(2018) 11 DEL CK 0048

In the Delhi High Court

Case No : Civil Writ Petition No.534 Of 2017 & Civil Miscellaneous No. 2437 Of 2017

M/S. Captain Guman Singh & Sons & Ors APPELLANT

Vs

M/S. Indian Oil Corporation RESPONDENT

Date of Decision : 13-11-2018

Acts Referred:
Arbitration and Conciliation Act, 1996 — Section 34, 37
Constitution of India, 1950 — Article 226

Citation : (2018) 11 DEL CK 0048

Hon'ble Judges : Vibhu Bakhru, J

Bench : Single Bench

Advocate : Kapil Joshi, Divjyot Singh, Avsi M. Sharma

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J

Introduction

1. The petitioners have filed the present petition, inter alia, impugning the communication dated 28.05.2012 (hereafter â??the impugned orderâ?)

issued by the respondent (hereafter â??IOCLâ?) whereby the dealership for retail supply of Kerosene and light diesel oil (hereafter â??the

Productsâ??) was terminated.

2. The impugned order was issued, essentially, on two grounds. First, it was alleged that respondent no.2 (Sh. Vijay Singh Chauhan) had diverted the

Products for commercial purposes, which was not permissible. Second, that the dealership was being operated by persons who were not authorized as

per the records of IOCL. The agreement for dealership was entered into by IOCL with Late Captain Guman Singh, who was, at the material time carrying on business as a sole proprietor under the name of â??M/s Captain Guman Singh and Sonsâ?. He has since expired but the business is being

carried on by the petitioners who, according to IOCL, were not authorized to deal with the Products.

3. The petitioners dispute the above contentions. It is their case that they had duly informed IOCL regarding the demise of Captain Guman Singh (who

expired on 19.02.2004). Petitioner nos. 2 and 3 are sons of Late Captain Guman Singh. They claim that after the demise of Late Captain Guman

Singh, they had constituted a firm and also submitted a proposal in this regard to IOCL. And, IOCL had continued to deal with them. The petitioners

rely on Clause 13 of the Dealership Agreement entered into between Late Captain Guman Singh and IOCL and contend that IOCL had three options

at the material time: (i) to terminate the dealership; or (ii) to continue the dealership with the firm; or (iii) to enter into a fresh dealership agreement

with the reconstituted firm. The petitioners contend that since IOCL had continued to deal with the petitioners, it had exercised its option in terms of

the Dealership Agreement and it is, therefore, not open for IOCL now to terminate the dealership on the ground that the petitioners are not authorized

to deal with its specified products.

4. Insofar as the allegation of diversion of stock is concerned, the petitioners have denied the same. The Arbitral Tribunal constituted to examine the

said dispute did not sustain the aforesaid allegation. Thus, the principal controversy is whether the petitioners were licensed by IOCL to deal with the

products.

Relevant Facts

5. Before addressing the aforesaid controversy, it is relevant to refer to the factual context in the backdrop of which the present controversy arises.

6. On 18.11.1982, IOCL entered into an agreement (hereafter â??the Dealership Agreementâ?) with Captain Guman Singh whereby he was

appointed as the dealer for the retail supply of kerosene and light diesel oil (the Products) for domestic purposes, to customers in the specified area.

7. Captain Guman Singh, the original licensee, expired on 19.02.2004. He was survived by his widow, Smt. Havan Kanwar; three sons Sh. Rajendra

Singh, and petitioner nos. 2 and 3; and three daughters, namely, Smt. Himmat Kanwar, Smt. Gulab Kanwar and Smt Prem Kanwar.

8. The petitioners claim that a settlement was arrived at between the heirs of Late Captain Guman Singh and it was agreed that petitioner nos. 2 and 3

would carry on his business of dealing in the Products as equal partners. It is stated that a firm by the same name M/s Captain Guman Singh and Sons

was constituted by petitioner nos. 2 and 3.

9. The petitioners claim that by a letter dated 04.03.2004, the widow of Captain Guman Singh and the mother of petitioner nos.2 and 3 informed IOCL

regarding the demise of Late Sh. Guman Singh and also informed IOCL that her sons, namely, petitioner nos. 2 and 3 would operate the dealership

with the consent of other heirs. The petitioners claim that this was followed by another letter dated 11.03.2004 sent by petitioner no.2 informing IOCL

that he and his brother (petitioner no.3) have been appointed partners to continue the business of Late Captain Guman Singh.

10. The petitioners claim that thereafter, on 22.03.2004, they sent a proposal for reconstitution of the firm, M/s Captain Guman Singh and Sons. The

petitioners claim that on 22.07.2005, they sent a representation seeking a change in the Dealership Agreement and requesting IOCL to enter into a

fresh Dealership Agreement with petitioner no.1 firm (constituted by petitioner nos. 2 and 3 as partners).

11. The petitioners rely on letter dated 22.03.2004, sent by IOCL to the District Supply Officer, Pali requesting that a trading license be issued in the

name of Sh. Vijay Singh of M/s Captain Guman Singh and Sons up to 04.05.2004. The said letter records that the family members of Captain Guman

Singh had requested IOCL to continue supply of the Products and have authorized Sh. Vijay Singh (petitioner no.2) to place indents for taking supplies

from Salawar Terminal.

12. IOCL disputes the aforesaid letters.

13. Sometime in early 2011, IOCL received information that M/s Guman Singh and Sons were involved in diversion of blue dyed SKO to various

granite industries in Jalore District. Pursuant to the said information, a team of officials from Central Bureau of Investigation (CBI) and IOCL officials

conducted a surprise check at a factory of M/s Jagdamba Mineral, Bagra, District Jalore on 18.05.2011. At the time of inspection, one vehicle

(bearing Registration No. RJ GA-0218) was allegedly found stationed at the premises and decanting blue kerosene in barrels.

14. In view of the above, the District Collector, Pali served a notice dated 27.07.2011 alleging that petitioner no.1 was engaged in illegally supplying

kerosene to M/s Jagdamba Minerals. The said letter was also accompanied by a report from the Central Bureau of Investigation (CBI). Thereafter,

IOCL served a show cause notice on 10.01.2012 to petitioner no.1 calling upon it to respond to the allegation regarding diversion of stock. It was also

alleged that after the demise of Late Captain Guman Singh, the firm was being run benami in gross violation of the terms of the Dealership

Agreement.

15. The petitioners responded to the show cause notice by a letter dated 13.02.2012 and disputed the allegations with regard to diversion of stocks and

denied any involvement in the same. The petitioners also contended that the reconstitution of the firm was accepted by IOCL and the continuance of

business after the demise of Late Captain Guman Singh was not unauthorized or benami as alleged.

16. IOCL did not accept the aforesaid response and terminated the Dealership Agreement by the impugned order dated 28.05.2012.

Aggrieved by the same, the petitioners raised the disputes and sought resolution of the same by arbitration in terms of Clause 28 of the Dealership

Agreement.

17. The Arbitral Tribunal was constituted to adjudicate the aforesaid disputes and on 01.08.2012, petitioner no.1 (through petitioner no.2) filed a claim

before the Arbitral Tribunal. The petitionerâ??s principal claim was that the termination of the Dealership Agreement was illegal.

18. The arbitral proceedings culminated in an arbitral award dated 11.03.2015. Insofar as the allegations regarding diversion of Kerosene is concerned,

the Arbitral Tribunal noted that CBI had found the matter to be of a petty nature and not worth further investigation and had handed over its report to

the District Collector, Pali. The District Collector had pursued with the investigations and thereafter, had exonerated the petitioners of any involvement

in the said incident. Accordingly, the Arbitral Tribunal held that it was difficult to arrive at any conclusion regarding the allegation of diversion of

stocks.

19. Insofar as the issue regarding change in the constitution of the petitioner no.1 is concerned, the Arbitral Tribunal concluded that the claimant

(petitioner no.1) had failed to provide any plausible evidence as having informed IOCL regarding the demise of Captain Guman Singh. The Tribunal

also found that the legal heirs of Late Captain Guman Singh had failed to submit the proposal for reconstitution of the firm after his demise.

Accordingly, the petitioners' challenge to the impugned order was rejected.

20. Aggrieved by the arbitral award, the petitioners preferred an application under Section 34 of the Arbitration and Conciliation Act, 1996 before this

Court (OMP No. 478/2015), which was dismissed by an order dated 15.02.2016 by a Coordinate Bench of this Court. This Court held that the relief

regarding restoration of the dealership could not be granted as the Dealership Agreement was determinable in nature and thus, could not be

specifically enforced. As far as the claim of damages/compensation was concerned, the Court noticed that the same was neither pleaded nor proved.

21. The petitioners challenged the aforesaid decision before the Division Bench of this Court by filing an appeal under Section 37 of the Arbitration

and Conciliation Act, 1996 (FAO(OS) No. 248/2016) captioned â??M/s Captain Guman Singh and Sons v. M/s Indian Oil Corporation Ltd.â?). The

said appeal was disposed of as withdrawn with liberty to pursue remedy under Article 226 of the Constitution of India. The operative part of the order

dated 22.11.2016 passed by the Division Bench is set out below:-

â??3. We feel that the learned counsel for the appellant should be permitted to withdraw this appeal with liberty to pursue his remedy under Article

226 of the Constitution of India if available in law. However, since the learned Single Judge did not address the factual issue with regard to the

termination, the finding of the Arbitral Tribunal shall not come in the way of the appellant in case he pursues the said remedy under Article 226 of the

Constitution of India and in case, that is available to him in law. The appeal is dismissed as withdrawn with the aforesaid liberty.

4. The appellant shall not file the proposed writ petition later than four weeks from today.â??

22. IOCL sought to appeal against the said decision and filed a Special Leave Petition before the Supreme Court. However, the same was rejected.

Submissions

23. Mr Kapil Joshi, learned counsel appearing for the petitioners had referred to the letter dated 22.03.2004 sent by IOCL to the District Supply

Officer, Pali (Annexure P-8 to the petition) which indicated that IOCL was duly informed of the demise of Late Captain Guman Singh and also

reflected that his surviving family members had requested IOCL to continue supply of the Products and had authorized petitioner no.2 to place indents

and lift supplies from Salawar Terminal. He also relied upon the Inter Office Memo dated 26.07.2005 sent by Jodhpur Divisional Office requesting

CTM, Salawar to release non-PDS Kerosene to M/s Captain Guman Singh and Sons. The said Memo also noted that Captain Guman Singh and Sons

had taken a distribution license from DSO, Pali by a letter dated 18.01.2005. He submitted that the license referred to was issued to petitioner no.1

(the firm constituted by petitioner nos.2 and 3) and not the sole proprietorship of Late Captain Guman Singh (who had expired prior to issuance of the

distribution license). He earnestly contended that this amply established the petitionersâ? case that IOCL was duly informed of the demise of Late

Captain Guman Singh and had accepted continuing the dealership with petitioner no.1 (as constituted by petitioner nos.2 and 3). He also relied upon

Clause 13 of the Dealership Agreement and contended that the Dealership Agreement itself contemplated IOCL continuing with the dealership after

the demise of a sole proprietor.

24. Mr Divjyot Singh, learned counsel appearing for IOCL had countered the submissions made on behalf of petitioners. He contended that IOCL was

not informed of the demise of Captain Guman Singh at the material time. He submitted that the letters dated 04.03.2004 and 11.03.2004, which were

relied upon by the petitioners, are disputed and no such letters were sent to IOCL. Further, the letter dated 22.03.2004 is also not a part of the record

of IOCL. The same indicates that IOCL had never received the said letters. Insofar as the Inter Office Memo dated 26.07.2005 is concerned, he

submitted that the said Memo only referred to M/s Captain Guman Singh and Sons. He contended that IOCL always believed M/s Captain Guman

Singh and Sons to be the proprietorship concern of Captain Guman Singh and had no means of knowing that a firm by an identical name had been

constituted by the petitioner nos. 2 and 3.

25. He further submitted that the dispute with regard to the controversy had been finally adjudicated by the Arbitral Tribunal and the observations

made by the Division Bench in the order dated 22.11.2016 would not permit reopening of the said issues as the same was not permissible in law.

Although, IOCL has also challenged the jurisdiction of this Court to entertain the present petition, Mr Divjyot Singh, fairly stated that the said objection

was not pressed.

Reasons and Conclusion

26. Before proceeding further, it would be relevant to refer to Clause 13 of the Dealership Agreement, which is relied upon by the petitioners. The

said Clause is set out below:-

â??13 The Dealer shall not sell, assign, mortgage or part with or otherwise transfer his interest in the dealership or the right, interest or benefit

conferred on him by this agreement to any person. In the event of the Dealer 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 firm or impliedly waived or condoned the breach or

default mentioned hereinabove by the Dealer. In the event of the death of any of the partners, the Dealer 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 dealership with the said firm or to have a fresh agreement of dealership with any reconstituted firm or to terminate the dealership

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.â??

27. According to the petitioners, since IOCL had continued to deal with the petitioners, it must be accepted that IOCL has elected to continue with the

dealership. Therefore, it was not open for IOCL to terminate the dealership on account of the demise of Late Captain Guman Singh.

28. This Court finds no merit in the aforesaid contention. Late Captain Guman Singh was carrying on the business as a sole proprietor and not as a

partner of the firm. Although, he was carrying on the business under the name of M/s Guman Singh and Sons, the same was a sole proprietorship.

Undisputedly, the Dealership Agreement was between IOCL on one part and Late

Captain Guman Singh on the other part. With the demise of Late

Captain Guman Singh, the Dealership Agreement with him stood terminated. Clause 13 of the Agreement has no application in this case as M/s

Guman Singh and Sons (the sole proprietorship of Captain Guman Singh) was not a firm; therefore, there was no question of reconstitution of the sole

proprietorship after the demise of Late Captain Guman Singh. Petitioner no.1 as constituted by petitioner nos.2 and 3 is a separate concern. Clause 13

of the Agreement only contemplates change in the constitution of a partnership firm whether by retirement or introduction of new partners. In the

case where a partner expires, IOCL has an option either to continue the dealership or to terminate the same. This would, clearly, not apply where the

sole licensee (being an individual) expires. Thus, the petitionersâ? claim that the Dealership Agreement continued even after the demise of Late

Captain Guman Singh, is unsustainable.

29. In view of the above, the petitionersâ? challenge to the termination of the Dealership Agreement has no merit and the present petition is liable to

be dismissed on this ground alone.

30. Before concluding, it is relevant to observe that there is a serious dispute as to the fact whether the petitioners had informed IOCL regarding the

demise of Late Captain Guman Singh and whether a proposal for reconstitution of the firm has been submitted. IOCL has disputed the

communications relied upon by the petitioners for the said purpose. It is clearly not feasible to examine the said dispute in these proceedings. Thus,

even if the findings of the Arbitral Tribunal are ignored, it would not be apposite for this Court to determine the factual disputes whether the family

members of Late Captain Guman Singh had informed IOCL about his demise. The Inter Office Memo dated 26.07.2005 is also not determinative of

the question whether information as to demise of Late Captain Guman Singh was informed to IOCL.

31. The petition is, accordingly, dismissed. The pending application is also disposed of.

