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W.P.No.4643 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2023

CORAM :

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

W.P.No.4643 of 2017 and
W.M.P.Nos.4896 & 4895 of 2017

Bhavani – Komarapalayam Lorry
Owners Association (Regn.No.81 of 1998)
No.5/1159, A-5, Salem Bypass Road
NH-47, Lakshmi Nagar
Vasavi College (PO)
Erode – 638 316
Rep by its President
Mr.P.Muthusamy

.. Petitioner

vs

1. M/s.Hindustan Petroleum Corporation Limited
Rep. by its General Manager
Gandhi Irwin Road
Egmore, Chennai – 8.

2. The Senior Regional Manager (Retail)
Hindustan Petroleum Corporation Limited
Coimbatore Retail Regional Office
HP House, 18/3, Big Bazaar Street
Coimbatore – 641 001.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorari, calling the records relating to the notification issued by the first respondent which was published in the Thina Thanthi newspaper



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dated 03.02.2017 quash the same insofar as the petitioner's retail outlet situated at No.1175-A, Bhavani Main Road, Lakshmi Nagar, Vasavi College PO, Erode – 638 007, Sl.No.6 available in the detailed advertisement is concerned.

For the Petitioner : Mr.R.Ravi
for Mr.V.Elangovan
For the Respondents : Mr.M.Vijayan
for M/s.King and Partridge

ORDER

The notification issued by the first respondent for appointing service provider published in Thina Thanthi newspaper on 03.02.2017 is sought to be quashed in the present writ petition.

2. The petitioner is Bhavani – Komarapalayam Lorry Owners Association (Regn.No.81 of 1998) and is a registered Association under the Tamil Nadu Societies Registration Act.

3. The impugned notification for appointment of service provider by the Hindustan Petroleum Corporation Limited is sought to be quashed mainly on the ground that the petitioner is a temporary dealer of retail outlet



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to sell petroleum products (petrol bunk).

3. On earlier occasion, the petitioner filed W.P.No.13430 of 2009 challenging the notification dated 22.06.2009, issued by the respondent Petroleum Corporation in Thina Thanthi. Further, direction was sought for to appoint the petitioner as a regular dealer of the retail outlet. This Court passed an order based on the undertaking given by the petitioner and the respondent herein. In this regard, the learned counsel for the petitioner herein relied on the observation made in the earlier order by this Court dated 20.11.2009, which reads as under:

“3. However, today, the learned counsel for the petitioner has filed an affidavit of undertaking. As per the said affidavit or undertaking, the petitioner seeks permission to operate the retail outlet at Bhavani I, 6/1172-A, Bhavani Main Road, Erode till regular dealers are appointed.

4. Taking into account the terms of the order dated 22.01.2007, I am of the opinion that the request of the petitioner is a reasonable one.



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5. However, according to the learned counsel for the respondents, the petitioner cannot be permitted to run the said outlet as a service provider, but he can continue to operate the same in terms of the order dated 22.01.2007 till regular dealers are appointed.”

4. Relying on the above undertaking, the petitioner states that, unless a regular outlet dealer is appointed, the petitioner cannot be disturbed from running a retail outlet (petrol bunk) and therefore, the present writ petition is filed.

5. Even as per the notification, the respondents have stated that the petitioner may be permitted to run an outlet until regular dealers are appointed. It was the undertaking given in the year 2009 before this Court and pursuant to the said undertaking, the petitioner is running a retail outlet as a temporary dealer for about fourteen years.

6. The reason for not appointing a regular dealer is not known by this Court. In this regard, the first respondent / Hindustan Petroleum Corporation Limited has to conduct an enquiry in the matter of allowing a temporary



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dealer for continuing for years together without appointing a regular dealer to run the retail outlet.

7. The present writ petition is filed challenging the notification issued by the respondent to appoint service providers. The petitioner, in spite of participating the process, have chosen to challenge the said notification and by virtue of the interim order, is continuing the retail outlet for the past about five years. Such a practice of running a retail outlet merely based on an interim orders for years together, at no circumstances be encouraged. The respondents were not vigilant enough to pursue the writ petition.

8. No doubt, the respondents are empowered to appoint a regular dealer in respect of the said outlet. The notification was issued to appoint service providers, which is also stated to be temporary. While so, even in such case, the petitioner ought to have participated in the process, even for such temporary dealership or otherwise. The undertaking of the year 2009 cannot be utilized indefinitely or for longer period, which would be against



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the public interest.
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9. The respondent is a State within the meaning of Article 12 of the Constitution of India. Appointment of dealership must be done transparently and scrupulously by following procedures as contemplated. All eligible persons are entitled to participate in the process of appointment of dealers to run outlets in the manner known to law and the petitioner cannot be allowed to hold the temporary post for such long period, which would be violative of the public interest policy and more so, denying the opportunity of other eligible persons who are all aspiring to seek appointment of dealership by participating in the process of appointment.

10. This being the factum, the respondents are open to initiate all appropriate action for the appointment of a regular dealer or service provider, as the case may be. In either of the circumstances, the petitioner has to participate in the process, if any notification has been issued. At the outset, the petitioner has to seek retail outlet only by participating in the



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process of selection, which is to be notified in accordance with the Rules and regulations. The respondents are directed to initiate all steps accordingly.

11. With these directions, the writ petition is disposed of. There will be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Index : Yes/No
Neutral Order: Yes/No

23.03.2023

drm

To:

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S.M.SUBRAMANIAM,J.

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