

(2023) 08 CAL CK 0004

In the Calcutta High Court

Case No : MAT No. 1000 Of 2023, IA NO: CAN/1, 2, 3/2023,

Monmohan Dutta And Anr.

APPELLANT

Vs

Bharat Petroleum Corporation Ltd. And Ors.

RESPONDENT

Date of Decision : 01-08-2023

Acts Referred:

Specific Relief Act, 1963 — Section 14

Citation : (2023) 08 CAL CK 0004

Hon'ble Judges : T. S. Sivagnanam, CJ;Hiranmay Bhattacharyya, J

Bench : Division Bench

Advocate : Debabrata Saha Roy, Pingal Bhattacharyya, Neil Basu, Sankha Biswas, Sanjib Kumar Mal, Bimalendu Das, Shomrita Das, Shomrik Das, Pankaj Halder, Pankaj Halder, Sanatan Panja, Tapas Manna

Final Decision : Dismissed

Judgement

Hiranmay Bhattacharyya, J.

1. This appeal is at the instance of the writ petitioners and is directed against an order dated 18.05.2023 passed by a learned Single Judge in WPA 23196 of 2022.

2. Facts giving rise to the instant appeal in a nut shell are as follows.

3. The 9th respondent in this appeal was appointed as LPG distributor in the name and style of M/s. Buroma Gas Service and an agreement was executed by and between the Bharat Petroleum Corporation Limited (for short "BPCL") and the 9th respondent on 23.02.1989. Thereafter, on 05.06.1992 the partnership deed was executed by and between the appellants herein and the 9th respondent and in the said partnership business the appellants had 24% share each in the partnership business and the 9th respondent had 52% share. BPCL accorded approval to the said partnership deed and a distributorship agreement was executed on 05.06.1992 by and between BPCL on one hand and the appellants and 9th respondent on the other hand. The dealership agreement was renewed from time to time and lastly the same was renewed for a period of 5 years

commencing from 05.06.2017. The appellants claim that a supplementary deed of partnership was executed on 15.09.1993 whereby only the profit sharing ratio of the partners were changed. The Territory Manager (LPG) of BPCL being the 8th respondent herein, by a letter dated 01.06.2022, requested all the partners to come at the Territory Office at Uluberia LPG Bottling Plant to execute documents for renewal of the distributorship agreement which was valid till 04.06.2022. Thereafter, the 8th respondent issued a letter dated 26.09.2022 requesting the partners to come forward together with necessary document for renewal of distributorship agreement failing which BPCL will be constrained to suspend supplies to the distributorship. The appellants filed a writ petition praying for a direction upon BPCL to renew the LPG distributorship agreement on the basis of the signature of the appellants without insisting for the signature of the 9th respondent and for a writ of mandamus to cancel and/or rescind the letter dated 26.09.2022 issued by the 8th respondent.

4. The learned Single judge by the order dated 18.05.2023 disposed of the writ petition giving liberty to BPCL to take steps as per the requirement under the guidelines only after the joint/ individual representations made by the parties concerned within the time limit stipulated in the said order are considered and disposed of by BPCL with a reasoned decision.

5. Being aggrieved by the said order dated 18.05.2023, the writ petitioners have preferred the instant appeal.

6. Mr. Debabrata Saha Ray, learned advocate appearing in support of the appeal contended that since the appellants are jointly holding 99% share in the partnership business and also that a Hon'ble Division Bench of this Court by an order dated 01.03.2010 passed in APO No. 22 of 2010 directed the authorities to renew the licenses in favour of the partnership firm on the basis of the documents to be submitted in respect of 99% share in the partnership firm, BPCL cannot insist upon the signature of all the three partners for the purpose of renewal of the distributorship agreement. Mr. Saha Ray contended that since by execution of the supplementary partnership deed on 15.09.1993 only profit sharing ratio of the partners were changed, the same cannot fall within the expression "reconstitution of the firm" and therefore the question of previous written approval of the corporation as contemplated under Clause 21 of the distributorship agreement does not and cannot arise at all. Mr. Saha Ray, further contended that the 9th respondent was creating disturbances in the management of the partnership firm for which the Civil Court has passed an order restraining the 9th respondent from interfering with the management of the firm, and, therefore, BPCL should be directed to renew the distributorship agreement on the signature of the appellants herein.

7. Mr. Mal, learned advocate representing the BPCL seriously disputed the contentions raised by Mr. Saha Ray. He contended that the execution of the supplementary partnership deed amounts to change in the constitution of the firm. In support of the aforesaid contention he referred to various clauses of the

partnership deed dated 05.06.1992 and the supplementary partnership deed dated 15.09.1993. By referring to various clauses in the distributorship agreement Mr. Mal contended that the distributorship agreement is determinable by its nature. He further contended that such contract cannot be specifically enforced in view of the provisions laid down under Section 14 of the Specific Relief Act. To buttress such submission he placed reliance upon a decision of the Hon'ble Supreme Court in the case of Indian Oil Corporation Limited vs. Amritsar Gas Service and ors. reported at (1991) 1 SCC 533.

8. Mr. Pankaj Halder, the learned advocate representing the private respondent submitted that the supplementary partnership deed was not acted upon by the parties as would be evident from the income tax return filed for the assessment year 1999-2000. The learned advocate referred to the policy guidelines for reconstitution of retail outlet/ SKO-LDO dealerships and contended that induction of partners is permitted subject to retention of minimum 51% share by the original allottee and/ or legal heirs/ family members of the original allottee in the dealership after reconstitution. He, therefore, submitted that the reconstitution of partnership by way of reduction of the share of the original allottee to 1% is prohibited as per the policy guidelines of the oil companies.

9. In reply Mr. Saha Ray contended that the policy guidelines referred to by the learned advocate for the respondents cannot be applied to the case on hand as the supplementary partnership deed was executed long prior to the issuance of the policy guidelines annexed to the supplementary affidavit filed by the 9th respondent.

10. Heard the learned advocates for the parties and perused the materials placed.

11. Record reveals that an advertisement was published in the Ananda Bazar Patrika on 05.12.1989 inviting unemployed graduates (including unemployed engineering graduates) to apply for being appointed as a distributor of BPCL. Pursuant to the said advertisement the 9th respondent applied for appointment as a distributor at Debagram, Nadia.

12. The 9th respondent was selected by BPCL for appointment as an LPG distributor and an agreement was entered into by and between the 9th respondent and BPCL. Subsequently, the sole proprietorship was converted into a partnership firm by way of induction of the appellants herein as partners along with the 9th respondent. The conversion of proprietorship into a partnership firm was duly approved by BPCL and a distributorship agreement was entered into on 05.06.1992. At the time when the distributorship agreement was entered on 05.06.1992, the 9th respondent was having 52% share and the appellants were having 24% share each. Thereafter, supplementary partnership deed was executed on 15.09.1993 and it is not in dispute that no previous written consent of BPCL was obtained in that regard.

13. In the meantime disputes cropped up between the appellants and the 9th respondent with regard to renewal of licenses which compelled the appellants to

file a writ petition being WPO No. 1127 of 2009 which stood dismissed by an order dated 15.12.2009. On an appeal being preferred against the said order dated 15.12.2009 being APO No. 22 of 2010, the Hon'ble Division Bench by an order dated 01.03.2010 directed the appellants to submit documents in respect of their 99% share in the partnership firm before the respondent authority and the respondent authority was directed to take necessary steps in the matter in accordance with the provisions of law for renewal of such license in favour of the partnership firm. The appellant no. 1 thereafter filed a Title Suit no. 308 of 2019 before the learned Civil Judge (Senior Division) 4th Court at Alipore alleging that the 9th respondent is creating disturbances in respect of the management and functioning of the partnership firm and is trying to damage the partnership business violating the terms of the supplementary partnership deed dated 15.09.1993. On an application for injunction being moved in connection with the said Title Suit, the learned Civil Judge by an order dated 20.03.2019 passed an order restraining the 9th respondent from interfering with the management of the partnership firm.

14. The issue which falls for consideration in this appeal is whether the changes made through execution of the supplementary partnership deed dated 15.09.1993 requires previous written consent of BPCL as contemplated in Clause 21 of the distributorship agreement.

15. In terms of the supplementary partnership deed, the share of the appellant no. 1 in the partnership business increased to 75% and the share of the 9th respondent was brought down to 1% and the share of the appellant no. 2 remained the same.

16. Clause 3 of the supplementary partnership deed states that the business will be entirely managed by the appellants herein and the 9th respondent will not be responsible for any act of omission or commission of the business. Clause 4 of the deed states that upon the death of 9th respondent, her share will revert to the other partners and her heirs will have to claim over the said partnership business. Clause 5 of the deed states that the appellant shall have the exclusive right to decide to carry on any other business without the consent of the 9th respondent.

17. The partnership deed dated 05.06.1992 states that the partners shall jointly run the said business. Clause 9 of the said deed states that no change in the partnership shall be made without formal approval from BPCL. Clause 13 of the said deed states that all the parties to the said deed shall actively and diligently work to the interest of the partnership to the fullest capacity in the discharge of their duties as partners in the firm. Clause 14 of the said deed states that in the event of death of any partner the partnership deed will come to an end and the same can be reconstituted only with the formal written approval from BPCL.

18. From a comparative reading of the partnership deed dated 05.06.1992 it appears to this Court that all the partners agreed to work actively and diligently

to the interest of the partnership. However, after going through the supplementary deed dated 15.09.1993 it appears to this Court that the 9th respondent who was holding more than 50% share in the partnership deed and had a role in the management of the partnership firm prior to the execution of the supplementary deed had now become only a partner on paper having a nominal share of 1% in the partnership business with no right of participation in the partnership business or in the management of the firm. The right of the 9th respondent in the vital decision making process has been taken away by virtue of clause 5 of the supplementary deed.

19. That apart the appellants approached this Court on an earlier occasion by filing a writ petition and being unsuccessful approached the Hon'ble Division Bench in APO No. 22 of 2010 for a direction upon the concerned respondent authorities to allow renewal of the requisite licenses on the basis of the documents in respect of 99% share holding of the partnership firm. The appellants succeeded in obtaining an order on 01.03.2010 to that effect. Thereafter, the appellant no. 1 approached the Civil Court by filing a Title Suit alleging that the 9th respondent is interfering with the business of the partnership firm and obtained an order of injunction restraining the 9th respondent who happened to be the defendant no. 1 in Title suit no. 308 of 2019 from interfering with the management of the suit firm. It is not in dispute that the said injunction order was which was initially passed on 20.03.2019 was subsequently extended from time to time and is still in subsistence. Therefore, the 9th respondent is restrained by an order of the Civil Court to participate in the management of the partnership firm. Thus, the intention of the appellants is to carry on the partnership business jointly by excluding the 9th respondent from the LPG distributorship business. Now, this Court is to consider whether Clause 21 of the distributorship agreement stands attracted in the facts and situations of this case. Clause 21 of the distributorship agreement is extracted herein below.

"21. The Distributor shall not sell, assign, mortgage, or part with or otherwise transfer his interest in the distributorship or the right, interest or benefit conferred on him by this agreement to any person. In the event of the Distributor being a partnership firm any change in the constitution of the firm, whether by retirement, introduction of new partners or otherwise howsoever will not be permitted without the previous written approval of the Corporation notwithstanding that the Corporation may have dealings with such reconstituted firms or impliedly waived or condoned the breach or default mentioned hereinabove by the Distributor. In the event of the death of any of the partners , the Distributor shall immediately inform the corporation giving the necessary particulars of the heirs and legal representatives of the deceased partner and it shall be the option of the Corporation either to continue the distributorship with the said firm or to have a fresh agreement of distributorship with any reconstituted firm or to terminate the distributorship agreement and the decision of the Corporation in that behalf shall be final and binding on all the parties concerned. No claim on premature termination for compensation or otherwise

will be made or sustainable against the Corporation on account of such termination.”

20. Clause 21 of the distributorship agreement states that in the event of the distributor being a partnership firm any change in the constitution of the firm whereby retirement, introduction of new partners or otherwise howsoever will not be permitted without the previous written approval of the corporation notwithstanding that the Corporation may have dealings with the reconstituted firm or impliedly waived or condoned the breach or default as mentioned hereinbefore by the distributor.

21. Clause 21 uses the expression “or otherwise”. It therefore implies that the constitution of the firm may be changed either by way of retirement, introduction of new partners or otherwise. The expression “or otherwise” is of very wide amplitude. It would cover all cases which would indicate that there has been a change in the constitution of the firm other than by way of retirement or admission of a partner.

22. The original allottee was the 9th respondent, being an individual. Subsequently the sole proprietorship was converted into a partnership firm with the original allottee having more than 50% share in the partnership business. Such conversion was, however, with the approval of BPCL. Mr. Saharay would contend that only the profit sharing ratio of the existing partners have been changed by way of execution of supplementary partnership deed which does not amount to reconstitution of the firm. The execution of the supplementary partnership deed coupled with the order of restraint passed by the Civil Court against the 9th respondent on an injunction application filed by the appellant no. 1, in reality, has the effect of ousting the original allottee, the 9th respondent from the partnership business. The execution of the supplementary affidavit together with the subsequent actions taken by the appellants, for all practical purposes, has, in effect converted a partnership firm consisting of three partners into a partnership firm consisting of two partners i.e., the appellants herein, who have now approached this Court for renewal of the distributorship agreement with the signature of the appellants only. This, to the mind of this Court, is nothing but a change in the constitution of the firm and falls within the expression “or otherwise” used in Clause 21 of the Distributorship agreement.

23. This Court is also not inclined to give any weightage to the submission of Mr. Saharay that dealings made by BPCL with the partnership firm after execution of the supplementary partnership deed amounts to deemed approval of the change in constitution in view of the expression “notwithstanding that the Corporationby the Distributor” used in Clause 21 of the said agreement.

24. This Court has already held that there has been a change in the constitution of the partnership firm and, therefore, it necessarily follows that Clause 21 of the distributorship agreement stands attracted to the dispute involved in this appeal.

25. This Court accordingly holds that the changes made in the Supplementary

Deed without the previous approval of BPCL is violative of Clause 21 of the distributorship agreement. The issue is thus answered in the affirmative and against the appellants.

26. In Amritsar Gas Service (supra) the LPG distributorship agreement was cancelled on certain grounds which was a subject matter of challenge in an arbitration proceeding. In the case on hand the dealership agreement stood expired by efflux of time. The said decision being distinguishable on facts, the same cannot be made applicable to the facts on hand.

27. The last renewal of the distributorship agreement was made sometimes in June, 2017. However, the period of the said distributorship agreement stood expired by efflux of time on 04.06.2022. Record reveals that in spite of repeated requests made by BPCL to the partners to come together with necessary documents for execution of the distributorship agreement the partners are not agreeable to execute the agreement jointly. It is not in dispute that the 9th respondent is refusing to put her signature for the purpose of renewal of the distributorship agreement. In view of the order of injunction passed in the title suit instituted by the appellant no. 1, the 9th respondent may be justified in refusing to put her signature for the purpose of renewal of the distributorship agreement. BPCL has also not given written approval to the change in the constitution of the firm as observed hereinbefore. Therefore, BPCL cannot also be faulted for not renewing the distributorship agreement on the basis of the signature of the appellants alone.

28. For the reasons as aforesaid this Court is of the considered view that a writ of mandamus cannot be issued directing BPCL to renew the LPG distributorship agreement on the signature of the appellants alone. The appellants do not have any right to carry on the distributorship business to the exclusion of the 9th respondent. BPCL cannot be directed to continue its supplies in the absence of a valid distributorship agreement. In view thereof this Court holds that BPCL was justified in issuing the letter dated 26.09.2022 to suspend supplies to the distributorship.

29. The learned Single Judge, by the order impugned, gave liberty to the parties to make representations to the oil company with a direction to the oil company to consider and dispose of such representation with a reasoned decision. The writ petitioners, being aggrieved, filed this intra court mandamus appeal. However, on 13.05.2023 a meeting was held wherein the oil company was represented by its officers and the appellants and the 9th respondent were also present. It, however, transpires from the minutes of the meeting dated 20.05.2023 that there are internal/ personal disputes between the appellants and the 9th respondent which is yet to be resolved. In view of the fact that the interest of the public / consumers would be affected if the supply of LPG cylinders is disrupted as there are internal disputes between the appellants and the 9th respondent for which the distributorship agreement could not be renewed.

30. The appeal accordingly fails and the same stands dismissed. The connected applications stands disposed of accordingly. There shall be, however, no order as to costs. This Court, keeping the larger public interest in mind leaves BPCL free to take necessary steps to ensure that the interest of the public / consumers are not in anyway affected.

31. Before parting this Court makes it clear that all observations made hereinbefore are only to support the ultimate conclusion in this appeal and the same shall not prejudice the private parties either in the pending or all future litigations between them.

32. Urgent Photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.