
(2003) 11 DEL CK 0156

In the Delhi High Court

Case No : CW No. 5059 of 2003 and CM No's. 8833, 9244 and 10986 of 2003

Ramit Enterprises

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 03-11-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 AD 117 : (2004) 1 CTLJ 202 : (2003) 108 DLT 79 : (2004) 3 RCR(Civil) 82

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : A. Maitri, for the Appellant; Raju Ramachandran, ASGI and Vinod K. Srivastava, for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—The petitioner had a petrol dealership of the Hindustan Petroleum Corporation Ltd. and was running the same at Rohini, Delhi. The petitioner was issued a show cause notice dated 25.07.2003, wherein various allegations were set out against the petitioner's running of the said dealership which included alleged contraventions of the various clauses of the dealership agreement dated 21.03.1996. In particular, it appears from the show cause notice that the petitioner had committed alleged breaches and violations of clauses 9, 36, 44 and 55K of the said agreement. The petitioner sent a reply to the said show cause notice within time. After considering the reply, the respondent terminated the dealership invoking clause 55K of the dealership agreement on 06.08.2003. The dealership was terminated with immediate effect. Learned counsel for the petitioner submitted that three month's notice ought to have been given before the dealership could be terminated, particularly in view of the express provisions of clause 9 of the agreement. Learned counsel for the petitioner also drew my attention to clause 3 of the agreement which permitted termination implicate of the dealership agreement in respect of both the parties

by giving three months notice.

2. However, learned senior counsel appearing on behalf of the respondent submitted that the termination was in terms of clause 55K and not only on the basis of clause 9. Therefore, the dealership agreement could be terminated forthwith and no notice period was necessary. He also drew my attention to clause 66 of the dealership agreement which reads as under:-

"66. Any dispute or difference of any nature whatsoever 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 managing director of the corporation or of some officer of the corporation who may be nominated by the managing director. The dealer 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 to deal 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 of the 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 managing director as aforesaid at the time of such transfer, vacation of office or inability to act, shall designate another person to act as arbitrator in accordance with the terms of the agreement such person shall be entitled to proceed with the reference from the point at which it has left by his predecessor. It is also a term of this contract that no person other than the managing director or a person nominated by such managing director 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 of or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause.

The award shall be made in writing within six months after entering upon the reference or within such extended time not exceeding further four months as the sole arbitrator shall by a writing under his own hands appoint."

3. From the aforesaid clause, it is clear that if there is any dispute or difference between the petitioner and the respondent the same is referable to arbitration in terms of the said clause. The petitioner, Therefore, has the alternative remedy of seeking arbitration and it would not be proper for this Court to interfere under Article 226 of the Constitution.

4. In this context, Mr Maitri, who appears on behalf of the petitioner, placed the decision of the Supreme Court in Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, and particularly referred to paragraph 7 thereof which reads as under:-

"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 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 virus of an Act is challenged. (See *Whirlpool Corpn. v. Registrar of Trade Marks*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 non-existent 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."

5. In the said decision, the Supreme Court indicated that the presence of an alternative remedy does not necessarily mean that a writ petition cannot be entertained and that such a rule is only a rule of prudence. However, the circumstances under which the Supreme Court interfered were also clearly indicated in paragraph 7 as it had come to the conclusion that the termination in that case was based on an irrelevant and non-existent cause. In the present case, this does not appear to be so as there have been various allegations including the fact that the targets have not been met as well as serious allegations of other irregularities and tampering of the seals. These issues are germane to termination. Whether they have been established or not established, is a question which has to be gone into. But at this stage, it cannot be said that they are irrelevant or non-existent for if they were to be established even they would certainly not be irrelevant or non-existent causes for termination.

6. In view of the above discussion, the present case is clearly distinguishable from the decision of Supreme Court. I find that the petitioner has an alternative remedy by way of approaching the arbitrator under clause 66 of the said agreement and this Court ought not to interfere under Article 226 of the Constitution.

Writ petition is dismissed. No order as to costs.