
(2003) 09 DEL CK 0068
In the Delhi High Court
Case No : CW No. 4753 of 2003

Phool Service Station

APPELLANT

Vs

Indian Oil Corporation Ltd.

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 6 AD 556 : (2004) 1 CTLJ 181 : (2003) 107 DLT 571 : (2003) 71 DRJ 17

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : A. Maitri, for the Appellant; M.M. Kalra, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—The petitioner, a partnership concern having a retail outlet/petrol pump at Dibai Road, Shikarpur, District-Bulandshahr (U.P.) has approached this Court for the issuance of an appropriate writ, order or direction quashing the letter dated 26.06.2003 issued by the Assistant Manager (Sales), Noida of the respondent/Indian Oil Corporation Ltd whereby the petitioner was advised to close the sales till further advice from the respondent's divisional office at Agra. The petitioner has also sought an appropriate writ, order or direction for restraining the respondents from taking any action pursuant to the show cause notice dated 23.07.2003 issued by the Sr Divisional Retail Sales Manager of the respondent (Indian Oil Corporation Ltd) from Agra without first comparing the samples drawn from the petitioners retail outlet/petrol pump with the mother/reference sample. The petitioner has also sought restoration of supply of petrol/diesel to its retail outlet/petrol pump.

2. At the outset, the learned counsel appearing on behalf of the respondent submitted that this Court would not have any territorial jurisdiction to entertain the present writ petition apart from the fact that the present writ petition itself is premature as no action as such has been taken pursuant to the show cause

notice.

3. The question that has to be determined, Therefore, is whether this Court has territorial jurisdiction to entertain the present writ petition? To answer this question, certain relevant facts need to be pointed out. The petitioner was running the retail outlet at Shikarpur, District-Bulandshahr (U.P.) pursuant to a Dealership Agreement entered into with the respondent at New Delhi. Clause 66 of the said Agreement reads as under:-

"66. This Agreement has been made in N. Delhi and all payments there under shall be due and made in N. Delhi unless otherwise directed by the Corporation. The Courts in the city of N. Delhi alone shall have jurisdiction to entertain any suit, application or other proceeding in respect of any claim or dispute arising under this Agreement."

4. It is on the basis of this clause that the learned counsel for the petitioner submits that this Court has territorial jurisdiction in respect of the present writ petition. We shall come to this aspect a little later. The petitioner is essentially aggrieved by the fact that its sales have been suspended by virtue of the aforesaid letters dated 26.06.2003 and 23.07.2003 on account of certain alleged discrepancies which were observed when a surprise inspection was carried out at the petitioner's retail outlet by the Anti-Adulteration Cell on 26.06.2003.

5. The petitioner has been served with the aforesaid show cause notices. In response to the show cause notice dated 23.07.2003, the petitioner sent its reply on 26.07.2003. Thereafter nothing has happened. The respondent (Indian Oil Corporation Ltd) is yet to take action in the matter pursuant to the show cause notice dated 23.07.2003 and the reply of the petitioner 26.07.2003.

6. From a perusal of the reply, it appears that the petitioner is primarily aggrieved with the sampling procedures and with the fact that the samples allegedly drawn from the petitioner's retail outlet have not been compared with the mother samples. In fact, the question of law as contemplated by the petitioner itself at page "G" of the List of Dates is as under:-

"QUESTION OF LAW INVOLVED IN THE PETITION:

That when as per the provisions of Standard Weights & Measures Act, 1976 the powers vest with the Directorate of Legal Metrology in respect of all matters pertaining to Weights and Measures then how the action can be contemplated."

7. Therefore, it appears that:

a) The writ petition itself is premature inasmuch as a show cause notice has been issued by the respondent and a reply has been submitted by the petitioner. No action in terms of the Dealership Agreement itself has been taken by the respondent;

b) The grievance of the petitioner is one which does not fall within the expression "any claim or dispute arising under this Agreement".

As such, clause 66 of the Dealership Agreement would not come into play at all. Learned counsel for the petitioner had relied upon the said clause 66 as well as a Division Bench decision of this Court in the case of A.K. Surekha Vs. The Pradeshia Investment Corpn. of UP Ltd. and Another and Govt. of NCT and Another, , where a similar clause with regard to jurisdiction was considered. The said decision of the Division Bench would have no applicability in the facts of the present case inasmuch as clause 66 itself does not come into play at all as indicated above. Learned counsel for the respondent has relied upon the decision of a Division Bench of this Court in the case of Stofwa v. Air Force Naval Housing Board: 1996 (36) DRJ , wherein it was observed in paragraph 13 thereof as under:-

"13. The law as reflected by the above said decisions is that the emphasis has shifted from the residence or location of the person or authority sought to be proceeded against to the situs of the accrual of cause of action wholly or in part. It is also clear that a trivial or insignificant part of the cause of action arising at a particular place would not be enough to confer writ jurisdiction; it is the cause of action mainly and substantially arising at a place which would be determination factor of territorial jurisdiction. So also it shall have to be kept in view who are the real persons or authorities sought to be proceeded against or against whom the writ to be issued by the Court would run. Joining of proforma or ancillary parties, and certainly not the joining of unnecessary parties, would be relevant for the purpose of Article 226(1)."

8. The learned counsel for the respondent has also relied upon a decision of a single Judge of this Court in the case of Smt Uzma Khanam v. Indian Oil Corporation & Ors being CW No. 3604/2001, decided on 19.07.2002. The latter decision would have no applicability in the facts of the present case.

9. It is pertinent to note that in the case of Union of India and Others Vs. Adani Exports Ltd. and Another, , with regard to the question of cause of action for the purposes of territorial jurisdiction, the Supreme Court held as under:-

"17. It is seen from the above that in order to confer jurisdiction on a High Court to entertain a writ petition or a special civil application as in this case, the High Court must be satisfied from the entire facts pleaded in support of the cause of action that those facts do constitute the cause so as to empower the Court to decide the dispute which has, at least in part, arisen within its jurisdiction. It is clear from the above judgments that each and every fact pleaded by the respondents in the application does not ipso facto lead to the conclusion that those facts give rise to a cause of action within the Court's territorial jurisdiction unless those facts pleaded are such which have a nexus or relevance with the lis that is involved in the case. Facts which have no bearing with the lis or the dispute involved in the case, do not give rise to a cause of action so as to confer territorial jurisdiction on the court concerned."

10. In the present case, first of all, no cause of action as such has arisen

inasmuch as a final decision is yet to be taken by the respondent in response to the reply filed by the petitioner on 26.07.2003. Where the cause of action itself has not arisen, the question of territorial jurisdiction obviously cannot arise. However, assuming that any cause of action has accrued in favor of the petitioner, such a cause of action is not one which could be said to have arisen under the said Dealership Agreement. This being the case, clause 66 of the said Dealership Agreement would not come into play at all. The grievance with regard to the sampling procedures and non-compliance with the mother sample are all outside the domain of the contract between the petitioner and the respondent and has entirely arisen in U.P. No part of it has arisen within the territorial jurisdiction of this Court.

11. Accordingly, the writ petition is dismissed. There shall be no order as to costs.