

(1990) 09 P&H CK 0098
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1905 of 1989

Hindustan Petroleum Corporation Ltd. and another	APPELLANT
Vs	
Sardar Chand and another	RESPONDENT

Date of Decision : 17-09-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 1, Order 41 Rule 1, Order 41 Rule 27
Companies Act, 1956 — Section 291
Constitution of India, 1950 — Article 147, 147A, 148, 148(7)

Citation : AIR 1991 P&H 185

Hon'ble Judges : Amrit Lal Bahri, J

Bench : Single Bench

Advocate : S.M.L. Arora, for the Appellant; Ajai Lamba, for the Respondent

Judgement

A.L. Bahri, J.—This revision petition is directed against order of Additional District Judge, Ambala dated February 1, 1989 dismissing the appeal filed by the present petitioner, as incompetent.

2. Sardar Chand filed a suit against the Hindustan Petroleum Corporation Limited (hereinafter referred to as the Corporation) for declaration that he was entitled for letter of intent for retail outlet dealership of H.S. Diesel near village Mandhar and that withdrawal of the intent letter dated July 3, 1985 vide letter dated November 27, 1986 by defendant No. 2 was illegal and void and for mandatory injunction directing the defendants to revalidate letter dated July 3, 1985. Along with the suit, an application for interim order was filed. The trial Court on October 1, 1987 directed the defendants to maintain status quo till further orders. Against the aforesaid order, an appeal was taken to the Additional District Judge, Ambala wherein an objection was taken to its maintainability, which resulted in passing of the impugned order.

3. In the revision petition, an application under O.41, R.27 of the CPC had been filed in order to take into consideration the documents Annexures A/1 to A/4.

Notice of this application was given to the respondents. This application is also being disposed of.

4. The question for consideration is as to whether Shri J. Sethi, who was attorney of the Corporation could take a decision and file the appeal before the lower appellate Court or not. If it is held that he had the power to decide to file the appeal then the appeal before the lower appellate Court would be competent and if it is held that he was not the authority to decide, but the authority vested in the Board of Directors of the Corporation and there being no resolution passed by the Board of Directors, Shri J. Sethi, could not file the appeal although he may be competent to sign the memorandum of appeal. Such a question was to be determined on going through the Memorandum and Articles of Association of the Corporation as well as different powers of attorney executed on behalf of the Corporation. Thus, it has been considered necessary for just decision of the case to take into consideration the documents accompanying the application filed under O.41, R. 27 of the Code of Civil Procedure. The application is, therefore, allowed.

5. Article 147 of the Memorandum and Articles of Association provides powers of Directors of the Board. Under Art. 147(A) the powers of the Directors/Chairman and Managing Director can further be delegated Art. 148 contains certain powers of the Board. Sub-sec. (7) of Art. 148 refers to the subject of suits and it reads as under:--

"Art. 148(7) "To institute, conduct, defend, compound, or abandon any legal proceedings by or against the Company or its officers, or otherwise concerning the affairs of the Company, and also to compound and allow time for payment or satisfaction of any debts due to, and of any claims or demands by or against the Company, and to refer any differences to arbitration, and observe and perform any awards made thereon."

6. The Board of Directors, thus, was the authority under the Articles of Association, as referred to above to take a decision regarding institution or defending the suits. The power was delegated to Sh. Mohinder Kumar Bagai vide power of attorney Annexure A/2., now produced. Mr. M. K. Bagai was Director Marketing. Under this attorney, Mr. Bagai was further authorised to delegate the aforesaid powers mentioned therein to officer in the Marketing Division. This action of giving authority to Mr. M. K. Bagai was rectified by the Board of Directors in its meeting held on September 30, 1981 vide resolution A-8, copy Annexure A-1. Subsequently, Mr. Bagai delegated the power to Sh. J. Sethi, copy of which was produced along with memorandum of appeal filed in the lower Appellate Court. Copy has been shown and produced in this Court as well. This authority was executed on September 16, 1983. Under this authority, power was given to prosecute and defend suits under cl. 5(1) and to appeal, from any judgment and order adverse to the Company under cl. 5(iv). The matter of taking decision by the Board may differ from Company to Company. In the present, reference has been made to the Articles and Memorandum of

Association showing as to how such decisions were required to be taken by the Board or by the authorities delegated. Thus, it was not a case where the defendant-Corporation was required to pass resolution in every case where the suit was to be filed or an appeal was to be filed in the meeting of Board of Directors. Such authority was delegated by the Board to Mr. Bagai, who was also competent to further delegate it and he did so in favour of Mr. J. Sethi. The appeal having been filed by Mr. J. Sethi under such authority was, therefore, competent. This Court in Pepsu Road Transport Corporation, Patiala v. Kirat Mohinder Singh, 1983 PLR 219 had held as under:--

"The resolution fully authorised the General Manager to act on behalf of the petitioner in all the cases filed or to be filed by or against it. The passing of any specific resolution is not contemplated under the Act in each and every case. Moreover, it will depend upon the constitution of a Corporation and the manner in which its functions regulated by the State itself. There cannot be any universal rule that every Corporation must act through resolutions passed by it in each and every case."

7. The learned counsel for the respondents has referred to the decision of this Court in Punjab Wakf Board through its Secretary Ambala Cantl. v. Darb Singh (deceased) through his L.Rs. 1988 Cri.LJ 640 a case under the Wakf Act; wherein it was held that the Wakf Board was to take a decision for filing appeals. The Secretary of the Wakf Board of its own could not take such a decision and file the appeal. The ratio of this decision cannot be applied to the case in hand. That was not a case relating to a Company registered under the Companies Act. The present Corporation is a registered Company and is governed by its own rules and regulations provided in the Memorandum and Articles of Association, which have been discussed above.

8. For the reasons recorded above, this Revision Petition is allowed. The order of the Additional District Judge is set aside and the appeal filed in the lower Appellate Court is held to be maintainable. The case is sent to the Court of Addl. District Judge, Jagadhri for deciding the appeal on merits according to law. The parties through their counsel are directed to appear there on October 12, 1990. There will be no order as costs.

9. Revision allowed.