
(2011) 01 DEL CK 0179

In the Delhi High Court

Case No : Writ Petition (C) 5576 of 2008 and CM 3246 of 2009

Sonia Daga and Another

APPELLANT

Vs

Indian Oil Corporation

RESPONDENT

Date of Decision : 19-01-2011

Acts Referred:

Citation : (2011) 180 DLT 278

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

Bench : Single Bench

Advocate : Harish Malhotra and Tanuj Khurana, for the Appellant; Abhinav Vashisht, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The order dated 15th July 2008 passed by the Respondent Indian Oil Corporation Ltd. (‘IOCL’) terminating the retail outlet dealership of M/s Maheshwari Service Station is under challenge in this petition.

2. On 15th March 1999 the IOCL entered into a dealership agreement with Shri Renu Daga who was the sole proprietor of M/s Maheshwari Service Station. Shri Daga died on 4th October 2003 leaving behind his mother Smt. Vipin Lata Daga (Petitioner No. 2), his wife Sonia Daga (Petitioner No. 1) and son Master Divit Daga. After the death of Shri Daga the proprietary concern, M/s Maheshwari Service Station, was reconstituted as a partnership with Petitioners 1 and 2 as partners. The prior approval to the running of the retail outlet by the firm was granted by IOCL by a letter dated 12th January 2004. A partnership deed was executed on 19th January 2004 and was registered on 23rd January 2004. The Petitioner No. 1 holds 60% of the shares and Petitioner No. 2 holds the balance 40% in the profit and loss of the said firm. Consequent upon the registration of the partnership deed a fresh agreement dated 21st July 2004 was entered into between the IOCL and the partnership firm.

3. Thereafter certain disputes arose between Petitioner No. 1 and Petitioner No. 2

as a result of which Smt. Sonia Daga (Petitioner No. 1) filed a complaint with the IOCL. On 20th December 2004 the IOCL wrote to the Petitioners asking them to settle their inter se disputes amicably. In response to the said letter, the Petitioner No. 2 on 23rd December 2004 wrote to the IOCL stating that the dispute was on account of some personal differences and did not relate to the partnership. She requested that the further proceedings by the IOCL should be dropped. On 24th December 2004 the IOCL wrote to the Petitioners stating that the settlement of the disputes should be indicated by a joint letter of both parties.

4. On 28th December 2004 the Petitioner No. 2 wrote a letter to the IOCL stating that every effort would be made to settle the disputes. On 10th January 2005 the IOCL wrote to the Petitioners stating that pending the settlement of the disputes and till the receipt of a confirmation to that effect to the satisfaction of the IOCL, supplies to the partnership firm would remain suspended. The IOCL informed that it was taking over the day-to-day functioning of the retail outlet. It was to be operated as an 'A' site solely owned by the IOCL i.e. as a company owned company operated (COCO) retail outlet. This was a temporary arrangement and the parties were called upon to resolve the disputes within 30 days failing which appropriate action would be taken by the IOCL.

5. Petitioner No. 2 wrote to the IOCL on 9th February 2005 requesting for a month's time to settle the disputes. On 10th February 2005 after noting the Petitioner No. 2's request IOCL gave 30 more days for settling the disputes. By a letter dated 9th March 2005 the IOCL informed the parties that a settlement should be conveyed by 12th March 2005. On 11th March 2005 the Petitioner No. 2 wrote a detailed letter to the IOCL stating that the disputes between her and Petitioner No. 1 were of a personal nature and had nothing to do with the partnership and, therefore, possession of the retail outlet should be handed over and further proceedings dropped. On 24th March 2005 the IOCL wrote to Petitioner No. 2 declining the request. The Petitioners were asked to resolve their disputes by 31st March 2005. On 26th May 2005 time for reporting the settlement was extended by IOCL till 7th June 2005. The time was further extended till 15th July 2005 by a letter dated 17th June 2005. A last and final opportunity was given by a letter dated 29th November 2005 to settle the dispute by 30th December 2005.

6. On 9th February 2007 the IOCL issued a show cause notice to both the Petitioners and the firm for termination of the dealership. On 19th February 2007 Petitioner No. 2 replied stating that there had been progress in settling the disputes and that she was hopeful of the disputes being resolved soon. On 9th January 2008 Petitioner No. 1 wrote to the IOCL stating that due to her pre-occupation in the family affairs she was not in a position to look after the business of the retail outlet and sought permission to resign from the partnership firm. In response thereto on 21st February 2008 the IOCL informed the Petitioner No. 1 that IOCL was in the process of taking a view on the termination of the dealership and, therefore, could not consider her request.

7. On 29th February 2008 both Petitioners wrote a joint letter to IOCL stating that their entire disputes have been settled amicably and they were willing to act jointly and run the said outlet to the best of their abilities. The IOCL was asked to restore the possession of the retail outlet to the firm immediately. The letter was accompanied by individual affidavits dated 29th February 2008 of the two Petitioners.

8. In response to the above letter of 10th April 2008 the IOCL informed the firm through the two Petitioners as partners that they had to submit a joint affidavit attested by a 1st Class Judicial Magistrate and also indemnify the IOCL from losses in case any dispute arose in future in which case the IOCL would have the liberty to terminate the dealership. In response thereto on 9th May 2008 the Petitioners reiterated that they had settled their disputes and enclosed a joint affidavit dated 8th May 2008 attested by a Sub Divisional Magistrate (SDM). On 1st July 2008 both Petitioners requested that the possession of the retail outlet be handed over to them.

9. Thereafter on 15th July 2008 the impugned letter was written by the IOCL invoking a policy dated 29th December 2005 which did not permit revival of a dealership that had remained inoperative for a period of more than 3 years. It was accordingly informed by the IOCL that the Petitioners' request could not be acceded to and that the dealership stood terminated with immediate effect.

10. At the hearing of this case on 4th August 2008 Mr. Abhinav Vashisht learned Counsel for the IOCL sought time to obtain instructions whether any retired Judge of this Court could be appointed as a sole arbitrator to adjudicate the disputes and differences between the parties. Thereafter on 3rd September 2008 the following order was passed:

It is contended by Mr. Malhotra, learned senior counsel appearing for the Petitioner that a petrol pump was being run as a proprietary concern of one Shri Renu Daga. On the demise of Shri Renu Daga a partnership concern was constituted with the mother of the deceased and the widow of the deceased. Consequent to this a new dealership agreement was executed on 21.7.2004. The Petitioners thereafter informed the Respondent that disputes had arisen between both the partners and thereafter the Respondent took over possession of the petrol pump pending settlement of the disputes. After the disputes were settled a communication was issued to the Respondents on 29.2.2008 and the Respondent was requested to restore possession of the said retail outlet to the Petitioners. The Respondent now seeks to terminate the dealership of the Respondents by a communication dated 15.7.2008.

Mr. Malhotra, learned senior counsel for the Petitioners relies upon a communication issued by the Respondent to the Petitioners on 10.1.2005 wherein it has been mentioned that the taking over of the petrol pump was a temporary arrangement and the Petitioners were called upon to resolve the partnership disputes within 30 days failing which further action may be taken by

the Respondents. Admittedly between January, 2005 & 29.02.2008 no action was initiated by the Respondents.

Issue notice to show cause as to why the petition be not admitted. Mr. Abhinav Vasisht accepts notice.

It is not in dispute that the Respondents are in possession of the petrol pump and are operating the same. Till the next date of hearing the parties are directed to maintain status quo as of today. List on 17.11.2008.

11. The above status quo has continued since then.

12. Mr. Harish Malhotra, learned Senior counsel appearing for the Petitioners submits that the IOCL acted unfairly in terminating the dealership when every condition imposed by it for revival of the dealership had in fact been complied with by both the Petitioners. He maintained that even as of date the Petitioners stood by their letter dated 29th February 2008 written by them jointly and reiterated in the joint affidavit dated 8th May 2008 attested by the SDM. He submitted that at no point in time did the IOCL inform the Petitioners that on account of the policy dated 29th December 2005 the dealership could not be revived. He submitted that even in terms of the Policy dated 29th December 2005 the termination was effected only on 15th July 2008 and it was only where the dealership had remained inoperative thereafter for over three years that there could be no revival of such dealership. He submitted that inasmuch as the IOCL had on 10th January 2005 taken over the operation of the dealership, it could not be stated that the dealership had remained inoperative.

13. Appearing on behalf of the IOCL Mr. Abhinav Vashisht learned Counsel first submitted that the dispute ought to be referred to arbitration. He then referred to Clause 4.6 of the Policy dated 29th December 2005 as modified on 9th October 2006 and submitted that there was a distinction between the "dealership" remaining inoperative and the "outlet" remaining inoperative. According to him, the operation of the outlet was continued by the IOCL in public interest but the facts showed that the "dealership" itself remained inoperative on account of the inter se disputes between the two Petitioners. He has submitted that although the IOCL could have taken action to terminate the dealership even on 10th January 2005 on account of the inter se disputes between the partners, it was not precluded from terminating the dealership by the impugned order since more than three years had elapsed after the dealership became inoperative. He submitted that despite several opportunities the Petitioners failed to report any settlement and, therefore, the IOCL was justified in terminating the dealership.

14. The above submissions have been considered. The scope of the dispute is narrow. It is confined to the question whether IOCL was justified in terminating the dealership by invoking Clause 4.6 of the Policy dated 29th December 2005 as modified on 9th October 2006. Relegating the parties to arbitration at this stage will really not be in the interests of justice as it will delay resolution of the

dispute which has been pending for over five years. Moreover, the jurisdiction of this Court under Article 226 can be invoked in appropriate cases and in the considered view of this Court this is one such case.

15. The facts show that when the Petitioners reported settlement on 29th February 2008 to the IOCL, three years after 10th January 2005 when IOCL took over the operation of the retail outlet, and also furnished affidavits to that effect, the IOCL did not invoke Clause 4.6 of the Policy dated 29th December 2005 as modified on 9th October 2006. By a reply dated 10th April 2008 IOCL informed the Petitioners that they had to submit a joint affidavit to be attested by a magistrate. This was followed by the Petitioners furnishing under cover of letter dated 9th May 2008 a joint affidavit attested by an SDM. This was accepted without demur by the IOCL. Even at that stage the Petitioners were not informed that there was a bar to revival of dealership on account of the policy dated 29th December 2005. It was only by the impugned order dated 15th July 2008 that Clause 4.6 of the policy was invoked to terminate the dealership agreement. It is indeed strange that after pushing the Petitioners towards a settlement, the IOCL sprung a surprise on them after they arrived at a settlement.

16. Clause 4 of the Policy dated 29th December 2005 as modified on 9th October 2006 which is relevant for the present case reads as under:

4.0 Guidelines for Revival:

4.1. Revival of dealership shall not be allowed in the following cases: 4.1.1 Dealerships terminated on account of malpractices/ irregularities/breach of Dealership Agreement/violation of MDG. This will not however come in the way of consideration of decision on appeals, which may be made by the terminated dealership under the provision of MDG.

4.1.2 Terminated SKO/LDO dealerships

4.2 In cases other than 4.1 above (for reasons beyond the control of the dealer), depending on the merit of the case, revival with the same constitution at the same location may be permitted with the approval of Board of Directors.

4.3 The dealer must meet the eligibility criteria for selection of a new dealer, which are in vogue at the time of revival.

4.4 The dealer will be required to deposit the security amount payable to new dealerships.

4.5 Dealerships inoperative from a date prior to 1.4.2002 will not be considered for revival.

4.6 Dealerships remaining inoperative for a period of more than 3 years will not be revived.

17. The words "revival of dealership" presuppose that it is a dealership that has been terminated which is to be revived. Under Clause 4.6 a dealership that has

remained inoperative for a period of more than three years would not be revived. In the present case, admittedly the IOCL stepped in on 10th January 2005 to take over the operations of the retail outlet in question. Therefore, clearly the retail outlet did not remain inoperative. The dealership in this case was terminated only on 15th July 2008 and therefore became "inoperative" only from that date. IOCL's case that the dealership became inoperative from an earlier date is belied by IOCL's subsequent conduct. It never took that stand till 15th July 2008. Till then it kept pushing the Petitioners to go in for a settlement even after the Policy dated 29th December 2005 was announced and even after it was modified on 9th October 2006. IOCL itself therefore did not consider the dealership as having become inoperative on a date earlier than 15th July 2008. To recall, IOCL's takeover of the operation of the retail outlet was meant to be temporary. That arrangement continued and the outlet was not handed back to the Petitioners only on the ground that the Petitioners had not resolved their inter se disputes. Once that was overcome to the satisfaction of the IOCL, the IOCL was expected to put the Petitioners back in possession of the outlet. IOCL did not act fairly or reasonably in thereafter invoking Clause 4.6 and terminating the dealership on the basis that it had remained inoperative for over three years.

18. Consequently the impugned order dated 15th July 2008 of the IOCL terminating the retail outlet dealership of M/s Maheshwari Service Station, Geeta Colony, Delhi is hereby set aside. The firm comprising the two Petitioners as partners will now be put in possession of the said retail outlet within a period of four weeks from today. This will be subject to the conditions spelt out in the letter dated 10th April 2008 written by the IOCL to the firm. In other words, in case any dispute occurs in future between the partners of M/s Maheshwari Service Station resulting in the hampering of the sales through the retail outlet the IOCL will have the liberty to terminate the dealership.

19. The writ petition is allowed in the above terms but with no order as to costs. The application stands disposed of.