In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 27969 of 2019 (O&M)

Date of Decision: 10.07.2020

Naresh Kumar

... Petitioner(s)

Versus

Indian Oil Corporation and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice Anil Kshetarpal

Present: Mr. Kanwaljit Singh, Senior Advocate
with Mr. Ajaivir Singh, Advocate
for the petitioner(s).

Mr. Ashish Kapoor, Advocate
for respondents No.1 to 3.

<u>Anil Kshetarpal, J.</u>

Learned counsel for the parties have consented to address final arguments through video conferencing on account of restricted functioning of the Courts due to outbreak of COVID-19.

In the considered view of this Court, following three issues require adjudication:

1. Whether refusal to accept the deed of dissolution of a partnership at Will of an agent by the principal (nationalized oil company) result in revival of the dissolved partnership firm? Or

   If the principal refuses to accept/reject the deed of a partnership firm (an agent), whether the partnership firm would stand revived or can it be said to be continued particularly when a new partnership firm in place of an old firm has been constituted and started its working?

2. Whether a nationalized oil company is justified in cancelling the LPG distributorship on the ground that its agent gave wrong information while submitting an application for allotment, particularly when it is established that neither the information given was wrong nor there is any intention to give wrong information?

3. Whether it is necessary to implead a new letter of intent holder (agent/distributor) of the LPG Distributorship as party-respondent in the writ petition even if governed by a rule of *lis pendens*?

FACTS

In the year 1970, Bharat Petroleum Corporation Limited (hereinafter referred to as "BPCL") opened a retail outlet on a piece of land owned by Sh. Sat Parkash and Smt. Neelam Mittal. The aforesaid retail outlet of petroleum products was permitted to be operated by a partnership firm M/s Mittal & Company with Sh. Sat Parkash (25%), Naresh Kumar (writ petitioner) (25%) and late Sh. Jagdish Rai (50%), both sons of Sat Parkash, as partners. Sh.Jagdish Rai died on 07.02.1999. Thereafter, Smt. Neelam Mittal, widow of Sh.Jagdish Rai, was inducted in place of her late husband. The partnership was at Will. On 23.09.2003, BPCL was informed of reconstitution of the partnership firm as the writ petitioner Naresh Kumar and his father Sh. Sat Parkash decided to relinquish their share in the partnership business. On 26.09.2003, vide document (Annexure P17), the Territory Manager (Retail), Bhatinda informed the General Manager

(North), BPCL about reconstitution of the firm with a recommendation that the resignation letters of both the partners be accepted and Smt. Neelam Mittal be allowed to run the retail outlet on temporary basis till completion of the reconstitution formalities. Pursuant thereto, on 02.10.2003 a deed of dissolution was signed by the partners noting that the firm stood dissolved w.e.f. 30.09.2003. Smt. Neelam Mittal on the same day i.e. 02.10.2003 along with Ramesh Kumar Bansal signed a new partnership deed agreeing to continue with the business with same name of the firm M/s Mittal & Company w.e.f. 01.10.2003. Consequently, vide communication dated 03.10.2003, a copy of the dissolution deed dated 02.10.2003 along with the required papers for reconstitution of the firm were submitted to the Territory Manager, BPCL. Further, vide communication dated 20.10.2003, a copy of dissolution deed was also forwarded to the Income-Tax Officer, Moga. A new bank account with HDFC Bank, Gill Park, G.T. Road, Moga, Punjab was opened, depicting with Smt. Neelam Mittal and Ramesh Kumar Bansal, as partners of M/s Mittal & Company. The writ petitioner has also produced the copies of income-tax returns for the assessment years 2004-05, 2005-06 and 2006-07 to support the fact that he did not continue as a partner in the firm after 30.09.2003.

The writ petitioner, pursuant to an advertisement issued in the year 2006 by Indian Oil Corporation Limited (hereinafter referred to as "IOCL"), applied for distributorship of Indane gas (LPG). In the aforesaid application dated 16.10.2006, the writ petitioner answered to question No.2 in negative. The question and its answer are extracted as under:

> *"Does any of the member (including yourself) of your "family unit" is dealer/distributor or LOI holder of any MS-HSD/SKO-LDO dealership or LPG distributorship of any oil company? "NO"."*

The writ petitioner was appointed as an indane distributor under open category at Mamdot (LPG Rural Market) in the year 2014. The writ petitioner, thereafter, signed a memorandum of agreement with IOCL on 28.06.2014 and started working after creating infrastructure.

Two complaints were submitted to IOCL, one by the brother of the writ petitioner and second by someone else, alleging that the writ petitioner had concealed the material facts as he continued as partner in the firm M/s Mittal & Company on the date of submission of the application and therefore, was not entitled to allotment. At this stage, it may be significant to note the dissolution of the firm M/s Mittal & Company was not accepted by the BPCL forcing the writ petitioner to once again submit a resignation on 15.11.2009 which was approved by BPCL on 21.10.2010.

A show cause notice was issued to the writ petitioner on 03.04.2017. The writ petitioner, in response thereto, requested for two weeks' time for filing detailed report after getting copies of the documents. It was further prayed that a copy of the report of investigation conducted by IOCL and being relied against him be also supplied. However, the IOCL refused to accept both the requests. The application for extension of time was again submitted. However, the IOCL again rejected the same. The writ petitioner filed a Civil Writ Petition No. 13643 of 2017 which came to be allowed on 09.06.2017, directing the respondent-IOCL to supply copy of the material which is sought to be used by the writ petitioner and thereafter, take a final decision. In the meantime, the writ petitioner was permitted to continue with the LPG distributorship.

The writ petitioner submitted a detailed reply to the show cause notice along with various documents. It may be pertinent to note that the writ petitioner had also filed a civil suit against his brothers in which BPCL was also impleaded as a defendant. The BPCL filed a written statement in the aforesaid civil suit taking a stand that Naresh Kumar-the writ petitioner had offered his resignation and requested for reconstitution of the firm vide letter dated 23.09.2003. However, the recommendation for grant of temporary dealership was not permitted by the higher authorities. It was further stated that the resignation, submitted by the writ petitioner, was also rejected. The writ petitioner, thereafter, once again resigned on 15.11.2009 which was accepted w.e.f. 21.10.2010. In the appeal against the judgment of the trial Court, the contesting parties entered into a compromise on 10.04.2019. The brothers of the writ petitioner also filed an affidavit that the writ petitioner-Naresh Kumar had no concern with M/s Mittal & Company after 02.10.2003.

However, the explanation submitted by the writ petitioner did not find favour with the IOCL. Consequently, vide communication dated 03.08.2017, the distributorship of M/s Mamdot Indane Gas Service, Mamdot, District Ferozepur, a sole proprietorship firm of the writ petitioner, was terminated. The writ petitioner once again filed Civil Writ Petition No. 21852 of 2017 before this Court, which was again allowed vide order dated 11.12.2018. The operative part of the order reads as under:

"This Court would have no hesitation in observing that the impugned order dated 3.8.2017 (Annexure P-23) terminating the L.P.G Distributorship held by the petitioner is without application of mind. The information supplied by B.P.C.L vide communication dated 21.12.2016 (Annexure R-1/1) cannot be termed as irrelevant. Be that as it may, the respondent-Corporation/competent authority was obligated to weigh such information as contained in communication dated 21.12.2016 supplied by B.P.C.L against the stand/information taken by the petitioner in the reply dated 24.6.2017 (Annexure P-18) to the show cause notice. It was only thereafter that an opinion could have been formed as to whether the petitioner had actually resigned and left the partnership concern namely M/s Mittal & Company prior to 18.9.2006 when the L.P.G Distributorship had been advertised by the respondent-Corporation. The respondent authorities were also obligated to consider the effect of the reconstitution proposal that had been submitted by M/s Mittal & Company vide letter dated 15.11.2009 pursuant to resignation of the present petitioner and another partner. If the partnership firm i.e. M/s Mittal & Company had actually been dissolved on 2.10.2003 as is claimed by the petitioner and whereby the petitioner left the partnership and the reconstituted firm M/s Mittal & Company submits a reconstitution proposal belatedly, the same prima facie could not have worked to the prejudice of the petitioner.

Unfortunately these are aspects which have not been dealt with by the competent authority under the respondent-Corporation prior to passing of the impugned order dated 3.8.2017 (Annexure P-23).

In view of the above, the impugned order dated 3.8.2017 (Annexure P-23) is set aside. Matter is remanded back to the competent authority under the respondent-Corporation for reconsideration and for passing an order afresh. Such exercise of reconsideration be completed within a period of four months from the date of receipt of a certified copy of this order. A personal hearing to the petitioner prior to passing of the final order would be appreciated."

The writ petitioner, once again, submitted a detailed representation dated 24.04.2019. After granting an opportunity of personal hearing, the IOCL has rejected the representation on 24.04.2019 and order terminating the distributorship dated 03.08.2017 has been maintained.

The writ petitioner has filed the present writ petition seeking a writ of certiorari to quash order dated 29.05.2019 (Annexure P26). After notice of motion, reply on behalf of respondents No.1 to 3 has been filed. It has been stated in the reply that since the resignation submitted by the writ petitioner was not approved by BPCL in the year 2003, therefore, the writ petitioner continued to be a partner in the firm M/s Mittal & Company till 21.10.2010 and hence, false information was submitted by the writ petitioner while submitting an application dated 18.09.2006 for allotment of the LPG distributorship.

This Court has heard learned counsel for the parties at length and with their able assistance, gone through the pleadings and documents filed in support thereof.

Learned senior counsel appearing for the writ petitioner has contended that the order passed by the IOCL dated 29.05.2019 is illegal and arbitrary. While elaborating, he submitted that there was no intentional concealment of facts by the writ petitioner while submitting an application for allotment of LPG Distributorship on 18.09.2006 as the writ petitioner had already resigned in September, 2003 from M/s Mittal & Company. He drew attention of the Court to various documents, copies whereof have been annexed in the writ petition, to contend that after 30.09.2003, the writ petitioner did not continue as a partner in the firm M/s Mittal & Company and therefore, the order is not sustainable. He further submitted that the petitioner has already worked as LPG Distributor for a period of five years without any complaint in its working before it was terminated. The writ petitioner was not a partner even as per the case of the IOCL, on date when he was appointed as distributor of indane gas in the year 2014.

On the other hand, learned counsel appearing for respondent No. 1 to 3 has pointed out that the resignation of the writ petitioner to resign submitted in the year 2003, was never accepted and rather rejected by the BPCL. He, hence, submitted that on the date of application i.e. 18.09.2006, the writ petitioner furnished a false information and therefore, in terms of broucher and advertisement, the distributorship in favour of the writ petitioner has rightly been cancelled.

It would be important to note that the only allegation against the writ petitioner is with respect to the alleged wrong information provided by him while filing an application for being appointed as LPG Distributor on

18.09.2006 along with supporting affidavit.

<u>Issue No. 3</u>

<u>Whether it is necessary to implead a new letter of intent holder (agent/distributor) of the LPG Distributorship as party-respondent in the writ petition even if governed by a rule of *lis pendens*?</u>

In reply to the application for grant of interim order, the IOCL has brought to the notice of the Court that the LPG Distributorship in question has been allotted to Ms. Puneet Kaur Warah vide letter of intent dated 16.01.2020 and therefore, she is a necessary party. It will be significant to note here that the present writ petition was filed on 25.09.2019. It was listed before the Court on 27.09.2019 when a copy of its paper-book was handed over to the learned counsel representing the IOCL with direction to list the writ petition on 21.10.2019. Thereafter, the writ petition was taken up on 22.10.2019, when formal notice of motion was issued and the learned counsels representing respondent No.1 to 3 and respondent No. 4 & 5 accepted notice.

Ms. Puneet Kaur Warah has been selected on the basis of an advertisement (Annexure P28). A footnote of the advertisement reads as under:-

> *"Mamdot - The distribution of the award is subject to the outcome of the pending Court case. CWP-21852/2017."*

Civil Writ Petition No. 21852 of 2017 was allowed on 11.12.2018. As noted above, the present writ petition was filed on 24.09.2019. Thus, not only the alleged letter of intent has been issued in favour of Ms. Puneet Kaur Warah during the pendency of the present writ petition and therefore, it is governed by the Rule of *lis pendens*, but subsequent letter of intent holder is in the knowledge of the fact that the claim of the writ petitioner is pending in Court. Keeping in view the aforesaid facts, she (the subsequent letter of intent holder) cannot be said to be a necessary party to these proceedings.

The doctrine of *lis pendens* has its genesis from Section 52 of the Transfer of Property Act, 1882 (hereinafter referred to as "the 1882 Act"). On careful reading of Section 52, it is apparent that the statute uses two alternate words; one is "suit", whereas the other is "proceeding". The question is whether a writ petition under Article 226 of the Constitution of India would be covered by the word "proceedings" as used in Section 52 of the 1882 Act or not. No doubt, the proceedings under Article 226 of the Constitution of India are extraordinary proceedings, however, in these proceedings rights of the parties are determined even with regard to moveable and immovable property. This Court does not find any reason to hold that the writ proceedings would not be covered by the word "proceedings" used in Section 52 of the 1882 Act. A proceeding under Articles 226 & 227 of the Constitution of India, apart from being a civil or criminal or some other proceeding depending upon the nature of the right sought to be enforced, is also proceeding on the original side. Still further, if it is held that Section 52 of the 1882 Act does not contemplate the writ proceedings or does not take into its fold the writ proceedings, it would lead to disastrous consequences. It may so happen that even when the writ petitioner succeeds in the writ petition, the alienation, if any, made during the pendency of the writ petition shall have to remain unaffected, rendering the order ineffective or in some cases even infructuous. The parties would stand deprived of the fruits of the litigation. In these circumstances, logical conclusion, in the considered opinion of this Court, is to hold that the doctrine of *lis pendens* also governs the writ proceedings. A reference in this regard can be made to a Division Bench judgement of the Karnataka High Court in ***Goudappa Appaya Patil v. Shivari Bhimappa Pattar and Another AIR 1992 Karnataka 71***.

The rule of *lis pendens* provides that the rights of the parties stand crystallized on the day the proceedings are filed. The subsequent developments become subject to the decision of the writ petition. Hence, the letter of intent so issued during the pendency of the writ petition is subservient to its decision. In any case, she would be at liberty to move an appropriate application.

Therefore, Issue No.3 is answered against the respondents and in favour of the writ petitioner.

Issue No. 1

Whether refusal to accept the deed of dissolution of a partnership at Will of an agent by the principal (nationalized oil company) result in revival of the dissolved partnership firm? OR

If the principal refuses to accept/reject the deed of a partnership firm (an agent), whether the partnership firm would stand revived or can it be said to be continued particularly when a new partnership firm in place of an old firm has been constituted and started its working?

Before adjudicating the issue involved, it would be appropriate to examine certain statutory provisions dealing with the relationship of principal and agent as also dissolution of partnership at will.

Chapter X of the Indian Contract Act, 1872 (hereinafter referred to as “the 1872 Act”) deals with agency. The words “the agent and the principal" have been defined in Section 182 of the 1872 Act. Sections 201 makes a provision for the termination of agency, which is extracted as under:-

> *"**201. Termination of agency**.—An agency is terminated by the principal revoking his authority; or by the agent renouncing the business of the agency; or by the business of the agency being completed; or 43 by either the principal or agent dying or becoming of unsound mind; or by the principal being adjudicated an insolvent under the provisions of any Act for the time being in force for the relief of insolvent debtors.*

The dissolution of partnership at will is governed by Section 43 of the Indian Partnership Act, 1932 (hereinafter referred to as "the 1932 Act"), which reads as under:-

> ***"Section 43 DISSOLUTION BY NOTICE OF PARTNERSHIP AT WILL.***
>
> *(1) Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all the other partners of his intention to dissolve the firm.*
>
> *(2) The firm is dissolved as from the date mentioned in the notice as the date of dissolution or, if no date is so mentioned, as from the date of the communication of the notice."*

The relationship between the oil supply company and its distributor is of the principal and the agent. Thus, their relationship would be governed by Chapter X of the 1872 Act. On careful examination of the provisions contained in Chapter X of the 1872 Act, it is apparent that the principal has no power to reject the notice served by a partner of the agent walking away from the arrangement of agency. Still further, a partnership at will can be dissolved in accordance with the procedure prescribed in Section 43 of the 1932 Act, which provides that any partner can give notice in writing to all other partners of his intention to dissolve the firm. Such notice itself is sufficient to dissolve a partnership at will.

In the present case, the dissolution deed was executed between the partners on 02.10.2003 effective from 30.09.2003. Thereafter, a new proprietorship firm M/s Mittal & Company was also constituted with execution of a new partnership deed between Smt. Neelam Mittal and Ramesh Kumar Bansal. The new partners opened a new bank account with HDFC Bank. The writ petitioner intimated BPCL in this regard. The Territory Manager (Retail), Bhatinda recommended for acceptance of the resignation and permit Smt. Neelam Mittal to run the retail outlet on temporary dealership till the completion of all the formalities for re-constitution of the firm. Learned counsel for the respondents has failed to draw attention of the Court to the provision enabling the principal to reject the dissolution of the partnership firm merely because such firm is also its "agent". No doubt, the principal has power to revoke the agency (partnership firm) on coming to know of the development. However, it does not have power to refuse to recognise dissolution of the partnership firm at will. Still further, even the subsequent conduct of the new partners as well as the writ petitioner clearly establishes that the writ petitioner did not continue as a partner in the firm M/s Mittal & Company.

Learned counsel for the respondents further failed to draw attention of the Court to a provision of law whereby refusal to accept the deed of dissolution of partnership firm at will by the principal would result in revival of already dissolved partnership. Learned counsel for the respondents further failed to draw attention of the Court to the communication in the year 2003 addressed to the writ petitioner by BPCL intimating that his request for dissolution of the firm has been rejected and his request for acceptance of resignation from the firm has been refused. In fact, the phrase "resignation from a partnership firm" is not appropriate. As per the 1932 Act, a partner of a partnership at will is entitled to give notice for dissolving the firm. There is no provision for the partner to resign from the partnership firm. In the present case, the firm was dissolved as per writing dated 02.10.2003 w.e.f. 30.09.2003. A new partnership firm was also constituted. An intimation in this regard was also sent. Even perusal of subsequent income-tax record also proves that the writ petitioner did not continue as a partner in the firm M/s Mittal & Company.

Keeping in view the aforesaid facts, issue No.1 is also answered in favour of the writ petitioner and it is held that the alleged refusal on the part of BPCL to accept the resignation and dissolution of the firm would not result in revival of the dissolved firm. In fact, BPCL had no power to reject the resignation or to refuse to recognise the dissolution of the firm.

Issue No.2

Whether a nationalized oil company is justified in cancelling the LPG distributorship on the ground that its agent gave wrong information while submitting an application for allotment, particularly when it is established that neither the information given was wrong nor there is any intention to give wrong information?

As noted above, the only allegation against the writ petitioner is that he did not provide correct information while submitting an application dated 16.10.2006. The relevant question and its answer by the writ petitioner have already been extracted in the foregoing part of this judgement. In the facts of the present case, this Court has come to a conclusion that the information filled and supplied in by the writ petitioner in the application form dated 16.10.2006 was neither incorrect nor there was any intention to provide any information. It is undisputed that the writ petitioner did walk from the partnership firm and signed dissolution deed on 02.10.2003. The copies of resignation letter as well as dissolution deed were duly forwarded to BPCL. The respondents have failed to draw attention of the Court to the documents which may prove that the writ petitioner on 16.10.2006 was in knowledge of the fact that his resignation from M/s Mittal & Company submitted in the year 2003 stands rejected or in other words the BPCL has refused to recognise dissolution of the partnership firm. Still further as discussed while answering issue No.2, once the partnership firm has been dissolved in according with Section 43 of the 1932 Act, refusal on the part of the principal to recognise the dissolution of an agent (partnership firm) would not result in revival of the partnership firm. In such circumstances, once a partnership firm stood dissolved by a deed of dissolution in the absence of a judgement or decree of the Court to the effect that such dissolution was in violation of law, the partnership firm cannot be said to have continued.

Para 4.4 of the eligibility norms of the Broucher-Selection of LPG Distributors, June 2006, makes an individual ineligible to apply for a new dealership/distributorship, if any other individual in a family unit already holds a dealership/distributorship. Para 4.5 (d) thereof provides that if any person is allotted the distributorship by giving wrong information or by suppression of information, the shall shall be liable to be cancelled. Para

4.4 and 4.5 (d) are extracted as under:-

> *"Para 4.4 Multiple distributorship norm (Relationship Clause)*
>
> *"Multiple dealer/distributorship norms means that none of the individuals would be entitled to a new dealership/distributorship if any other individual in a "family unit" already holds a dealership/distributorship or LOI for dealership/distributorship of a PSU Oil company i.e. only Retail Outlet/SKO-LDO dealership/distributorship of PSU oil company will be allowed to a "family unit".*
>
> *Para 4.5 Disqualification: The following are not eligible.*
>
> *(d) If any person is allotted the distributorship by giving wrong information or by suppression of information, it will be cancelled."*

It is apparent that before cancelling the distributorship while revoking the agency, a nationalized Oil Company is required to form opinion that the alleged wrong information was intentionally supplied or there was some intentional suppression of important piece of information. In these circumstances, the IOCL was expected to examine the facts of the case in the aforesaid context. It is apparent, on reading of the orders dated 03.08.2017 and 29.05.2019, that the concerned authority while rejecting the representation did not examine the representation/reply submitted by the writ petitioner in the aforesaid context. Entire emphasis of the IOCL is on the fact that since the resignation submitted by the writ petitioner stood rejected by the BPCL, therefore, the information supplied by the writ petitioner was incorrect. The authority has failed to examine whether the alleged false information was supplied intentionally or inadvertently or unknowingly. It will be noted here that it is not disputed before this Court by learned counsel for the respondents that the expression "family unit" means immediate family members of an individual including his wife and children and does not extent to larger family.

In view of the aforesaid discussion, it is held that the writ petitioner is neither guilty of suppressing any information nor supplying any wrong information while submitting an application on 16.10.2006.

Still further, as noted above, the writ petitioner was allotted distributorship on 27/28.06.2014 and the writ petitioner did once again resigned in the year 2009 which was accepted in the year 2010. Thus, on the date allotment was made in the year 2014, the writ petitioner was, in any case, eligible.

Keeping in view the aforesaid discussion, Issue No.2 is also answered in favour of the writ petitioner.

Consequently, the writ petition is allowed and orders dated 03.08.2017 and 29.05.2019 are set aside. The LPG Distributorship of M/s Mamdot Indane Gas Service shall stand restored in favour of the writ petitioner.

The miscellaneous application(s) pending, if any, shall also stand disposed of in terms of the main order.

(Anil Kshetarpal)
Judge

July 10, 2020
"DK"

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