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W.P.No.25337 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2023

CORAM :

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.25337 of 2007 and

M.P.Nos.1 to 3 of 2007, 1 of 2008, 1 of 2010 & 1 of 2013

C.Ganesan

..

Petitioner

vs

1. Indian Oil Corporation Limited
Rep by its General Manager
(Tamil Nadu & Pondy)
Indian Oil Bhavan
No.139, Nungambakkam High Road
Chennai 600 034.
2. The Deputy General Manager (LPG)
Indian Oil Corporation Limited
(Tamil Nadu & Pondy)
Indian Oil Bhavan
No.139, Nungambakkam High Road
Chennai 600 034.
3. Murali
Deputy Manager, Area Office
No.8/1079, Avinashi Road
Coimbatore – 641 018.
4. Parameswaran
Deputy Manager, Area Office
No.8/1079, Avinashi Road
Coimbatore – 641 018.



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5. Vellaichamy
Field Officer
Area Office
No.8/1079, Avinashi Riad
Coimbatore – 641 018.

6. The Thirumalai Indane Gas Service
Pitchampalayam Pudur Bus Stop
Peruma Nallur Road
Tiruppur – 641 602.

7. Sri Periyannayagi Amman Indane Gas Service
Palayakadu
Uthukuli Road
Tiruppur – 641 607.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari, calling for the records of the first respondent herein in TNL/S/669 dated 18.07.2007 relating to N.S.Gas Agency, Tiruppur and quash the same.

For the Petitioner : Ms.M.Meenarukmani
for Mr.T.Pon Ram Kumar

For the Respondents : Mr.V.Ananthanatarajan
for respondents 1 to 2

No Appearance
for respondents 3 to 7



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ORDER

The writ on hand has been filed calling for the records of the first respondent herein in TNL/S/669 dated 18.07.2007 relating to N.S.Gas Agency, Tiruppur and quash the same.

2. The petitioner belongs to the Pallar Community, who applied for grant of LPG distributorship in Tiruppur area under the said category and was successful to bag the LPG distributorship, given in favour of the petitioner by the first respondent herein under agreement dated 17.03.1997. Due to shortage of funds to start the business, the petitioner got financial assistance from one A.Vellaichamy to the tune of Rs.2.50 lakh, who is the petitioner's close relative and took a property for lease from the wife of the said A.Vellaichamy. The said loan was granted after getting signatures of the petitioner on several blank stamp papers and papers as security for the purpose of debt, apart from the promisory note.



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3. With the funds made available to the petitioner and with his own funds, the petitioner constructed a godown and commenced the business in March, 1997. The Sales Tax Registration Certificate in respect of the Gas Agencies and the mandatory licenses, which are required under the Explosives Act and the Rules framed thereunder are in the name of the petitioner.

4. While so, on 26.12.1997, when one of the employees of the petitioner was on his way to the bank to deposit the collections, one V.Ravi Shankar, son of the said Vellaichamy, forcibly snatched away a sum of Rs.88,000/- from him. In view of the above, the petitioner had filed a complaint against the said Ravi Shankar with the South Police Station, Tirupur and the said Ravi Shankar was summoned by the police, where it was admitted by him of the fact of having snatched the money from the petitioner's employee and the same was handed over back to the petitioner.



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5. On 17.04.1998, the said Vellaichamy have addressed a letter to the second respondent herein, stating that he has advanced money to the petitioner for the purpose of starting business on the assurance that he would get back his money with the interest at 18 – 24%. It was stated that the said payments were not made and the rent was also not paid for the said property and further raised an allegation that unauthorized gas connections were being given by the petitioner. In the said representation, the said Vellaichamy has requested the Corporation to arrange to get back his loaned funds. He has further forwarded letters dated 04.05.1998 and 09.05.1998 stating that two items of further advances were omitted in his earlier letters and the same may also be taken into account while settling the loans.

6. The said Vellaichamy said to have filed O.S.No.18 of 2000 on the file of the District Munsif Court, Tirupur praying for a decree for permanent injunction to restrain the petitioner from preventing him from taking over the business of the petitioner and for a mandatory injunction to direct the first respondent herein to induct him as the licensee in the petitioner's



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business. The said suit was dismissed for default on 04.09.2003, which was not further pursued by the said Vellaichamy.

7. Thereafter, the said Vellaichamy had made a complaint before the first respondent Corporation. The petitioner was summoned by the Manager (Vigilance) of the first respondent Corporation on 22.06.2005 and several questions touching upon the documents, which appears to have been furnished by the said Vellaichamy, were shown to the petitioner and the petitioner explained that the said documents were not executed by him and there was no such partnership as claimed by the said Vellaichamy and the transaction was of loan, pure and simple. On 09.07.2005, the petitioner sent a communication to the Manager (Vigilance) of the first respondent, stating that the petitioner was the sole proprietor of the business and the alleged partnership was a false claim by Vellaichamy and his son Ravi Shankar as if they were the partners of the Agency. The claim that an oral partnership was entered into on 20.01.1996 and partnership deeds were entered into on 27.11.1998 and 09.01.1999 were false and the agreement dated 31.12.1997,



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which was shown to the petitioner at the time of enquiry on 22.06.2005 was also a false document.

8. While so, the petitioner received a show cause notice dated 07.02.2006 from the Deputy General Manager of the first respondent that the petitioner had entered into partnership with Ravi Shankar on 31.12.1997 and is sharing the profits of the distributorship at 33% : 67% respectively and the management and administration of the distributorship was being carried out by Ravi Shankar and the petitioner entered into an agreement with Vellaichamy and Ravi Shankar on 20.09.1998 with a condition that the petitioner would return the loan amount of Rs.14,00,000/- on or before 20.11.1998, failing which, the petitioner had to hand over the distributorship to them. The petitioner had entered into partnership with Vellaichamy on 09.01.1999 for operating the distributorship as a joint business and the same was registered under the Partnership Act on 16.02.1999 that large number of cylinders were released on cash and carry basis without extending the cash rebate and that it was established that



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supply of bulk quantity of refills to some unauthorized persons without proper documents in the name of P.K and M80 was made as per the registers maintained by the petitioner and that the above acts amount to gross violation of the terms and conditions of the LPG Distributorship Agreement and the petitioner was called upon to show cause within 15 days as to why the distributorship agreement dated 17.03.1997, entered into between the petitioner and the first respondent Corporation should not be terminated.

9. Since the documents dated 31.12.1997, 20.09.1998, 09.01.1999 and 16.02.1999 were not furnished to the petitioner, the petitioner, vide letter dated 14.02.2006, sought for the copies of the said documents. Thereafter, the petitioner filed W.P.No.5265 of 2006 praying for a writ of Certiorari, calling for the records relating to the show cause notice dated 07.02.2006 and quash the same. The said writ petition was disposed of by order dated 24.02.2006, directing the respondent Corporation to extend the time so as to enable the petitioner to file his submission of reply.



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Accordingly, on 03.03.2006, the petitioner filed a detailed explanation to the first respondent, reiterating that the petitioner had entered into a lease with the wife of Vellaichamy in respect of the vacant land for the purpose of godown and the said Vellaichamy, who is the relative of the petitioner, had lend money to the petitioner for the purpose of his business, through which the petitioner purchased vehicle for the purpose of his business and he was carrying on the business as a Proprietor and no one else was entitled to claim the business and that the bank accounts, book accounts, correspondence etc, would show it was only a proprietorship concerned and the documents dated 31.12.1997, 20.09.1998, 09.01.1999 and 16.02.1999 are all forged documents.

10. The grievance of the petitioner is that, on 20.07.2007, the respondents 3 to 5 herein had inspected the godown of the petitioner and took count of the cylinders and loaded all the cylinders, full and empty, domestic and commercial in their vehicles. On questioning the same, the third respondent produced a copy of the order dated 18.07.2007, passed by



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the first respondent herein, terminating the distributorship agreement dated 17.03.1997 and calling upon the petitioner to handover all the equipments and documents and etc. The petitioner was also made to sign a statement of stock as if it was handed over by the petitioner under his letter head. Condemning the said act, the petitioner has filed this writ petition.

11. The learned counsel appearing on behalf of the petitioner mainly contended that the termination of Distributorship was made based on vengeance. The petitioner made allegations against the authorities of the Indian Oil Corporation and instead of conducting fair enquiry into allegations, the respondents have initiated action to terminate the Distributorship. Therefore, the order of termination is not valid.

12. The learned counsel appearing on behalf of the petitioner is of an opinion that a fair enquiry was not conducted. Merely based on the charges and the explanations and without conducting a detailed enquiry, the order of termination has been issued. Thus, the principles of natural justice has been



violated.
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13. Regarding the agreement between the petitioner and the respondents, the learned counsel contended that the writ petition can be maintained. The Hon'ble Supreme Court of India in the case of ***ABL International LTD. and Another Vs. Export Credit Guarantee Corporation of India LTD. and Others*** reported in (2004) 3 SCC 553 held that the writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record will not normally be entertained under Article 226 of the Constitution of India. However, it has been held that if the facts are required oral evidence can be taken.

14. The Hon'ble Supreme Court held that the Courts can very well go into the disputed facts and decide the objections if facts permit. Therefore, applying the said judgment, the facts involved in the present case are to be considered. The principles laid down by the Apex Court on the judgment has been subsequently followed in the case of ***Popatrao***



Vyankatrao Patil Vs. State of Maharashtra and Others reported in 2020

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SCC Online SC 291, wherein, the Court has held as follows,

“11. No doubt that, normally, when a petition involves disputed questions of fact and law, the High Court would be slow in entertaining the petition under Article 226 of the Constitution of India. However, it is a rule of self-restraint and not a hard and fast rule. In any case, this Court in ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd.¹ has observed thus:

“19. Therefore, it is clear from the above enunciation of law that merely because one of the parties to the litigation raises a dispute in regard to the facts of the case, the court entertaining such petition under Article 226 of the Constitution is not always bound to relegate the parties to a suit. In the above case of Gunwant Kaur [(1969) 3 SCC 769] this Court even went to the extent of holding that in a writ petition, if the facts require, even oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to



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entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact”

12. While summing up the conclusions in the aforesaid case, this Court concluded thus:

“27. From the above discussion of ours, the following legal principles emerge as to the maintainability of a writ petition:

(a) In an appropriate case, a writ petition as against a State or an instrumentality of a State arising out of a contractual obligation is maintainable.

(b) Merely because some disputed questions of fact arise for consideration, same cannot be a ground to refuse to entertain a writ petition in all cases as a matter of rule.

(c) A writ petition involving a consequential relief of monetary claim is also maintainable.

28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under



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Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1].) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.”

15. The learned counsel appearing on behalf of the respondents / Indian Oil Corporation objected the submissions made on behalf of the petitioner by stating that the case of the petitioner was decided based on the violations of the clauses of the contract. Therefore, the writ petition need not be entertained.



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16. The order of termination itself states that the Distributorship of the petitioner came to adverse notice for violation of certain clauses of Distributorship agreement and therefore show cause notice for termination was issued to the petitioner for violation of clauses 11, 23(a), 23(b), 23(c) (i), 23(c) (iii), 27(a) and 27(n) of the contract. Since the clauses of the contract have been violated, the show cause notice was issued based on the explanation and by providing opportunity to the petitioner. If at all the petitioner is aggrieved, the petitioner has to resolve the same by invoking the arbitration clause, since arbitration clause was agreed between the parties. Therefore, the writ petition is liable to be rejected.

17. The learned counsel for the respondents relied on the judgment of the Hon'ble Supreme Court of India in the case of ***A.S.Motors private Limited Vs. Union of India and Others*** reported in ***(2013) 10 SCC 114***, wherein, the Hon'ble Supreme Court held as follows:

“7. It was argued on behalf of the appellant that the termination of the contract between the parties was legally bad not only because the principles of



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natural justice requiring a fair hearing to the appellant were not complied with but also because there was no real basis for the respondent Authority to hold that the appellant had committed any breach of the terms and conditions of the contract warranting its termination. We find no merit in either one of the contentions. The reasons are not far to see.

8. Rules of natural justice, it is by now fairly well settled, are not rigid, immutable or embodied rules that may be capable of being put in straitjacket nor have the same been so evolved as to apply universally to all kind of domestic tribunals and enquiries. What the courts in essence look for in every case where violation of the principles of natural justice is alleged is whether the affected party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably. The doctrine of audi alteram partem is thus aimed at striking at arbitrariness and want of fair play. Judicial pronouncements on the subject have, therefore, recognised that the demands of natural justice may be different in different situations depending upon not only



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the facts and circumstances of each case but also on the powers and composition of the tribunal and the rules and regulations under which it functions. A court examining a complaint based on violation of rules of natural justice is entitled to see whether the aggrieved party had indeed suffered any prejudice on account of such violation. To that extent there has been a shift from the earlier thought that even a technical infringement of the rules is sufficient to vitiate the action. Judicial pronouncements on the subject are legion. We may refer to only some of the decisions on the subject which should in our opinion suffice.

15. Coming to the case at hand we find that the termination of the contract between the parties was preceded by a show-cause notice issued to the appellant and a hearing provided to it by the competent authority. The show-cause notice issued to the appellant on 24-11-2006 enclosed with it all relevant documents including the complaints received against the appellant from various quarters and a copy of the report submitted by the agency engaged for verifying the allegations against the appellant. The appellant had unsuccessfully



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challenged the show-cause notice in Writ Petition No. 6338 of 2006 before the High Court. The High Court had while refusing to interfere in the matter directed [A.S. Motors (P) Ltd. v. Central Bank of India, WP No. 6338 of 2006, order dated 13-12-2006 (MP)] the appellant to submit a reply to the notice. The appellant had accordingly appeared before the authority on 12-1-2007, submitted its written statement and was heard in support of its case that it had not committed any default. In the reply or at the hearing, the appellant had not alleged any mala fides, bias or prejudice against the officers dealing with the matter or the agency employed by them for collecting and verifying the facts. Principles of natural justice thus stood substantially complied with.

16. The contention that the appellant should have been given an opportunity to cross-examine the persons whose statements had been recorded by the agency in the course of its inquiry and verification was rightly rejected by the High Court keeping in view the nature of the inquiry which was primarily in the realm of contract, aimed at finding out whether the appellant had committed any violation of the contractual stipulations



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between the parties. Issue of a show-cause notice and disclosure of material on the basis of which action was proposed to be taken against the appellant was in compliance with the requirement of fairness to the appellant who was likely to be affected by the proposed termination. Absence of any allegation of mala fides against those taking action as also the failure of the appellant to disclose any prejudice, all indicated that the procedure was fair and in substantial, if not strict, compliance with the requirements of audi alteram partem. The first limb of the challenge mounted by the appellant, therefore, fails and is hereby rejected.”

18. In the above judgment, a specific contention was raised regarding the violation of the principles of natural justice. However, the Court found that regarding breach of terms and conditions of the contract provides rights to the parties to initiate action. Therefore, what the Courts in essence look for in any every case, where violation of principles of natural justice is alleged is whether the affected party was given reasonable opportunity to present its case and whether the administrative authority had acted fairly, impartially and reasonably.



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19. In this context, let us now consider the clauses of contract invoked by the respondents/Indian Oil Corporation, namely, clause 11, clause 23(a) and clause 27(n), which are as follows:

*“**Clause 11** :- The distributor shall faithfully and diligently observe and carry out all directions, orders, terms and conditions as may be issued by the Corporation, from time to time and has may be contained in the Corporation's 'Indane manual' and any amendments or modification as may be made by the Corporation thereto from time to time. The distributor hereby confirms that he has received the copy of the Indane manual and the general directions as circulated by the Corporation on date of this agreement and agrees to abide by and perform the same.*

***Clause 23(a):** "The distributor undertakes faithfully and promptly to carry out, observe and perform all directions and order or rules made from time to time or its representative for the proper carrying on the distributorship of the Corporation".*

***Clause 27(n)** : "Notwithstanding anything to the contrary herein contained, the Corporation shall also be*



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at liberty at its entire discretion to terminate this agreement forthwith upon or at any time after the happening of any of the following events, namely:-

If the distributor shall either by himself or by his servants or agents commit or suffer to be committed any act which, in the opinion of State Office in-charge of the Corporation for the time being at Chennai in the state of Tamil Nadu of the Corporation, whose decision in that behalf shall be final, is prejudicial to the interest or good name of Corporation or its products; the state office in charge shall not be found to give reasons of such decision".

20. Certain clauses are broader enough to cover the varieties of allegations against the Distributorship, more specifically, clause 27(n) contemplates that the respondent/Indian Oil Corporation shall be at liberty at its entire discretion to terminate the agreement forthwith upon or at any time after the happening of any of the following events, namely, if the distributor shall either by himself or agents commit or suffer to be committed any act which, in the opinion of State Office in-charge of the Corporation for the time being at Chennai in the State of Tamil Nadu of the



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Corporation, whose decision in that behalf shall be final is prejudicial to the interest or good name of Corporation or its products. The State office in charge shall not be found to give reasons of such decision.

21. The above clause is sufficient enough to cover numerous nature of allegations and if the Corporation found that the Dealership causes greater inconvenience or causing dis-reputation to the Corporation, they are at discretion to terminate the contract. Such broader clause has been agreed between the parties, in order to ensure that the Distributorship run in a smooth and customer friendly manner. It is a business agreement and therefore smooth functioning of Distributorship is of paramount importance and the customer relationships are of far more importance for the purpose of running the business in a peaceful manner.

22. With reference to the above clauses, the respondents/ Indian Oil Corporation issued a show cause notice to the petitioner. The petitioner was provided with an opportunity to submit their explanations. The explanations



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were considered by the authorities competent and they have formed an opinion that the petitioner has breached certain clauses. Therefore, the respondents have terminated the Distributorship. The reasons stated in the impugned order provides details regarding the manner in which the issues were considered based on the reply submitted by the writ petitioner. The explanations / objections submitted by the writ petitioner were elaborately considered. Therefore, the very contention of the petitioner that the principles of natural justice has been violated is incorrect.

23. While dealing with the terms and conditions of the contract, the parties are aware of the terms and conditions as they have signed the agreement. Therefore, the Court is bound to consider, *whether the affected party was given a reasonable opportunity to present its case or not?; whether the administrative authority had acted fairly and reasonably or not?*



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24. It is not as if there must be a separate enquiry proceedings through any other agency. When the opportunity of hearing is provided and the explanations submitted by the petitioner are considered by the competent authorities, it would be sufficient to meet out the requirements of the principles of natural justice. Therefore, the contention of the petitioner in this regard deserves no merit consideration.

25. If at all the petitioner raise certain allegations against the authorities of the Indian Oil Corporation or in respect of the allegations made out against the petitioner, an elaborate adjudication is required, then such an adjudication cannot be undertaken in the writ proceedings. Therefore, the petitioner has to invoke the arbitration clause as agreed between the parties in the contract.

26. The respondents have raised an allegation of causing dis-reputation and dis-honor to the institution of Indian Oil Corporation Limited. Further, the petitioner created undue pressure on the officer in-



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charge of sales area from discharging normal duties and caused harassment to the officer. There are several other allegations raised and the respondent / Indian Oil Corporation formed an opinion that the petitioner had frequently caused inconvenience and disrupted the image of the Indian Oil Corporation. Further, the petitioner was non co-operative in all respects.

27. A mere sending of complaint would not be a ground for termination of contract. As pointed out, the termination of the Distributorship was issued based on the allegations subsequently raised in show cause notice issued to the petitioner and the petitioner has also submitted its explanations. Considering the explanations, the clauses in the agreement were invoked and accordingly, the order of termination of Distributorship was issued.

28. If at all the petitioner raise other allegations against the corporation or its officials, then the petitioner necessarily has to invoke the arbitration clause for elaborate adjudication of the issues, which cannot be



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done in the writ proceedings.

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29. The power of Judicial Review of the High Court under Article 226 of the Constitution of India is to scrutinise the processes through which a decision is taken by the competent authorities in consonance with the provisions of the Statute and the Rules in force, or not, but not the decision itself.

30. In the present case, the show cause notice was issued, certain allegations are raised against the petitioner and the petitioner submitted its detailed explanation. Thereafter, the competent authorities considered the explanation and taken a decision that the petitioner has breached certain terms and conditions of the contract. Accordingly, the respondents issued the termination of Distributorship.

31. This being the facts and circumstances, if at all the petitioner decides to adjudicate the issue elaborately, it is left open for the petitioner to



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invoke the arbitration clause for the purpose of resolving the issues.

However, this court do not find any merit for interference in respect of the order of termination of Distributorship issued by the respondents.

32. Accordingly, the writ petition stands dismissed. However, there will be no order as to costs. Consequently, the connected miscellaneous petitions are closed

Index : Yes/No

15.03.2023

Neutral Order: Yes/No
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To:

1. Indian Oil Corporation Limited
Rep by its General Manager
(Tamil Nadu & Pondy)
Indian Oil Bhavan
No.139, Nungambakkam High Road
Chennai 600 034.
2. The Deputy General Manager (LPG)
Indian Oil Corporation Limited
(Tamil Nadu & Pondy)
Indian Oil Bhavan
No.139, Nungambakkam High Road
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S.M.SUBRAMANIAM,J.

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