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**(2001) 01 P&H CK 0027**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 10294 of 2000**

Ex. Flt. Lt. Virinder Singh

APPELLANT

Vs

Union of India and others

RESPONDENT

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**Date of Decision :** 17-01-2001

**Acts Referred:**

Constitution of India, 1950 — Article 14

**Citation :** (2001) 4 RCR(Civil) 549

**Hon'ble Judges :** N.K. Sud, J

**Bench :** Single Bench

**Advocate :** Amar Vivek, for the Appellant; S.C. Kapoor and Mr. Ashish Kapoor, for the Respondents Nos. 2 and 3, for the Respondent

**Final Decision :** Dismissed

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## Judgement

N.K. Sud, J.—The Petitioner in the present writ petition is aggrieved by the order dated 2.8.2000 passed by the Indian Oil Corporation (for short "the Corporation"), the Respondent No. 2, terminating the LPG distributorship held by him in the name of Ambala Gas Service under the terms of an agreement dated 1.4.76 with immediate effect. Before adverting to the various objections raised by the Petitioner, it is necessary to notice the relevant facts.

2. Ambala Gas Service was originally a partnership firm consisting of two partners namely Petitioner and one K.K. Mehra. It had entered into an agreement with the Corporation on 1.4.1976 for the LPG distributorship in its favour on the terms and conditions contained therein. The said K.K. Mehra is stated to have retired from the partnership vide an oral dissolution in the year 1986-87 and since then the LPG distributorship was being run by the Petitioner as the sole proprietor of Ambala Gas Service.

3. A notice dated 21.3.2000 was issued to the Petitioner requiring him to show cause as to why the distributorship be not terminated as clauses 23(b) and 23(c) of the agreement dated 1.4.1976 had been violated by him. Clause 23(b)

required the Petitioner to take active part in the management and running of the distributorship and to personally supervise the same. He could, under no circumstances, do so through any other person, firm or body. Further as per Clause 23(c), the Petitioner could not enter into any arrangement, contract or understanding, whereby the operations of the distributorship may be controlled, carried out or financed by any other person, firm or company, whether directly or indirectly and whether in whole or part without previous written consent of the Corporation. According to the Corporation both these clauses stood violated as the Petitioner had executed two partnership deeds dated 6.5.1988 and 6.1.1995 whereby one S.R. Wadhawan had been inducted as a partner for running Indane distributorship without the prior written consent of the Corporation. It was also alleged that S.R. Wadhawan had been made a partner for a consideration of Rs. 2,50,000/- for which a separate agreement dated 18.1.1996 had been executed. It was further alleged that in a civil suit filed in the Court of Civil Judge (SD), Ambala, the said S.R. Wadhawan had raised the following contentions:

(a) That he had been running the distributorship independently till December.

1996 and the entire investment, including the cost towards functioning of the office as

well as for godown was borne by him.

(b) That he has mortgaged his house No. 134-R, Model-Town City as a Security to Union Bank of India in order to facilitate the financial functioning of the distributorship.

(c) That directions to be issued for true & correct accounts from you till December 1996 and restraining you from running the office of the distributorship firm. Moreover, relief has also been sought for appointment of Court Receiver to take charge and control of the affairs of the firm during the pendency of the litigation." On the basis of this material, it was alleged that the Petitioner had allowed an outsider to run the business and also to have financial control over the distributorships. This arrangement being allegedly contrary to clauses 23(b) and 23(c) of the agreement, the distributorship was sought to be terminated.

4. The Petitioner furnished a reply to the aforesaid notice on 10.4.2000 in which the allegations were denied. The Petitioner denied having entered into any partnership with S.R. Wadhwan and took the stand that the documents referred to in the civil suit and the contentions raised thereon were false, vexatious and baseless. It was explained that S.R. Wadhawan was only a Manager in his office and this fact was within the knowledge of the Corporation right from the year 1973. It was further contended that the services of S.R. Wadhawan were dispensed with in 1998 due to his ill health and this had provoked him to file a false, frivolous and vexatious suit against the Petitioner on the basis of forged documents. In this explanation, the Petitioner also requested the Corporation to supply him the copies of the documents referred to in the show cause notice, so that he could furnish necessary explanation in respect of the same. The

Petitioner also claims to have sent a letter dated 2.4.2000 (Annexure P-4), wherein a specific request had been made to supply him the copies of the following documents referred to in the show cause notice dated 21.3.2000 served on the Petitioner on 29.3.2000:

(A) Copy of agreement.

(B) Copy of the affidavits of persons who have stated that I was in partnership with Wadhawan.

(C) Copy of investigations made by you and the material collected by you.

(D) Copies of partnership deeds relied by you.

In this letter the Petitioner also requested the Corporation to show him the original documents in its possession so that their authenticity could be checked. However, it is alleged that the Corporation neither supplied the documents to the Petitioner nor was he given any opportunity to examine the original documents. Instead he received the impugned order dated 2.8.2000 stating that his explanation had not been found to be satisfactory and therefore his distributorship was being terminated with immediate effect. Hence this writ petition.

5. Notice of motion was issued and written statement on behalf of the Corporation has been filed. Mr. Amar Vivek, Advocate, appearing on behalf of the Petitioner vehemently contended that the impugned order dated 2.8.2000 had been passed in utter violation of the principles of equity and natural justice inasmuch as the material on the basis of which the distributorship had been terminated, had never been confronted to the Petitioner. According to him, the Petitioner had completely denied the execution of any partnership with S.R. Wadhawan and had specifically requested the Corporation to show him the original documents and also to supply to him the copies of such documents and other material collected by the Corporation in its own investigations, so that the same could be rebutted. However the corporation had allegedly failed to do so. It was also contended that even otherwise the Corporation was obliged to supply the copies of these documents to the Petitioner before using the same against him. It was further pointed out that the so-called report of the handwriting expert opinion about the genuineness of his signatures on the partnership deeds had not been obtained by the Corporation, but had been filed before it by S.R. Wadhawan, who being the complainant, was an interested party. Furthermore the authenticity of even this report had not been proved. It was further argued that the entire sequence of events showed that the Corporation was acting merely at the behest of S.R. Wadhawan and treating the documents filed by him as genuine without making its own, independent investigations. At any rate, it was incumbent upon the Corporation to associate the Petitioner with the investigations and confront him with the material in its possession for rebuttal.

6. Shri S.C. Kapoor, the learned Counsel for the Respondent Nos. 2 and 3,

resisted the claim of the Petitioner and justified the action of the Corporation in terminating the distributorship of the Petitioner on account of violation of clauses 23(b) and 23(c) of the distributorship agreement. At the very outset a preliminary objection was raised against the maintainability of the present writ petition. It was pointed out that the distributorship of the Petitioner was governed by the terms of the agreement dated 1.4.1976 and according to Clause 37 of the said agreement, any dispute or difference arising out of or in relation to the dealership agreement, had to be resolved by arbitration. It was further pointed out that there was sufficient material with the Corporation to show that the Petitioner had entered into an arrangement with S.R. Wadhawan whereby not only the operations of the distributorship were being controlled and carried on by him but were also being substantially financed by him. This was amply evident from the two partnership deeds dated 6.5.1988 and 6.1.1995 as also from the agreement dated 18.1.1996. According to him, the Petitioner had duly been confronted with this material as was evident from the show cause notice dated 21.3.2000 which contains the necessary details. The learned Counsel denied the receipt of the Petitioner's letter dated 2.4.2000 by the Corporation. It was also stated that the Petitioner had mis-stated certain facts especially that the said S.R. Wadhawan had mortgaged his house with the Union Bank of India as a guarantee against the credit limit sanctioned to the Petitioner in the year 1980. According to the Corporation, this had been done in the year 1988 after the execution of the first partnership deed. The learned Counsel further argued that even if the termination order was liable to be treated as invalid on any technical ground, the termination would still be valid in view of Clause 28 of the agreement which empowered either party to terminate the agreement on giving a 30 days' notice without assigning any reason. Therefore, it was pleaded that even if the termination of distributorship under Clause 27 was to be treated as invalid, the Petitioner could only be granted compensation for the notice period of 30 days. He cannot ask for the restoration of the distributorship. In support of this contention the learned Counsel for the Corporation placed reliance on the decision of the Supreme Court in *Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others*, .

7. Faced with the aforesaid situation, Mr. Amar Vivek, the learned Counsel for the Petitioner, submitted that the writ petition was maintainable as the Petitioner was challenging the termination order passed by the Corporation on the touch-stone of Article 14 of the Constitution of India. According to him, since the Corporation is an instrumentality of the State, its action could be validly challenged on the grounds of its being arbitrary, unfair and unreasonable. In support of his contention, he relied on the following decisions of the Apex Court:

- i) *Olga Tellis and Others Vs. Bombay Municipal Corporation and Others*,
- ii) *Central Inland Water Transport Corporation Limited and Anr. v. Brojo Nath Ganguly and another* 1986 (2) SLR 345
- iii) *M/S Dwarkadas Marfatia & Sons v. The Board of Trustees of the Port of*

Bombay, JT 1989 (Supp.) 146.

iv) Mahabir Auto Stores and Ors. v. Indian Oil Corporation , JT 1990 ( I) 363.

v) Delhi Transport Corporation v. D. T.C. Mazdoor Congress , 1990 (5) SLR 311. He further argued that in the present writ petition, the Petitioner was not only challenging the action of the Corporation in terminating the distributorship, but also seeking the relief of restoration of the distributorship which is beyond the scope of arbitration under Clause 37 of the agreement. For this purpose, he invited my attention to the decision of the Apex Court in E. Venkatakrishna v. Indian Oil Corporation and Anr., JT 2000 ( 10) 558. Thus according to him, the writ petition was maintainable for this reason as well. Referring to the decision of the Supreme Court in Amritsar Gas Services's case (supra), he submitted that the facts of that case were clearly distinguishable. In that case, the restoration of the distributorship was sought under the terms of the agreement with reference to the Specific Relief Act. As against this, according to him, in the present case, the order was being challenged on the ground of its being violative of Article 14, 19 and 21 of the Constitution of India. Referring to the contention on behalf of the Corporation that even if the termination of distributorship under Clause 27 is held to be bad, the only relief to which he would be entitled to is compensation for the notice period of 30 days in view of Clause 28 of the agreement, the learned Counsel contended that the Clause 28 is itself illegal and ultra vires being totally unfair and unreasonable. According to him. this clause gave an arbitrary power to the Corporation to terminate the distributorship without assigning any reasons. He relied on the decisions of the Apex Court in Central Inland Water Transport Corporation Limited and another, Olga Tellis and Ors. and Delhi Transport Corporation's cases (supra) wherein the rule conferring a similar power on the State or its instrumentalities in the Service Regulation of its employees had been struck down.

8. I have heard the rival contentions and have gone through the authorities relied upon by the Counsel for the parties. At the outset I may point out that there is no dispute that an order of the State or any instrumentality of the State can be challenged in a writ petition if it is violative of Article 14 of the Constitution. However in the present case, the dispute is about contractual obligations of the parties. It is undisputed that the distributorship had been granted to the Petitioner by the Respondent-Corporation under the terms of an agreement dated 1.4.1976. A copy of this agreement has been placed on record. This agreement is a standard format which apparently governs the distributorships awarded by the Corporation all over the country. In fact, it is a printed format in which a few blank portions are left to fill in the individual particulars and dates in respect of each distributor. Otherwise all the other clauses in respect of each distributor remain the same. It is also undisputed that the said agreement contains Clause 37 which requires that any dispute or difference arising out of or in relation to the agreement be referred to the sole arbitration of the Managing Director of the Corporation or some officer of the

Corporation, who may be nominated by the Managing Director. It is, therefore, evident that the cancellation of the distributorship under Clause 27 would be a dispute arising out of or in relation to the agreement and, therefore, it is incumbent upon the Petitioner to refer the same for arbitration under Clause 37 of the agreement itself. The Karnataka High Court in *E. Venkatakrishna Vs. The Indian Oil Corporation Ltd.*, while dealing with a similar situation under the same agreement had held that in view of this arbitration clause, the writ petition against the order of termination of the distributorship under Clause 27(n) could not be entertained. It is true that it had been observed in that case that if any agreement is terminated by the Corporation malafidely on collateral considerations, then a writ petition would be maintainable despite the provision of an arbitration clause. However, it is evident that no charge of malafide has been brought against any person in the present writ petition. All that has been contended is that the copies of the documents which had been relied on, for termination of the distributorship had not been supplied to the Petitioner. This, at best, can be said to be a procedural lapse and can neither be equated with lack of jurisdiction nor with any violation of Article 14 of the Constitution. This argument can certainly be raised and decided in the arbitration proceedings. Thus the controversy in the present writ petition revolves around the disputed questions of fact e.g. whether the partnership deeds are genuine or not; whether there was any agreement, according to which, financial and administrative control had been handed over to S.R. Wadhawan or not etc. and the same can only be determined in proper arbitration proceedings in which the relevant material on record can be examined in the light of the rival contentions of the parties. The Supreme Court in the case of *Smt. Rukmanibai Gupta Vs. Collector Jabalpur and Others*, had observed that "when there is an arbitration clause in a contract, the party aggrieved must have a recourse to the provisions of the Arbitration Act and that being a complete Code in itself, the party cannot approach this Court in a writ petition under Article 226 of the Constitution of India by-passing the arbitration clause and the provisions of the Arbitration Act." In *Food Corporation of India and others Vs. Jagannath Dutta and others*, the Supreme Court in para 5 had observed that "the High Court should not have gone into the question of contractual obligation in its writ jurisdiction under Article 226 of the Constitution of India." I also find support from the observations of the Karnataka High Court in para 7 of the *E. Venkatakrishna Vs. The Indian Oil Corporation Ltd.*, which reads as under:

The learned Counsel for the Petitioner, however, submitted that the Arbitrator provided for as an officer of the Corporation itself and further the terms and conditions set out in Cls. (a) to (h) were such as would show that the Petitioner was precluded from raising any question of bias against the Arbitrator and the decision of the Arbitrator was made final and conclusive, and, therefore, the arbitration clause should not be held as a bar for entertaining the writ petition. I am not convinced by the submission. The Petitioner has by his own volition entered into the contract which contains the arbitration clause. The Arbitrator is

one of the top officers of the Corporation, that is, the Director (Marketing). He is in duty bound to decide any dispute raised in an impartial manner. Further, as provided in Section 31 of the Act, it is also open for the Petitioner to raise questions about the fairness of the arbitration agreement itself before the Court if and when the award of the Arbitrator were to be against him. Further Clause 36 of the agreement shows that the agreement was made at Madras and the Petitioner had agreed that Courts at Madras alone have jurisdiction. Section 32 of the Arbitration Act bars suits on any grounds whatsoever including the effect or validity of an arbitration agreement. As held by the Supreme Court in the case of Smt. Rukmanibai Gupta Vs. Collector Jabalpur and Others, , whenever there is an arbitration clause in a contract, the party aggrieved must have recourse to the provisions of the Arbitration Act and that being complete code in itself, the party cannot approach the Court in a petition under Article 226 of the Constitution by passing the arbitration clause and the provisions of the Arbitration Act. For these reasons, I hold that in view of the arbitration clause, the writ petition cannot be entertained.

9. In these circumstances, it is evident that the present writ petition is not maintainable. The contention of the learned Counsel for the Petitioner that in view of the decision of the Supreme Court in E. Venkatakrishna Vs. Indian Oil Corporation and Another, , the question of restoration of the distributorship could not be decided by the Arbitration as it fell beyond the scope of Clause 37 of the agreement, cannot be accepted. Even in the case of Amritsar Gas Service (supra), the dispute arising out of the same agreement had been ordered by the Supreme Court to be decided by arbitration. In para 5 of its order, the Supreme court had reproduced its earlier order granting special leave in the earlier round of litigation as under:

Special Leave granted.

We have heard learned Counsel for the parties and we are of the opinion that the disputes between the parties can more appropriately be disposed of by arbitration. Subject to his consent in that behalf, we appoint Shri A.D. Koshal, a retired Judge of this Court, as arbitrator for the purpose of deciding the disputes between the parties, the disputes being those mentioned in Suit No. 376 of 1983 pending before the Court of the learned Senior Subordinate Judge, Amritsar. Learned Counsel for the parties are agreed to the appointment of Shri A.D. Koshal as arbitrator and are further agreed that they will be bound by any award made by him and will not question that award in any proceeding thereafter..... The appeal is disposed of accordingly.

10. The question of relief of restoration of the distributorship will arise only after it has been found by an appropriate authority that the order of termination of the distributorship under Clause 27 of the agreement was bad. A writ petition cannot be entertained in anticipation of such a finding. As and when a finding about the termination order being bad is finally recorded, it shall be open to the Petitioner to stake his claim before an appropriate authority for restoration of the

distributorship. He can also seek his remedies before the appropriate Courts in accordance with law. However, at this stage, the relief claimed by the Petitioner is premature and cannot be considered.

11. In view of my findings that the writ petition against the order of termination is not maintainable because of an arbitration clause in the agreement, I do not find it necessary to go into the contentions of the learned Counsel for the Petitioner challenging the validity of Clause 28 of the agreement dated 1.4.1976, Apart from the fact that it is highly doubtful that a party to a commercial agreement can be permitted to challenge a clause and that too after taking benefit under the same for 25 years, no action under Clause 28 has either been proceed or taken so far.

12. In view of the aforesaid discussion, I do not see any merit in this writ petition, which is hereby dismissed. However, it is necessary to observe that it is open to the Petitioner to raise the dispute about the alleged illegal termination of his distributorship under Clause 27 of the agreement before the Arbitrator by invoking the arbitration clause of the agreement. If and when such a request is made by the Petitioner, it is hoped that the necessary action will be taken by the Managing Director of the Corporation promptly and the issue decided in accordance with law. Keeping in view the facts and circumstances of the case, there shall be no order as to costs.