

(2011) 07 DEL CK 0419

In the Delhi High Court

Case No : Writ Petition (C) 4811 of 2011 and CM No. 9778 of 2011 (for stay)

Moti Ram and Company

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 13-07-2011

Acts Referred:

Citation : (2011) 07 DEL CK 0419

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Kailash Vasdev, Chadra Ravi and Anurag Singh, for the Appellant; No Appearance, for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—The writ petition impugns the letter dated 1st July, 2011 of the Respondent to the Petitioner terminating the "temporary arrangement" with the Petitioner for operation by the Petitioner of the company owned retail outlet at Manesar District-Gurgaon and calling upon the Petitioner to hand over the said outlet to the Respondent.

2. The Petitioner was as far back as in the year 1962 granted dealership for operation of the retail outlet setup by the then predecessor of the Respondent on land procured by the Respondent on lease at Mile 13/5, Delhi-Gurgaon Border, Kapashera, New Delhi. The Petitioner continued to operate the said retail outlet of the Respondent under agreements with the Respondent from time to time. Last such agreement was entered into between the parties on 27th September, 2001 for a period of 15 years. However the lease in favour of the Respondent of the land underneath the said outlet expired on 31st March, 2007 and the Respondent was required to vacate the same. Accordingly the Respondent directed the Petitioner to close down the said outlet at Kapashera border and the said site was vacated.

3. The Petitioner requested the Respondent for resitment of its dealership and informed the Respondent that the Petitioner/its partners were the owners of a

land near to the then existing Kapashera outlet. The Petitioner requested the Respondent to grant dealership to the Petitioner at its said land. The said request was being actively considered by the Respondent.

4. The Petitioner, however vide its letter dated 15th May, 2007 informed the Respondent that there was some litigation with respect to the land aforesaid owned by the Petitioner and as such it was not possible to immediately obtain dealership with respect thereto. It was further represented that the Petitioner had to recover its old dues from its old customers and which would become bad debts unless the Petitioner was allowed to continue in business by allowing the Petitioner to as an interim /temporary arrangement operate some other petrol pump. The Petitioner as such sought permission from the Respondent to operate some other petrol pump of the Respondent for a period of six months only on ad hoc basis.

5. The Respondent vide its letter dated 15th May, 2007 to the Petitioner appointed the Petitioner as a temporary dealer to operate its Manesar outlet aforesaid on temporary basis for eleven months only and subject to termination by either party giving to other fifteen days notice.

6. It is in pursuance to the aforesaid, that the Petitioner came to operate the Manesar petrol pump with respect to which relief is claimed in the present petition.

7. Though the Manesar petrol pump was allotted to the Petitioner for eleven months only on ad hoc/temporary basis but on the request of the Petitioner, the said arrangement was extended from time to time. It is the said arrangement which has now been terminated by the Respondent.

8. It has as such been enquired from the senior counsel for the Petitioner as to what is the right of the Petitioner to continue with the Manesar outlet.

9. The senior counsel for the Petitioner has contended that the term of fifteen years of the agreement dated 27th September, 2001 between the parties is not yet over; that the Respondent is obliged under the said agreement to continue with the Petitioner. However a perusal of the agreement dated 27th September, 2001 shows that the same was with respect to the Kapashera land only. The senior counsel for the Petitioner is unable to show any clause therein under which the Respondent is obliged to accommodate the Petitioner at any other site. The Petitioner is also not found to have made any such claim against the Respondent in the past. It cannot be lost sight of that the cessation of the Kapashera outlet was owing to the expiry of the lease of the land underneath the same. It cannot thus be said that such cessation was owing to the Respondent. The Petitioner who had been operating the outlet on the said site since the year 1962 is deemed to have known that the lease of the said land was due to expiry in the year 2007.

10. Moreover, the agreement dated 27th September, 2001 is found to be

determinable in nature, Clause 3 whereof permits termination thereof by three months notice in writing without giving any reasons even. Attention of the senior counsel for the Petitioner is invited to Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others, whereof Apex Court has held that such agreements are not specifically enforceable and the claim even if any can be for damages only. In view of the said position, the argument of the senior counsel for the Petitioner of No. default, on happening of which also the agreement was terminable having been attributed to the Petitioner, is of No. avail.

11. The Petitioner has chosen not to produce before this Court the letter dated 20th April, 2007 referred to in the correspondence on record. The counsel for the Respondent appearing on advance notice has during the course of hearing handed over a copy of the same. The same unequivocally shows that the Petitioner obtained the temporary arrangement with respect to the Manesar outlet by representing that the same was necessary to tide over the delay in the Petitioner getting its land in Kapashera cleared from litigation and to enable the Petitioner to recover its outstanding dues. The Petitioner cannot now be heard to contend otherwise.

12. No. merit is thus found in the claim for retaining the Manesar outlet.

13. The writ petition also claims a direction to the Respondent to permanently re-site the Petitioner at any other location. As aforesaid, No. such right has been found under the agreement dated 27th September, 2001. The senior counsel for the Petitioner contends that it is the policy of the Respondent to in the matter of allotment of other retail outlets, give priority to the dealers as per seniority. However No. such policy has been placed on record.

14. The senior counsel for the Petitioner requests for the matter to be taken up on 15th July, 2011 for the said limited purpose.

15. List on 15th July, 2011 as requested.