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WP(MD)No.15837 of 2014
BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.03.2023
Pronounced On: 06 .07.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.15837 of 2014
and
MP(MD)No.1 of 2014

M/s.Edhayam & Co,
COCO Operator,
Represented by its Managing Partner
D.Durairaj,
3/52D, Krishnarajapuram,
Tuiticorin - 628 002. ...Petitioner

Vs.

The Senior Regional Manager,
Hindustan Petroleum Corporation Limited,
Madurai Retail Regional Office,
1, III Floor, Rakesh Towers,
By pass road, Madurai - 625 010. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, writ of certiorified mandamus calling for the records of the respondent herein viz, the proceedings bearing No.MDRO:VK:RET dated 10.09.2014 in respect of the petitioner's retail outlet at S.No.166/6A, Tharuvaikulam Village, Tuiticorin District and quash the same and consequently forbear the respondents herein, its men, agents, subordinates or any other person or persons claiming through it or authorise by it from in any



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manner, interfering with the operation of the Retail
Outlet by the petitioner at S.No.166/6A,
Tharuvaikulam Vilalge, Tuiticorin District.

For Petitioner : Ms.AL.Gandhimathi
for Mr.T.Pon Ramkumar
For Respondent : Mr.M.Sridhar

ORDER

This writ petition is filed challenging the proceedings of the respondent corporation directing him to vacate and hand over the retail outlet, where he has appointed as Maintenance and Handling Contractor at S.No.166/6A, Tharuvaikulam Village, Tuiticorin District.

2.The learned Counsel for the petitioner submits that the petitioner was appointed as a Maintenance and Handling Contractor (M&H) by the respondent Corporation by an agreement dated 29.03.2003. Based on the agreement, the petitioner is operating the bunk as M&H Contractor till date. The policy of phasing of the temporary COCOs by the Government



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dated 06.09.2006 has been kept in abeyance by the
Government itself by letter dated 28.07.2014.

From the date of awarding contract, the petitioner's
performance is satisfactory. While so, he cannot be
evicted and hence the impugned order has to be
quashed.

3.The learned Standing Counsel appearing for the
respondent submits that the petitioner was appointed
purely on a temporary basis by the respondent
Corporation and as per Class 7 of the agreement dated
06.09.2006, the corporation by giving one month
notice can terminate the contract without assigning
any reason. He further submits that similarly placed
persons have earlier filed writ petitions before this
Court and the same were dismissed by the Division
Bench of this Court. The appeals, challenging the
said orders, filed before the Hon'ble Supreme Court
in Civil Appeal No.5228 of 2013, etc., batches were
also dismissed by order dated 08.07.2013. Therefore
there is no need to interfere with the impugned order
passed by the respondent Corporation.



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4.This Court considered the rival submissions

and perused the material placed on record.

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5.This petitioner was appointed as M & H contractor by an agreement dated 29.03.2003 to operate the petroleum outlet on a temporary basis. Even though the agreement is only for a temporary period, the petitioner still manages to operate the premises as M & H contractor and the petroleum corporation is also still supplying the products to the petitioner. While so, on 10.09.2014 the respondent Corporation has issued notice to the petitioner to vacate and hand over the outlet within one month as per Class 7 of the agreement. Challenging the same this writ petition is filed.

6.In contractual matters the parties are bound by the terms of the agreement entered into between them. Its relevant to extract the relevant terms and conditions of the agreement dated 29.03.2003 entered into between the petitioner and the respondent Corporation:



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"1.The Corporation hereby appoints the labour contractor purely as a temporary arrangement, pending selection and appointment of regular dealer through dealer selection board for performing various jobs and the said COCO with objective of running the retail outlets through its officials in the smooth manner.

7.The agreement will be for a period of one year with effect from 01.10.2003. The Corporation at its option may renew the agreement for a further period of one year. However, the agreement may be terminated at the option of the Corporation by giving one month's notice to the labour contractor without assigning any reason thereof. The agreement may be terminated by the labour contractor by giving three months notice in writing to the corporation of its intention to terminate this agreement."

7.Thus it appears that the contract is purely on temporary basis until a new regular dealer is appointed and as per class 7 of the agreement, the petitioner can be terminated by providing one



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month's notice. However, in a similar issue the
Division Bench of this Court in WA(MD)No.309 of 2010,
order dated 25.08.2014 has observed as follows:

"3. The second limb of subject matter of the dispute is the M&H Contractors, who are nominees of the land owners, and these contracts also are sought to be terminated on the ground of less than appropriate performance. In this behalf, there has been some subsequent development, inasmuch as during the pendency of the matters, the land owners were permitted to nominate different persons as M&H Contractors, provided they met the bench mark of the Indian Oil Corporation. These arrangements are stated to have continued satisfactorily.

5. In view of the aforesaid, these appeals and writ petitions are disposed of in the following agreed terms:

(ii) If the Indian Oil Corporation is satisfied with the performance of the present M&H Contractors, no precipitative action would be necessary. If they are not satisfied, then they will put the relevant parties to notice of their intent to change on



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account of lack of performance, so that
the parties have a right to explain their
stand."

8.Further this Court in WP.No.25517 of 2008 by
order dated 06.12.2018 has held as follows:

"2.When the matter was taken up for
consideration, the learned counsel for the
petitioner, on instructions, submitted
that on behalf of the petitioner, his
nominee, viz., his sister's son, by name,
A.Sivadevan may be permitted to continue
to run the said retail outlet as M&H
Contractor or adhoc dealer and as and when
a new dealer is appointed for the said
retail outlet, the petitioner will vacate
the retail outlet and hand over the same
to the respondents 2 to 4, within a period
of four weeks. An affidavit of undertaking
dated 26.11.2018 signed by the petitioner
has also been filed to that effect.

4.Recording the aforesaid affidavit
of undertaking dated 26.11.2018 filed by
the petitioner, this writ petition stands
disposed of, permitting the petitioner to
continue to run the retail outlet by his



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nominee and directing him to hand over the vacant possession within a period of two weeks from the date on which the new dealer is appointed by the respondents 2 to 4. No costs. Consequently, connected Miscellaneous Petition is closed."

9. Pending this writ petition, the petitioner has filed an affidavit before this Court, undertaking to vacate the premises within a period of four weeks from the date of appointment of a new dealer. It also appears that a new agreement has also been entered into between the petitioner and the respondent corporation on 21.11.2022 and the relevant terms and conditions are extracted hereunder:

"2. In the meanwhile with a view to avoid inconvenience to the motoring public, we had discussions with you on 15.11.2022 through online, when you consented to operate the said retail outlet purely on a temporary basis till such time, we are in a position to appoint a regular dealer.

3. Accordingly we hereby appoint you as a temporary dealer to operate the said



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outlet solely on temporary basis subject to termination by either party giving to the other one month return notice in their behalf.

4. The retail outlet business will be conducted by you purely on temporary basis without any claim or entitlement for regular dealership."

10. Considering the new agreement entered into between the parties and the affidavit filed by the petitioner dated 26.03.2023, this writ petition is disposed of with a direction to the petitioner to vacate the retail outlet in dispute, as and when a regular M & H contractor is appointed by the respondent Corporation, within a period four weeks therefrom, as undertook by him in the affidavit dated 26.03.2023. No costs. Consequently connected miscellaneous petition is closed.

.07.2023

dsk

Index: Yes/No

NCC : Yes/ No

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To

The Senior Regional Manager,
Hindustan Petroleum Corporation Limited,
Madurai Retail Regional Office,
1, III Floor, Rakesh Towers,
By pass road,
Madurai - 625 010.



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B. PUGALENDHI, J.

dsk

ORDER MADE IN

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