
(2007) 08 PAT CK 0060
In the Patna High Court
Case No : LPA No. 656 of 2006

Sanjay Kumar

APPELLANT

Vs

The Indo-Burma Petroleum Company Ltd. and Others

RESPONDENT

Date of Decision : 16-08-2007

Acts Referred:

Citation : (2008) 1 PLJR 21

Hon'ble Judges : J.N. Bhatt, C.J.; Kishore K. Mandal, J

Bench : Division Bench

Advocate : Madhuresh Prasad, for the Appellant; K.D. Chatterjee and A.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

1. By this Letters Patent Appeal under Clause 10 of the Letters Patent the challenge is against the judgment, dated 5.1.2006, in CWJC No. 6732 of 2005, whereby, the challenge against the order, dated 11.5.2005, whereby, the dealership agreement granted to the petitioner (appellant herein) to run a Retail Outlet of Indo-Burma Petroleum Company at Dudhaila Sonapur, District Saran came to be terminated, was dismissed by the learned Single Judge. The only question which emerges for our consideration and adjudication in this Letters Patent Appeal has been as to whether the termination of dealership of Retail Petroleum Outlet by order, dated 11.5.2005, (Annexure 8) could be said to be illegal or contrary to the terms of the dealership agreement?

2. With a view to appreciating the sole question, which requires our consideration, following facts may be highlighted, which are no longer in controversy:--

(1) The appellant-original writ petitioner was granted Retail Petroleum Outlet by the respondent Petroleum Company w.e.f. 26.5.1988 (Annexure 1).

(2) The appellant-original writ petitioner has contended that he started his business in the name and style as M/s Shivem Auto Station.

(3) The officers of the respondent-Petroleum Company exchanged correspondence.

(4) The official of the respondent-Petroleum Company then visited the business premises of the original writ petitioner with a view to conduct an inspection which was earlier not allowed by the original writ petitioner or by his representatives.

(5) The documents, which were called for by letters, were not all supplied by the original writ petitioner.

3. It is, also, very clear and apparent from the record that the respondent-Petroleum Company wanted to verify as to whether the original licensee (original writ petitioner) was running the business in his own name or not? It means there was a doubt in the mind of the officials that the petitioner was running a benami business after obtaining licence.

4. The letters, dated 14.5.2004 and 17.9.2004, followed by a letter, dated 23.12.2005, the respondent-Petroleum Company asked the original writ petitioner to submit the documents stated therein.

5. The original writ petitioner was, also, given an opportunity to show cause by a notice, dated 16.3.2005, which was replied without any date being mentioned therein, which as such came to be received by the respondent-Petroleum Company on 2.5.2005.

6. The original writ petitioner was, also, given an opportunity of personal hearing but it was not availed of, which led to the impugned order of termination of dealership.

7. We have heard the learned Counsel appearing for the parties. We have given our anxious thought to the factual conspectus emerging from the record of the present case. We have, also, examined material terms and conditions of the agreement for the Retail Petroleum Outlet. We have, also, evaluated the text and texture of the impugned order of the learned Single Judge.

8. It appears from the record that despite several demands for production of certain documents, like, Pass Book, income tax Returns etc., to verify as to whether the business was run and done in the name of the petitioner or not, the same were not supplied. Not only that on two occasions the officials were, also, prevented from conducting inspection of the premises which conduct itself speaks volumes about the bona fide of the petitioner.

9. The petitioner though was given an opportunity of hearing but it was not availed of and the learned Single Judge has believed this and there is nothing on the record to show that this finding is not correct.

10. It is in these context, the respondent-Petroleum Company by exercising its power under Clause 9(n) of the Agreement passed an order, dated 11.5.2005, (Annexure 8) terminating the Dealership Agreement. Clause 9(n) of the

Dealership Agreement reads hereasunder:--

"(n) At all times and from time to time during the currency of this Licence to give adequate facilities to the Company, its officers, agents and servants to inspect and test the accuracy and general working of the pumps and other equipment installed and provided at the said outfit, and to investigate the operation and management of the said outfit by the Licensee/s and to afford to the Company, its Officers, agents and servants all proper and necessary assistance for conducting such inspection and investigation."

11. It could very well be seen that the respondent-Petroleum Company is empowered to visit the business premises for inspection and investigation, as well as, to see the operation of the business of the petitioner because of his being a dealer of the products of the respondent-Company. Obviously, the respondent-Company would be interested to verify as to whether the business is run by the same person in orderly manner or not, as well as, to see that the petroleum products of the Company are sold satisfactorily in good condition to the consumers without any adulteration.

12. It is in these context, the right of inspection has been reserved by the respondent-Petroleum Company. It is, obviously, necessary, therefore, to verify the material documents, which were not furnished. Non-furnishing of the required documents could throw abundant light on the doubt in the mind of the respondent-Petroleum Company about running of the business in name of the petitioner and its operations.

13. Even the inspection report, dated 6.5.2004, also, goes, clearly, against the original writ petitioner. Following observations and materials have been borne out from the inspection report:--

- (i) Dealer did not produce the DSR/ Inspection file records.
- (ii) Stock reconciliation of petroleum and diesel could not be carried out.
- (iii) Stock availability of lubricating oils as per display records not produced.
- (iv) Records with respect to average sale per day, number of days of sale etc. were not produced.
- (v) Whether or not there is adequate lighting could not be checked.
- (vi) No cash memo was shown. The suggestion/complaint book was not produced. Records relating to Water Dip maintained by the dealer was not produced.
- (vii) Density register maintained by the dealer was not produced.
- (viii) The pump delivery could not be checked.
- (ix) The dealer refused to allow drawal of sample as per MDG. However, the team had drawn sample separately from the same unit but the dealer had refused to

sign on sample. The dealer refused to produce any record for carrying out R.O. inspection/reconciliation, refused to sign the inspection report, did not allow the team to take action as per NDO.

14. It is not on record as to why and how the original writ petitioner refused to take the inspection of the premises. The same is the position when the material documents were asked to be produced as stated hereinabove. It is in these context, an opportunity for showing cause was given by serving a show cause notice in terms of the provision of Clause 19(f) which authorizes the respondent-Petroleum Company to terminate the Dealership Agreement. Clause 19(f) of the Dealership agreement reads hereasunder:--

"19. Notwithstanding anything to the contrary hereinabove contained the company shall be at liberty to terminate and to revoke this Licence forthwith upon or at any time after the happening of any of the events following:--

.....

(f) If the Licensee/s shall be guilty of a breach of any of the covenants and stipulations on their part contained in Clause 9 thereof.

15. It was case of the respondent-Petroleum Company that the personal hearing was given to the original writ petitioner and notice was issued which he did not avail of.

16. After observing the requirements as contemplated in the terms of the Dealership Agreement and findings by the Company that the original writ petitioner had violated the material terms of agreement, which entitles the respondent-Petroleum Company to terminate the Dealership Agreement, the impugned order, dated 11.5.2005, came to be passed terminating the Dealership Agreement granted to the original writ petitioner to run a Retail Outlet for petroleum products.

17. From the facts and circumstances, as well as, the relevant terms and conditions of the agreement, as well as, considering the limited jurisdictional scope of the writ jurisdiction under Article 22C of the Constitution of India, as well as, the appellate scope under Clause 10 of the Letters Patent, we find that this is not a fit and appropriate case for dislodging or reversing the order of the learned Single Judge. Therefore, the Letters Patent Appeal after full-fledged hearing of learned Counsel of the parties at the admission stage shall stand dismissed. Rule is discharged. No cost.