

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.11311 of 2015 (O&M)

Date of decision: 22.5.2018

Pawan Kumar

...Petitioner

Versus

Indian Oil Corporation Ltd. and another

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr.Surinder Garg, Advocate for the petitioner.

Mr.Ashish Kapoor, Advocate for respondent No.1.

Mr.Dhirender Chopra and Mr.Lalit Sharma, Advocates for
respondent No.2.

Rakesh Kumar Jain, J. (Oral)

The petitioner was allotted Indane LPG distributorship in the physically handicapped category at Rajpura by the Indian Oil Corporation Ltd. (for short 'the Corporation') under the name and style of M/s Rajpura Gas House.

The agency was terminated on 6.1.2004 by the Corporation. The matter was taken for the Arbitration and the Arbitrator passed the award on 3.5.2005 holding the termination of the gas agency of the petitioner as null and void but with the rider that he has no power to order for the restoration. The petitioner filed a civil suit on 18.5.2005 with a prayer to direct the Corporation to restore the distributorship. The said civil suit was

dismissed on 2.8.2006. The appeal filed against the decree dated 2.8.2006 was withdrawn on 7.11.2007. Thereafter, the petitioner filed an application under Section 34 of the Arbitration and Conciliation Act, 1996 against the award of the Arbitrator. Since there was a delay in filing the objections, therefore, the Objections were not entertained and then the petitioner filed FAO No.3620 of 2008 which was ultimately allowed and the matter was remanded back to the civil court for deciding the Objections on merits. After remand, the Objections filed by the petitioners were allowed and a direction was issued to the Corporation to consider the request of the petitioner for restoration of distributorship. The said order passed by the civil court was challenged by the respondents Corporation by filing FAO No.3815 of 2009 which was allowed on 18.8.2009 and the following observations were made:

“Even apart from the reasoning found in the Arbitrator's award, there is yet another reason why the Gas Agency cannot obtain the relief of restoration of agency. An agent whose contract is unlawfully terminated can have no right to insist on the continuation of the contract, except under situations where the contract of agency is coupled with interest. The right which is protected under Section 202 of the Contract Act is a matter that would require specific pleading and evidence. No such attempt was made before the Arbitrator that there had been a case of agency coupled with interest. The relief claimed by the Gas Agency before the Arbitrator for restoration of the Agency was, therefore, not maintainable for that reason also.”

During the pendency of those proceedings, the Corporation had re-advertised the allotment of distributorship in Rajpura on 18.9.2006.

Admittedly, the petitioner did not apply for the allotment of distributorship

in pursuance of the said advertisement in which the allotment was made to respondent No.2. It is also not in dispute that the petitioner, who was the party in FAO No.3815 of 2009, did not challenge the order dated 18.8.2009 passed by this Court. However, this petition was filed in the year 2015 when the petitioner came to know that the Gas agency allotted to respondent no.2 has started its operation.

Counsel for the petitioner has submitted that once the termination order by the Corporation has been held to be null and void, the necessary consequence was status quo ante and the petitioner should have been restored the gas Agency which has been illegally allotted to respondent No.2.

On the other hand, counsel for the respondents have submitted that question of status quo ante do not arise in this case because in the order passed by this Court in FAO No.3815 of 2009 on 18.8.2009, it is categorically observed that “Even apart from the reasoning found in the Arbitrator's award, there is yet another reason why the Gas Agency cannot obtain the relief of restoration of agency. An agent whose contract is unlawfully terminated can have no right to insist on the continuation of the contract, except under situations where the contract of agency is coupled with interest. The right which is protected under Section 202 of the Contract Act is a matter that would require specific pleading and evidence. No such attempt was made before the Arbitrator that there had been a case of agency coupled with interest. The relief claimed by the Gas Agency before the Arbitrator for restoration of the Agency was, therefore, not maintainable for that reason also.”

After hearing the learned counsel for the parties and taking into consideration the aforesaid facts and circumstances, I am of the considered opinion that the petitioner has actually missed the bus because of two reasons. Firstly, he did not challenge the correctness of the order passed in FAO No.3815 of 2009 in which there is a categoric finding in regard to the non restoration of gas agency and secondly, he did not apply for the allotment of gas agency when it was re-advertised. Thus, in view thereof, there is hardly any scope for the purpose of interference in this petition and the same is hereby dismissed.

May 22, 2018
Meenu

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned : Yes/No
Whether reportable : Yes/No