(1997) 03 P&H CK 0063

In the Punjab And Haryana At Chandigarh

Case No : Civil Revision No. 5137 of 1996

Joginder Pal APPELLANT

Vs

Hindustan Petroleum Corpn. Ltd. and others RESPONDENT

Date of Decision : 05-03-1997

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 115 , 151
Prevention of Corruption Act, 1988 — Section 13, 7

Citation : AIR 1997 P&H 248 : (1997) 117 PLR 110 : (1997) 2 RCR(Civil) 605

Hon'ble Judges : H.S. Brar, J

Bench : Single Bench

Advocate : Kanwaljit Singh, for the Appellant; Jagdish Marwaha and Rajesh Khurana, for the Respondent

Judgement

1. This is a revision-petition against the orders dated 29-8-1996 and 16-11-1996 of the trial Court and lower Appellate Court, respectively, vide which an application under Order 39, Rules 1 and ''2'' read with Section 151, C.P.C. filed by the petitioner-plaintiff for grant of temporary injunction against the suspension of supply of petroleum products by the respondents-defendants, vide their letter dated 8-8-1996 annexed as An-nexure P-4 with the petition, was dismissed.

2. Undisputedly, a retail outlet of petroleum produces was granted in favour of Joginder Pal petitioner-plaintiff vide an agreement dated 18-6-1984 executed between the parties at Chandigarh and he started business in the name of M/s. Kakria Brothers, at Samana and continued doing" the business of sale of diesel, petroleum and lubricants as per procedure. One Rajdeep Singh who was employed as a Manager with the firm in the year 1990 was later enjoined as a partner in the firm on 1-4-1994. By this adjustment Joginder Pal petitioner-plaintiff has got 51% share and Rajdeep Singh has got 49% share in the concern.

3. Shri B. R. Puri, Chief Regional Manager of the Hindustan Petroleum Corporation (hereinafter called ''the Corporation'') issued a letter dated 8-8-1996

(Annexure P-4) vide which he suspended the supplies of products to the retail outlet of the petitioner with immediate effect till such time when he could prove his bona fide with regard to the operation of his outlet as per dealership agreement signed between the parties on 18-6-1984. The stoppage of the supply of the products to the outlet of the petitioner was based on some irregularities committed by the petitioner mentioned in the letter which are reproduced as under :--

"(a) You were not available at the retail outlet and one Shri Rajdeep Singh posing as Manager had conveyed to our officers that he is the owner of this outlet.

(b) Name of Shri Rajdeep Singh is painted at the Sales room building as sole proprietor- Kakria Brothers, Samana.

(c) The painting at the outlet was not as per standard colour specifications prescribed by the Corporation. Moreover, the cheques drawn on Punjab and Sind Bank, Samana (Current Account No. 1911) are being presented at our Paliala depot which are signed by Shri Rajdeep Singh, as partner, which is totally in contravention of clause No. 47, (ii) of Dealership agreement dated 18-6-1984 signed between you and us. The clause 47(ii) of the Dealership Agreements reads as "Except with the previous written consent of the Corporation;

(ii) The dealer (if it be a firm or a Cooperation Society shall not effect any change in its constitution whether in the identify of partner-members or in the share/ shareholding of any of them, or in the terms of the deed of partnership or of the eye-laws as the case may be."

Since you had not been attending to the operations of retail outlet, we had called you to our office vide our letter dated 22nd February, 1994 when you promised to run the retail outlet yourself. But our Sales officers during their subsequent visits have also not found you at the outlet which is also contravention of our Dealership agreement."

4. The petitioner filed a suit for permanent injunction to the effect that the defendants-respondents be restrained from stopping the supply of petroleum products to the plaintiff and further to restrain the respondents-defendants from terminating the dealership agreement of retail outlet with the plaintiff-petitioner M/s. Kakria Brothers, Samana and to declare the letter dated 8-8-1996 as illegal, null and void. Along with the suit he filed an application for a temporary injunction injuncting the authorities to stop the petroleum products. The learned Courts below as stated above dismissed the application of the petitioner under Order 39, Rules 1 and 2 read with Section 151, C.P.C. and refused to restore the supply. Hence this revision-petition.

Initially notice of motion was issued by a Hon''ble Judge of this Court and the respondents were directed to restore the supply of petroleum products. The revision-petition has now been put up for regular hearing before me after its admission.

The learned counsel for the petitioner submits that the orders of the Courts below be set-aside and the respondents be directed to continue the supply of the petroleum products to the peiitioner-plaintiff till the final decision of the suit, on the following grounds :--

(i) That the order of suspension of the petroleum products of the petitioner vide letter dated 8-8-1996 (Annexure P-4) is arbitrary, mala fide and is an act of the vengeance. The learned counsel explains that Shri R. K. Jain, a Sales Officers of the respondents, asked Rajdeep Singh the partner of the petitioner-firm to take delivery of the lubricants worth about rupees five lacs which delivery he refused to take as that much quantity of the lubricants was not required. Shri R. K. Jain, then demanded a bribe of Rs. 10,000/- from Rajdeep Singh to make adjustments but Rajdeep Singh was not prepared to give this bribe. However, on making persistent demands by R. K. Jain, Rajdeep Singh agreed to pay Rs. 5,000/- as bribe. Rajdeep Singh reported the matter to the Vigilance Department and at his instance FIR No. 52 was registered by Police-Station, vigilance Bureau, Patiala under Sections 7 and 13 of the Prevention of Corruption Act against R. K. Jain and he was trapped while accepting Rs. 5,000/- as bribe from Rajdeep Singh. The Sales Officer, Shri R. K. Jain, was produced in the Court on 6-8-1996 and was bailed out on 7-8-1996. The letter vide which the supply of the petroleum products was stopped to the petitioner was issued by the Chief Regional Manger on 8-8-1996 (Annexure P-4). Before the issuance of this letter dated 8-8-1996, a letter dated 7-8-1996 (Annexure P-3) was addressed by the same Chief Regional Manager, to the petitioner, vide which it was complained that Shri R. K. Jain should not have been got trapped by the Vigilance Department and if Shri R. K. Jain had acted in a way which was harmful to the business it should have been brought to their notice by the petitioner rather than to take an extreme step of taking help of the vigilance Department. Vide this letter an explanation was sought trom the petitioner about this act of his and a week''s time was given to him for replying the same.

(ii) That the petitioner had inducted Rajdeep Singh as a partner in his business to the extent of 49% though formal previous written consent of the Corporation as envisaged under Clause 47 of the agreement was not taken. It was in the knowledge of the Corporation that Rajdeep Singh has been inducted as a partner is the firm and Shri Rajdeep Singh was dealing as a partner with the corporation and its employees since more than the last two years before suspension of supplies to the petitioner company. In these circumstances, though written consent was not taken for appointing Rajdeep Singh as a partner in the concern but the implied consent was deemed to have been taken when it was already in the knowledge of the respondents and Rajdeep Singh has acted and dealt with the respondents as partners. The learned counsel has also cited State of Punjab Vs. Geeta Iron and Brass Works Ltd., in order to substantiate his argument for grant of temporary injunction in favour of the petitioner.

5. On the other hand, the learned counsel for the respondents-defendants has

submmit-ted that no fault can be found with the orders of the Courts below as the petitioner-plaintiff has violated the terms of the agreement executed between the parties on 18-6-1994. The petitioner-plaintiff has inducted Rajdeep Singh as a partner is the firm without the written consent of the Corporation as has been provided in the agreement.

6. The learned counsel for the respondents has further contended that the petitioner-plaintiff is not entitled to file a suit in a Civil Court as according to the agreement between the parties, the dispute in question could be referred to an arbitrator under Clause 68 of the Agreement.

7. After hearing the learned counsel for the parties, I find it very difficult to interfere with the concurrent findings of the Courts below vide which the prayer of the petitioner to stop the operation of the order of the respondents contained in the letter Annexure P-4 vide which the supplies of the petroleum products were stopped was declined. Fol-lowing are the grounds which persuade me to deny the interim relief to the petitioner :

(i) Admittedly, the parties are governed by an agreement dated 18-6-1984 entered into between them. Clause 68 of the Agreement entered into between the parties on 18-6-1984 specifically provides that any disptue or difference of any nature whatsoever or regarding any right, liability, act, omission or account of any of the parties arising out of or in relation to this agreement shall be referred to the sole arbitration of the Managing Director of the Corporation, or of some officer of the Corporation who may be nominated by the Managing Director. It is then clearly stated in this clause that the dealer will not be entitled to raise any objection to any such Arbitrator on the ground that the Arbitrator is an officer of the Corporation of that he has to deal with the matters to which the contract relates or that in the course of his duties as an officer of the Corporation he had expressed views on all or any of the matters in dispute or difference.

The petitioner instead of invoking Clause 68 of the agreement has chosen to file a suit which he was not entitled to as per the agreement he entered into with the respondents with his eyes open. Hence the petitioner is bound by the agreement. Petitioner should have invoked Clause 68 of the agreement and should have acted under the same.

(ii) Supplies have been stopped vide letter dated 8-8-1996, Annexure P-4, on the basis of some irregularities committed by the petitioner and not on the basis of a case got registered by Rajdeep Singh against R. K. Jain. The irregularties alleged to have been committed have been enumerated in the letter and have been so enumerated in the foregoing paras of this judgement. Though the letter Annexure P-3 shows an annoyance on the part of the respondents to the petitioner for getting a case registered against their officer Mr. R. K. Jain but the grounds on the basis of which the supplies to the petitioner company have been stopped, are different.

(iii) An important condition of the contract has been violated by the petitioner by joining Rajdeep Singh as the partner of the petitioner-Firm without the written consent of the respondents-Corporation. Clause 47 of the Agreement specifically provides that without the previous written consent of the Corporation the dealer shall not enter into any arrangement contract or understanding whereby the operation of the dealer here- under are or may be controlled carried out and/or financed by any other person firm or company whether directly or indirectly and whether in whole or in part.

8. It stands admitted by the petitioner that Rajdeep Singh was admitted as a partner in the Firm with 49% share without the written consent of the Corporation. As has been contended by the learned counsel for the petitioner that dealing of the new partner Rajdeep Singh with the Corporation for about two years implies the consent of the Corporation for introduction of the new partner in the company by the petitioner. Mere dealing of Rajdeep Singh, the new parties, for some time with the Corporation does not exonerate the petitioner from taking the previous consent of the Corporation toi enter into any arrangement contract or understanding whereby the operation of the dealer hereunder are or may. be controlled carried out and/or financed by any other person, firm or company whether directly or indirectly and whether in whole or in part. Thus, the petitioner has contravened the agreement entered into between the parties with impunity.

9. Though the letter dated 7-8-1996, Annexure P-3, issued by the respondents is an irritant and invites a cautious look of the Court towards its contents, but from the violation of agreement entered into by the petitioner with the respondents and other alleged irregularities committed by the petitioner cannot persuade me to find the. balance of convenience in favour of the petitioner or that he will sufferin an irreparable loss if the injunction sought for is not granted to him. The authority cited by the counsel for the petitioner State of Punjab Vs. Geeta Iron and Brass Works Ltd., is not at all relevant to the facts of this case which, thus, does not invite any discussion.

In view of the over-all discussion made above, I do not find any force in this revision petition which is dismissed, however, without any order as to costs.

10. Petition dismissed.

