(2011) 06 UK CK 0059

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1135 of 2011

Jaspinder Singh APPELLANT

Vs

Indian Oil Corporation and Others RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Citation : (2011) 06 UK CK 0059

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sudhanshu Dhulia, J.—Heard Mr. Sharad Sharma, Senior Advocate assisted by Mr. Bhuwan Bhatt, Advocate for Petitioner and Mr. V. K. Kohli, Senior Advocate assisted by Mr. T. C. Pande, Advocate for Respondent Nos. 1 and 2.

2. The Petitioner runs a petrol pump under an agreement with the Indian Oil Company. The pump is being run by the Petitioner since 22nd August, 2007. Now the Petitioner is aggrieved by an order dated 9th March, 2011 by which the licence to run the retail outlet of petrol pump has been cancelled.

3. The grounds of challenge in the present writ petition is that earlier the Oil Company has given a show cause notice dated 25.11.2010 for which Petitioner was asked to give explanation as to why the licence be not cancelled as he has handed over the petrol pump to another person namely, Vikas Batra by giving a power of attorney in his favor. In reply to the show cause notice was given by the Petitioner admitting that a power of attorney was given in favour of one Mr. Vikas Batra but this was purely temporary in nature and it was done as the Petitioner was not in good health to run the petrol pump. In other words, certain reasons were assigned for executing a power of attorney in favour of Mr. Vikas Batra. After looking at the reply of the show cause notice, the Oil Company has cancelled the licence of the Petitioner for the reasons that he has violated the condition Nos. 45 and 46 of the agreement. Condition Nos. 45 and 46 of the

agreement reads as follows:

(45) It shall be a paramount condition of the agreement that the Dealer himself (if he be an individual) or both partners of the dealer firm (if the dealer is a partnership fir consisting of two partner only) or the majority of the partner of the dealer co-operative society (if the dealer is a cooperative society) as the case may shall be take active part in the management and running of the retail outlet and shall personally supervise the same and shall not under any circumstances do so through any other person fir or body.

(46) Except with the previous written consent of the corporation.

(i) The dealer shall not enter into any agreement contract or understanding where by the operations of the dealer here under are or may be control carried out and/or financed by any other person firm or company whether directly or indirectly and whether whole or part.

(ii) The dealer himself if he be an individual or partner/member of any of them of the dealer (if a dealer is a firm/cooperative society) shall not take up any other employment or engage in other business apart from running of the retail outlet which is the subject matter of this agreement.

(iii) The dealer (if it be a firm or a cooperative society) shall not effect any change to its constitution whether in the identified of its partner/member or in the share/share holding of any of them or in term of the deed of partnership or by the byelaws as the case may be in the event of the death of the any partner/ member of firm/cooperative society which has been appointed as a dealer hereunder the surviving partners/members hereby agree to indemnify and keep indemnify the corporation against any claim or demand which may be made by the heirs of the deceased partner/member.

4. The Petitioner has relied upon certain anomalies in the procedure inasmuch as certain letter of the bank was not even in existence before the show cause notice was given to the Petitioner nor was this letter shown to the Petitioner on which reliance was placed by the Oil Company. Moreover, the Petitioner has stated that there was no cause for cancelling the licence of the Petitioner for running the petrol pump inasmuch as the power of attorney executed by the Petitioner was already revoked by him on 21st October, 2010 i.e. even prior to the show cause notice was given to the Petitioner.

5. Learned Senior Counsel appearing for the Oil Company Mr. V. K. Kohli on the other hand stated that the writ petition is not maintainable in view of Clause 67 of the agreement which is an arbitration. Clause 67 reads as follows:

(67) Any dispute of difference of any nature whatsoever or regarding any right, liability, at omission on account of any of the parties hereto arising out of or in relation to this agreement shall be referred to the sole arbitration of the Director marketing of the corporation, or of some officer of the corporation who may be nominated by the Director Marketing. The dealer will not be entitled to raise any

objection to any such arbitrator on the ground that he arbitrator is an officer of the corporation or that in the matters in dispute or differences. In the event of the arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to Act for any reason the Director Marketing as aforesaid at the time of such transfer, vacation of office or inability to act shall designate another person to act as arbitrator in accordance with the term of the agreement. Such person shall be entitled to proceed with the reference from the point at which it was left by is predecessor. It is also at term of this contract that no person other than the Director Marketing or person nominated by such Director Marketing of the corporation as for said shall act as arbitrator hereunder. The award of the arbitrator so appointed shall be final, conclusive and binding on all parties to the agreement, subject to the provision of Arbitration Act, 1940 or any statutory modification of or reenactment thereof and rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause.

6. The counsel for the Petitioner the position that the Petitioner was running a petrol pump outlet by means of an agreement, which admittedly has an arbitration clause, as referred above.

7. Therefore writ petition is presently not a remedy available for the Petitioner as he has to first resort to the arbitration clause. Moreover, leaned senior counsel appearing for the oil company Mr. V.K. Kohli has also taken this Court to the various documents filed with the writ petition which show that primarily a power of attorney was executed by the Petitioner by which the entire petrol pump was handed over to one Mr. Vikas Batra which is a gross violation of condition Nos. 45 and 46 of the agreement.

8. Be that as it may, without going into the merits of the case since admittedly there is an arbitration clause, it is a settled view of law that writ petition should not normally be entertained in such matters at this stage.

9. Writ petition is therefore dismissed.

10. No order as to cots.