

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-28-2017 (O&M)
Date of decision : 20.08.2018

M/s Guru Nanak Indane and others

...Petitioner(s)

Versus

Indian Oil Corporation Ltd. and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Amandeep Singh, Advocate for the petitioners.

Mr. Ashish Kapoor, Advocate for the respondents.

JITENDRA CHAUHAN, J.

The petitioner is aggrieved against termination of LPG distributorship agency vide impugned order dated 12.12.2016 (Annexure P-11).

Learned counsel for the petitioners contends that the impugned order has been passed while holding that the conviction of one of the partners for an offence of moral turpitude has given bad name to the corporation. However, the conviction under Section 302 IPC per se would not amount to moral turpitude. It is further contended that the petitioner's request for transfer of his shares was illegally and arbitrarily ignored and instead, the impugned order of termination of distributorship was passed. No opportunity of hearing was granted to the petitioner prior to passing the impugned order.

On the other hand, learned counsel for the respondents, at the

very outset, has opposed the instant petition on the ground of maintainability. He refers to Clause 37(a) of the Memorandum of Understanding signed between the parties (Annexure P-2), wherein, it has been expressly provided that in case of any dispute between the parties, the same would be liable to be referred to the Arbitrator. It is further contended that the agreement submits that the distributorship in question was terminated strictly in accordance with the terms and conditions of the agreement. The petitioner stands convicted under Section 302 IPC which would constitute moral turpitude. It is submitted that the petitioner, vide letter dated 09.10.2014, sought time to file reply to show-cause notice but instead of furnishing reply, he filed a civil suit before the Civil Court, Ambala. During the civil proceedings, application under Section 8 of the Arbitration and Conciliation Act, 1996, filed by the respondent was allowed vide order dated 27.05.2016, and the parties were directed to approach the Arbitrator. However, the petitioner has not filed any claim before the arbitrator.

Heard.

While issuing notice of motion, this Court observed as under:-

“The LPG distributorship agency of the petitioner allotted vide agreement Annexure P2, has been terminated vide order Annexure P11 dated 12.12.2016, on the allegation that one of the partner of the firm has been convicted for offence under Section 302 IPC, which would constitute moral turpitude. The petitioner had been issued a show cause notice dated 25.9.2014, prior to the termination which notice was challenged before the Civil Courts, Ambala. The Civil Court, Ambala, has

allowed the application under Section 8 of the Arbitration and Conciliation Act, 1996, filed by the respondent Corporation vide order dated 27.5.2016 and directed the parties to approach the Arbitrator.

It is apparent that thereafter, the termination order has been passed which has been challenged by the petitioners in this petition by invoking the extra ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

*Counsel for the petitioners submits that the very foundation of the termination of the dealership is contrary to the terms of the contract between the parties. When confronted as to why the provisions of Section 9 of the Arbitration and Conciliation Act, 1996, for seeking interim relief could not be availed of by the petitioners, counsel for the petitioners relies upon the judgment of Hon'ble the Supreme Court in **Harbanslal Sahnia and another Vs. Indian Oil Corporation Ltd. And another, AIR 2003 SC 2120**, holding that a writ petition would be maintainable despite the alternate remedy being available. Hon'ble the Supreme Court has relied upon the parameters of exercise of writ jurisdiction relying upon judgment in **Whirlpool Corporation Vs Registrar of Trade Marks, Mumbai, 1999(1) RCR (Civil) 220**.*

Counsel for the petitioners submits that where the petition seeks enforcement of any fundamental right; or where there is the failure of principles of natural justice; or where the orders or proceedings are wholly without jurisdiction, the writ jurisdiction of the High Court, can be invoked. It has further been submitted by the counsel for the petitioners that the petitioners are not entitled to seek the relief under Section 9 and Section 17 of the Arbitration and Conciliation Act, 1996 to get an interim

relief for continuation of the dealership. It has also been argued that there is no appeal provided under any Statute or Rules against the termination order.

The writ petition is being entertained on the following grounds:-

(i) It is debatable whether the petitioners are entitled to seek injunction order under Section 9 and S.17 of the Arbitration and Conciliation Act, 1996, in the arbitration proceedings as ordered by the civil Court.

(ii) No provisions regarding statutory appeal being available has been brought to the notice of the Court.

*Notice of motion to the respondents for 23.1.2017.
Dasti also.*

Status quo regarding the distributorship as existing today shall be maintained.”

In the instant case, the majority partner of the petitioner-agency was convicted and sentenced by the Court of learned Additional Sessions Judge, Mohali, vide judgment dated 22.11.2013 (Annexure P-12) for various offences including murder. Petitioner No.3, vide letter dated 24.07.2014 (Annexure P-4) informed the respondent(s) about his conviction and requested them to transfer his share in the agency in the name of his wife, namely, Surinder Kaur. Pursuant thereto, the respondents issued show cause notice dated 25.09.2014 (Annexure P-6) calling upon the petitioners to explain and show cause as to “why action in line with the distributorship agreement should not be taken against the distributorship firm”. The petitioners were granted 15 days time to furnish the reply. The petitioners vide letter dated 09.10.2014 sought time to file reply to the show cause

notice but instead of furnishing reply to the show cause notice, the petitioners chose to file a suit for declaration which was decided by the Court of learned Civil Judge (Junior Division) Ambala, vide order dated 27.05.2016 (Annexure P-8) directing the parties to approach the arbitrator as per their agreement. Without approaching the arbitrator as per directions of the Civil Court, the petitioners preferred another suit for permanent injunction restraining the defendants from taking any action including stopping supply of LPG/ suspension/cancellation/termination of the LPG distributorship in question. Meanwhile, vide impugned order dated 12.12.2016 (Annexure P-11), the distributorship of the petitioners was terminated.

Before advertng to the merits of the controversy involved, the first question to be determined is whether the present petition is maintainable in view of the express stipulation of dealership agreement to the effect that in case of any dispute between the parties, the matter would be liable to be referred to Arbitrator. At this stage, it would be apposite to refer to Clause 37(a) of the Memorandum of Understanding signed between the parties (Annexure P-2), which reads thus:-

“All questions, disputes and differences arising under or in relation to this agreement shall be referred to the sole arbitration of the Director (Marketing) of the Corporation. If such Director (Marketing) is unable or unwilling to act as the sole arbitrator, the matter shall be referred to the sole arbitration or some other officer of the Corporation by such Director (Marketing) in his place, who is willing to act as

such sole arbitrator. It is known to the parties herein that the Arbitrator appointed hereinunder is an employee of the Corporation and may be Shareholder of the Corporation. The arbitrator to whom the matter is originally referred, whether the Director (Marketing) or Officer, as the case may be, on his being transferred or vacating his office or being unable to act, for any reason, the Director (Marketing) shall designate any other person to act as arbitrator in accordance with the terms of the agreement and such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also the term of this Agreement that no person other than the Director (Marketing) or the person designated by the Director (Marketing) as aforesaid shall act as arbitrator. The award of the Arbitrator so appointed shall be final, conclusive and binding on all the parties to the Agreement and provisions of the Arbitration & Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the Rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause.”

While dealing with a similar question of law, a Division Bench of this Court in **“M/s Indian Oil Corporation Vs. Sh.Baba Lal Ji Filling Station and another”** 2012 (1) RCR (Civil) 648, has laid down as under:-

“We have heard the learned counsel for the parties and perused the record with their able assistance. We have thoughtfully considered arguments raised by the learned counsel for the

parties. After going through the various decisions rendered by Hon'ble the Supreme Court as also decisions of this Court on the issue of Arbitration i.e. the effect of an Arbitration Clause as a bar to invoking the writ jurisdiction of High Court, we are unable to find ourselves in agreement with the reasoning arrived at by the Learned Single Judge in so far as the maintainability of the civil writ petition is concerned. Hon'ble the Supreme Court in Harbanslal Sahnia and Another v. Indian Oil Corpn. and Others, AIR 2003 SC 2120, has observed as under:-

“So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed. Suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged (see Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors. (1988) 8 SCC.”

8. *It is patently clear that when the aforesaid test is applied to the facts of the present case then there seems to be no justification for exercising of the extraordinary writ jurisdiction by the learned Single Judge in view of the arbitration clause, as stipulated in the agreement. There is no violation of principles of natural justice resulting into infringement of fundamental rights guaranteed by Article 14. We could hardly see any violation of any other fundamental right.*

9. *Further reliance was placed by the ld. counsel for the Appellant on Hindustan Petroleum Corporation Ltd. v. M/s Pinckcity Midway Petroleums, 2003(3) RCR (Civil) 686, in which it was laid down that once it is established that there is an arbitration clause in the agreement, in view of the mandatory language of section 8 of the Arbitration Act, the court is bound to refer the dispute to the Arbitrator.*

10. *The ld. Counsel also cited Division Bench judgments of this Court rendered in CWP no. 12366 of 2007 decided on 22.2.2008 and 2009 (154) PLR 110, one of which was rendered by a Division Bench of which one of us (M.M. Kumar, J.) was a member. It has been held that the existence of an Arbitration Clause would ordinarily bar the invoking of the writ jurisdiction of the High Court. Another judgment delivered by the learned Single Bench of this Court in CWP no. 17443 of 2009 decided on 11.1.2009, also affirms the settled proposition of law that exceptions apart, in case there exists an arbitral clause in an agreement, the parties must be relegated to that*

remedy.

11. Mr. Amar Vivek, learned counsel for respondent No. 1/petitioner has placed firm reliance on a judgment rendered by Hon'ble the Supreme Court in the case of Tantia Construction Pvt. Ltd. (supra) and argued that arbitration clause may not always be a barrier to the exercise of equitable jurisdiction. There cannot be any quarrel with the aforesaid proposition. In fact Hon'ble the Supreme Court in para 27 has virtually reiterated the view taken in the earlier judgments. It would be profitable to read para 27 which is as under:-

"27. Apart from the above, even on the question of maintainability of the writ petition on account of the Arbitration Clause included in the agreement between the parties, it is now well-established that an alternative remedy is not an absolute bar to the invocation of the writ jurisdiction of the High Court or the Supreme Court and that without exhausting such alternative remedy, a writ petition would not be maintainable. The various decisions cited by Mr. Chakraborty would clearly indicate that the constitutional powers vested in the High Court or the Supreme Court cannot be fettered by any alternative remedy available to the authorities. Injustice, whenever and wherever it takes place, has to be struck down as an anathema to the rule of law and the provisions of the Constitution. We endorse the view of the High Court that

notwithstanding the provisions relating to the Arbitration Clause contained in the agreement, the High Court was fully within its competence to entertain and dispose of the Writ Petition filed on behalf of the Respondent Company."

12. A perusal of the aforesaid para would show that a writ Court could reach the injustice where it lies unfairness, unreasonable, injustice and patent illegality(s) are various facets. There is no difficulty to exercise jurisdiction if principles of natural justice have not been followed or the conscious of the Court suffers a shock. In this case transaction is commercial in nature and there are allegations/counter allegations concerning breach of contract. In such cases functions of an arbitration clause is more pronounced and significant. It is not possible for the Court to fathom the injustice because neither there is any patent illegality nor there is any violation of fundamental rights. Therefore, we have no hesitation in rejecting the aforesaid submission of the learned counsel.

13. In view of the above discussion we are of the considered opinion that once an agreement contains an Arbitration clause, unless an exception is carved out for invoking the writ jurisdiction of the High Court as laid down by the Hon'ble Supreme Court in Harbans Lal Sahania case (supra) by applying the prescribed test, the parties are required to be referred to invoke arbitration proceedings.

14. Accordingly, this LPA is allowed and the

judgment of the Learned Single Judge is set aside with no order as to costs. The parties are accordingly given liberty to initiate arbitration proceedings in the matter without prejudice to their respective rights.”

It is to be seen that the question of relief of restoration of the distributorship will arise only after it has been found by an appropriate authority that the order of termination under Clause 27 of the agreement was bad. A writ petition cannot be entertained in anticipation of such a finding.

It is also to be noticed that before the passing of impugned termination order, the petitioners were show caused vide a show cause notice dated 12.12.2016 (Annexure P-11) to explain as to why the agreement be not terminated in line with the distributorship agreement. Till date no reply has been furnished by the petitioners to the said notice. The petitioners also tried to take refuge from the Civil Court which also referred the parties to invoke the arbitration proceedings. Again the petitioners failed to approach the arbitrator and on the contrary preferred another suit and ultimately the instant writ petition. In view of the express condition in the distributorship agreement with regard to approaching the arbitrator in case of any dispute between the parties, it was imperative upon the petitioners to act in line with the said agreement. Therefore, the instant writ petition is declined as not maintainable.

On merits, the contention of learned counsel for the petitioners that the offence of murder *per se* would not amount to moral turpitude, is again deserved to be rejected in view of the facts and circumstances

reflected in the judgment of conviction recorded against petitioner No.3. While convicting the petitioner, learned trial Court has held that the petitioner, being annoyed with his companions and under the influence of the liquor, had fired a shot in the air from his licenced revolver and run Rachpal Singh, Ram Kumar and Raj Kumar underneath his Scorpio vehicle, as a result of which Rachpal Singh had died and the others received injuries. From the above observations of learned trial Court, it can safely be inferred that the petitioner with criminal intention and having full knowledge that his act of running vehicle over his companions would result into their death. The offence of murder committed by the petitioner was pre-meditated and planned in cold blood, therefore, would amount to moral turpitude. In ***Gurpal Singh Vs. High Court of Judicature for Rajasthan***, Writ Petition (Civil) No.200 of 2006, Hon'ble the Supreme Court has held as under:-

“35. The Rajasthan High Court was placed in a very piquant situation till the petitioner's acquittal was reiterated by the Delhi High Court. The High Court, literally, had no option but to place and keep the petitioner under suspension. It was not as if the petitioner had unwittingly breached a traffic regulation, which may not invite, even a frown from the general public. It was also not where he may have had a minor altercation with someone which may well be overlooked by a reasonable man, as it would not involve any moral turpitude. He was facing a trial for the offence of murder, a crime of highest moral turpitude. Since time immemorial, Judges have been placed on a very high pedestal in every civilized society. Such high status is accompanied by corresponding responsibility of a judge maintaining an unusually high standard of dignity, poise

and integrity. There can be no two ways about it! Therefore, the decision of the High Court to continue the suspension of the petitioner can not be said to be wholly unjustified till his acquittal by the Delhi High Court.”

At this juncture, it is worthwhile to refer to the relevant terms of agreement (Annexure P-2) entered into between the parties at the time of allotment of distributorship to the petitioners. Clause 27 of the agreement (Annexure P-2) reads thus:-

“27. Notwithstanding anything to the contrary herein contained, the Corporation shall also be at liberty at its entire discretion to terminate this Agreement forthwith upon or at any time after the happening of any of the following events, namely:-

(a) to (c)

XXX

XXX

XXX

(d) If the Distributor or any partner of the Distributor's firm or any whole time office bearer of the co-operative society appointed as Distributor hereinunder shall be involved in any criminal offence relating to moral turpitude.

(e) to (n)

XXX

XXX

XXX”

Even otherwise, much water has already flown as it has been brought to the notice of the Court that consequent upon termination of distributorship, the equipment and other resources owned by the respondent-corporation have been restored back to it. Further, all the consumers have already been shifted to nearby agency(ies). Otherwise also, the conviction of the majority partner goes to the root of the matter.

Therefore, at this belated stage, the Court is also not inclined to give liberty to the parties to approach the Arbitrator.

Dismissed.

20.08.2018
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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No