
(2008) 09 P&H CK 0210

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14572 of 2007, CWP No. 17067 of 2007 & CWP No. 8826 of 2008

Munish Gupta

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Citation : (2009) 2 PLR 110 : (2009) 1 RCR(Civil) 365

Hon'ble Judges : Hemant Gupta, J and Kanwaljit Singh Ahluwalia, J

Advocate : Shri Ashok Aggarwal, Senior Advocate with Shri Mukul Aggarwal, Advocate. Shri S.K. Sharma, Advocate. For the Respondent Nos. 2 and 3, Shri S.C. Kapoor, Senior Advocate, with Shri Ashish Kapoor, Advocate. For the Petitioner, Shri Mukul Aggarwal, Advocate. For the Respondent Nos. 2 to 6, Shri Ashish Kapoor, Advocate. For the Petitioner, Shri Arun Palli, Senior Advocate, with Shri Harinder Sharma, Advocate. Shri S.K. Sharma, Advocate. For the Respondent Nos. 2 and 3, Shri Anil Malhotra, Advocate., Advocates for appearing Parties

Judgement

Hemant Gupta, J.—This order shall dispose of Civil Writ Petition Nos. 14572 of 2007; 17067 of 2007 and 8826 of 2008, as all the three writ petitions raise identical questions of law arising out of the similar facts.

2. In Civil Writ Petition No. 14572 of 2007, the petitioner was granted distributorship of Liquefied Petroleum Gas (for short referred to as the LPG) at Phagwara, in the year 1995 on the basis of the recommendations of the Oil Selection Board. However, the said distributorship was cancelled on 21.7.2004 pursuant to a show cause notice dated 15.6.2004. The Petitioner filed representation to Government of India, Ministry of Petroleum and Natural Gas. The Ministry issued directions on 10. 11.2005 (Annexure P.7), wherein it was observed that Marketing Discipline Guidelines issued by the Ministry of Petroleum and Natural Gas on 12.4.2001, have been issued so that the penal action against the distributors may be taken without any discrimination and to avoid arbitrary action at the field level. It was, thus, observed that that the Marketing Discipline Guidelines are to be respected by the Oil Marketing Company, in letter and spirit,

therefore, the Director, Marketing of the Oil Company was directed to examine the case record personally and review the decision of the Company appropriately. After the said communication, the Board of the respondent Company in its 529th meeting held on 21.6.2007, found that the distributor had indulged in large scale malpractices including variation in weight in large number of cylinders sold and use of devices for pilferage of product from cylinders and, thus, the termination of the distributorship was found to be in order. It is, thereafter, the petitioner has approached this Court to challenge the decision of the respondent Oil Company terminating the distributorship agreement.

3. In CWP No. 17067 of 2007, the challenge is to the cancellation of the LPG Distributorship vide order dated 19.10.2007. In the aforesaid case, the petitioner was granted distributorship for the sale of LPG in the category of physically handicapped person on the basis of the recommendations of the Oil Selection Board. Distributorship agreement dated 26.12.2001 was executed between the parties. On 28.10.2006, an inspection of the godown of the petitioner was conducted. Thereafter, the distributorship was suspended on account of allegations of overcharging of cylinders; underweight of cylinders and tampering with the cylinders etc. A show cause notice was issued to seek termination of the distributorship agreement on 6.11.2006 and after considering the reply dated 11.11.2006, an order of imposing fine was passed. Another show cause notice was issued on 20.1.2007. The petitioner denied the allegations in his reply, but on 12.2.2007, a fine of Rs. 2,62,497/ was imposed.

4. The petitioner represented the respondents on 6.3.2007 to explain the entire matter and position and on 8.6.2007, requested the Corporation for arbitration. An Arbitrator was appointed on 16.7.2007. It was on 6.6.2007, again the godown of the petitioner was inspected. On 13.8.2007, a show cause notice was issued to the petitioner as to why his distributorship be not terminated. The first reason for issuing the show cause notice was that three major irregularities within a period of two years were committed and the second reason was unauthorized assignment of interest in distributorship to outsider. Subsequently, in pursuance of the directions of this Court, after considering the reply to the show cause notice, the order terminating the distributorship was passed on 19.10.2007.

5. In Civil Writ Petition No. 8826 of 2008, the petitioner was allotted a retail outlet of petrol and diesel pump in village Musahibpur in District Hoshiarpur on 9.5.2001. It is the case of the petitioner that respondent No. 3 came to the retail outlet of the petitioner and started fiddling with the seals and wires of the dispenser units in a reckless way, in the absence of the petitioner. The said respondent directed stoppage of sale and also made entry in the daily stock register of the petitioner. It is alleged that such action of respondent No. 3 is on account of malafide of the said officer consequent to contempt petition filed by the petitioner, alleging violation of the interim order passed in the separate writ petition pertaining to allotment of one temporary retail outlet. The petitioner was issued a show cause notice on 14.3.2008. After considering the reply filed, the

order terminating the regular retail outlet by invoking Section 55(k) of the Dealership Agreement, was passed. It is the said order, which is under challenge in the present writ petition.

6. The stand of the respondent Oil Companies is common. The allegations have been denied. It was asserted that the petitioners were found indulging in malpractices and, therefore, an order of termination of agency has been passed. Reliance is placed upon Clause 37(a) of the agreement in CWP No. 14572 of 2007 and CWP No. 17067 of 2007 and Clause 66 of the Agreement in CWP No. 8826 of 2008, pointing out that any dispute and/or difference of any nature, whatsoever, is required to be resolved by way of an arbitration. The reference is also made to Section 14 of the Specific Relief Act, 1963, to raise an argument that contract of such a nature, cannot be specifically enforced. Therefore, the writ petition is not maintainable.

7. Clause 37(a) of the Agreement in CWP No. 14572 of 2007 reads as under :

"37 (a) Any dispute or difference of any nature whatsoever any claim, cross claim, counter claim or set off of the Corporation against the Distributor or regarding any right, liability, act, omission or account of any of the parties hereto arising out of or in relation to this agreement shall be referred to the Sole Arbitration of the Director (Marketing) of the Corporation or of some Officer of the Corporation who may be nominated by the Director (Marketing). The Distributor will not be entitled to raise any objection to any such arbitrator on the ground that the arbitrator is an Officer of the Corporation or that he has dealt 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 other matters in dispute or difference. In the event of the arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason, the Director (Marketing) as aforesaid at the time of such transfer, vacation of office or inability to act may in the discretion of the Director (Marketing) designate another person to act as arbitrator in accordance with the terms of the agreement to the end and intent that the original Arbitrator shall be entitled to continue the arbitration proceedings notwithstanding his transfer or vacation of office as an Officer of the Corporation. If the Director (Marketing) does not designate another person to act as arbitrator on such transfer, vacation of office or inability of original arbitrator. Such persons shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is also a term of this contract that no person other than the Director (Marketing) or a person nominated by such Director (Marketing) of the Corporation as aforesaid shall act as arbitrator hereunder. The award of the arbitrator so appointed shall be final conclusive and binding on all parties to the agreement subject to the provisions of the Arbitration Act, 1940 or any statutory modification or reenactment thereof and the rules made thereunder for the time being in force shall apply to the arbitration proceedings under this clause."

8. The LPG Marketing Discipline Guidelines provide for incremental fine and

subsequent termination of the agreement. It is the case of the petitioner that the order of termination of the distributorship in CWP No. 14572 of 2007 has been passed without any previous imposition of fine and therefore, the order of termination of the distributorship is against the guidelines published. It is also argued that the dispute between the parties in respect of the termination of the agreement is subject to adjudication by an Arbitrator, but the Arbitrator has no power to order restoration of the distributorship in view of Section 14 of the Specific Relief Act, 1963. Therefore, the remedy of the petitioner is to invoke the jurisdiction of this Court as the termination of the contract is in violation of the public law duty imposed upon the respondents. Reliance is placed upon *E. Venkatakrishna v. Indian Oil Corporation and another*, (2000)7 Supreme Court Cases 764, the Hon"ble Supreme Court has set aside the Award of the Arbitrator restoring the distributorship of LPG, as it was held that Arbitrator was not vested with the jurisdiction to award restoration.

9. Reliance is also placed on *Mrs. Sanjana M. Wig v. Hindustran Petro Corporation Ltd.*, 2005(4) R.C.R.(Civil) 160 (SC) : AIR 2005 Supreme Court 3454, wherein the Hon"ble Supreme Court was seized of an agreement in respect of a retail outlet of the petroleum products. The writ petition was dismissed by the High Court in limine on the premise that there existed an arbitration clause in the agreement. The argument before the Hon"ble Supreme Court was that the Court has not considered the second prayer for restoration of the position to the appellant. After considering various judgments including that of *Harbans Lal Sahnia and another v. Indian Oil Corporation Ltd. and others*, (2003)2 SCC 107 and *State of H.P. v. Gujarat Ambuja Cement Ltd.*, 2005 AIR SCW 3727, it was held to the following effect :

"18. It may be true that in a given case when an action of the party is de hors the terms and conditions contained in an agreement as also beyond the scope and ambit of domestic forum created therefor, the writ petition may be held to be maintainable; but indisputably therefore such a case has to be made out. It may also be true, as has been held by this Court in *Amritsar Gas Service* (supra) and *E. Venkatakrishna* (supra), that the arbitrator may not have the requisite jurisdiction to direct restoration of the distributorship having regard to the provisions contained in Section 14 of the Specific Relief Act, 1963; but while entertaining a writ petition even in such a case, the court may not lose sight of the fact that if a serious disputed question of fact is involved arising out of a contract qua contract, ordinarily a writ petition would not be entertained. A writ petition, however, will be entertained when it involves a public law character or involves a question arising out of public law functions on the part of the respondent."

(Emphasis Supplied)

10. After returning such finding, the Hon"ble Supreme Court dismissed the appeal. Learned counsel for the petitioners have vehemently relied upon the observations made in the aforesaid judgment that a writ petition will be

entertained when it involves a public law character or involves a question arising out of public law functions on the part of the respondents.

11. However, learned counsel for the petitioners, could not refer to any precedent or principle of law to the effect that the grant of distributorship to the petitioners involves a public law character or a public law function. In fact, the grant of distributorship to the petitioners is a commercial transaction for which the petitioners are paid commission charges. Though the ultimate beneficiary of sale of LPG may be public at large, but such sale of petroleum products is a commercial transaction for which the petitioners make their profit. Such transaction does not involve any public law function, which may entitle the petitioner to invoke the writ jurisdiction of this Court.

12. In *Hindustan Petroleum Corpn. Ltd. v. M/s. Pinkcity Midway Petroleums*, 2003(3) R.C.R.(Civil) 686 (SC) : (2003)6 SCC 503, the Hon"ble Supreme Court found that the dispute regarding termination of the Dealership Agreement is covered by the arbitration clause in the agreement and the finding recorded by the Tribunal that such dispute is not referable to the Arbitrator, is not correct. It was held that such objection in respect of applicability of the arbitration clause will have to be raised before the concerned Arbitral Tribunal. While examining the question on merit, the Court found that the right of the Corporation to suspend the supply of petroleum products to an erring dealer, is an exercise under the contract. It was held that when a dealer shortsupplies or tampers with the seal, he apart from committing the statutory violation also commits a misconduct under the agreement and, therefore, the Corporation is entitled to invoke the agreement to stop supply of the petroleum products to such dealer. It was held to the following effect :

"22. Therefore, in our opinion, the courts below have erred in coming to the conclusion that the appellant did not have the legal authority to investigate and proceed against the respondent for its alleged misconduct under the terms of the Dealership Agreement. We are also of the opinion that if the appellant is satisfied that the respondent is indulging in shortsupply or tampering with the seals, it will be entitled to initiate such action as is contemplated under the agreement like suspending or stopping the supply of petroleum products to such erring dealer. If in that process any dispute arises between the appellant and such dealer, the same will have to be referred to arbitration as contemplated under Clause 40 of the Dealership Agreement."

13. In *Harbans Lal Sahnia's* case (supra), the conditions in which the High Court can exercise writ jurisdiction even though alternative remedy is available, were considered. It was held that at least in the following three contingencies, the jurisdiction of the writ court can be invoked; i.e. (i) where the writ petition seeks enforcement of any fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the order or the proceedings are wholly without jurisdiction or the vires of the Act is challenged. It was held to the following effect :

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of the compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged (See Whirlpool Corn. v. Registrar of Trade Marks, 1999(1) R.C.R.(Civil) 220 (SC) : (1998)8 SCC 1). The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and nonexistent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

14. However, in the present case, none of the three contingencies mentioned hereinabove is alleged to, has been violated. Neither there is any violation of the principles of natural justice nor it is alleged that the order or proceedings are wholly without jurisdiction, nor the vires of an Act are challenged. Even the petitioners do not seek any enforcement of any of the fundamental rights. As the dealers of petroleum products, they are bound to comply with the conditions mentioned in the contract. The consequences of contravention of the conditions are contained in the agreement itself. Therefore, the writ petitions filed by the petitioners to seek restoration of the dealership agreement is not maintainable.

15. Learned counsel for the petitioners have relied upon a Single Bench judgment of Delhi High Court reported as Delhi Petrol Dealer Association & Another v. Union of India and others, 81(1999) DLT 400, to contend that the Marketing Guidelines are legal and valid. The said judgment arises out of a writ petition filed by an Association of Petroleum Dealers challenging the Marketing Guidelines. It was found that the Guidelines had to be framed to check malpractice and that there is no arbitrary exercise of powers. The State machinery is provided with ample discretion in the matter and Clause 43 of the agreement vests power in the authorities to remedy breaches and there is no violation of the same in framing of the Guidelines.

16. While considering the argument raised by the Petroleum Dealers that there is no power in any of the statutes controlling the sale and distribution of the petroleum products to issue such Guidelines, it was found that when the parties have chosen to enter into contractual obligation, the power has to be traced to the agreement between the parties. It was held to the following effect :

"21. The learned counsel for the petitioners have denied that directions could be issued provided the powers are vested in the authorities in terms of the

Agreement entered into between the parties. Clause 43 it is contended, does not confer any such powers to impose major and minor penalties particularly when such action violates the rule of law and principles of natural justice as no opportunity is provided to the petitioners to show cause. This argument is misconceived as more drastic remedy such as termination is provided in the various statutes and the various causes of the agreement such as clauses 43 and 56 provide ample powers in the respondents to frame the guidelines as have been framed in the present case. The reading of the punishment as prescribed for major and minor penalties could not show that the explanation of the dealer is always called for and action is only taken when it is not found to be satisfactory. In appropriate cases the members of the petitioner association can also ask for a personal hearing and the same cannot be denied. The mere absence of the quantum of fines in various statutes will not make the agreement between the parties redundant on the ground that no power is vested in the authorities to frame such guidelines. The guidelines of 1982 and 1995 have operated satisfactorily and no one came forward on an earlier occasion to impugn those guidelines as the basic purpose for framing of the guidelines was to check adulteration, provide better service to the customers, to check violation of environmental health and safety regulations."

17. Still further, it was found that the writ petition under Article 226 of the Constitution of India, cannot be used for enforcement of contractual disputes. Thus, in case there is any dispute or difference between the parties regarding any right or liability arising out of or in relation to the agreement, the same shall be referred to an Arbitrator. As a matter of fact, the said judgment does not support the cause of the petitioner, in any manner. Apart from the finding that the writ petition is not maintainable in respect of the contractual obligation, it was found that even the guidelines arise out of the powers conferred on the distributor Companies in terms of the agreement. Thus, we do not find that the guidelines confer any right on the petitioner on the basis of which the termination of the agreement can be disputed in a writ petition. The guidelines have been framed not in exercise of statutory power, but are in the nature of Instructions, so as to regulate the internal working of the Oil Companies, so as to avoid the allegations of the arbitrariness and discrimination. Such guidelines do not confer any enforceable right in favour of the petitioner.

18. Still further the Division Bench of this Court in *M/s Regent Automobiles v. Indian Oil Corporation Limited and others*, 2008(3) R.C.R.(Civil) 752 (CWP No. 17874 of 2007, decided on 12.2.2008);

M/s Sanjeev Auto Fuels, Dharmapur, Mansa and another v. Indian Oil Corporation and another, (CWP No. 12366 of 2007 decided on 22.2.2008 and *Vipan Kumar Kamboj v. Union of India*, (CWP No. 3969 of 2008 decided 14.3.2008) has taken the same view that the writ jurisdiction cannot be invoked on account of termination of the distributorship agreement.

In view of the above, the writ petitions are dismissed with no orders as to costs.

Petitions dismissed.