

Court No. - 40

Case :- WRIT - C No. - 9028 of 2022

Petitioner :- M/S Pandit Damber Lal Bhagirathi Filling Station

Respondent :- Union Of India And 2 Others

Counsel for Petitioner :- Rahul Pandey, Sr. Advocate, Vishakha Pande

Counsel for Respondent :- A.S.G.I., Anand Tiwari, Brijesh Kumar, Deepesh Kumar
Ojha, Saurabh Yadav

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

(Delivered by Hon'ble Prashant Kumar, J.)

1. Heard Shri Rakesh Pande, learned Senior Counsel assisted by Shri Rahul Pandey, learned counsel for the petitioner, Shri Neeraj Tripathi, learned Senior Counsel assisted by Shri Deepak Kumar Ojha, learned counsel for the complainant and Shri Rakesh Kumar & Sri Anand Tiwari, learned counsel appearing for the respondent nos. 2 and 3.
2. Present writ petition is preferred under Article 226 of the Constitution of India for quashing of the order dated 12.03.2022, whereby the dealership of the petitioner was terminated by the Divisional Retail Head, Noida Divisional Office, Indian Oil Corporation Ltd. (Marketing Division), U.P. State Office-II, E-8, Sector-1, Noida.
3. Brief facts of the case are as follows :-
4. A Petrol-Pump was allotted through Letter of Intent (for short "LOI") to one Shri Umesh Chand Sharma (father of the petitioner) (for short "original allottee") on 22.08.2005, followed by an execution of the Memorandum of Agreement on 04.08.2008. At the time of allotment, the respondent- Indian Oil Corporation Limited (for short "IOCL") had a condition in the agreement that the allottee should not be holding the Office of Profit or if he is in any job, he has to submit his resignation or voluntary retirement. The petitioner, who is son of original allottee, claimed that his father was holding a post of Lecturer in a Private aided College namely

“Lakshman Prasad Anglo Vaidic Inter College, Anoopshahar, Bulandashar” and on 01.10.2005, the original allottee had submitted his application for voluntary retirement, which was duly accepted by the Management of the College on 10.10.2005 and was forwarded to District Inspector of Schools (for short “DIOS”) for approval. The DIOS had rejected the said application on 29.03.2006. It is also claimed that the original allottee had intimated the whole state of affairs to the General Manager of IOCL and even it was brought to the notice of the IOCL that he had rejoined the post of Lecturer on 30.03.2006, which was duly received and acknowledged by the General Manager of IOCL on 23.05.2006. Later on, the original allottee superannuated on 30.06.2009. The IOCL had also sent a letter to the Principal of the College for confirmation of the information, therefore, it is claimed that the IOCL was in full knowledge of the above facts. Right from the start of the petrol-pump i.e. in the year 2005 till 2013, the petrol-pump was running smoothly to the satisfaction of IOCL.

5. It transpires from the record that the brother of the original allottee namely Shri Naresh Chandra Sharma, who is real uncle of the petitioner, made a complaint to the IOCL on 29.09.2014 alleging therein that the land on which, the petrol-pump is situated is an ancestral land and there is no partition and forged NOC was submitted by the original allottee for getting NOC from the IOCL. In the said complaint, it was also alleged that since the original allottee was in service and hence, the petrol pump could not have been allotted to the petitioner’s father. In response to the said complaint, the IOCL had issued a show cause notice to the original allottee, which was duly responded by him. It also transpires from the record that in the interregnum, some settlement arrived between the brothers. It is also claimed that in lieu of settlement, the petitioner had paid Rs. 17/- lakhs to the complainant and accordingly, the complaint was withdrawn. Once the complaint was withdrawn, the IOCL closed the complaint and informed the complainant about the same on 14.11.2014.

6. Even after amicable settlement of the dispute between the brothers, the complainant kept on writing complaints to IOCL against the original

allottee, on which, the IOCL had conducted inquiries at regular intervals and found nothing adverse against the original allottee. As per the petitioner, these complaints were made only to harass the original allottee and to extract some money.

7. In the meanwhile, the dealership of petrol-pump was reconstituted on 14.11.2017 and in place of original allottee, the name of the petitioner being a son, was incorporated and thereafter, a fresh agreement was also executed between IOCL with the reconstituted firm (petitioner's firm).

8. It is not out of place to mention that the complainant had made five complaints, out of which, he himself had withdrawn two, even though, fully conscious about the fact that the earlier complaints were consigned to record way-back in the year 2014 itself. The complainant went to the extent of filing a writ petition being Writ-C No. 11080 of 2021 (Naresh Chandra Sharma v. Union of India and 02 Others) before the Division Bench for cancellation of licence of the petitioner's dealership, wherein, he had claimed himself to be co-owner of the land. The only ground was pressed before the Division Bench that as no objection certificate of the co-owner is required before the land is offered for setting of the petrol-pump and it was also alleged that the respondent no. 3 had forged with the NOC of the petitioner. In this backdrop, the Court has proceeded to dispose of the writ petition vide an order dated 26.07.2021, the same is reproduced hereunder :-

“The petitioner claims to have submitted a complaint before the respondent no. 2 regarding the selection of respondent no. 3 for running a retail outlet - petrol pump of Indian Oil Corporation.

It is sought to be submitted that the petitioner is co-owner of the land, which had been offered by the respondent no. 3 for setting up of the petrol pump. No objection certificate of the co-owner is required before the land is offered for setting up of the petrol pump. It is contended that the respondent no. 3 had forged with the no objection certificate of the petitioner.

Looking to the prayer made in the writ petition without entering into the merits of the claim of the petitioner, the writ petition is being disposed of with the direction that the respondent no. 2 shall consider the complaint filed by the petitioner and pass a reasoned and speaking order after making due inquiry wherein opportunity of hearing is required to be afforded to the respondent no. 3. The entire exercise shall be completed within a period of two months from the date of receipt of this order.”

9. In pursuance of the aforesaid order, the IOCL has issued notice to the complainant on 23.09.2021 and thereafter, on the next date, the petitioner was called upon to submit his response. The petitioner explained the entire state of affairs to the IOCL who, in turn, passed an order on 27.09.2021 stating that they will take necessary action as per IOCL policy and guidelines regarding the dealership. Thereafter, the petitioner was served with another show cause notice on 15.12.2021 on two grounds. Firstly, the original allottee got the dealership in contravention of Clause 4.3.1(g) of the “Dealership Selection Policies & Guidelines, 2003” and secondly, in terms of the Dealership Agreement dated 04.08.2008, which could have led to the termination of his dealership for not divulging the correct facts. In response to the aforesaid show-cause notice, the petitioner responded in detail on 05.01.2022 and in the said response, it was also pleaded that the original allottee had given an application for voluntary retirement from the institution, which was also approved by the management of college. Therefore, there was no concealment of fact, even though, the same was rejected by the DIOS. These facts were in knowledge of the IOCL and the original allottee continued to run the petrol-pump without any objection by the IOCL.

10. That, from time to time, on every complaint, the clarifications were given by the original allottee and also by the petitioner’s firm vide registered letters dated 24.12.2008, 21.03.2009, 26.06.2010, 12.09.2017 and 13.09.2019, even though, considering the earlier response of the original allottee, the IOCL itself had dropped the complaint in the year 2014. Later on, the fresh agreement was also executed between IOCL and the reconstituted petitioner’s firm.

11. Even after filing a writ petition bearing Writ-C No. 11080 of 2021, the complainant had also filed another writ petition bearing Writ-C No. 34430 of 2021 (Naresh Chandra Sharma vs. Union of India and 2 others) and the Division Bench of this Court had dismissed the writ petition vide an order dated 02.03.2022 with following observation:-

“.....At present, learned counsel for the petitioner has vehemently urged that the respondent no. 3 was wholly ineligible to obtain retail out-let as he

was deriving payment of salary from an Educational Institution, where he was posted as Lecturer.

In the first place, the objection raised as to absence of No-objection Certificate was the only objection on which direction had been issued in the earlier writ petition filed by the petitioner being Writ-C No. 11080 of 2021. That objection has been decided against the petitioner by order dated 27.09.2021. As to the further objection being raised by the petitioner to the ineligibility of respondent no. 3 to obtain a retail out-let, the same may remain a matter between the respondent nos. 3 & 2 arising from stipulation of contract entered into between those parties. Present petitioner is stranger to that contract.

*As to the second and more vital aspect pertaining to No-objection Certificate, once the finding has been recorded by the respondent no. 2 in favour of respondent no. 3, **the only recourse that may remain open to the petitioner to question the No-objection Certificate, may be available under suit proceeding,** and, not in the writ jurisdiction, which has to remain confined to summary procedure.*

In such view of the matter, there is no good ground to interfere in the matter in writ jurisdiction under Article 226 of the Constitution of India.

The writ petition lacks merit and is, accordingly, dismissed. No order as to costs.”

(Emphasis supplied)

12. While dismissing the aforementioned writ petition, the Division Bench has clearly opined that once, finding has been recorded by the IOCL in favour of the allottee, the only recourse was available to the complainant to question the NOC under the suit proceeding and the court had declined to entertain the writ petition at the behest of complainant.

13. Aggrieved by the show-cause notice, the petitioner herein had filed a Civil Misc. Writ Petition No. 6708 of 2022 on 09.03.2022. Before the writ petition could be heard on 12.03.2022, the respondent no. 3 terminated the dealership of the petitioner. This termination order has been assailed by the petitioner by means of the instant writ petition.

14. Learned counsel for the petitioner submitted that the IOCL had given nod for fresh agreement with the petitioner only after complete appraisal of the entire facts such as original allottee's resignation, acceptance by the management (employer), later on rejection by the DIOS and subsequent joining. Therefore, such situation would not place the conduct of original allottee to have committed fraud by any stretch of imagination.

15. He further submitted that, there was no Clause 45(j) in the original agreement signed by the petitioner's father/original allottee and IOCL. This

Clause was only incorporated on the new agreement which was entered by the petitioner at the time of reconstitution of the firm and the IOCL on 11.01.2018.

16. That, Clause 45 (j) is being incorporated herein for ready reference :-

“Clause 45 (J)- " If the Dealer has concealed any information which if disclosed would in the opinion of the General Manager of the Corporation for the time being a E-8, Sector 1, Noida whose decision shall be final, have disintitiled him to be appointed as a Dealer:"

17. Learned counsel for the petitioner submitted that, therefore, at this stage when the new entity (petitioner’s firm) came into existence, the IOCL cannot raise an objection pertaining to the original allottee that he had made any concealment for getting NOC. At the time of issuance of LOI, the resignation of the original allottee was accepted by management (employer), even though later on resignation was turned down by the DIOS and the original allottee rejoined the institution. In fact, IOCL had written a letter to the college seeking the job status and they were aware of all the facts. Since 13.02.2009, the IOCL was throughout aware of the job status of the original allottee and IOCL is bound by acquiescence now.

18. Learned counsel for the petitioner further submitted that the termination of dealership order was passed on the premise that “fraud vitiates everything”. This would not be applicable in the present case as the status of petitioner’s father was disclosed by way of various communications made by the allottee to the IOCL and hence, no fraud can be said to have taken place.

19. *Per contra*, Mr. Anand Tiwari appearing for respondent nos. 2 and 3 had submitted that in the LOI on 22.08.2005, it was mentioned that under Clause 8 of the LOI, which lays down that “if already employed you will have to submit acceptance of resignation letter from your employer prior to the issuance of the appointment letter by us.”

20. He further submitted that clause 47(ii) and 58(a) clearly states that the dealers shall not take up any other employment or be engaged in any other

business apart from doing dealership and in case, there is any breach, IOCL shall be at liberty to terminate the agreement forthwith.

21. Clause 47(ii) of the agreement is being quoted herein for ready reference:-

“47. Except with the previous written consent of the Corporation :

(ii) The Dealer himself (if he be an individual) or partners/members or any of them of the Dealer (if the Dealer is a firm/co-operative society) shall not take up any other employment or engaged in any other business apart from the running of the retail outlet which is the subject matter of this agreement.”

22. He further submitted that on the last complaint made by the complainant, and further in response to the order passed by this Court, IOCL had conducted an inquiry and on the recommendation of the Inquiry Officer, a show cause notice was issued which resulted in termination of the dealership. The learned counsel for IOCL relied upon the judgement passed by this Hon’ble Supreme Court in the matters of **Tata Cellular v. Union of India**¹ and also a judgment passed this Hon’ble Court in **State of U.P. v. Prem Shanker Sharma**² and the judgment passed in the matter of **High Court of Judicature at Bombay v. Udai Singh**³ stating that the Court has no power to make a judicial review on the decision taken by the company as the Court does not have the expertise to correct the administrative decision.

23. Once it is established that the petitioner had played fraud then any proceeding arising out of such order cannot be held to be legal or in consonance with law. The order obtained by fraud has to be treated as nullity and accordingly, the dealership has rightly been terminated as the same has been availed because of the fraud played by the petitioner. Learned counsel for the respondent placed reliance on the judgement passed by the Hon’ble Supreme Court in the matter of **A.V. Papayya Sastry and Others v. Govt. of A.P. and Others**⁴.

1 (1994) 6 SCC 651

2 2006 (10) ADJ 123

3 JT 1997 (5) SC 298

4 (2007) 4 SCC 221

24. The complainant had also filed an impleadment application. Mr. Neeraj Tripathi, learned Senior Advocate appeared and argued that the allottee has played a fraud and accordingly, the dealership of the petitioner should be cancelled.

25. We have carefully considered the submissions advanced by the learned counsel for the respective parties. With their able assistance, we have perused the pleadings, grounds taken in the petition, annexures thereto and reply filed by the concerned respondents.

26. It is apparent that in this case, the impugned order has been passed on the ground that the petitioner has committed a fraud by not disclosing that he was in service while he was running the dealership. The first issue in this case is whether the petitioner has committed a fraud and the second issue is whether the respondents are bound by doctrine of acquiescence.

FIRST ISSUE

27. The Hon'ble Supreme Court in the matter of **Chandro Devi & Etc. vs Union Of India**⁵, has held that every wrong action is not a fraudulent action.

28. Learned counsel for the petitioner placed reliance upon the judgement and order passed by the Hon'ble Supreme Court in **Sukh Sagar Medical College and Hospital v. State of M.P.**⁶, wherein it is held that as far as the fraud is concerned, the fraud can either be actual or constructive fraud. The actual fraud is a concealment or false representation through an intention or reckless statement, whereas, the constructive fraud is an unintentional deception or misrepresentation that causes injury to another. There can also be an actionable fraud. It is a deception practice in order to induce another to part with property or surrender some legal rights.

29. In this case, it cannot be said that the petitioner had obtained the dealership by fraud. Since nothing has been concealed by the petitioner. All the facts were brought to the notice of IOCL and it was well aware of the fact. It cannot be said that the petitioner had got the dealership by fraud.

5 2017 9 SCC 469

6 2021 (13) SCC 587

30. It is evident that the petrol-pump was allotted to the father of the petitioner/original allottee on 22.08.2005, at that point of time, the relevant clause in the LoI stated that if an allottee is already employed, he has to submit acceptance of resignation letter from his employer prior to the issuance of LoI by the Company. In this case, the petitioner, who was working as a Lecturer in a private unaided college, had submitted his resignation on 01.10.2005, which was accepted by the management on 10.10.2005 and was forwarded for approval to DIOS. After issuance of this letter, the DIOS, Bulandshahar rejected the voluntary retirement sought by the allottee. This fact was brought to the notice of IOCL but IOCL chose not to take any action on the same. The petitioner had duly informed about the status of the service i.e. his resignation, relieving from the college, order of DIOS rejecting the resignation, rejoining of the petitioner's father and retirement in the month of June, 2009. Everything was in the knowledge of the IOCL. Hence, it cannot be said that there was any concealment on the part of the petitioner and the petitioner cannot be said to have committed a fraud upon IOCL in getting dealership by concealing the relevant facts. In fact, all the facts were brought to the notice of IOCL as and when the said development took place.

31. The respondent nos.2 & 3 in their counter affidavit have agreed that the complainant had made complaints on 28.08.2014, 29.09.2014, 11.09.2014, 09.05.2015 and 10.07.2016. The allottee and the complainant entered into a compromise and the complainant withdrew his complaint and accordingly, IOCL dropped the proceedings.

32. The complainant thereafter appears to have turned greedy and again made a fresh complaint on the same issues, which he had complained earlier. The IOCL was well aware of the facts and did not take any action on the complaint, for which the complainant had filed the writ petition for cancellation of dealership.

33. The last complaint filed by the complainant was on two grounds; firstly, the land did not belong to the petitioner and secondly, on the issue of

the allottee holding Office of Profit, as the allottee was a teacher in a private school when the allotment was made.

34. The issue raised in the complaints which was dropped once, cannot be raked up again and again. IOCL was well aware of the status of the service of the allottee both by his communications to IOCL and also by the complaint filed by the complainant. On the various complaints, notices were issued to the allottee for which he had answered. Once being satisfied with the answer, it is not open for the IOCL to revisit or to set up an inquiry or to issue a show-cause notice on the issues which had already been decided earlier. Therefore, the objection of the learned counsel for the IOCL, that the Court has no power to make a judicial review on the decision taken by the company as the Court does not have expertise to correct the administrative decision, is totally misconceived as in the matter, moreover, in the pleading, there is no ambiguity which requires great expertise, once the issue was barred by acquiescence. In the impugned termination order, major emphasis have been given on Clause 45(j) of the agreement. This Clause was a part of the agreement dated 11.01.2018, which was executed afresh while reconstitution of the firm. There is not an iota of evidence to show that the present petitioner had concealed any kind of information while entering into the agreement dated 11.01.2018. IOCL was well aware about the service status of the original allottee.

35. At the time of original allotment, there was no Clause 45(j) but it was Clause 8 in the LoI dated 22.08.2005 which reads as follows :-

“under Clause 8 of the Letter of Intent that “if already employed you will have to submit acceptance of resignation letter from your employer prior to the issuance of the appointment letter by us.”

36. As per Clause 8 of the LoI, the original allottee had submitted his resignation/voluntary retirement which was also accepted on 10.10.2005, the DIOS vide order dated 29.03.2006 has rejected the resignation and the original allottee continued with the service till June, 2009 till he had attained the age of superannuation. This fact was brought to the notice of IOCL about his resignation, acceptance, rejection by the DIOS and his retirement. Hence, it cannot be said that the allotment was made by concealing the facts and

because of fraud. There is no element of fraud in this case. The Clause 45(j) was a part of the agreement which was entered between the parties at the time of reconstitution of the firm. The alleged violation did not take place when the fresh agreement was executed. Hence, there was no violation of Clause 45(j) of the agreement.

37. As far as the fraud is concerned, there is hardly anything to suggest that a fraud has been played on the respondents.

SECOND ISSUE

38. The status of the service of the father of the petitioner was well known to the IOCL right from the beginning and they did not take any action against it. Hence, it is a clear case of acquiescence. IOCL cannot, after nine years of slumber, get up and take action against the petitioner. When acquiescence takes place, it presupposes knowledge against the particular act. From the knowledge comes passive acceptance, therefore, instead of taking any action against any illegality as per the terms of the contract despite adequate knowledge of his term and allowing it to continue consciously ignoring it, then definitely it is bound by doctrine of acquiescence.

39. Hon'ble Supreme Court in the matter of **Union of India v. N. Murugesan and Ors**⁷ has held that acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent of an act. In other words, such an act would qualify a passive acceptance. Thus, when acquiescence takes place, it presupposes knowledge against the particular act. From the knowledge comes passive acceptance, therefore, instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its term and instead being allowed to continue by consciously ignoring and thereafter proceeding further, acquiescence does take place. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Relevant part of the judgement is reproduced herein below:-

⁷ 2022 (2) SCC 25

“24. We have already discussed the relationship between acquiescence on the one hand and delay and laches on the other. Acquiescence would mean a tacit or passive acceptance. It is implied and reluctant consent to an act. In other words, such an action would qualify a passive assent. Thus, when acquiescence takes place, it presupposes knowledge against a particular act. From the knowledge comes passive acceptance, therefore instead of taking any action against any alleged refusal to perform the original contract, despite adequate knowledge of its terms, and instead being allowed to continue by consciously ignoring it and thereafter proceeding further, acquiescence does take place.

25. As a consequence, it reintroduces a new implied agreement between the parties. Once such a situation arises, it is not open to the party that acquiesced itself to insist upon the compliance of the original terms. Hence, what is essential, is the conduct of the parties. We only dealt with the distinction involving a mere acquiescence. When acquiescence is followed by delay, it may become laches. Here again, we are inclined to hold that the concept of acquiescence is to be seen on a case-to-case basis.”

40. In **Bichitrananda Behera v. State of Orissa and other**⁸ Hon'ble Supreme Court while relying upon **UOI v. N. Murugesan** (supra) held that the ground of delay and laches amounts to acquiescence which means an implied and reluctant consent to an act. In this case, Hon'ble Supreme Court made the observations while declining the belated service related claim made by the petitioner pertaining to the post of physical education trainer on the ground that in the period of over 12 years, he had not moved before any forum, be it a court of law or a tribunal or an authority asserting his claims qua the solitary post of PET in the school in question.

41. In view of the law laid down by the Hon'ble Supreme Court in **N. Murugesan** (supra) and **Bichitrananda Behera** (supra), the law is clear that IOCL cannot now take action against the petitioner by terminating the agreement.

42. The record clearly transpires that the Division Bench while entertaining the writ petition bearing Writ-C No. 34430 of 2021 has dismissed the writ petition vide order dated 02.03.2022 with an observation that the Court had considered both the objections of the complainant, wherein, it was also alleged that the original allottee was wholly ineligible as he was deriving payment of salary from an educational institution where he was posted as Lecturer and the second objection pertaining to the NOC

8. 2023 INSC 902

which was obtained by the original allottee on the basis of some fraud/concealment of fact. The same was also negated on the ground that the IOCL has already accorded NOC in favour of the original allottee, therefore, the only recourse was available to question the NOC under the suit proceedings. The Division Bench has considered both the aspects and grounds taken by the complainant and non-suited the same on the ground that the complainant had to press the relief in the suit proceeding, moreover, the said order was passed in presence of the counsel of the IOCL, therefore, it was not open to the respondent- IOCL to proceed to cancel the dealership of the petitioner.

43. The conduct of the complainant was dubious. He had made a complaint, settled the dispute with the brother, taken Rs. 17/- lakhs and withdrew the complaint. Thereafter, it seems that he has turned greedy and has again started making complaints in order to extract some more money.

44. Since there is no element of fraud by the petitioner and also IOCL is bound by doctrine of acquiescence, hence, the impugned order dated 12.03.2022 passed by respondent no. 2 terminating the dealership of the petitioner is liable to be set aside and accordingly, the termination of dealership is set aside.

45. The writ petition is **allowed**. No order as to costs.

Order Date :- 30.11.2023

Rama Kant