APHC010150422023

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3332]**
(Special Original Jurisdiction)

MONDAY ,THE ELEVENTH DAY OF MARCH
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SRI JUSTICE RAVI CHEEMALAPATI

WRIT PETITION NO: 7719/2023

Between:

Gudivaka Srinivasa Rao **...PETITIONER**

AND

Union Of India and Others **...RESPONDENT(S)**

Counsel for the Petitioner:

1. AVANIJA INUGANTI

Counsel for the Respondent(S):

1.
2. VENKATA DURGA RAO ANANTHA
3. VENKATA DURGA RAO ANANTHA
4. VENKATA DURGA RAO ANANTHA
5. VENKATA DURGA RAO ANANTHA
6. VENKATA DURGA RAO ANANTHA

The Court made the following:

ORDER:

This writ petition has been filed under Article 226 of the Constitution of India for the following relief:

> "…..issue an appropriate writ or order or direction more in the nature of a writ of mandamus declaring the action of the respondents indebiting an amount of Rs.16,756/- on 30.09.2022 towards VSAT services without even providing the service and an amount of Rs.1,479/- every month towards e-locking service, as illegal, *dehors* jurisdiction, ultra vires of the conferred powers, unlawful gain, manifestly arbitrary, predominantly unconscionable, capricious and being flagrantly highhandedly capricious, violative of Articles 14, 19(1)(g), 21 of the Constitution of India and Dealership agreement and to direct the respondents to refrain from making any further unauthorized debits from the petitioner's SAP account by paying the unlawfully debited amount of Rs.65,567.62 ps. along with 24% interest per annum….."

2. The case of the petitioner, in brief, is that he is operating retail outlet of the respondent corporation under the name and style "Aditya Filling Station" in Koduru, Krishna District from 21.08.2014 onwards and pursuantly, SAP account i.e. Systems Applications and Products in Data Processing account was created for him, through which all the transactions relating to the retail outlet take place, which is solely accessible by the respondent corporation, enabling it to unilaterally debit amount from the account without intimating the dealer and without taking consent from the dealer. The respondent corporation introduced digital e-locking system and installed it in the tank trucks to ensure safe delivery of petroleum products from Corporation's terminal i.e. supply point to the retail outlets. As per clause 9(a) of the Dealership Agreement, the corporation shall supply the products (MS/HSD) at the premises of the Dealer. Contrary to the said clause, the respondent corporation is collecting Rs.1479/- every month towards rentals of digital e-locking system since 13.05.2020. Though the petitioner did not sign the addendum, clause-1 of which states that Rs.1253-50 along with 18% GST

will be recovered from the dealers for operation of e-locking system and without there being any agreement between the petitioner and respondent corporation to debit the amount for providing e-locking system services, the respondent corporation is debiting Rs.1,479/- for every single month since May,2020 from the petitioner's SAP account and till date they have debited Rs.48,811.62.

It is the further case of the petitioner that, the respondent corporation vide letter dated 22.04.2019 informed him that it will be installing Very Small Aperture Terminal (VSAT) mechanism for stable connectivity of wifi in every retail outlet and all the dealers including the petitioner are obligated to pay Rs.14,200/- per annum towards annual rental service. The VSAT mechanism installed at retail outlet did not provide stable connectivity and it had several issues and the respondent corporation stopped supplying the said service from 31.03.2021. Despite the same, the respondent corporation debited an amount of Rs.16,756/- on 30.09.2022 from the petitioner's SAP account towards provision of VSAT services. The petitioner along with other dealers submitted multiple representations to the corporation regarding the unauthorized debits in SAP account towards provision of VSAT and e-locking services and further the petitioner had also filed a complaint with Department of Administrative and Public Grievances on 30.12.2022, for which the corporation vide letter dated 30.01.2023 had given a very vague statement to the effect that the rentals towards digital e-locking and VSAT are deducted as

per Corporation guidelines. The respondent corporation falls within the ambit of State as per Article 12 of the Constitution. The respondent corporation is making unauthorized debits in a predominant and monopolistic manner from its dealer's SAP accounts without any prior intimation, explanation or obtaining consent from them and thereby deriving unlawful gain, which is opposed to Article 14 of the Constitution. Hence, this writ petition is filed.

3. The respondent nos. 2 to 6 filed counter affidavit denying the averments of the writ affidavit and further contended that, the very object of providing very Small Aperture Terminal (V-SAT) service is to provide the stable and better connectivity in every Retail Outlet and to address the issues like frequent disconnection so that real time information is received to the corporation from the respective Retail Outlet. The fundamental premise is installing the VSAT is to ensure that Retail Outlet is operating as per Corporation manual and guidelines and to avoiod mismanagement of the Retail Outlet by timely intervention. VSAT has not only helped the Corporation but also the dealers in analysis of Q&Q assurance and can monitor the sales performance, alerts, stock, price update and sales transaction on real time basis. To roll out VSAT services, the corporation has engaged M/s Nelco Limited. From the e-RACTS records of the corporation, it is evident that the petitioner was using VSAT services and whenever there were technical issues, the petitioner was lodging complaints and they are being addressed without any undue delay.

It is the further case of the respondents that, e-locking facility has been introduced by the corporation to provide better quality and quantity of the petroleum product. After the Tank Truck was filled with petrol, the same will be e-locked and the same will only open in the RO premises. The same would avert pilferage of petrol enroute. The e-locking facility is designed in a way so that the dealer receive the product uncontaminated and as per invoiced quantity. Though the petitioner did not sign the addendum for execution of e-locking service, he has been availing e-locking services since its inception and therefore the cost towards e-locking is being deducted from his account. The corporation has engaged Kritilabs Digital Locking Solutions for looking after e-lock operations and is making payments to them for providing the said service and thereafter recovering the same from the dealers. Further, VSAT has not been dismantled and removed from the petitioner's Retail Outlet and the complaints raised regarding its functions are being addressed and thus debit made by the corporation towards VSAT service is justified. Since the petitioner availed the services provided by the corporation, he cannot claim the debits made for providing services as unauthorized. As per Clause 8(a) of the agreement, the corporation shall install outfits described in second schedule at its own expenses, but second schedule does not mention about installation of VSAT and thus debiting amount towards VSAT is not in violation of clause 8(a) of the agreement as alleged by the petitioner. Further, as per clause 23, the dealer has to bear all charges connected with the business. Therefore,

when VSAT has been installed, the dealer is under bounden duty to pay the charges. Moreover, as per clause 42, the dealer shall observe and perform and carryout at all times all directions, instructions, guidelines and orders given on safe practices and marketing discipline guidelines and the proper carrying on of the dealership. In view of the above clause, the petitioner is under contractual obligation to follow the instruction given by the corporation and pay the rentals for VSAT. There are no merits in the writ petition and the same deserves dismissal.

4. The petitioner filed rejoinder reiterating the contentions of the writ affidavit and further contending that, according to the respondent corporation, VSAT had been installed for efficient working of the retail outlet and seamless connectivity of the dispensing unit and the digital e-locking apparatus has been introduced for safe supply of fuel, which means for efficient working of the retail outlet and therefore both the services becomes part of second schedule of the agreement. Hence, as per clause 8(a) of the agreement, the corporation is liable to maintain the apparatus and outfit, it cannot collect rentals under those heads from the dealers. The respondent corporation had utterly failed in resolving the issues raised by the dealers regarding non-functioning of VSAT mechanism several times. A sales officer of the respondent corporation informed the petitioner on 29.03.2022 that VSAT contract with M/s. NELCO is no longer in subsistence. Apart from that the petitioner had written multiple representations such as letters dated

04.04.2022 and 03.10.2022 requesting the corporation to take VSAT equipment from the retail outlet since VSAT is no longer working. The petitioner has not been using VSAT mechanism in any form or manner since VSAT service was not being provided to the dealers since 31.03.2022. Further, the respondent corporation vide letter dated 27.01.2023 had informed all the deals that the latest termination of the contract shall happen in January,2023 and no VSAT charges shall be payable to the vendor thereafter. However, contrary to their own letter, the corporation had charged VSAT rentals from the petitioner on 30.09.2022 to the tune of Rs.16,756/- for the period from 01.04.2022 to 31.03.2023. Further, as per clause 9(a) the Corporation shall supply the products at the premises of the dealer, however, contrary to the said clause, the corporation is collecting rental for digital e-locking system. Further, there is no rationale for arriving at the rental at Rs.1479/- per month for e-locking rentals, since e-locking is installed in each tank truck and one tank truck is used to deliver fuel to multiple retail outlets but not confined to one retail outlet. Therefore, the action of the respondent corporation in debiting the amounts from petitioner's SAP account is illegal, arbitrary and unreasonable. Accordingly, prayed to allow the writ petition.

5. Heard Ms. Avanija Inuganti, learned counsel for the petitioner, and Sri S.V.S.S.Sivaram, learned counsel for the respondents.

6. Ms. Avanija Inuganti, learned counsel for the petitioner, while reiterating the contents of the writ affidavit further contended that, as per clause 8(a) of the Dealership Agreement, the Corporation shall install at the premises the outfit and other apparatus for efficient working of the retail outlet and all such apparatus and equipment shall form part of the outfit. If that is so, the VSAT installed at the retail outlet and digital e-locking apparatus are for the purpose of efficient working of the outlet and seamless connectivity to the dispensing unit and for safe supply of fuel to the retail outlet are covered by clause 8(a) of the agreement and the respondent corporation is liable to maintain both VSAT and e-locking apparatus at their own expense and cannot collect rentals under those heads from the dealers.

The learned counsel would further submit that despite several complaints and grievances raised by the petitioner regarding non-functioning of VSAT mechanism , the respondent corporation failed to take appropriate steps to rectify the same. Adding to the same, Sales officer of the respondent corporation had informed the petitioner on 29.03.2022 that the VSAT contract with M/s. NELCO is no longer in subsistence and pursuantly the petitioner had also written letters dated 04.04.2022 and 03.10.2022 requesting the respondent corporation to take VSAT equipment from the retail outlet since not working, however, only with a view to continue charging rentals from the petitioner, the respondent corporation did not collect the equipment from the outlet. Even though the petitioner is not using the VSAT mechanism in any

form or manner since 30.03.2022 and despite issuance of letter dated 27.01.2023 by the corporation that the latest termination of the contract shall happen in January,2023 and no VSAT charges shall be payable to the vendor thereafter, the respondent corporation charges VSAT rentals from the petitioner on 30.09.2022. Therefore, debiting an amount of Rs.16,756/- from the petitioner's SAP account for providing VSAT service for the period from 01.04.2022 to 30.03.2023 , despite the factum of stoppage of services w.e.f. 31.03.2022 is illegal.

The learned counsel for the petitioner would further submit that as per clause 9(a) of the Dealership agreement, the corporation shall supply the products at the premises of the dealer, thus, it is evident that it is the duty of the corporation to deliver goods from terminal to retail outlets. Therefore, the corporation is debarred from collecting Rs.1479/- every month towards rental for digital e-locking system for safe delivery of petroleum products from terminal to outlets. The petitioner did not sign the addendum thereby did not agree to pay the rentals for e-locking system, because it is the responsibility of the respondent corporation to safely supply fuel to the retail outlets. The analogy of the respondent corporation that even though the petitioner is not a signatory to the addendum, clause-1 of which deals with recovery from the dealers the rental for e-locking system, placing an order for fuel with the corporation implicitly amounts to availing digital e-locking services is illogical and irrational and there is no rationale base for arriving at Rs.1479/- towards

rentals for e-locking services. The corporation being a State under Article 12 of the Constitution of India, cannot act in an arbitrary manner and cannot behave as a monopoly and proceed on installing e-locking services without consulting the dealers and force the dealers to pay rents for the service. Thus, the action of the respondents in debiting the amounts towards VSAT services and e-locking services is illegal, dehors jurisdiction, ultra vires and unconscionable. Accordingly, prayed to allow the writ petition.

In support of her contentions, the learned counsel for the petitioner relied on the decision of the Hon'ble Supreme Court in ***Mahabir Auto Stores and others vs. Indian Oil Corporation and others***[1]

7. On the other hand, Sri S.V.S.S.Sivaram, learned counsel, for Sri A.Venkata Durga Rao, learned counsel for the respondent nos. 2 to 6, while reiterating the contents of the counter further contended that VSAT service is to provide the stable and better connectivity in every Retail Outlet (RO) so that the real time information is received to the corporation from the respective Retail Outlets and wherever there had been technical issues, the petitioner had lodged complaints and the same were addressed without any delay. The contract of M/s. NELCO with the corporation is still subsisting and VSAT has not been dismantled and removed from the petitioner's Retail Outlet and therefore rentals for the modem, VSAT antenna are still being recovered

[1]. (1990) 3 Supreme Court Cases 752

from the petitioner and M/s.NELCO is still addressing the complaints vis-à-vis VSAT. There has been no official communication sent to petitioner for discontinuation of VSAT from Vijayawada DO. Moreover, the corporation vide letter dated 14.10.2022 informed all the dealers that No VSAT rentals will be recovered from the dealer once SDWAN has been installed or after removal of VSAT from RD, whichever takes place earlier. Clause 8(a) of the agreement pertains to outfit installed by the corporation described in second schedule, which does mention about installation of VSAT, which was installed later to improve connectivity. Therefore, there is no force in the contention of the learned counsel for the petitioner that debiting amounts towards VSAT services is in violation of clause 8(a) of the agreement. Further, as per clause 23 of the dealership agreement, the dealer has to bear all the charges connected with the business, which shows that the dealer is bound to pay the charges borne for its upkeep. Further, as per clause 42 the dealer at all times carryout at all times all directions, instructions, guidelines and orders given or may be given from time to time on safe practices and marketing discipline guidelines. Thus, this clause obligates the petitioner to follow the directions diligently. There are no merits in the writ petition and the same deserves dismissal. Accordingly, prayed to dismiss the writ petition.

8. Perusal of the material available on record would indicate that the petitioner is operating respondent corporation’s retail outlet in Koduru, Krishna District. The petitioner challenged debiting an amount of Rs.16,756/-

on 30.09.2022 towards VSAT services and an amount of Rs.1,479/- per month towards digital e-locking monthly rental service charges on the ground that they are opposed to clause 8(a) and 9(a) of the Dealership agreement. The respondent justified the action of the corporation by placing reliance on clause nos. 23 and 42 of the said Dealership Agreement.

9. For convenience, the above said clauses of the Dealership agreement are extracted hereunder:

> *"8(a) The corporation has installed or in about to install at his own expense at the premises the outfit described in the Second schedule here to. The Corporation may install at the premises such other apparatus and equipment from time to time as it may deem necessary for the efficient working of the Retail outlet and all such other apparatus and equipment shall be deemed to be and form part of the outfit. Provided that the Corporation shall have the right to remove any particular item or items of apparatus or equipment comprises in the outfit without assigning any reason therefor.*
>
> *The Corporation will maintain the outfit in proper working condition at its own expense.*
>
> *9(a) The Corporation will supply that products(MS/HSD) at the premises of the Dealer. The Dealer shall arrange to take prompt delivery of the products and shall be responsible for and shall pay all detention and /or other charges of whatsoever nature for any loss or damage arising directly or indirectly through his failure, neglect or delay to take such delivery promptly.*
>
> *23. The Dealer shall be solely responsible for an shall himself bear all expenses of and in connection with the Dealership business including administration of Office, wages, salaries, employment benefits payable to all persons employed by him, insurance premia, telephone rents, licence or other fees, rates & water consumption charges and all other charges and out-gouings of every kind connected with the said business and shall pay the same promptly and without fail.*
>
> *42. The Dealer at all times faithfully, promptly and diligently observe and perform and carry out at all times all directions, instruction,*

> *guidelines and orders given or as may be given from time to time by the corporation or its representative (s) on safe practices and marketing discipline and/or for the proper carrying on of the Dealership of the Corporation. The Dealer shall also scrupulously observe and comply with all laws, regulations and requisitions of the Central/state Government and of all authorities appointed by them or either of them including in particular the chief controller of Explosives, Government or India and/or any other local authority with regard to the safe practices.*

10. Clause 8(a) of the Agreement obligates the Corporation for installation at the premises at its own expense at the premises the outfit described in the Second schedule and may install at the premises such other apparatus and equipment from time to time as it may deem necessary for the efficient working of the Retail outlet and all such other apparatus and equipment shall be deemed to be and form part of the outfit. This clause gives right to the Corporation to remove any particular item or items of apparatus or equipment comprises in the outfit without assigning any reason therefor.

11. As rightly contended by the learned counsel for respondent nos. 2 to 6, Schedule-II, which provides for Description of Outfit, does not contain VSAT facility as one of the items to be provided by the Corporation for installation of Outfit at its own expenses at the premises of Retail Outlet. Clause 8(a) further gives right to the Corporation for installation at the premises such other apparatus and equipment from time to time and that forms part of the outfit.

12. Thus the Description of 'Outfit' given in Schedule-II appended to the Dealership Agreement is not confined to as many as 22 items mentioned therein. The language employed in clause 8(a) of the agreement clearly suggests that any other apparatus or equipment installed at the premises that required for efficient working of the Retail Outlet would becomes part of the 'Outfit' described in schedule-II of the Dealership agreement.

13. Very Small Aperture Terminal (VSAT) mechanism is intended to have stable connectivity of wifi in every retail outlet. According to the respondents, the VSAT service is to provide the stable and better connectivity in every Retail Outlet and to address the issues like frequent disconnection so that real time information is received to the Corporation from the respective ROs. In essence, VSAT service provided for efficient working of the Retail outlet and seamless connectivity to the dispensing unit. Thus, the said service would become an essential and integral part for effective and efficient running of the 'Outfit'. Therefore, as per clause 8(a) of the Distribution Agreement, the Corporation has to maintain it at its own expense.

14. In view of the above, in the absence of any agreement between the petitioner- Retailer and the Corporation for payment of amount for services provided at the Retail Outlet, Clause 8(a) of the Dealership agreement forbids the corporation from collecting any amount for upkeep and maintenance of the outfit including VSAT services.

15. However, the petitioner was informed by the respondent corporation vide letter dated 22.04.2019 that they are going to provide VSAT mechanism at the Retail Outlet and vide email dated 15.10.2019, the petitioner was informed that some amount would be deducted from petitioner's SAP account once in every financial years. The petitioner did not choose to challenge the letter so issued to him in the year 2019 till filing of this writ petition in the year 2023.

16. In this writ petition, the petitioner has limited his relief to the extent of the amount of Rs.16,756/- debited on 30.09.2022 towards provision of VSAT services. The petitioner placed reliance on the letter dated 14.10.2022 of the Divisional Retail Head, which is to the effect that VSAT contracts have been terminated for ROs, where VSAT was installed under Phase I. Hence, no rentals are chargeable from these dealers now. However, in respect of the ROs where VSAT was provided under Phase II, the services shall continue till termination of the contract. The latest termination of the contract shall happen in Jan, 2023 and no VSAT charges shall be payable to the vendor thereafter. Whereas, according to respondents, the letter relied on by the petitioner only says that no VSAT rentals will be recovered from the dealer once SDWAN has been installed or after removal of VSAT from RO, whichever takes place earlier and Since VSAT has not been removed from the petitioner's premises till date and as he is not allowing SDWAN installation, VSAT recovery is being made from him.

17. A perusal of the letter dated 14.10.2022 relied on by the petitioner and referred to in the counter, nowhere says as contended by the respondent that "no VSAT rentals will be recovered from the dealer once SDWAN has been installed or after removal of VSAT from RO, whichever takes place earlier." It only says that from the dealers where VSAT was installed under Phase I, no rentals are chargeable now. Thus, debiting an amount of Rs.16,756/- on 30.09.2022 towards VSAT services is not just and proper in view of the contents of the letter dated 14.10.2022 and also for the reasons stated supra that clause-8(a) imposes an obligation on the part of the Corporation to bear all the expenses that are essential for efficient running of the Retail Outlet and VSAT service forms part of the outfit, which shall be installed by the Corporation at its own costs.

18. Now coming to the rentals towards e-locking service that are being debited from the petitioner's SAP account at the rate of Rs.1,479/- every month, according to the petitioner there is no agreement between the petitioner and the corporation and the petitioner did not consent to sign on the addendum to the principal dealership agreement. According to the corporation, placing an order for fuel with the Corporation implicitly amounts to availing digital e-locking services.

19. From the pleadings and the arguments, it is understood that E-locking facility has been introduced by the corporation to provide better

quality and quantity of the petroleum product. To avoid pilferage of petrol enroute to the Retail Outlet, Geo-fencing is created. This facility is designed so that dealer shall receive the product which is not contaminated and is as per invoiced quantity.

20. Clause 9(a) of the Dealership Agreement specifically states that the Corporation shall supply products (MS/HSD) at the premises of the Dealer. This clause does not authorize the corporation to debit rentals towards e-locking facility. That is the reason why an addendum to the Principal Dealership agreement was sent to the petitioner for his signature in acquiescence of amended terms of the original agreement.

21. According to the said addendum, the corporation has decided to upgrade their existing locking system of padlocks in Tank Trucks with a Robust e-locking solution to ensure secured transportation of fuel. It further states that Rs.1253.50 + 18% GST per TT per month for Dealer own TTs & 091 (one) TT per Dealer for supplies through Transporter TT on date will be charged. No doubt the petitioner did not sign this addendum.

22. When clause 9(a) of the Dealership Agreement imposes an obligation on the part of the Corporation to deliver goods at the premises of the dealer, it is the responsibility of the corporation to see that unadulterated product as is invoiced is supplied to the Dealer at his Retail Outlet by taking all the precautions so as to avert pilferage as well as adulteration of the product.

When there is no condition for payment of any additional charge for providing better Quality and Quantity of product and it is the primary duty of the corporation to supply better quality of the product as is invoiced by the dealer, mulcting the dealer with e-locking charges on the ground of upgradation of locking system, that too in the absence of any agreement between the parties is illegal, arbitrary and unconscionable.

23. The contention advanced on behalf of the petitioner that there is no rationale for arriving at the rental at Rs.1479/- per month for e-locking rentals, since e-locking is installed in each tank truck and one tank truck is used to deliver fuel to multiple retail outlets but not confined to one retail outlet, is not refuted by the respondent corporation by offering any plausible explanation for arriving at the figure towards e-locking rentals. This leads to a presumption that there is every justification in the contention raised by the petitioner that there is rational basis for arriving at the quantum of e-locking rentals.

24. In the decision relied on by the learned counsel for the petitioner in Mahabir Auto Stores and others (supra 1), their lordships of Hon'ble Supreme Court held that:

> *"12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in*

M/s Radha Krishna Agarwal & Ors. v. State of Bihar & Ors., [1977] 3 SCC 457.1t appears to us, at the outset, that in the facts and circumstances of the case, the respondent-company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See M/s Radha Krishna Agarwal v. State of Bihar, (supra) at p. 462, but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the con- tract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration, it depends upon facts and circumstances of a particular transaction whether heating is necessary and reasons have to be stated. 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 in State action 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 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, the same would be unreasonable. In this connection reference may be made to E.P. Royappa v. State of Tamil Nadu & Anr., [1974] 4 SCC 3; Maneka Gandhi v. Union of India & Anr., [1976] 1 SCC 248; Ajay Hasia & Ors. v. Khalid Mujib Sehravardi & Ors., [1981] 1 SCC 722; R.D. Shetry v. International Airport Authority of India & Ors., [1979] 3 SCC 1 and also Dwarkadas Marlaria and sons v. Board of Trustees of the Port of Bombay, [1989] 3 SCC 293. 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 in the type of the transactions and nature of the dealing as in the present case.

20. Having regard to the nature of the transaction, we are of the opinion that it would be appropriate to state that in cases where the instrumentality of the

state enters the contractual field, it should be governed by the incidence of the contract. It is true that it may not be necessary to give reasons but, in our opinion, in the field of this nature fairness must be there to the parties concerned, and having regard to the large number or the long period and the nature of the dealings between the parties, the appellant should have been taken into confidence. Equality and fairness at least demands this much from an instrumentality of the State dealing with a right of the State not to treat the contract as subsisting. We must, however, evolve such process which will work.

25. The above observations would indicate that where the instrumentality of the State enters the contractual field, it should be governed by the incidence of the Contract. Every action of the State or instrumentality of the State in exercise of its executive power must be subject to the rule of law and be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32. Though it may not be necessary to give reasons but in the field of this nature fairness must be there to the parties concerned. So whatever be the activity of the public authority in such monopoly or semi-monopoly dealings, it should meet the test of Article 14. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. Rules of reason and rule against arbitrariness and discrimination, and rule of fair play and natural justice are part of the rule of law application in situation or action by State instrumentality in dealing with citizens.

26. For the reasons given in the foregoing paras, since clause 8(a) and 9(a) of the Dealership Agreement obligates the Indian Oil Corporation, which

is a State within the meaning of Article 12 of the Constitution, to do a certain act, they cannot charge the dealer with rentals for perpetuating their duties and that too without any specific agreement between the parties. Clause Nos. 23 and 42 of the Dealership Agreement relied on by the learned counsel for respondent nos. 2 to 6 for justifying the action of the respondents in demanding to pay rentals, do not come to the rescue of the respondents, as they relate altogether to different subject. Clause 23 says that the dealer is responsible for and shall bear all expenses of dealership business including administration, water consumption and they do not at all relate to the VSAT service charges as sought to be contended by the respondents. Further Clause-42 of the agreement specifies that the Dealer shall diligently observe and carryout directions given by the corporation on safe practices and marketing disciplined guidelines only, but that does not obligate the dealer to pay or borne out whatever the amount demanded by the corporation.

27. In view of the above, having found that the Corporation cannot be permitted to act unilaterally in demanding e-locking service rentals without any specific clause in the Dealership Agreement and mere placing order for fuel products does not amount to acquiescence of the petitioner for payment of e-locking service, since the corporation is duty bound to supply quality product as is invoiced by the petitioner/dealer and further finding justification in the contention of the learned counsel for the petitioner that debiting

Rs.16,756/- towards VSAT services is illegal and arbitrary, this writ petition is liable to be allowed.

28. Accordingly, the writ petition is allowed and the respondent authorities are directed not to make any further debits from the petitioner's SAP account towards VSAT or e-locking facilities and the authorities are directed to pay back the amount collected towards rentals of e-locking service and Rs.16,756/- towards VSAT service debited on 30.09.2022 within a period of three (03) months from the date of receipt of copy of this order. There shall be no order as to costs.

As sequel thereto, miscellaneous petition, if any, pending shall stand closed. Interim orders, if any, shall stand vacated.

JUSTICE RAVI CHEEMALAPATI

11th March, 2024
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