

(2015) 09 OHC CK 0011
In the Orissa High Court
Case No : Writ Petition (C) No. 13835 of 2014

Rabindra Nath Tiriya

APPELLANT

Vs

The Director (Refineries), IOCL and Others

RESPONDENT

Date of Decision : 16-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 09 OHC CK 0011

Hon'ble Judges : B.K. Nayak, J

Bench : Single Bench

Advocate : R.N. Patnaik and D.K. Mallick, for the Appellant

Final Decision : Dismissed

Judgement

B.K. Nayak, J—The original and appellate orders passed under Annexures-8 and 9 respectively by the opposite parties terminating the dealership agreement with the petitioner, have been assailed in this writ petition.

2. The petitioner was selected for running a retail outlet dealership of petrol (MS) and High Speed Diesel at Karanjia (Ankura) and on the basis of agreement executed between the petitioner and the Indian Oil Corporation, the petitioner operated the outlet. It is the case of the petitioner that while operating the retail outlet, all on a sudden on 05.03.2013 the petrol delivery machine started creating problems and the Totalizer of the machine started jumping, for which the petitioner stopped operating the delivery machine and tried to contact the officers of the Indian Oil Corporation at Bhubaneswar over cell phone. But due to network problems, he could not contact any of them. The petitioner intimated the Inspector (Legal Metrology) Karanjia on 06.03.2013 and lodged a complaint before him. On inspection the Inspector (Legal Metrology) decided that the Totalizer needs to be replaced. On 12.03.2013 an additional Totalizer was connected to the machine in presence of the Inspector (Legal Metrology), Karanjia for the purpose of trial and was under observation for 24 hours by the Weights & Measures Department of Karanjia for which it was not sealed. On

13.03.2013 the officers of Anti Adulteration Cell and S.O. (Retail Sales) Baripada Sales Area of Indian Oil Corporation made an inspection of the petitioner's outlet and reported that an extra totalizer was connected with cable coming from micro processor controller box and the original totalizer was disconnected and the extra totalizer was not sealed by the Weights and Measures Department. The inspecting team sealed the nozzle of the dispensing unit. On the basis of the report, notice was issued to the petitioner vide Annexure-2 for violation of Clause No. 8.2 (iii) & (iv) of MDG-2012 read with Clause-8 (i) of the dealership agreement and asking for show cause as to why action as stipulated in the agreement shall not be taken.

3. On receipt of the notice (Annexure-2), the petitioner filed his show cause along with copy of the letter of Inspector (Legal Metrology) Karanjia vide Annexure-4 stating inter alia that he tried to contact officers of the Indian Oil Corporation over telephone, but could not succeed due to network problems and, therefore, he informed the Weights and Measures Department, Baripada and the officers of the said department installed the additional totalizer on a trial basis. The petitioner also submitted a further reply vide Annexure-6. Since the decision on the petitioner's show cause was delayed, the petitioner filed W.P.(C) No. 26789 of 2013 before this Court, which was disposed of by order dated 12.12.2013 directing the authority of the Corporation to finalise the matter within a month from the date of receipt of a copy of the said order. Thereafter, the order dated 31.01.2014 under Annexure-8 was intimated to the petitioner cancelling his dealership as per the terms of the agreement. The petitioner challenged the cancellation order in appeal, which was dismissed by opposite party No. 1 by his order dated 20.06.2014 (Annexure-9).

4. Learned counsel for the petitioner submits that by fixing the extra totalizer to the machine in his outlet and not sealing the same by the petitioner was not with malafide intention but because of the trouble detected in the totalizer of the machine and that the petitioner having failed to contact the authorities of the Indian Oil Corporation over phone, with the assistance of the Officers of the Weights and Measures Department, Karanjia and the Inspector (Legal Metrology) fixed the extra totalizer for test which cannot be said to be unauthorized and, therefore, the cancellation orders under Annexures-8 and 9 are liable to be quashed.

5. The opposite parties have filed a counter affidavit, with reference to which the learned counsel for the opposite parties draws the attention of this Court to different clauses of the dealership agreement executed between the parties, which has been annexed as Annexure-A/2. Among others Clauses-8 (i), 42 and 45 (a) and (k), which are relevant, run as follows :

"Clause-8 (i) No repairs to the premises and outfit shall be done by the Dealer unless previously authorized by the Corporation in writing. The dealer shall not interfere with or attempt to adjust the outfit or any part thereof but shall notify the Corporation immediately of the necessity of any repair or adjustment and

thereby ensure that the outfit is in proper working order and delivers full and proper measure at all times. The Dealer shall not operate the outfit while it is out of order.

42. The Dealer shall at all times faithfully, promptly, and diligently observe and perform and carry out at all times all directions, instructions, guidelines and orders given or as may be given from time to time by the Corporation or its representative (s) on safe practices and marketing discipline and/or for the proper carrying on of the Dealership of the Corporation. The Dealer shall scrupulously observe and comply with all laws, rules, regulations and requisitions of the Central/State Government and of all authorities appointed by them or either of them including in particular the Chief Controller of Explosives, Government of India and/or any other local authority with regard to the safe practices.

45. Notwithstanding anything to the contrary herein contained, the Corporation shall be at liberty at its entire discretion to terminate this Agreement forthwith upon or any time after the happening of any of the following events namely:--

(a) If the Dealer shall commit a breach or default of any of the terms, conditions, covenants and stipulations contained in this agreement.

(b to j)

(k) If the Dealer does not adhere to the instructions/guidelines issued from time to time by the Corporation in connection with Marketing Discipline and/or safe practices to be followed by him in the sale or supply and storage of the Corporation's products or otherwise;"

6. It is apparent from the aforesaid terms and conditions of the dealership agreement that for violation of Clause-8 (i) of the agreement consequences as stipulated in Clause-45 (a) & (k) stipulating for the termination of the dealership agreement would ensue.

7. Admittedly, the petitioner has committed breach of the terms of the contract by not intimating the corporation authorities about the mal functioning of the machine and the necessity for repair or replacement of the same as required under Clause-8 (i) of the agreement. For such breach the opposite parties have cancelled the agreement in exercise of their contractual right under the agreement. The dispute is purely contractual, for resolution of which a writ petition under Article 226 of the Constitution is not the appropriate remedy. (See State of Kerala and Others Vs. M.K. Jose(2015) 6 MLJ 503 : (2015) 8 SCALE 737). Besides, Clause-61 of the agreement provides for arbitration in respect of any dispute or difference of any nature whatsoever, any claim, cross-claim, counter claim or set-off or regarding any right, liability, act, omission or account of any of the parties to the contract.

Learned counsel for the petitioner relies upon a decision reported in Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, AIR 2003 SC 2120 :

(2002) 10 JT 561 : (2003) 2 SCC 107 : (2003) AIRSCW 126 : (2003) 1 Supreme 446 . and others, in which the apex Court set aside the cancellation of dealership agreement by rejecting the contention of availability of alternative remedy of arbitration as because the allegation of adulteration of petroleum product was disputed by the dealer and the test of sample was conducted long after collection giving rise to doubt about the correctness of the test report. It was not a case of admitted violation of terms of the agreement. Hence the said decision has no application to the facts of the instant case.

Therefore, this Court refuses to entertain this writ petition, which is hereby dismissed. No costs.