

(2014) 06 MAD CK 0109
In the Madras High Court
Case No : W.P. No. 20210 of 2009

A. Jamsheeda Bee

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Citation : (2014) 06 MAD CK 0109

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

T. Raja, J.—This writ petition has been filed by Ms. A. Jamsheeda Bee challenging the impugned order of termination of the contract issued by the Senior Regional Manager, Hindustan Petroleum Corporation Ltd., the second respondent herein in CBRO/PNR/RET dated 14.09.2009, in and by which the second respondent, by referring to the agreement dated 10.2.2009, giving one month's notice for termination of contract for operation of the company owned retail outlet at Bagalur, Krishnagiri District, advised the petitioner to hand over the COCO retail outlet on 14.10.2009 to the Sales Officer, Hosur Sales Area and also to settle and comply with all the formalities as mentioned in the contract agreement.

2. The petitioner, aggrieved by the impugned order, has come to this Court taking a stand that after the petitioner was selected to operate the outlet on contract basis, she submitted a bank guarantee for a sum of Rs. 15 lakhs as required by the second respondent and thereafter an oral agreement for operation of the above retail outlet was also executed between the first respondent and herself and that she has been managing the retail outlet by providing good quality service to all the customers. While so, in the last week of March, 2009, experiencing certain technical problems to the HSD pump and L & T pump, she informed the same to the Sales Officer, Hosur of the first respondent Corporation by letter dated 31.3.2009 and requested to arrange a pump mechanic to rectify the pump immediately. But no arrangements were

made by the officials of the first respondent to rectify the said problem, as a result, the petitioner was unable to run the outlet. However, in the meanwhile, on 16.4.2009, the petitioner's petrol bunk was inspected by the officials from the respondents on a complaint given by some one on 3.4.2009 and thereafter they sealed the petrol pump operation stating the reason that there is a shortage in measurement and the stock register and bill books were not properly maintained by the petitioner. Thereupon the petitioner was also imposed with the penalty of Rs. 2,025/- and the same was also paid to the respondents by the petitioner. Under these circumstances, the petitioner received a communication dated 20.5.2009, threatening to take over the petroleum retail outlet. As there was no opportunity, the petitioner came to this Court by filing W.P. No. 11784 of 2009 and this Court, by order dated 24.7.2009, directed the District Collector, Krishnagiri to remove the seal within a period of one week from the date of receipt of copy of the order and thereafter within a period of one week the respondents were directed to rectify the defect pointed out by the petitioner in her complaint dated 31.3.2009. However, liberty was given to the respondents to take appropriate steps for the commission and omission committed by the petitioner, in accordance with law. Taking strength of the order, the respondents have wrongly, without there being any reason whatsoever, issued the impugned communication dated 14.9.2009 advising the petitioner to hand over the COCO retail outlet on 14.10.2009 to the Sales Officer, Hosur Sales area and also to settle and comply with all the formalities as mentioned in the contract.

3. Learned counsel for the petitioner, urging this Court to set aside the impugned communication, took me through the terms and conditions of the contract. Clause-7 of the agreement for maintenance and handling, he pleaded, states that the agreement would be for a period of one year with effect from 31.12.2008 and the Corporation, at its option, may renew for a further period of one year. While the period of one year had commenced only from 31.12.2008, even before the expiry of one year period, by the impugned communication dated 14.9.2009, violating the principles of natural justice including the terms which are binding on the respondents, came forward, without any reason, to take back the petroleum outlet. Therefore, the action taken by the respondents in the impugned order is not only against the principles of natural justice, but also against their own terms and conditions, more specifically mentioned in clause-7 of the agreement. Adding further, he has stated that it is an admitted case that the petitioner submitted the bank guarantee for Rs. 15 lakhs as required by the second respondent. That apart, she has also invested huge money. Therefore, overlooking all these significant aspects, the impugned communication ought not to have been issued, hence, the same is to be set aside.

4. Opposing the above, the learned counsel for the respondents urged this Court to dismiss the writ petition on the ground that the averments made by the petitioner in the affidavit filed in support of the writ petition stating that the impugned communication has been issued before completion of one year is absolutely unacceptable and untenable. The reason is that a proper reading of

clause-7 of the agreement for maintenance and handling clearly and conspicuously speaks that the agreement would be for a period of one year with effect from 31.12.2008 with an option to the Corporation to renew the agreement for a further period of one year. The said clause makes it clear that the agreement may be terminated at the option of the Corporation by giving one month's notice to the labour contractor without assigning any reason therefor. Therefore, when the respondents are at liberty to terminate the agreement by giving one month's notice to the labour contractor without assigning any reason whatsoever, it is not the case of the petitioner that one month's notice was not given. Moreover, the petitioner has also closed down the petrol bunk. For all these reasons, as per the terms of the agreement, the impugned communication has been rightly issued. Therefore, the petitioner cannot come to this Court by filing the present writ petition to re-write the contract. In any event, as of now, when the period of one year contract was already over, the question of giving a direction to the respondents to renew the contract does not arise. In support of his submissions, he has also placed on record two of the judgments of this Court, namely, one unreported order passed in W.P. No. 22423 of 2009 dated 15.3.2010 (T. Manoharan v. The Senior Regional Manager, Hindustan Petroleum Corporation Ltd. and two others) to say that every contract has to be awarded as per the notification for a period of only one year, but, after the expiry of time, no prayer for extension should be considered and yet another reported judgment in the case of Kurshed Sharfudeen and S. Hafez Khadar Ibrahim Vs. IBP Company Limited, The Divisional Manager, IBP Company Limited and The Indian Oil Corporation Limited, . Learned counsel for the respondents, highlighting the ratio laid down by this Court, submitted that when the period of dealership had come to an end, there is no vested right on the part of the petitioner to claim permanent dealership. In view of that, the petitioner cannot complain any violation of the principles of natural justice, as the question of principles of natural justice does not arise.

5. This Court, finding force in the submissions made by the learned counsel for the respondents, by keeping in mind clause-7 of the agreement for maintenance and handling, which is given as under,

6. The Agreement will be for a period of one year with effect from 31.12.2008. The Corporation at its option, may renew the Agreement for a further period of one year. However, the Agreement may be terminated at the option of the Corporation by giving one month's notice to the Labour Contractor without assigning any reason therefor. The Agreement may be terminated by the Labour Contractor by giving three months Notice in writing to the Corporation of its intention to terminate this Agreement.

is unable to accede to the prayer made by the petitioner. A clear and close reading of clause-7 of the agreement for maintenance and handling gives enormous discretion to the respondents to terminate the agreement at their option by giving one month's notice to the labour contractor without assigning

any reason therefor. Therefore, this Court is unable to test the correctness of the impugned communication, as clause-7 stares at the Court not to do so. In view of the same, the writ petition fails and it is dismissed. No costs.