

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.2046 OF 2019

M/s. Om Sai Petroleum
through its Proprietor
Mr.Ankitkumar Jaykishan Agrawal
and another

Petitioners

Versus

Bharat Petroleum Corporation Ltd.
And another

Respondents

Mr.V.D.Hon, Senior Counsel i/by Mr.D.D.Bagul, advocate for the petitioners.

Mr.A.P.Bhandari, advocate for Respondents No.1 & 2.

Mr.B.R.Waramaa, advocate for intervenor.

**CORAM : PRASANNA B. VARALE AND
NITIN W. SAMBRE, JJ.**

DATE : 10th April, 2019.

P.C. :

Petitioner no.2 Ankitkumar Agrawal claims to be the proprietor of petitioner no.1-firm, who was interviewed by the respondents on October 13, 2011 for establishment of petroleum retail outlet. Respondents No.1 and 2 are the public sector Oil Corporation who have issued letter of intent in favour of petitioner no.2 on March 15, 2012. Petitioners claim that pursuant to the contents of letter of intend, land admeasuring 70 x 70 meters at village Raingan, village Kothala Shivar, Tq.Navapur, District Nandurbar was used in favour of the Corporation for establishment of retail outlet.

2 According to the petitioners, in family partition, said land has gone to the share of his uncle Shailesh and there exists serious dispute between uncle Shailesh and petitioner no.2. In the aforesaid background, after dispensing pump and selling license agreement was executed on August 30, 2012 and based on the 18th July, 2012 lease agreement executed for the aforesaid land in favour of petitioner no.2 by uncle Shailesh, petitioner started operation of the retail outlet pump.

3 As the dispute arose between uncle Shailesh and petitioner no.2, Shailesh lodged complaints dated 3rd October, 16th October and 25th October 2012 against the petitioners with the Oil Corporation pointing out that petitioner no.2 has executed a partnership deed in favour of said Shailesh on 1st July, 2015, which is a notarised agreement. The Respondent- Oil Corporation, having noticed the said act of petitioner contrary to the terms of the agreement entered into between the petitioners and Respondents, issued two show cause notices dated 08.12.2017 and 11.04.2018. After reply of the petitioner was received, Respondent-Corporation granted personal hearing to the petitioner no.2 on June 18, 2018 and by impugned order dated February 04, 2019, terminated the dispensing pump and selling license agreement. As such, this petition.

4 Shri Hon, learned Senior Counsel appearing for the petitioners, would urge that the alleged execution of the partnership deed between petitioner no.2 and uncle Shailesh was specifically denied by the petitioner no.2 as he has neither signed nor executed such partnership deed. According to Shri Hon,

without admitting the aforesaid, dispute, if any, exists between petitioner no.2 and his uncle Shailesh, can be resolved *inter se* between petitioner no.2 and said uncle in the Civil Court and same will have hardly any impact or bearing over the business relations between petitioners and respondents. Shri Hon then would urge that Respondent-Corporation has neither considered the reply filed by petitioners nor the additional explanation tendered to the questionnaire. He would submit that perusal of the alleged partnership agreement dated 01.07.2015 would reveal that the alleged document is itself under cloud as the petitioner has not executed the same, which issue has not gone into. He would then urge that the *mala fides* on the part of the Respondent is apparent as even before termination, the location in question was advertised. As such, he sought indulgence of this Court under its extraordinary jurisdiction.

5 Shri Bhandari, learned Counsel for the Respondent-Corporation supports the order impugned and submits that the order of termination of agreement is based on the contents in the show cause notice, consideration of reply and also the statement of notary. According to him, the petition involves disputed questions of fact and as such, the petitioner, if entitled for any damages, be relegated to the Civil Court. He, as such, sought dismissal of the petition.

6 Considered rival submissions.

7 The issuance of show cause notices dated 08.12.2017 and 11.04.2018 is not in dispute. What is disputed by the

petitioner is very execution of the partnership deed dated 01.07.2015. The Respondent-Oil Corporation has granted personal hearing to the petitioner and has passed the impugned order dated February 04, 2019. It is required to be noted that the order impugned, in categorical terms, narrates the submissions of the petitioner and considered same in the backdrop of terms of the dealership agreement. Clause 4, Clause 10, Clause 13 and Clause 20 are relied upon for the purpose of passing the impugned order. The Respondent-Corporation then noticed that there exists *prima facie* material to infer execution of partnership deed dated 01.07.2015 between petitioner no.2 and his uncle Shailesh. The Respondent-Corporation noticed that petitioner no.2 has not disputed his signature over the partnership deed and the reply given by the notary Mr.Ajit Sagar in categorical terms admits presence of the petitioner at the time of execution of the document.

8 That being so, Respondent-Oil Corporation has rightly proceeded to pass the impugned order based on the very material on record.

9 Perusal of the order impugned *prima facie* demonstrates that there is sufficient evidence on record to form a *prima facie* opinion as regards violation of the terms of the agreement dated 30.10.2012 and as a consequence, termination order was issued. The impugned order contains sufficient reasons which reflect application of mind by the Respondent-Corporation.

10 Whether the document in question i.e. partnership deed dated 01.07.2015 was executed by the petitioner or not is a

disputed question, which, he may get decided before the competent Civil Court. However, that by itself, cannot lead the impugned order to be a nugatory or illegal.

11 Keeping an option open to the petition to file a civil suit in the matter in question, this Court, in its extraordinary jurisdiction, does not see any palpable illegality or material irregularity which warrants interference in the impugned order.

12 Keeping a liberty open to the petitioners to file civil suit, we are of the view that the petition is liable to be dismissed and is dismissed accordingly.

13 C.A. No.3407 of 2019 for intervention stands disposed of.

NITIN W. SAMBRE
JUDGE

PRASANNA B. VARALE
JUDGE

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