

S.Prasanna Raj vs M/S. Indian Oil Corporation Ltd on 3 February, 2023

Author: C.V.Karthikeyan

Bench: C.V.Karthikeyan

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 03.02.2023

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 27481 of 2022

And

W.M.P.No. 26704 of 2022

S.Prasanna Raj

... Petition

..Vs..

1. M/s. Indian Oil Corporation Ltd.,
Rep. by its Executive Director (Retail Sales-S&W)
Appellate Authority, Indian Oil Bhavan
G-9, Ali Yavar Jung Marg, Bandra (East)
Mumbai – 400 051.
2. M/s. Indian Oil Corporation Ltd.,
Rep. by its Executive Director
Indian Oil Bhavan
No.139, Mahatma Gandhi Road,
(Nungambakkam High Road)
Chennai – 600034.
3. Divisional Retail Head – Salem
M/s. Indian Oil Corporation Ltd.,
Salem Divisional Office
Indian Oil Officers Quarters
1st Floor, No.74, Rasi Nagar
Jagir Ammapalayam
Salem – 636 302.

<https://www.mhc.tn.gov.in/judis>

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4. Malarvizhi
Sales Officer
Salem Divisional Office
Indian Oil Officers Quarters
1st Floor, No. 74, Rasi Nagar,
Jagir Ammapalayam
Salem – 636 302.

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PRAYER: Petition under Article 226 of the Constitution of India, for the issue of a Writ of Certiorari calling for the records of the Judgment dated 30.09.2022 passed by the first respondent appellate Authority, confirming the order of 2nd respondent original dated 13 entered with the petitioner and quash the same.

For Petitioner :: Mr. Vijayan
for Mr. S. Doraiswamy

For Respondents :: Mr. R. Ravi
Senior Counsel (for

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus seeking interference with an order of the first respondent dated 30.09.2022 by which order the first respondent confirmed an earlier order of the second respondent which was dated 28.11.2011.
<https://www.mhc.tn.gov.in/judis>

2. By virtue of those two orders, the petitioner / dealer of the first respondent Indian Oil Corporation and running a petrol bunk by name Alamu Agencies at Salem Chennai Main Road in Deviyakurichi post at Thalaivasal, Attur Taluk, suffered termination of dealership which agreement had been originally granted on 13.05.2005.

3. Let me not enter into a detailed discussion on the various facts raised and allegations as against the petitioner herein.

4. Short facts are that the respondents had conducted an inspection of the petitioner petrol bunk on 07.11.2009. On that particular date, according to them, the current reading of the diesel called HSD 2 was 1320798. It had been stated that the previous hearing was 1303848. After going through various calculations in their own method, the respondents finally stated that the petitioner was having an excess stock of 5271 liters of diesel.

5. A dealer can have excess stock only if he had purchased diesel from outside source or more damagingly if he had adulterated the stock <https://www.mhc.tn.gov.in/judis> already purchased from the respondents. A laboratory test of the available diesel would give a fair indication whether

there has been adulteration. In this case, there was no adulteration.

6. Mr. Vijayan, who appeared on behalf of the petitioner pointed out of the diesel the reading on the previous day and that was 1315799. It was therefore contended that if that reading had been taken into consideration, the petitioner could not have been categorised as having excess stock. It is stated that consequent to this show cause notice which had been issued, the petitioner was initially placed under suspension for a period of 7 days from 07.11.2009 till 14.11.2009 and thereafter in accordance with rules and regulations, the dealership was terminated and the respondents stopped supplying diesel or any other product from 13.10.2022.

7. There are rules and regulations which governed the dealership. The original Rules and Regulations were of the year 2005 and according to those guidelines, if excess stock had been detected, the only punishment which could be imposed was to terminate the dealership. Questioning the <https://www.mhc.tn.gov.in/judis> show cause notice and the orders passed, the petitioner had approached the second respondent, namely, the Executive Director, (Retail Sales – S&W), who is the appellate Authority and has been impleaded as first respondent. The appellate authority by an order dated 30.09.2022 had confirmed the order of the second respondent.

8. It is seen that the first respondent/appellate authority had taken about a decade to confirm the order of the first respondent. Naturally during any pendency stretching that long period, further rules and regulations come into play or the earlier rules and regulations are amended.

9. In this case, they were amended by the amendment Rules in the year 2012. The punishment for excess stock was modified to suspension for a period of 15 days.

10. Both the learned counsels relied on a Judgment of the Hon'ble Supreme Court reported in (2020) 10 SCC 763 [Trilok Chand Vs. State of Himachal Pradesh] wherein with respect to the Food Safety and Standards Act, 2006, when there was an amendment brought in which was beneficial <https://www.mhc.tn.gov.in/judis> to the accused person, in that case, violation of the provisions of the Food Safety and Standards 2006, it was held that the sentence which was beneficial to the accused should be taken note of and applied.

11. The ratio applies to the present case since the amendment in the year 2012 brought about a reduction from termination to dealership to suspension for a period of 15 days. I am bound by the ratio laid down by the Hon'ble Supreme Court.

12. It is seen from the records that the petitioner had already suffered suspension for a period of 7 days. Moreover the respondents had stopped supplying petrol and diesel products from 13.10.2022 till date. Naturally, he had certainly suffered more than 15 days of disruption of business. In view of the particular amendment which had been brought into effect in the year 2012, I would direct that no further punishment is liable to be imposed on the petitioner herein and a direction is issued that the respondents are to resume supply of petrol products both petrol and diesel as previously to the petitioner herein immediately from today, if possible, but definitely from tomorrow ie., on 04.02.2023. The fact that the petitioner <https://www.mhc.tn.gov.in/judis> was caught having excess

stock should not be put against the petitioner since the learned counsel had disputed the readings and therefore, the order of suspension for the period of 7 days and the order stopping supply need not be put against the petitioner in future, if at all any action is directed against the petitioner for any other violation of any other rule of the respondent herein.

13. This Court had passed the present order though the petitioner had the option to take the issue before arbitration since the effect of the amendment can be interpreted only be a judicial authority and any arbitrator would restrict himself to an examination of the facts and certainly cannot examine the application of the effect of an amendment midway through the appellate proceedings.

14. The minor punishments which had been imposed are sustained. I am not entering into any discussion on the same. If the petitioner is aggrieved over those punishments, then he can invoke the arbitration clause with respect to those punishments imposed. <https://www.mhc.tn.gov.in/judis>

15. With the above said observation, this Writ Petition stands disposed of. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

03.02.2023 vsg Index: Yes/No Internet: Yes/No Speaking / Non Speaking Order To

1. Executive Director (Retail Sales-S&W) M/s. Indian Oil Corporation Ltd., Appellate Authority, Indian Oil Bhavan G-9, Ali Yavar Jung Marg, Bandra (East) Mumbai – 400 051.

2. Executive Director M/s. Indian Oil Corporation Ltd., Indian Oil Bhavan No.139, Mahatma Gandhi Road, (Nungambakkam High Road) Chennai – 600034.

3. Divisional Retail Head – Salem M/s. Indian Oil Corporation Ltd., Salem Divisional Office Indian Oil Officers Quarters 1st Floor, No.74, Rasi Nagar Jagir Ammapalayam Salem – 636 302.

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<https://www.mhc.tn.gov.in/judis> C.V.KARTHIKEYAN, J., vsg And 03.02.2023
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