(2023) 08 CAL CK 0110

In the Calcutta High Court

Case No : WPA No. 13764 Of 2023

Rakhi Sharma APPELLANT

Vs

Indian Oil Corporation Ltd. & Ors. RESPONDENT

Date of Decision : 25-08-2023

Acts Referred:
Constitution Of India, 1950 — Article 19(1)(g), 21

Citation : (2023) 08 CAL CK 0110

Hon'ble Judges : Bibek Chaudhuri, J

Bench : Single Bench

Advocate : Kalyan Kumar Bandopadhyay, Ramesh Dhara, Mousumi Choudhury, Amit Nag, Ranjabati Ray, Washim Ahmed, Sk. Md. Masud, Rahul Kumar Singh

Final Decision : Disposed Of

Judgement

Bibek Chaudhuri, J

1. On the basis of a memorandum of agreement executed on 30th November, 2020 by and between Mrs. Rakhi Sharma, proprietor of M/s Sharma Kerosene Agency (SKO) and the Indian Oil Corporation Limited, the petitioner was granted kerosene/diesel oil dealership.

2. It is not in dispute that on the basis of the said agreement, Director of Consumer Goods, Food and Supplies Department, Government of West Bengal granted requisite lincence in favour of the petitioner. It is the case of the petitioner that she has been running the said business continuously, uninterruptedly and without any objection from its customers.

3. On 17th April, 2023 the petitioner received a letter from the Divisional Retail Sales Head, Durgapur Divisional Office of IOCL alleging, inter alia, that the IOCL received a complaint on 13th April, 2023 where it has been alleged that the petitioner has entered into an agreement with one Sonatan Bera of Purusurah, Hooghly and Avijit Maji of Kendur, Purba Bardhaman on 8th July, 2021 and thereby violated the terms of dealership agreement. The petitioner was therefore

directed to submit her explanation within five days of receipt of the letter.

4. From the letter dated 12th April, 2023 annexed with aforesaid letter issued by the Divisional Retail Sales Head of Indian Oil Corporation, the petitioner came to know that she allegedly assigned her dealership to some outsiders, namely, Sonatan Bera and Avijit Maji. The petitioner flatly denied such allegation and by a letter dated 31st May, 2023 she stated that the allegation of execution of any agreement on 8th July, 2021 with Sonatan Bera and Avijit Maji is false and any such agreement was not valid. The dealership in question was solely being operated by the petitioner. In the said letter the petitioner requested the authorities to provide her one month time so that she can submit all correct facts regarding the issue before the Divisional Manager, IOCL. Similarly, the complainant who allegedly made a complaint against the petitioner of assignment of dealership in violation of agreement in favour of third parties, namely, Amal Sankar Nandi, wrote a letter on 9th June, 2023 stating, inter alia, that he did not make any complaint against the petitioner. She also declared from her knowledge that the petitioner has been running the dealership business of kerosene oil by herself. Therefore, he requested the IOCL authority to discard such fake, fabricated and forged complaint against the petitioner.

5. It is the grievance of the petitioner that on 6th June, 2023 the Deputy Director of Consumer Goods, Department of Food and Supplies issued agent wise allocation of superior kerosene oil for the month of June, 2023 and allocation in favour of the petitioner was stopped without giving any opportunity to the petitioner even to submit an explanation, showing cause as to why allocation of superior kerosene oil would not be stopped from the month of June, 2023.

6. Mr. Kalyan Kumar Bandopadhyay, learned Senior Counsel on behalf of the petitioner refers to a letter issued by the Divisional Retail Sales Head of IOCL to the Director of Consumers Goods on 1st June, 2023 requesting him to temporarily suspend superior kerosene oil quota of M/s Sharma (SKO) Agency, Sonamukhi, Bankura. In the said letter the Director of Consumer Goods was informed that the petitioner being the proprietor of M/s Sharma (SKO), Sonamukhi, Bankura has entered into an agreement with one Sonatan Bera and Avijit Maji on 8th July, 2021 to meet financial need of the said agency without prior approval of IOCL. A general power of attorney has also been executed in the name of the said Avijit Maji. It is alleged that execution of such agreement is in gross violation of the dealership agreement executed by and between the petitioner and IOCL and her agency is liable to be terminated. It is also stated that a committee officer will investigate into the matter and find out the detailed facts of the case. It is submitted by Mr. Bhattacharya that the said letter issued by IOCL to the Director of Consumer Goods is absolutely mala fide and malicious and decision taken by the Director of Consumer Goods. On the basis of the said letter, deleting the name of the petitioner from the list of allocation of superior kerosene oil for the month of June, 2023 is absolutely arbitrary. The petitioner was not given any opportunity in support of her claim that the agreement was

false. The complainant who allegedly made allegation against the petitioner that she was not running business and assigned her business in faovur of one Sonatan Bera and Avijit Maji subsequently retracted from her complaint stating, inter alia, that the said complaint was fake and forged. Moreover, she declared from the personal knowledge that Rakhi Sharma has been running the business personally. Thus, it is contended on behalf of the petitioner that the entire action by the IOCL as well as the director of Consumer Goods is arbitrary, mala fide and executed with ill motive. Therefore, the order dated 6th June, 2023 issued by the Director, Consumer Goods is liable to be quashed.

7. The learned Advocate on behalf of the IOCL, being respondent No.1, 2 and 3 has filed affidavit-in-opposition controverting entire allegation made out by the petitioner in her writ petition.

8. The learned Advocate for the petitioner at the outset draws my attention to Clause 28(a) and 15 of the Agreement executed by Rakhi Sharma with IOCL. Clause 28(a) of the agreement runs thus:

“28. Except with the previous written consent of the Corporation (which constant the Corporation may in its sole and absolute discretion withhold)

(a) The Dealer shall not enter into any agreement contact or understanding whereby the operations of the Dealer hereunder are or may be controlled, carried out and/or financed by any other persons, firm or company whether directly or indirectly and whether the whole or in part.”

9. Clause 15 of the agreement read as hereunder:-

“Notwithstanding anything to the contrary herein contained the Corporation shall be at liberty upon breach by the Dealer of any covenant in this Agreement to stop and/or suspend forthwith all suppliers to the Dealer and/or sales from the premises by the Dealer for such period or periods as the Corporation may think fit, and such right of stoppage and/or suspension of supplies shall be in addition to and/or without prejudice to any other right or remedy of the Corporation under this Agreement or Law. For the purpose of this clause, the General Manager of the corporation for time being at Kolkata shall be the sole Judge as to whether a breach of any convenant of this agreement has been committed by the Dealer. The Dealer shall not be entitled to claim any compensation or damage from the Corporation on account of any such stoppage and/or suspension of supplies.”

10. Placing reliance on the said two clauses it is submitted by the learned Advocate for the petitioner that Clause 28(a) permanently restrains a dealer from executing any agreement, contract or understanding by virtue of which the dealership business may be controlled, carried out and/or financed by any other person, firm or company whether directly or indirectly and whether in whole or in part. Therefore, the petitioner is debarred from taking any financial help from any person to run his/her dealership. Clause 15 empowers the corporation to

suspend forthwith of supplies to the dealer and/or sales from the premises by the dealers on the ground of breach of agreement by the dealer.

11. Thus, it is submitted by the learned Advocate for the corporation that the corporation is not supposed to carry out a long drawn inquiry before suspending the dealership of the petitioner. It is also submitted by him that whether the said terms and conditions violates any of the provision of the Contract Act or whether the said two clauses are practically in the nature of a void agreement in restrain of trade. This questions are to be adjudicated upon by the Civil Court. The writ court has no jurisdiction to conduct an inquiry on disputed question of fact. Therefore, the instant writ petition is not maintainable.

12. It is also pointed out by the learned Advocate for the respondents that temporary suspension of allocation of superior kerosene oil quota against the proprietorship business of the petitioner was not issued by IOCL. The order was issued by the Deputy Directorate of Consumer Goods. On due consideration of the letter written by IOCL Authority to the Director of Consumer Goods. Therefore, IOCL cannot be held liable for the order of suspension.

13. Through, the learned Advocate for the state respondents, respondent No.4 hereby filed certain documents which I have referred hereinabove. The respondent No.4 was not represented at the time of hearing of the instant writ.

14. In reply, the learned Senior Counsel on behalf of the petitioner submits placing reliance on the decision of the Hon’ble Supreme Court in Mohinder Singh Gill & Anr. vs. The Chief Election Commissioner, New Delhi & Ors. reported in (1978) 1 SCC 405, that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. In the instant case the Divisional Retail Sales Head of IOCL wrote a letter on 1st June, 2023 to the Director of Consumer Goods stating, inter alia, that M/s Sharma SKO Agency, Sonamukhi, Bankura had entered into an agreement with one Santosh Bera and Abhijit Majhi on 8th July, 2021 to meet a financial need of the said agency. The letter was issued on the basis of a purported complaint made by one Amal Kumar Nandi but the said Amal Kumar Nandi restricted from his complaint declaring that the purported complaint was fake and it was not signed by him. The petitioner in her letter dated 31st May, 2023 clearly stated that the alleged agreement is false and she prayed for one month time to submit her detailed representation in this regard. However, the petitioner was not granted any time and decision for suspension of allocation of kerosene oil was taken unilaterally without giving any opportunity of being heard, to the petitioner. The respondents at present cannot support its decision on the basis of the alleged documents, viz, power of attorney or deed of agreement etc which were alleged to be false by the petitioner herself.

15. Mr. Bandopadhyay, refers to a decision in the case of Popcorn Entertainment & Anr. vs. City Industrial Development Corporation & Anr. reported in (2007) 9

SCC 593. It is held by the Hon’ble Supreme Court in the above decision that in Whirlpool Corporation Case (1998) 8 SCC 1, the Hon’ble Supreme Court laid down three clear cut circumstances wherein the writ petition would be maintainable even in a contractual matter. Firstly, if the action of the respondent is illegal and without jurisdiction, secondly, if the principles of natural justice have been violated and thirdly, if the appellants' fundamental rights have been violated. It is submitted by Mr. Bandopadhyay that in the instant case the order written by the regional head of IOCL to the Director of Consumer Goods requesting him to suspend the allocation of quota of superior kerosene oil in favour of proprietorship firm of the petitioner was violative of the principle of natural justice because of the fact that suspension of dealership business was proposed by the IOCL without providing any opportunity to the petitioner of hearing. Thus, the basic norm of natural justice was violated. Moreover, the IOCL as well as the Director of Consumer Goods, Government of West Bengal passed the impugned order in utter violation of the fundamental right contained in Section 19(i)(g) and as a corollary thereof, Article 21 of the Constitution of India, when the petitioner approached the IOCL authority to hear the opportunity to prove that the alleged agreements were false, the respondents ought not to have taken such decision without giving and opportunity to the petitioner to place her case before them.

16. On the same point the learned Senior Counsel on behalf of the petitioner refers to a decision in the case of Union of India & Ors. vs. Tantia Construction Private Limited reported in (2011) 5 SCC 697. In this decision it is held by the Hon’ble Supreme Court that existence or availability of arbitration clause in agreement is not bar to invocation of writ jurisdiction when injustice is caused and rule of law violated. Constitutional power vested in High Court or Supreme Court cannot be fettered by any alternative remedy available to authorities.

17. It is urged by the learned Advocate for the respondent No.1, 2 and 3 that the agreement contains arbitration clause and therefore, the petitioner could have invoked arbitration clause to settle the dispute.

18. It is important to note that the petitioner has not challenged the lawful authority of the agreement in question executed by the petitioner and IOCL. The petitioner has approached this Court regarding the manner as to how the respondents proceeded in this manner on the basis of a complaint which was subsequently denied to be made by the complainant and also on the basis of purported agreement and power of attorney which the petitioner unequivocally declared to be false. The petitioner was not granted any opportunity to prove her case before the authorities. She was not summoned to produce documents, if any in support of her claim. On the other hand, a unilateral request was made by the IOCL for suspension of dealership of the petitioner temporarily and the Director of Consumer Goods, State of West Bengal arbitrarily acted on it.

19. In view of such circumstances, this Court is of the opinion that the instant writ petition is maintainable and the Director of Consumer Goods cannot pass the

impugned order dated 6th June, 2023 detagging SKO dealers from M/s Sharma Kerosene Agency by tagging it with M/s Raj Krishno Supply Agency, Bishnupur. The said order is absolutely arbitrary, mala fide and violative of the principles of natural justice as well as fundament rights enshrined in Articles 19(i)(g) and 21 of the Constitution of India.

20. Accordingly, the order dated 6th June, 2023 passed by the Director of Consumer goods is set aside and quashed.

21. With the above order the instant writ petition is disposed of on contest however, under the facts and circumstances without any cost.

