

(2003) 07 DEL CK 0145
In the Delhi High Court
Case No : CW No. 5453 of 1997

S. Sucha Singh Anand and Another

APPELLANT

Vs

Bharat Petroleum Corporation Ltd and Another

RESPONDENT

Date of Decision : 22-07-2003

Acts Referred:

Citation : (2004) 1 AD 150 : (2003) 108 DLT 370

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Chetan Sharma and Vikram Nandrajog, for the Appellant; Mithun Barsaley, for the Respondent

Judgement

Badar Durrez Ahmed, J.—The petitioner seeks the cancellation and/or quashing of the termination letter dated 26.12.1996 whereby the petrol pump which was being run by the firm M/s S.K.S. Gurmukh Singh (hereinafter referred to as "the Firm") has been terminated. The petitioner no.1 was one of the partners in the said firm. The partnership was entered into sometime in 1963 by the petitioner no.1 and his brother, Gurmukh Singh (respondent no.2). Originally, the petrol pump license was granted by the respondent no.1 to the petitioners' grand father, i.e., Late Sardar Kant Singh who died in 1953. Subsequently, by an agreement dated 11.11.1974, the license was granted by the respondent no.1 to the said firm w.e.f. 01.01.1970. Clause 10 (s) of the said agreement reads as under:-

"10. THE LICENSEES HEREBY COVENANT AND AGREE WITH THE COMPANY AS FOLLOWS:-

.....XXXX XXXX
xxxx xxxx xxxx xxxx (s) Not to change the constitution of the Licensees' firm nor to dissolve the partnership nor admit new member as partner nor allow any partner to withdraw from the partnership without obtaining the previous consent in writing of the Company."

2. It is this clause that has been pressed into action for terminating the license granted by the said agreement dated 11.11.1974. It is alleged by the petitioner that Gurmukh Singh (respondent no.2) left India and settled in USA in 1970 and the business of the partnership was continued in the firm name by the petitioner no.1. Gurmukh Singh, however, allegedly returned to India in 1992 and certain disputes arose between the two brothers. The said partnership between the petitioner no.1 and Gurmukh Singh was a partnership-at-will. Be that as it may, a suit for dissolution was filed in this Court by Gurmukh Singh (respondent no.2) and by an order dated 17.10.1995, a preliminary decree was passed whereby the said firm was dissolved. The issues of valuation and accounting were referred to arbitration by a Division Bench of this Court by an order dated 14.02.1996. Those proceedings are continuing.

3. Gurmukh Singh (respondent no.2) sent a letter to the respondent no.1 on 14.11.1995 informing the petitioner no.1 that the said firm had been dissolved and it is on the basis of this letter that the respondent no.1 issued a show cause notice dated 14.05.1996 requiring the petitioner to show cause as to why the license under the said agreement be not terminated on account of alleged breach of the conditions of the license in terms of clause 13 (a) (vii) of the said agreement read with clause 10 (s) referred to above. Although the learned counsel for the petitioner states that clause 10 (s) has not been explicitly mentioned in the show cause notice. Subsequent to this show cause notice the petitioner sent his reply dated 27.05.1996 and which culminated in the letter dated 26.12.1996 which is at page 85 of the Paper Book.

4. It is the petitioner's contention that clause 10 (s) would only be applicable if the dissolution or change in constitution had proceeded from the petitioner no.1 himself. He has done nothing to bring about the situation. In fact, the dissolution of the partnership has been brought about by the respondent no.2 and ultimately by an order of this Court. It is further clear from a reading of clause 10 (s) of the said agreement that there is no express bar or prohibition against change in constitution or dissolution and that mere change in constitution or dissolution of the partnership would not ipso facto render the license terminable. The only condition that is put is that such change or dissolution should not be brought about without obtaining the previous written consent of the company, i.e., respondent no.1. It is the petitioner no.1's contention that such a situation would only have arisen if on account of his action the partnership had been dissolved. Since, dissolution of the firm took place only by order of the Court dated 17.10.1995, there was no occasion for him to obtain previous consent of the respondent no.1 for any such dissolution or change in the constitution.

5. Be that as it may, it appears that in this very writ petition an order had been passed on 23.10.2002 requiring the petitioner to make a representation and the respondent to take a decision thereon. It appears that the representation was made consequent upon the said order and a decision has also been taken vide letter dated 06.03.2003, a copy whereof is annexed as Annexure P-23 at page

253 of the Paper Book. Upon consideration of the said letter two aspects have been pointed out by the learned counsel appearing for the respondents. The first is that the respondents were entitled to terminate the license under clause 10 (s) of the said agreement dated 11.11.1974 in view of the fact that the change in constitution/dissolution was not brought to their notice by the petitioner. The second aspect is that the site on which the petrol pump was running is no longer a commissioned site for a petrol pump and as such they had arranged for an alternative site which has already been commissioned. This fact that the petitioner's site is no longer commissioned is disputed by the learned counsel for the petitioner and he states categorically that the site continues to be commissioned for the purpose of running a petrol pump. He further submits that it is privately owned and as such requires no commissioning. On the first aspect, it appears that the petitioner no.1 may have a legitimate ground for not notifying the respondents about the dissolution of the firm. The dissolution or change in constitution did not proceed from him. It was the result of action taken by Gurmukh Singh which resulted in the Court order dissolving the firm. No occasion arose for taking prior written consent as the petitioner no.1 was opposing the dissolution. Moreover, Gurmukh Singh, who was also an erstwhile partner in the said firm, had, in any event, informed the respondents of the dissolution. On the second aspect also, the petitioner no.1 cannot be faulted. The alleged non-commissioning of the plot where the petrol pump was running is not on account of any act of commission or omission of the petitioner no.1. However, at the same time, the respondent company also cannot be faulted inasmuch as it has to also ensure that if one petrol pump is not running, another should be commissioned so that the public does not suffer.

6. In these facts and circumstances, balancing the equities, it is my view that this petition can be disposed of with the following directions:-

- i) The petitioner may make a fresh representation and application before the respondent no.1;
- ii) The respondent no.1 will consider the question of giving consent under clause 10 (s) afresh;
- iii) In case the the respondent no.1 does grant the consent, the license for the petrol pump be restored in the name of petitioner no.1.

4. Accordingly, this writ petition is disposed of. There shall be no orders as to costs.