

CWP No.27028 of 2014 (O&M)

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Manoj Kumar
2017.10.06 14:08
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**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.27028 of 2014 (O&M)

Date of Order: 03.10.2017

Ex-Serviceman Service Station

....Petitioner

Versus

Divisional Manager and another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Sunil Chadha, Sr. Advocate with
Mr. M.S. Atwal, Advocate for the petitioner.

Mr. Raman Sharma, Advocate for respondent Nos.1 & 2.

Mr. Satish Singla, Advocate for respondent No.3.

Mr. Kanwaljit Singh, Sr. Advocate, with
Mr. Abhishek Bajaj, Advocate for respondent No.4.

Mr. L.S. Chahal, Advocate for the applicant in
CM No.12201 of 2017.

RAKESH KUMAR JAIN, J (ORAL)

CM No.12201 of 2017

This application is filed under Order 1 Rule 10 read with
Section 151 CPC for impleading the applicant as respondent No.5.

Notice of the application was issued to which reply has
been filed.

After hearing learned counsel for the parties and
keeping in view the fact that similar applicant has already been
impleaded as respondent No.4 vide order dated 07.2.2017
by this Court, this application is also allowed and the applicant is

impleaded as respondent No.5.

Amended memo of parties is taken on record.

Learned counsel for respondent No.5 (newly added respondent) submits that he would not file any reply to the petition and shall adopt the reply filed by respondent No.4.

Main case

This petition is preferred against the Notice dated 17.12.2014 (P.7) issued by respondent No.3 asking the petitioner to submit certain documents under the name and style of M/s Ex-Servicemen M.T Co-operative Society Limited.

In brief, the erstwhile Burmah Shell Oil Storage and Distributing Company of India Limited (for short "the Company") entered into an agreement on 24.6.1972 with the Ex-Servicemen M.T. Cooperative Society Limited (for short "first Society") for dispensing Pump and selling Licence. It was specifically mentioned in the agreement that "the said premises and the said facilities shall at all times during the continuance of this Licence remain the absolute property and in sole possession of the Company and no part of the said facilities shall be removed by the Licensees nor shall the position of any constituent part thereof or of the said premises be changed or altered without the previous written consent of the Company".

The petitioner is Ex-Servicemen Service Station. As per their own document dated 24.4.1985 (P.4), it was leased out to late S. Chanan Singh on rent of Rs.200/- per month in 1968 as lessee. The petitioner after entering into as lessee started operating the petroleum pump. The Company was wound up by

the Act of Parliament i.e The Burmah Shell (Acquisition Of Undertakings in India) Act, 1976 (Act No.2 of 1976). As a result thereof, all the assets and liabilities of the Company were transferred to the newly constituted Government Company being Bharat Petroleum Corporation Limited (for short "the Corporation").

Thereafter, the lessee, namely, the Society was divided into two Societies, in terms of Section 13 (1) (b) of the Punjab Cooperative Societies Act, 1961 vide its General Body Meeting resolution dated 23.8.1978, namely, The Delux Ex-servicemen Motor Transport Cooperative Society Ltd, Kapurthala (for short "Second Society)/respondent No.4 and The New Ex-Servicemen Motor Transport Cooperative Society Ltd, Kapurthala (for short "third Society")/respondent No.5. The Managing Committee of the Society, vide its resolution dated 28.10.1978, further decided to bifurcate the assets, liabilities, staff and other property etc as it stood on 20.01.1979. The petitioner was continuing with the Petrol Pump as a dealer of the petrol pump till it received a telegram dated 17.4.1985 (P.10) from the Corporation whereby the petitioner was asked to appear before the Corporation to defend the allegations levelled against it that the Petrol Pump is not being run by the authorized dealer/person.

Apropos, the petitioner sent written reply on 24.4.1985 (P.11) wherein it was categorically mentioned that though the First Society is the dealer but the control of the Petrol Pump is with the petitioner on account of being lessee of the First Society. It is also alleged therein that since the petitioner has developed the Petrol

Pump with the dint of their labour, therefore, false complaint has been made against them. It is further alleged that the Society itself is unauthorized dealer because the First Society had been dissolved in 1979 and no fresh agreement had been entered into in favour of either of the respondents. However, in the end of this letter, the petitioner requested that since they were operating since 1968 as a Benami dealer, they might be recognized as direct dealer of the Company on registering terms, as they had served the Company to the customers for the last so many years, without any complaint to the part of the Corporation and on 27.11.2012 (P.12), the Corporation wrote a letter to the Deputy Chief Controller of Explosives, Chandigarh for renewal of Storage Licence of their Retail Outlets in for the year 2013-2022 in which the petitioner was mentioned at Serial No.72 as dealer.

The cause of action for filing this petition arose to the petitioner when it received the impugned registered notice dated 17.12.2014 (P.7) by which the Corporation informed the petitioner that they had earlier written many letters to them on the subject of submission of documents but despite various reminders, they had not sent the requisite documents as yet and thus last chance was given to the petitioner to submit self-attested copies of the documents to the respective Sales Officer of the area concerned and after due verification by the Sales Officer, upload the documents in the BROMA application latest by 29.12.2014, failing which the Corporation would be constrained to stop their supplies w.e.f 01.01.2015. The Corporation asked the petitioner to submit the following documents :

“Details of all the bank accounts issued by the bank- specifying names of authorized signatories through which supplies are being taken for the RO.

Latest Balance sheet of the dealership

Latest IT return of the dealership

Latest sales tax return of the dealership

Registered Partnership deed

Sales licence where applicable”

The stand of the petitioner is that there was no difficulty in submitting the documents but the Corporation has been asking for the documents in the name of the First Society. Naturally, the petitioner has nothing to do with the First Society, therefore, the petitioner had no document of the First Society. Initially, there was only notice issued by this Court on the cause shown by the petitioner in this petition, but vide detailed order dated 21.12.2015 of this Court, the supply to the petitioner was ordered to be restored.

During the pendency of the main writ petition, respondent Nos.4 & 5 i.e Second and Third Societies filed applications under Order 1 Rule 10 CPC for impleading them as party on the ground that they are part of the First Society and are eligible to be considered as dealers, the applications have been allowed by separate orders.

Learned Senior counsel appearing on behalf of the petitioner has submitted that the Corporation has committed error in issuing impugned notice after a long period of 29 years after considering the petitioner as their dealer all through as the Oil

products were being supplied to them. In support of his submission, he has relied upon a judgment of Hon'ble Supreme Court reported as **Mahabir Auto Stores Vs. Indian Oil Corporation, 1990 AIR (SC) 1031** and another Division Bench judgment of this Court titled **Bharat Petroleum Corporation Limited & Anr Vs. M/s Pal Filling Station & Ors passed in LPA No.13 of 2015, decided on 21.4.2015.**

On the other hand, Sh. Raman Sharma, learned counsel for the Corporation has submitted that even if the Corporation had been supplying oil products to the petitioner and referring them as the dealer in the communications, yet the petitioner would not become their dealer in the absence of any agreement as the agreement was entered into by the erstwhile Company with the First Society and there is no agreement with the petitioner as such. It is also submitted that in the past, a telegram was sent to the petitioner on 17.4.1985 to disclose as to whether they are the dealer of the Company to which the petitioner has allegedly submitted a reply dated 24.04.1985 but in the said reply itself, the petitioner has confessed that they are not themselves the dealer but are lessee of the dealer. It is also submitted that the petitioner has alleged that they have been operating as Benami dealer and made request that they may be recognized as dealer henceforth. It is submitted that the Company, of course, did not decide the issue at that time, but it does not mean that the Company acquiesced the dealership of the petitioner since the dealership can only come into being when an agreement is entered into

between the parties. It is submitted that the petitioner might be having grouse with the First Society or Society Nos.2 & 3 as the case may be because they are lessee of First Society but merely because they have been continuously managing and operating the Petrol pump, their dealership would not be recognized.

Learned counsel for respondent Nos.4 & 5 have submitted that the petitioner is not the dealer rather First Society was the dealer. It is submitted that the land on which the Petrol Pump is located is the property of the First Society and after First Society was wound up, all the assets and liability have been bifurcated into two, conferring upon the Second Society and Third Society respectively. It is also submitted that they had made the complaint to the Company about the unauthorized operation of the Petrol Pump at the instance of the petitioner and in that regard, the Corporation has taken appropriate action by issuing notice, which has been challenged before this Court.

I have heard learned counsel for the parties and perused the record.

There is no dispute that the relationship between First Society (licensee) and the Company came into being by virtue of agreement dated 24.6.1972. There is no dispute as well that only the land has been contributed by the First Society and the remaining installation i.e dispensing machine and pump etc all belongs to the erstwhile Company and now the Corporation. It is the Company's own dealership operated petrol pump in which right has been given to the dealer to operate on behalf of the Company.

Learned Senior counsel for the petitioner has submitted that although, the dispensing machine and pumps etc were purchased by them from the Company in 1975 and in this regard, he has referred to certain documents, which is attached as Annexure P.9, but since the Company is no more in existence, therefore, there is no mechanism with the Court to declare the authenticity of the said documents, therefore, no opinion can be given in this regard.

Be that as it may, the issue before this Court is as to whether the petitioner has justifiable cause of challenging the impugned notice (P.7)?

The petitioner is admittedly not the dealer. He is acting as dealer on behalf of the Company being a lessee in possession. This fact is itself alleged by the petitioner in the letter dated 24.4.1985 that the petitioner had taken on lease service station through his father on the land in the year 1968, which was further developed gradually. Since, the petitioner is not the dealer and has also prayed in the letter that he is Benami dealer, requesting that it may be considered as dealer, which has not been accepted by the Corporation so far and that the status of the petitioner in the record of the Company is not of dealer but of a stranger, be a lessee of the dealer i.e an entity, which is managing the affairs of Petrol Pump as lessee on behalf of the licensee, therefore, the agitation of the petitioner that long silence on the part of the Corporation clothes it with the right of dealership, is not acceptable.

Thus, in my considered opinion, there is no merit in this

petition as the petitioner has only been asked to submit the documents through notice and in case, it has the documents of dealership, then there was no reason for the petitioner to hold back from submitting the same and approach this Court from precluding it to do the needful.

In view of aforesaid, the instant petition is found to be devoid of any merit and the same is hereby dismissed.

October 03, 2017
manoj

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No