
(1998) 09 P&H CK 0032
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 7490 of 1998

Ram Singh and Others

APPELLANT

Vs

Indian Oil Corporation and Others

RESPONDENT

Date of Decision : 22-09-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 P&H 61 : (1999) 121 PLR 343 : (1998) 4 RCR(Civil) 534

Hon'ble Judges : V.K. Bali, J;B. Rai, J

Bench : Division Bench

Advocate : Padam Kumar Jain, for the Appellant; Ashish Kapoor and G.S. Bajwa, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bali, J.—Ram Singh for himself as also as partner of M/s. Shakti Filling Station, Adda Rawal Pindi, Phagwara. District Kapurthala, in the present petition filed by him under Article 226 of the Constitution of India challenges letter, Annexure P-14 suspending/ stopping the supply of petrol and diesel to the partnership concern-M/s. Shakti Filling Station, Petitioner No. 2 and directing the Indian Oil Corporation to desist from stopping, denying or discontinuing the supply of petrol, diesel and all kinds of lubricants.

2. Brief facts giving rise to the present petition reveal that respondent No. 3-ParmaNand was appointed as dealer for the sale of petrol and diesel at Rawal Pindi, Tehsil Phagwara vide letter, Annexure P-1 dated October 18, 1982. The said dealership was to be given to a person belonging to reserved category of Scheduled Caste. Respondent No. 3 Parma Nand did belong to the category referred to above and, as mentioned above, he was-appointed dealer an October 18, 1982. It is then the case of the petitioner that on May 10, 1982 an agreement of partnership/arrangement was signed between the petitioner and respondent No. 3. Earlier thereto on November 15, 1979 Ram Singh petitioner had purchased the land and on April 10, 1985 a partnership deed came into

being between petitioner and respondent No. 3. On April 7, 1986, however, Parma Nand sent a request for reconstitution and such a request was also made by the petitioner on the same day. However, on January 28, 1991 respondent Corporation required Parma Nand, respondent No. 3 to prove that the partnership was bona fide. It is further the case of petitioner that on April 1, 1992 fresh partnership deed came to be executed between the petitioner and respondent No. 3, However, vide impugned order, Annexure P-14, dated March 11, 1998 supply of MS, HSD was stopped.

3. Pursuant to notice issued by this Court, respondents 1 to 3 have entered defence and vide two separate written statements, one filed on behalf of respondents 1 and 2 and the other by respondent No. 3, have contested the case of the petitioner. In the written statement filed on behalf of respondents 1 and 2, it has been pleaded that respondent No. 3 was appointed a dealer of the Indian Oil Corporation and there was no privity of contract between the petitioner and Indian Oil Corporation and that the writ petition requires determination of disputed facts which cannot be gone into by this Court in its writ jurisdiction under Article 226 of the Constitution of India. It is further the case of respondents that the matter is pending determination in a civil suit filed by respondent No. 3. It has further been pleaded that the respondent dealer was not permitted to enter into any partnership without the prior permission of respondents 1 and 2. The partnership deed was forwarded to respondents 1 and 2 but the proposal was rejected by them way back in 1991. It appears that representation was . again received seeking permission for Divisional Manager, Chandigarh, keeping in view the commercial interest of the Corporation. However, this proposal was also not approved by respondents 1 and 2. The supply of petrol and diesel has been stopped as requested by the dealer himself.

4. Respondent No. 3 in his separate written statement pleads that petitioner No. 2 through petitioner No. 1 had already filed a civil suit before the Civil Judge (Junior Division), Jalandhar titled as Shakti Filling Station, Adda Rawalpindi through its alleged partner Ram Singh v. Indian Oil Corporation and another claiming similar relief. The head note of the said suit reads thus :--

"Suit for Permanent Injunction re-straining the defendants from shifting the petrol pump known and styled as M/s. Shakti Filling Station from its present site near Adda Rawalpindi, Tehsil Phagwara, to some other place and for permanent injunction restraining the defendants from stopping the supply of Petroleum products to the aforesaid Petrol pump."

5. Along with the aforesaid suit, an application under Order 39, Rules 1 and 2 read with Section 151, C.P.C. for temporary injunction was also filed. The said suit is still pending. Having failed to obtain a temporary injunction, the petitioners have filed this writ petition claiming similar relief. It is further the case of respondent No. 3 that petition is liable to be dismissed for the reason that petitioner No. 1 is not owner of firm M/s. Shakti Filling Station and in fact respondent No. 3 is the sole proprietor of the firm. Supply of petroleum products

has been stopped by respondents 1 and 2 at the request of respondent No. 3 who is the real owner/allottee of the retail outlet allotted to him under the reserved category of Scheduled Caste. It is further the case of respondent No. 3 that the petition is liable to be dismissed on the ground of concealment and mis-statement of material facts. The petitioners have deliberately not mentioned about the pendency of the civil suit filed by them claiming almost the similar relief before the Civil Judge, Jalandhar. They were trying to mislead this Court by mentioning respondent No. 3 as its sleeping partner. In fact, under the garb of forged partnership deed, petitioner No. 1 is trying to grab the petrol pump which was solely owned and allotted to respondent No. 3. Respondent No. 3 was allotted the retail outlet dealership under the reserved category of scheduled caste and he was issued a letter of intent dated April 20, 1982 by respondents 1 and 2. Under the terms and conditions of this letter of intent, respondent No. 3 could not have inducted any partner. However, he was given liberty to procure a suitable plot of land either by purchasing or having the same on lease. In pursuance of this condition, respondent No. 3 had taken the land on lease from petitioner No. 1 for running the business of petrol pump. It is further the case of respondent No. 3 that he simply asked petitioner No 1 to assist him in running the business as he was new in this business and petitioner No. 1 was merely appointed as a Manager of the firm M/s. Shakti Filling Station. No partnership was agreed upon by respondent No. 3 and under the garb of managing the petrol pump, petitioner No.-1 started fabricating documents from time to time without the knowledge and consent of respondent No. 3. As the lease deed of the land was for a period of ten years which was going to expire in 1995, petitioner No. 1 started showing himself as the partner of the firm without the knowledge and consent of respondent No. 3. It is only in the month of May, 1995 that it came to the notice of respondent No. 3 that the petitioner was posing himself as owner of the petrol pump when a notice was published in almost all the leading news papers to the effect that the petitioner was the owner of the petrol pump and respondent No. 3 was merely an employee and petitioner would not be responsible for any deed or act purportedly done by respondent No. 3 on behalf of the firm M/s. Shakti Filling Station. Respondent No. 3 immediately sent legal notices to the petitioner and Registrar of the Firms to the effect that there was no partnership firm as is being alleged by the petitioner. Respondent No. 3 also applied for cancellation of the registration of alleged forged, fabricated partnership deed and he also requested the authorities of Indian Oil Corporation for permission to shift the petrol pump to other appropriate site and location with a further request that the supply of any kind of products should be made on the indents duly signed by him only. A request to this effect was signed by respondent No. 3 on October 5, 1995. He was informed by the authorities of the Indian Oil Corporation vide letter dated November 14, 1996 that his request could be considered for shifting of the petrol pump with a condition to supply the requisite information for the transfer. In the meantime, petitioner No. 1 filed a civil suit on October 12, 1995 restraining the Indian Oil Corporation from shifting the petrol pump. However, petitioner withdrew that suit on October 16, 1995.

Respondent No. 3 meanwhile purchased a suitable land which has been registered and mutated in his name. Respondents 1 and 2 acceded to the request of respondent No. 3 and after completion of requisite formalities, respondents 1 and 2 agreed to transfer the petrol pump from the existing site to the land owned and purchased by respondent No. 3 for which respondents 1 and 2 applied for No Objection Certificate to the Deputy Commissioner, Kapurthala. When the petitioner started interfering with the business being run by respondent No. 3 in order to garb the ownership of the petrol pump on the basis of alleged forged partnership deeds, respondent No. 3 requested the authorities of the Indian Oil Corporation vide letter dated March 20, 1997 for immediately stopping the supply of the products till the petrol pump was not shifted. In these circumstances, respondents 1 and 2 had stopped the supply of the petroleum products to petrol pump.

6. Mr. Padam Kumar Jain, learned counsel for the petitioner contends that order, Annexure P-14 is illegal and against the principles of natural justice as no opportunity of hearing was ever provided to the petitioners before issuing letter/order, Annexure P-14 and that an implied contract had come into being between the parties and the outlet named as Shakti Filling Station was deemed to have been reconstituted by the acts and acquiescence of respondents 1 and 2. It is further pleaded that a huge amount had since been invested by petitioner No. 1 in setting up the petrol pump and respondents 1 and 2 were not entitled to act in a manner which is harmful and causing wrongful loss to the petitioner. That even the representation filed by the petitioner against order. Annexure P-14 has not been decided.

7. In the context of the facts of this case and in view of the averments made in the written statements, detailed above, we are of the view that this petition deserves to be dismissed. Petitioners having failed to obtain an interim stay from the Civil Court, conveniently withheld this vital information and did not mention even a word with regard to filing of the civil suit. Mr. Jain, learned counsel for the petitioner, however, stated that the suit was based on entirely a different cause of action and for that precise reason, no mention of the same was made in the writ petition. A certified copy of the plaint has been handed over to us by learned counsel for respondent No. 3. The head note of the civil suit has already been reproduced above. In the body of the plaint and in paragraph 8 thereof, the pleadings are as follows :--

"Thus, there is no escape from the fact that no resitment can be made by the defendant except after consulting and the consent of Ram Singh which is conspicuously missing in the present case. There appears to be extraneous reasons for so doing. In order to pressurise the plaintiff to agree to the resitment of the petrol pump, the defendant Corporation has even threatened to discontinue the supply of the products which are being made from the IOC Depot situated on G.T. Road Bye Pass, Jalandhar and this threat of the defendants is absolutely illegal. The defendants have no right to stop the supply of petroleum

products to the plaintiff firm especially when all the payments are being made in advance for the supplies made."

The prayer clause of the suit reads thus :

"It is, therefore, prayed that a decree for permanent injunction restraining the defendant from shifting the petrol pump known and styled as M/s. Shakti Filling Station from its present site near Adda Rawalpindi, Tchsil Phagwara to some other place and for permanent injunction restraining the defendant Corporation from in any manner stopping the supply to the petrol pump in question, may kindly be passed in favour of the plaintiff and against the defendant Corporation with costs."

8. True, insofar as impugned order, Annexure P-14 is concerned, the same came to be passed on March 11, 1998 whereas the suit aforesaid was filed on November 5, 1997 but the petitioners were certainly aware of the fact that in view of the prevailing situation and the request made by the respondent No. 3, supply of the petrol and diesel is going to be stopped, We are of the view that cause of action did not change only on account of the fact that supply of diesel and petrol was ordered to be stopped vide order, Annexure P-14 on March 11, 1998 whereas the suit came to be instituted earlier. The cause of action was the same and at the most passing of order, Annexure P-14 the plaint could have been amended to specifically challenge the said order as well. The petitioner have been guilty of suppressing material fact from this Court, thus, disentitling it for any discretionary relief from this Court. That apart, one thing that stands admitted even by the petitioners is that respondent No. 3 was appointed as dealer by respondents 1 and 2 and that being so, a request made by respondent No. 3 for stopping supply of petrol and diesel, cannot possibly be agitated by the petitioners. We do not wish to go into the assertions of respondent No. 3 that petitioner No. 1 was only an employee and had forged documents purporting to be partnership deed as that would certainly prejudice either of the Parties at the time of trial in the civil authorised dealer of respondents 1 and 2 on his request if respondents 1 and 2 have stopped supply of petrol and diesel, no exception can be had to the same by the petitioners.

9. Finding no merit in this petition, we dismiss the same in limine with costs quantified at Rs. 5,000/-.