

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.7840 OF 2015

M/s.Shri Gajanan Auto Services
Through its Partner
Sachin S/o Appasaheb Jagtap ...Petitioner

Versus

The Union of India and Ors. ...Respondents

Mr.R.S.Deshmukh, Advocate for Petitioner
Mr.S. B.Deshpande, A.S.G. for Respondent No.1
Mr.S.D.Kulkarni, Advocate for Respondent Nos. 2 and 3
Mr.N.L. Jadhav, Advocate for Respondent No.5

**WITH
WRIT PETITION NO.7691 OF 2014**

Dr.Satyavan S/o.Yashwantrao Jadhav ...Petitioner

Versus

The Union of India and Ors. ...Respondents

Mr.N.L. Jadhav, Advocate for Petitioner
Mr.S. B.Deshpande, A.S.G. for Respondent No.1
Mr.S.D.Kulkarni, Advocate for Respondent Nos. 2 and 3
Mr.S.S.Thombre, Advocate for Respondent No.4

**WITH
CIVIL APPLICATION NO.4082 OF 2015
IN
WRIT PETITION NO. 7691 OF 2014**

M/s.Shri Gajanan Auto Services
Through its Partner
Sachin s/o Appasaheb Jagtap ...Applicant

Versus

Dr.Satyavan s/o Yashwantrao Jadhav
and Ors. ...Respondents

Mr R.S. Deshmukh, Advocate for applicant-intervenor
Mr S.B. Deshpande, A.S.G. for respondent no.2 – Union of India
Mr.N.L. Jadhav, Advocate for respondent no.1 – Petitioner in W.P.
Mr.S.D.Kulkarni, Advocate for Respondent Nos. 3 and 4 – in W.P.
Mr.S.S.Thombre, Advocate for Respondent No.5/Caveator

**CORAM : S.V.GANGAPURWALA AND
A.M.DHAVAL, JJ.**

DATE: APRIL 19, 2018

PER COURT :

1. The petitioner in writ petition No.7691/2014 was granted dealership of Petrol (M.S.) and Diesel/HSD lubricants and its allied products by respondent No.2. The petitioner Satyavan was given licence of the said retail outlet on or about 1st May, 2005. In the year 2014, the petitioner in writ petition No.7691 of 2014 was issued with the notice as to why the dealership agreement should not be terminated as the petitioner has entered into partnership agreement with Mr.Sachin Jagtap by executing partnership deed dated 04.10.2003 and has inducted him for running the business without permission of respondent Nos. 2 and 3. The respondents communicated the petitioner that petitioner violated clause 6 of letter of intent dated 10th June, 2005. Petitioner replied the said notice. Thereafter, under communication dated 04.08.2014, respondent Nos. 2 and 3 cancelled the dealership agreement forthwith w.e.f.

(3)

05.08.2014. The said communication is assailed in the present writ petition.

2. We have heard the learned counsel for the respective petitioners and Mr. Kulkarni, the learned counsel for respondent No.2 and 3.

3. The gravamen of the petitioners contention in writ petition No. 7691 of 2014 is that the partnership agreement relied on by the respondents to terminate the dealership agreement is of the year 2003. The same is nominal agreement just to supervise the running of the business. Even civil suit has been filed before the competent court wherein, it is averred by the petitioner of writ petition No.7691 of 2014 that the said partnership is nominal agreement. Said nominal agreement is of the year 2003, whereas the dispensing pump and selling licence agreement is dated 01.05.2005. The petitioner in writ petition No.7691 of 2014 has obtained the licence in his own name. The petitioner has not committed any breach of the terms of the licence or dealership agreement.

4. The learned counsel submits that even otherwise, the opportunity of hearing has not been granted. If the opportunity of hearing is granted in such matter, the petitioner

would be in a position to convince the respondents about the breach not being committed. The learned counsel for the petitioner relied on the judgment of the Apex Court in the case of ***M/s.Travancore Rayons Ltd. Vs. The Union of India and others*** reported in ***AIR 1971 SCC 862*** and in case of ***Mahabir Auto Stores and others Vs. Indian Oil Corporation and others*** reported in ***(1990) 3 SCC 752***. The learned counsel also relies on the judgment of the Apex Court in case of ***Harbanslal Sahnia Vs. Indian Oil Corporation Limited*** reported in ***2003 (2) SCC 107***.

5. Mr. Kulkarni, the learned counsel for the respondent No.2 and 3 submits that the breach is admitted by the petitioner. It is admitted by the petitioner that partnership agreement is executed. The notice was given by the Corporation to the petitioner. The petitioner replied the show cause notice. Clause 4 of the agreement specifically prevents the licensee from entering into partnership. After considering the reply filed by the petitioner, the respondent has by speaking order cancelled the dealership agreement, no illegality is committed. An opportunity of hearing is not contemplated. Even otherwise, no purpose would be served as the breach committed is ex-facie. The learned counsel relies on the judgment of the Apex Court in case of ***F.N.***

Roy Vs. Collector of Customs Excise, Calcutta, so also, in case of ***Dharampal Satyapal Ltd. vs. Deputy Commissioner of Central Excise and others*** reported in ***(2015) 8 SCC page 519.***

6. We have considered the submissions canvassed by the learned counsel for the respective parties. The petitioner in writ petition No. 7691 of 2014 was given licence of dispensing pump and selling licence dated 01.05.2005. The dealership agreement was entered into by respondent Corporation with the said petitioner. The licence was granted to the petitioner in his individual capacity. The partnership agreement referred by respondent-Corporation is dated 4th October, 2003 between petitioner in writ petition No.7691 of 2014 and one Mr. Sachin Jagtap. The petitioner was running the business since the issuance of letter of intent and the licence in the year 2005 upto 2014 for almost nine years. The respondent Corporation had issued a notice as to why the dispensing pump and selling licence agreement dated 01.05.2005 shall not be terminated on account of petitioner having entered into the partnership agreement. The irregularities conveyed by the respondent-Corporation to the petitioner are as under :-

III. IRREGULARITIES :

1) It has come to our notice that you have entered into a Partnership Agreement with Mr.Sachin Jagtap by executing a partnership deed dated 04.10.2003 and has inducted him for running the RO without the permission of BPCL. The said Partnership deed is enclosed herewith as (Annexure I)

2) You have also clearly violated clause 7 of Letter of Intent dated 10.06.2005 which states that you shall not induct any partner(s), nor make any changes in the constitution of the partners as existing at the time of application and shall give an undertaking to this effect.

7. Even some past irregularities were communicated. The order of termination basically is on the ground that the petitioner has executed partnership deed dated 04.10.2003 and has inducted Mr. Sachin Jagtap for running the business without permission of the respondent-Corporation.

8. The prima donna contention of the petitioner is that opportunity of hearing was not given. The agreement does not prescribe any opportunity of hearing to be provided.

However depending upon the condition of the agreement, the complexity of the matter, opportunity of hearing can be provided. There cannot be straight jacket formula in that regard. The respondents admittedly had not given any opportunity. The petitioner could have pointed out whether the partnership is formal or not. Effect of the pendency of the civil suit between the parties *inter se* and whether the breach even committed is condonable or not. All these aspects could have been pointed out by the petitioner.

9. The Apex Court in the case of *M/s. Travancore Rayons Ltd.* (supra) has observed that though the rules do not require that a personal hearing should be given to a revision petitioner under section 36 if in appropriate cases where complex and difficult questions requiring familiarity with technical problems are raised, personal hearing is given, it would conduce to better administration and more satisfactory disposal of the grievances of citizens.

10. The Corporation is an instrumentality of the State. Its action should depict the reasonable and fair opportunity being given. In fact, it is expected to be model litigant. In such cases, after giving opportunity of hearing of the order is passed, jurisdiction of this court would be limited.

11. As opportunity of hearing was not given, we set aside the impugned communication. The respondents shall give hearing to the petitioner. The petitioner shall appear before the respondent on 5th May, 2018 and after giving hearing to the petitioner, pass order afresh.

12. It is made clear that till the afresh orders are passed, the status quo as on today be maintained.

13. The writ petitions are disposed of. No costs.

14. In view of the disposal of writ petitions, Civil Application No.4082 of 2015 is also disposed of.

(A.M. DHAVAL, J.)

(S.V. GANGAPURWALA, J.)

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