

(2012) 07 DEL CK 0096
In the Delhi High Court
Case No : LPA No. 252 of 2011

Sarabjit Singh Anand and Others

APPELLANT

Vs

Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 13-07-2012

Acts Referred:

Citation : (2012) 07 DEL CK 0096

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sushil K. Pandey, for the Appellant; A.D.N. Rao, Annam Venkatesh and Ms. Neelam Jain, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—This Intra-Court appeal impugns the judgment dated 8th February, 2011 of the learned Single Judge dismissing W.P.(C) No. 10671-80/2006 preferred by the appellants. The said writ petition was preferred impugning the communication dated 28th December, 2004 of the respondent rejecting the representation dated 14th September, 2004 of the appellants for restoration of the dealership licence earlier granted to M/s S.K.S. Gurmukh Singh for sale of petroleum and petroleum products at 2775-76 Lothian Road, Kashmere Gate in the name of the appellants. It is the case of the appellants that, the erstwhile M/s Burmah Shell Company granted dealership licence for distribution of petrol in favour of Sardar Kahan Singh Anand who started running petrol pump business at 2775-76, Lothian Road, Kashmere Gate, Delhi in the name and style of M/s S.K.S. Gurmukh Singh of which the said Sardar Kahan Singh Anand was the sole proprietor; that upon demise in April, 1953 of Sardar Kahan Singh Anand, the business of M/s S.K.S. Gurmukh Singh was continued by his sons namely Sardar Sucha Singh Anand and Sardar Gurmukh Singh Anand as partners; that a fresh licence agreement was also entered into in the year 1953; that Sardar Gurmukh Singh Anand went to America in the year 1970 and also gave up his Indian citizenship and thus became incompetent to continue as a

partner; that late Sardar Sucha Singh Anand continued with the said business and subsequently with his sons Sardar Sarabjit Singh Anand and Sardar Amarjit Singh Anand.

2. Sardar Gurmukh Singh Anand in or about the year 1992 however filed CS(OS) No. 2619/1992 in this Court for dissolution of the said business of M/s S.K.S. Gurmukh Singh; that on 17th October, 1995 a preliminary decree dissolving M/s S.K.S. Gurmukh Singh was passed in the said suit; that Sardar Sucha Singh Anand filed FAO(OS) No. 19/1996 there against and vide order dated 14th February, 1996 wherein the matter was referred to an arbitrator for accounting and valuation; that Sardar Gurmukh Singh stopped participating in arbitration proceedings and ultimately CS(OS) No. 2619/1992 was also dismissed on 21st August, 2008; that the Advocate of Sardar Gurmukh Singh however had written a letter dated 14th November, 1995 to the respondent for closure of the petrol pump business and in pursuance thereto the respondent issued a show cause notice dated 14th May, 1996 and after considering the response of Sardar Sucha Singh Anand, vide order dated 26th December, 1996 terminated the distribution agreement with M/s S.K.S. Gurmukh Singh and w.e.f. 1st January, 1997 stopped the supply of petrol to the said petrol pump; that Sardar Sucha Singh Anand whose legal heirs, the present appellants are, had earlier filed W.P.(C) No. 5453/1997 in this regard which was disposed of vide order dated 22nd July, 2003 with a direction to Sardar Sucha Singh Anand to represent to the respondent and which representation has been rejected by the respondent vide communication dated 28th December, 2004 (supra).

3. The appellants claim that since the dealership was terminated owing to the preliminary decree of dissolution of the partnership and which suit has since been dismissed, they are entitled to restoration of dealership.

4. The respondent contested the writ petition pleading that the dealership was de-commissioned with the consent of the erstwhile dealer and in pursuance to the decree of dissolution; that in fact it was a term of the dealership agreement that the constitution of the firm shall not be changed without the previous consent in writing of the respondent; that in violation of the said clause the sons of Sardar Sucha Singh Anand had been inducted into the partnership; that the request for re-commissioning was by one of the partners only and not jointly by Sardar Gurmukh Singh and Sardar Sucha Singh Anand, the erstwhile partners of the firm; that the respondent could not act on the request of one of the partners only; that the termination was in accordance with the rules and regulations of the respondent and could not be found fault with; that in any case the retail outlet could not be re-commissioned after eleven years.

5. The learned Single Judge dismissed the writ petition holding that, (i) since the firm, to which dealership had been granted, stood dissolved, the respondent was justified in refusing the re-commissioning; and, (ii) that the respondent could not be directed by mandamus to restore the dealership granted in the name of a firm, to an individual who was one of the legal heirs of one of the partners of the

firm.

6. The counsel for the appellants besides reiterating the case aforesaid has also relied on para 56 of Lily Thomas, Vs. Union of India and Others, dealing with the powers of the Court of judicial review. Attention is invited to the judgment dated 22nd July, 2003 in W.P.(C) No. 5453/1997 earlier filed by the predecessor of the appellants where it was observed that the dissolution of the firm had not proceeded from Sardar Sucha Singh Anand but was the result of action taken by Sardar Gurmukh Singh Anand and a result of the preliminary decree passed by the Court and thus no occasion arose for taking prior written consent of the respondent to dissolution. It is argued that the learned Single Judge in the impugned judgment could not have taken a different view of the matter. It is further contended that the respondent has not considered the representation of the appellants in true perspective. It is highlighted that though Sardar Gurmukh Singh Anand had sought dissolution of the firm and had after obtaining preliminary decree of dissolution also written to the respondent to de-commission the petrol pump but had not followed up the matter. It is contended that upon the suit in which the preliminary decree was passed having stood dismissed, the position reverted to what it was before the dissolution and the respondent is also liable to re-commission the supplies. It is urged that the appellants and their predecessors are not at fault in any manner whatsoever and being the owners of the site from where the petrol pump was being run are entitled to restoration of their dealership.

7. Per contra, the counsel for the respondent has argued that since the date of de-commissioning of the petrol pump of the appellants, the policy of appointing distributors/dealers has changed. Attention is also invited to the policy for Revival of Dealerships/Distributorships in vogue now which does not permit dealerships/distributorships which are inoperative from a date prior to 1st April, 2002 to be considered for revival. Attention is also invited to the letter dated 4th November, 2010 of the Govt. of India, Ministry of Petroleum and Natural Gas to the public sector oil distribution companies clarifying that Retail Outlet dealerships lying inoperative for more than three years but less than five years and depending on the merits of the case, can be considered for revival. On the basis thereof it is contended that dealership lying inoperative for more than five years in the present case cannot be considered for revival. One of the appellants appearing in person has also handed over additional submissions in writing which have also been considered by us. The policy regarding appointment of distributorships/dealerships has over the years undergone a sea change; also, other petrol pumps/outlets may have come up in the interregnum; we are of the opinion that in the facts aforesaid, no mandamus as claimed can be issued to the respondent. The fact that the entity to which dealership, which is essentially a terminable contract, was granted, is no longer in existence is undisputed. The appellants have been unable to show to us that the respondent is bound to continue to do business with the legal heirs of one of the two partners earlier accepted as dealer. It is also undisputed that Sardar Sucha Singh Anand, one of

the partners, in violation of the dealership licence/agreement reconstituted the firm indicating his son as partner therein, without obtaining permission of the respondent. Merely because subsequently the proceedings initiated by the other partner i.e. Sardar Gurmukh Singh for dissolution of firm were not pursued, will not make any difference. We do not find any merit in this appeal, which is dismissed. No order as to costs.