
(2011) 02 DEL CK 0137

In the Delhi High Court

Case No : Writ Petition (C) 10671-80 of 2006

Sarabjit Singh Anand and Others

APPELLANT

Vs

Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 08-02-2011

Acts Referred:

Citation : (2011) 02 DEL CK 0137

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Party in Person for 1 and Subhash Chand, for the Appellant; A.D.N. Rao and Neelam Jain, for the Respondent

Final Decision : Dismissed

Judgement

S. Muralidhar, J.—This is the second round of litigation concerning the petrol pump dealership which was originally granted in the name of the partnership firm in the name and style of M/s S.K.S. Gurmukh Singh at Lothian Road, Kashmere Gate, Delhi.

2. The Petitioner states that in 1939 late Sardar Kahan Singh Anand was granted a dealership by M/s Burmah Shell, i.e., the predecessor-in-interest of Respondent Bharat Petroleum Corporation Ltd. ('BPCL'). Upon the death of Sardar Kahan Singh, his sons became the partners and a fresh dealership agreement was entered into in 1953. After BPCL took over Burmah Shell, an agreement of dealership was entered into on 11th November 1974 with effect from 1st January 1970.

3. Clause 10(s) of the Agreement dated 11th November 1974 reads as under:

10. The Licensees hereby covenant and agree with the Company as follows:

....

(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.

4. It is stated that one of the partners Shri Gurmukh Singh settled down in the United States of America in 1974 and subsequently acquired the citizenship of USA. Shri Gurmukh Singh returned to India in 1992. He filed Suit No. 2619 of 1992 for dissolution of partnership. A preliminary decree was passed in the said suit on 17th October 1995 whereby the partnership firm was dissolved. One of the other partners late Sardar Sucha Singh filed an appeal against the said preliminary decree. The Division Bench referred the matter to arbitration. However, the arbitration proceedings could not proceed on account of the non-cooperation of the parties, who failed to appear before the Arbitrator on several dates. Ultimately, the suit came to be dismissed on 21st August 2008 reserving the rights and contentions of the L Rs of the Defendants in the said suit vis-?-vis the Writ Petition (C) No. 10671-80 of 2006 (the present petition) filed by them challenging the cancellation of the dealership.

5. The Petitioner states that on 14th November 1995 a notice was sent to the BPCL on behalf of S. Gurmukh Singh Anand stating that the partnership firm of M/s S.K.S Gurmukh Singh had been dissolved by the preliminary decree dated 17th October 1995 and that consequently the business of selling petrol and its other bye-products cannot be carried on at the premises of the dealership by any of the parties. Consequently, the BPCL was requested to stop the delivery of petrol at the petrol pump forthwith.

6. On 14th May 1996, the BPCL sent a show cause notice to late Sucha Singh Anand (one of the partners) as to why the dealership should not be terminated. Thereafter by a letter dated 29th December 1996 the BPCL terminated the dealership. It is stated that the requests made on 14th January 1997 of the firm for its reconstitution was not accepted by the BPCL. In the circumstances, Writ Petition (C) No. 5453 of 1997 was filed by late Sucha Singh Anand (as Petitioner No. 1) and M/s S.K.S. Gurmukh Singh (firm - as Petitioner No. 2). The Respondents in the said writ petition were the BPCL (Respondent No. 1) and Shri Gurmukh Singh Anand (Respondent No. 2).

7. It is stated that during the pendency of the said writ petition Sucha Singh Anand expired on 6th March 2000. The present Petitioners were brought on record in place of Shri Sucha Singh Anand as Petitioners in W.P.(C) 5453 of 1997 by an order dated 29th January 2001.

8. While the said writ petition was pending, the Petitioners made a representation on 8th November 2002 to BPCL seeking permission to reconstitute the firm in the name of Shri Sarabjit Singh Anand (Petitioner No. 1 herein). By a letter dated 6th March 2003, the BPCL refused to grant such permission.

9. W.P.(C) 5453 of 1997 was disposed of by the learned Single Judge on 22nd July 2003. It was held that since the dissolution was brought about by the

preliminary decree dated 17th October 1995 of this Court in a suit filed by Shri Gurmukh Singh, there was no occasion for late Sucha Singh to take prior written consent of BPCL for such dissolution. The second ground for rejection of the representation was that the petrol pump was no longer a commissioned site and BPCL had arranged for an alternative site which had already been commissioned. The learned Single Judge held that the non-commissioning of the plot where the petrol pump was running, was not on account of any act of commission or omission of Petitioner No. 1. It was observed that at the same time, the BPCL also could not be faulted inasmuch as it had to also ensure that if one petrol pump is not running, another should be commissioned so that the public does not suffer. In the facts and circumstances of the case, the writ petition was 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 Respondent No. 1 does grant the consent, the licence for the petrol pump be restored in the name of Petitioner No. 1.

10. A review petition was filed by the Petitioners seeking recall of the aforementioned order dated 22nd July 2003. The BPCL also filed a review petition seeking recall of the directions contained in para 6 (iii) of the said order. By an order dated 13th August 2004, both review petitions were dismissed by the learned Single Judge. As regards the review petition filed by the Petitioners, it was observed that they were entitled to take all grounds in the fresh representation to be made to the BPCL and BPCL was bound to consider the grounds raised with regard to the question of giving consent under Clause 10(s) afresh.

11. The BPCL then filed Writ Appeal No. (LPA) 1076 of 2004 which came to be dismissed as withdrawn on 22nd September 2005.

12. On 14th September 2004, a fresh representation was made by Petitioner No. 1 for grant of permission under Clause 10(s) of the license agreement dated 11th November 1974. A reminder was sent on 13th December 2004. Thereafter the impugned order dated 28th December 2004 was passed by the BPCL rejecting the representation.

13. It was pointed out in the said order that a request for reconstitution of the dealership was denied as BPCL was not legally permitted to reconstitute the terminated dealership for any reason. The partnership stood dissolved on 17th October 1995. Prior to termination of the dealership, neither of the partners had made any application for reconstitution of the partnership. Moreover, the request for decommissioning of the site was made with the consent of the erstwhile dealer and decommissioning had started as early as in 1988. The letter dated

28th December 2004 summarized the reasons for rejection of the representation as under:

We are therefore unable to consider your claim for granting permission under Clause 10(s) of the dealership agreement dated 11-11-1974 because:

= the said dealership agreement stands terminated for almost 8 years now, and as per the provisions of Section 14(1)(c) of the Specific Relief Act 1963 we are unable to consider your request for restoring licence;

= you have no dealership Agreement with Bharat Petroleum Corporation and are not entitled to evoke any Clause of the said Agreement including Clause 10(s) of the dealership agreement. For these reasons stated herein above, we are unable to consider your representations dated 14-9-2004 and 13-12-2004.

14. The basic point to be considered is whether the BPCL can be faulted for not granting permission in terms of the Clause 10(s) of the Agreement dated 11th November 1974 to the change in the constitution of the firm or dissolution of the firm.

15. The facts show that the firm stood dissolved by the preliminary decree dated 17th October 1995 passed by this Court. That preliminary decree became final, as is evident from the order dated 21st August 1998 passed by this Court in Suit No. 2619 of 1992. An intimation to that effect was also sent on behalf of the partners to the BPCL on 14th November 1995. There is also no denial of the fact that the decommissioning started in 1988 itself. Neither of the partners of M/s S.K.S Gurmukh Singh wrote to the BPCL for its previous consent in terms of Clause 10(s) of the Agreement dated 11th November 1974. The fact remains that the dissolution of the firm had already taken place even before Clause 10(s) could be invoked. The BPCL was in no position to grant its "previous consent" to the "reconstitution" of the partnership firm. The fact remains that the dealership was granted in the name of the firm which stood dissolved on 17th October 1995. In the eye of law, there was no reconstitution of the firm at all after its dissolution. Admittedly, the dealership had to necessarily come to an end with the dissolution of the firm.

16. In the additional written submissions filed by the Petitioner on 27th January 2011, it is contended that the petrol pump in question is situated on a land which is owned by the dealer, where the dispensing machines, underground tanks etc. are supplied and owned by the BPCL. It is submitted that unless a dispensing pump selling licence ("DPSL") is issued in the name of the Petitioner No. 1, it would not be possible to run the petrol pump. It is further contended that "if the licence is granted then there can be a firm created to run the Petrol Pump." This Court cannot accept the above submission. The entire case stems from the termination of a dealership granted in the name of the firm M/s S.K.S Gurmukh Singh. The claim of the Petitioner throughout has been that there has been a reconstitution of the firm which should be recognised by the BPCL and the dealership should be permitted to continue in the name of the firm. If the case

now is that the erstwhile dealership which was granted in the name of the firm should now be granted in the name of the individual, then clearly such individual is not claiming a right to the dealership through the firm but merely as an individual. The BPCL cannot be directed by a mandamus to "restore" the "dealership" granted in the name of a firm to an individual who happens to be one of the legal heirs of one of the partners of the firm.

17. The writ petition is dismissed.