



WA.No.452/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

WA.No.452/2023 & CMP.No.4271/2023

1. Indian Oil Corporation Limited
rep.by its Executive Director [Retail Sales
S and W] Appellate Authority, Indian Oil
Bhavan G-9, Ali Yavar Jung Marg, Bandra [East]
Mumbai 400 051.
2. M/s. Indian Oil Corporation Limited
rep.by its Executive Director,
Indian Oil Bhavan, No.139, Mahatma Gandhi
Road, [Nungambakkam High Road]
Chennai 600 034.
3. Divisional Retail Head Salem
M/s. Indian Oil Corporation Limited
Salem Divisional Office, Indian Oil
Officers Quarters, 1st Floor, No.74
Rasi Nagar, Jagir Ammapalayam
Salem 636 302.
4. Malarvizhi,
Sales Officers, Salem Divisional Office,
Indian Oil Officers Quarters, 1st Floor



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No.74, Rasi Nagar,
Jagir Ammapalayam
Salem 636 302.

... Appellants

Vs.

S.Prasanna Raj

... Respondent

Prayer : Writ Appeal filed under Clause 15 of Letters Patent Act against the order in WP.No.27481/2022 dated 03.02.2023.

For Appellants : Mr.Mohammed Fayaz Ali

For Respondent : Mr.Jayaprakash

JUDGMENT

[Judgment of the Court was delivered by S.S.SUNDAR, J.,]

(1)The present writ appeal is directed against the order of the learned Single Judge dated 03.02.2023 made in WP.No.27481/2022 filed by the respondent herein for issuance of a writ of certiorari to quash the impugned order of the 1st respondent dated 30.09.2022 confirming the order of the 2nd respondent herein dated 13.05.2005.

(2)Brief facts that are necessary for the disposal of this appeal are as follows:-



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(a) A Dealership Agreement dated 13.05.2005 was entered into between M/s.IBP Company Limited and the writ petitioner / respondent herein in respect of a Petrol [MS] and High Speed Diesel [HSD] Retail Outlet. The said Dealership Agreement was for a period of ten years from 26.12.2003. It is admitted that the Dealership Agreement is determinable in nature by issuing three months notice to the other party.

(b) As per the Dealership Agreement, M/s.IBP Co. Ltd., was entitled to inspect the Retail Outlet and its management under specific clauses in the Agreement and to suspend the sales in the event of any breach of the terms and conditions of the Dealership Agreement as per Clause 15. The Dealership can be terminated forth with in the event of breach of contract and for other reasons enumerated therein. Apart from the terms and conditions as per the Dealership Agreement dated 13.05.2005, the dealer namely the writ petitioner/respondent herein, was bound to follow the instructions / guidelines issued by M/s.IBP Co.Ltd from time to time in connection with Marketing Discipline Guidelines. It is



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admitted that M/s.IBP Co.Ltd was later merged with the Indian Oil Corporation Limited, the appellants herein.

(c) The Sales Officer of M/s.Indian Oil Corporation inspected the Retail Outlet of the writ petitioner and during the time of inspection, a few irregularities were observed. It was found that the Daily Sales Register was found unavailable and the Density Register which was required to be maintained by the writ petitioner, was not updated. Stock variation in petrol and high speed diesel was found and it was beyond the permissible limits. The Inspection Report was prepared by the Sales Officer. Since the representative of the writ petitioner refused to sign in the Report as well as on the sample labels drawn from the Retail Outlet for testing in the Laboratory, the Inspection team took the assistance of the local Village Administrative Officer and other public witnesses to record the inspection and samples collected at the Retail Outlet. A panchnama was also prepared in the presence of the police officials, Village Administrative Officer and other public witnesses.



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(d) Pursuant to confirmation of irregularities, the dealership of the writ petitioner was suspended and the writ petitioner filed a writ petition in WO.No.23072/2009 and the order of suspension was stayed by an order dated 12.11.2009. By a subsequent order dated 25.11.2009, the writ petition was allowed quashing the order of suspension, however, giving liberty to the respondents therein to proceed further in accordance with law.

(e) Thereafter, the appellants issued a show cause notice dated 23.06.2010 calling upon the writ petitioner/respondent herein to show cause as to why action should not be taken in terms of Clauses 39[a], 42 and 45 of the Dealership Agreement read with the provisions of the Marketing Discipline Guidelines, 2005. Though the writ petitioner gave an explanation by a communication dated 07.07.2010, the Dealership Agreement came to be terminated by an order dated 28.03.2011. The writ petitioner once again filed WP.No.9143/2011 and this Court granted an order of interim stay vide order dated 08.04.2011. However, the Dealership Agreement expired on 26.12.2013 and no extension



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was granted thereafter. It was by virtue of the interim order granted by this Court, the supply was given to the writ petitioner without any infraction. In the said circumstances, WP.No.9143/2011 was disposed of by an order dated 10.11.2021, with a direction to the writ petitioner to invoke the Arbitration Clause in the Dealership Agreement dated 13.05.2005 or to prefer an appeal before the Appellate Authority under the Marketing Discipline Guidelines, 2005. The writ petitioner was permitted to continue operations for a period of three months in the same order.

(f) The writ petitioner preferred an appeal before the Appellate Authority which came to be dismissed vide order dated 30.09.2022. Challenging the order of the Appellate Authority, the writ petitioner filed WP.No.27481/2022. The said writ petition was allowed by a learned Single Judge of this Court vide order dated 03.02.2023. It is against the said order of the learned Single Judge, in allowing the writ petition, the present writ appeal is preferred by the appellants.



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(3) The learned counsel for the appellants submitted that the Dealership Agreement dated 13.05.2005 was only for a period of ten years from 26.12.2003 and can be extended for successive periods until it is determined by either party by giving three months notice. The learned counsel relied upon the specific clause in the Dealership Agreement regarding period. As per clause 2 of the Agreement, the Agreement was for a period of ten years from 26.12.2003. Even though the Agreement can continue thereafter for successive periods until determined by either party giving three months notice in writing to the others, of his intention to terminate the Agreement, the fact that the Dealership Agreement was never extended beyond the first spell of ten years is not disputed. Learned counsel then pointed out Clause 45 of the Agreement which gives liberty to the appellants to terminate the Agreement forthwith if the dealer commit breach or default of any of the terms and conditions, covenants and stipulations contained in the Agreement. Similarly, the Dealership Agreement can be terminated if the dealer does not adhere to the instructions / guidelines issued by the Oil Company in connection with marketing discipline or safe practices to be followed by him in the sale,



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supply and storage of the products of Oil company. As per Clause 61, dispute of every nature regarding right, liability, act or omission on account of any of the parties arising out of and in relation to the Dealership Agreement should be referred to the sole Arbitration of the Director [Marketing] of IBP who may act as the Arbitrator or nominate some other officer of M/s.IBP to act as the Arbitrator.

(4)The learned Single Judge found that for the violation of having excess stock, the maximum punishment that could be imposed previously was is to terminate the dealership Agreement that was entered into. However, there was an amendment to the Rules in the year 2012 and after amendment, the maximum punishment for excess stock was to suspend the agreement for a period of fifteen days. Since the major allegation against the writ petitioner was that he had stock in excess quantity, the maximum punishment that could be given to the writ petitioner, was to suspend the Dealership Agreement for a period of fifteen days. It was in the said circumstances, the learned Single Judge, after referring to the judgment of Hon'ble Supreme Court in *Trilok Chand Vs. State of Himachal Pradesh [2020 [10] SCC 363]*, held that the order



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impugned, cannot be sustained by virtue of the amendment which had been brought into effect from 2012. In view of the conclusion reached by the learned Single Judge, the writ petition was allowed by recording the fact that the impugned order stopping supply, cannot be sustained.

(5) Even though an argument was advanced that parties normally are directed to go before Arbitration, in view of the conclusion reached by the learned Single Judge that there cannot be any excess punishment beyond suspension of Dealership Agreement for a period of fifteen days as per amendment, the writ petition was disposed of with a direction to the appellants herein to resume supply of petroleum products both petrol and diesel as granted to the writ petitioner from the date of order or at least from 04.02.2023. However, liberty was given to the appellants herein to take any action against the writ petitioner for any violation of any other Rules. The learned Judge also observed that minor punishments imposed for violations of terms and conditions are sustained leaving it open to the individual to invoke the arbitration clause if necessary in respect of those punishments which are independent.



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(6) This Court has already referred to relevant clauses in the Agreement. The Dealership Agreement dated 13.05.2005 is for a period of ten years from 26.12.2003. Though the Agreement can be extended for successive periods and the Dealership Agreement will hold good till it is determined by either party by providing three months notice during subsistence of the Agreement, the learned Single Judge miserably failed to read the important clause in the Agreement.

(7) When we read Clause 2 along with Clause 45[k] which enables the Oil Company to terminate the Agreement forthwith upon finding that the dealer does not adhere to the instructions / guidelines issued from time to time in connection with the marketing discipline, the learned Judge failed to note the important fact that the Dealership Agreement was never extended beyond the ten year period from 26.12.2003.

(8) Clauses 45[a] and 45[k] are relevant and they are extracted below:-

Clause 45:-Forthwith Termination:-

.....

[a] If the dealer shall commit a breach or default of any of the terms, conditions, covenants and stipulations contained in this Agreement.



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....

[k]If the dealer does not adhere to the instructions / guidelines issued from time to time by IBP in connection with Marketing Discipline and / or safe practices to be followed by him in the sale or supply and storage of IBP's Products or otherwise."

(9)The fact that the writ petitioner/respondent committed serious breach of terms and conditions of Dealership Agreement is demonstrated before this Court. Even the learned Single Judge has not recorded any dispute and has acknowledge the specific violations of the terms and conditions of the Dealership Agreement by the writ petitioner / respondent herein. In the absence of a valid Dealership Agreement beyond 26.12.2013, the writ petitioner cannot be permitted to operate the retail outlet based on the Dealership Agreement which had expired long back. By the impugned order, the appellants were directed to resume supply and continue the contract till it is terminated. In the absence of any extension of contract, there is no scope for issuing a direction, as if there is a subsisting enforceable contract as between the writ petitioner / respondents and the appellants.



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(10) In view of the conclusions reached above, this Court is unable to sustain the order of the learned Single Judge in allowing the writ petition.

(11) In the result, this writ appeal is **allowed** and the order of the learned Single Judge dated 03.02.2023 made in WP.No.27481/2022 is **set aside**. The **impugned order** passed by the appellants which is challenged in the writ petition, is **upheld**. Since the writ petitioner/respondent is carrying on the retail outlet business for a long time even after the expiry of the Dealership Agreement, this Court permits the appellants to take appropriate action in accordance with law following the orders impugned in the writ petition. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [K.R.S., J.]
03.09.2024

AP
Index : Yes / No
Internet : Yes
Neutral Citation : Yes / No



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To

- 1.Executive Director [Retail Sales
S and W] Appellate Authority,
Indian Oil Corporation Limited
Indian Oil
Bhavan G-9, Ali Yavar Jung Marg, Bandra [East]
Mumbai 400 051.
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and
K.RAJASEKAR, J.,

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