

IN THE HIGH COURT OF TELANGANA AT HYDERABAD**W.P. No. 12345 of 2011****And****W.P.No.29128 of 2012****W.P. No. 12345 of 2011**

Between:

Sri Venkateswara Service Station

... Petitioner

And

M/s India Oil Corporation Limited and another

... Respondents

W.P.No.29128 of 2012

Between:

Sri Venkateswara Service Station

... Petitioner

And

M/s India Oil Corporation Limited and another

... Respondents

JUDGMENT PRONOUNCED ON: 29.11.2023**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

- 1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?**
- 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes**
- 3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes**

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 12345 of 2011****And****W.P.No.29128 of 2012****% 29.11.2023****W.P. No. 12345 of 2011**

Between:

Sri Venkateswara Service Station

... Petitioner

And

M/s India Oil Corporation Limited and another

... Respondents

W.P.No.29128 of 2012

Between:

Sri Venkateswara Service Station

... Petitioner

And

M/s India Oil Corporation Limited and another

... Respondents

< Gist:**> Head Note:**

! Counsel for the Petitioner in

Writ Petition No.12345 of 2011 :Mr T.Praveen Kumar

! Counsel for the Petitioner in

Writ Petition No.29128 of 2012 :Mr Ponnamm Ashok Goud

^ Counsel for Respondents

In both writ petitions : Mr Deepak Bhattacharjee

? Cases Referred:**(2021) 6 SCC 771**

HON'BLE MRS JUSTICE SUREPALLI NANDA

W.P. No. 12345 of 2011

And

W.P.No.29128 of 2012

COMMON ORDER:

Since the parties in both the Writ Petitions are one and the same in the two writ petitions i.e. W.P.No.12345 of 2011 and W.P.No.29128 of 2012, are disposed off through a common order.

2. Heard the learned counsel Mr. T.Praveen Kumar, appearing on behalf of the Petitioner in W.P.No.12345 of 2011, Mr Ponnamm Ashok Goud, learned counsel appearing on behalf of the petitioner in W.P.No.29128 of 2012 and learned senior counsel Mr. Deepak Bhaatacharjee appearing on behalf of the respondents in W.P.No.12345 of 2011 and W.P.No.29128 of 2012.

3. The prayer sought for by the Petitioner in W.P.No.12345 of 2011 is as under :

"to issue a Writ of Mandamus, declaring that the inaction on the part of the respondents in not restoring

the retail dealership of the petitioners situated at Kompally and Madhapur, Rangareddy District, in favour of the petitioner pursuant to the arbitration award Ref. No.DBD/ARB/SS, dated 19-03-2010 is arbitrary and violative of Articles 14, 19(1)(g) & 21 of the Constitution of India and further direct the respondent corporation to restore the said dealership."

4. The prayer sought for by the Petitioner in W.P.No.29128 of 2012 is as under :

"to issue a Writ of Mandamus, declaring the order Ref. No.SDO/RO/2022, dated 21.07.2011 including termination order dated 06.01.2005, passed by the respondents rejecting to restore the dealership for the retail outlets of the petitioner situated at Kompally and Madhapur, Ranga Reddy District as illegal, arbitrary, unreasonable and non-application of mind, and set aside the said orders, and consequently direct the respondents to restore the dealership for the retail outlets of the petitioner situated at Kompally, Ranga Reddy District with HSD facility and Madhapur, Ranga Reddy District with MS facility.

PERUSED THE RECORD :

5. Paras 5, 6 & 7 of the counter affidavit filed on behalf of Respondents in W.P.No.12345/2011 reads as under :

5. It is humbly submitted that the petitioner thereafter invoked the arbitration clause in the dealership agreement and Sri B.M.Bansal, Director (Marketing) was appointed as a sole arbitrator by the respondent, who entered into reference and conducted the arbitration proceedings under the Arbitration and Conciliation Act. The sole arbitrator passed an award on 19.03.2010 holding that the termination is bad. However, the following ration laid down by the Hon'ble Supreme Court in Amritsar Gas Vs. Indian Oil Corporation reported in 1999(1) SCC 533 held that the petitioner will not be entitled for restoration of dealership but shall be entitled for compensation in terms of Section 14(1) of the Specific Relief Act 1963. After the award was passed, the legal advise was sought and a clear advise was given stating that the petitioner will be entitled to only claim. compensation and not restoration of dealership as per the award.

6. It is humbly submitted that the petitioner instead of seeking compensation, under the due process of law, addressed a letter on 05.05.2010 to Chairman of the corporation to revoke the termination. The request was not accepted but the compensation was calculated by

the respondent corporation to abide by the award passed by the sole arbitrator and a sum of Rs.3,21,370/- was paid under cheque drawn in favour of the petitioner. Unfortunately, the petitioner returned the cheque.

7. That, the petitioner did not choose to question the arbitration award under the provisions of the Arbitration and Conciliation Act and the award has become final. The respondent corporation has implemented the award in its true force and hence the petitioner is not entitled to seek any relief beyond the scope of the award after invoking the arbitration clause and after participating in the arbitration proceedings and after the award is passed, giving due regards to the question of facts and law involved in the case.

6) The interim orders of the Court dt. 27.04.2011 passed in W.P.No.12345/2011 which are in force as on date read as under :

“Sri Deepak Bhattacharjee, learned standing counsel for Indian Oil Corporation, takes notices for the respondents and seeks time for filing counter affidavit.

Post on 20.06.2011

Meanwhile, the respondents shall not allot the retail dealership relating to Kompally and Madhapur retail outlets to third parties."

7. Paras 7, 10 of the counter affidavit filed on behalf of the Respondents in W.P.No.29128/2012 read as follows :

"7. That, the petitioner did not choose to question the arbitration award under the provisions of the Arbitration and Conciliation Act and the award has become final. The respondent corporation has implemented the award in its true force and hence the petitioner is not entitled to seek any relief beyond the scope of the award after invoking the arbitration clause and after participating in the arbitration proceedings and after the award is passed, giving due regards to the question of facts and law involved in the case.

10. It is humbly submitted that as per the direction of the Hon'ble High Court in WP No 12345/2011, the case of the petitioner was again re- appreciated and the representation was accordingly disposed of on 21.07.2011. It was made clear that the petitioner did not choose to question the award under the provisions of Arbitration and Conciliation Act and the award has become final. In terms of the award passed by the arbitrator, the Respondent issued a cheque for Rs.3,21,370/-. The petitioner was informed that the request for restoration of dealership is not possible and

the compensation is the appropriate remedy in terms of Section 14(1)(c) of the Specific Relief Act. There was no illegality committed in disposing the representation on 21.07.2011 by the Corporation. The award has become final and is binding on both the parties. The petitioner is not entitled to invoke the extraordinary jurisdiction of the Hon'ble High Court under Article 226 of the Constitution of India for the relief as prayed for.

8. The Case of the Petitioner in brief as per the averments made in the Affidavit filed in support of the present two Writ Petitions, is as under :

a) The Petitioner herein in both the writ petitions W.P.Nos.12345 of 2011 and W.P.No.29128 of 2012 is M/s. Venkateswara Service Station, situated at 1-52/A, Mahdapur, Ranga Reddy District. The Petitioner service station was reorganized under Dealership Agreement dated 05.05.1998 whereby the original dealer Mr. M.Chandraiah, was permitted to induct Petitioner's daughter Smt. G.Padmavathi as a Partner in the dealership business. On 17 and 18th April 2004, when the Petitioner was not present in the retail outlet the Respondent Corporation Officials who were passing by

the retail outlet at Madhapur, found a tanker truck bearing Registration No.AP16T9378, entering the retail outlet premises. The contention of the said officials was that the said tanker was decanting some unknown product into the underground tanks in the said outlet. But the plea of the Petitioner is that the said tanker truck came to the Petitioner's retail outlet to fillup fuel but not for unloading any material into the underground tank. On a wrong apprehension the retail outlet was sealed and sales of all the products were suspended. A show cause notice dated 27.04.2004 was issued by the Respondent Corporation as to why disciplinary action should not be taken against the Petitioner. Challenging the validity of the said show cause notice dated 27.04.2004 Petitioner filed W.P.No.8944 of 2004 before this Court and the Court by orders dated 01.07.2004 directed the Respondent Corporation to continue to sell motor spirit at the retail outlet and the Petitioner was granted 3 weeks time for submission of explanation. Accordingly the Petitioner had submitted explanation denying the charges. Without considering the

explanation of the Petitioner in a proper perspective the Respondent Corporation had passed orders on 06.01.2005 terminating the dealership of the retail outlet on the ground that the allegations made against the Petitioner are established.

b) It is further the case of the Petitioner that the Respondent Corporation appointed one of the senior officer Mr. B.M. Bansal, Director (R&D) and Member of the Board as the Sole Arbitrator to adjudicate the disputes between the parties and the Sole Arbitrator on 19.03.2010 after hearing all the concerned passed the Award Ref.No.DBD/ARB/VSS, dt. 19.03.2010 and issue No.1 on the point "whether the termination letter by the Respondents to the claimant dealership of HSD facility located on Corporation owned land at Kompally in Ranga Reddy District and MS (Petrol) facility located at Madhapur in Ranga Reddy District is legal and valid, if so to what extent ? The Arbitrator clearly held on issue No.1 that the termination by the Respondent of the claimants dealership of HSD (Diesel) facility located on Corporation owned land at Kompally in Ranga Reddy

District and MS (petrol) facility located at Madhapur in Ranga Reddy District as illegal and invalid and allowed issue No.1 in favour of the claimant and against the Respondents. Even on the 2nd issue namely "whether the claimant is entitled to seek restoration of dealership agreement dt. 05.05.1998 in respect of HSD facility located on the Corporation owned land at Kompally in Ranga Reddy District and MDS facility located at Madhapur in Ranga Reddy District also the learned Arbitrator held in favour of the claimant/petitioner and against the Respondent.

c) It is further the case of the Petitioner that the Respondents having accepted the said Award and having not challenged the Award in any forum surprisingly did not implement the said Award. Taking into consideration the observation made in the Award of the Arbitrator dated 19.03.2010 which said owing to the termination being unwarranted and invalid I leave the claimant to approach the appropriate authority as deemed fit for the relief, and in pursuance to the said directions the Petitioner approached the Respondents

with representations dated 05.05.2010, 10.7.2010, 06.08.2010, 10.03.2011 seeking restoration of dealership and when there was no response the Petitioner approached the Court by filing W.P.No.12345 of 2011 declaring the inaction on the part of the Respondents in not restoring the retail dealership of the Petitioners situated at Kompally and Madhapur, Ranga Reddy District in favour of the Petitioner pursuant to the Arbitration Award Ref.No.DBD/ARB /VSS, dt. 19.03.2010 as arbitrary and inviolation of Articles 14, 19(1)(g) and 21 of the Constitution of India and to direct the Respondent to restore the said dealership to the Petitioner herein. Taking into consideration of the interim order of the Court dt. 20.06.2011 passed in W.P.No.12345 of 2011 directing the Respondents to consider and pass the necessary orders on the representations dated 05.05.2010, 10.07.2010 and 06.08.2010 of the Petitioner seeking to restore the dealership of the Petitioner in pursuance of award dated 19.03.2010 within four weeks from the date of receipt of the order from this Honourable court pending WP

No.12345 of 2011 on the file of the High Court, the Respondent Indian Oil Corporation issued the impugned proceedings dated 21.07.2011 which rejected Petitioner's request for restoration of dealership observing that it will not be in public interest to restore the dealership though the learned Arbitrator held that the termination is bad in the Award dated 19.03.2010 vide Ref.No.DBD/ ARB/VSS. Challenging the said impugned order dated 21.07.2011 vide Ref.No.SDO/RO/2022 including the termination order dt. 06.01.2005 passed by the Respondent rejecting to restore the dealership for the retail outlets of the Petitioner situated at Kompally and Madhapur, Ranga Reddy District, the Petitioner filed W.P.No.29128 of 2012.

9. The learned counsel Mr. T.S. Praveen Kumar appearing on behalf of the Petitioner puts forth the following submissions :

i. The Petitioner is entitled to seek restoration of dealership agreement dated 05.05.1998 in view of

the categorical findings in favour of the Petitioner at paras No.16 & 17 of the Award dated 19.03.2010.

ii. The observations at para 18 do not apply to the facts of the case.

iii. The Petitioner is entitled for relief since Petitioner's dealership which is their bread and butter came to be terminated for an irrelevant and non-existent cause.

iv. Order is passed in favour of the Petitioner in C.C.No.84 of 2009 by the Hon'ble XVI Metropolitan Magistrate Court, Kukatpally, holding that the Petitioner is not guilty of offences u/s. 420 IPC and Sec.3 & 7 of E.C. Act and the Petitioner was acquitted u/s. 248(1) Criminal Procedure Code. This fact was overlooked by the Respondent Corporation at the time of passing the order impugned dated 21.07.2011.

v. The retail outlet is the only source of the Petitioner and Petitioner's children's livelihood and therefore the dealership should be restored at the earliest and the money cannot compensate for the loss incurred by the Petitioner since 06.01.2005 and

therefore the writ petitions should be allowed as prayed for.

10. The learned Senior Counsel Mr. Deepak Bhaatacharjee appearing on behalf of the Respondents mainly puts forth the following submissions:

i. As per the ratio laid down by the Supreme Court in Amritsar Gas Vs. Indian Oil Corporation reported in (1999) 1 SCC 533 the Petitioner is entitled for compensation in terms of Sec.14(1) of the Specific Relief Act, 1963 and the Petitioner will not be entitled for restoration of dealership.

ii. The Petitioner did not choose to question the Arbitration Award under the Provisions of the Arbitration & Conciliation Act and the Award has become final.

iii. The Respondent Corporation has implemented the Award in its true force and hence Petitioner is not entitled to seek any relief beyond the scope of the Award after invoking the Arbitration clause and after participating in the Arbitration proceedings and after the Award is passed.

iv. The Respondent Corporation accepted the Award of the Arbitrator dt.19.03.2010 and paid a sum of Rs.3,21,317/- under Cheque drawn in favour of the Petitioner but however the Petitioner returned the said cheque.

v) Though the termination was held to be bad the learned Arbitrator Awarded only compensation and not restoration of the dealership.

vi) The writ petition is not maintainable after the Award is passed, since entire cause of action of the writ petition No.29128/2012 arose out of the realm of the contract and it was a termination of contract which was questioned by the Petitioner before the Sole Arbitrator by invoking Arbitration clause.

vii) The learned senior counsel on the basis of the aforesaid submissions contended that the writ petition needs to be dismissed.

DISCUSSION AND CONCLUSION

11. Paras 16, 17, 18 of the Award of the Arbitrator dated 19.03.2010 read as under :

"16. Based on my findings in paras 11 to 15 on all the four alleged irregularities by the Corporation, I am of the view that under the facts and circumstances of the case the termination of dealership by the Corporation under the relevant Clauses of Dealership Agreement was unwarranted and hold the termination by the respondent of the claimant's dealership of HSD facility located on Corporation owned land at Kompally in Ranga Reddy District as illegal and invalid and allow issue No.1 in favour of the Claimant and against the respondent.

17. The termination has been held to be invalid by me, I accordingly, decide issue No.2 in favour of the claimant and against the respondent.

18. As regards the relief, in a judgment passed by the Hon'ble Supreme Court of India in the matter of M/s Amritsar Gas v/s Indian Oil Corporation Limited (1991(1) SCC 533) wherein it has been held that if a contract is determinable by its very nature, the only relief that can be granted is compensation in light of section 14(1)(c) of the Specific Relief Act, 1963. The contract has been terminated under clause 56(a)(i) and (k) of the Agreement.

12. Clause 56(a)(i) and (k) of the Agreement reads as under :

"56. Notwithstanding anything to the contrary herein contained, the Corporation shall be at liberty 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 any of the covenants and stipulations contained in the Agreement, and fail to remedy such breach

(b) Upon

(i) the death or adjudication as insolvent of the Dealer, if he be an individual.

(k) If the Dealer shall either by himself or by his servants or Agents commit or suffer to be committed any act which, in the opinion of the General Manager of the Corporation for the time being in Madras whose decision shall be final, is prejudicial to the interest or good name of the Corporation or its products; the General Manager shall not be bound to give reasons for such decision.

13. The learned Arbitrator framed three specific issues on 06.01.2006 after hearing both the parties which are extracted hereunder :

i. Whether the termination letter by the Respondents to the claimant dealership of HSD facility located on Corporation's owned land at Kompally in Ranga Reddy District and MS facility located at Madhapur in Ranga Reddy District is legal and valid ? If so to what extent ?

ii. Whether the claimant is entitled to seek restoration of dealership agreement dt.

05.05.1998 in respect of HSD facility located on the Corporation owned land at Kompally in Ranga Reddy District and MS facility located at Madhapur in Ranga Reddy District ?

iii. What relief ?

14. A bare perusal of the Award dated 19.03.2010 paras 16 and 17 clearly indicate a clear observation in favour of the Petitioner and a categorical finding of the learned Arbitrator that the termination of dealership by the Corporation under the relevant clauses of dealership agreement was unwarranted and further the learned Arbitrator held the termination by the Respondent of the Petitioner's dealership of HSD facility located on Corporation's own land at Kompally in Ranga Reddy District and MS facility located at Madhapur in Ranga Reddy District as illegal and invalid. The learned Arbitrator not only allowed issue No.1 in favour of the claimant against the Respondent he also observed at para 17 that having held the termination to be invalid he accordingly decided issued No.2 in favour of the claimant and against the Respondent, but however, did not grant any relief of restoration of dealership and

granted compensation, referring to the judgment of the Apex Court in the matter of M/s. Amritsar Gas Vs. Indian Oil Corporation Ltd., reported in (1991) 1 SCC 533 wherein it has been held that if a contract is determinable by its very nature the only relief that can be granted is compensation in light of Sec.14(1)(c) of the Specific Relief Act, 1963 and observed that owing to the termination being unwarranted and invalid, the Petitioner is at liberty to approach the appropriate authority as deemed fit for relief. This Court opines that without there being no violation of any clause of agreement by the Petitioner and the Petitioner being exonerated of all the allegations leveled against the Petitioner only natural outcome has to be restoration of all benefits which the Petitioner was deprived of unauthorizedly.

15. In so far as the plea of the Respondents is concerned that the writ petition is not maintainable for the prayer of restoration of dealership this Court opines that the prayer of the Petitioner for restoration of dealership is available to the Petitioner only by means

of a writ petition as neither a civil suit is maintainable nor is this remedy available before an Arbitrator appointed in terms of the Arbitration clause contained in the agreement.

16. This Court opines that the Arbitrator could not grant the relief of restoration of dealership to the Petitioner though he recorded two clear findings in favour of the Petitioner and held issue No.1 and 2 also in favour of the Petitioner and against the Respondent herein due to the mandate U/s.14(1) of the Specific Relief Act.

17. In Indian Oil Corporation Ltd., Vs. Amritsar Gas Service & Others, the judgment reported in (1991) 1 SCC 533 referred to by the Arbitrator in the Award dt. 19.03.2010 the Supreme Court was considering a dispute between the parties as arising under a distributorship agreement which permitted either party to terminate the agreement by 30 days' notice to the other party without assigning any reason for the termination. A dispute had arisen between the parties

on wrongful termination of the agreement. The dispute was referred to arbitration. The arbitral tribunal in its award granted restoration of the distributorship as one of the reliefs to the claimant. This relief granted by the arbitral Tribunal was challenged by the appellant under Section 34 asserting the applicability of Section 14(1)(c) of the Specific Relief Act contending that when the arbitral tribunal having noted that the contract was determinable, it could not have proceeded to grant a relief of specific performance of the contract. In such context, the Supreme Court held that the contract in question by its nature was determinable, hence granting the relief of restoration of the distributorship was contrary to the mandate of Section 14(1)(c) of the Specific Relief Act. In paragraph 12 it was observed thus :-

“12.... ... The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be

specifically enforced, one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the other clauses of sub section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases.' The grant of this relief in the award cannot, therefore, be sustained.

CONCLUSION :

18. A bare perusal of the order impugned dt. 21.07.2011, SDO/RO/2022 of the Respondent Indian Oil Corporation clearly indicates that the same is passed hastily without application of mind in a very cryptic manner without reasons except stating that it will not be in public interest to restore the dealership though the learned Arbitrator held that the termination is bad

in the Award passed. This Court is of the firm opinion that the Respondent Corporation failed to understand that the Arbitrator had his own limitations in directing for restoration of dealership with the Petitioner as per the mandate in Sec.14(1) of the Specific Relief Act, 1963 and left it open to the Petitioner to pursue the remedy available to the Petitioner very clearly observing and holding the termination of the dealership of the Petitioner as invalid since the Petitioner had not violated the relevant clauses of the dealership agreement.

19. The Apex Court in a judgement dt. 20.04.2021, reported in (2021) 6 SCC 771 in M/s. Radhakrishnan Industries vs. State of Himachal Pradesh referring to Whirlpool Corporation vs. Registrar of Trade Marks (reported in 1998 (8) SCC 1) at para 15 observed as under :

“The principles of law which emerge are that

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of

statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

20. In the present case this Court opines that (i) and (iii) (a) (extracted above) are attracted and hence the present writ petition is maintainable and the plea of availability of alternative remedy is unsustainable.

21. This Court opines that the Respondent Corporation rejected the Petitioner's representation vide impugned order Ref.No.SDO/RO/2020, dt. 21.07.2011 relying on the same set of earlier allegations which were already decided as illegal by the Arbitrator with clear findings in favour of the Petitioner in the Award passed by the Arbitrator dated 19.03.2010 in particular para 16 and 17 of the said Award, totally ignoring the fact that the Petitioner had been acquitted in the criminal case

registered against the Petitioner. This Court also opines that the order impugned dt. 21.07.2011 passed by the 2nd Respondent herein failed to understand the limitations of the Arbitrator in granting relief of restoration of dealership of the Petitioner as per mandate in Section 14(1) of the Specific Relief Act, 1963 inspite of recording clear findings in favour of the Petitioner deciding issue No.1 and 2 in favour of the Petitioner and against the Respondent Corporation very clearly observing that the termination of the dealership by the Corporation under the relevant clauses of Dealership Agreement was unwarranted and further held the termination itself as invalid.

22. This Court opines that the Respondent Corporation is a State under Article 12 of the Constitution of India is an instrumentality of the State and it is required to act in a fair and a reasonable manner and its acts and omissions are always liable to be tested on the touch stone of the tenets referable to Article 14 of Constitution of India.

23. The High Court of Allahabad in its judgement dt. 18.05.2023 passed in Modern Service Station Vs. Indian Oil Corporation Ltd., & Others dealing with an order of termination of dealership as confirmed by the Appellate Authority directed the Respondents to restore the retail outlet dealership of the Petitioner forthwith placing reliance on another judgment of Allahabad High Court dated 18.02.2019 passed in Kamal Kant Automobiles & Others vs. Hindustan Petroleum Corporation Ltd., & Others and very clearly observed at paras 34, 35 and 36 as under :

Para 34 : In fact for the prayer of restoration of dealership, the only remedy available to the petitioners is by means of a writ petition as neither a civil suit is maintainable nor is this remedy available before an arbitrator appointed in terms of the arbitration clause contained in the agreement.

Para 35 : Thus, this Court is of the view that the writ petition is maintainable and the arbitration clause does not provide for an effective and efficacious remedy to the petitioners for the relief sought in the petition particularly relating to restoration of point No.3.

Para 36 : After holding that the order dated 24.02.2018 is bad in law and liable to be quashed, the question arises as to whether the petitioner is entitled to restoration of dealership. There being no violation of any clause of agreement, no proceedings having culminated in accordance with law and after being exonerated of all the allegations leveled against the petitioner only natural outcome has to be restoration of all benefits which the petitioner was deprived of unauthorisedly.

24. This Court opines that the judgment relied upon by the learned Counsel appearing on behalf of the Respondent Corporation in Indian Oil Corporation Ltd., & Another vs. T.Natarajan reported in (2018) 9 SCC 235 (paras 10, 13, 18, 29 and 30) has no application to the facts of the present case because in that case the Apex Court held that the administrative decision of the IOCL is based on reasons involving no arbitrariness of any nature therein which may call for any interference by the High Court. But in the present case, admittedly the order impugned dt. 21.07.2011 of the 2nd Respondent vide SDO/RO/2022, clearly indicates that the Corporation took into consideration the same

allegations leveled against the Petitioner which were held to be invalid in the Award passed by the Arbitrator dt. 19.03.2010 and it was unilaterally decided that it will not be in public interest to restore the dealership though the Arbitrator held that the termination is bad in the Award passed.

25. In so far as the judgment of the Apex Court reported in (2022) 4 SCC 463 in Indian Oil Corporation Ltd., Vs. Sri Ganesh Petroleum Rajguru Nagar (para 41) relied upon by the learned Counsel appearing on behalf of the Respondent Corporation is concerned, this Court opines that the same is not applicable to the facts of the present case in view of the fact that in the said case the challenge is with regard to the Award passed by the Arbitrator itself. In the present case the Petitioner is not aggrieved by the Award dt. 19.03.2010 passed by the Arbitrator and the Petitioner very well understands that the Arbitrator passed the said Award as per the mandate in Sec.14(1) of the Specific Relief Act, 1963, as permissible under law and the relief prayed for in the present writ petition pertains to the decision of the

Respondent Corporation in rejecting the Petitioner's representation for restoration of dealership which is an independent cause of action and the Respondent Corporation having had the bounden duty to take a decision based on reasons involving no arbitrariness of any nature therein but in the present case admittedly the Respondent Corporation failed to act in a fair and reasonable manner and in fact acted arbitrarily effecting Petitioner's right to livelihood on a same set of allegations which were held to be invalid in the Award passed by the Arbitrator dt. 19.03.2010.

26. Taking into consideration the above referred facts and circumstances and the discussion arrived at as above W.P.No.12345 of 2011 is allowed and the Respondent Corporation is directed to consider the case of the Petitioner for restoration of the retail outlets of the Petitioner situated at Kompally and Madhapur, Ranga Reddy District and the impugned orders in W.P.No.29128 of 2012 is allowed as well and the impugned order SDO/RO/2022, dated 21.07.2011 of the 2nd Respondent is set aside including termination

order dt. 06.01.2005 passed by the Respondents and the Respondent Corporation is directed to reconsider the representations dated 05.05.2010, 10.07.2010 and 06.08.2010, of the Petitioner seeking restoration of the retail outlets of the Petitioner situated at Kompally and Madhapur, Ranga Reddy District, within a period of 3 weeks from the date of receipt of the copy of the order duly considering the observations made in particular at para 23 and also the discussion and conclusion as arrived at as above in the present judgment, in accordance to law in conformity with the principles of natural justice by providing an opportunity of personal hearing to the Petitioner and duly communicate the decision to the Petitioner. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.

SUREPALLI NANDA, J

Dated: 29.11.2023

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