

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 18th September, 2012

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LPA No. 541/2012

INDIAN OIL CORPORATION LTD.

..... Appellant

Through: Mr. Rajeeve Mehra, ASG with Mr.
Rajat Navet, Mr. Kunal Kahol & Mr.
Madhusudan, Advocates.

Versus

M/S BHARAT FILLING STATION & ORS.

..... Respondents

Through: Mr. N.S. Mathur, Adv. for R-1&2.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the judgment dated 06.07.2012 of the learned Single Judge allowing W.P.(C) No.9432-33/2005 preferred by the respondents No.1&2, by quashing and setting aside the order dated 14.07.2003 of the appellant of termination of dealership of the respondents No.1&2. The appellant has accordingly been directed to restore the dealership of the respondent No.2 Sq. Leader K.D. Mehra (Retd.) under the name and style of the respondent No.1, on the Delhi Palam Road, Opposite APS Colony, New Delhi. This appeal came up before us first on 30.07.2012, when files in FIR No.239/2001 registered with Police Station Delhi Cantt. under Sections 420/120B IPC in the case titled *State Vs. Bharat Filling Station* decided on 01.08.2009 as well as the file of W.Ps.(C)

No.3916/2001 and 9432-33/2005 and of LPA No.299/2003 were requisitioned. The appeal was admitted for hearing and with the consent of the parties heard finally.

2. The respondent No.2 was on 11.07.1977 allotted the retail outlet aforesaid for the sale of petroleum and petroleum products on preferential basis in the category of ex-servicemen who have suffered disabilities while in action. The respondent No.2 in or about the year 1995 inducted his son and daughter also as partners in the said business. The site of the retail outlet i.e. the land, machinery and other investment is of the appellant with the respondents No.1&2 being allowed to operate and retail petroleum and petroleum products from the said outlet. The Agreement between the appellant and the respondents No.1&2 was renewed from time to time and was last renewed on 02.06.1999 for a period of five years. On 10.06.2001, the Economic Offences Wing of the Crime Branch, Delhi Police along with officials of the appellant, on the basis of complaint received, inspected the aforesaid retail outlet. The inspection revealed that the 3 Z-line dispensing units (2HSD & 1MS for 2-3 wheelers) were having extra fittings which were not part of the original equipment i.e. an extra switch was installed in the sloping column inside nozzle boot resulting in delivering short supply of 200 ml in every five liters. The officials of Larsen & Toubro (L&T) and Avery responsible for maintaining the dispensing units were summoned who also confirmed the extra switch installed by the respondents No.1&2 in the aforesaid machine to be not part of the original equipment supplied by them. On the basis of this inspection, the respondent No.2 was arrested and the FIR aforesaid lodged.

3. The appellant vide order dated 13.06.2001 terminated the dealership of the respondents No.1&2.

4. The respondents No.1&2 earlier filed W.P.(C) No.3916/2001 in this Court challenging the aforesaid termination. A Single Judge of this Court by order dated 18.03.2003 quashed the order dated 13.06.2011 of termination finding the same to have been made in violation of the principles of natural justice inasmuch as the respondents No.1&2 had not been given any opportunity of being heard. Accordingly, the appellant, who after termination of dealership of the respondents No.1&2, had started operating the petrol pump itself, was directed to restore the petrol pump to the respondents No.1&2. The appellant was however given liberty to, on the basis of inspection of 10.06.2001, take appropriate action against the respondents No.1&2 after complying with the principles of natural justice.

5. The appellant preferred LPA No.299/2003 against the aforesaid order and vide interim order in which the operation of the judgment of the learned Single judge was stayed. However during the pendency of the LPA, the appellant accorded post decisional hearing to the respondents No.1&2 and whereupon order dated 14.07.2003 supra, again of termination of dealership i.e. in confirmation of the earlier order dated 13.06.2001, was issued. Owing thereto the LPA was disposed of by the Division Bench vide order dated 18.07.2003 granting leave to the respondents No.1&2 to take their remedies against the fresh order dated 14.07.2003.

6. The respondents No.1&2 did not challenge the order dated 14.07.2003 for a period of nearly two years i.e. till May, 2005 when the writ petition

from which this appeal arises was filed. The appellant contested the writ petition including on the ground of the same being barred by laches, waiver and acquiescence.

7. The learned Single judge in the detailed impugned judgment running into 62 pages has observed / found / held:

- (i) that the only question for consideration in the writ petition was whether the order dated 14.07.2003 had been passed in compliance with the principles of natural justice;
- (ii) that a post-decisional hearing should not be reduced to an empty formality;
- (iii) that the appellant however had treated the post decisional hearing as a mere mechanical exercise to validate the earlier illegal order of termination;
- (iv) no rules or procedure for conducting the inquiry proceedings had been laid down;
- (v) the inquiry had been conducted by two different officials and neither seemed to have submitted any inquiry report;
- (vi) the Disciplinary Authority had not taken into consideration any of the defences taken by the respondents No.1&2 in the reply to the show cause notice;
- (vii) that though the respondents No.1&2 had demanded inspection of alleged extra fittings and a complete set of documents on the basis whereof show cause notice dated 07.05.2003 was issued but neither inspection or access to the petrol pump was given

nor any documents supplied; even the copy of the report of the L&T was not supplied to the respondents No.1&2;

- (viii) that no proper hearing was given to the respondents No.1&2;
- (ix) that by mere giving a show cause notice, the principles of natural justice do not stand complied with;
- (x) that even if inspection sought by the respondents No.1&2 could not be given by the appellant for the reason of the dispensing pump having been sealed and the matter being in the Court, permission of the Court could have been obtained but no steps in which regard were taken by the appellant;
- (xi) that there was no unequivocal admission of the respondents No.1&2 of tampering;
- (xii) that no evidence was led by the appellant before the Inquiry Officer or documents produced to substantiate the allegations made against the respondents No.1&2;
- (xiii) that it was not disputed that the seals were intact on the pumps – if that be so then how were the pumps tampered with and the alleged extra fitting installed;
- (xiv) that in the inspection conducted on 19.05.2001 of the said retail outlet, i.e. just three weeks before the alleged incident as well as in the random surprise check on 28.03.2001, no such things were found or reported;
- (xv) that even on 03.06.2001 an inspection was conducted and no shortfall of delivery noted – all these things were not considered before imposing the extreme penalty of termination;

- (xvi) that the decision to terminate was only on the basis of alleged FIR, the contents of which were taken to have been proved;
- (xvii) that the modus of conducting the inquiry and the termination supported the plea of the respondents No.1&2 that the Area Sales Manager of the appellant wanted to shut down the outlet as he wanted to re-allot the same to some other obliging allottees, as the respondents No.1&2 were not pleasing the officials of the appellant;
- (xviii) that the Criminal Court had not found sufficient material to even frame the charge and had discharged the respondents No.1&2 vide order dated 01.08.2009;
- (xix) that damages as sought by the respondents could not be awarded in the writ petition; liberty was granted to the respondents to institute appropriate legal proceedings therefor;
- (xx) that the appellant in the matter of terminating the dealership of the respondents No.1&2 had also treated the respondents No.1&2 and M/s Libra Filling Station though placed similarly, dissimilarly; while the dealership of M/s Libra Filling Station has been restored, that of the respondents No.1&2 had not been;
- (xxi) that though the allegations of short delivery had not been substantiated but even if it were to be assumed that there was short delivery for a period of about one to three weeks (as inspections were carried out earlier also and nothing was found), the penalty of termination was excessive and in violation of Clauses of the Dealership Agreement and the

Marketing Discipline Guidelines issued to ensure that the Agreements with the dealers were carried out in a systematic manner and the appellant does not invoke the Termination Clause arbitrarily and which provide for termination only upon a third instance of tampering with the seals;

- (xxii) that the past conduct of the respondents No.1&2 of running the retail outlet for 23 years had not been taken into consideration;
- (xxiii) that the delay in filing the writ petition had been satisfactorily explained by the respondent No.2 on account of his illness and the other two partners being away from India; and
- (xxiv) that the writ remedy was available to the respondents No.1&2 inspite of the alternative remedy of arbitration in terms of the Dealership Agreement.

8. The appellant has pleaded:

- (a) that the finding of the learned Single Judge of the documents having not been supplied to the respondents No.1&2 is perverse and contrary to the record; all documents were not only part of the writ petition earlier filed by the respondents No.1&2 but also received by them in the criminal case;
- (b) that the long delay of two years in filing the writ petition itself was sufficient to deny relief to the respondents No.1&2;
- (c) that the respondent No.2 in his reply to the show cause notice had admitted tampering but attributed the same to sabotage probably on account of jealous competition or internal disputes between members of staff;

- (d) that the Agreement between the parties was determinable in nature and could not be specifically enforced;
- (e) that the tampering detected at the said retail outlet was against the interest of the public at large and of serious nature;
- (f) that had the respondents No.1&2 been keen on inspecting the dispensing units, they could have approached the Police Authorities of their own but which steps were not taken;
- (g) that the respondent No.2 was discharged by the Criminal Court on purely technical grounds and which did not establish his innocence;
- (h) that the direction of the learned Single Judge is beyond the scope of exercise of the power of judicial review;
- (i) that the exceptional circumstances of installation of extra fittings for short delivery justified termination of the dealership in the first instance itself and which was permissible under the Marketing Discipline Guidelines also;
- (j) that even otherwise the factum of the restoration of the dealership of M/s Libra Filling Station did not justify interference with the penalty imposed on the respondents No.1&2; and
- (k) that since disputed questions of fact arose, writ remedy was not the appropriate remedy.

9. Learned ASG appearing on behalf of the appellant has taken us through the records including of the criminal cases particularly the report dated 12.10.2001 of the Central Forensic Science Laboratory (CFSL) who

had inspected the sealed fuel filling machines at the retail outlet aforesaid on 16.06.2001 and had found “an unusual toggle switch hidden inside the slot where the fuel nozzle was kept after use and which when operated resulted in shortage of 4% in the delivery” and the order dated 30.09.2002 in the said proceedings where the respondent No.2 had acknowledged having received complete set of documents. He has next highlighted that the appellant was not a party to the criminal proceedings and contended that it was thus not for the appellant to make an application in those proceedings for giving inspection to the respondents No.1&2 and the respondents No.1&2 who were parties to the said proceedings if desirous of inspection could have so applied to the Court where the criminal proceedings were pending. From the record of the criminal case, it is also shown that the switches aforesaid were lying in the Maal Khana. With reference to the Dealership Agreement, it is shown that as per Clause 45 thereof, the dealer is to take active part in the management and running of the retail outlet and is to personally supervise the sale and is prohibited from doing so through any other person. It is argued that the factum of the respondent No.1 being ill and the other two partners being abroad itself shows that the respondents No.1&2 were not interested in or capable of operating the dealership and had filed the writ petition after two years as an after thought.

10. Per contra, the counsel for the respondents No.1&2 has highlighted that in the inspection carried out on 03.06.2001 no such tampering or deficiencies or shortfall in delivery was found; attention is invited to the reply to the show cause notice to show the various pleas taken therein and it is argued that none of them have been dealt with in the order of termination;

a copy of the order on the charge in the criminal case is handed over. With reference to the record of the writ petition, it is shown that in earlier inspection the delivery was rather found in excess; attention is also invited to earlier inspections from time to time in each of which the seals were found intact; it is argued that there was never any complaint against the respondents No.1&2. Attention is next invited to the Marketing Discipline Guidelines and it is argued that the tolerance limit is of upto 2% and the shortfall in delivery even as per the Police was found to be of 4%. To meet the argument of the learned ASG, it is contended that the report of the CFSL was not before the Inquiry Officer. Again with reference to the Guidelines, it is shown that though seven days notice is prescribed to be given but only five days notice was given. Attention is also invited to the documents concerning M/s Libra Filling Station.

11. Learned ASG in rejoinder has argued that the Guidelines themselves provide that the same are general and the Competent Authority of the concerned Oil Company can take appropriate higher punitive action against erring dealer including of termination in the first or any instance.

12. We have considered the matter. The respondent No.2, as per the Certificate dated 06.12.1972 of the Army Hospital, Delhi Cantt., had in the Indo-Pak War of 1971 dislocated his right elbow resulting in partial disablement of right arm. The appellant is the owner of the plot of land and apparatus and equipment installed thereon, of the retail outlet in question, and had allotted the said retail outlet to the respondent No.2 in or about the year 1977; in the year 1995, he was, on request, permitted to take his son and daughter as partners in the said business. A perusal of the Agreement

between the appellant on the one hand and the respondents No.1&2 on the other hand shows that the appellant had granted to the respondent No.2 leave and license and permission for the duration of the Agreement to enter on the premises of the retail outlet to use the same for the sale and exclusive purpose of storing, selling and handing the products purchased from the appellant. The Agreement as aforesaid was last renewed in the year 1999 and was to continue for five years i.e. till the year 2004 and thereafter for successive periods of one year each until determined by either party by giving three months notice in writing to the other. The Agreement was also terminable by the appellant on breach of the terms thereof by the respondents No.1&2.

13. It would thus be seen that the Agreement as per its terms was terminable by the appellant even without any cause or breach on the part of the respondents No.1&2 and the respondents No.1&2 had no right thereunder except as a licensee to operate the retail outlet. The said nature of the Agreement assumes significance in the context of the delay by the respondents No.1&2 of nearly two years in challenging the termination order dated 14.07.2003. Though the appellant, being the 'State' within the meaning of Article 12 of the Constitution of India, in the matter of renewal of the Agreement is not entitled to discriminate and if granting such renewals to others, is bound to, in the absence of any breach by the respondents No.1&2, grant such renewal to them also but the nature of the relief sought in the writ petition was akin to that of specific performance and which relief is discretionary and in the grant of which, the delay and laches assume significance. Ordinarily specific performance would be denied

where the parties seeking the performance sleeps over the claim for specific performance thereby allowing the other party to proceed on the premise that the first party is not interested in seeking specific performance. (Reference can be made to *Madamsetty Satyanarayana Vs. G. Yelloji Rao* AIR 1965 SC 1405 and *Dr. Jiwan Lal Vs. Brij Mohan Mehra* (1972) 2 SCC 757) Though the appellant herein during the said period did not change its position but the possibility of the appellant in the interregnum of two years, for which period respondents No.1&2 sat quite, could very well have allotted the said retail outlet to somebody else and which rights could not have been disturbed on a belated action on the part of the respondents No.1&2. Rather the factum of the appellant having not allotted the said retail outlet to any other person also negates the plea of the respondents of *mala fides*, of the action against them being with a design to allot the retail outlet to others.

14. We even otherwise are not satisfied with the explanation offered by the respondents No.1&2 of delay. As aforesaid, the respondent No.2 though was made the allotment in his exclusive name, had as far back as in the year 1995 sought permission to include his son and daughter as partners in the business and which permission was granted by the appellant. However, the factum of the said son and daughter of the respondent No.2 proceeding abroad shows that they were not really interested in carrying on the said business. Even otherwise, it is not the case of the respondents No.1&2 that all their affairs had come to a standstill during the said period of two years. A perusal of the record of the criminal prosecution shows that the respondents No.1&2 were defending the prosecution during the said time.

When they could defend the prosecution, they could very well have, if so desired, challenged the order of termination also. The same is indicative of the challenge to the termination order being predicated as a defence to the prosecution and the respondents No.1&2 otherwise having decided not to challenge the termination order.

15. We are therefore unable to concur with the reasoning given by the learned Single Judge on the aspect of delay and are of the opinion that the writ petition was liable to be dismissed and the appeal deserves to be allowed on this ground alone.

16. We are also unable to agree with the reasoning given by the learned Single Judge of the post decisional hearing given to the respondents No.1&2 being mechanical, in defiance of the principles of natural justice and an empty formality. The learned Single Judge has devoted a considerable length of judgment on the documents even having not been supplied to the respondents No.1&2. However on perusal of the record of LPA No.299/2003, we find that on 23.05.2003, the application of the respondents No.1&2 for vacation of the interim stay of the judgment of the learned Single Judge earlier granted by the Division Bench, was dismissed for the reason of the appellant having issued notice to the respondents No.1&2 to show cause as to why their dealership be not cancelled. It is further recorded in the order of that date:

“On demand made by the present respondent, requisite documents have been furnished and within four weeks from today, inquiry will be completed, provided the respondent herein will co-operate. We direct that the inquiry must be completed within four weeks and further time will be

automatically extended to the extent for which he is seeking time in the inquiry proceeding”

The record of the LPA No.299/2003 does not show the respondents No.1&2 to have thereafter approached the Division Bench at any time with the grievance of the documents having not been supplied or of the inquiry being contrary to the principles of natural justice. On the contrary, thereafter when the matter came up before the Division Bench on 18.07.2003, the appeal was dismissed as infructuous in view of the order dated 14.07.2003 post such inquiry. We are of the view that since the Division Bench was then seized of the matter, if the respondents No.1&2 felt that any principles of natural justice were being infringed in the inquiry, the respondents No.1&2 would have approached the Division Bench. Nothing of the sort was done. The respondents after having made a grievance of having not received the documents and having received the documents, cannot now be heard that the documents were not supplied. This is besides the fact that the acknowledgment of receipt of documents as aforesaid is recorded on 30.09.2002 in the criminal case also.

17. We may also mention another factor which had weighed heavily with us in interfering with the judgment of the learned Single Judge. Nearly 11 years have elapsed since the respondents were ousted from the retail outlet aforesaid. The retail outlet was allotted for rehabilitation of the respondent No.2 who had suffered disability in action during the Indo-Pak War. The said purpose of rehabilitation was served in nearly 25 years when the respondents No.2 operated the said retail outlet and earned therefrom. The respondent No.2 who at the time of allotment in the year 1977 was 37 years of age is now 72 years old. He cannot be expected to now run retail outlet

himself. The restoration of the retail outlet now would be for the benefit of the children only of the respondent No.2 and for whose benefit it was not originally allotted.

18. We have also perused the termination order dated 14.07.2003. The same records that the respondents had in their reply to the show cause admitted the existence of the extra fittings resulting in short delivery but had pleaded ignorance thereof and placed the blame / responsibility thereof on the malpractices of the Manager and other staff of the petrol pump and which explanation was not accepted owing to the requirement of the Agreement, of the dealer personally operating the pump. The respondents No.1&2 in their reply had also expressed inability of the respondent No.2 to look after the business because of advanced age and health reasons. It was further noticed that the reply was silent as to why the other partners viz. the son and the daughter of the respondent No.2 could not look after the business.

19. The learned Single Judge has recorded that there was no admission. We have perused the reply dated 28.05.2003 to the show cause notice. The respondents therein *inter alia* stated:

“Despite my disabilities, I have been putting in all efforts to ensure that the customers get the best possible services from my Petrol Pump and its staff just as in any other business I am dependent on my staff and I rely on their sense of duty to duly perform their respective jobs. If bonafide mistakes happen despite the best intention to faithfully offer the highest customer satisfaction from my retail outlet, I should not be punished especially keeping in view the

flawless track record since the dealership was allotted to me.”

“But in the circumstances of my spending limited time at the Retail Outlet due to my ill health it is evident that someone has taken advantage of this situation and has sabotaged the Retail Outlet. Probable reasons could be jealous competition or an internal dispute between members of my staff. I express complete ignorance to the happenings that have led to this incident. The Corporation has been very harsh in its dealings with me and has ignored my past record and without giving any notice has terminated my dealership. You are requested hereby to kindly take cognizance of my profile and good reputation in the area and return the dealership that I have earned with my life, as my only source of livelihood for my family and me.”

20. The strict Rules of Pleadings and Evidence do not apply to departmental inquiries. The officers who conduct and hold the inquiries are not trained in legalese and cannot be expected to record proceedings and reasons in the way done in the Courts. We are of the view that on the basis of the quoted paragraphs of the reply, no error can be found in the conclusion drawn by the officer of the appellant of the respondents having not disputed the existence of the extra switches intended to short deliver and having blamed it on his staff and his inability to spend sufficient time at the retail outlet. It cannot thus be said that the hearing was farcical or an empty exercise.

21. As far as the aspect of discrimination is concerned, we are of the view that even if the facts of M/s Libra Filling Station were identical to that of the respondents and termination was not effected in that case, that would not

justify interfering with the termination in the case of the respondent if otherwise justified. There is no concept of negative equality in law. (Reference may be made to *State of U.P. Vs. Raj Kumar Sharma* (2006) 3 SCC 330 and to *Union of India Vs. M.K. Sarkar* (2010) 2 SCC 59)

22. Similarly, reliance by the learned Single Judge on the Marketing Discipline Guidelines is without noticing the non binding nature thereof. In the present case, the respondents were being prosecuted by the Department of Weights and Measures. Record of the criminal proceedings also shows that the respondent No.2, after his arrest was given judicial custody of 12 days. In these circumstances, the action of the appellant of terminating the dealership falls in the category of exceptional circumstances in which the Guidelines also permit the appellant Company to effect termination even in the case of first default.

23. The acquittal of the respondents in the prosecution is of no avail. We have perused the order of acquittal. The Additional Chief Metropolitan Magistrate discharged the respondents on the ground that tampering with the petrol dispensing machine can be considered as preparation of the offence of cheating and in the absence of any offence to show any person having been cheated, the offence was not made out. The prosecution under the Standard of Weights and Measures (Enforcement) Act, 1985 was held to be not sustainable for the reason of the procedure thereof having not been followed. The respondents can thus not take any advantage of the said acquittal.

24. We are also of the view that even if it were to be assumed that there was no admission of guilt on the part of the respondents, the dispute as to whether the respondents had indulged in or allowed or neglected to detect,

the installation of switches / machines for short delivery was a factual dispute and the writ remedy in any case is misconceived. The remedy if any of the respondents No.1&2 was of arbitration only.

25. We are therefore unable to sustain the judgment of the learned Single Judge and set aside the same. Resultantly, the writ petition filed by the respondents is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

SEPTEMBER 18, 2012

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