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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) No.5027/2016 & CM Nos. 20985/2016 (stay)

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9th November, 2016

MUKUL KUMAR

..... Petitioner

Through: Mr. Anupam Lal Das and Mr. Sahil
Monga, Advocates.

versus

INDIAN OIL CORPORATION LTD. & ANR.

..... Respondents

Through: Mr. V.N.Kaura and Mr. P.K.Benipal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. By this writ petition filed under Articles 226 and 227 of the Constitution of India, petitioner impugns the Letter dated 2.5.2016 issued by the respondent no.1/Indian Oil Corporation Ltd. removing the petitioner as a trustee of the Indian Oil Corporation Ltd. Employees Superannuation Benefit Fund (SBF) Trust.

2. The Trust Deed admittedly contains Clause 4.2 dealing with the appointment and removal of trustees and this Clause 4.2 gives a final power to the Chairman of respondent no.1 to remove a trustee by giving a 7 days notice in writing to the trustee. This Clause 4.2 reads as under:-

“4.2The power of appointing the Trustees shall be vested in the Chairman of IOC, who shall make such appointments in writing. The Trustees from the

officer employees and unionized employees shall be appointed in consultation with Officers Association/Union. Chairman of IOC shall appoint as Trustee only persons who are in its employment in India. Chairman of IOC shall also have power to fill up at any time any vacancy in the number of Trustees and to remove a Trustee by giving seven days notice in writing to the Trustee at his last known address and to the continuing Trustees.

Chairman of IOC shall be under no obligation to fill the vacancy occasioned in respect of any trustees so removed or any other vacancy in the number of Trustees until he shall think fit and so long as the number of Trustees shall not be less than two and pending the filling in of any vacancy, the continuing Trustees shall have power to act. A member of the Scheme can be appointed a Trustee of the Scheme. Chairman of IOC shall nominate one of the Trustees to be the Chairman of the Trustees. Chairman of IOC shall also nominate a Trustee to be an alternate Chairman who shall act in the absence of the Chairman of the Trustees and shall exercise all the power of the Chairman.”
(underlining added)

3. A reading of the relevant portion of the Clause 4.2 leaves no manner of doubt that there is a complete power in the Chairman of respondent no.1 to remove a trustee by giving a 7 days notice. Ordinarily, such removal would be non-justiciable unless the removal is in direct conflict with any other clause in the Trust Deed. There is no other clause in the Trust Deed which is pointed out to this Court on behalf of the petitioner that such a clause would be violated on removal of the petitioner.

4. Counsel for the petitioner places reliance upon Clause 4.4 of the Trust Deed to argue that the Clause 4.2 has to be read in harmony with Clause 4.4, and therefore, unless a trustee is disabled by any of the handicaps/disqualifications mentioned in Clause 4.4, such a trustee cannot be removed in exercise of powers in Clause 4.2. Clause 4.4 reads as under:-

“The Trustees shall be resident in India. The Office of a Trustee shall be vacated if the Trustee ceases to be in the service of the Company or if he shall permanently leave India or if for reasons or illness or infirmity or mental incapacity he shall, in the opinion of the Chairman of IOC become incompetent or incapable to act.”

5. I cannot agree with the arguments urged on behalf of the petitioner because Clause 4.4 contains some of the qualifications or disqualifications whereby a person can or cannot be a trustee or would cease to be a trustee, but, this clause when read in harmony with Clause 4.2 shows that Clause 4.4 is not an exhaustive clause containing all the reasons for non appointment of a trustee or for removal of a trustee, because, the relevant language of Clause 4.2 makes it clear that there is no restriction on powers of the Chairman of respondent no.1 to remove a trustee, of course as already stated above subject to there not being any other clause disqualifying the exercise of powers by the Chairman of respondent no.1, and which is not pointed out to exist in the present case.

6. Finally, counsel for the petitioner sought to place reliance upon the fact that the Trust Deed shows that the same is for the benefit of employees of respondent no.1, and therefore, since the petitioner is a representative of the employees of respondent no.1, therefore, he cannot be removed. Once again, this argument is without any merit for the said same reasons given above and also that it is not a requirement of Clause 4.2 that there must at all points of time be a trustee who is a representative of the employees and what is only

found in Clause 4.2 is that when a trustee is appointed (as against removal of the trustee) the officers and employees of respondent no.1 will be consulted along with the association/union of such employees. The present is not a case with respect to appointment but of removal of the petitioner, and therefore, it cannot be argued that the petitioner is sole repository of the interest of the employees and whose interest would not be watched if the petitioner is removed as a trustee of the trust inasmuch as it is relevant to note in this regard that as per Clause 4.2 the only requirement of the existence of trustees is that there should be not less than two trustees for the trust to function and it not the case of the petitioner that number of trustees are less than two on the removal of the petitioner. In fact, even after the removal of the petitioner by the impugned Letter dated 2.5.2016, there would be about 7/8 other trustees to manage the trust.

7. Dismissed.

NOVEMBER 09, 2016
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VALMIKI J. MEHTA, J