

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P.No.31723 OF 2022

Between:

M/s. Leela Gas Agency

... **Petitioner**

And

The Indian Oil Corporation Limited & others

... **Respondents**

JUDGMENT PRONOUNCED ON: 03.06.2024

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 : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

MRS JUSTICE SUREPALLI NANDA

THE HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P.No.31723 OF 2022****% 03.06.2024****Between:**

M/s. Leela Gas Agency

... Petitioner**And**

\$ The Indian Oil Corporation Limited & others

... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner : Mr.S.Pradeep Kumar**^ Counsel for Respondents** : Mr.Domnic Fernandez,
S.C. for R1 and R2
G.P. for Civil Supplies for R3.

? Cases Referred:

- (1) (1991) 1 SCC 533
- (2) (2021) 6 SCC 771
- (3) AIR 1991 SC 537
- (4) (2010) 13 SCC 760
- (5) (2022) 2 SCC 25

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA**W.P. No.31723 OF 2022****ORDER:**

Heard Mr.S.Pradeep Kumar, learned counsel appearing on behalf of the petitioner, Mr.Domnic Fernandez, learned counsel appearing on behalf of respondent Nos.1 and 2, and learned Government Pleader for Civil Supplies, appearing on behalf of respondent No.3.

PRAYER:

2. **The petitioner approached the court seeking prayer as under:**

"...to issue a Writ, Order or direction more particularly one in the nature of Mandamus, declaring the action of the 2nd respondent impugned orders in terminating the petitioner's distribution-ship, vide orders Ref.SAO/LEELA GAS, dated 27/06/2022, the same is not served on petitioner till today, though the impugned order indicates that the 1st respondent sent the impugned order by way of registered post with Acknowledgment Due and recently, the petitioner came to know about the orders passed by the 2nd respondent through Email only. The said orders passed on the ground, that the petitioner Gas Agency violated the Clause No.21 and 23(c) (i)

and 27(f) and (n) of L.P.G.Distribution ship agreement dt. 01/04/2006. Based on the false complaint and blackmail complaint dt:30/09/2020 filed by one person by name K.Prabhakar, without conducting proper inquiry and without issuing any notice to the said K.Prabhakar, who was joined as Managing partner to the petitioner's Gas Agency at the instance of the 1st respondent corporation and the same was accepted and communicated to the 3rd respondent/District Collector to revoke the petitioner's suspension of B-Form License of M/s. Leela Gas Agency vide letter dt.21/07/2010 and suppressed all these aspects, the said fact is proved from the explanation submitted by the petitioner herein dt. 16/07/2021, in response to the 1st respondent's Show cause notice dt.03/06/2021 including the complaint dt.30/09/2020, without considering the said aspects, the 2nd respondent passed the impugned orders dt.27/06/2022, though the Show cause notice was issued by the respondent No.2 is totally bad in law and nonest in the eye of law, is illegal and void and opposed to Articles 14, 19 and 21 of Constitution of India, and consequently to direct the respondents to restore the petitioner's Gas Agency in question and further direct not to interfere with the business of the Petitioner's Gas Agency without following due process of law and to pass..."

3. PERUSED THE RECORD:

4. The case of the petitioner in brief as per the averments made by the petitioner in the affidavit filed by the petitioner in support of the present writ petition, is as under:

a) The petitioner was granted dealership of the Gas Agency by the respondent Corporation under the SC Women Quota in the year 2006. In the year 2009, the petitioner Agency was due for payment of amount of Rs.9,00,750/- in view of the said lapse, the I.O.C. suspended the petitioner's B-Form License and communicated the same to the 3rd respondent.

b) Thereafter, in order to clear the dues, the petitioner added a partner to the business and accordingly the petitioner submitted the proposals to the 1st respondent and the same was accepted by clearing all dues and by adding K.Prabhakar as a partner to the petitioner's Gas Agency and the same was communicated to the 3rd respondent vide letter dated 21.07.2010 with a clear direction to restore the petitioner's suspended B-Form license.

c) However, the 1st respondent having colluded with the K.Prabhakar and his political influence, passed the impugned

orders dated 27.06.2022 in a mechanical manner causing injustice to the petitioner's category of allotment of Agency under SC Women Quota.

d) Furthermore, the distributor-ship was issued in favour of the petitioner by I.O.C., Head office at Mumbai and assigned the Area Office at Secunderabad for State of Andhra Pradesh, executed by Senior Area Manager, in such an event, the 1st respondent is the competent authority to terminate the petitioner's Distributor-ship, but not the 2nd respondent. Also, contrary to the Show-Cause notice the 2nd respondent passed the impugned order which is totally bad in law and without application of mind.

e) Moreover, that before passing of the impugned orders, the 3rd respondent has cancelled the license in connection with the proceedings under section 6A, without following the rules. Aggrieved by the same, the petitioner filed WP.No.24236 of 2020 and the same was allowed vide order dated 05.01.2022. Thereafter the 3rd respondent restored the petitioner's Form B License vide orders dated 08.04.2022. The said action of the 3rd respondent is also at the instance of K.Prabhakar's political pressure only.

f) Subsequently, the said K.Prabhakar filed forged documents before the IOC as if the petitioner has signed the papers seeking to transfer the entire Agency in his favour. Upon knowing the said fraud, the petitioner filed criminal complaint and the same is registered as FIR.no.233 of 2020 dated 06.07.2020.

g) Thereafter the police arrested the said K.Prabhakar and got released on bail and bearing grudge upon the same, K.Prabhakar has filed false complaint dated 30.09.2020 before the IOC against the petitioner. Therefore, 2nd respondent passed impugned order in terminating the petitioner's distribution ship vide Orders Ref.SAO/LEELA GAS, dated 27.06.2022 by suppressing the directions passed by the IOC to the 3rd respondent, without calling the complainant, without conducting any enquiry into the allegations made in the complaint against the petitioner and concluded that the petitioner has violated the authorization conditions in question on the ground that petitioner without getting prior permission from the IOC in connection with the Induction of any other party to the petitioner's Gas Agency. Hence this, Writ Petition.

5. Counter Affidavit filed by the Respondent No. 1 and 2 is as under:

a) The petitioner has received the termination order on 30.06.2022 and the petitioner is attempting to raise untenable grounds in order to revoke the termination order and the operation of distributorship has time and again, came under the radar of authorities in various violations for improper operation of the said distributorship. In the meantime, the complaint dated 30.09.2020 was received from the complainant K.Prabhakar where several allegations were made against the petitioner.

b) Thereafter, the complaint was investigated by the Corporation as per applicable guidelines and it was found that the petitioner had inter-alia executed registered MOU & GPA vide document No. 78/2010 dated 06.04.2010, unregistered MOU & GPA on 17.02.2010 and unregistered partnership deed on 29.03.2010 with Mr. K. Prabhakar without taking any permission from the Corporation. However, the petitioner was given an opportunity for regularization of illegal partnership by paying the required ratification fees and seek condonation of her mistake, vide letter dated 22.10.2020 by the Corporation.

c) However, the petitioner neither replied nor expressed in writing her intention of ratifying the mistake nor paid the applicable ratification fees within the validity date of 31.10.2020. On expiry of policy of one-time opportunity for regularization, a letter ref. SAO/613 dated 05.11.2020 was sent to the petitioner seeking reply on the complaint dated 30.09.2020 and reply was submitted on 09.12.2020 that the petitioner has lodged a complaint against Shri K.Prabhakar for forgery of her signature and taking all the records of the distributorship.

d) Further, the petitioner had also admitted in her letter dated 19.10.2020 that she due to her son's ill-health, had given POA to K. Prabhakar on 17.02.2010. Thereafter, show cause for termination, vide letter dated 03.06.2021, was issued to the petitioner for entering into unauthorized partnership with K.Prabhakar, in violation of Clause No. 21, 23 (c) (i), 27 (t) and 27 (n) of the distributorship agreement dated 01.04.2006. Thereafter the Petitioner had submitted the show cause reply dated 16.07.2021 and appeared in the personal hearing held on 18.08.2021.

e) Moreover, the distributorship was penalized for Rs.9,00,750/- towards shortage of equipment during inventory check which was paid by the petitioner on 09.04.2010 and for the above irregularities the petitioner's Form-B, licence was suspended. The letter dated 21.07.2010 addressed to the 3rd respondent only mentions that the petitioner has submitted the reconstitution proposal for induction of K.Prabhakar and same was under process. However, the reconstitution could not be approved and same was within the knowledge of the petitioner as per her statement made during the personal hearing dated 18.08.2021. In case any distributor approaches the corporation for any assistance or guidance pertaining to their distributorship, guidance as per applicable guidelines in vogue and the guidance is not specific only to the petitioner. On these lines, when the petitioner approached IOC petitioner was provided guidance and was informed the reconstitution policy guidelines in vogue. Hence the allegation that the petitioner had to accept the same (by force) is categorically denied as it is false and baseless.

f) Furthermore, the termination letter was issued for entering into unauthorized partnership with K.Prabhakar and

therefore the outcome of the WP No.24236 of 2020 has no bearing on the termination letter and just by referring to a letter, the petitioner is trying to mislead the case. The letter dated 21.07.2010 from IOCL to DC is not an approval and it is mentioned that reconstitution proposal is under process but nowhere it was mentioned that the reconstitution has been completed. The process of reconstitution is as per the applicable reconstitution guidelines and only after compliance of the same by the distributor and signing of distributorship agreement by all the parties, the reconstitution will be completed. In the instant case, the reconstitution proposal did not meet the criteria of the guidelines and hence rejected, which the petitioner is well aware.

g) Thereafter, the petitioner had entered into registered MOU & POA dated 06.04.2010 with K.Prabhakar which clearly signifies that the petitioner had willfully entered into an agreement with K.Prabhakar without informing the Corporation. Also, it is an admitted fact that petitioner has entered into unregistered MOU dated 17.02.2010 and conveyed all her rights over the LPG distributorship to Sri Prabhakar for a consideration of Rs.22,50,000/-.

h) Alongside, the petitioner had also entered into partnership deed dated 29-03-2010 with K Prabhakar by giving 49% shareholding in the LPG distributorship without taking prior permission. Hence, the allegation against IOC is with maligned interest is strongly refuted. The Dealership agreement entered into by the petitioner provides for arbitration of any dispute or difference of any nature whatsoever. Hence this writ petition is not maintainable.

i) The petitioner was given ample opportunity to rectify the irregularities and regularize the operations of distributorship as per applicable guidelines which was available till 31.10.2020, but petitioner failed to rectify the same for reasons best known only to her. Hence, the Writ Petition is devoid of merits and is liable to be dismissed.

5. **The learned Standing Counsel appearing on behalf the Respondent Corporation placing reliance on the averments made in the counter affidavit put-forth mainly 3 submissions on the following points :**

i) Approbate and Reprobate.

- ii) Interpretation of Contract.
- iii) Contractual disputes and writ jurisdiction.

DISCUSSION AND CONCLUSION:

7. A bare perusal of the record indicates that on the ground that the Petitioner operated the distributorship in violation of Clause No.21, Clause 23(c)(i) and Clause No.27(f) and (n) of the LPG Distributorship Agreement dated 01.04.2006, the order impugned dated 27.06.2022 had been passed against the Petitioner.

8. **Clause 21, Clause 23(c)(i) and Clause No.27(f) and (n) of the LPG Distributorship Agreement are extracted hereunder :**

Clause 21 - Faithful Performance

The Distributor shall not sell, assign, mortgage or part with or otherwise transfer his interest in the distributorship or the right, interest or benefit conferred on him by this agreement to any person...

Clause 23- Faithful Performance

c) **Except with the previous written consent of the Corporation:**

(i) The Distributor shall not enter into any arrangement, contract or understanding whereby the operations of the Distributor hereunder are or may be controlled/ carried out and/or financed by any other person firm or

company, whether directly or indirectly and whether in whole or in part.

Clause 27-

"Notwithstanding anything to the contrary herein contained, the Corporation shall also 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:

(f) If the license issued to the Distributor by the relevant authorities for the storage of LPG products supplied by the Corporation is cancelled or revoked.

(n) If the distributor shall either by himself or by his servants or agents commit or suffer to be committed any act which, in the opinion of the State Office in charge of the Corporation..... whose decision in that behalf shall be final, is prejudicial to the interest or good name of the Corporation or its products; the State Office in charge shall not be bound to give reasons of such decision."

9. A bare perusal of the order impugned dated 27.06.2022 indicates the allegations levelled against the Petitioner as per the complaint dated 30.09.2020 from one Sri K.Prabhakar are as under :

"1. That you have executed MOU and General Power of Attorney dated 17.02.2010 and 06.04.2010 in favour of Sri Prabhakar for controlling and managing the business of the distributorship.

2. That you have also entered into partnership dated 29.03.2010 with Sri Prabhakar assigning 49% shareholding in the distributorship.

3. That Sri Prabhakar was managing the affairs of the business from 2010 to 2020.

4. That in 2020, due to dispute in respect of monthly remuneration, you have created nuisance and later lodged an FIR 233/2020 against Sri Prabhakar, however, he had taken anticipatory bail.

5. Sri Prabhakar further requested for LPG distributorship to be restored to him as Managing partner."

10. The observations in the inquiry conducted to probe the allegations levelled against the distributorship in the complaint dated 30.09.2020 as reflected in the order impugned dated 27.06.2022 issued to the petitioner by the 2nd respondent are extracted hereunder:

"1. That you had taken financial help from Shri K.Prabhakar and executed registered MOU dated 17.02.2010 & MOU and Power of Attorney vide document No.78/2010 dated 06.04.2010 without taking any permission from the Corporation and assign complete authority in favour of Sri Prabhakar in respect of business of the distributorship.

2. That you have entered into unregistered partnership deed dated 29.03.2010 for the purpose of business of the distributorship.

3. That you have entered into deed of dissolution dated 06.07.2020 dissolving the partnership deed and issued Advocate notice to Shri Prabhakar dated 09.10.2020 stating the cancellation of Power of Attorney."

11. A bare perusal of the impugned order dated 27.06.2022 issued by the 2nd Respondent to the Petitioner indicates that in view of the irregularities committed by Petitioner Distributorship for entering into MOU dated 17.02.2010 and MOU and Power of Attorney vide document No.78/2010 dated 06.04.2020 and unauthorized partnership deed dated 29.03.2010 assigning the management and affairs of the distributorship business to Sri Prabhakar without taking any prior permission of Corporation after issuing show cause notice dated 03.06.2021 to the Petitioner and after considering the reply of the Petitioner dated 16.07.2021 and after hearing the Petitioner personally on 18.08.2021 the 2nd Respondent in the order impugned dated 27.06.2022 made 9 specific observations which are extracted hereunder :

1. That you were operating the Indane distributorship under sole proprietorship vide distributorship agreement dated 01.04.2006. While the distributorship was operating, the same was penalised for Rs.900750/- for shortage of 434 cylinders and 51 PRs during inventory check. You have stated in your show cause reply that since you were finding it difficult to pay the penal amount, you have inducted Sri Prabhakar by entering into MOU for managing the affairs of

the business. It is denied that IOCL officials have suggested you to induct the partner to get out the financial mess and the call rests with the distributor either to operate the distributorship on sole proprietorship or in partnership. Nevertheless, any change in set up of the distributorship must be undertaken after taking prior approval of the corporation as per the reconstitution policy. In the instant case, you entered into MOU and partnership with Sri Prabhakar before the approval of reconstitution and without informing the Corporation.

2. With regard to your submission that Sri Prabhakar had influenced and pressurised to sign MOU, it is submitted that arrangement made by your goodself with Sri Prabhakar was not in the knowledge of the Corporation and registered MOU & POA dated 06.04.2010 signifies that you have willfully entered into an agreement with Sri Prabhakar without informing the Corporation. As per the records available, your distributorship is under sole proprietorship and Sri Prabhakar was never inducted into the distributorship and therefore the same was unauthorised set up and hence it cannot be said that the induction of Sri Prabhakar was within the knowledge of IOCL officials as alleged by you.

3. It is an admitted fact that you have entered into unregistered MOU dated 17.02.2010 and conveyed all your rights over the LPG distributorship to Sri Prabhakar for a consideration of Rs.22,50,000/-.

4. You have also entered into partnership deed dated 29.03.2010 with Sri Prabhakar by giving 49% shareholding in the LPG distributorship without taking prior permission which was later dissolved on 06.07.2020 after a span of 10 years of operation on the ground that Sri Prabhakar who was handling the business has forged your signatures in PAN Card

Registration/VAT/GST Registration, Bank account, Firm registration and other agencies.

5. Later, you had entered into MOU and Power Of Attorney vide document no.78/2010 dated 06.04.2010 with Sri Prabhakar giving him absolute authority over operations and management of the distributorship.

6. You allowed the operations of the distributorship for Shri Prabhakar to continue without any objection from 2010 to 2020 and have only lodged an FIR vide crime no.233/2020 on 06.07.2020 against Sri Prabhakar for committing forgery after 10 years of operations. Your act of entering into MOU and partnership deed with Sri Prabhakar is manifest from your letter dated 13.07.2020 to the District Registrar, Nizamabad for cancellation of the Power of Attorney (POA) given to Sri Prabhakar vide document no.78/2010 and notice informing that POA issued in favour of Sri Prabhakar has been cancelled as his performance is not satisfactory. It is again reiterated that above arrangement was done without permission of IOCL and against the terms of the distributorship agreement.

7. With regard to your submission that you have put up a request for reconstitution of the distributorship for inducting Sri Prabhakar was under process, it is submitted that your request for reconstitution could not be finally processed and in this regard you may refer your statement made during the personal hearing dated 18.08.2021 wherein you have stated that you visited the Area Office where you were informed that Sri Prabhakar was not eligible for induction as partner. Since, Sri Prabhakar could not be inducted as partner, your reconstitution proposal could not be materialised. Processing of your reconstitution request does not give you an authority to transfer your rights over the distributorship to Sri Prabhakar and only after the reconstitution is approved, the distributor can transfer the share/control of the

distributorship to the incoming partner. In the instant case, you have transferred the control and management of the distributorship much before the proposal for reconstitution which is against the distributorship agreement.

8. On receipt of the complaint dated 30.09.2020, inquiry was conducted wherein the allegation levelled in the complaint got substantiated and thereafter, you were given an opportunity vide issuance of letter Ref: SAO/Leela Gas dated 22.10.2020 to submit reconstitution application for rectification and regularization of the said unauthorized set up as per clauses 4.5, 4.5.1, 4.5.2 and 4.6, 4.6.1 of the current reconstitution policy and submit the proposal on or before 31.10.2020. However, you failed to submit the reconstitution proposal despite the letter dated 22.10.2020 was acknowledged by you.

In this regard, may kindly note the DGM (LPG-S), Secunderabad AO's letter dated 22.10.2020 wherein it is specifically stated if the reconstitution proposal is not submitted on or before 31.10.2020, action shall be taken as per the provisions of the distributorship agreement including termination of the distributorship as per Corporation Policy. You were well aware that further time to submit the reconstitution proposal will not be allowed but still you have not submitted the proposal giving Corporation the right to take action as per the policy.

Your submission that the show cause reply letter may be treated as application for rectification and regularization of the distributorship as per the original constitution cannot be accepted as the cutoff date to accept the proposal was 31.10.2020 and beyond that same cannot be accepted as per the Corporation policy prevailing. Furthermore, you may kindly refer to your submission made during the personal hearing dated 18.08.2021 where you have specifically stated

that since you do want to induct Sri Prabhakar into the distributorship you did not avail the option as given vide our letter dated 22.10.2020. Even if you were not willing to induct Sri Prabhakar as partner, you could have rectified your mistake by paying the ratification fees for operation of the distributorship as per the original set up by sending the proposal on or before 31.10.2020.

9. Corporation by requesting you to submit the application for reconstitution has tried to help you but you failed to avail the opportunity.

Therefore, in view of the observations made herein above, you have operated the distributorship in violation of Clause No.21, Clause No. 23 (c) (i) & Clause No. 27 (f) & (n) of LPG Distributorship Agreement dated 01.04.2006 which are reproduced here as under."

12. It is the specific case of the Petitioner as stated in Petitioner's affidavit at Para 4 that the Petitioner had not violated any conditions under the authorization issued by the IOC in the year 2006 and in-fact when the Petitioner approached the Respondent Corporation, the Respondent Corporation advised the Petitioner to add a partner to Petitioner's business by taking financial assistance from him to clear the dues and though Petitioner is not interested to add partner in Petitioner's agency, but however, as per the guidelines of IOC Petitioner submitted proposals to the IOC, the IOC accepted the same and cleared all dues by adding K. Prabhakar

as a partner to Petitioner's Gas Agency and the same was communicated to the District Collector i.e., the 3rd Respondent vide letter dated 21.07.2010 with a clear direction to the District Collector to restore Petitioner's suspended B-Form licence.

13. The letter of the Indian Oil Corporation SAO 614, dated 21.07.2010 addressed to the District Collector, Nizamabad is extracted hereunder:

"We are having distributorship by name Leela Gas Agency in Banswada and their B form licence has been suspended by you. The proprietrix's name is Mrs. Leela Kumari.

The above agency was not managed well by Smt. Leela Kumari due to financial problems. She has paid the dues to IOC and wants to induct one Shri K. Prabhakar as her financial partner. Based on her letter requesting us to induct Shri K. Prabhakar as her partner, we are processing her request for induction of partner.

Therefore, we request you to kindly revoke the suspended B Form licence of M/s. Leela Gas Agency, Banswada at the earliest so that the agency can be recommissioned."

14. A bare perusal of the contents of the complaint dated 30.09.2020 of one K. Prabhakar addressed to the Deputy General Manager, Indian Oil Corporation Ltd., Indane Area Office, Hyderabad, which had been basis for initiation of the

present impugned proceeding against the Petitioner in particular paragraph 7 clearly indicates that there is no suppression by the Petitioner herein since there is a very clear admission by the complainant K.Prabhakar himself that the said Prabhakar had been continuing for the last one decade the business operations of the Petitioner Agency as the authorized representative of the Petitioner herein.

Paragraph 7 of the complaint dated 30.09.2020 of the said Prabhakar to the Respondent Corporation is extracted hereunder :

"7. This is to bring to your notice that myself and Smt.Leela Kumari have submitted all the documents and also request/application to include me as a partner and permit me to run the business for and on behalf of the dealership and accordingly Indian Oil Corporation Ltd (IOCL) has permitted me to conduct the operations in the year 2010 as the authorized representative and agent of the dealership in the year 2010. In the past one decade I have been continuing the business operations of the agency. The records of the IOCL are self explanatory as I have dealt with each and every aspect of the business in the past (10) years. This is an admitted fact borne from record."

15. **A bare perusal of Clause 27(a) of the terms of dealership agreement is extracted hereunder :**

27 – Termination of Agreement:

“27. Notwithstanding anything to the contrary herein contained, the Corporation shall also 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 Distributor shall commit a delay, breach or default of any of the terms, conditions, covenants and stipulations contained in the Agreement and fail to remedy such breach within four days of the receipt of a written notice from the Corporation in that regard.”

16. **Section 39 of the Indian Contract Act, reads as under:**

Section – 39 – Effect of refusal of party to perform promise wholly.

“39. When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.”

17. This Court opines that the failure on the part of the Respondents to terminate the agreement on the ground of breach of Clauses of the distributorship agreement indicates passive

acceptance since the Respondent Corporation allowed the Petitioner to continue by consciously ignoring the alleged breaches, acquiescence did take place which re-introduced a new implied agreement between the Petitioner and the Respondent Corporation and hence the Respondent Corporation cannot insist upon the compliance of the original terms. Clause 27(a) of the agreement entered into between Petitioner and the Respondent Corporation read with section 39 of the Indian Contract Act, clearly indicates that Sec.39 of the Indian Contract Act comes to the rescue of the Petitioner in the present case.

18. In so far as the specific plea of the Respondent Corporation is concerned that the Petitioner cannot Approbate and Reprobate, this Court opines that the contents of the letter dated 21.07.2010 of the Respondent Corporation addressed to the District Collector, Nizamabad, clearly indicates that the request of the Petitioner for induction of partner as being processed, but however, even as per the stand of the Respondent Corporation in the counter affidavit the Corporation never permitted or recognized the said arrangement, in view of the same it cannot be said that a request to treat the Petitioner as the sole proprietor of the distributorship is wrong.

19. In so far as the specific plea of the Respondent Corporation that a writ petition would not lie when there are disputed questions of facts, and it is specifically contended at Para 15 of the counter affidavit that the dealership agreement entered into by the Petitioner provides for arbitration of any dispute or difference of any nature whatsoever, hence this writ petition is not maintainable, the said plea is answered by referring to judgment of Allahabad High Court dated 18.05.2023 :

The High Court of Allahabad in its judgment dated 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 24.07.2018 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 levelled against the petitioner only natural outcome has to be restoration of all benefits which the petitioner was deprived of unauthorisedly.

20. Sub-Section (1) of Sec. 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. Sub-Section (1) of Sec. 14 of the Specific Relief Act, 1963, reads as under :

Section 14 – Contracts not specifically enforceable -

“(1) The following contracts cannot be specifically enforced, namely: -

- (a) a contract for the non-performance of which compensation in money is an adequate relief;
- (b) a contract which runs into such minute or numerous details or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the court cannot enforce specific performance of its material terms;
- (c) a contract which is in its nature determinable;
- (d) a contract the performance of which involves the performance of a continuous duty which the court cannot supervise.

21. In the present case admittedly the prayer sought for by the Petitioner is to set aside the order impugned passed by the 2nd Respondent vide orders Ref.SAO/LEELA GAS, dt. 27.06.2022 and to continue the petitioner agency to do business of Petitioner’s gas agency. This Court opines that though there is a stipulation in the agreement that any dispute between the parties can be referred for Arbitration, this court opines that if the contract is determinable by its very nature the only relief that can be granted by the

Arbitrator is compensation in light of Section 14(1)(c) of the Specific Relief Act, 1963. Hence this Court opines that the plea of the Respondent Corporation that the writ petition is not maintainable for prayer of restoration of dealership is concerned, the same 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 Arbitration Clause contained in the agreement. This Court opines that the Arbitrator cannot grant relief as prayed for by the Petitioner in favour of the Petitioner herein and against the Respondent Corporation herein due to the mandate U/s.14(1) of the Specific Relief Act, 1963.

22. The Apex Court in the matter of M/s. Armitsar Gas Vs. Indian Oil Corporation Ltd., reported in (1991) 1 SCC 533 observed as under :

“if a contract is determinable by its very nature the only relief that can be granted in compensation in light of Sec.14(1)(c) of the Specific Relief Act, 1963.”

23. This Court opines that the present writ petition is maintainable and the plea of the Respondent Corporation of availability of alternative remedy is unsustainable as per the observations of the Apex Court in judgment dated 20.04.2021 reported in (2021) 6 SCC 771 in M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh, which referred to Whirlpool Corporation Vs. Registrar of Trade Marks reported in (1998) 8 SCC 1 and the said view had been reiterated in a recent full bench judgment reported in 2021 SCC Online SC 801 in "Magadh Sugar & Energy Ltd. Vs. State of Bihar and others". The principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy had been summarized in the said Judgment at para 28 and the same is extracted hereunder:

"28. 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."

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

24. The Apex Court in the judgment reported in AIR 1991 SC 537 in Shriekha Vidyarthi Vs. State of U.P. at Paras 21, 28 and 34 observed as under :

“21. The Preamble of the Constitution of India resolves to secure to all its citizens Justice, social, economic and political; and Equality of status and opportunity. Every State action must be aimed at achieving this goal. Part IV of the Constitution contains 'Directives Principles of State Policy' which are fundamental in the governance of the country and are aimed at securing social and economic freedoms by appropriate State action which is complementary to individual fundamental rights guaranteed in Part III for protection against excesses of State action, to realise the vision in the Preamble. This being the philosophy of the Constitution, can it be said that it contemplates exclusion of Article 14 non-arbitrariness which is basic to rule of law from State actions in contractual field when all actions of the State are meant for public good and expected to be fair and just? We have no doubt that the Constitution does not envisage or permit unfairness or unreasonableness in State actions in any sphere of its activity contrary to the professed ideals in the Preamble. In our opinion, it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. The scope and permissible grounds of judicial review in such matters and the relief which may be available are different matters but that does not justify the view of its total exclusion. This is more so when the modern trend is also to examine the unreasonableness of a term in such contracts where the bargaining power is unequal so that these are not negotiated contracts but standard form contracts between unequals.

28. Even assuming that it is necessary to import the concept of presence of some public element in a State action to attract Article 14 and permit judicial review, we have no hesitation in saying that the ultimate impact of all actions of the State or a public body being undoubtedly on public interest, the requisite public element for this purpose is present also in contractual matters. **We, therefore, find it difficult and unrealistic to exclude the State actions in contractual matters, after the contract has been made, from the purview of judicial review to test its validity on the anvil of Article 14.**

34. In our opinion, the wide sweep of Article 14 undoubtedly takes within its fold the impugned circular issued by the State of U.P. in exercise of its executive power, irrespective of the precise nature of appointment of the Government Counsel in the districts and the other rights, contractual or statutory, which the appointees may have. It is for this reason that we base our decision on the ground that independent of any statutory right, available to the appointees, and assuming for the purpose of this case that the rights flow only from the contract of appointment, the impugned circular, issued in exercise of the executive power of the State, must satisfy Article 14 of the Constitution and if it is shown to be arbitrary, it must be struck down. However, we have referred to certain provisions relating to initial appointment, termination or renewal of tenure to indicate that the action is controlled at least by settled guidelines, followed by the State of U.P., for a long time. This too is relevant for deciding the question of arbitrariness alleged in the present case."

25. The Apex Court in the judgment reported in (2010) 13 SCC 760 in Shalimar Gas & Others Vs. Indian Oil Corporation Ltd., & Another at para Nos.4, 6 and 8 observed as under :

"4. After the marriage of her daughters, Appellant 2 entered into a partnership with Appellant 3, Anil Kumar, on 21-12-2006 with 51% and 49% shares, respectively. The respondent Corporation held an enquiry and came to the conclusion that Appellant 2 assigned/transferred the distributorship in violation of the terms and conditions of the distributorship agreement and got the approval for reconstitution of the firm by misrepresentation to the Corporation. Hence the appellant's distributorship was cancelled 9-11-2009.

6. In our opinion the judgment of the learned Division Bench as well as the learned Single Judge of the Delhi High Court cannot be sustained. Appellant 2, admittedly, was a war widow who was given a source of livelihood by awarding the distributorship of Indane Gas in 1986 and now she is an old lady with several ailments. Being an old lady and because of her ill health she could not be an active partner and was thus not available for day to day running of the firm. However, she continued to hold the majority shares in the firm.

8. The law should take a more liberal view in the case of widows, physically handicapped people, etc."

26. The Apex Court Judgment reported in (2022) 2 SCC 25 in Union of India & Others vs. N. Murugesen & Others, in particular, at paras 24 and 25, it is observed as under:

"Acquiescence

24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other.

25. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis."

27. **This Court in the light of discussion and conclusion arrived at as above, opines that the finding arrived at in the impugned order dated 27.06.2022 issued by the 2nd**

Respondent that the Petitioner had been found guilty of entering into unauthorized set up by inducting Sri K.Prabhakar into the distributionship without taking any prior permission of IOCL is factually incorrect as per the contents of the letter dt. 21.07.2010 SAO 614 of the Indian Oil Corporation addressed to the District Collector, Nizamabad and also as per para 7 of the complaint dated 30.09.2020 of one Sri Prabhakar addressed to the Respondent Corporation (referred to and extracted above).

28. Taking into consideration :

- i) The afore said facts and circumstances of the case,
- ii) The observations of the Apex Court in the judgments reported in
 - (a) (1991) 1 SCC 533 in M/s Armitsar Gas Vs. Indian Oil Corporation Ltd.,
 - (b) (2021) 6 SCC 771 in M/s. Radhakrishnan Industries Vs. State of Himachal Pradesh,
 - (c) AIR 1991 SC 537 in Shrilekha Vidyarthi Vs. State of U.P.,
 - (d) (2010) 13 SCC 760 in Shalimar Gas & others Vs. Indian Oil Corporation Ltd.,

- (e) (2022) 2 SCC 25 in Union of India & others Vs. N.Murugesen, (referred to and extracted above),
- iii) The contents of the letter dated 21.07.2010 SAO 614 of the Indian Oil Corporation addressed to the District Collector, Nizamabad and also as per para 7 of the complaint dated 30.09.2020 of one Sri Prabhakar addressed to the Respondent Corporation (referred to and extracted above),
- iv) The averments made in the counter affidavit filed by the Respondent Corporation, referred to and extracted above,
- v) The contents of the letters dated 21.07.2010 and 22.10.2020 of the Corporation, addressed to the petitioner.

The writ petition is allowed as prayed for and the impugned order passed by the 2nd Respondent vide Order Ref.SAO/LEELA GAS, dated 27.06.2022 are set aside and the Respondents are directed to restore the Petitioner's gas agency in question forthwith and the Respondents are further directed not to interfere with the business of

Petitioner's Gas Agency without following due process of law.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS JUSTICE SUREPALLI NANDA

Date: 03.06.2024

Note : L.R. Copy to be marked.
B/o. *Yvkr*