

(2013) 08 SC CK 0121

In the Supreme Court Of India

Case No : C.A. No. 7360 of 2013 (Arising from SLP (C) No. 19628 of 2012)

Sushila Kumar

APPELLANT

Vs

Indian Oil Corporation Ltd. and Another

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 12 SCALE 343

Hon'ble Judges : V. Gopala gowda, J;G.S. Singhvi, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. Leave granted. The Appellant is the widow of Major General B.N. Kumar, who was killed in war with Pakistan. She applied for allotment of LPG distributorship on compassionate ground. Respondent No. 1 - Indian Oil Corporation Ltd. accepted her application and vide letter dated 27.11.1989/20.3.1990 she was offered the dealership at Noida. However, the distributorship agreement was executed only on 7.7.1994.

2. The Appellant successfully operated the dealership from 1994 to 2001 without any cause of complaint from any consumer. After seven years, she was served with show cause notice dated 27.4.2001 proposing to take action on the ground of violation of the terms of agreement. It was alleged that during the inspections carried out by the field staff, the Appellant was rarely available at the showroom. The Appellant filed detailed reply dated 2.5.2001 and denied the allegation. The Chief Area Manager (Marketing Division) took cognizance of the Appellant's assertion that she was signing the documents on day to day basis and supervising the dealership and issued letter dated 5.6.2001, paragraph 2 of which reads as under:

Keeping in view the above, the Corporation has decided to defer any further action pursuant to the Show Cause notice. You are hereby WARNED that in case

at any later date it is found that there is any breach of any term of the agreement including that of Clause 23(b) we shall be constrained to take further action as may be deemed appropriate including Termination of Distributorship.

3. In June 2001, the Appellant sent communication to the Chief Area Manager of Respondent No. 1 seeking latter's approval to travel to New Zealand to attend her daughter, who was expecting a child.

4. During the Appellant's absence, the Chief Area Manager ordered an inspection of the showroom and then issued letter dated 30.7.2001 terminating the distributorship agreement on the ground that she was operating the distributorship through Shri Tarun Kumar. The reasons recorded by the Chief Area Manager for taking punitive action against the Appellant are reproduced below:

In your reply to the Show Cause you had stated that the distributorship is being operated by you and that the overall function of the distributorship is being personally looked after by you. However, in spite of your above statement, it has been reported that you are never available at your distributorship and the same is being run and operated by some other person. Your continuous absence from the distributorship clearly shows that the operation of the distributorship are being controlled and carried out by some other persons in violation of the terms and conditions of the distributorship agreement.

That in view of the breaches and violation of the terms and conditions of the distributorship agreement committed by you and your failure to remedy the same in spite of opportunities given to you, it has been decided to terminate your distributorship forthwith. Please note that the distributorship agreement 7.7.1994 stands terminated forthwith. You are advised to return all the equipment and stationery to our representative immediately and also to reconcile the accounts and clear the outstandings immediately. You are further advised to hand over the godown premises to our authorized representative immediately.

5. The Appellant challenged the aforesaid communication in CWP No. 469 of 2005 filed before the Delhi High Court. In the affidavit filed by her, the Appellant averred that she had gone abroad after taking permission from the competent authority and Area Sales Officer, Shri D.S. Rao had recorded in his report dated 13.6.2001 that Shri Tarun Kumar will look after the day to day business of distributorship during her absence. She also pleaded that the action taken by the Chief Area Manager was totally arbitrary and was based on non existing and vague grounds.

6. In their counter affidavit, the respondents pleaded that the writ petition is liable to be dismissed on the ground of laches because the Appellant had not given any explanation for more than three years' delay. On merits, it was pleaded that the action had been taken against the Appellant because she was not looking after the business of distributorship and had entrusted this task to Shri Tarun Kumar in violation of Clause 23(b) of the Distributorship Agreement.

It was further pleaded that the action was taken against the Appellant after giving her notice and opportunity to explain her position.

7. The learned Single Judge overruled the objection of delay by assigning the following reasons:

Article 226 is not regulated by any period of limitation. Yet as a rule of caution and prudence courts desist from granting relief if the litigant approaches it after lapse of considerable time. This rule was evolved as a matter of prudence and convenience, to rule out adjudication of state claims. Inherent in the concept of doctrine of laches is the element of subjectivity. What is considered reasonable under certain circumstances may not be so having regard to another set of factors. Here the Petitioner waited for 4 years to approach the court. The court cannot be unmindful of the attendant circumstances of her case. Her husband was killed in extremist violence; he was a high ranking Army officer. The Petitioner herself had to wait for more than 5 years before the IOC - allotted the distributorship to her. The other relevant fact here is that the Petitioner is single and dependent on others and employees, to carry on the business. She was, by her own showing, out of country for about 4-5 months. There is no dispute that she repeatedly represented for restoration of the distributorship. In the overall conspectus of these facts, I am not persuaded that the petition is hit by laches.

8. The learned Single Judge then considered the Appellant's plea that the action taken by the Chief Area Manager was arbitrary and proceeded to observe:

The sole objection of the IOC is to the Petitioner's functioning, in absentia as it were. It was insulated, at an early stage that she did not carry on business. However, that show cause notice was dropped. The materials on the basis of which the impugned termination letter was issued, is an inspection said to have been carried out in July, 2001. That inspection report records that Shri Tarun Kumar was an employee of the Petitioner, it further states that she was temporarily absent and had informed the IOC. During the hearing although the Respondents asserted that the Petitioner ought to have applied for leave, no rule or condition in the agreement was brought to my notice compelling her or any other distributor to seek leave from the IOC. Even otherwise the idea of a distributor-even of public agencies having to apply for sanction of leave for compelling reasons, is abhorrent. As long as the distributor is in overall control and supervises the outlet efficiently, the public agency - at least as in the case like the present should not be too intrusive. The IOC's approach in this case appears to have been schizophrenic to say the least. On the other hand the inspection report recorded that the Petitioner's employee was present and acknowledged her absence. Yet that very material was seen in a twisted manner to issue the termination letter. These circumstances clearly betray a biased attitude, and utter non-application of mind. I have no doubt therefore that the impugned termination letter was arbitrary and unreasonable.

9. The Division Bench of the High Court did not find any error in the order of the

learned Single Judge but took cognizance of the events which followed the termination of distributorship agreement, which were highlighted by the Learned Counsel for the Respondents herein and held:

While we do not find any blemish in the order of the learned Single Judge and are thus not inclined to set aside the same on the ground of any error therein but the events which have subsequently unfolded, in our opinion do require consideration for the outcome of this appeal. The Respondent No. 1 has been out of the distributorship business now for the last 12 years. In the said 12 years her customer base has eroded and the said customers were transferred to other distributors. It can safely be assumed that depending upon the total number of customers, additional distributors may have been introduced, It is also undisputed that the Respondent No. 1 has spent most of the last 12 years abroad. So much so that for the last 5 years she is also a foreign citizen. The reason given in her affidavit for such absence from India is, "absence of any children in India to look after her in her old age". We have thus wondered whether the relief granted by the learned Single Judge is today justified. In our opinion No. It cannot be lost sight of that the said distributorship was given to her by way of largesse and on compassionate ground and was not by way of any right. It is also sufficiently borne out that the said distributorship has served the Respondent No. 1 well; it had helped her in rehabilitating herself and her children. Now, when the grounds for which compassion was then shown to the Respondent No. 1 have disappeared, we have wondered whether any case for restoration of the distributorship when the Respondent No. 1 in the interregnum has settled herself elsewhere, is justified. Our answer again is No. In fact the long delay of over three years on the part of the Respondent No. 1 in approaching the Court itself shows that the need/requirement by the Respondent No. 1 for the said distributorship had disappeared then only. It is not as if the Respondent No. 1 between the date of cancellation and the date of filing of the writ petition did not visit India. The dates aforesaid disclosed by her reveal three visits to India between that time. The Petitioner still did not file any proceedings. The only inference can be that she was then not in a position, neither to remain in India nor to recommence business. The Respondent No. 1 though may be justified in feeling hurt at the treatment meted out to her on the part of the Appellant but the said hurt would still not justify the restoration of distributorship. It is a well known fact that such distributorships are awarded even today on compassionate ground and we are of the view that restoration of distributorship in today's date and time to the Respondent No. 1 would definitely be at the cost of some other deserving person. We are conscious that the said distributorship was not limited in point of time. However at the same time it did not create any right in favour of the Respondent No. 1; it was a terminable contract. Even though the Appellant is found to have acted unfairly and unjustly in effecting such termination but that alone would not lead to the restoration.

10. We have heard Learned Counsel for the parties and perused the record.

11. At the outset, we may mention that while issuing notice of the SLP on 20.7.2012, this Court had directed the Appellant to file an undertaking to return to India for operating the LPG agency. In compliance of the Court's order, the Appellant filed affidavit dated 13.8.2012, paragraphs 2 and 3 of which read as under:

2. I say that on the Agency being restored, I shall come back to India and run the said Agency as per the Rules and Regulations of the Respondents.

3. I say that I had shifted to New Zealand as my daughter is residing there and with the cancellation of the Agency by the Respondents, I had no financial means, and I had to depend on her for my day to day living.

12. We shall now consider whether the justification supplied by the Division Bench of the High Court for upholding the action taken by the Chief Area Manager is legally tenable. The Division Bench relied upon the information supplied by the counsel appearing for Respondent No. 1 about the Appellant's 14 visits to New Zealand between 1997 and 2010 and observed that she has been out of business for the last 12 years and she had acquired citizenship of New Zealand. In our view, the Division Bench could not have relied upon these factors for approving termination of the distributorship agreement because she has not been given an action oriented notice and opportunity of hearing to explain her position on the issues of her annual visits to New Zealand and the alleged acquisition of foreign citizenship.

13. That apart, a look at the period of Appellant's stay in New Zealand shows that she remained there for about two months in 1997, one month in 1999, about one month and a half in 2001, two months and twenty days in 2002, two months between November 2003 and January 2004, one month and a half between November 2004 and January 2005, three months between November 2005 and January 2006, two months between November 2006 and January 2007, two months between November 2007 and January 2008, one month and a half between November 2008 and January 2009 and one month and a half between November 2009 and January 2010. Such visits would be normal for any person placed in the Appellant's position. There was nothing abnormal in the Appellant's stay for one or two months in a country where her only daughter is residing. Her visits to New Zealand post 2001 were out of love and affection for her grandchild. Therefore, neither her annual visit to New Zealand nor the factum of stay for one month and a half to two months in that country could have been made a ground by the Division Bench of the High Court for setting aside the order of the learned Single Judge.

14. The Division Bench also went wide of the mark when it observed that the ground of compassion which constituted the foundation of allotment of dealership to the Appellant has disappeared because she has settled elsewhere. In our view, the Appellant's 14 visits to New Zealand in a span of 13 years cannot be construed as an indicator of her lack of interest in running the LPG

distributorship. The situation in which the Appellant was placed left her with no choice but to go and live with her daughter. Indeed, it is not even the pleaded case of the Respondents that due to the Appellant's absence for one or two months, the interest of any consumer had been adversely affected or there was any cause of complaint in the working of distributorship. Therefore, the Appellant's absence for short duration cannot lead to an inference that she had abandoned the distributorship or that she will not be able to effectively perform the task of supply of LPG to the consumers. In the result, the appeal is allowed, the impugned judgment is set aside and the order passed by the learned Single Judge is restored. The Respondents are directed to restore the LPG distributorship to the Appellant within one month from the date of receipt/reproduction of copy of this order.