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WP.No.13687 of 2025

In the High Court of Judicature at Madras

Reserved on 25.6.2025	Delivered on : 03.7.2025
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Writ Petition No.13687 of 2025
& WMP.Nos.15376, 15380 & 15383 of 2025

Smt.P.Kalyanasundaravalli,
Proprietrix of M/s.K.T.
Bakthavatchalam Naidu
Agency, Indian Oil Dealers,
Chennai-603110.

...Petitioner

Vs

1.The Indian Oil Corporation Ltd.,
rep.by its Divisional Retail
Sales Head, Marketing Division,
Chennai Divisional Office,
No.550, Anna Salai,
Teynampet, Chennai-18.

2.The Executive Director &
State Head, Indian Oil
Corporation Ltd., Tamil Nadu
State Office, Marketing
Division, No.139,
Nungambakkam High Road,
Chennai-34.

...Respondents



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PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the impugned order of termination of the petitioner's petroleum retail outlet dealership dated 07.4.2025 in Ref.CDO/ BHAKTHAVATCHALAM passed by the 2nd respondent, quash the same and consequently direct the respondents to continue the supply of the petroleum products to the petitioner's dealership as per the dealership agreement dated 31.3.2018.

For Petitioner : Mr.N.L.Rajah, SC for
Mr.M.R.Jothimanian

For Respondents : Mr.Mohammed Fayaz Ali,
Standing Counsel

ORDER

The petitioner assails the order of termination passed by the second respondent dated 07.4.2025 and also seeks for a direction to the respondents to continue the supply of petroleum products to the petitioner based on the dealership agreement dated 31.3.2018.

2. Heard the learned Senior Counsel appearing on behalf of the petitioner and the learned Standing Counsel appearing for the



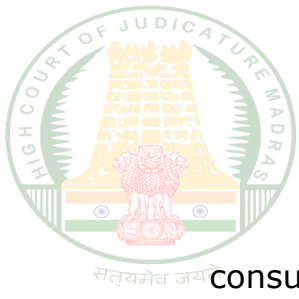
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respondents.
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3. The case of the petitioner is as follows :

(i) The petitioner is the sole proprietrix of M/s.K.T. Bakthavatchalam Naidu Agency. She was granted a dealership by the first respondent for the retail sale of all the petroleum products. The dealership agreement was entered into in this regard on 31.3.2018. The land, in which, the retail outlet operates, belongs to the family of the petitioner. Considering the educational qualification of the petitioner, the property owned by the petitioner and her expertise in business administration, the dealership was granted in favour of the petitioner.

(ii) The petitioner received a notice dated 16.7.2024 from the first respondent in response to a complaint given by the petitioner's estranged husband on the ground that the petitioner has taken up another employment in a private company. The petitioner gave a reply on 31.7.2024 clarifying that she was never a full time employee with any private company. She further clarified that she was previously associated with one M/s.Fisher Chennai Engineering Center (for short, the private company) as a freelancer providing online support



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consultancy on commission basis. This engagement was also effectively discontinued in the year 2018 itself and the petitioner was relieved formally in the year 2021 due to intermittent pandemic condition.

(iii) The first respondent once again issued a notice dated 20.11.2024 with the very same set of allegations and called upon the petitioner to show cause as to why the dealership agreement should not be terminated for violations of the terms and conditions of the dealership agreement. On receipt of this notice, the petitioner submitted a reply dated 03.12.2024. A personal hearing was conducted and the petitioner gave her explanation and also submitted her further explanation in writing on 06.2.2025.

(iv) The grievance of the petitioner is that the second respondent, without considering any of those explanations, proceeded to issue the termination order dated 07.4.2025. Aggrieved by that, the above writ petition has been filed before this Court.

4. The respondents filed a counter affidavit, in which, they took the following stand :



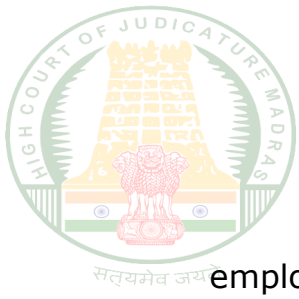
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(i) The petitioner had submitted her application under the open category on 20.11.2014 and after selection, she was issued a letter of intent dated 29.2.2016. Thereafter, the letter of appointment dated 29.3.2018 was issued to the petitioner. Pursuant to that, the petitioner and the Indian Oil Corporation Limited (IOCL) entered into a retail outlet dealership agreement dated 31.3.2018.

(ii) Later, a complaint was received on 06.7.2024 from the petitioner's husband stating that the petitioner is employed gainfully in the private company. To substantiate the same, he also sent Form-16 for the financial years from 2016-17 to 2018-19.

(iii) One of the preconditions for the award of dealership is that the selected dealer is not eligible to take up any other employment. The petitioner had also given an affidavit dated 29.3.2018 wherein she confirmed that she was not gainfully employed anywhere. However, after receiving the complaint and the response of the petitioner, it was found that the petitioner had continued with the employment in the private company as on the date of dealership agreement dated 31.3.2018 and that she was relieved from the private company only by letter dated 21.9.2021. It also came to light that for the period from 2018 onwards, the petitioner was continuing with her other



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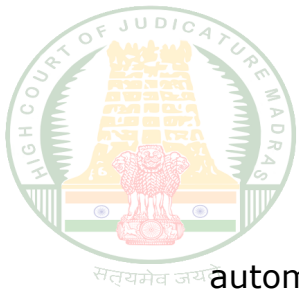
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employment in the private company, that the same went against the relevant clause in the dealership agreement and that the undertaking given by the petitioner was also found to be false.

(iv) Hence, a notice was issued and an explanation was called for. After affording an opportunity to the petitioner, ultimately, the impugned termination order was passed by the second respondent on 07.4.2025. The respondents have justified the termination order. They have also questioned the maintainability of this writ petition on the ground that the petitioner has an effective alternative remedy by way of initiating arbitration proceedings as per the dealership agreement dated 31.3.2018. Accordingly, the respondents have sought for the dismissal of this writ petition.

5. The learned Senior Counsel appearing on behalf of the petitioner submitted as follows :

(a) The impugned order that was issued by the second respondent is a non speaking order, which does not assign any reasons for terminating the dealership despite sufficient explanation offered by the petitioner. Clause 45 of the dealership agreement, which was relied upon by the respondents, does not lead to an



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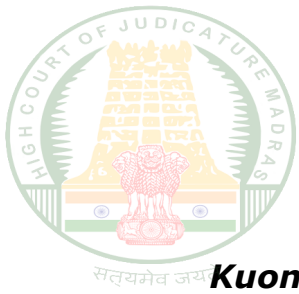
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automatic cancellation of the dealership agreement and such cancellation can take place only on satisfaction of certain conditions.

(b) The respondents have prejudged the issue even when the show cause notice dated 20.11.2014 was issued since, by the time the reply was given, a caveat was filed before this Court by the IOCL represented by its Deputy General Manager (Retail Sales), Chennai-18 on the apprehension that the petitioner would challenge the said show cause notice. The respondents had already taken a decision to terminate the dealership agreement and the so-called opportunity given to the petitioner is only an empty formality.

(c) There was a matrimonial discord between the petitioner and her husband, who had given a complaint, based on which, action was initiated. At the best, the petitioner was only a freelancer, who was helping the private company through online mode and this cannot be considered to be an employment. Therefore, the impugned termination order passed by the second respondent is highly disproportionate to the alleged violation of the conditions alleged to have been committed by the petitioner.

(d) In order to support his submissions, he relied upon the judgment of the **Delhi High Court** in **Kaushal Kishor Singh Vs. Sita**



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Kuoni World Travel India Ltd. [reported in 2022 SCC OnLine

Delhi 3215] wherein it was held that freelancing could not be equated to an employment since there has been no master - servant relationship.

(e) He also relied upon the judgment of the Hon'ble Apex Court in **Unitech Limited & Others Vs. Telangana State Industrial Infrastructure Corporation & Others [reported in 2021 SCC OnLine SC 99]** in support of his submission that availability of an alternative remedy by way of initiation of arbitration proceedings is not a bar to maintain the above writ petition under Article 226 of The Constitution of India.

6. Per contra, the learned Standing Counsel appearing for the respondents made the following submissions :

(a) Even as per the letter of intent dated 29.2.2016, the petitioner was expected to resign from the other employment and produce the letter of acceptance of resignation by the employer before the issuance of the letter of appointment by the IOCL. A written undertaking was also expected to be given. Accordingly, the petitioner submitted a written undertaking stating that she already resigned from



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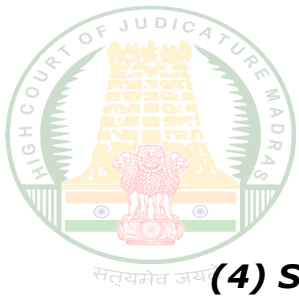
the other employment.

(b) Ultimately, when the complaint was received by the IOCL from the estranged husband of the petitioner, an explanation was sought for from the petitioner and even as per the explanation given by the petitioner and the materials relied upon, it was found that the resignation of the petitioner was accepted by the private company only on 21.9.2021. Therefore, for the period between 2018 and 2021, the petitioner did not resign from the private company and she was parallelly employed. This will result in automatic termination of the dealership agreement.

(c) To support his submissions, he relied upon Clause 45(a), (i) and (j) of the dealership agreement dated 31.3.2018.

(d) The dealership agreement itself provides for raising a dispute before an arbitrator under Clause 60 and in the light of such an alternative remedy available to the petitioner, the above writ petition is not maintainable.

(e) In order to substantiate his submissions, he relied upon the judgments of the Hon'ble Apex Court in ***B.R.Chowdhury Vs. Indian Oil Corporation Limited [reported in 2004 (2) SCC 177]*** and in ***Shiv Kant Yadav Vs. Indian Oil Corporation [reported in 2007***



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(4) SCC 410].
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7. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned termination order.

8. The spark for the IOCL to issue the notice to the petitioner for cancellation of the dealership agreement started after the complaint was given by the husband of the proprietrix to the effect that she was employed gainfully elsewhere and that she had given a false undertaking and continued to be in the other employment even after the letter of appointment dated 29.3.2018.

9. It is true that this complaint has emanated from a disgruntled husband, with whom, the proprietrix had a matrimonial discord. That, by itself, cannot stop the respondents from inquiring as to whether the petitioner was in the other employment even after the letter of intent was issued and as to whether she continued to be in the other employment pursuant to the letter of appointment issued on 29.3.2018.

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10. In other words, the source of the complaint, by itself, does not vitiate the inquiry started by the IOCL to satisfy themselves as to whether the petitioner had violated the terms and conditions of the dealership agreement. If, ultimately, the complaint of the estranged husband of the proprietrix is found to be false or unsustainable, the stand taken by the petitioner that such complaint should not result in the termination of the dealership agreement will have force. In view of the above, without being prejudiced by the source of complaint received against the petitioner, this Court will independently apply its mind on the materials placed before this Court and see as to whether the impugned termination order dated 07.4.2025 issued by the second respondent is legally sustainable.

11. Before venturing into the merits of the case, since the respondents have raised the question of maintainability of the writ petition, that issue has to be gone into in the first instance.

12. Availability of an alternative remedy is not an absolute bar for invoking the jurisdiction under Article 226 of The Constitution of India. These are restrictions that are self imposed by the Courts



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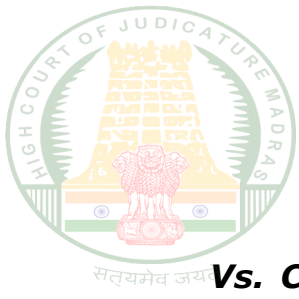
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considering the fact that the power under Article 226 of The Constitution of India is boundless.

13. In the case in hand, the aspect of availability of the alternative remedy that has been put against the petitioner is the availability of referring the matter for arbitration as per Clause 60 of the dealership agreement dated 31.3.2018. The said Clause is wide enough to encompass any dispute between the parties.

14. The general norm that is followed is that wherever an arbitration clause is available to resolve a dispute, the Court does not, in a routine manner, exercise its jurisdiction under Article 226 of The Constitution of India. In one of the cases, which pertained to cancellation of a dealership by the petroleum company without following the principles of natural justice, in spite of availability of an alternative remedy, the Court invoked its jurisdiction under Article 226 of The Constitution of India.

15. Useful reference can be made to the judgment of this Court in ***K.M.Batchha & company rep.by its partner Smt.B.Rasheeda***



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Vs. Chief Regional Manager, Hindustan Petroleum Corporation Ltd., Chennai & another [reported in 2010 (4) MLJ 987].

16. The scope of entertaining a writ petition when an arbitration clause is available to resolve the dispute was discussed by the Hon'ble Apex Court in the case of ***GAIL (India) Limited Vs. Gujarat State Petroleum Corporation Limited [reported in 2014 (1) SCC 329].***

17. This Court does not want to burden this order with all the citations since the law is now too well settled. Hence, this Court will deal with the facts of the case and see if interference is required by invoking the writ jurisdiction under Article 226 of The Constitution of India against the termination order dated 07.4.2025 passed by the second respondent.

18. The letter of intent was issued on 29.2.2016 and it is relevant to extract Clause 9, which reads as hereunder :

"It will always be a basic condition for the award of MS/HSD retail outlet dealership that you shall be paying attention towards day to day working of the dealership by personally managing



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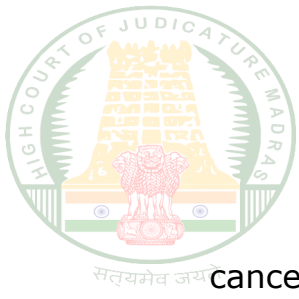
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the affairs of the dealership you will give us a written undertaking to this effect and shall not assign or part with the same to any other person(s).

You will not be eligible for taking up any employment. If you are already employed you will have to resign from the employment and produce the letter of acceptance of resignation by the employer before the issuance of Letter of Appointment by Indian Oil Corporation Ltd."

19. A careful reading of the above Clause would show that a dealer is expected to pay attention towards the day-to-day working of the dealership by personally managing the affairs and therefore, such a dealer is not eligible to take up **any other employment** gainfully. In case the dealer is employed, he/she will have to resign from such other employment and produce the letter of acceptance of resignation by the employer before the issuance of the letter of appointment by the IOCL. The dealer is supposed to give a written undertaking to this effect.

20. It is further provided in Clause 16 of the letter of intent dated 29.2.2016 that it will stand automatically withdrawn and



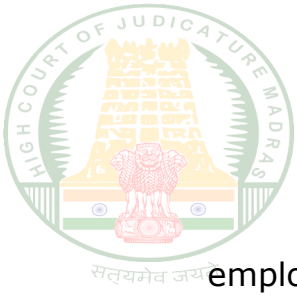
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cancelled where it is found that the dealer has suppressed and/or misrepresented any material facts in the application.

21. The petitioner submitted a notarised affidavit dated 29.3.2018 wherein she stated that she was neither employed in the private sector nor was drawing any salary, that she had already resigned from the other employment and that her resignation was also accepted. This affidavit also gives an impression that the acceptance of resignation was also attached along with it. However, the acceptance of resignation was never attached with this affidavit. This is evident from the fact that the petitioner herself was able to produce the letter of acceptance of resignation by the private company dated 21.9.2021, which was issued subsequent to the letter of appointment dated 29.3.2018 and the dealership agreement dated 31.3.2018.

22. Therefore, the undertaking affidavit submitted by the petitioner did not reveal the entire truth. The letter of appointment dated 29.3.2018 was issued to the petitioner and while acknowledging the same, the petitioner once again gave an undertaking that she was not employed elsewhere, that she had already resigned from the other

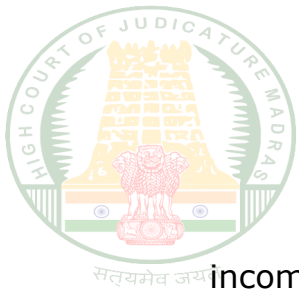


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employment and that the proof of acceptance of resignation by the employer had been submitted to the IOCL. Obviously, the proof of acceptance of resignation letter could not have been submitted either at the time of granting the letter of intent or at the time of issuing the letter of appointment dated 29.3.2018 since this letter of the employer was dated 21.9.2021.

23. It will be relevant to take note of some of the Clauses in the dealership agreement dated 31.3.2018. Clause 21 makes it clear that the dealer should take an active part in the management and running of the dealership and should personally supervise the same and should not, under any circumstances, do so through any other person, firm or body, etc. This reiteration that the dealer must manage and supervise the running of the dealership personally presupposes that the dealer should not be engaged in any other employment whatsoever, called in any other name. Hence, the undertaking of the freelancing work by the petitioner may not create an employer - employee relationship. However, to that extent, it is a parallel avocation created by the petitioner, as a result of which, there is a divided attention between running of the dealership and acting as a freelancer and earning



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Income from a private entity.

24. It is also relevant to take note of Clause 28(b) of the dealership agreement, which is extracted as hereunder :

"(a).....

(b) The dealer himself (if he is an individual) or the partners themselves (if the dealer is a partnership firm) or the whole time office bearers/ elected members (if the dealer is a cooperative society) shall not take up any other employment or engage in any other business and/or profession apart from the operation of the dealership which is the subject matter of this agreement."

25. The above Clause makes it clear that the dealer should not take up any other employment or engaged in any other business and/ or profession apart from the operation of the dealership. Hence, this reiteration is what was expected of a dealer right from the day, on which, the letter of intent was issued by the IOCL.

26. It will also be relevant to take note of Clause 45(a), (i) and (j) of the dealership agreement, which reads thus :

"Notwithstanding anything to the contrary



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herein contained the Corporation shall be at liberty at its entire discretion to terminate this agreement forthwith upon or at any time after the happening of any of the following events namely

(a) If the dealer shall commit a breach of default of any of the terms conditions covenants and stipulations contained in this agreement,

.....

(i) If any information given by the dealer in his application for appointment as a dealer or in any document supplied therewith or field in support of thereof shall be found to be untrue or incorrect

(j) If the dealer has concealed any information which if disclosed would in the opinion of the General Manager of the Corporation for the time being at Chennai, whose decision shall be final have disentitled him to be appointed as a dealer."

27. The above extracted Clause, if read together, would show that the IOCL is at liberty to terminate the dealership agreement forthwith on the happening of any of the events listed in Clause 45.

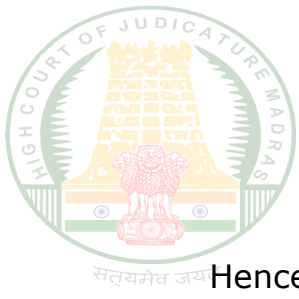


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28. The undertaking affidavit given by the petitioner at the time of issuing the letter of intent dated 29.2.2016 and at the time of issuing the letter of appointment dated 29.3.2018 was found to be false since the letter of acceptance of resignation was produced only in the year 2021. Hence, for the period from 2018 to 2021, there is no indication that the private company had accepted the resignation submitted by the petitioner. This is more so since even in the letter of acceptance of resignation, the date of resignation letter has been mentioned as 18.6.2021. This would mean that the petitioner submitted her resignation letter only on 18.6.2021 and it was accepted on 21.9.2021. This event had taken place much after the issuance of the letter of appointment dated 29.3.2018 and the dealership agreement dated 31.3.2018.

29. It is also relevant to take note of Form-16 that was issued to the petitioner by the private company for the financial years 2018-19 upto 2020-21. It is not out of place to make a mention here that Form-16 is issued only by an employer towards the income of the employee and the deductions made from the employee and all those documents are available in the typed set filed by the respondents.



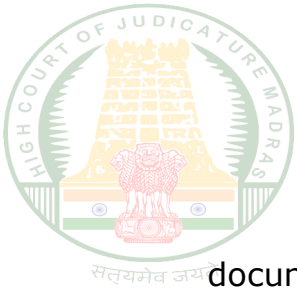
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Hence, prima facie, the petitioner was drawing an income from the private company and the so-called resignation had taken place only in the year 2021, which is admitted by the petitioner by producing the letter of acceptance of resignation issued by the private company on 21.9.2021.

30. A cumulative reading of the materials produced before this Court would make it clear that the petitioner did not satisfy one of the preconditions for the award of dealership since there is absolutely no material to show that the petitioner had submitted her resignation to the private company and it was also accepted before the issuance of the letter of intent dated 29.2.2016 or at least before the issuance of the letter of appointment dated 29.3.2018 by the first respondent.

31. It is relevant to take note of the fact that the undertaking affidavit given by the petitioner did not reveal the true facts. In view of the same, it cannot be said that the impugned order suffers from non application of mind or the respondents have prejudged the issue or there was disproportionate punishment against the petitioner. The termination of the dealership agreement was based on those

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documents relied upon by the petitioner and it related back to the precondition, which was the sine qua non for issuing the letter of appointment dated 29.3.2018 and entering into the dealership agreement dated 31.3.2018. If the same has not been satisfied, the dealership agreement has to be terminated forthwith.

32. Therefore, the respondents did not really prejudge the matter. Instead, the second respondent went by the materials placed by the petitioner and came to the right conclusion. There is no disproportionality on the action taken against the petitioner since the non-fulfilment of the precondition and the false undertaking affidavit given by the petitioner, by themselves, disentitle the continuation of the dealership agreement.

33. The upshot of the above discussions leads to the only conclusion that the termination order dated 07.4.2025 issued by the second respondent does not suffer from any illegality or error of law apparent on the face of it. The impugned termination order has been issued in line with the terms of the dealership agreement dated 31.3.2018 and it does not warrant the interference of this Court.



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34. In the result, the writ petition is dismissed. No costs.

Consequently, the connected WMPs are also dismissed.

03.7.2025

Index : Yes
Neutral Citation : Yes

To

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rep.by its Divisional Retail
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