

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT APPEAL NO.987 OF 2016

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letter Patents Act, is preferred against the order of the learned Single Judge in WP.No.8643 of 2016 dated 08.07.2016. The appellant herein is the petitioner in WP.No.8643 of 2016. They invoked the jurisdiction of this Court under Article 226 of the Constitution of India to declare the proceedings of the first respondent dated 02.03.2012, in terminating the dealership agreement dated 02.02.2010, as arbitrary, illegal and in violation of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order 2005 (for short, "the 2005 Order"). By the order under appeal, the learned Single Judge observed:-

".....Except merely denying the allegations in the show cause notice in the reply notice dt.12.11.2012 nowhere did the petitioner raise the contention that the samples were irregularly drawn by an authority who was not competent to draw them under the 2005 Order. When the petitioner has not raised any plea of violation of the 2005 Order in his reply to the show cause notice, he is deemed to have waived any rights thereunder.

Random inspection was done by the Area Sales Manager of 1st respondent in the Visakhapatnam Sales Area of the petitioner's retail outlet on 17.11.2010 and petitioner was advised by letters dt.30.11.2010 and 14.02.2011 to submit the facts on the irregularities observed by the Tahsildar, Payakaraopeta. Admittedly, the petitioner did not respond to any of these letters.

The petitioner was already furnished copies of the lab reports enclosed to the letter dt.22.02.2011 of the Collector (Civil Supplies), Visakhapatnam.

Petitioner having kept quiet about the finding of 200 liters of PDS kerosene at the outlet and without specifically disputing the contents of the lab reports enclosed to the letter dt.22.02.2011 of the Collector (Civil Supplies), Visakhapatnam, which were also supplied to him, cannot be allowed to agitate in his Writ Petition the technical plea of non-compliance with the 2005 Order, which point he had not canvassed at any point of time earlier.

It is settled law that when there is an Arbitration Clause in a contract between the parties, normally the High Court under Article 226 of the Constitution of India will not exercise its jurisdiction (**Empire Jute Co. Ltd v. Jute Corporation of India Ltd.**¹).

Also after cancellation of the dealership agreement dt.02.02.2010 by order dt.02.03.2012, the subject petroleum outlet is admittedly now being run by a third party for more than four years.

Therefore, for these reasons, this Court is not inclined to accept the contention of the petitioner and accordingly, the Writ Petition is dismissed. No costs.”

Sri S.L.M. Ahmed, learned counsel for the appellant, would draw our attention to the judgment, in **K. Harinath v. Hindustan Petroleum Corporation Ltd.**², wherein the Division Bench, relying on the judgment of the Supreme Court in **E. Venkatakrishna v. Indian Oil Corporation**³, held that, since the Arbitrator could not grant the relief of restoration of dealership, the Writ Petition was maintainable and should be entertained. Learned counsel would submit that the appellant also contends that the respondents had violated the provisions of the 2005 Order, and a Writ Petition would lie for violation of the Control Order made under the Essential Commodities Act.

Sri B. Mayur Reddy, learned Standing Counsel for the first respondent, would draw our attention to a subsequent judgment of the Supreme Court in **Empire Jute Company Limited**¹ in support of his submission that, as serious allegations of malpractice are levelled against the appellant and as all these issues necessitate an investigation of facts, the appellant has been rightly relegated to the remedy of invoking the arbitration clause in the agreement, and to have these disputed questions of fact decided by the Arbitrator.

¹ (2007) 14 SCC 680

² 2013 (4) ALD 518 (DB)

³ (2000) 7 SCC 764

In **Empire Jute Company Limited**¹, the Supreme Court referred to its earlier decision in **Sanjana M. Wig v. Hindustan Petroleum Corporation Ltd.**⁴, wherein it was observed:-

“.....The principal question which arises for consideration is as to whether a discretionary jurisdiction would be refused to be exercised solely on the ground of existence of an alternative remedy which is more efficacious. Ordinarily, when a dispute between the parties requires adjudication of disputed question of facts wherefor the parties are required to lead evidence both oral and documentary which can be determined by a domestic forum chosen by the parties, the Court may not entertain a writ application. (See **Titagarh Paper Mills Ltd. v. Orissa SEB**⁵ and **Bisra Lime Stone Co. Ltd. v. Orissa SEB**⁶)

However, access to justice by way of public law remedy would not be denied when a lis involves public law character and when the forum chosen by the parties would not be in a position to grant appropriate relief.....

.....It may be true that in a given case when an action of the party is dehors the terms and conditions contained in an agreement as also beyond the scope and ambit of the domestic forum created therefor, the writ petition may be held to be maintainable; but indisputably therefor such a case has to be made out. It may also be true, as has been held by this Court in **Amritsar Gas Service**⁵ and **E. Venkatakrishna**⁶ that the arbitrator may not have the requisite jurisdiction to direct restoration of distributorship having regard to the provisions contained in Section 14 of the Specific Relief Act, 1963; but while entertaining a writ petition even in such a case, the court may not lose sight of the fact that if a serious disputed question of fact is involved arising out of a contract qua contract, ordinarily a writ petition would not be entertained. A writ petition, however, will be entertained when it involves a public law character or involves a question arising out of public law functions on the part of the respondent.....”

From the aforesaid-extracted portions of the judgment in **Sanjana M. Wig**⁴ it is evident that these observations were made by the Supreme Court after considering its earlier judgment in **E. Venkatakrishna**³.

After extracting the relevant paragraphs of its earlier order in **Sanjana M. Wig**⁴ the Supreme Court, in **Empire Jute Company Limited**¹, observed that, in view of Section 5 of the Arbitration and Conciliation Act, 1996, no judicial authority should intervene except where so provided in Part-I of the 1996 Act; the provisions

⁴ (2005) 8 SCC 242

⁵ (1975) 2 SCC 436

⁶ (1976) 2 SCC 167 : AIR 1976 SC 127

of the 1996 Act must be given effect to; and as disputed facts, as also of law, are required to be determined by the Arbitrator, all disputes between the parties should be directed to be resolved upon making a reference to the Arbitrator.

Neither the judgment of the Supreme Court in **Sanjana M. Wig⁴**, nor in **Empire Jute Company Limited¹**, was brought to the notice of the Division Bench in **K.Harinath²**. In the light of the law declared by the Supreme Court in **Sanjana M. Wig⁴** and **Empire Jute Company Limited¹** wherein the earlier judgment in **E.Venkatakrishna³** was considered, we see no reason to accept the submission of Sri S.L.M. Ahmed, learned counsel for the appellant, that the Writ Petition should have been entertained. The discretion exercised by the learned Single Judge, in relegating the appellant herein to the remedy of arbitration, accords with the law declared by the Supreme Court in **Sanjana M. Wig⁴** and **Empire Jute Company Limited¹** and, as such, does not necessitate interference in an intra-Court appeal under Clause 15 of the Letters Patent.

The Writ Appeal fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(U.DURGA PRASAD RAO, J)

13th October 2016
RRB