

(2014) 11 MP CK 0057
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 819 of 2014

Thapak Petrol Pump	Vs	APPELLANT
Hindustan Petroleum Corporation		RESPONDENT

Date of Decision : 05-11-2014

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16, 30, 8
Constitution of India, 1950 — Article 226
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2

Citation : (2014) 11 MP CK 0057

Hon'ble Judges : Rajendra Menon, J; N.K. Gupta, J

Bench : Division Bench

Advocate : G.S. Ahluwalia, Advocate for the Appellant; N.K. Salunke, counsel, Advocate for the Respondent

Judgement

1. Calling in question tenability of the order dated 19.9.2014 passed in Writ Petition No. 6112/2014 dismissing the writ petition filed by the petitioner on the ground of availability of an Arbitration clause in the agreement this writ appeal was filed.
2. The appellant here was granted a dealership by Hindustan Petroleum Corporation Ltd. for the purpose of setting up a petroleum outlet. An agreement i.e. "Dealership Agreement" was entered into between the parties on 12.2.2007 and clause 66 of the agreement contemplates as Arbitration clause.
3. Be that as it may be on 14.12.2013, a joint inspection of the retail outlet was conducted and after taking out sample of High Speed Diesel and sample of other products, it was found that the products which were dispensed in the outlet did not meet the statutory specifications as contemplated, it was found to be adulterated and as a result the retail outlet dealership of the petitioner for retail sale of petroleum products was canceled. Challenging the cancellation of dealership on various grounds the writ petition was filed and in the said petition a

preliminary objection was raised by the respondents, to say, that in view of the clause 66 of the Agreement, as there was a arbitration agreement between the parties, the petitioner had to avail the remedy of invoking the arbitration clause. The learned writ Court having upheld this objection, this appeal has been filed under Section 2 of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth ko Appeal) Adhiniyam, 2005.

4. Shri G.S. Ahluwalia, learned counsel for the appellant submitted that even though there is a arbitration agreement between the parties but the said agreement only contemplates grant of damages and compensation to the petitioner in case the termination of dealership is found unsustainable. On the contrary it is submitted that if termination was found to be illegal then the relief of restoration of dealership cannot be granted by the Arbitrator and therefore, it is said that arbitration clause available will not effect the maintainability of the writ petition for the simple reason that the relief of restoration of the dealership cannot be granted by the Arbitrator. Referring to the judgment passed by the Supreme Court in the case E. Venkatakrishna Vs. Indian Oil Corporation and Another, , Shri Ahluwalia submitted that it has been held by the Supreme Court in the aforesaid case that "restoration of distributorship" will not arise under the agreement and therefore, same cannot be adjudicated by the Arbitrator. Accordingly, it is said the law laid down in the aforesaid case has been ignored by the writ Court and therefore, the matter be remanded to the writ Court. That apart he referred to another judgment passed by the Division Bench of the Andhra Pradesh High Court in the case of "K. Harinath Vs. Hindustan Petroleum Corporation" decided on 28.3.2013 in Writ Appeal No. 371 of 2013, it is agreed that the learned Writ Court committed error in dismissing the petition.

5. On the contrary Shri N.K. Salunke, counsel for the respondents, refuted the aforesaid submissions and the arguments advanced by the counsel for the appellant to say that clause 66 contemplated an arbitration clause and as the learned single Judge has noted all the submissions and has upheld the preliminary objections, no interference can be made. That apart placing reliance on another judgment of the Supreme Court in Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums, Shri Salunke tried to argue that the order passed by the learned writ Court does not call for any interference and the petitioner has a liberty to invoke clause 66 of the Dealership Agreement. He further submitted that as per the material available on record it is apparent that a joint inspection was conducted in accordance with the rules, it is established that in the petroleum outlet, petroleum products were not as per the statutory specification and parameters therefore, now no interference be made.

6. We have considered the rival contentions and the judgments referred to by the parties. Even though clause 66 contemplates an arbitration clause, this Arbitration clause is identical in nature to the one considered by the Supreme Court in the case of E. Venkatakrishna (supra) and in paras 4, 6 and 7 of the said judgment the Hon''ble Supreme Court has held as under :

"4. The award was challenged by the respondent in proceedings under Section 30 of the Arbitration Act taken before a learned Single Judge of the Madras High Court. The learned Single Judge rejected the challenge. The respondent preferred an appeal and the Division Bench, in the judgment and order that is impugned before us, upheld the challenge. It said "There is considerable force in the contention of the appellant that what is arbitrable under Clause 37 is only the dispute or difference in relation to the agreement. The question of restoration of distributorship would not arise under the agreement. Therefore, we have no hesitation in holding that the Arbitrator was in error and in fact had no jurisdiction to direct restoration of distribution to the 1st respondent.

6. We find it difficult to accept the contention on behalf of the appellant that what was referred to the Arbitrator was the issue of restoration of distributorship in the sense that the Arbitrator could direct, upon holding that the termination was unlawful, that the distributorship should be restored. We think that the reference itself contemplated consequential damages for wrongful termination. In any event and assuming that there is any error in so reading the reference, it is difficult to hold that the Arbitrator was thereby vested with jurisdiction to award restoration.

7. It was contended that the appellant had invoked the arbitration Clause only because of the order of the learned single Judge of the Karnataka High Court on the writ petition that he had filed and that that order contemplated that the Arbitrator, acting on the arbitration Clause in the agreement, would have the authority to award restoration. In the first place, we do not find any such observation in the judgment of the learned Single Judge. In any event, such observation, even if it were there, would not vest the Arbitrator with a jurisdiction that he did not otherwise possess in law".

(Emphasis Supplied)

7. The legal principle as indicated hereunder clearly goes to show that the Supreme Court has laid the principle that even though cancellation of a petroleum outlet dealership can be subjected to arbitration in accordance with the dealership agreement but the Arbitrator has no jurisdiction to restore the dealership, he can only grant damages. The principle laid down by the Supreme Court in the aforesaid case has been relied by the Andhra Pradesh High Court in the case of K. Harinath (supra) and the Andhra Pradesh High Court has also referred various other judgments on the question.

8. The judgment in the case of Hindustan Petroleum Corporation Ltd. Vs. Pinkcity Midway Petroleum (supra) relied on by Shri Salunke does not deal with the question directly. It holds that under Section 8 of the Arbitration and Conciliation Act, 1996, where arbitration clause exists Court has a mandatory duty to refer the dispute arising between the contracting parties to an Arbitrator and the Civil Court has no jurisdiction to continue with the suit once an application under Section 8 of the Arbitration and Conciliation Act has been filed. It has been

further held Under Section 16 of the Arbitration and Conciliation Act, 1996 that objection regarding applicability of arbitration clause in the agreement to the facts of the case though goes to the root of jurisdiction, must be raised before arbitrator for decision and in the said case the question of right and jurisdiction of the Arbitrator to restore the dealership was not considered and therefore, this judgment cannot be applied. Even though the judgment in the case of "E Venkatakrishna" (supra) is referred to by the Writ Court but, without considering the legal principle as laid down in the said case only on the ground of availability of an alternative remedy and after relying on the various other judgments pertaining to exercising the jurisdiction the High Court in the matters under Article 226 of the Constitution of India when an alternative remedy is available to the petitioner is dismissed. It is held that a Writ Court will have jurisdiction only if the matter pertains to breach of fundamental rights or violation of natural justice or challenge is made to the statutory enactment. With respect to the question in issue the learned Writ Court has not applied the principles of law as laid down in the case of E. Venkatakrishna (supra) which answers the legal question as raised by the appellant. Once it has been held by the Supreme Court in the case of E. Venkatakrishna (supra) that the Arbitrator does not have the jurisdiction to restore the dealership then we are of the considered view that the Arbitration Agreement will not apply and if the petitioner wants restoration of the dealership then the jurisdiction is with the writ Court and not with the Arbitrator. As the preliminary objection raised by the appellant cannot be allowed and as it is contrary to the principles laid in the case of E. Venkatakrishna (supra) this appeal has to be allowed and the matter returned back to the Writ Court. Accordingly, this appeal is allowed, the preliminary objection is rejected and the matter remitted back to the Writ Court to deal with the dispute on merit.

9. Appeal accordingly stands disposed of.