

CWP No.2433 of 2014 (O&M)

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.2433 of 2014 (O&M)

Date of decision:18.09.2017

M/s Kartar Filling Station

...Petitioner

Versus

Chief Divisional Manager,
Indian Oil Corporation Limited and another

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Ms. Rupinder K. Thind, Advocate,
for the petitioner.

Mr. Ashish Kapoor, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

This petition is filed by Sukhwant Singh S/o Kartar Singh on behalf of M/s Kartar Filling Station to challenge the order dated 20.05.2013 and also for a direction to decide his application dated 21.05.2013.

In brief, Makhan Singh S/o Tehal Singh, resident of Village & Post Office Tiban Kalan, Tehsil and District Amritsar, was allotted dealership to run the petrol pump of the Indian Oil Corporation Limited (hereinafter referred to as the "Corporation") under the name and style of M/s Kartar Filling Station at Jamarai, District Tarn Taran, Punjab with Makhan Singh as Sole Proprietor, vide letter dated 29.06.1994. Sukhwant Singh, who has now filed the present petition, has alleged that he has been living with Makhan Singh, who had executed a Special Power of Attorney in his favour on 06.07.1994 and an intimation to that effect was sent to the respondents on 10.07.1994. It is further averred that Makhan Singh had a son and two

daughters. They are all well settled. Makhan Singh executed a registered Will on 14.09.1999 in his favour and died on 29.04.2009. It is alleged that he has become owner of the filling station on the basis of the said Will and the other natural heirs of Makhan Singh have raised no objection in this regard. Sukhwant Singh sent the information of the death of Makhan Singh along with a copy of the registered Will to the respondents for necessary action. The petitioner, however, received a letter from the respondents on 19.06.2012 that Makhan Singh was the proprietor of the firm as per the dealership agreement and that the reconstitution was not approved by the Corporation in the name of the petitioner. The petitioner relied upon the said letter on 06.07.2012. However, on 05.10.2012, respondent no.2 issued a show cause notice to Sukhwant Singh for termination of the retail outlet dealership on the ground that he is running the outlet without the written consent of the respondents. The said show cause notice was also replied on 30.10.2012 and the petitioner also filed CWP No.10713 of 2013 but withdrew the same on 17.05.2013 on the ground that his matter would be examined on the administrative side. The respondents, however, cancelled the dealership on 20.05.2013 and the petitioner applied for information on 21.05.2013 under the Right to Information Act, 2005.

Counsel for the petitioner has submitted that the status of the petitioner in the filling station, on the basis of the Special Power of Attorney executed by Makhan Singh in his favour, was sent to the respondents as far back in the year 1994 and after the death of Makhan Singh, the information was again sent. The respondents had decided to consider the case of the petitioner as they had asked for certain documents and the petitioner had sent

the affidavits of the legal heirs of Makhan Singh in support of his claim but they have wrongly declined his claim.

On the other hand, counsel for the respondents has submitted that Sukhwant Singh S/o Kartar Singh has no *locus standi* to maintain this writ petition because as per Clause 47 of the Dealership Agreement, except with the previous written consent of the Corporation, the dealer cannot enter into any arrangement, contract or understanding whereby the operations of the dealership are controlled, carried out or financed by any other person whether directly or indirectly and whether in whole or part. It is also submitted that as per Clause 47(iii) of the Dealership Agreement, the dealer is prohibited from effecting any change in the constitution of the firm without prior written approval of the Corporation and as per Clause 35, dealer shall not sell, assign, sublet, mortgage, change or part with or otherwise transfer the premises or any part thereof, his interest in the dealership or any right or interest or benefit conferred by the agreement or grant any license in connection with the said premises and/or outfit or any part thereof to any person, firm or company nor allow any other person, firm or company to use the premises or the outfit or any part thereof except to the extent necessary under the terms of the agreement and specifically permitted in writing by the Corporation. It is also submitted that as per Clause 58 of the Dealership Agreement, the respondents had reserved the right to terminate the agreement forthwith upon breach of any covenants or stipulation contained in the agreement or at any time upon the death or on adjudication as insolvent of the dealer, if he be an individual. Lastly, it is argued that the petitioner-firm had an agency, which has been terminated in terms of Section 201 of the Indian Contract Act, 1872

(hereinafter referred to as the “Act”).

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that there is no merit in the present writ petition because the retail outlet was in the name of the proprietary firm of Makhan Singh who did not obtain prior approval of the respondents, as required under Clauses 35 and 47 of the Dealership Agreement. Moreover, there is a specific provision in the Dealership Agreement that in case of breach of any covenant and stipulation contained in the agreement, it can be terminated forthwith at the instance of the Corporation/respondents. Moreover, there is no agreement between the petitioner, namely, Sukhwant Singh S/o Kartar Singh and the respondents as the Dealership Agreement was with the proprietorship firm of Makhan Singh and after his death, the agency given to him was terminated in terms of Section 201 of the Act.

In view of the aforesaid, the present writ petition is hereby dismissed, through without any order as to costs.

September 18, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned: Yes/No

Whether Reportable: Yes/No