
(2010) 05 P&H CK 0092
In the Punjab And Haryana At Chandigarh

Harvinder Singh and Another	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2010) 159 PLR 325

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Kannan, J.

I. The dispute

1. By the impugned notice dated 19.12.2007 (Annexure P-11), the 3rd respondent had terminated the Maintenance and Handling Contract entered into through the instrument dated 01.08.2005. This was purported to be in pursuance of a policy dated 06.09.2006 and 13.10.2006 when the Ministry of Petroleum and Natural Gas laid down some guidelines for operation of public sector Oil Marketing Companies (OMCs) on Company Owned Company Operated (COCO) basis. This policy was an attempt to provide a commercial freedom and operate petroleum outlets through regular dealers. The formulation of policy has come through a meeting held at the Ministry on 29.09.2006 and a special scheme called as "Operation Vijay" (Kargil). There has been an amalgamation of IBP Company Limited with the Indian Oil Company Limited pursuant to a scheme of amalgamation and as a transferee Company, the Indian Oil Corporation has served this impugned notice to give expression to the policy considerations declared by the Ministry of Petroleum. The challenge by the petitioner is as a person directly affected by the cancellation.

II. The factual background

2. Earlier the IBP Company had issued advertisements in different newspapers in the year 2002 inviting applications for operation of retail outlets and after inspection of ideal location of the outlets, various locations had been identified as potential for establishment of petrol pump/retail outlet in Ludhiana, among other places. It is claimed by the petitioners that the first petitioner and Smt. Sinderjit Kaur wife of Gurmukh Singh, who was related to the first petitioner, had purchased land measuring 1 bigha 10 biswas in equal shares on a promise by the IBP Company that they would be made dealers of petroleum products for a long number of years. Based on the promise, the property at Seora village had been purchased in the joint names, at Rs. 2,25,000/- on 04.12.2002. The dealership was also offered to the first respondent after the property was initially taken on lease by IBP Company from the petitioners for a period of 30 years. When all the necessary installations had been made by the IBP Company, the authorization to run the petrol outlet had been given to the petitioners and a contract which was termed as "Maintenance and Handling Contract" was issued originally in favour of a person by name Avtar Singh, a cousin of the first petitioner, commencing from 01.06.2003 to 01.06.2005. Subsequently, the 2nd petitioner had been appointed as M&H Contractor on 01.08.2005 till 31.07.2006 which was subsequently extended to 31.01.2008. The cancellation of this contract is the subject matter before this Court.

III. Examination of the terms of contract to ascertain the strength of the challenge

3. Since all the transactions have come through written instruments setting out the mutual rights and obligations between parties, it is imperative that the parties could seek for enforcement of only such rights as are guaranteed under the contract and they cannot traverse beyond the same. It is, therefore, necessary to examine the lease deed executed in favour of the IBP Company which enabled the said Company to take possession of the property to make their installations and then later examine the M&H Contract to see whether it enables the petitioners to contend for the rights that they canvass for now.

4. The lease deed in favour of the IBP Company delivers the property to the Company to maintain or open the service station or filling station for supplying petroleum products for a period of 30 years. Clause 1 of para IV provides that the IBP Company shall have the liberty to assign, transfer or sublet the demised premises without restriction and without reference to the Lessors. The M&H Contract recognizes IBP Company as the person who has complete control over the property, apparatus and equipments that may be necessary for running a COCO retail outlet. The M&H Contractor has merely a right to operate the outlet and to render other services from the said premises on behalf of the Company. It must be noticed that the interest in the immovable property itself is not transferred in any way to the M&H Contractor. The dealership is not also issued to the M&H Contractor. The Company continues to retain its control over the property as well as their business. The M&H Contractor has merely a power to

sell the products to the customers delivered to him by the Company from time to time. Clause 10 of the agreement states that the licence and the permission granted by the Company for use of the premises and the outfit shall terminate immediately on the termination of the agreement. Clause 11 states that the Contractor shall not have any claim to employment with the Company at any time. In consideration of the services to be rendered under the agreement, the Contractor is to be paid contractual charges at Rs. 20,726/- per month and thereafter, the monthly contractual charges for, each quarter will be based on monthly average sale proceeds of three months. The agreement dated 01.08.2005 originally stipulates a period upto 31.07.2006 and it is an admitted case that beyond the period stipulated in the document, the petitioners had been allowed to continue till an express letter of the termination of the contract was made. IV. Limited scope of judicial review for State's policy consideration

5. Going by the terms of the agreement, it will be futile for the parties to contend that they had invested in the property for purchase under the belief that the dealership would be offered to them for a long number of years and they could not have been cut short by a change in policy. Policy considerations seldom fall within the judicial domain for being re-written. The extent of judicial review will apply only to examining whether the terms are reasonable and whether they conform to principles of public policy. Arbitrary or discriminatory character will also be relevant criterion to be examined through the prism of Article 14 of the Constitution. Beyond that, the petitioners cannot contend that the Oil Company shall have no right to terminate the contract and award dealership to any specified class of individuals. If under a policy of the State, it is specified that certain specified classes of persons in the Society have to be encouraged and the dealerships are to be awarded to those classes of persons, the termination of contract with the idea of enforcing the policy cannot be objected to by the petitioners. In the communication sent by the Government of India dated 06.09.2006 to the Chairmen of the Oil Companies which is challenged in the Writ Petition, it is directed that the OMCs should stop contractorship or ad hoc dealership and after phasing out COCO retail outlets, they should be offered and handed over to the holders under the following categories:

- (a) Special Scheme (Operation Vijay Kargil), the Kargil Allottees;
- (b) Discretionary quota scheme;
- (c) Corpus Fund Scheme (SC/ST category) dealerships for widows and women above the age of 40 years without earning parents.
- (d) Other categories as prescribed in the marketing plans.

The policy clearly stipulates the deserving classes of persons to whom the dealership should be granted. After setting down the detailed guidelines through the communication dated 13.10.2009 sent by the Oil Company to all the regional heads, it has been decided that the operation of COCOs through job contractorship should be stopped and temporary COCO should be operated for a

maximum period of one year through labour contractors. If at all, the COCOs are not phased out in full, a list of permanent COCOs to be operated is also required to be drawn up. Through these communications, a definite strategy has been worked out as to how the temporary COCO outlets should be handled in future. The Ministry has reviewed the progress of commissioning of dealership/distributorship under the operation Vijay-Kargil on 29.09.2006 which includes month-wise target for commissioning dealership/distributorship in a phased manner. The termination notice has followed after all these deliberations.

V. No plea of estoppel or legitimate expectation could be made against the terms of written contracts

6. The Learned Senior Counsel appearing on behalf of the petitioners refers to a decision of a Division Bench of the Karnataka High Court in Writ Appeal No. 3248 of 2009 between the Indian Oil Corporation Limited v. Sri Y.T. Narendra Babu and Anr. which is applied the principle of estoppel and legitimate expectation to quash the letters of cancellation similarly sent to other contractors. It appears this decision has been taken to the Hon''ble Supreme Court and the Hon''ble Supreme Court has also granted the stay of the order passed by the High Court in SLP No. 9655 of 2010. The Learned Counsel also refers to a decision of the Gujarat High Court dealing with a batch of cases to hold that the cancellation letters violated the principle of promissory estoppel and the respective petitioner's claim to dealership was directed to be first considered subject to rules which were prevailing at the relevant time. The learned Judge has found that all the petitioner were entitled to get an offer from the Oil Company provided all the terms and conditions of the Company prevailing at the time were fulfilled. It is also held that if the respondents-Corporation decided to run the petrol pump as being owned and being operated petrol pump, the first offer has to be given to the petitioners subject to the terms and conditions as well as the Corporation's policy prevailing at the time of offer. On such a line of reasoning, the Court has held that the petitioners and nominees were entitled to be appointed as dealers on retail outlets being maintained by the petitioners provided under the terms and conditions of the Company prevailing at the time of taking the decision to convert COCO into retail outlets.

7. The decisions of either the Karnataka High Court or the Gujarat High Court have no value of precedent for this Court except that the petitioners could probably contend that their submission may be considered on the same line of reasoning. The Hon''ble Supreme Court itself has not considered the matter yet and on their own showing, the decision of the Karnataka High Court as has been stayed by the Hon''ble Supreme Court. In my view, the rights of parties cannot obtain a larger play than how they have stipulated for themselves under the written instruments and they leave no scope for any arguments that the petitioners were led into a belief that they will be retained on a dealership basis for a long number of years. A contractor who does work for a Company owned outlet cannot obtain special privilege by the only fact that the property had

originally belonged to him or his relatives and that the petitioners offered on lease to the Company only under the belief that they will obtain a lease back from the Company. The principles of promissory estoppel ought to be rested on stronger grounds and not on mere fanciful expectations that have no roots on the definite terms of the contract. The legitimate expectation must again be on a representation that is clear from a contract. In this case, there is no contract that assures to the petitioners any tenure more than a fixed period of one or two years. There could be again no estoppel beyond what is represented under the terms of the document. The petitioners are now clamouring for rights which are inconsistent with the terms of the lease granted to the Company that gives an absolute liberty to the Company to decide its future course of action in relation to property for a period of 30 years and also inconsistent with the terms of the contract that stipulates only a particular period. The contractor that does work in the installations made by the Company does not at once become a self-anointed dealer with privileges. This Court has considered the similar situation already in yet another case and rejected a similar claim made in Civil Writ Petition No. 16469 of 2009, dated 03.03.2010 in Shyam Sunder Proprietor M/s T.C. Filling Station (Ad hoc) HPC Petrol Pump, Ambala Hisar Road, Village Ajrawar, Sub Tehsil Ismailabad, District Kurukshetra, Haryana v. Union of India and Ors. (2010-2) 158 PLR 725. This Court has held in the said judgment, "the plea of promissory estoppel has no meaning in a case where the transaction clearly spells out the respective rights and duties between the parties (to the contrary). The petitioner cannot lay claim to a larger right to hold on to a possession than what is secured through specific promise as contained under the contract. The conduct of the 2nd respondent as a public body could be amenable to the writ jurisdiction of the High Court but when the actions of the 2nd respondent are driven by contractual promises and are definite in nature, there is nothing arbitrary about the cancellation of the contract. There is nothing available for intervention." While dealing with a challenge to a policy, it was observed by this Court, "the statement of policy is only incidental to our consideration and it has to be set in its proper perspective to examine, if need be, whether the 2nd respondent's conduct was reasonable or not. The statement of a policy consideration for vacating premises from the hands of a temporary dealer is an additional ground to test the reasonableness of the demand of the 2nd respondent, though not a necessary test for examining the reasonable act." The Learned Counsel appearing on behalf of the respondents has also filed copies of the orders passed by the Hon''ble Supreme Court in SLP No. 5067 of 2008 and a batch of other cases that were filed against the decision of the Delhi High Court. The Hon''ble Supreme Court was dealing with two types of outlets namely, the Company Owned Company Operated retail outlet and other types of cases where persons were interested in obtaining dealership directly. The Hon''ble Supreme Court specifically directed itself to cases of retail outlets run by Maintenance and Handling Contractors, but who were not the owners of the demised lands themselves but relatives of such owners in some cases. While disposing of the applications where the period of contract had already expired, it had only served

notices in cases where agreements were executed between the parties within the time period when a policy provided for grant of dealership to landowners. I have not been shown through any specific policy that obtains to the petitioners any specific right under any policy.

VI. Disposition

8. The writ petition is wholly vexatious and it is dismissed with cost assessed at Rs. 10,000/-.