BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.01.2025

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THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

W.P (MD).No.10001 of 2019
and
W.M.P(MD)Nos.7789, 7790 & 7791 of 2019

M/s.Sulthania Fuel Services,
Represented by its Proprietor,
A.Ahamed Anisha
(Petitioner is substitued vide Court
order dated 06.01.2024) .... Petitioner

Vs

1.Bharat Petroleum Corporation Ltd.,
Rep. by its Chairman and Managing Director,
Having its Registered Office at
Bharat Bhavan, 4 and 6 Currimbhoy Road,
Bhallard Estate, Mumbai-1.

2.Bharat Petroleum Corporation Ltd.,
Rep. by it Head (Retail)South,
No.1, Renganathan Gardens,
11th Main Road,
Anna Nagar, Chennai.

3.The Appellate Authority,
Mr.Shri George Paul,
Bharat Petroleum Corporation Ltd.,
Chairan's Office,
Bharat Bhavan, 4 and 6 Currimbhoy Road,
Bhallard Estate, Mumbai.

4.Disputes Resolution Panel,
New Delhi. ...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, challenging the impugned termination order passed by the second respondent dated 31.08.2015 in SRP:RET:TERMINATION(SULTHANIA) and subsequent impugned order passed by the fourth respondent in No.DRP/BPC/RET/0004/2018 dated 29.11.2018 and quash the same and further direct the 1 to 3 respondents to restore the dealership to the petitioner.

For Petitioner	: Mr.S.Meenakshi Sundaram Senior Counsel for Mr.T.Selvan
For R1 & R2	: Mr.T.Natesh Raja
For R4	: Mr.S.Jeyasingh

O R D E R

This writ petition has been filed challenging the order passed by the second respondent, dated 31.08.2015 and the order passed by the fourth respondent, dated 29.11.2018 thereby confirmed the order passed by the second respondent and terminated the dealership of the petitioner.

2. The property comprised in S.No.1703 under patta No.2173 belonged to the petitioner's brother. It is situated adjacent to the National Highways and it is very much suitable for running a Petrol Bunk. While being so, the second respondent issued notification dated 05.04.2007 thereby calling

for applications for license to run a retail outlet. The petitioner applied for the same with relevant records. As such, executed legal agreement in favour of the second respondent for a period of 29 years in respect of the subject property. Thereafter, on 21.12.2008 the petitioner issued letter of intent and entered into dealership agreement on 29.04.2010 to run a retail outlet in the name and style of M/s.Sultania Fuel Services for a period of 15 years and the same was renewable for a further period of 5 years.

3. While being so, on 07.02.2015 on a routine check up, the samples were taken down from the retail outlet in the presence of the petitioner's Manager. It was sent for analysis and on the strength of the lab analysis report, the petitioner was served with show cause notice dated 26.02.2015 alleging that the samples indicates introduction of foreign substances in the test. However, on the request made by the petitioner, the remaining samples were sent for another test conducted by the Hindustan Petroleum Corporation limited and results shows that the MS samples were not meet the specifications of FBP and RON. Thereafter, the petitioner was given personal hearing of opportunity and submitted an explanation. However, the retail outlet dealership was terminated on 31.08.2015. Aggrieved by the same, the petitioner preferred an appeal and the same was also dismissed.

4. The learned Senior Counsel appearing for the petitioner would submit that the samples were taken on 07.02.2015. As per the Marketing Discipline Guidelines 2012 for retail outlet dealership /Superior Kerosene Oil Dealership 7.6.1 says about the Certification, the Test Reports of MS/HSD shall be made as per Annexure 12/12(a) and 13/13(a) respectively. It was not complied with. Further, any dispute or difference of any nature whatsoever, any claim, cross-claim, counter-claim, or set off of the Company against the Licensee or regarding any right, liability, act, ommission or account of any of the parties hereto arising out of or in relation to this agreement shall be refered to the Sole Arbitration of the Director (Marketing) of the Company or of some Officer of the Company who may be nominated by the Director (Marketing). However, the second respondent without refering the same before the Sole Arbitrator, the second respondent itself terminated the dealership without following due process of law.

5. He further pointed out that the appellate authority, namely, the fourth respondent ought to have dispose the appeal within 90 days, however, the fourth respondent did not dispose the appeal. Hence, the petitioner approached this Court by filing a writ petition in W.P.No.27272 of 2016 and after direction of this Court, dated 05.09.2018, the fourth respondent dismissed

the appeal on 29.11.2018 after a period of three years from the date of filing i.e., on 29.09.2015. In the meanwhile, the amendment in Marketing Discipline Guidelines 2012 came into force in respect of formation of Dispute Resolution Panel. Accordingly, in case of termination arising out of invocation of Marketing Discipline Guidelines, the dealer will have the right to appeal within a period of 30 days from the date of receipt of order, before the Appellate Authority. The Appellate Authority is empowered to decide the matter and the appeal shall be disposed of preferably within 90 days from the date of filing the appeal. Further, the terminated dealer preferring appeal would be required to deposit Non-refundable Appeal fee of Rs.5 lakhs along with their appeal to the concerned OMC. In case of SC/ST dealer, Rs.2 lakhs Non-refundable Appeal fee is required to be paid along with their appeal. Though the petitioner preferred an appeal, even before amendment of Marketing Discipline Guidelines, after direction issued by this Court, the petitioner was directed to deposit Rs.5 lakhs and accordingly, the petitioner deposited the said amount. In the meanwhile, subsequent amendment came into force on 25.09.2018. Even prior to the amendment, dated 25.09.2018 there was an amendment which came into force with effect on 04.06.2015. As per the amendment in respect of Critical Irregularities as mentioned in Clause 8.2 says that Adulteration of MS/HSD is treated as Critical Irregularity. The action as per the existing guidelines is that termination at the first instance will be imposed for the irregularities of Adulteration. But, as per the amended guidelines for the critical irregularities of adulteration the penalty of Rs.5 lakhs and an amount equivalent to 6 months dealer's commission (average MS + HSD sales volume of the RO during preceding 12 months) and suspension of sales & supplies for 30 days at the first instance. Further, the amened penalty clause for critical irregularities will be applicable for all pending cases of termination. It will also be applicable for all future cases of inspection also. Therefore, he specifically contended that as per the said amendment, as the first instance, the termination for critical irregularity of adulteration could not be passed and the petitioner ought to have been imposed with penalty of Rs.5 lakhs.

6. On perusal of the counter affidavit filed by the second respondent and submissions made by the learned counsel appearing for the respondents 1 & 2 revealed that the amendment as indicated by the learned Senior Counsel to Marketing Disciplined Guideline was only proposal and the same was not accepted by the Ministry of Petroleum. Only as per the proposed amendment for the critical irregularities on its first instance a penalty of Rs.5 lakhs and an amount equivalent to 6 months dealer's commission and suspension of sales & supplies for 30 days at the first instance. However, the said amendment was

not accepted and the earlier Marketing Discipline Guideline would apply in the case of the petitioner. In fact, as per the Marketing Discipline Guidelines which is amended with the effect from 08.01.2013 is applicable to the case on hand.

7. Accordingly, the termination at the first instance will be imposed for the critical irregularities adulteration of MS/HSD, therefore, the amendment which is emphasised by the Senior Counsel was not accepted and there was no amendment in the Marketing Discipline Guidelines.

8. Therefore, this Court finds no infirmity or irregularity in the order passed by the second respondent dated 31.08.2015 and subsequent impugned order passed by the fourth respondent dated 29.11.2018 and the writ petition is devoid of merits and it is liable to be dismissed.

9. Accordingly, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Internet : Yes
Index : Yes/No **27.01.2025**
Speaking/Non Speaking order
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G.K.ILANTHIRAIYAN, J.

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W.P (MD).No.10001 of 2019

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