

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.3235 OF 2007

ORDER:

This writ petition is filed to issue a Writ of Mandamus declaring the action of the first respondent-Corporation in terminating the Distributorship of the petitioner-LPG Gas Agency at Proddatur, Kadapa District, vide Letter in Reference No.APSO/L/S/3004, dated 13.02.2007 of the first respondent-Corporation, as illegal and arbitrary and consequently direct the respondents 1 and 2 to restore the said LPG Distributorship to the petitioner and enable the petitioner to continue the business without giving any weight to the instructions of the third respondent.

2. The brief facts of the case are that the first respondent-Corporation had given an LPG Distributorship to Major (Retd.) Parthasaradhy – third respondent, in the year 1976 under the defence quota. The Major Parthasaradhy – third respondent had initiated the distributorship as a proprietor concern of 'M/s.Balaji Gas Agencies'. In the year 1986, he had sought permission from the first respondent to convert the proprietary concern into a partnership firm. This request was accepted by the first respondent company. Thereafter, Major Parthasaradhy had inducted C.Venugopal Reddy into the firm, which was also called 'M/s.Balaji Gas Agencies'. The firm consists of Major Parthasaradhy with 51% share and

C.Venugopal Reddy with 49% share. The firm, thereafter, entered into a distributorship agreement with the first respondent on 20.08.1986. Thereafter, the petitioner's firm has been undertaking distributorship operation of the first respondent company. In July, 2006, the third respondent had written a letter to the first respondent-Corporation that he wishes to surrender the distributorship. The first respondent-Corporation, based on the letter dated 16.08.2006 of the third respondent, had issued show-cause notice on 18.09.2006 to both the partners of the petitioner's firm. In reply to this, the third respondent had addressed a letter dated 16.10.2006 to C.Venugopal Reddy requesting him to surrender distributorship and other necessary accounts to the first respondent-Corporation. Sri C.Venugopal Reddy initially took time for giving a reply and thereafter filed a reply on 25.10.2006. In his reply letter dated 25.10.2006, C.Venugopal Reddy had set up two stands, firstly he stated that partnership business has not been dissolved and thereafter took a stand that he was the sole proprietor of M/s.Balaji Gas Agencies and the third respondent was being projected as his partner. Sri C.Venugopal Reddy, after his reply, without waiting for any further orders of the first respondent-Corporation, filed O.S.No.17 of 2006 in the Court of the II Additional District Judge, Proddatur for permanent injunction restraining the first respondent-Corporation from terminating the distributorship of the petitioner's firm. Along

with the suit, he filed I.A.No.974 of 2006 for temporary injunction. The temporary injunction was granted on 09.11.2006. On contest, the interim injunction was vacated on 07.02.2007. It appears that he filed appeal before this Court against the order dated 07.02.2007 of the II Additional District Judge, Proddatur. The first respondent-Corporation, after considering his reply, passed the impugned order of termination of distributorship vide impugned order dated 13.02.2007. Aggrieved by the said termination order, the petitioner filed the present writ petition.

3. This Court, while admitting the writ petition on 20.02.2007, granted interim order in WPMP No.4131 of 2007 and the same was confirmed by order dated 02.04.2006, dismissing WVMP No.563 of 2007 in WPMP No.4131 of 2007. Against the same, Writ Appeal No.356 of 2007 was filed and the same was dismissed on 26.04.2007. In view of the same, the petitioner is continuing as a distributor.

4. Sri Vedula Venkataramana, learned senior counsel appearing for the petitioner would contend that on the request made by the third respondent on 04.03.1986, seeking permission to induct him as a partner, the first respondent-Corporation on 18.08.1986 had accorded permission to run the business as partnership. In that context, the first respondent-Corporation has executed another distribution agreement signed by it and the third respondent jointly on

20.08.1986. In the said agreement, the petitioner was described as distributor concern as a partnership firm. The tenure of the distribution agreement dated 20.08.1986 is subsisting. The petitioner has been doing business without any complaint. The first respondent-Corporation issued a show-cause notice dated 18.09.2006, stating that why the distributorship shall not be terminated since the third respondent has resigned from the partnership firm and hence the partnership stands dissolved as per letter dated 16.08.2006 of the third respondent. The learned counsel has drawn attention of this Court to the contents of the said letter, which reads as follows:

“I have fully understood and confirm the following:

- a) As I have decided to withdraw from the LPG distributorship at Proddatur and my legal heirs are also not interested in running the distributorship/participating in the business. I have clearly understood that the distributorship will be terminated. A new distributor will be appointed through the regular selection process as per policy.
- b) As per the Guidelines in vogue, my inducted financial partners will not have any lien on the distributorship whatsoever.
- c) I will be fully responsible for timely handing over of the records and the IOC equipment in safe condition.
- d) I will have to carry out the complete reconciliation of all my accounts with IOC Ltd. and clear the dues, if any.
- e) I fully indemnify the Corporation against any action by the inducted financial partners or my family members in this regard.

- f) I am fully aware that I will not have any claim on IOC Ltd. against the actual or the perceived losses that may arise or accrue due to surrender of this distributorship.
- g) All the liabilities of M/s.Balaji Gas, Proddatur will be settled by me and IOC Limited will not be liable to any of the claims by any one including family members and inducted financial partner Mr. Venugopal Reddy.

Will full understanding of the process and the implications, I once again confirm that my decision to withdraw from the distributorship is final.

I once again request you to kindly accept my resignation and advise me a suitable date for handing over of the records and equipment. A suitable date may also be advised for carrying out the necessary reconciliation for settlement of accounts and dues.”

The learned counsel further contends that the third respondent addressed a letter dated 16.08.2006 to the first respondent-Corporation and not to Sri C.Venugopal Reddy. The substance of the letter does not fit into the concept of ‘Dissolution of partnership at will’ contained in Section 43 of the Indian Partnership Act, 1932 (for short ‘the Act’). It is well settled that in order to bring about the dissolution of partnership firm at will, it is necessary that the notice must really state the intention of the partner giving notice to dissolve the firm and it must be given in writing to all other partners of the firm, for which he had relied on a Division Bench judgment reported in *Chainkaran Sidhakaran Oswal Vs. Radhakisan Vishwanath Dixit and others*¹.

¹ AIR 1956 Nagpur 46

The learned counsel further contended that the partnership firm could not be brought to an end by a unilateral act by one of the parties except giving a notice in writing to his intention to dissolve the firm. When there is no such notice, mere act that a partner was willing to give any share in property, other cannot be put an end to the partnership firm. In support of his contention, he relied on a Division Bench judgment reported in *Chhotelal Ratanlal and another Vs. Rajmal Milapchand and others*². He further contended that under Section 43 of the Act, a partnership at will could be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm and upon such notice being given, the firm gets dissolved from the date mentioned in the notice as the date of dissolution and if no date is mentioned as from the date of communication of the notice. In support of his contention, he relied on a judgment reported in *Commissioner of Income-tax, W.B.-III Vs. M/s.Pigot Champan and Co*³.

The learned counsel further submits that in cases of dissolution of firm brought about by a notice under Section 43 or by an order of the Court under Section 44 of the Act, some of the erstwhile partners may take over the assets and liabilities and carry on the same business by constituting a new firm and even in such cases would be cases of

² AIR 1951 Nagpur 448

³ AIR 1982 S.C. 1085

succession to the old business. In support of his contention, he relied on a judgment reported in *Commissioner of Income-tax* (3 cited supra).

The learned counsel further contended that in view of the above legal position, Sections 47 and 48 of the Act provide continuing authority of partners for the purpose of winding up and the dissolution of a partnership firm at will, the letter of the third respondent dated 16.08.2006 could not bring about the dissolution of the partnership firm and hence question of terminating the distributorship of the petitioner does not arise on the ground of dissolution of the petitioner's firm. The petitioner in fact in his reply dated 25.10.2006 stated that clause 27 of the Distributorship Agreement is not applicable. Due to a mistaken advise, the petitioner has filed suit for permanent injunction in O.S.No.17 of 2006 in the Court of the II Additional District Judge, Kadapa at Proddatur to restrain the first respondent-Corporation from terminating the distributorship. The action of the first respondent-Corporation in terminating the distributorship of the petitioner and also taking possession of the stock on 15.02.2007, is arbitrary and illegal. Though there is an arbitration clause in the distributorship agreement, it does not provide an effective remedy to the petitioner. In support of his contention, he relied on a judgment reported in 2003(2) SCC 107. Hence, there is no dissolution of partnership firm at will as per law.

The learned counsel further contended that in fact the petitioner had not committed any irregularity to terminate the distributorship on the ground of alleged violation of clause 27 of the agreement. In fact, the partnership entered into between Sri C.Venugopal Reddy and the third respondent was not dissolved in accordance with the provisions of the Partnership Act or the Deed of partnership. The first respondent had terminated the distribution agreement only on the basis of the letters written by the third respondent.

5. Sri T.Vinod Kumar appearing for the first respondent would contend that termination of distribution agreement of the petitioner is legally correct and justified because the third respondent who hold major share in the partnership firm had written a letter in the month of July, 2006 expressing his wish to surrender the distributorship and reiterated the same vide his letter dated 16.08.2006. Even after appraised by the Committee of Officers about the consequences of the letter of the third respondent, in view of the virtual resignation tendered by the third respondent, the first respondent had rightly terminated the distribution agreement as per clause 27 of the distribution agreement. He further contended that the act of one partner in choosing to dissolve the firm binds the other partners of the firm. The settled legal position of law is that the act of one partner can well be constituted as an act on behalf of all the partners. In support of his contention, he relied on the judgment in the case of *Structee*

Mech. India, partnership firm and others Vs. Bharatkumar Pahlarajai, minor, rep. by father and natural guardian Pahlajai and others. Sri Vedula Venkataramana, learned senior counsel appearing for the petitioner denied the said contention and contended that the act of one partner binds the other partners only if he does an act in furtherance of the benefit of the partnership firm but not otherwise.

Sri T.Vinod Kumar, learned counsel for the first respondent further contended that the distributorship is allotted to the third respondent for the purpose of rehabilitating and giving livelihood to the former defence personnel. When the original allottee is not interested in continuing the distributorship, the question of allowing the other partners to go on with the distributorship is illegal.

6. In the facts and circumstances of the case and in the considered view of this Court, it is found that the third respondent/ex-serviceman was appointed as an LPG Distributor for Proddatur town, Kadapa District, for which an agreement dated 09.05.1977, was entered into between the first respondent-Corporation and the third respondent. The first respondent permitted the third respondent to enter into a partnership with Sri C.Venugopal Reddy for distributorship of LPG cylinders in the name and style of 'M/s.Balaji Gas Agencies' (the petitioner), in which the third respondent is having 51% share and Sri C.Venugopal Reddy is having 49%

share. Thereafter, the firm entered into a distribution agreement with the first respondent on 20.08.1996. In the month of July, 2006, the third respondent had written a letter to the first respondent-Corporation to surrender the distributorship. The third respondent confirmed the same by letter dated 16.08.2006. Basing on the letter of the third respondent, the first respondent-Corporation had issued show-cause notice on 18.09.2006 to both the partners of the petitioner's firm. Both the partners submitted their replies and Sri C.Venugopal Reddy also submitted a reply, even belatedly, on 25.10.2006, stating that based on the letter of the third respondent, the petitioner's partnership firm would not get dissolved and the same could not be termed as dissolution of partnership firm under Section 43 of the Act.

7. The partnership at will could be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm. Upon such notice being served on the other partners, the firm gets dissolved from the date mentioned in the notice or the date of communication of the notice. In this case, there is no such notice given by the third respondent. The letter of the third respondent dated 16.08.2006 could not be construed as a letter for the dissolution of the firm. Hence, the action of the first respondent-Corporation treating the petitioner's firm gets dissolved, is said to be initiated under clause 27 of the distribution agreement. Clause 27 would be applicable only

when the firm itself stands dissolved and clause 28 would be applicable when any of the partners wish to terminate the distribution agreement. When there is no legal dissolution of the petitioner firm, the termination of the distributorship of the LPG by the first respondent-Corporation treating it as dissolution of the firm, action initiated under clause 27 of the agreement is illegal and contrary to the agreement. However, first respondent-Corporation misdirected itself and no effective steps were taken to terminate the distribution agreement by availing clause 28 of the agreement and as per law, if it feels that this particular LPG distributorship is allotted to the former defence personnel for the purpose of rehabilitating and giving livelihood to the defence personnel and the same is knocked away by the petitioner firm and Sri C.Venugopal Reddy, which is happening regularly in all distributors or largesse granted/allotted to the persons for the purpose of achieving social objectives.

8. In the facts and circumstances, the Writ Petition is allowed, setting aside the termination order passed by the first respondent-Corporation vide Letter in Reference No.APSO/L/S/3004, dated 13.02.2007. However, the first respondent-Corporation is given liberty to take any legal action for termination of the distributorship as per law. No costs.

9. Miscellaneous Petitions, if any, pending in this Writ
Petition shall stand closed.

JUSTICE M.GANGA RAO

14-03-2018
anr



THE HON'BLE SRI JUSTICE M.GANGA RAO



WRIT PETITION No. 3235 OF 2007

14-03-2018

anr