
(2015) 09 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Writ Petition No. 9206 of 2015

Jagdamba Farming Centre

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd. and Others

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 34, 36, 9

Citation : (2015) 09 RAJ CK 0046

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : Vikas Balia, for the Appellant; Dinesh Mehta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Pratap Krishna Lohra, J—The petitioner, a proprietorship concern, was allotted retail outlet dealership by the respondent-Corporation at village Ren situated on NH-89 in the year 1982. In terms of the lease agreement, the petitioner-firm was authorised to sell High Speed Diesel (HSD). It emerges out from the facts averred in the petition that some dispute cropped up between the petitioner and the respondent-HPCL and in terms of clause 66 of the dealership agreement dated 10.06.2008 the matter was referred to the sole arbitrator for adjudicating the dispute. The sole arbitrator Mr. M.K. Sharma after hearing the rival claims rendered its award on 04.08.2015. The operative portion of the award reads as under:--

"1. That the Respondent Corporation was justified in suspending the Sales and Supplies of the Claimant and the act of suspension is valid and proper in light of above discussed factual and legal matrix.

2. That the serving of the Show Cause Notice dated 03/03/2015 is in the form of opportunity given to Claimant to provide explanations and as such cannot be considered as legally invalid.

3. That the Claimant is not entitled to Claim of Rs. 16,18,000/- as Claimant has failed to carry out his obligations as per Dealership Agreement and in light of above referred clause No. 33 and 46 of the Dealership Agreement and hence Claimant cannot be allowed to be benefitted out of his wrong/irregularity.

4. Both the parties i.e. Claimant and Respondent shall bear their respective expenses and costs."

2. In substance, the sole arbitrator was concerned with the dispute pertaining to suspension of sales and supplies of the petitioner-claimant and its claim worth Rs. 16,18,000/- and both these issues were decided by the sole arbitrator against the petitioner-claimant. Being aggrieved by the arbitral award, the petitioner made an application under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act") before the District & Sessions Judge, Merta City which is still pending consideration.

3. It so happened that after the arbitral award, taking note of its finding, justifying suspension of sales and supplies of the petitioner, the respondent-HPCL by its order dated 13.08.2015 (Annex.8) terminated the dealership agreement of the petitioner. It is said order which is a cause of grievance for the petitioner and, therefore, the petitioner has laid this writ petition to assail the same.

4. Precisely in the writ petition, the petitioner has questioned the impugned order on the ground that the arbitral proceedings have not attained finality inasmuch as its application for setting aside arbitral award is still pending consideration before the learned District & Sessions Judge, Merta. In that background, the petitioner has urged that the arbitral award has not become enforceable under Section 36 of the Act and, therefore, the impugned action is per se bad in law. For substantiating this assertion, the petitioner has specifically pleaded in the writ petition that the subject matter of the arbitral proceedings is having direct nexus with the impugned order and, therefore, it was not desirable from the respondent-HPCL to take adverse decision of terminating the dealership agreement. The petitioner has also contended that issuance of impugned order has jeopardised the entire proceedings under the Act and it is likely to prejudice the cause of the petitioner which he has agitated before the learned District & Sessions Judge. A specific ground is urged in the writ petition that respondents are taking steps to take possession of the retail outlet inspite of the fact that matter is sub-judice before the Court and, therefore, the rights of the petitioner be protected so that its claim may not be frustrated.

5. While contesting the writ petition, the respondents in their return refuted all the averments contained in the writ petition. Joining the issue with the petitioner, the respondents have averred in the reply that in the entire writ petition, there is no ground urged by the petitioner to assail the impugned order except on the anvil of the pendency of the arbitral proceedings. Taking serious exception to the positive assertion of the petitioner that before passing the impugned order, no notice inspiring action was served on it, the respondents have submitted in the

return that this assertion is factually incorrect. For substantiating this fact, the respondents have placed on record show cause notice dated 03.03.2013 and its reply dated 29.04.2013 submitted by the petitioner as Annex.R/2 and R/3 respectively. While refuting the allegation of the petitioner that action of the respondents in terminating the dealership agreement is having nexus with the earlier arbitral award, the respondents have pleaded in the return that the same has no casual connection and the impugned action is independent of the earlier dispute between the rival parties. As per the respondents, in the earlier arbitral proceedings, the sole arbitrator was concerned with the suspension of sales and supplies of the dealer with effect from 26.02.2013. The respondents have also defended their action of taking possession of the retail outlet by asserting that after termination of dealership agreement, the petitioner cannot be allowed to retain possession and in the public interest, the respondent-HPCL may be permitted to run the petrol pump. With these assertions, the respondents have prayed for rejection of the writ petition.

6. I have heard learned counsel for the parties. Perused the impugned order and materials available on record.

7. Upon perusal of the impugned order and the grounds urged by the petitioner to assail the same, there remains no quarrel that earlier arbitral proceedings were confined to the suspension of sales and supplies to the petitioner and its alleged claim worth Rs. 16,18,000/-. The sole arbitrator after analysing the evidence and other materials finally passed the award favouring the cause of the respondents. True it is that the petitioner's application under Section 34 of the Act against the arbitral award is pending consideration before the District & Sessions Judge, Merta, but in my considered opinion, that itself cannot divest the respondent-HPCL from taking any action against the petitioner pursuant to the show cause notice which was issued to it on 03.03.2013. A bare perusal of the impugned order makes it amply clear that competent authority while issuing the order has taken note of all the facts which were relevant and germane to the matter and passed a detailed speaking order. The proceedings under Section 34 of the Act are not akin to the appellate proceedings and, therefore, mere pendency of application under Section 34 of the Act, it is rather unsafe to presume that respondents were precluded from taking any action against the petitioner in accordance with law. Moreover, while delving deep into the matter, in my considered opinion, the petitioner has miserably failed to show any nexus between the earlier arbitral proceedings and the impugned order and I am also unable to find any causal connection between the said earlier arbitral proceedings and the impugned action of the respondents.

8. There is yet another aspect of the matter that whether after termination of dealership agreement, the petitioner can invoke Section 9 of the Act. On perusal of Clause (ii) (e) of Section 9 of the Act clearly and unequivocally reveals that Court may pass any interim measure of protection which may appear to the Court just and convenient. The language employed by the legislature is to be

given very wide amplitude and if the petitioner is in a position to satisfy the Court about any casual connection of the impugned action of the respondents with the arbitral proceedings, such remedy can very well be availed. However, in the backdrop of the facts and circumstances of the instant case and the grounds urged by the petitioner are falling short to assail the impugned order for being upset in exercise of extraordinary jurisdiction of this Court.

9. The respondents have also submitted that the petitioner is not handing over possession of the premises despite termination of dealership agreement. The respondent's claim is that consequence of termination of dealership is that the petitioner is to vacate the premises so that Corporation can operate either independently or through dealer. In support of his contention, learned counsel for the respondents has placed reliance on a decision of Hon'ble Apex Court in *Rahul Yadav & Anr. v. M/s. Indian Oil Corporation Ltd. & Ors.* (Civil Appeal No. 4909/2015) decided on 01.07.2015. Paragraph 18, 19 & 20 of the decision in *Rahul Yadav*(supra) are reproduced as under:--

"18. On a plain reading of the aforesaid agreement, it is clear as noon day that it has no connection whatsoever with the lease agreement. Both the agreements are independent of each other. The appellant was a dealer under the lessee, that is, the Corporation. The dealership is liable to be cancelled on many a ground. In case there is a termination, dealership is bound to be cancelled and at that juncture, if the lease deed is treated to have been terminated along with the dealership, it will lead to a situation which does not flow from the interpretation of the instruments. The dealership agreement has been terminated because of the decision rendered by this Court in *Mukund Swarup Mishra* (supra). The consequence of cancellation of the dealership is a sequitur of the judgment. The inevitable consequence of that is the appellant has to vacate the premises and the Corporation has the liberty to operate either independently or through another dealer. The appellant cannot be allowed to cause obstruction or create an impediment. The submission that the appellant entered into the lease agreement at a monthly rent of Rs. 10,000/- as it was given the dealership is a mercurial plea, only to be noted to be rejected. The dealership was availed of as has been held by this Court in an inapposite manner. In such a situation, consequences are to be faced by the appellant.

19. The second issue which has been feebly raised by the learned senior counsel for the appellant that the 1971 Act would not be applicable has really no force. Admittedly, the respondent is a public sector undertaking. The appellant whose dealership has been cancelled, cannot claim possession to retain possession on the basis of ownership of the land as the lease is in continuance. Therefore, he is a trespasser. Thus, the provisions of the 1971 Act apply on all fours and accordingly we repel the said submission.

20. We will be failing in our duty if we do not take note of another submission which has been alternatively and assiduously canvassed by Mr. Sibal, learned senior counsel for the appellant. It is urged by him as the termination was

directed by the Corporation by virtue of the judgment of this Court and not because of any wrong committed by the appellant and hence, his case should be reconsidered for grant of dealership under the new policy. Ms. Meenakshi Arora, learned senior counsel for the Corporation has filed the prevalent policy. We do not intend to allude to the same and issue any direction. Once there is a policy and any candidate fits in, needless to say, when there is an advertisement; he is at liberty to apply. We are not disposed to advert to the policy at this juncture. If the policy permits, as we have said, the appellant is at liberty to apply. However, we must clarify that our grant of liberty does not mean that the appellant shall create an impediment for the Corporation to enter into and take possession and run the petrol pump on its own or appoint a dealer."

10. Therefore, viewed from any angle, I am not persuaded to interfere in the matter and consequently the writ petition fails and the same is hereby dismissed.

11. It is made clear that dismissal of writ petition shall not preclude the petitioner from availing any other remedy in accordance with law.