
(2010) 08 AP CK 0118
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 14 of 2010

Hindustan Petroleum Corporation Ltd. and Another	APPELLANT
Vs	
Margadarsi Service Centre	RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 08 AP CK 0118

Hon'ble Judges : R. Kantha Rao, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : Advocate General and Thoom Srinivas, for the Appellant; J. Prabhaker, for the Respondent

Final Decision : Allowed

Judgement

R. Kantha Rao, J.—This writ appeal is filed by M/s. Hindustan Petroleum Corporation Limited challenging the order passed by the learned single Judge in W.P. No. 14490 of 2009 on 22.12.2009.

2. The appellants issued notice dated 05.05.2009 to the respondent to show cause as to why the dealership of a petroleum outlet which was installed in the premises bearing Door No. 1-1-5/1, Rashtrapathi Road, Secunderabad shall not be terminated. The grounds on which, the termination of dealership was proposed by the appellants are that:

i) the respondent failed to reach the targets which she has covenanted to uplift the minimum quantities of products under Clause 9 of the dealership agreement and rendering the retail outlet dry of MS and HSD on several occasions during the period from January, 2009 to March, 2009 and thereby causing loss of sales and also inconvenience to the general public;

ii). that they have received a letter SME/8/2009-10 dated 20.04.2009 from State Bank of India, Secunderabad branch to the effect that the respondent had availed working capital facilities aggregating Rs. 2.30 Crores and in addition Rs.

0.50 Crores and that the respondent became irregular in paying instalments and the bank classifying the account as non-performing assets and proposing to initiate action for recovery of loan amount by invoking the provisions under Sarfaesi Act and that it is going to serve possession notice shortly initiating action to seize all the current assets of the retail outlet.

The respondent however, sent a reply to the show cause notice as well as the termination notice agreeing that the performance of the respondent is below the minimum off-take required for the products as per the dealership agreement and explaining that the dealership of the outlet was given to the respondent in the year 2007 after the death of her husband who was holding licence since 1977 and the time consumed by the respondent to understand the gross-roots of the business and the potential of the market and making a request to consider the case of the respondent on the ground that the last two years as an aberration due to the learning phase and with regard to the working capital loan with the State Bank of India, the respondent submitted that their working capital loan is 100% secured by their own residence and another property worth in total more than 4.5 Crores with collateral and personal guarantees and that the assets of the appellants/Corporation have not been offered as a security for loan.

3. Thereafter, the appellants examined the reply dated 13.05.2009 sent by the respondent, did not accept the explanation offered by the respondent, arrived at the opinion that the respondent failed to operate the outlet properly and kept the same dry on several occasions by commissions and omissions and stating that they had no option except to terminate the dealership agreement as provided under Clauses 9, 18, 13 r/w 55(k), ultimately terminated the dealership agreement dated 02.02.2007 with immediate effect.

4. The contention urged by the learned Advocate General on behalf of the appellants/Petroleum Corporation is twofold; one is that the writ petition itself is not maintainable as the action impugned in the writ petition is in the realm of private non-statutory commercial contract which cannot be enforced by invoking the jurisdiction under Article 226 of the Constitution of India and secondly that as the dealership agreement specifically provides for settlement of any dispute only having recourse to the arbitration process, the respondent is precluded from resorting to any other remedy as the remedy agreed to be pursued by the parties is equally efficacious.

5. On the other hand, the learned Counsel appearing for the respondent would submit that there is no hard and fast rule to restrict the interference of the High Court in its writ jurisdiction under Article 226 of the Constitution of India since the appellants-Corporation being a creature of a statute and an organization fully owned by the Union of India, the termination orders passed canceling the dealership of the respondent being arbitrary and in violation of principles of natural justice and that the officials of the appellants/corporation could have given opportunity to the respondent to improve the performance as held by the learned single Judge, allowing the writ petition.

6. Before advertng to the rival contentions, we wish to refer to the following decisions relied upon by the learned Advocate General appearing for the appellants:

i) Pimpri Chinchwad Municipal Corporation and Others Vs. Gayatri Construction Company and Another, In the said case, the Apex Court was dealing with the termination of contract by the Municipal Corporation on the ground that the respondents failed to complete the work of improvement and widening of a road within the agreed period under the contract. The agreement provided for in-house remedy for settlement of disputes, the High Court despite noticing the same, interfered in its writ jurisdiction and the Apex Court held that the order of the High Court is not sustainable since the agreement contained a condition wherein both parties agreed under the relevant clause that the right of action under the contract shall be referred to the Committee and the writ petitioner could seek such remedy which is available in law. The Apex Court expressed the view that the order passed by the High Court allowing the writ petition is unsustainable and the High Court ought not to have exercised the power of judicial review in contractual transactions of Government.

While dealing with the above case, the Apex Court relied upon its earlier decision in Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others, wherein it was held as follows:

The interpretation and implementation of a clause in a contract cannot be the subject-matter of a writ petition - If a term of a contract is violated, ordinarily the remedy is not the writ petition under Article 226. We are also unable to agree with the observations of the High Court that the contractor was seeking enforcement of a statutory contract. A contract would not become statutory simply because it is for construction of a public utility and it has been awarded by a statutory body.

A statute may expressly or impliedly confer power on a statutory body to enter into contracts in order to enable it to discharge its functions - Every act of a statutory body need not necessarily involve an exercise of statutory power. Statutory bodies, like private parties, have power to contract or deal with property. Such activities may not raise any issue of public law - The contract between the parties is in the realm of private law. It is not a statutory contract. The disputes relating to interpretation of the terms and conditions of such a contract could not have been agitated in a petition under Article 226 of the Constitution of India. That is a matter for adjudication by a civil Court or in arbitration if provided for in the contract.

7. In Sri Lalitha Devi Gas Agencies Vs. Hindustan Petroleum Corporation Ltd. and Another, and Choday Sanyasi Rao, HPC Retail outlet Vs. Hindustan Petroleum Corporation Limited, Division Bench of this Court held that rendering the judgments in relation to the dealership agreement between HPCL and the dealers that when the dealership agreement contains an arbitration clause that all the

disputes arising under the contract shall be referred to the Arbitrator who is empowered to decide all kinds of disputes relating to the contract, the only course open to the petitioner/dealer is to submit for arbitration and the arbitrator is competent to decide all the questions including his competency to rule on his own jurisdiction and the High Court cannot invoke the powers under Article 226 of the Constitution of India to settle the disputes.

8. The instant case is not in any way different from that of the cases referred above dealt with by the Apex Court and the Division Bench of this Court. As rightly contended by the learned Advocate General, the learned single Judge in our view instead of ascertaining the decision making process, examined the correctness of the decision itself having recourse to the power of judicial review. The learned single Judge also overlooked the facts namely the writ petition was in the realm of private non-statutory commercial contract and also the availability of an alternative and an efficacious remedy in the form of arbitration which was agreed by both the parties under the arbitration clause and the learned single Judge in our view ought to have held that the writ petition is not maintainable on these two grounds. Further the issues raised by the writ petitioner in the writ petition involved evaluation of the disputed questions of fact on merits which shall not be adjudicated in a writ petition filed under Article 226 of the Constitution of India.

9. We also totally agree with the submissions made by the learned Advocate General that the respondent positively admitted that she never achieved the target in 2007-08 and 2008-09 and kept the retail outlet persistently dry due to the non-availability of petroleum products obviously considerable loss was caused to the Corporation. The corporation in its decision making process adhered the norms of fairness by putting the respondent on notice affording opportunity to submit the explanation and passing reasoned order in consideration thereof mainly resting on the admissions made by the respondent in her explanation. The learned single Judge therefore ought not to have interfered with the final decision of the appellant on the ground of proportionality we cannot accede to the view taken by the learned single Judge that the decision making process of the appellant itself is arbitrary and erroneous.

10. For the aforementioned reasons, we agree with the submissions made by the learned Advocate General that the writ petition is not maintainable and that the order passed by the learned single Judge setting aside the termination order passed by the Corporation and directing the appellants to associate a Senior Officer with the agency of the respondent to guide and monitor the activities at the petroleum outlet from time to time to ensure proper supply and any instance of permitting the outlet to become dry of its stock, due to paucity of funds with the respondent, shall by itself constitute the basis for cancellation, cannot be sustained and we are of the view that the impugned order is outside the purview of the extraordinary jurisdiction conferred on the High Court under Article 226 of the Constitution of India.

11. Accordingly, we set aside the impugned order passed by the learned single Judge and allow the appeal without any order as to costs.