
(2014) 09 MP CK 0131
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6112/2014

Thapak Petrol Pump

APPELLANT

Vs

Industan Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 19-09-2014

Acts Referred:

Arbitration Act, 1940 — Section 17
Constitution of India, 1950 — Article 226, 227

Citation : (2014) 09 MP CK 0131

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Manikant Sharma, Learned Counsel, Advocate for the Appellant;
N.K. Salunke, Learned Counsel, Advocate for the Respondent

Judgement

Sanjay Yadav, J.—Parties are heard on the preliminary objection raised by the respondents as to the maintainability of petition because of availability of the arbitration clause.

2. Vide dealership agreement dated 12.02.2007 entered into between the petitioner and the respondent ? Hindustan Petroleum Corporation Ltd. the petitioner is carrying on the business of retail outlet dealership for retail sale of petroleum products.

3. On a joint inspection of retail outlet carried out by the officials of respondent Corporation on 14.12.2013 at 4 PM density failure was observed in High Speed Diesel (HSD) sample taken from Midco HSD Dispensing Unit connected with underground tank. The difference in density found was 31.6 Kg/M3. Nozzle sample of HSD of underground tank failed in density as per IS specification 1460 : 2005. The test report of HSD sample was found outside the reproducibility/permissible limit with depot reference sample on the parameters of (I) density at 15 degree centigrade Kg/m3, (ii) Kinematic viscosity at 40 degree centigrade cst, (iii) Sulfur content mg. kg. All this led to drawing of proceedings resulting in passing of order dated 2.04.2014 terminating the

agreement as per clause 64 with a liberty to invoke clause No.66 of the Dealership Agreement dated 12.02.2007 for the adjudication of disputes through Arbitration.

Clause 66 of agreement dated 12.02.2007 stipulates :

“66. Any dispute or difference of any nature whatsoever or regarding any right, liability, act, omission or account of any of the parties hereto arising out of or in relation to this agreement shall be referred to the sole arbitration of the Managing Director of the corporation or of some officer of the corporation who may be nominated by the Managing Director. His dealer will not be entitled to raise any objection to any such arbitration on the ground that the Arbitrator is an officer of the corporation on that he has to deal with the matters to which the contract relates or that in the course of his duties as an officer of the corporation. He had expressed views on all or any of the matters in dispute or difference. In the event of the Arbitrator or whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason the Managing Director as aforesaid at the time of such transfer, vacation of office or inability to act, shall designate another person to act as Arbitrator in accordance with the terms of the agreement such person shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is also a term of this contract that no person other than the Managing Director or a person nominated by such Managing Director of the Corporation as aforesaid shall act as Arbitrator hereunder. The award of the Arbitrator so appointed shall be final, conclusive and binding on all parties to the agreement, subject to the provisions of the Arbitration Act, 1940 or any statutory modification of or re-enactment thereof and the Rules made thereunder and for the time being in force shall apply to the Arbitration proceedings under this clause.”

4. Petitioner instead of invoking clause 66 has filed the present petition contending inter alia that it is his right to invoke the extraordinary jurisdiction under Article 226 of the Constitution of India. Reliance is placed on the decision in E. Venkatakrishna Vs. Indian Oil Corporation and Another, ; Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others, ; Sudarshan Motors vs. Hindustan Petroleum Corp. : (2011) 3 EFR 612; M/s Royale Highway Services vs. Hindustan Petroleum Corp. : W.P.No.5034/2007; M/s Juneja & Comp. vs. Hindustan Petroleum Corp. Ltd. & another : W.P.No.1350/2008, decided on 09.05.2013.

5. The respondents have relied upon clause 66 of the Dealership agreement to bring home the submission that the petition in view of availability of efficacious remedy is not tenable.

6. Considered the rival submissions.

7. It is petitioner's own admission that the retail outlet in question is by virtue of Dealership agreement dated 12.02.2007. That being so, the petitioner is bound by its terms.

8. In Assistant Excise Commissioner and Others Vs. Issac Peter and Others, it is held :

¶26. ¶ It must be remembered that these contracts are entered into pursuant to public auction, floating of tenders or by negotiation. There is no compulsion on anyone to enter into these contracts. It is voluntary on both sides. There can be no question of the State power being involved in such contracts. ¶ ?

9. In Delhi Gate Auto Service Station and Others Vs. B.P.C.L. Agra th. Sr. Div. Manager and Others, it is held :

¶1. The question in these appeals is regarding the correctness of the judgment of the High Court dismissing the writ petitions by the appellants herein. The controversy was regarding dealership of two petrol retail outlets. The dealership was terminated by the respondent - Bharat Petroleum Corporation Ltd., ("BPCL" for short). That termination was challenged.

2. The matter was remanded by the High Court in the first round with an observation that the BPCL should hear the appellants and consider the objections. Accordingly, show-cause notice was issued. That show-cause notice was also replied to by the appellants by giving various reasons as to why the termination should not have been effected. Later on, the BPCL terminated the dealership. That was challenged by filing writ petitions. However, as per the terms of the agreement of dealership, the appellants also approached the arbitration. Now it is reported that arbitration is over and the award has gone against the appellants which award has also been further challenged.

3. In that view, it will not be possible for us to entertain this appeal. In fact, the writ petitions itself could not have been entertained on the ground that two parallel remedies could not have been pursued by the appellants at one and the same time. The writ petition was rightly dismissed. We do not find any merit in these appeals. They are dismissed without any order as to costs. This order should not be viewed as any expression on the merits of the matters.¶

10. In Kanaiyalal Lalchand Sachdev and Others Vs. State of Maharashtra and Others, it is held :

¶23. In our opinion, therefore, the High Court rightly dismissed the petition on the ground that an efficacious remedy was available to the appellants under Section 17 of the Act. It is well- settled that ordinarily relief under Articles 226/ 227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh vs. National Insurance Co. Ltd.; Surya Dev Rai vs. Ram Chander Rai &; State Bank of India vs. Allied Chemical Laboratories.)¶

11. In Union of India (UOI) and Another Vs. Guwahati Carbon Ltd., it is held :

¶10. In other words, existence of an adequate alternative remedy is a factor to be considered by the writ court before exercising its writ jurisdiction (see Rashid

Ahmed vs. Municipal Board, Kairana).

...

15. In our opinion, the assessee ought not to have filed a writ petition before the High Court questioning the correctness or otherwise of the orders passed by the Tribunal. The Excise Law is a complete code in order to seek redress in excise matters and hence may not be appropriate for the writ court to entertain a petition under Article 226 of the Constitution. Therefore, the learned Single Judge was justified in observing that since the assessee has a remedy in the form of a right of appeal under the statute, that remedy must be exhausted first. The order passed by the learned Single Judge, in our opinion, ought not to have been interfered with by the Division Bench of the High Court in the appeal filed by the respondent assessee.?

12. In the case at hand having failed to establish the three parameters viz. (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of the principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged, no indulgence is caused as the petitioner has efficacious alternative remedy of invoking Arbitration clause in the agreement.

13. Consequently, preliminary objection as to the maintainability is upheld. Petition is dismissed with liberty to the petitioner to invoke clause 66 of the Dealership Agreement dated 12.02.2007.

14. At this stage learned counsel for the petitioner insist upon continuation of interim order dated 26.05.2014 whereby it was ordered that the respondent authorities shall not allot or handover the retail outlet to any other person. Since the dealership has been terminated on serious charges found proved, petitioner is not entitled for interim protection, therefore, the plea for continuation of interim order dated 26.05.2014 stand rejected.

15. In the result, petition is dismissed in terms above. No costs.