IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on 06.12.2018

Order delivered on 14.12.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.2798 of 2017
and
W.M.P.No.24284 of 2018

M/s. Thiruarul
rep. By its Proprietor V.Maya Devi,
No.56, Korattur Village,
Ambattur-Red Hills Road,
Kallikuppam,
Chennai - 600 053. ... Petitioner

vs.

1. M/s. Bharat Petroleum Corporation Ltd.,
(Southern region),
Rep. by its State Head/Co-ordinator (TN&P)
No.1, Ranganathan Garden,
11th Main Road, Anna Nagar,
Chennai - 600 040

2. The Territory Manager (Retail)
Bharat Petroleum Corporation Ltd.,
No.35, Vaidhyanathan Street,
Tondiarpet,
Chennai - 600 081.

3. The Head (Retail) (South),
Bharat Petroleum Corporation Ltd.
No.1, Ranganathan Garden,
11th Main Road, Anna Nagar,
Chennai - 600 040. ..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records lof the third respondent concluding in the impugned order dated 17.01.2017 and quash the same and consequently direct the respondents 1 to 3 to permit the petitioner to reconstitute the dealership by including Mr.N.Sreenivasa Rao as a partner.

For Petitioner : Mr.T.P.Manoharan,
Senior Counsel
for Mr.S.Kamaleshkannan

For Respondents: Mr.M.Vijayan
for M/s.King & Patridge

ORDER

The petitioner is aggrieved against the proceedings of the 3rd respondent dated 17.01.2017, wherein and whereby, the petitioner's request for reconstitution of the dealership was rejected. Consequently, the petitioner seeks for a direction to the respondents 1 to 3 to permit her to reconstitute the dealership by including one N.Sreenivasa Rao, as a partner.

2. The case of the petitioner is as follows:

The petitioner firm was awarded the dealership of Bharath Petroleum Corporation Limited in 2006 and as such, the said business is being run by its sole proprietor, namely, the deponent herein. The proprietor is a single lady with children. Due to her health condition, certain family issues and high work load, she finds difficult in running the dealership solo. Hence, she decided to induct a partner. Accordingly, she decided to take one N.Sreenivasa Rao as a partner to run the business, who has the required knowledge and skill to assist her in the business. The deponent and the said Sreenivasa Rao entered into a Memorandum of Understanding. Though the said N.Sreenivasa Rao was an ex-employee of the respondent Company, he had resigned from the respondent organisation and he was also relieved from the service on and from 18.04.2016. The deponent made a request dated 22.04.2016 to the Corporation to induct the said N.Sreenivasa Rao as a partner in the dealership. The application for re-constitution of the firm was submitted on 11.05.2016 before the 2nd respondent. The said application was rejected on 16.09.2016 by the 2nd respondent on the reasons that the said Sreenivasa Rao, being an Ex-employee of the Corporation, could not be allowed to be a partner, as it violates Section 23 of the Indian Contract Act. As against the said order of rejection, the petitioner preferred an appeal before the 3rd respondent, who in turn, rejected the same on 17.01.2016 citing the very same reason. Hence, the present writ petition.

3. A counter affidavit is filed on behalf of the respondents. The case of the respondents is as follows:

The petitioner is a dealer under the respondents in respect of the petroleum outlet as a sole proprietor of the concern. N.Sreenivasa Rao was working in respondent Corporation as an Executive (Sales) and he was in control and supervision of sale activities of retail dealers in the District of Thiruvallur and thus, he was in charge of the petitioner outlet also till he was relieved on 17.04.2016. Hence, there is a reasonable nexus to assume that the proposal made by the petitioner to induct the said person as incoming partner of the dealership is not free from clout. Bharat Petroleum Corporation Limited is a Public sector undertaking and thus, the said N.Sreenivasa also be covered by the definition of public servant and therefore, he is required to maintain absolute integrity and do nothing which is unbecoming of a public servant. After cessation of employment, if the ex-employee is inducted as a partner, the same would show a tendency to corrupt a public servant. Such a partnerhsip, if permitted, would be contrary to the public policy hit by section 23 of the Indian Contract Act, 1872. The dealership selection guidelines permits the employee to resign and thereafter, apply against advertisement along with other candidates as per the laid down procedure/guidelines. The agreement entered by the petitioner and the respondent Corporation is purely commercial in nature and hence, the petitioner has no statutory right to compel the respondent to accept an ex-employee as a dealer. Hence, the writ petition is not maintainable.

4. Mr.T.P.Manoharan, learned senior counsel for the petitioner submitted as follows:

The reconstitution of the dealership is permissible as per the policy guidelines issued by the respondent Corporation. Clause 3.1 of such policy specifically permits for induction of partner and the only condition for such induction is that it could be done only after 5 years of commissioning of the dealership. When the petitioner has complied with such requirement, there is no embargo on the respondents to permit the reconstitution of the dealership. The petitioner, being a single lady is unable to run the business individually and therefore, she needs help which cannot be doubted by the respondent Corporation. Former employer of the respondent Corporation is not debarred from either becoming a partner or applying for dealership itself. In the absence of any such prohibition after retirement or resignation, the proposed partner cannot be found as ineligible, in the absence of any specific statutory prohibition. The writ is maintainable since the rejection was made arbitrarily, unreasonably with unfairness. The issue before this Court is not for enforcement of the contract but enforcement of the policy guidelines. In support of his contention, learned senior counsel relied on 2007 (6) SCC 81 (Bharat Petroleum Corporation Ltd., vs. Maddula Ratnavalli and others).

5. Learned counsel for the respondents submitted as follows: The respondent Corporation does not want its own ex-employee to become the partner of the existing dealership. The proposed partner in this case, admittedly was in charge of supervising the area where the petitioner's dealership exists and therefore, there is every possibility to assume nexus between the petitioner and the said person even during the course of his employment. The petitioner has no legal right to compel the Corporation to take the ex-employee as a dealer. The contract between the petitioner and the Corporation is not a statutory one and therefore, no statutory duty is fastened on the Corporation to comply with the terms of such contract. Consequently, the writ petition for enforcing such terms of the contract is not maintainable. In support of his contention, learned counsel relied on 2000(6) SCC 293(Kerala State Electricity Board and another v. Kurien E.Kalathil and others) and 1989 (2) SCC 116 (Bareilly Development Authority and anotehr v. Ajai Pal Singh and others).

6. Heard both sides and perused the materials placed before this Court.

7. The petitioner is aggrieved against the order in rejecting the reconstitution of the dealership by inducting one N.Sreenivasa Rao as a partner. There is no dispute to the fact that the dealership was awarded to the petitioner as a sole proprietress concern in the year 2006 and the petitioner wanted to induct the said N.Sreenivasa Rao as a partner by making an application only on 11.05.2016. Policy guidelines for reconstitution of retail outlet dealership issued by the respondent Corporation clearly indicates that under policy No.3.1 such reconstitution is permissible, provided the same is made after 5 years of commissioning of dealership. Clause 3.1 of the said policy reads as follows:

> 3.1 Reconstitution will be permitted for induction of minority partner(s) only after five years of commissioning of dealership.

8. Apart from the above condition, I do not find any other restriction or condition stipulated in clause 3 of the policy, either fixing eligibility criteria for a person to become a partner of the existing dealership or indicating any disqualification factors. The case of the respondents is not that the petitioner seeks to induct a person either against the terms of the contract or against the policy guidelines. On the other hand, their only objection against the proposed partner is that such person was working under the respondent Corporation as an Executive and therefore, there is every reason to assume that the proposal made by the petitioner to induct him as incoming

partner is not free from clout. It is further contended that the respondent Corporation being a public sector undertaking, the proposed partner who was an ex-employee of the Corporation would also be construed as a public servant and so he cannot become a partner as it is against the provision of Section 23 of the Indian Contract Act, 1872.

9. I am unable to either appreciate or accept the above contentions of the respondents for the simple reason that the respondent Corporation cannot speak against its own policy , more particularly, in this case, in respect of the Clause dealing with reconstitution of commissioned dealership. Clause 3.1 of the said policy as extracted supra is in clear and categorical terms, not only permits reconstitution and also the induction of minority partner in the dealership. The only embargo on the dealer to have such reconstitution is that, it cannot take place before 5 years of its commissioning. In this case, admittedly, the proposed induction of the partner and reconstitution are sought to be made after a period of 10 years. When such being the factual position, I do not think that the respondent Corporation can say something which is not supported by their own policy. In other words, the respondent Corporation is not entitled to presume and stipulate a qualification criteria for a person to become the partner, in the absence of any such prescription in the policy. If such approach of the Corporation is permitted, it would mean as if the Corporation is entitled to go against its own policy guidelines and that such conduct cannot be questioned. I have already stated supra that clause 3 of the policy guidelines does not say anywhere that an ex-employee of the Corporation is prohibited from becoming a partner. On the other hand, the respondent themselves have admitted in the counter that the dealership selection guidelines permits the employee to resign and thereafter, apply against the advertisement along with other candidates to take the dealership. I fail to understand as to how an ex-employee of the respondent Corporation who is otherwise entitled to apply for dealership along with other candidates, is not entitled to become the partner in the existing dealership, more particularly such entitlement is not prohibited under clause 3.1 of the Policy Guidelines for Reconstitution of Retail Outlet Dealerships. Therefore, it is apparent on the face of the impugned proceedings that the reasons stated therein are arbitrary and unreasonable and also exhibit unfairness of the respondent Corporation.

10. No doubt, the respondents raised an objection with regard to the maintainability of the writ petition. According to them, the relief sought for by the petitioner is in relation to the implementation of the terms of the contract and therefore, the contract being non-statutory one, the petitioner is not entitled to seek for such implementation under writ

jurisdiction. The above objection of the respondents is liable to be rejected at the threshold for the very reason that their understanding of the relief sought for in the writ petition is totally misconceived. Certainly, the petitioner is not seeking for implementation of any terms of the contract and on the other hand, she seeks for a direction to the Corporation to stick to their own policy while considering the petitioner's request for reconstitution of the dealership. Therefore, the respondent Corporation, being a public sector undertaking is bound to act fairly and reasonably, without giving room for arbitrariness while the policy of the Corporation is sought to be implemented. Needless to say that a policy, once put into operation, becomes binding on the parties including the respondent Corporation. Therefore, if any arbitrary, unreasonable and unfair decision is taken by the Corporation in respect of a request for implementing any clause in such policy, such action of the Corporation is certainly amenable to writ jurisdiction. Hence, the objection raised on the maintainability of the writ petition is liable to be rejected.

11. Learned counsel for the respondents relied on 2000(6) SCC 293(Kerala State Electricity Board and another v. Kurien E.Kalathil and others) to contend that the writ is not maintainable in respect of the dispute relating to the terms of the contract. I have already stated supra that the present issue is not in respect of implementing the terms of the contract entered between the parties and on the other hand, it is in respect of the policy guidelines issued by the Corporation. The other decision relied on by the learned counsel of the respondents is reported in 1989 (2) SCC 116 (Bareilly Development Authority and anotehr v. Ajai Pal Singh and others). Here again, the facts and circumstances of the case would show that the question before the Apex Court was whether the registered persons for allotment of the flats in accordance with the terms and conditions contained in the brochure issued by the Bareilly Development Authority, can challenge the alteration of the terms and conditions of the agreement, under Article 226 of the Constitution of India. Under such circumstances, the Apex Court found that such of those registered persons cannot challenge the alteration of the terms and conditions by way of writ petition. The facts and circumstances of the present case are totally different and distinguishable and thus, the above decision is also not helping the respondents in any manner.

12. Learned senior counsel appearing for the petitioner on the other hand relied on a decision of the Apex Court reported in 2007(6) SCC 81 (Bharat Petroleum Corporation Ltd., vs. Maddula Ratnavalli and others) wherein the Apex Court found that Bharat Petroleum Corporation Limited is a State within the meaning of Article 12 of the Constitution of India and therefore, it has a duty to act fairly and reasonably. At

paragraph No.13 of the said decision, it is observed as follows:

> 13. The appellant company is a "State" within the meaning of Article 12 of the Constitution of India. It is, therefore, enjoined with a duty to act fairly and reasonably. Just because it has been conferred with a statutory power, the same by itself would not mean that exercise thereof in any manner whatsoever will meet the requirements of law. The statute uses the words "if so desired by the Central Government". Such a desire cannot be based upon a subjective satisfaction. It must be based on objective criteria. Indisputably, the 1976 Act is a special statute. It overrides the provisions of Section 107 of the Transfer of Property Act. The action of the State, however, must be judged on the touchstone of reasonableness. Learned counsel for both the parties have relied upon a three-Judge Bench decision of this Court in Bharat Petroleum Corpn. Ltd. v. P. Kesavan [(2004) 9 SCC 772] wherein this Court held: (SCC p. 777, para 11)
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> > "11. The said Act is a special statute vis-à-vis the Transfer of Property Act which is a general statute. By reason of the provisions of the said Act, the right, title and interest of Burmah Shell vested in the Central Government and consequently in the appellant Company. A lease of immovable property is also an asset and/or right in an immovable property. The leasehold right, thus, held by Burmah Shell vested in the appellant. By reason of sub-section (2) of Section 5 of the Act, a right of renewal was created in the appellant in terms whereof in the event of exercise of its option, the existing lease was renewed for a further term on the same terms and conditions. As noticed hereinbefore, Section 11 of the Act provides for a non obstante clause."

13. The appellant before the Apex Court in the above case is the respondent Corporation herein. Therefore, if the action of the respondent Corporation is found to be unfair and unreasonable, such action can be interfered with by the Writ

Court exercising its extraordinary jurisdiction under Article 226 of the Constitution of India as the respondent Corporation is a State within the meaning of Article 12 of the Constitution of India. Therefore, this Court finds that the Writ Petition is maintainable.

14. Considering the above facts and circumstances, this Court is of the view that the petitioner is entitled to succeed and that the respondent Corporation is not justified in rejecting the request of the petitioner to reconstitute the dealership by taking the partner, namely the said N.Sreenivasa Rao, so long as such person is not suffering from any other disqualification under law.

15. Accordingly, the Writ Petition is allowed and the impugned order is set aside. Consequently, the respondent Corporation is directed to permit the petitioner to take N.Sreenivas Rao as a partner and reconstitute the dealership as per the application made already. Appropriate orders shall be passed by the respondent Corporation on such application within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The State Head/Co-ordinator (TN&P)
M/s. Bharat Petroleum Corporation Ltd.,
(Southern region),
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No.1, Ranganathan Garden,
11th Main Road, Anna Nagar,
Chennai - 600 040

+1cc to Mr.S.Kamaleshkannan, Advocate sr.no.87113
+1cc to M/s.King & Patridge, Advocate sr.no.86561

W.P.No.2798 of 2017

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