

(2011) 12 P&H CK 0112

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 12366 of 2011 (O and M)

Harbans Kaur

APPELLANT

Vs

Indian Oil Corporation and another

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 166 PLR 208

Hon'ble Judges : K. Kantian, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K. Kannan, J.

CM. No. 17210 of 2011

Application is allowed. Replication is taken on record.

C.W.P.No. 12366 of 2011

1. The petitioner challenges the decision of the Indian Oil Corporation cancelling the wholesale licence, which had been originally issued in the name of Gurdev Singh, husband of the petitioner. Gurdev Singh had been a war veteran in the 1965 and 1971 wars against Pakistan and having been rendered disabled by amputation of both legs, he had been awarded with the licence in a reserved category. Since he had a very serious disability, he had been permitted to associate his daughters in the business by a partnership arrangement of the licensee with the daughters. Gurdev Singh has expired and his widow viz, has been associated with his daughters. The trouble has started when one of the daughters, who holds a 24% interest in the partnership has given it in writing that she is a Government employee and the licence, which had been issued may be cancelled. She had also given other reason viz., that the dealership was engaging in unlawful activities in selling kerosene in open market to persons

without ration cards. Originally, a suspension order of licence had been issued on the representation received from one of the daughters of the petitioner but this was challenged in writ petition filed before this Court in C.W.P. No. 9087 of 2009. At the time when the writ petition was taken up, there had been an objection even regarding the maintainability of the writ petition having regard to the fact that there was a provision for arbitration. The Court held that in a situation where the widow of the war veteran was interested in carrying on with the business, it should take a sympathetic view and chose to put it back to the Indian Oil Corporation to consider the plea of the petitioner to allow her to continue the dealership. The Court also observed, dealing with the objection relating to the arbitrability of the dispute, that since it was still at the stage of show cause notice, there was no need to relegate the matter to arbitration. The Court expressly stated that the jurisdiction under Article 226 was self-imposed restriction and having regard to several circumstances, it found no reason to refer the matter to arbitration. This was again challenged in appeal to the Division Bench where the Division Bench confirmed the decision of the Single Judge both as regards the maintainability of the writ petition as well as the direction for sympathetic consideration.

2. On the matter being put back to the Indian Oil Corporation for fresh consideration, they have dug deep into certain circumstances that resulted in withdrawal of the wholesale dealership, which was restricted only to retail dealership when there had been some irregularities noticed in a surprise inspection carried out at the premises. This, among other reasons, has been allowed to prevail when an ultimate decision was taken. The Authority also had additional reason that the daughter, who had been a Government servant could not have been associated and decided to cancel the licence.

3. It is very easy to see through the records that one of the daughters, who had been associated with the mother and the other sister did not want the dealership to continue. If she was motivated by a sense of duty and rectitude that as a Government servant, she could not be associated in business, the best that she could have done, was to walk away from the dealership after informing the authorities that she was not associated in the business any longer. It would have been still possible for a partner, who had an overwhelming sense of duty and good conduct to inform of any wrong practice in the dealership and bring it to the authorities to see that such a dealership did not continue. This was already an issue, which had gone through a certain form of adjudication that had resulted in withdrawal of wholesale dealership and restricting the dealership only for retail trade. An issue that had resulted in some form of punishment could not have been again reopened only for the purpose of cancellation of the whole business, purporting to act on a complaint by one of the partners. The pre-ominant cause set in the show cause notice was a representation by one of the daughters that she was a Government servant and therefore, licence could be cancelled. It will mean violence to the language employed by the Court that a sympathetic consideration for a widow of a war veteran was being made when they chose to

cancel the licence. Such sympathetic consideration must be addressed to see whether there were any persistent misconduct, which could have resulted in cancellation of the licence, I find the authorities have merely acted on the fact that one of the partners was a Government servant and dug up the old instance of misconduct, which had already resulted in a partial cancellation of the licence in so far as the retail trade was concerned.

5. I do not think the action of the respondent has been fair. Learned counsel for the Corporation pleads vehemently that there is a dispute resolution mechanism provided under the dealership agreement and therefore, it should be referred to arbitration. If there were serious contentious issues and factual considerations, which would have necessitated collection of appropriate evidence for an adjudication, I would have definitely found it as a justifying circumstance to send it to arbitration. There is hardly any point of disputed fact. The consideration was whether the decision of the authority had a fairness component, which I have found, is wholly lacking. I quash the order and direct that on the representation of one of the daughters, Jagdish Kaur, it could be acted upon so as to relieve her from the dealership and issue a licence recognizing the petitioner and the other daughter as licencces for running the retail trade. With these observation the writ petition is allowed.