

(2012) 01 P&H CK 0303

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 1235 of 2011 (O and M)

Sohan Lal

APPELLANT

Vs

Hindustan Petroleum Corporation Limited and another

RESPONDENT

Date of Decision : 05-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 166 PLR 23

Hon'ble Judges : Tej Pratap Singh Mann, J; Satish Kumar Mittal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Kumar Mittal, J.—This Letters Patent Appeal has been directed against the judgment dated 29.4.2011 passed by the learned Single Judge whereby the writ petition (CWP No. 13467 of 2009) filed by the appellant challenging the order of termination of agreement dated 4.3.2008, has been dismissed. The appellant challenged the order of termination of agreement dated 4.3.2008 on the ground that neither any show cause notice, as required under Clause 29B of the said agreement, had been issued to the appellant nor he committed any breach of the terms and conditions of the said agreement. It is the case of the appellant that after issuance of the show cause notice for termination of the agreement dated 7.3.2005, a fresh agreement dated 4.3.2008 was executed between the parties and by the said agreement the appellant-dealer and the respondent-Corporation had voluntarily agreed to continue the dealership for another five years on the same terms and conditions. It is further the case of the appellant that after execution of the new agreement, the same could not be terminated by the respondent-Corporation on the basis of the show cause notice issued in the earlier agreement, and that too, without there being any breach of the terms and conditions of the new agreement. According to the appellant, the termination of the agreement dated 4.3.2008 is totally null and void being in violation of the principles of natural justice. Therefore, the appellant was entitled to maintain the

writ petition under Article 226 of the Constitution of India to challenge such an order.

2. The learned Single Judge has dismissed the writ petition filed by the appellant on the ground of its maintainability. It was held that after issuance of the show cause notice for termination of the earlier agreement, the appellant had made the prayer for appointment of an Arbitrator under the arbitration clause of the said agreement. On the application of the appellant, a sole Arbitrator was appointed to adjudicate the dispute between the parties. In those arbitration proceedings, the appellant filed additional claim with regard to termination of his dealership vide application dated 27.7.2008. Prior to that, the respondent-Corporation requested the Arbitrator vide letter dated 9.7.2008 for enlargement of the scope of arbitration to adjudicate disputes and differences arising out of termination of agreement dated 4.3.2008. Thus, the scope of the arbitration proceeding was enhanced and both the parties were given ample opportunity to lead evidence in support of their claim. On the said letter filed by the respondent-Corporation, the issue of termination of agreement dated 4.3.2008 was also to be gone into. Finally, the Arbitrator after considering the claim of both the parties and the evidence led by them, had passed the Award dated 18.11.2008 while holding that the termination of dealership agreement dated 4.3.2008 carried out by the respondent-Corporation vide letter dated 1.7.2008 is proper, valid and legal. The claim of the appellant seeking restoration of the dealership was accordingly rejected. The claim of the respondents for shortage/imbalance of 177 cylinders and 322 regulators was granted and the appellant was directed to pay an amount of Rs. 21,84,245/- to the respondent-Corporation as per the calculation given in the Award.

3. The learned Single Judge dismissed the writ petition while taking into consideration the fact that already the arbitration proceedings have been culminated in the arbitration Award and if the appellant has any grievance against the said Award, he has the remedy under the Arbitration Act. However, instead of choosing that remedy he had filed the writ petition challenging the very termination order which was subject matter of adjudication before the Arbitrator. In view of these facts, it has been held that the writ petition filed by the appellant was not maintainable. It has been further found by the learned Single Judge that in the writ petition many disputed questions of facts had been raised which also could not have been gone into in writ jurisdiction. It has been held that having himself voluntarily invoked the remedy of arbitration and after getting an unfavourable decision from the Arbitrator, the appellant could not be permitted to raise the issue in the writ jurisdiction. The appellant has challenged the said order in the present appeal.

4. We have heard the learned counsel for the parties and gone through the record of the case.

5. During the course of arguments, learned counsel for the appellant raised unusual argument that in spite of the fact that the Arbitrator had decided the

issue with regard to termination of the agreement dated 4.3.2008, but still the appellant can raise this issue by filing the writ petition because the earlier show cause notice, which was initially referred to the Arbitrator, was issue with regard to termination of the earlier agreement dated 7.3.2005 and vide letter dated 1.7.2008 the subsequent agreement dated 4.3.2008 was terminated, and that too, without providing an opportunity of hearing. Therefore, the said termination, which was against the principles of natural justice and wholly without jurisdiction, could be questioned in the writ petition. He further argued that the new agreement entered into between the parties on 7.3.2005 substitutes the earlier agreement dated 12.2.1983, therefore, the termination of the subsequent agreement dated 4.3.2008 on the basis of the show cause notice issued in the earlier agreement, is illegal. It is admitted position that initially vide agreement dated 12.2.1983 the appellant was granted dealership by the respondent-Corporation for a period often years and it was extended for another period of five years. On account of certain allegations of irregularities, a show cause notice was issued to the appellant for termination of distributorship agreement dated 7.3.2005. After issuance of the said show cause notice, a fresh agreement dated 4.3.2008 was executed in favour of the appellant. The new agreement was also in continuation of the earlier agreement as under the new agreement the dealership was ex-tended for another five years. After the renewal when the matter was pending before the Arbitrator and when the subsequent agreement dated 7.3.2005 was terminated by agreement dated 4.3.2008 the appellant filed the additional claim before the Arbitrator and raised the dispute with regard to termination of the subsequent agreement even after the order of termination was conveyed to him and was referred for arbitration. The appellant himself had invoked the remedy of arbitration and once the Arbitrator had adjudicated about the termination of the agreement dated 4.3.2008, then the said Award of the Arbitrator cannot be challenged by filing the writ petition. The appellant can have his remedy against the said Award under the Arbitration and Conciliation Act, 1996 which he has not availed. Lastly, learned counsel for the appellant argued that the Arbitrator has no jurisdiction to restore the dealership. He further argued that even if it is found that the termination of the agreement was illegal, the writ petition filed by the appellant challenging the termination of agreement with the prayer for restoration of the dealership was maintainable. We do not find any force in the said argument. In our opinion, since the Arbitrator found the termination of agreement valid and legal, therefore, the question of restoration of the dealership does not arise. Thus, in our opinion, the learned Single Judge has rightly dismissed the writ petition being not maintainable in which the appellant had challenged the order of termination of agreement dated 4.3.2008, which was already matter of adjudication before the Arbitrator for which the Arbitrator has made the Award dated 18.11.2008 while holding that the termination of dealership agreement dated 4.3.2008 carried out by the respondent-Corporation vide letter dated 1.7.2008 is proper, valid and legal. The claim of the appellant seeking restoration of the dealership was accordingly rejected. The claim of the respondents for shortage/imbalance of 177 cylinders

and 322 regulators was granted and the appellant was directed to pay an amount of Rs. 21,84,245/- to the respondent-Corporation as per the calculation given in the Award. Thus, we do not find any illegality in the impugned order passed by the learned Single Judge.

Dismissed.