(2000) 11 P&H CK 0194

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 3377 of 2000

Bharat Petroleum Corporation Limited APPELLANT

Vs

Prem Chand RESPONDENT

Date of Decision : 15-11-2000

Acts Referred:

Arbitration Act, 1940 — Section 30
Arbitration and Conciliation Act, 1996 — Section 8
Essential Commodities Act, 1955 — Section 7
Penal Code, 1860 (IPC) — Section 420

Citation : (2001) 2 CivCC 659 : (2001) 3 RCR(Civil) 80 : (2001) 1 RCR(Civil) 710

Hon'ble Judges : M.L. Singhal, J

Bench : Single Bench

Advocate : Mr. Chetan Mittal, for the Appellant; Mr. S.C. Pathela, for the Respondent

Judgement

M.L. Singhal, J.—Prem Chand-plaintiff was allotted retail out-let by the Bharat Petroleum Corporation Limited at Dirba. Due to the certain alleged violation of the terms of the agency by him, his operatorship was suspended vide order dated 3,7,2000. It was ordered that the suspension order would remain in force till sample test and investigation reports were received. On 17.7.2000 his operatorship was terminated without awaiting the result of the samples and invesiigation reports. Plaintiff filed suit for declaration against Bharat Petroleum Corporation Limited to the effect that order dated 17.7.2000 passed by them vide which retail outlet allotted to him vide agreement dated 8.4.2000 was terminated is illegal, null and void, against the principles of natural justice, without jurisdiction and is liable to be set aside and also the order of suspension dated 3.7.2000 and for permanent injunction restraining them from allotting the retail out-let of Bharat Petroleum at Dirba to any other person, and for staying the operation of the order dated 17.7.2000 and for mandatory injunction directing them to restore the supply of retail out-let of Bharat Petroleum

Corporation Ltd. at Dirba which had illegally been suspended by defendants. Defendants filed an application u/s 8 of the Arbitration and Conciliation Act, 1996 for the stay of the proceedings and referring the matter to the arbitrator in view of clause incorporated/provided in the Agreement.

2. Vide order dated August 2, 2000. Civil Judge (Sr. Division), Sangrur held that matter could not be referred to the arbitrator as the agreement had since been terminated and was no longer subsisting and further legality and validity of the agreement between the parties could be gone into only by the Court according to the settled principles of law.,

3. Not satisfied with this order dated 2.8.2000 of Civil Judge (Sr. Division), Sangrur, Bharat Petroleum Corporation Limited has come up in revision to this Court.

4. I have heard the learned counsel for the parties and have gone through the record.

5. Learned counsel for the petitioner contended that the contract was terminated in accordance with the provision of clause 11 of the agreement. When the dispute or difference for determination had arisen out of the agreement, dispute or difference between the parties was required to be settled by the arbitrator in view of the clause 17-A. Clause 17-A of the agreement reads as follows:

"Any dispute or difference of any nature whatsoever, any claim, cross-claim, counter-claim or set off of the company against the Operator or regarding any right, liability, act, omission or account of any of the parties hereto arising out or in or account of any of the parties herein arising out of or in relation to this agreement shall be referred to the sole arbitration of the Director (Marketing), of the company or some officer of the company who may be nominated by the Director (Marketing). The operator will not be entitled to raise any objection to any such arbitrator on the ground that the Arbitrator is an officer of the company or that he has dealt with the matters to which the contract relates or that in the course of his duties as an officer of the company he had expressed views on all or any other matters in dispute or differences. In the event of the arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, the Director (Marketing) as aforesaid at the time of such transfer, vacation of office or inability to act may in the discretion of the Director (Marketing) as aforesaid to act may at the discretion of the Director (Marketing) designate another person to act as arbitrator in accordance with the terms of the agreement to the end and inient that the original arbitrator shall be entitled to continue the arbitration proceedings notwithstanding his transfer or vacation of office as an officer of the company if the Director (Marketing) does not designate another person to act as Arbitrator on such transfer, vacation of office or inability of original arbitrator. Such persons shall be entitled to proceed with the reference from the point at which it was left by the predecessor. It is also a form (term ?) of this contract that no person other than Director

(Marketing) or a person nominated by such Director (Marketing) of the company as aforesaid shall act as Arbitrator hereunder. The award of the arbitrator so appointed shall be final, conclusive and binding on all persons to the agreement subject to the provisions of the Arbitration Act, 1940 or any statutory modification or re- enactment thereof and the rules made thereunder for the time being in force shall apply to the arbitration proceedings under this Clause".

6. It was submitted by the learned counsel for the petitioner that the disputes arising out of the agreement or in relation to this agreement shall be referred to the sole arbitration of the Director (Marketing) of the company or some officer of the company who may be nominated by the Director (Marketing). The operator will not be entitled to raise any objection to any such arbitration on the ground that the arbitrator is an officer of the company or that he has dealt with the matters to which the contract relates or that in the course of his duties as an officer of the company he had expressed views on all or any other matters in dispute or differences. It was submitted that matter was referable to the arbitrator notwithstanding that the retail out-let had been terminated by the company. It was submitted by the petitioner that the matter was liable to be referred to arbitrator in view of clause 17-A of the agreement between the parties. In support of this submission, he drew my attention to E. Venkatakrishna Vs. Indian Oil Corporation and Another, .

7. In E. Venkatakrishna Vs. Indian Oil Corporation and Another, , the facts were that the appellant was appointed a dealer of the first respondent i.e. Indian Oil Corporation to distribute liquified petroleum gas. The contract in this behalf contained a clause by reason of which the distributorship could be terminated if the dealer did anything which was prejudicial to the interests of the good name of the principal of its products. It was the case of the respondent that the appellant had stored spurious gas cylinders; therefore, the dealership of the appellant was terminated under the terms of the said Clause. The appellant filed a writ petition in the High Court of Karnataka seeking restoration of the distributorship. The writ petition was dismissed because the learned Single Judge found that there was an arbitration Clause in the contract between the parties. He said:

"In this behalf, all that is necessary to observe is that it is open for the petitioner to raise these points in the dispute and plead before the Arbitrator that the termination of distributorship agreement was arbitrary and that the material on the basis of which the opinion was formed did not exist or did not justify the formation of such an opinion. If such a plea is raised, the Arbitrator is duty bound to consider as to whether the opinion formed was based on sufficient material and if not to give appropriate relief to the petitioner."

8. No appeal against the order of dismissal was filed. The appellant wrote to the Director (Marketing) of the respondent invoking the arbitration Clause. The Director (Marketing) was called upon to act as an Arbitrator or to appoint a sole Arbitrator to determinate the following issues:

"(i) - Issue of Termination of distributorship of Hab-bal, Yalahanka and adjacent areas of Bangalore City.

(ii) - Issue of Restoration of the distributorship, and

(iii) - Consequential damages and pendents lite interest"

9. On 10th December, 1987 the Director (Marketing)declined to act as Arbitrator, but he appointed an Arbitrator "to adjudicate upon the disputes and differences arising between you and the Corporation and to give his Award''s thereon." The appellant filed a statement of claim before the Arbitrator so appointed and prayed for setting aside the termination, for damages, for a direction to the respondent "to restore distributorship to the claimant" and for the incidental reliefs. The Arbitrator raised issues, thus:

"(1) - whether the claimant or this servants or agents committed/suffered to be committed the act mentioned in the termination letter dated 11/8/87 issued by the respondent and whether or not the termination of the Indane distributorship of the claimant by the respondent is justified ?

(2) - whether the order of termination dated 11/8/87 of the distributorship of the claimant is valid or liable to be set aside ?

(3) - whether the claimant is entitled to the various monetary claims made in the statement of claim dt. 28/1/1988, if so to what extent ?.

(4) - whether the respondent is entitled to the monetary claim made in its written statement dt. 28/3/88, if so to what extent ?

(5) - whether the respondent is entitled to any interest as claimed in its written statement dt. 28/3/88, if so, to what extent ?

(6) - to what reliefs are the parties entitled ?

The arbitrator made an award thus :

"I award and hold that with a view to meet the ends of justice the claimant, Shri E. Venkatakrishna, doing business under the name and style of M/s Poornashree Gas shall be restored with the In-dane distributorship at Habbal, Banaglore forthwith. Each of the parties is entitled to the monetary benefits as awarded above. In the circumstances of the case, I award and hold that the parties shall bear their respective costs."

10. The award was challenged by the respondent in proceedings u/s 30 of the Arbitration Act taken before a learned Single Judge of the Madras High Court. The learned Single Judge rejected the challenge. The respondent preferred an appeal and the Division Bench, in the judgment and order that is impugned before us, upheld the challenge. It said, "there is considerable force in the contention of the appellant that what is arbitrable under Clause 37 is only the dispute or difference in relation to the agreement. The question of restoration of distributor would not arise under the agreement. Therefore, we have no

hesitation in holding that the Arbitrator was in error and in fact had no jurisdiction to direct restoration of distributorship to the 1st respondent. Hon''ble Supreme Court held that in their view the Division Bench was right. All that the Arbitrator could do, if he found that the ter-mination of the distributorship was unlawful, was to award damages, as any civil Court could have done in a suit. Hon''ble Supreme Court dismissed the appeal and the judgment and order of the Division Bench was up-held. Hon''ble Supreme Court deleted the relief given in the award in respect of issue No. 6 and the reliefs given under issues No. 1 to 5 were allowed to stand". Learned counsel for the petitioner contended that the matter was referable to arbitration even after the allotment of retail out-let agreement had been terminated. Arbitrator can determine whether termination of the retail out-let agreement was or was not legal or further whether the order of suspension dated 3.7.2000 was or was not legal and further whether the termination of the retail out-let altogether vide order dated 17.7.2000 was or was not legal when the results of analysis of the samples and investigation reports were still being awaited.

11. In order dated 3.7.2000 the irregularities observed in the operation of retail out-let have been indicated, namely that on the night of 27.6.2000, a police party raided the RO and caught red-handed a tanker bearing Regn. No. PB 11B 2983. decanting 3 to 4-KL of un-au- thorised product into HSD tank and subsequently, a case u/s 7 of Essential Commodities Act alongwith Section 420 of Indian Penal Code was registered against him (Prem Chand) vide FIR No. 108 dated 27.6.2000 for the said act of un-authorised decapitation which was done solely with a view to earn illegal profits at the cost of public at large. It has damaged company''s name, reputation and business.

12. Further samples were drawn by the Police Authorities and investigations have also been commenced by the local police. The result of samples drawn and investigations are awaited.

13. He (Prem Chand) instead of informing the company immediately after the happening of the event i.e. raid, chose to run away from the scene and even after that, he did not take any initiative to inform the company. Further he ignored the basic responsibility to safeguard company''s product and property. His act of attempting adulteration has resulted in the suspension of sales of HSD from one Pump & one tank, without any fault on their part and has made company and public to suffer.

14. The company found no option but to suspend the operatorship agreement till such time sample test and investigation reports were received by them. Opera-torship agreement was suspended with immediate effect. Vide order dated 17.7.2000, operatorship agreement was terminated in view of the irregularities in the operation of operatorship agreement by the allottee.

15. In view of clause 11 of the operatorship agreement, agreement could be terminated before the expiry of the period on the happening of any of the

following events:

(1) - the operator being found guilty of breach of any of the conditions of this agreement.

(2) - if the operator is found negligent or incapable of carrying out work.

(3) - if the operator fails to carry out instructions of the company/officers.

(4) - if the operator indulges in any malpractice and violates marketing discipline guidelines.

16. Learned counsel for the petitioner submitted that as to whether the retail out-let allotted to Prem Chand was or was not justifiably terminated should have been referred to the arbitrator in view of clause 17-A of the agreement executed between the parties.

17. Learned Counsel for the respondent on the other hand submitted that the arbitration clause was no longer operative when operatorship agreement had been terminated vide order dated 17.7.2000 by the company. On 19.7,2000 when the suitwas filed, there was no operatorship agreement subsisting and as such no reference could be made to the arbitrator in terms of clause 17-A thereof. It was also submitted that if the matter is referable to the arbitrator, arbitrator has no power to restore the contract of distribution of the petroleum products to the respondent. It was submitted that issue relating to the termination of operatorship cannot be referred to the arbitrator who has no power to restore the agency and the restoration of the agency can be ordered only by the civil court.

18. Suffice it to say, arbitration clause shall be deemed to be subsisting with respect to acts done under the contract even after the termination of the contract. In Damodar Valley Corporation Vs. K.K. Kar, Hon''ble Supreme Court held that the arbitration clause subsists with respect to acts done under the contract even after the termination of the contract.

19. Countering this argument advanced by the learned counsel for the petitioner, learned counsel for the respondent submitted that matter should not be referred to the arbitrator as the arbitrator will none else be the own officer of the company at whose hands expecta-tion of fair play to the respondent may not be possible.

20. In my view, matter was referable to the arbitrator in view of clause 17-A of the operatorship agreement between the parties, which was drawn up when the out-let was allotted to the respondent. It will be for the arbitrator to decide whether the retail put-let allotted to the respondent had or had not been justifiably terminated. It is for the arbitrator to decide whether the re-tail out-let could be terminated during the pendency of the result on analysis of the samples and the pendency of investigation by the police into the case registered against the respondent u/s 7 of the Essential Commodities Act read with Section 420 of

the Indian Penal Code vide FIR No. 108 dated 27.6.2000 for the alleged act of unauthorised decantation.

21. For the reasons given above, this revision is allowed and the impugned order of the Civil Judge (Sr. Division), Sangrur is set aside. The matter is referable to the arbitrator in view of clause 17 of the operator-ship agreement.

22. Revision allowed.

