

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.10406 OF 2016

M/s. S.R. Gholap & Sons represented by
Smt. Sushma Ravikiran Gholap ...Petitioner

Versus

Indian Oil Corporation Ltd. ...Respondent

.....

Mr. Sandip K. Shinde with Ms. Tanaya Goswami i/b. Mr. V.V.
Salunkhe for the Petitioner.

Mr. Chirag Mody with Mr. Rishikesh Soni, Mr. Ashok Purohit,
Mr. Tejas Gokhale and S. Mali i/b. M/s. Ashok Purohit and
Co. for the Respondent.

**CORAM : A.S. OKA &
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 6th FEBRUARY, 2017.

P.C.:-

Heard the learned counsel appearing for the Petitioner and the learned counsel appearing for the Respondent. On the basis of an advertisement published by the Respondent, the Petitioner applied for grant of dealership. Applications were invited from the Applicants belonging to scheduled castes and scheduled tribes.

2. On the basis of the application made by the Petitioner, she was called for interview by a letter dated 22nd July, 2009. Interview was fixed on 26th August, 2009. On 11th March, 2009 the Petitioner

had submitted her caste validity certificate to the Respondent. The letter of appointment was issued on 13th July, 2010. According to the case of the Petitioner, on the basis of the dealership agreement executed by the Respondent on 13th April, 2011, several steps were taken by the Petitioner by spending a large amount.

3. A show cause notice was issued by the Respondent to the Petitioner on 11th August, 2011 calling upon the Petitioner to show cause as to why the dealership should not be terminated. Reliance was placed by the Respondent on the decision of *Anita Sidhram Koli Vs. Union of India*.¹ According to the Respondent, considering the view taken by the Division Bench and as per the terms and conditions incorporated in the advertisement, the Petitioner was ineligible as the Petitioner produced the caste validity certificate after her interview. Reliance was placed on the show cause notice and clause 2(b) of the advertisement.

4. The challenge in this Petition under Article 226 of the Constitution of India is to the communication dated 24th August, 2016 issued by the Executive Director of Maharashtra State Office of the Respondent, by which dealership agreement executed in favour of the

1 2010 (3) Bom.C.R. 580

Petitioner was terminated.

5. The learned counsel appearing for the Petitioner submitted that the view taken by this Court in the case of ***Anita Sidhram Koli Vs. Union of India (supra)*** can be distinguished. His second submission is that the show cause notice on the basis of which impugned order was issued by the Senior Divisional Retail Sales Manager of the Respondent and that the impugned notice of termination has been issued by the Executive Director. He, therefore, submitted that the impugned notice of termination is bad in law.

6. We have given careful consideration to the submissions. It appears that after the service of the show cause notice, the Petitioner invoked arbitration clauses. The Petitioner made an application under section 9 of the Arbitration and Conciliation Act 1996 (in short “Arbitration Act”). Accordingly an application under Section 9 of the Arbitration Act being Arbitration Case No.4 of 2011 was filed in the District Court, Nashik. By judgment and order dated 16th April, 2012 the Principal District Judge, Nashik dismissed the said application. A perusal of the said judgment and order shows that the Petitioner has relied upon the Arbitration Clause, which is clause No.61 (a) of the

agreement. In paragraph No.17 of his judgment, the District Judge has quoted the arbitration clause. In the light of the decision of the Division Bench in the case of *Anita Sidhram Koli Vs. Union of India (supra)*, the learned District Judge held that prima facie case is not established. An Appeal was preferred by the Petitioner against the said order before this Court. The learned Single Judge on 23rd April, 2014 dismissed the said Appeal. In paragraph No.11, a prima facie observation was recorded by the learned Single Judge that the contract of retail outlet dealership was a terminable contract and specific performance thereof cannot be granted. The said order of the learned Single Judge has attained finality in the sense that a Special Leave Petition preferred against the judgment and order dated 23rd April, 2014 has been dismissed. The Petitioner has invoked the arbitration as per clause No.61(a) of the Agreement. Therefore, the issue of legality and validity of the impugned notice dated 24th August, 2016 will have to be considered by the learned Arbitrator.

7. In the circumstances, we decline to entertain this Petition under Article 226 of the Constitution of India. The Petition is rejected. At this stage, the learned counsel appearing for the Respondent states that by giving an intimation to the concerned Officer of the

Respondent, the Petitioner can take away her machinery and articles from the site. We accept the said statement. In view of the said statement, it will be open for the Petitioner to take her articles and equipment from the said place within a period of one month from today.

(ANUJA PRABHUDESSAI, J.)

(A.S. OKA, J.)