

APHC010260072014



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI**

**Bench Sr.No:-1
[3552]**

WRIT APPEAL NO: 1126 of 2014

The Indian Oil Corporation Ltd., Hyderabad and ...Appellant(s)
Others

Vs.

Durga Pujari Suri Babu, Visakhapatnam Dist. ...Respondent

Advocate(s) for Appellant(s): SAI SANJAY SURANENI, T
BALA MOHAN REDDY
Advocate for Respondent: CHAKRADHARA RAJA Y

**CORAM : THE CHIEF JUSTICE DHIRAJ SINGH THAKUR
SRI JUSTICE CHALLA GUNARANJAN**

DATE : 22nd April, 2026

JUDGMENT: (per Hon'ble Sri Justice Challa Gunaranjan)

Present intra-court appeal under Section 15 of Letters Patent assails order dated 14.07.2014 passed by learned Single Judge in W.P. No.20858 of 2009, by which the prayer in the writ petition came to be allowed.

2. Brief facts in filing the appeal are stated as follows:

(a) The respondent writ petitioner came to be appointed as a Distributor for Liquefied Petroleum Gas (LPG) at Anakapalle, Visakhapatnam District, by virtue of the Distributor Agreement

(herein after, for short 'DA'), dated 30.01.1985. The selection and appointment of LPG dealership was under the category of social objective category (SOC) meant to accommodate the marginalized sections of schedule tribe community personnel. In order to run the distributorship, 1st respondent stated to have entered into a financial arrangement with two persons belonging to other than schedule tribe community. Though respondent sought for inclusion of one of the aforesaid persons as GPA holder, vide application dated 24.11.1987, for the purpose of running the distributorship, the appellant Corporation rejected the same request on 21.03.1988. Nevertheless, respondent continued with dealership.

(b) Later, respondent stated to have got selected as Secondary Grade Teacher on 31.03.1988 and he was simultaneously operating the distributorship as well. The appellant Corporation issued show-cause notice dated 30.04.2009 pointing out that the respondent since was working as Secondary Grade Teacher at Tribal Welfare Ashram School, Narrasayyapet, Visakhapatnam District, the same constituted violation and breach of the terms of DA and further that though Corporation rejected the request for inclusion of Sri Vuppala Lakshmi Narayana as GPA holder way

back on 21.03.1988, since it has come to their knowledge that the said person, along with Sri Satyanarayana have been roped in as partners under partnership deed dated 01.04.1986 for the purpose of running distributorship, without prior approval of the Corporation, also constituted breach of terms and conditions of the distributorship agreement, in particular, clause 23 (c) (ii) and (iii). Hence, 1st respondent was called upon to explain why necessary action, including the termination of dealership should not be made.

(c) The respondent submitted explanation dated 29.05.2009 admitting to the factum of working as Secondary Grade Teacher and also induction of partners to run the business, however, tried to explain the circumstances and reasons for resorting to such measures. It was also further pleaded that the respondent writ petitioner was willing to give up his employment as Secondary Grade Teacher besides pleading that the relationship between him and the persons who have financially supported in establishing and running the distributorship was merely a financial arrangement but cannot be construed to be a partnership as such and that at any rate, he was willing to remedy the breach or violation of terms and conditions of DA.

(d) Being not satisfied with the reasons so offered, the Corporation, by proceedings dated 27.08.2009, passed orders of termination. Assailing the same, respondent writ petitioner preferred W.P. No.20858 of 2009 before this Court.

(e) In the writ petition, it was mainly contended that the order of termination was not in conformity with clause 27(a) of DA, inasmuch as writ petitioner was not given opportunity to remedy the breach on account of which proposed action of termination contemplated. Further that when in the explanation it was specifically pleaded that he was willing to give up the employment as Secondary Grade Teacher and also explained the financial arrangement with third parties having regard to his social status, taking extreme step of termination of dealership was glaringly disproportionate and extremely harsh.

(f) The appellant Corporation tried to justify its action and the order impugned in the writ petition. The Corporation has also objected to maintainability of the writ petition in view of the arbitration clause in the agreement. The Writ Court has overruled the objection with regard to maintainability by placing reliance on judgments of Hon'ble Apex Court. On merits, the Court having

noticed clause 23(c) of DA which merely envisaged the distributor to seek prior permission of the Corporation before indulging in any other employment, came to conclusion that in the absence of absolute prohibition or bar in accepting any other employment, coupled with the fact that the writ petitioner has already addressed letter dated 19.02.1988 to the Area Manager of respondent Corporation, intimating of such employment, the Corporation erred to consider the explanation in proper perspective.

(g) Further reference was also made to clauses 2.4 and 4 of the Revised Policy Guidelines for Reconstitution RO Dealerships/ LPG Distributorships/ SKO-LDO dealerships, dated 01.12.2008, (herein after, 'Revised Policy Guidelines') issued by the Corporation, which envisaged the dealers belonging to SC/ST Category to induct partners falling outside said category in order to seek financial assistance for effective running of operations of dealership and also meet the competitive and growth targets. Since there was no absolute bar to induct a person other than SC/ST to finance the business operations, learned Single Judge held that the appellant Corporation failed to consider the

explanation in proper perspective, having regard to the object for which these guidelines came to be issued.

(h) Lastly, the Court felt that the order of termination was extremely harsh decision, in the facts and circumstances of the case unwarranted and therefore, allowed the writ petition.

3. Heard Mr.D.Prudhvi Teja, learned counsel, representing Mr.Sai Sanjay Suraneni, learned counsel for appellant and Mr.M.S.Prasad, learned Senior Counsel, representing Mr.Y.Chakradhara Raja, learned counsel for respondent.

4. (a) Learned counsel for appellant Corporation contended that when the writ petitioner himself admitted the factum of being employed as Secondary Grade Teacher without prior permission of the Corporation and also that roped in two persons into the business under the guise of partnership which was also without prior permission of the Corporation, the same clearly constituted major breach, hence, learned Single Judge ought not to have interfered with reasoned order passed by respondent Corporation.

(b) He further contended that as the writ petitioner was in clear breach of terms and conditions of DA, which was also admitted

to, and the same being major breach, question of issuing notice in terms of clause 27 of DA for remedying such breach does not arise, which was irreversible in nature.

(c) Lastly, it is contended that in terms of Revised Policy, in particular clauses 4.1 and 4.2, at any given point of time, the dealership belonging to SC/ST category should maintain atleast 75% of share even if in case a minority partner from outside his category needed to be inducted on account of meeting the financial assistance. Therefore, as the financial arrangement in the present case merely restricts writ petitioner's share to 20%, which is far below the minimum holding of 75%, the breach so committed can't be irreversible. He therefore urged to allow the appeal by setting aside the judgment and order of the learned Single Judge.

(d) In support of above submissions, he placed reliance on the judgment of High Court of Delhi in **Nirmala Kwatra v. Indian Oil Corporation Ltd. and another**¹.

5. (a) Per contra, Mr.M.S.Prasad, learned Senior Counsel, while supporting the impugned order under challenge contended

¹ 2013 SCC OnLine Del 4783 : (2013) 205 DLT 583 (DB)

that both the allegations made against writ petitioner constituting breach are capable of being remedied and in fact, the writ petitioner in the very explanation itself has offered his willingness to resign to the post of Secondary Grade Teacher and also do course correction regarding the financial arrangements with third parties, which opportunity otherwise envisaged under clause 27 was never extended.

(b) He also contended that both the allegations of securing employment while continuing to be a dealer and also inducting partners to run the distributorship since are not absolutely prohibited as such even according to the terms and conditions of DA, but merely requires prior approval from the Corporation, it is always open to the Corporation to consider the same even post facto having regard to the revised policy guidelines. Therefore, he would urge that as the writ petitioner since retired from service as Secondary Grade Teacher and no longer continues to hold any other employment and insofar as the allegation of inducting partners, as one of the persons who extended financial assistance passed away and the other also got disassociated with the business activity, an opportunity be given to the writ petitioner to make himself be in compliance with clauses 4.1 and 4.2 of

revised guidelines which permitted induction of outside category partner to the extent of 25% share.

(c) Learned Senior Counsel tried to distinguish the judgment of High Court of Delhi on facts by stating that it was a case of termination of dealership of petroleum outlet on account of transferring the ownership rights to the extent of 98%, which is not so in the present case.

6. We have given anxious consideration to the submissions made on either side.

7. The facts in issue are not in dispute. The respondent writ petitioner was entrusted with dealership, and accordingly, DA agreement dated 30.01.1985 came to be executed. The said agreement, in terms of clauses 23 (i) and (ii) and 23(c)(iii), envisages that the dealer shall not undertake any other employment and also induct partners to the business respectively without prior permission of the Corporation. The writ petitioner apparently has taken up the job of Secondary Grade Teacher and also got associated with two others as business associates by executing the partnership deed dated 01.04.1986, without prior permission or approval of the Corporation. In fact, an attempt

made by writ petitioner for inducting Lakshmi Narayana as GPA holder to safeguard his interest as financial facilitator for the purpose of running the business came to be rejected by the Corporation, nevertheless writ petitioner continued the business with two others as business partners. In that background, show-cause notice came to be issued and eventually order of termination came to be passed.

8. We are now informed that the writ petitioner ceased to be Secondary Grade Teacher, maybe on account of superannuation. Further that as against two persons namely Sri Vuppala Lakshmi Narayana and Sri Satyanarayana, who got associated with the writ petitioner as business partners, one partner has passed away and learned Senior Counsel appearing for respondent writ petitioner asserted that due to advent of subsequent events, there is no partnership as such in existence as is evident from the income tax returns filed for the years 2009 and 2010.

9. We are not sure as to whether there exists any partnership as of now and the initial partnership entered on 01.04.1986 continued beyond 2009. Yet another fact which requires to be taken note of would be that as against refusal of granting interim

order, the appellant herein approached Hon'ble Apex Court. By order dated 16.11.2015, the Apex Court has directed to maintain status quo till disposal of the writ appeal and it is stated that by virtue of the said status quo order, an *ad hoc* arrangement to oversee the distributorship has been continued, meaning thereby the writ petitioner was not restored with the dealership so far.

10. Be that as it may, though both the counsels on either side have made respective submissions, we are of the opinion that the language employed in clause 23 (c) (ii) & (iii) does not postulate absolute prohibition as such to either undertake any other employment being a dealer or induct partners but merely require prior permission before embarking on such course of action, therefore, it would not amount to fundamental breach. Though learned counsel for appellant vehemently contended that the same constitutes major breach and tried to draw support from the judgment rendered in **Nirmala Kwatra**¹, inasmuch as the expression 'major breach' neither finds place in clause 27 nor is defined in any other clauses of the DA, no specific distinction as such can be drawn between 'breach' and 'major breach'. The judgment referred to above, in our opinion, would not have application to the facts and circumstances of this case.

11. Moving forward, clause 27(a) clearly envisages that in case distributor commits breach, he should be given an opportunity to remedy such breach before any further action is taken.

12. In the present case, it is not in dispute that Corporation did not adhere to such course of action. Nevertheless, the writ petitioner in his explanation did make a statement that he was willing to give up the employment and also tried to explain the financial arrangement with the other two persons. The Revised Policy Guidelines clearly envisage that category of schedule tribe dealer is permitted to rope in a minor partner from other than his community/category by extending share up to maximum of 25% and retaining the majority share of minimum 75%. Therefore, still the writ petitioner has a leeway of inducting or roping in partner up to the maximum threshold of 25%.

13. Though learned Senior Counsel has made statement that one of the associate partners died and the other also got disassociated with the business, in order to test whether the requirement of aforesaid revised policy guidelines is strictly adhered to or not, the same should be best left to the Corporation

to examine and take appropriate decision. Since the writ petitioner belongs to schedule tribe community and the distributorship was assigned under SOC category, there lies an obligation to ensure that entrepreneurs from disadvantaged section of people in society are extended level playing field in socio-economic conditions having regard to the financial constraints. Having said that, it should also be ensured the revised policy guidelines of Corporation are met with. We therefore are of the view that the writ petitioner should be given chance to remedy the breach in terms of clause 27 of DA. The learned Single Judge has rightly taken note of the fact that writ petitioner, at the very first instance, in his explanation, has come forward to give up his employment as Secondary Grade Teacher, which was clearly in the direction of remedying the breach, however, the Corporation did not adhere to the course of action envisaged under clause 27.

14. We, therefore, direct the writ petitioner to make application/representation enclosing the documentary evidence to show that he ceased to be working as Secondary Grade Teacher and also that he no longer is associated with any other persons, much less under partnership. On making of such application

within a period of four weeks from the date of receipt of the judgment, the appellant Corporation is further directed to consider the same and examine the documents annexed along with it and if writ petitioner is found to be in conformity with clauses 4.1 and 4.2 and other clauses of revised policy guidelines, pass orders of restoration in accordance with law and the said exercise to be completed within a period of two months thereafter. The *ad hoc* arrangement made for running the distributorship in pursuance to orders in Civil Appeal No.13406 of 2015 @ SLP (C) No.30474 of 2014 shall continue till final decision is arrived.

15. Accordingly, this writ appeal is allowed in part and the order of the learned Single Judge in W.P. No.20858 of 2009 stands modified to the above extent. No costs.

As a sequel, miscellaneous petitions pending in this case, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ

CHALLA GUNARANJAN, J

SS