



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01-02-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

WP No.15060 of 2020

And

WMP No.18771 of 2020

M/s.Cooking Gas Agency,
3A, Malaviya Avenue,
1st Street,
Thiruvanmiyur,
Chennai-600 041 Represented by
its Partner mr.Ramanathan Krishnan

.. Petitioner

-VS-

Indian Oil Corporation Limited,
500, Anna Salai,
Teynampet,
Chennai-18 Represented by its
Deputy General Manager.

.. Respondent



Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records culminating in the order dated 22.09.2020 bearing Ref.No.CHAO/512 passed by the respondent and quash the same.

For Petitioner : Mr.Krishna Srinivasan,
Senior Counsel for
M/s.S.Ramasubramaniam and
Associates.

For Respondent : Mr.Vijay Mehanath,
Standing Counsel for IOC.

ORDER

The present writ petition has been filed questioning the order dated 22-09.2020 issued by the Indian Oil Corporation, imposing the penalty of Rs.2,46,374/-.

2. The learned Senior Counsel appearing on behalf of the writ petitioner would submit that the petitioner was appointed as LPG Distributor, distributing LPG to its customers from the year 1963 onwards.



The petitioner is the registered partnership firm. Certain allegations are raised against the petitioner-Agency and the action initiated was questioned by the petitioner in WP No.9461 of 2010. In the said writ petition, the order passed by the respondent dated 16.04.2010 was under challenge.

3. This Court passed final orders on 28.02.2014, remanding the matter back to the respondent for fresh consideration. Pursuant to the directions of this Court, a Committee was constituted by the Indian Oil Corporation and the petitioner participated in the process of adjudication.

4. The Minutes of the Meeting held on 31.07.2015 would reveal that the petitioner participated in the process of hearing and the Committee formed an opinion as follows:-

“3. The identification of the customers numbering 33 mentioned in Sl.No.3 of the Index submitted by M/s.Cooking Agency vide letter dated 12.08.2010, could not be ascertained and this meeting has been convened to get the feedback from the distributor on the development with respect to the 33 customers identification. However, the distributor has expressed that during



2010, due to blockage of all these connections mentioned in the MDG order No.CHAO/512 dated 16.04.2010, the customers were representing at various places and the possibility of these 33 customers approaching the Chennai Area Office directly cannot be ruled out. Hence, it may be concluded that these 33 customers were available then and currently could not be located due to various reasons.

4. Hence, it is suggested that on a joint endeavour of the agency and IOC, the aforementioned 33 customers would be accosted within a period of 15 days.”

However, no further action was initiated admittedly and the present impugned order has been passed in proceedings dated 22.09.2020, after a lapse of five years from the date of the Meeting convened by the Committee on 31.07.2015.

5. The learned Senior Counsel would submit that the Committee has not identified the discrepancies for the purpose of imposing penalty. The process of fixing the liability has not been completed. While-so, the impugned order has been passed beyond the period of five years



without affording further opportunity to the writ petitioner. The petitioner had submitted their defence before the Committee, which was taken into consideration. Further the decision arrived and further course of action, if any, to be initiated were not communicated to the petitioner and that being the factum, the order impugned is in violation of the principles of natural justice.

6. The learned Standing Counsel for the respondent would oppose the contentions raised on behalf of the petitioner by stating that the procedures, as contemplated, were followed scrupulously by affording opportunity to the petitioner to defend their case.

7. The LPG Distributorship was granted based on the agreement and an Arbitration Clause has been agreed between the parties. Instead of invoking the Arbitration Clause, the petitioner has chosen to file the present writ petition, which is liable to be rejected.

8. No doubt, in the event of Arbitration Clause, the parties are to be relegated to resolve the same through arbitration. However, the present



writ petition was filed in the year 2020 and pending for the past about three years. Thus sending the petitioner back to Arbitration would cause further delay and therefore, this Court is not inclined to reject the present writ petition on the said ground.

9. More-so, the present writ petition has been filed mainly on the ground that the final order has been passed after a lapse of five years from the date of the Meeting convened by the Committee. Further, the petitioner has not afforded with any further opportunity with reference to the decision taken by the Authorities and based on the Committee's Report on these two grounds, the petitioner is entitled to succeed.

10. In the present case, the Meeting was convened on 31.07.2015 and thereafter, no further show cause notice or opportunity was given to the writ petitioner with reference to the decision taken in the impugned order. The impugned order was passed on 22.09.2020, directly imposing the penalty on the petitioner. Certain discrepancy, if at all identified, cannot be granted to impose the penalty on the petitioner after a lapse of five years.



11. Therefore, the impugned order passed by the respondent in proceedings Ref.No.CHAO/512 dated 22.09.2020 is quashed and the present writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

01-02-2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn

To

The Deputy General Manager.
Indian Oil Corporation Limited,
500, Anna Salai,
Teynampet,
Chennai-600 018.



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S.M.SUBRAMANIAM, J.

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