

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

**RSA No.1490 of 2018 (O&M)
Date of decision : March 20, 2018**

Highway Services, G.T. Road

..... Appellants

Versus

Bharat Petroleum Corporation Ltd.

..... Respondent

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Ashok Aggarwal, Senior Advocate with
Mr. Pankaj Jain, Advocate for the appellant.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

KULDIP SINGH J.

Impugned in the present regular second appeal is the judgment dated 08.02.2018 passed by learned Addl. District Judge, Patiala, affirming the judgment and decree dated 26.10.2015 passed by learned Civil Judge (Jr. Divn.), Rajpura, vide which the suit filed by the plaintiff-appellants was dismissed.

The short facts, which are required to be noticed for the purpose of disposal of the present regular second appeal are that the plaintiff filed a suit for permanent and mandatory injunction for restraining the defendant-corporation from contemplating any action of termination of adhoc dealership including termination/cancellation/suspension of sales and supplies of petroleum products to the Retail Outlet Petrol Pump of plaintiff situated at G.T. Road, Village Bapror, Tehsil Rajpura, District Patiala till

the finalization of award of regular dealership in the name of plaintiff firm or its nominee and further restraining the defendants from continuing or starting any process or appointing regular dealership to some other person/COCO (Company Owner, Company Operated) operator on the Retail Outlet/Petrol Pump, situated at G.T. Road, Village Bapror. Mandatory injunction was also sought to regularize the dealership of the Retail Outlet/Petrol Pump, situated at G.T. Road, Village Bapror, Tehsil Rajpura, District Patiala in the name of the plaintiff firm or its nominee.

The plaintiff claimed that the plaintiff-firm is running another Retail Outlet/Petrol pump at G.T. Road, Shambhu, Tehsil Rajpura. Charanjit Singh, one of the partners of the plaintiff-firm owned land measuring 5 bighas, 18 biswas at G.T. Road in between Shambhu and Ambala situated between the Shambhu and Rajpura. In the year 1994, the land was taken on lease by the Bharat Petroleum Corporation Ltd. for installing Bulk Storage Depot for storing and distribution of petroleum products to the various Retail Outlets/petrol Pumps of the nearby areas. The Bulk Storage Depot was operated by the Bharat Petroleum Corporation Ltd. from 15.02.1997 to 12.03.2001. The Retail Outlet owned by the plaintiff firm remained lying vacant from 13.03.2001 to 25.08.2003. In the end of the year 2002, Charanjit Singh, partner of the plaintiff-firm gave the proposal to Bharat Petroleum Corporation Ltd. to install Retail Outlet/Petrol Pump on the unused land of Bapror, in order to counter the installation of Oil Petrol Pump by Reliance. It was agreed to make arrangement of adhoc dealership, which will be regularized in due course. The appellant obtained necessary permission from different authorities. The adhoc dealership was allowed to

the appellant-firm with the understanding that it shall be duly regularized when the proper policy comes into force. The said adhoc dealership started its operation from 26.08.2003. The lease of the land was expiring on 31.12.2003 and was renewed for the period of 30 years from 01.01.2004 to 31.12.2033, vide lease deed dated 22.07.2004. This was done with the understanding that a regular dealership will be allotted to the plaintiff-firm. The plaintiff-firm spent huge amount and created other facilities such as *dhaba* etc. adjoining the Retail Outlet. They spent more than ₹50,00,000/-. If the Retail Outlet is not allotted to the plaintiff-firm they will suffer a great loss.

The defendant-Bharat Petroleum Corporation Ltd., on other hand, took the stand that as per their policy, a single party cannot be given two dealerships. Since, the plaintiff-firm is having another Retail Outlet, therefore, it cannot be allowed second dealership. The adhoc dealership was granted only for the period till the time of selection of regular dealership. The plaintiff-firm cannot claim dealership as a matter of right. The setting up of the Bulk Storage Depot was admitted but it was denied that there was any understanding to allot regular dealership to the plaintiff-firm. The Retail Outlet was set up by the company by spending huge amount. The plaintiff-firm is not eligible for the regular dealership. The plaintiff-firm constructed the alleged *dhaba* without the permission from the defendant Company. The adhoc dealership was extended from 26.08.2004 to 25.11.2005 ex post facto on 16.11.2004. As per Clause 21 of the adhoc dealership appointment letter, the defendant company is competent to terminate the dealership as and when desired. It is the prerogative of the defendant company to either

appoint regular dealer or to run the dealership as COCO (Company Owned and Company Operated), as per settled guidelines.

From the pleadings, following issues were framed:

- 1. Whether the plaintiffs are entitled to permanent injunction as prayed for? OPP*
- 2. Whether the plaintiffs are entitled for mandatory injunction as prayed for? OPD*
- 3. Whether the suit is not maintainable? OPD*
- 4. Whether the suit is bad for non joinder and mis joinder of necessary parties? OPD*
- 5. Relief.*

The learned Civil Judge (Jr. Divn.), Rajpura, after hearing both the parties came to the conclusion that the plaintiff-firm is not entitled for regular dealership and consequently, dismissed the suit. The findings were upheld in appeal.

I have heard learned counsel of the appellant and have also carefully gone through the case file.

During the course of arguments, learned counsel for the appellant-firm does not deny that he has already got another Retail Outlet/Petrol Pump at G.T. Road, Shambhu, Tehsil Rajpura. It is also not denied that under the policy of Bharat Petroleum Corporation Ltd., one person cannot be allotted two dealerships. In this way, it is clear that the plaintiff-firm cannot be granted another dealership. The language of the relief claimed by the appellant shows that in fact, he wants that his adhoc dealership should be regularized and he should be appointed as regular dealer, which is not permissible under the policy of the Bharat Petroleum Corporation Ltd. He wants that no other dealer should be appointed nor the COCO (Company Owned Company Operated) should be appointed. There

is Clause 21 in the dealership appointment letter that the adhoc dealership can be terminated as and when desired.

The learned counsel for the appellant has stated that he does not press the relief regarding the appointment as a regular dealer. His prayer is that as regular dealer has not been appointed so far, his adhoc dealership should allowed to continue till the regular dealer is appointed.

I am of the view that the said relief cannot be granted to the appellant. The appellant already has another Retail Outlet/ Petrol Pump. He was allotted adhoc dealership on 26.08.2003 and allowed to run the same, which was extended ex post facto on 16.11.2004 for the period from 26.08.2004 to 25.11.2005. Now, we are in the year 2018. Because of the interim orders, the adhoc dealership is continuing. In fact, the appellant wants adhoc dealership for indefinite period, since the appellant cannot be allotted second regular dealership as it is prohibited under the policy of the Company. The relief of injunction is discretionary relief. The balance of convenience is in favour of the defendant-Company. The plaintiff-firm cannot be allowed to misuse the process of Court to continue with the adhoc dealership for whole of the life. It is discretion of the defendant-company whether to extend the adhoc dealership or not. Otherwise also, the appointment of adhoc dealership is a temporary arrangement and it cannot be used as a back door entry to get the second dealership for indefinite period in violation of the policy of Bharat Petroleum Corporation Ltd. There are concurrent findings recorded by two Courts below. The cogent and convincing reasoning has been given by both the Courts below to decline the relief. This Court, after going through the judgments of two Courts

below and the documents on file does not find any illegality, infirmity or perversity in the same.

Hence, the present regular second appeal is dismissed in limine.

Since, the main appeal is dismissed, therefore, the pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

March 20, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No