

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

WRIT PETITION Nos. 24595 & 24627 OF 2024

% Dated 05.03.2025

#W.P.No.24595 OF 2024

M/s. Vijayawada Gas Company

Rep by its Partner

Mrs. Dandamudi Sailaja Rani

w/o late Manoj Kumar Dandamudi

aged about 53 years,

C/o 40-6-8/1, Revenue Colony,

Moghalrajpuram, Vijayawada

NTR District & others.

..... Petitioners

Vs.

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M/s. Hindustan Petroleum Corporation Limited,

Rep by its Chairman, Mumbai

Vijayawada LPG Regional Office, IDA,

Kondapalli, Krishna District-521 228 & others

..Respondents

JUDGMENT PRONOUNCED ON: 05.03.2025

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

Whether Reporters of Local newspapers
may be allowed to see the Judgments?

Whether the copies of judgment may be marked to Law
Reporters/Journals

Whether Their Ladyship/Lordship wish to see THE fair copy
of the Judgment?

*THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

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! Counsel for the petitioner : Sri Javvaji Sarath Chandra

^ Counsel for the respondent : Sri G. Ramgopal

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> HEAD NOTE:

? Cases referred

1. 2015 (13) SCALE 313
2. AIR 1979 SC 25
3. MAT 1493 OF 2018 DATED 27.03.2019
4. (2012) 8 Supreme Court Cases 216
5. 2003 (2) SCC 107

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA**WRIT PETITION Nos. 24595 & 24627 OF 2024****COMMON ORDER:-**

1. As the issue involved in both the writ petitions is inter-related, both these writ petitions are taken up together and are disposed of through this common order. W.P.No.24595 of 2024 is taken as a leading case.

W.P.No.24595 of 2024

2. W.P.No.24595 of 2024 is filed under Article 226 of the Constitution of India, claiming the following relief:

“To issue Writ of Mandamus declaring the highhanded action of the respondents in rejecting the reconstitution application bearing no 275520231 dated 03/08/2023 vide Email Communication dt 08.07.2024 on the grounds of non payment of penalties imposed under the MDG letters dated 14.11.2022 as contrary to Clause 3 4 and further action of the respondents in compelling Petitioner No 3 to carryon business activity forcefully as contrary to Section 32 of the Partnership act 1932 and further violative of fundamental rights of the petitioner under Articles 14, 19(g) and 21 of Constitution of India and consequently direct the Respondents herein to reconstitute Petitioner No 1 firm distributorship as per the application bearing no 275520231 dated 03/08/2023 and relieve Petitioner No 3 from Petitioner No 1 distributorship”

3. M/s. Hindustan Petroleum Corporation Limited entered into LPG Distributorship Agreement dated 31.07.2018 with M/s. Vijayawada Gas Company, a partnership firm with the partners namely Smt. D. Shailaja Rani, Sri D. Manoj Kumar and Smt. M. Subhaprada. Due to death of D. Manoj Kumar, Petitioner No.3 having no further interest in continuing as partner in Petitioner No.1 firm due to gradual decline in physical and mental health due to age 65 years, Petitioner Nos.2 & 3 herein have submitted an application bearing No.27555-2023-1 dated 03.08.2023 for reconstitution of Petitioner No.1 firm through Respondent No.1 online portal. Respondent No.2 issued notice dated 20.05.2024 demanding payment of Rs.50,03,890/ for processing the reconstitution application with a threatened action to reject the application in case of failing to make payment within 15 days from the date of receipt of notice. It is the case that, inspite of the best efforts of the petitioners, the reconstitution application of Petitioner No.1 bearing No.27555-2023-1 dated 03.08.2023 has been rejected by the respondents vide e-mail communication dated 08.07.2024. Challenging the same, the present writ petition has been filed.

4. Respondents filed counter affidavit refuting the allegations made by the petitioners. It is submitted that, the petitioners were appointed as LPG

Distributors to market and sell HP Gas LPG connections and cylinders by entering into LPG Distributorship Agreement, incorporating certain terms and conditions agreed by and between the parties, apart from the regulations and guidelines issued by the Corporation from time to time. Respondent No.1/HPCL entered into LPG Distributorship Agreement dated 31.07.2018 with, M/s. Vijayawada Gas Company/Petitioner No.1 – a partnership firm with partners namely (i) Mrs. Dandamudi Sailaja Rani (ii) Smt. Mallela Subhaprada and (iii) Sri D. Manoj Kumar. The petitioners LPG Distributorship/partnership firm violated the terms and conditions of the LPG Distributorship Agreement dated 31.07.2018 and Marketing Discipline Guidelines of the Corporation by issuing unauthorized LPG cylinders and diversion of domestic LPG cylinders for commercial purposes, for which, after due enquiry, the respondent corporation imposed a penalty of Rs.50,03,890/- vide proceedings dated 20.05.2024. Questioning the penalty proceedings the petitioners filed W.P.No.40317 of 2022, wherein interim order was granted only for a period of four weeks and not extended any further.

5. It is submitted that, reconstitution of an LPG Distributorship, whether it is a Partnership firm/society/company, is the sole prerogative of HPCL and whether to allow or not allow any such reconstitution of the LPG Distributorship is a commercial transaction and it is for HPCL to decide as to

with whom it wants to conduct business by appointing them as its dealer/distributor in terms of the guidelines as applicable. The Petitioner No.1 LPG Distributorship of HPCL is having three partners with whom the respondent entered into a Dealership Agreement dated 31.07.2018 and the said firm has incurred liability of Rs.50,03,890/- pursuant to the proceedings dated 20.05.2024. When the petitioners wanted to reconstitute their partnership firm as proprietorship concern and to continue to be as the dealer of HPCL, HPCL demanded the petitioners to pay penalty amount of Rs.50,03,890/- for further consideration of the request of the petitioner firm to reconstitute the firm. Further, any reconstitution firm is affected, there would be fresh dealership agreement to be entered into with the HPCL by the reconstituted firm. Thus, the rejection of the request of the petitioners for reconstitution of the firm by allowing one of the existing partner to retire to old age and to convert the partnership firm into a proprietary concern in favour of only surviving partner is not acceptable to HPCL in view of the financial implications with the subsisting partnership firm and failure to comply with the demand of HPCL to clear the liability amount is unreasonable and untenable.

6. It is submitted that the decision of HPCL dated 08.07.2024 emanated during the course of commercial transactions between the petitioners and HPCL pursuant to the Dealership Agreement dated 31.07.2018 which is a

commercial contract between the parties, as such the writ petition seeking judicial review of a decision taken by HPCL is a commercial transaction, thus, the writ petition is not maintainable and liable to be dismissed.

7. The petitioners filed reply to the counter affidavit filed by the respondents, stating that pursuant to Clause 3.4 of the Reconstitution Guidelines, 2022, a partner of a firm has the right to resign from the distributorship after three years of commissioning the distributorship. None of the conditions in the dealership agreement dated 31.07.2018 specify that the respondent's interest in sanctioning the distributorship is limited to specified partners, namely Petitioner Nos.2 & 3, in such a case, a clause for reconstitution should not be included. Section 32(2) of the Partnership Act, 1932 only provides for the discharge of the retiring partner's liability for the acts of the firm to the continuing partner or any third party. In the present case, Petitioner No.2 is willing to take the liability if Petitioner No.3 is held responsible for the acts done by the firm

8. During hearing, Sri Posani Venkateswarlu, learned Senior Counsel appearing for Sri Javvaji Sarath Chandra, learned counsel for the petitioners would submit that, as per Guideline No.3.4 of the Guidelines for Reconstitution of LPG Distributorship-2022, the partners can resign from the distributorship

after three years of commissioning of a distributorship and transfer the same in favour of the existing partner and Respondent Nos.1 to 4 are under obligation under Guideline No.3.18 to process reconstitution of commissioned distributorship, if they are in accordance with the guidelines and the same shall be accepted. Accordingly, the application of reconstitution of the petitioners is only seeking transfer of existing partners share and also the husband of the petitioner who is no more, out of mutual understanding, the said application cannot be rejected.

9. Learned Senior Counsel submits that, once the incoming partners eligibility criteria is in accordance with Guideline No.8(a) of the Guidelines, the said application for the purpose of transferring share of Petitioner No.3 to Petitioner No.2 should be considered. The action of the respondents in rejecting the application of the petitioners for reconstitution of the firm demanding penalties against the firm which were imposed on 14.11.2022 which is still pending is contrary to the terms of the agreement. Therefore, without paying such penalty, rejection of reconstitution application is contrary to law and Guidelines for Reconstitution of LPG Distributorship-2022.

10. Learned Senior Counsel would also submit that, Guideline Nos.3.4 & 3.18 are independent clauses which are dealing with consideration of reconstitution of firms as per the Guidelines. If so, interlinking the penalties

imposed against the firm cannot be clubbed and demanded, while exercising power under Guideline Nos.3.4 & 3.18 which are independent power on part of the respondents.

11. He further submits that the claim of the respondents vide letter dated 14.11.2022 is assailed by the petitioners in W.P.No.40317 of 2023 which is pending for consideration, therefore, when the matter is subjudice before the Court, demanding such payment in the absence of any clause in favour of the petitioners is contrary to the clear terms of Guideline Nos.3.4 & 3.18 of the Guidelines. He further submits that, Section 32(1)(b) of the Partnership Act, 1932 clearly and categorically permits the partners to retire voluntarily whenever they wish to retire. The said action of the partners cannot be denied once the act permits any express permissions. Therefore, rejection of the application of the petitioners for reconstitution of commissioned distributorship for non-payment of penalty which is pending against the firm even though for the liability of the partners is joint and several. Even after retirement also, if the claim is allowed by the Court, the remaining/surviving partners shall make good the penalty, as demanded by the respondents.

12. Learned Senior Counsel would further submit that, the petitioners also submitted an undertaking as per the guidelines, taking responsibility that, in the event the respondents succeed in the writ petition, the same shall be paid

as a partner without insisting and without making any claim from the other partner. In view of the clear and categorical undertaking by the petitioners, as per Annexure B-2, which is permitted as per the Guidelines, still insisting for payment of penalty is nothing but making the writ petition infructuous and interfering with the adjudication of *lis* before this Hon'ble Court. Therefore, the impugned order of rejection is liable to be rejected.

13. In support of his contentions, learned Senior Counsel relied upon the judgments of the Hon'ble Supreme Court in **Indian Oil Corporation Ltd vs. Nilofer Siddiqui and others**¹; **Excel Wear and ors vs. Union of India**²; and judgment of High Court of Calcutta in **Indian Oil Corporation vs. Bimala Gas Services**³. On the strength of the ratio laid down in the above judgments, learned Senior Counsel for the petitioners requested to grant the relief as prayed in the writ petitions.

14. Sri G. Rama Gopal, learned Standing Counsel appearing for the Respondent – Corporation submits that the present writ petition is not maintainable in view of Guideline No.5 of the Guidelines, wherein, Guideline No.5 provides an alternative grievance redressal mechanism against the subject rejection of the petitioners application by the respondents and that the

¹ 2015 (13) SCALE 313

² AIR 1979 SC 25

³ MAT 1493 of 2018 dated 27.03.2019.

petitioners cannot plead any fundamental right, since the rights are borne out of the contract between the petitioners and the respondents.

15. Learned Standing Counsel also submits that, as per Clause 22 of the Dealership Agreement, the respondent corporation has the discretion to grant reconstitution of the partnership in the event of retirement or default of partners, subject to no claim against the corporation. He also submits that, Clause 33 of the Agreement also contemplates that no partner shall be relieved from demanded liability by public notice either by way of retirement or dissolution in accordance with the Indian Partnership Act, 1932, and all the persons who have been partners at the date of demand notice shall in such event nevertheless remain fully liable to the Corporation as if they had all continued to be partners. In view of the clear and categorical terms, the writ petitions are not maintainable and the petitioners may be directed to approach the statutory authority i.e. Grievance Redressal Cell for seeking appropriate remedies.

16. In support of his contentions, learned Standing Counsel placed reliance on the judgment of the Hon'ble Apex Court in **Michigan Rubber (India)**

Limited vs. State of Karnataka⁴ and on the strength of the ratio laid down in the above judgment, requested this Court to dismiss the writ petitions.

17. Heard Sri Posani Venkateswarlu, learned Senior Counsel appearing for Sri Javvaji Sarath Chandra, learned counsel for the petitioners and Sri G. Rama Gopal, learned Standing Counsel appearing for the Respondent – Corporation and perused the material available on record.

18. One of the contentions raised by the learned Standing Counsel for the Respondent is that the writ petitions are not maintainable on the ground of availability of alternative grievance redressal mechanism. But, the said argument is turned down, since availability of alternative remedy is not an absolute bar to entertain the writ petition. In **Harbanslal Sahnia vs. Indian Oil Corporation Limited**⁵, the Hon'ble Apex Court stated that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, inspite of availability of the alternative remedy, the High Court can still exercise its writ jurisdiction where the writ petition seek enforcement of fundamental rights, where there is failure principle of natural justice and where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

⁴ (2012) 8 Supreme Court Cases 216

⁵ 2003 (2) SCC 107

19. Since the effective alternative remedy for redressal of grievance cell is provided invoking extraordinary jurisdiction under Article 226 of the Constitution is not valid, in view of the facts and circumstances of the case, for the reason that the scheme of the guidelines as well as the conditions of agreement envisages for reconstitution of distributorship/firm. Hence, for one reason or the other, the same cannot be rejected without providing any opportunity to the petitioner. Hence, the contention of the learned Standing Counsel that the writ petitions are not maintainable is liable to be rejected.

20. For better appreciation of the case, Guideline No.3.4 of the Guidelines for Reconstitution of LPG Distributorship-2022 is extracted hereunder:

“The Sole Proprietor/Partner(s) can resign from the distributorship after three years of commissioning of a distributorship and transfer his/her/their shareholding in favour of family member(s)/existing partner(s)/outside partner(s). However, in case of induction of outside category partner(s) in SC/ST distributorships, the share of incoming outside category partner(s) will be restricted to 25%. ”

21. Section 32 (1)(b) of the Indian Partnership Act, 1932 reads as follows:

“A partner may retire in accordance with an express agreement by the partners”

22. Thus, from Guideline No.3.4 of the Guidelines and Section 32 (1)(b) of the Indian Partnership Act, 1932 any partner can rescind from the distributorship/partnership firm after three years of commencement of the distributorship and the same can be transferred in favour of the existing partner. Therefore, the application of the petitioners is in accordance with Guideline No.3.4 of the Guidelines and Section 32 (1)(b) of the Indian Partnership Act. Once Section 32 (1)(b) of the Indian Partnership Act, 1932 permits the partner to rescind or retire from the partnership, no one can be restricted at the wish of the partner at the cost of Article 19(g) of the Constitution of India.

23. Even as per Clause 27 of the Agreement and as per the provisions of the Indian Partnership Act, 1932 even the partner is retired or rescinded or if any partner died, any claim against the partnership firm, the responsibility of the existing partners is joint and several. Therefore, either the retirement or default of a partnership cannot defeat the interest of the respondent regarding its claim, pending against the firm. As per Guideline No.3.18 of the Guidelines, the respondent shall process the reconstitution of commissioned distributorship, pursuant to the application submitted by the existing distributor or firm. Therefore, the application of the petitioners is in accordance with Guideline No.3.18 of the Guidelines.

24. Further, Clause 22 of the Dealership Agreement states as follows:

“The Dealer shall not sell, assign, mortgage or part with or otherwise transfer his interest in the dealership or the right, interest or benefit conferred on him by this agreement to any person. In the event of the dealer being a partnership firm any change in the constitution of the firm, whether by retirement, introduction of new partners or otherwise howsoever will not be permitted without the previous written approval of the Corporation notwithstanding that the Corporation may have dealings with such reconstituted firm or impliedly waived or condoned the breach of default mentioned herein above by the dealer. In the event of the death of any of the partners, the dealer shall immediately inform the corporation giving the necessary particulars of the heirs and legal representatives of the deceased partner and it shall be the option of the corporation either to continue the dealership with the said firm or to have a fresh agreement of dealership with any reconstituted firm or to terminate the dealership agreement and the decision of the corporation in that behalf shall be final and binding on all the parties concerned. No claim on premature termination for compensation or otherwise will be made or sustainable against the Corporation on account of such termination.”

25. From the above, the existing reconstitution of distributorship or partnership firm should be considered, if it is in accordance with Clause 3.18.

26. It is further observed that, in the instant case, one of the partner and husband of the second petitioner died and the third petitioner having attained the age of 65 years retired wished for retirement. By mutual understanding only, the petitioner submitted application seeking reconstitution of the dealership, as envisaged under the scheme of guidelines as well as the conditions of the agreement. on perusal of the guidelines as well as terms/clauses of the agreement, as contended by the learned Senior Counsel for the petitioners, the apprehension and demand of the respondent for payment of penalty of Rs.50 lakhs when the matter is subjudice before this Court due to reconstitution of partnership firm is contrary to Section 32(1) of the Indian Partnership Act, apart from the settled proposition of law. Once the matter is subjudice before the Court, the other party is not permitted to take advantage of the situation and make infructuous of the matter by interfering in the adjudication of the proceedings, which is nothing but abuse of process of law. Therefore, the rejection of application of the petitioners by the respondent Corporation, even after reconstitution as explained above, having received the sworn undertaking as provided under the scheme/guidelines of the respondent is declared as illegal and arbitrary. In the instant case, the petitioners executed an undertaking taking responsibility for payment of the penalty, if it is held otherwise by the Hon'ble Court. Therefore, the rejection of reconstitution application of the petitioner is contrary to law as explained

above and also as per the scheme of the respondent as mentioned supra is liable to be set-aside.

27. HPCL being a Government of India undertaking is bound to act fairly and its conduct is subject to scrutiny on the touchstone of Article 14 of the Constitution of India. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness either in State action or public undertaking of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority/public institutions authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness and fairness the same would be unreasonable. It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of

contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination. (vide **Indian Oil Corporation Ltd vs. Nilofer Siddiqui and others** (supra)).

28. In view of the my foregoing discussion, W.P.No.24595 of 2024 is allowed with the following directions:

- (i) The action of respondents in rejecting the reconstitution application bearing No.2755-2023-1 dated 03.08.2023 vide Email Communication dated 08.07.2024 on the ground of non-payment of penalties imposed under the MDG letter dated 14.11.2022 is declared as illegal, arbitrary and contrary to Clause 3.4 and Section 32 of the Indian Partnership Act;
- (ii) The respondents are hereby directed to reconstitute Petitioner No.1 firm distributorship as per the application bearing No.2755-2023-1 dated 03.08.2023 and relieve Petitioner No.3 from Petitioner No.1 distributorship.

- (iii) However, the respondents are free to renew their demand for the penalty amount, which is currently sub judice, depending on the outcome of the writ petition. Further, the petitioner shall adhere to her undertaking, subject to the decision of the writ petition.

29. in view of the detailed discussion, W.P.No.24627 of 2024 is allowed with the following directions:

- (i) the action of respondents in rejecting the reconstitution application bearing No.2755-2023-5 dated 26.10.2023 vide Email Communication dated 08.07.2024 on the ground of non-payment of penalties imposed under the MDG letter dated 14.11.2022 and 13.10.2023 is declared as illegal, arbitrary and contrary to Clause 3.4 and Section 32 of the Indian Partnership Act;
- (ii) The respondents are hereby directed to reconstitute Petitioner No.1 distributorship as per the application bearing No.2755-2023-5 dated 26.10.2023 and relieve Petitioner No.3 from Petitioner No.1 distributorship.
- (iii) However, the respondents are free to renew their demand for the penalty amount, which is currently sub judice, depending on the

outcome of the writ petition. Further, the petitioner shall adhere to her undertaking, subject to the decision of the writ petition.

30. Consequently, miscellaneous applications pending if any, shall stand closed.

JUSTICE VENKATESWARLU NIMMAGADDA

Date: 05.03.2025

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THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION Nos. 24595 & 24627 OF 2024

Date: 05.03.2025

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