

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

922 WRIT PETITION NO.6298 OF 2019

KARACHIWALA FULE STATION THROUGH ITS PARTNER PARBHU
RIJUMAL KARACHIWALA ..PETITIONER

VERSUS

RELIANCE INDUSTRIES LTD THROUGH MANAGING DIRECTOR
AND ANR ..RESPONDENTS

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Mr. V. J. Dixit, Senior Advocate with Sushant V.
Dixit, Advocate for the Petitioner.
Mr. Ajit B. Kadethankar, Advocate for Respondent
Nos.1 and 2.

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**CORAM : S. V. GANGAPURWALA &
MANGESH S. PATIL, JJ.
DATED : 13th JUNE, 2019.**

PER COURT:-

1. The petitioner was allotted dealership of respondent no.1's Petroleum Retail outlet pursuant an agreement dated 07.02.2006. Under letter dated 8.3.2019 the dealership agreement is terminated by respondent no.1 with immediate effect purportedly referring to Clause 43(B)(i) of the dealership agreement. Under letter dated 9.3.2019 the respondent no.1 demanded from the petitioner dues referring to the dealership agreement. The said action is assailed in the present writ petition.

2. Mr. Kadethankar, learned counsel for respondent no.1 raised a preliminary objection that this Court would not exercise writ jurisdiction

under Article 226 of Constitution of India, as it is a purely contractual matter between the private parties. The learned counsel relies upon the judgment of the Apex Court in a case of **Pimpri Chinchwad Municipal Corporation and Ors. Vs. M/s. Gayatri Construction Company and Anr.** delivered on 06.08.2008 in **Civil Appeal No.4912/2008.**

3. Mr. Dixit, learned senior counsel for the petitioner submits that the writ jurisdiction can be exercised against the private individual also. According to the learned senior counsel, the remedy as provided under dealership agreement of referring the matter to arbitration is also not an efficacious remedy. The said clause is not in consonance with the provisions of the Arbitration and Conciliation Act, 1996. The petitioner under Clause 59 of the agreement is not entitled to raise objection to the arbitrator appointed by respondent no.1. According to the learned senior counsel the fundamental right of the petitioner to carry on business is violated. Clause 59 referring the dispute to the arbitrator is also void in view of the Section 23 and 24 of the Contract Act, 1972.

4. The contractual relationship between the parties came into existence pursuant to the dealership agreement amongst the parties dated 07.02.2006. The respondents on the ground that the petitioner has committed breach of dealership

agreement and inspite of calling upon the petitioner to rectify the same, the petitioner did not rectify the breach, terminated the dealership agreement. This Court in its writ jurisdiction would not embark upon the investigation of the disputed question of facts. Moreover, the matter pertains to the contractual relations between the parties. If at all the petitioner feels that by cancelling dealership agreement unilaterally, the petitioner's rights are affected, the petitioner has a remedy to vindicate its right before the appropriate forum.

5. It is not a case of the enforcement of the statutory right or duty but is a mere contractual dispute. If the term of the contract is violated, the remedy is not writ petition under Article 226 of Constitution of India. It has been observed by the Apex Court in a case of **Kerala State Electricity Board and Anr. Vs. Kurien E. Kalathil and Ors.** reported in 2000 (6) SCC 293 that the contract would not become statutory simply because it is for construction of public utility and it has been awarded by a statutory body.

6. In the present matter the petitioner does not assail the clause of arbitration, as such we are not required to look into the efficacy of the clause of arbitration.

7. The contract is awarded by public limited company in favour of the petitioner. The reciprocal rights and obligation as claimed are pursuant to the contract between the parties. The petitioner will have to enforce the same before the forum available.

8. In light of the above, we are not inclined to entertain the petition in writ jurisdiction.

9. Writ Petition is disposed of with liberty to the petitioner to avail the remedy as is permissible under law.

(MANGESH S. PATIL)
JUDGE

(S. V. GANGAPURWALA)
JUDGE