



W.P.Nos.7291 of 2022 & 1788 of 2023

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M.DHANDAPANI, J.

These writ petitions have been listed under the caption “for being mentioned” at the instance of the learned counsel for the petitioner on the ground that an inadvertent error has crept in sub clause (iv) of paragraph No.14 of the order, dated 17.03.2023 made in W.P.Nos.7291 of 2022 and 1788 of 2023.

2. Sub clause (iv) of Paragraph No.14 of the order shall read as follows :

(iv) The learned Arbitrator shall decide the place of arbitration on his own at Coimbatore/Ooty/Chennai.

3. Registry is directed to carry out the necessary correction in the order dated 17.03.2023 and issue a fresh copy of the order to the learned counsel for the parties. In other respects, the earlier order dated 17.03.2023 shall remain unaltered.

05.10.2023

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W.P.Nos.7291 of 2022 & 1788 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2023

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.Nos.7291 of 2022 and 1788 of 2023

and

WMP. Nos.7330 of 2022 and 1900 & 1901 of 2023

M.Sathyamoorthy

... petitioner in both the petitions

-Vs-

1. Bharat Petroleum Corporation Limited,
Bharath Bhavan
No.4 & 6, Currimbhai Road,
Ballard Estate,
Mumbai-9.

2. The Regional Manager,
LPG.,Bharat Petroleum Corporation Limited,
Ranganathan Garden,
Annanagar, Chennai.

3. The Territory Manager, LPG,
Bharat Petroleum Corporation Limited,
No.1644, Peelamedu, Coimbatore-004.

... Respondents in both the petitions

Prayer in WP.No.7291 of 2022: Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari calling for the records relating to the order of termination dated 10.02.2022 in Ref. CBE.LPG:2.5 CON of the 3rd respondent and quash the same.



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Prayer in WP.No.1788 of 2023: Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari calling for the records relating to the advertisement of the first respondent published in the Hindu dated 28.12.2022 with regard LPG distribution in Ooty, Nilgiris under RURBAN VITRAK category and quash the same.

In Both Writ petitions:

For petitioner : Mr. A.L.Gandhimathi

For A.R.Karthik Lakshmanan

For Respondents : Mr.K.Ethiraj, SC for RR1 to 3

COMMON ORDER

Since the issue involved in both the matters and the facts are one and the same, both these petitions are disposed of by way of common order.

2. W.P.No.7291 of 2022 has been filed seeking to quash the termination order dated 10.02.2022 of the 3rd respondent.

3. WP.No.1788 of 2023 has been filed seeking to quash the advertisement of the first respondent published in the Hindu dated



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28.12.2022 with regard LPG distribution in Ooty, Nilgiris under RURBAN VITRAK category.

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4. The case of the petitioner is that he is the proprietor of M/s.Master Fuel running business at Shop Nos.1 to 4 Natraj Building, Ettines Road, Ooty, Nilgiris District. For developing his business, the petitioner borrowed a sum of Rs.13 Lakhs from a private financier. For the said arrangement, the petitioner was forced to sign an alleged memorandum of understanding dated 14.02.2006 as security for the loan obtained. The Financier had also obtained blank signed cheques from the petitioner as security documents. Apart from this, one of the financiers viz., Balakrishnan obtained a power of attorney from the petitioner as security for the loan. However, he misused the power of attorney and executed a sale deed in respect of 1/4th undivided share in 453 sq.ft. of land in S.No.1686/2 together with shops. Therefore, the petitioner filed a suit in O.S.No.176 of 2012 before the Sub Court, Nilgiris for permanent injunction restraining the defendants from interfering with the petitioner's possession and enjoyment of the property as well as the LPG



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business. While so, the said financier Balakrishnan and his brothers have given complaint to the respondent Corporation stating that the petitioner, due to his inefficiency and financial problems was unable to cover the demand for cylinders at Ooty and the same was managed by Kothagiri Gas agents and he has approached them and requested to join partnership in the agency. As such, the partnership was formed on 01.02.2006. In view of the said complaint, the respondent corporation issued a letter dated 15.03.2012 to the petitioner enclosing a copy of the complaint. On receipt of the same, the petitioner gave an explanation dated 14.09.2012. In the meanwhile, the suit in OS.No.176 of 2012 also came to be dismissed as against which, the petitioner also filed an appeal in A.S.No.26 of 2016 on the file of the learned District Judge, Udthagamandalam.

5. While so, no orders have been passed against the notice and there was no MOU between the petitioner and the complainant. Therefore, the petitioner filed a writ petition before this Court in W.P.No.25115 of 2015 challenging the show cause notice dated



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05.06.2015 issued by the 3rd respondent. This Court, vide its order dated 10.02.2021, disposed of a writ petition directing the petitioner to send a reply to the show cause notice within a period of one week and on receipt of the same, the 3rd respondent shall consider the said reply and pass final orders on merits and in accordance with law. Pursuant to which, the petitioner sent a suitable reply on 01.04.2021. In the meantime, the petitioner distributorship has also been renewed on 17.06.2021 for five years commencing from 18.06.2021.

6. Under such circumstances, the appeal in AS.No.26 of 2016 was also allowed vide order dated 09.08.2021 and it was observed that the defendant in the suit has played fraud in creating the documents and permanent injunction has been granted in favour of the petitioner and the alleged sale deed created by them has also been cancelled. Such being the situation, the order of the third respondent herein in terminating the agreement dated 10.02.2022 is totally arbitrary and unjust. Challenging the same, WP.No.7291 of 2022 has been filed. During the pendency of this writ petition, the first respondent issued a public notification to call



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for the application under RURBAN VITRAK Category. Challenging the said Notification, WP.No.1788 of 2023 has filed.

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7. The learned Senior counsel appearing on behalf of the petitioners submitted that even before the complaint was given by the complainant in February, 2012, there were disputes between the petitioner and the complainant and a police complaint has also been given against the petitioner and in spite of clear explanation given by the petitioner, the respondent Corporation had not considered the same and passed order as if the alleged MOU has been entered into between the petitioner and the complainant. The respondent Corporation erred in finding that the petitioner had committed breach of terms of the distributorship agreement and terminating the agreement. Therefore, the order of termination passed by the respondent Corporation is illegal and the same is liable to be set aside.

8. It is the submission of the learned Standing Counsel appearing on behalf of the respondents that the Agreement between the petitioner



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and the respondents provides for an Arbitration Clause and without invoking the said Arbitration Clause and submitting himself to Arbitration, the petitioner has rushed before this Court by filing this Writ petition.

9. In fairness learned Standing Counsel submitted that, this Court may relegate the parties to Arbitration by appointing an Arbitrator, so that the issues between the petitioner and the respondents could be arbitrated by the learned Arbitrator. For such a course, learned senior counsel appearing for the petitioner also did not have any objection and he fairly conceded to the appointment of an Arbitrator.

10. Heard learned counsel appearing on either side and perused the materials placed on record.

11. The facts in the present case are not disputed by the learned counsel appearing on either side. However, the main ground on which the Writ petition is sought to be countered by the respondents is that,



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there is an Arbitration Clause which provides for Arbitration in case dispute arise between the petitioner and the respondents and the petitioner not having enforced the Arbitration Clause cannot seek any remedy before this Court by filing this Writ petition.

12. This Court has perused the Arbitration Agreement and in Clause 38 of the said Agreement, Arbitration is provided for, which reads as follows:

38. Any dispute or whatsoever arising out of or in connection with this Arbitration Agreement including any question regarding its existence, validity, construction, interpretation, application, meaning, scope, operation or effect of this contract or termination thereof shall be referred to and finally resolved through Arbitration as per the procedure mentioned hereinbelow:

(a) The dispute or difference shall, in any event, be referred only to a Sole Arbitrator.

(b) The appointment and Arbitration proceedings shall be conducted in accordance with SCOPE forum of Arbitration Rules for the time



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being in force or as amended from time to time.

(c) The Seat of Arbitration shall be at _____

(d) The proceedings shall be conducted in English Language.

(e) The cost of the proceedings shall be equally borne by the parties, unless otherwise directed by the Sole Arbitrator.

13. In view of the fact that the Agreement itself provides for Arbitration, this Court without entering into intricacies of the issue, deems it fit to appoint an Arbitrator to conduct Arbitration between the petitioner and the respondents to settle the issue amicably.

14. In view of the fair stand taken by the learned counsel on either side, this Court passes the following order :-

*i) **Hon'ble Mr. Justice V.PARTHIBAN, Judge (Retd.)** is appointed as the Arbitrator to arbitrate the issue between the petitioner and the respondents.*

ii) The Learned Arbitrator shall decide upon the composition of the Committee so as to involve the representatives of the petitioner and the



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respondents.

iii) The petitioner is directed to identify an office space at Coimbatore/Ooty, to enable the conduct of Arbitration, which would be the seat of Arbitration as per clause 38 (c) of the Agreement

iv) Arbitration shall be held at Coimbatore/Ooty at the convenience of the Arbitrator.

v) The learned Judge/Arbitrator shall fix his remuneration and also his boarding and lodging expenses in consultation with the petitioner and the respondents.

vi) The Committee shall start functioning from second week of June, 2023 and all efforts shall be made to complete the entire process, as expeditiously as possible.

vii) As and when any clarification is required, a memo shall be moved before this Court for obtaining appropriate orders.

15. With the above directions and observations, the writ petitions are disposed of. Consequently, connected miscellaneous petitions are also closed.



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16. Till completion of the Arbitration proceedings, the advertisement dated 28.12.2022 which was published with regard LPG distribution in Ooty, Nilgiris shall remain stayed. Upon completion of the Arbitration proceedings, it is open to either parties to work out their remedy in the manner known to law, if they are otherwise aggrieved by the award in the arbitration proceedings.

17.03.2023

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NCC : Yes / No
Speaking Order : Yes / No
Index : Yes / No

To

1. Bharat Petroleum Corporation Limited,
Bharath Bhavan
No.4 & 6, Currimbhai Road,
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Mumbai-9.

2. The Regional Manager,
LPG.,Bharat Petroleum Corporation Limited,
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