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W.P. No.12339 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2024

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.12339 of 2022

and

W.M.P. Nos.11782 and 11783 of 2022

M/s.Sri Venkatesa Traders,
Rep. by Smt. S. Chitra,
Partner.

.... Petitioner

Versus

1. Indian Oil Corporation Ltd.,
Rep. By its Divisional Retail Sales Head,
Marketing Division,
Salem Divisional Office,
No.234, Salem Bangalore By-Pass Road,
Kondalampatty,
Salem – 636 010.

2. The Executive Director & State Head,
Indian Oil Corporation Ltd.,
Tamil Nadu State Office,
No.139, Nungambakkam High Road,
Chennai – 600 034.

3. The Deputy General Manager,
Law,
Indian Oil Corporation Ltd.,
Tamil Nadu State Office,
No.139, Nungambakkam High Road,
Chennai – 600 034.

.... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus, calling for the records of the impugned order of termination of the petitioner's Petroleum Retail



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Outlet dealership dated 02.05.2022 in Ref.: SLMDO/R/3113 passed by the 1st respondent and quash the same, consequently direct the respondents to continue the supply the petroleum products to the petitioner's dealership as per the dealership agreement dated 23.11.2017.

For Petitioner : Mr.N.L. Raja
Senior Counsel
for Mr.M.R. Jothimanian

For Respondents : M.V. Vijay Meganathan
for M/s.AAV Partners

ORDER

The prayer sought for in this writ petition is for quashment of the impugned order of termination of the petitioner's Petroleum Retail Outlet dealership, dated 02.05.2022 in Ref.: SLMDO/R/3113 passed by the 1st respondent and for a consequential direction to the respondents to continue the supply of petroleum products to the petitioner's dealership, as per the dealership agreement dated 23.11.2017.

2. The short facts leading to filing of this writ petition are as follows

:-

a) Initially, the petitioner Firm consists of two Partners viz., Gopalan and G. Ravi and their Firm is referred in the name and style of M/s.Sri Venkatesa Traders. Thereafter, a Dealership Agreement was



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entered into between the said Firm and the respondent/Indian Oil Corporation for the supply of petroleum products. While so, due to death of Gopalan, one Vatsala was inducted as Partner. Thereafter, in the year 2005, due to illhealth of Vatsala's Son, one Kannan was appointed as Manager in the said Firm, who in turn, misused the position and created forged documents as if he was inducted as Partner of Sri Venkateswara Traders. But the aforesaid cheating done by the Manager Kannan was unknown to the Real Partners. On coming to know, the Partners lodged a police complaint on 28.09.2006 before the Superintendent of Police, Salem. Further the Petitioner's Firm have also intimated the authorities concerned viz., respondent, Commercial Tax Officer, etc. that the said Kannan was never inducted as Partner and confirmed that Ravi and Vatsala were the partners of the said Firm. Suddenly, the 1st respondent issued a letter dated 17.09.2008, thereby the dealership agreement was suspended. Immediately, on 19.09.2008, the respondent issued show cause notice to the petitioner stating that the petitioner Firm violated the terms and conditions stipulated in the Dealership Agreement. Challenging the suspension order, dated 17.09.2008, the Petitioner-Firm filed W.P. No.23219 of 2008 and obtained an order of stay of suspension, from this Court on 23.09.2008.



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b) When things stood thus, in the year 2013, another Partner G.Ravi died and in his place one S.Chitra, who is the family friend of said Vatsala was inducted as other Partner. Immediately, proper representations were made to the respondent with regard to the reconstitution of Firm with a new Partner. However, the respondent rejected the representations of the petitioner Firm, vide their letter dated 15.11.2013, stating the pendency of W.P. No.23219 of 2008. Aggrieved over the said rejection letter, dated 15.11.2013, W.P. No.33695 of 2013 was filed by the petitioner. This Court vide its order dated 03.01.2017 allowed the said writ petition viz., W.P. No.33695 of 2013, thereby the rejection order of the respondent was set aside with a direction to consider the petitioner's application dated 29.04.2013 and further direction issued to accord necessary approval with regard to the aforesaid reconstitution. Pursuant to the directions issued by this Court on 03.01.2017 in W.P. No.33695 of 2013, the 1st respondent approved the reconstitution of petitioner's Retail Outlet Dealership of M/s.Sri Venkatesa Traders on 04.11.2017 and necessary fees were paid. Thereafter, on 23.11.2017, new Dealership Agreement was also executed by the 1st respondent and thereby Vatsala and S.Chitra were continuing as Partners of the said Firm. At this juncture, the earlier W.P. No.23219 of 2008 filed by the petitioner was disposed of, on 01.08.2018 with a



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direction to the parties to avail the alternative remedy as per clause 61(a) of the Dealership agreement by initiating arbitration proceedings. In that scenario, the petitioner Firm submitted a representation to the respondent to drop the proceedings initiated against them, since the cause of action for proceeding based on the show cause notice dated 19.09.2008 was non-existent as well as the reconstitution of Firm was approved by the respondent on 23.11.2017.

c) On the other hand, the 1st respondent filed Writ Appeal, challenging the order dated 01.08.2018 passed in W.P. No.23219 of 2008 on the ground that there was no arbitrable dispute between the respondent and the petitioner. Thereafter, the Hon'ble Division Bench, vide its order dated 16.06.2021 in W.A. No.2681 of 2018 had directed the respondent to pass order based on the reply and communication dated 14.09.2018, by considering the subsequent developments that had taken place after 2013. It is the grievance of the petitioner that without considering the directions issued by this Court in W.A. No.2681 of 2018 and that too without affording any opportunity to the petitioner, the respondent vide their letter dated 21.10.2021 issued termination order, thereby the supply of petroleum products was stopped by them. Further, the petitioner challenged the termination order of the respondent by way of filing W.P.



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No.23165 of 2021 and this Court vide its order dated 26.10.2021 granted an interim order, thereby the rights of the petitioner were protected.

Within a short span, W.P. No.23165 of 2021 was disposed of by this Court, vide order dated 17.11.2021 and thus, the termination order of the respondent, dated 26.10.2021 was set aside. Further, there was a direction to the respondent to pass orders based on the directions of this Court, vide earlier order dated 16.06.2021 in W.A. No.2681 of 2018. Though the 1st respondent issued notice to the petitioner on 18.03.2022, calling upon the petitioner to appear for personal hearing and a reply was sent on 23.03.2022, but without conducting proper enquiry as well as without taking into account the subsequent developments, the 1st respondent passed the impugned order dated 02.05.2022, which resulted in termination of dealership agreement. Aggrieved by the same, this writ petition has been filed.

3. Mr.N.L. Raja, learned Senior Counsel for the petitioner submitted that since from the date of inception of the retail outlet, i.e., 1972, the petitioner Firm is making payments to the respondent without any fault. He further submitted that the petitioner Firm had also invested huge money for carrying on business of petroleum and its products retail outlet and the



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termination of dealership agreement would cause great prejudice to them.

He vehemently argued that the petitioner Firm has not been reconstituted or changed its partners as alleged in the show-cause notice dated 19.09.2008. Once the petitioner Firm came to the knowledge of the cheating played by Kannan as Partner, they immediately informed the same to the respondent as well as the authorities concerned and the same was also stated in their detailed explanation, dated 24.09.2008 by denying the allegations. When that being the position, there is no necessity to pass the order of termination by the respondent, which is arbitrary and illegal.

4. Learned Senior counsel for the petitioner further pointed out that introduction of one new Partner viz., S.Chitra, in the place of deceased Ravi and the consequential reconstitution of the Firm were properly informed by the petitioner Firm and the same was also approved by the respondent. In such a scenario, cause of action will not arise to proceed further based on the show cause notice dated 19.09.2008. It can be seen that due to subsequent developments, the earlier show cause notice dated 19.09.2008 does not exist. He mainly contended that without stating any valid reasons, just mentioning that the petitioner Firm has violated the terms of Dealership Agreement, that too, without considering the



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sympathetic ground of the Widowed Partners and their livelihood, mere passing of the impugned order by the respondent is totally unjustifiable and the same is unsustainable in the eye of law.

5. Denying the contentions raised by the petitioner, Mr.Vijay Meganathan, learned counsel for the respondents submitted that the respondents have not approved the reconstitution of RO dealership between the existing partners and the respondent. Though it is the claim put forth by the petitioner that the dealership agreement was approved and payments were made, it is to be noted that there is a specific rider clause. In support of his contention, he drew the attention of this Court to letter dated 23.11.2017 issued by the respondents, apparently the induction of one partner S. Chitra and proposal for reconstitution was approved and the approval is subject to the outcome of the result in W.P. No.23219 of 2008. By quoting the specific lines of the respondent's letter dated 23.11.2017, he drew the attention of this Court in respect of the approval of reconstitution, which are extracted hereunder for kind perusal :

It may kindly be noted that., "The approval for reconstitution is subject to the final orders in W.P. No.23219 of 2008. You may please note that the approval of reconstitution hereby conveyed would not confer any right or equity upon you as the same is subject to final



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orders in W.P. No.23219 of 2008 and Corporation will be at liberty to take such action, as deemed necessary and appropriate, for your having made change in the RO dealership, without approval of our Corporation”.

6. He further submitted that subsequent to issuance of the letter dated 23.11.2017 by the respondent, dealership agreement was entered into between the parties. Later, this Court vide its order dated 01.08.2018 in W.P. No.23219 of 2008 disposed of the said writ petition with directions to the parties to initiate arbitration proceedings, within a time scheduled fixed therein. In the mean time, aggrieved by the order dated 01.08.2018, the respondent filed Appeal viz. W.A. No.2681 of 2018 and this Court allowed the said appeal and the order, impugned therein was set aside. Further, there was a direction to the respondent / appellant therein to pass final orders within a period of eight weeks.

7. He also stated that thereafter, the respondent passed the termination order, dated 21.10.2021, which was again challenged by the petitioner and this Court vide its order dated 17.11.2021 in W.P. No.23165 of 2021 allowed the said writ petition and the earlier termination order dated 21.10.2021 issued by the respondent was set aside. Further there



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was a direction to the respondent to consider the case of the petitioner on the basis of the subsequent events / developments and also the communication of the petitioner dated 14.09.2018 as ordered by the Division Bench of this Court in W.A. No.2681 of 2018 and pass appropriate orders. Pursuant to the directions of this Court dated 17.11.2021 in W.P. No.23165 of 2021, the respondent Corporation had continued to supply the petroleum products to the petitioner. Later the respondent issued notice to the petitioner Firm on 18.03.2022 to attend the personal hearing.

8. Thus, it is the contention of the learned counsel for the respondent from the above it is clear that the respondent has provided due opportunity before passing of the order, dated 02.05.2022, which is impugned herein. Accordingly, he submits that the order passed by the respondent is valid and legal and thus, it calls for no interference of this Court and prays for dismissal of this writ petition.

9. This Court heard and considered the submissions made by the learned counsel on either side and perused the materials placed before it.

10. Admittedly, the original partners viz., Gopalan and G. Ravi have



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entered into a Dealership agreement with the respondent Corporation for the supply of petroleum products. Though there is a legal battle between the parties, it is not in dispute that the respondent Corporation continued to supply the petroleum products. It is not in dispute that due to death of Gopalan and G. Ravi, the existing Partners in the Firm viz., Vatsala and S.Chitra were inducted.

11. The primary tests to be conducted by this Court for exercising the power under Article 226 of the Constitution of India are as follows :-

- a) Whether principles of natural justice have been violated by the respondents? and
- b) Whether the order impugned herein is legally sustainable or not?.

12. It is borne out by record that one Kannan, acting in the Manager of the firm, had caused the wholesome trouble by misrepresenting himself as the partner of the firm. However, the Partners in the Firm have not caused any misrepresentation nor any adjudicable material in this regard is placed before this Court by the respondents to show that the petitioner have represented Kannan as the partner of the firm. If one of the employee had done something wrong, which has been brought to the notice of the



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respondents, the respondents cannot be taken to task unless there is material evidencing the same.

13. In the above backdrop, a careful perusal of the materials reveal that it is the stand of the respondent that before passing of the order, dated 02.05.2022, an opportunity of personal hearing was afforded to the petitioner. On a perusal of records, it reveals that a short time was afforded to the petitioner to appear for personal hearing to consider the case of the petitioner - Firm.

14. On the other hand, it is the stand of the petitioner Firm that the respondent Corporation have themselves approved the dealership agreement of petitioner Firm with the existing partners and necessary documentations as well as payments were made by them. When that being so, the respondent cannot turn around and state that the said approval for reconstitution is subject to final orders in W.P. No.23219 of 2008 and the agreement would not confer any right or equity upon them.

15. It is clear from the materials that the respondents have not pointed out irregularities at the hands of the petitioner; rather it is their specific case that one Kannan had misrepresented and done all the acts as alleged in the show cause notice. That being the case, it is not open to the respondents to mulct the responsibility on the head of the petitioners. True



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it is that the Partners of the petitioner Firm ought to have been vigilant, but the petitioners, who are the partners in the firm having lost their better-half and are running the firm for their livelihood, ought not to be treated in such a fashion, unless there is material evidencing malpractice at the hands of the petitioner.

16. The respondents have approved the partnership subject to the result of the appeal. However, it is to be pointed out that the order in the writ appeal had come to be passed by clearly pointing out that the respondents take into account the acts that have been done during the pendency of the *lis* and, thereafter, pass orders, meaning thereby that the same would also include the act of entering into agreement with the petitioners. Opportunity of hearing which was directed to be afforded is for the purpose of hearing and coming to a conclusion as to the culpability of the petitioners and there being no allegation against the petitioner, necessarily, the import of the order in the appeal has to enure to the benefit of the petitioner as the acts, including entering into agreement with the petitioner by the respondents and the continuation of the petitioner firm in dealing with the products of the respondents without there being any further acts of malpractice, necessarily the respondents should have held in favour of the petitioner.



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17. Further, it is to be pointed out that merely pointing out that neither there is any outstanding nor any arbitrable dispute and further the records also reveal that there is no allegation against the petitioner. That being the case, the respondent, considering the position of the partners of the petitioner Firm and their livelihood and the subsequent events that have taken place, including the act of the respondents entering into agreement with the petitioner, though on the basis of the direction of this Court, which erases the cause of action for which the show cause notice was issued, the respondents ought not have passed the impugned order against the petitioner as the same does not stand the test of judicial scrutiny.

18. For the reasons aforesaid the impugned order, dated 02.05.2022 passed by the 1st respondent terminating the petitioner's petroleum retail outlet dealership, is unsustainable and the same is liable to be set aside. Accordingly, the impugned order, dated 02.05.2022 passed by the 1st respondent is hereby set aside and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

12.08.2024

Index : Yes / No

Internet: Yes/No

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Speaking Order/Non-Speaking Order
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To

1. The Divisional Retail Sales Head,
Indian Oil Corporation Ltd.,
Marketing Division,
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M.DHANDAPANI, J.

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and
W.M.P. Nos.11782 and 11783 of 2022

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