

(2004) 09 PAT CK 0027
In the Patna High Court
Case No : C.W.J.C. No. 4564 of 2002

M/s Bharat Oil Distributors and Another	APPELLANT
Vs	
Bharat Petroleum Corporation Limited and Others	RESPONDENT

Date of Decision : 18-09-2004

Acts Referred:

Citation : (2004) 4 PLJR 815

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : Amresh Kr. Singh, for the Appellant; Ajay Kr. Tripathi for the Corporation and M/s Rajendra Pd. Singh, Rajeev Kumar Singh and Jay Shankar, for the Respondent

Final Decision : Dismissed

Judgement

Aftab Alam, J.—Petitioner No. 1 is a partnership firm and petitioner No. 2 is one of its partners. The petitioners are aggrieved by the termination of dealership for K. oil for Dehri-on-Sone given to petitioner No. 1 (on an adhoc, stop-gap basis) and the discontinuance of supply of oil by the respondent Oil Company, Bharat Petroleum Corporation Limited. They seek a direction to the respondents to restore the dealership to the firm and the supply of K. oil to it. The dealership of K. oil for Dehri-on-Sone was initially given to one Dinanath Prasad. He happened to be the sole dealer of K. oil for Dehri-on-Sone for the respondent oil company. He died. In such cases normally the dealership is given to the heirs and legal representatives left behind by the dealer. But in this case his wife Mrs. Triveni Devi declined to accept the dealership and to carry on the business. A situation was, thus, created where there was no K. oil dealer of the respondent company at Dehri-on-Sone. It naturally caused dislocation of supply of K. oil, which is an essential commodity, to the general public and in those circumstances the district administration as well as the petroleum company were required to make an emergent stop-gap arrangement.

2. The petitioner firm held K. oil dealership of the petroleum company for Patna,

Islampur in Nalanda district, Arrah in Bhojpur district and Bhabhua in Kaimur district. It appears that in order to meet the emergent situation arising from the death of the original dealer Dinanath Pd. and the refusal of his wife to accept the dealership in his place, the petitioner firm was asked by the respondent Company to take-up the supply of oil at Dehri-on-Sone on its behalf. The petitioners agreed to the arrangement and consequently by letter, dated 30.10.1993 (Annexure 1) the firm was given the dealership at Dehri-on-Sone. The letter granting dealership made it abundantly clear that the appointment of the firm (petitioner No. 1) as dealer at Dehri-on-Sone was temporary; it was an ad-hoc and stop-gap arrangement and was to continue till a permanent arrangement was made. It was further stipulated in the letter that the grant of licence would not create in favour to the petitioner firm any right, title or interest in the dealership in question or any right to have the SKO dealership in due course. Clause 11 of this letter further stated that the temporary dealership would, in any event, come to an end on 29.10.1994.

3. It is significant to note here that the temporary dealership was granted to the petitioner not on the basis of any open advertisement or by following a selection process known to law. It was an arrangement to meet certain exigencies.

4. Though the temporary dealership was expressly for a period of one year, it appears that due to procedural delays regular and permanent arrangement could not be made for a long time and the temporary dealership granted to the petitioner firm was extended from time to time. It further appears that in the internal allocation of dealerships Dehri-on-Sone fell in the category reserved for freedom fighters. Finally, a notice was issued in the daily "Hindustan" of 11.9.2000, inviting applications for grant of dealerships for K. Oil for different places, including Dehri-on-Sone in the district of Rohtas. In the notice, it was indicated that the dealership for Dehri-on-Sone was reserved for freedom fighters. In pursuance of the notice, respondent No. 3 made an application. He was selected by the Dealers' Selection Board and was granted the dealership for Dehri-on-Sone.

5. Consequent upon the grant of dealership to respondent No. 3, the temporary arrangement made with petitioner No. 1 was terminated by letter, dated 2.4.2002 (brought on record as Annexure-J to the counter affidavit filed by respondent No. 3). With the termination of the temporary dealership the supply of oil for Dehri-on-Sone was also stopped to the petitioner firm. The petitioners then filed a suit being Title Suit No. 326 of 2001 in which mandatory injunction directing the respondent company to restore the supply of K. oil was prayed for as an interim relief. The prayer for mandatory injunction was rejected by Subordinate Judge I, Patna. At a later stage respondent No. 3 who was granted dealership for that place appeared in the suit as intervenor. Pursuant to his appearance, the petitioners withdrew the suit and filed this writ petition before this court seeking the reliefs as indicated above.

6. Mr. Amresh Kumar Singh, counsel for the petitioners argued at great length in

support of their claim. Learned counsel sub-mitted that it would be quite incorrect to call the arrangement as temporary, adhoc or stop gap for the simple reason that it went on for nine years. He further submitted that though in the letter granting dealership to the petitioner it was stated that the arrangement would come to an end within one year from the date of its issuance, the grant of dealership was subject to the standard terms and conditions, that is to say, the terms and conditions applicable to a regular, permanent grant of dealership. As a result, the petitioners had been obliged to make massive arrangements at a heavy cost, such as, setting up an under-ground storage-tank, employing, eighteen persons for running the dealership etc. Mr. Singh contended that it was, therefore, highly unreasonable, unfair and unjust to suddenly terminate the dealership as a result of which all the arrangements made at Dehri-on-Sone at a great expense, were rendered useless, causing heavy loss to the petitioner. The simple answer to the contention is that the petitioner had accepted the arrangement with his eyes open. At all stages, from beginning to end, it was made fully known to him that the arrangement was temporary and ad-hoc; it was to meet a particular exigency and it would come to an end as soon as a permanent regular arrangement was made for the place. It was further made clear to him that the grant of temporary dealership would not confer upon him any rights whatsoever and it will not mature into a permanent arrangement in his favour. He accepted this arrangement undoubtedly because there was some potential for profit in it otherwise he was under no compulsion to accept the arrangement.

7. Mr. Singh submitted that his case was fully covered by the decision of the Supreme Court in Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, . in my view the submission is mis-conceived and the decision in Mahabir Auto Stores has no application to the facts of the case in hand. In the two cases the genesis of the relationship between the distributor and the oil company was completely different. In Mahabir Auto Stores though there was no formal or written agreement, the distributor was not brought en the scene after making it clear to him that it was a purely temporary, stop-gap, ad-hoc arrangement and it would last till a regular permanent arrangement was made. Though there was no formal, written agreement, supplies were made to the distributor (Mahabir Auto Stores) continuously and uninterruptedly for about twenty eight years. The case of Mahabir Auto Stores is, thus, clearly distinguishable from the facts of this case,

8. Mr. Singh next tried to assail the grant of dealership in favour of respondent No. 3. It was submitted that reservation of dealership for freedom-fighters was quite illegal and further that the selection of respondent No. 3 suffered from a number of illegalities and irregularities.

9. I do not think it is permissible for the petitioner to raise that objection at this stage. The petitioners might have been heard on that issue had they challenged the notice inviting applications at the time it was issued. They did not do so and are now trying to raise the objections) only after the selection of respondent No. 3 and the grant of dealership to him.

10. On hearing counsel for the parties it appears to me that the petitioners are trying to capitalise on ad-hoc arrangement made in their favour. They want a permanent dealership at Dehri-on-sone without facing any competition and without going through the selection process. When it was pointed out to him, Mr. Amresh Kumar Singh gave the reply that at the time of issuance of the notice there was no occasion for the petitioners to challenge it because it was not known to them that the grant of dealership to any one else would terminate the dealership in their favour. I am not prepared to accept the submission. The temporary dealership given to the petitioners was for Dehri-on-Sone. It was made clear in the letter granting temporary dealership that it was a stop gap arrangement and it would come to an end as and when a permanent arrangement was made for the place. In the notice inviting applications the place for dealership was clearly indicated as Dehri-on-Sone in the district of Rohtas. It was, therefore, quite clear that the grant of dealership in pursuance of the notice, dated 11.9.2000 would lead to the termination of the temporary dealership granted to them.

11. For the reasons discussed above, this court is fully satisfied that the action of the respondents does not suffer from any infirmity and the petitioners are not entitled to the reliefs prayed for on their behalf. This writ petition is, therefore, dismissed but with no order as to costs.