

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.3717 OF 2021

M/s. Mahalaxmi HP Gas Agency	]	
A registered Partnership Firm	]	
Through its Partners	]	
1. Savita Suryakant Yadav and another.	]	Petitioners
Vs.		
Hindustan Petroleum Corporation	]	
Limited and another.	]	Respondents

.....

Mr. S.S. Patwardhan i/b Mr. Bhooshan R. Mandlik, for Petitioner.

Mr. Pralhad Paranjape a/w Druti Datar, for Respondents No.1 and 2.

.....

CORAM : K.K. TATED &
PRITHVIRAJ K. CHAVAN, JJ.

DATE : 5th AUGUST, 2021.

P.C.

1. By this Writ Petition, the petitioner has invoked extraordinary jurisdiction of this Court by challenging the impugned order dated 9th June, 2021 passed by the respondents by which dealership agreement dated 25th February, 2020 came to be terminated. The facts in brief are as follows.

2. The petitioner is a firm registered under the Indian Partnership Act, 1932 of which petitioners No.1 and 2 are the partners. The petitioners came to be appointed as a dealer for distribution of liquid petroleum gas (for short 'L.P.G'.) at Sangola, District Solapur. A letter of appointment to that effect was issued on 7th October, 2014. A registered partnership deed came to be executed on 18th October, 2014 in the name of M/s. Mahalaxmi Gas Agency. A duly executed dealership agreement dated 25th February, 2015 came into existence for sale of LPG gas cylinders at Sanglo, District Solapur on the terms and conditions mentioned in the said agreement. The dealership agreement was initially valid only for five years. Thereafter, it came to be extended for further five years. The petitioners contend that due to their stellar performance, the respondents have extended the agreement for further five years. The respondents have been rewarded for their excellent performance several times. The respondents have therefore continued the dealership with the petitioners for a further period of five years executing another dealership agreement dated 25th February, 2020.

3. It is the contention of the petitioners that one Mr. Sunil Pawar was their employee from the midst of the year 2015. He earned confidence of the petitioners and was thus given several responsibilities in the business of the petitioner/firm. The petitioners increasingly depended upon the said Mr. Pawar so much so that they contemplated taking the said Mr. Pawar on board as a partner of the petitioner firm. However, the said Mr. Pawar was formally not admitted to the partnership of the

petitioner firm because the respondents have limited their powers to reconstitute the petitioner firm, without the express written consent of the respondent-Corporation. In deference to the said terms in the agreement, the petitioners have not formally admitted the said Mr. Pawar as a partner of the firm, and for that matter, for the good of the firm also. However, the petitioners thereafter discovered that the said Mr. Pawar was completely unreliable and had misutilized the funds of the firm for his personal gain. This resulted into litigation between the petitioners on one hand and the said Mr. Pawar on the other hand. It is contended that there was thus no question of seeking permission of the respondents to include the said Mr. Pawar as a partner of the petitioner firm and to reconstitute the firm by taking him on board.

4. The said Mr. Pawar filed a complaint with the respondents on 3rd February, 2021. The respondents, therefore, conducted hearing by giving due opportunity to the petitioners pursuant to a show cause notice dated 5th March, 2021. The said notice was also duly replied by the petitioners on 19th March, 2021.

5. By an order dated 20th May, 2021, respondent No.2 ordered termination of dealership agreement dated 25th February,, 2020 between the petitioners and the respondents. The said order of termination was challenged by the petitioners by way of a Writ Petition (Stamp) No.10912 of 2021 before this Court. The respondents appeared and filed their affidavit in reply. The Division Bench of this Court (Coram: R.D. Dhanuka and Madhav Jamdar, JJ) heard the parties and passed an order, thereby

remanding the matter to respondent No.2 for fresh hearing and passing a fresh order without getting influenced by the order dated 20th May, 2021 which was set aside.

6. The petitioners were heard by respondent No.2. Thereafter, in terms of the directions dated 28th May, 2021 issued by this Court in Writ Petition (Stamp) No.10912 of 2021, the petitioners contend that they had submitted several documents and additional reply before respondent No.2. However, respondent No.2 passed the impugned order dated 9th June, 2021.

7. We heard the learned Counsel for the petitioners as well as the respondents. At the outset, Mr. Patwardhan, learned Counsel for the petitioners vehemently urged that this Court can invoke its writ jurisdiction even though there is an alternate efficacious remedy available to the petitioners, as in the case at hand, there has been violation of principles of natural justice, in the sense, that the petitioners have not been provided with a copy of the complaint made by Mr. Sunil Pawar. In support of his submission, Mr. Patwardhan, placed reliance on a judgment in the case of *Whirpool Corporation Vs. Registrar of Trade Marks, Mumbai and others, (1998) 8 Supreme Court Cases 1*.

8. On the other hand, Mr. Paranjape, learned Counsel for the respondents strongly objected entertaining the petition by filing a preliminary affidavit in reply on behalf of the respondents opposing admission of the writ petition and grant of any ad-interim relief mainly on the premise that arbitration clause is in

existence and the present dispute requires leading of evidence since there are disputed questions of facts which cannot be gone into by a writ Court.

9. Having heard the learned respective Counsel for the parties, we are of the firm view that this petition needs to be dismissed at the threshold and in *limine* for the sole reason that the reliefs sought in this petition can be granted against the respondents in view of arbitration clause in dealership agreement entered into between the parties. Arbitration clause 38 stipulates that all the disputes arise out of and in connection with the dealership agreement are to be referred to arbitration. Clause 38 reads thus;

“Dealership Agreement

Arbitration Clause

Any dispute or difference of any nature whatsoever or regarding any right, liability, act, omission (on account of any of the parties hereto arising out of or in relation to this Agreement other than those in respect of which the decision of any person, is by the Agreement expressed to be final and binding) shall be referred to the sole Arbitration of the Chairman and Managing Director of the Corporation or of some officer/retired officer of the Corporation or retired officer of other Oil PSUs or retired senior Central Govt.

Officer who may be nominated by the Chairman and Managing Director. The dealer will not be entitled to raise any objection to any such Arbitrator on the ground that the Arbitrator is or was an officer and/or share holder of the Corporation or that he has to deal with or dealt with the matters to which the contract relates or that in the course of his duties as an officer of the Corporation, he had expressed views on all or any of the matters in dispute or difference in the event of the Arbitrator to whom the matter is originally referred vacating his office or being unable to act for any reason the Chairman and Managing Director has aforesaid at the time of such vacation of office or inability to act, shall designate another person to act as Arbitrator. In accordance with the terms of the Agreement such person shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is also a term of this contract that no person other than the Chairman and Managing Director or a person nominated by such Chairman

and Managing Director of the Corporation as aforesaid shall act as Arbitrator hereunder. The cost of arbitration shall be shared equally by the parties: The Award of the Arbitrator so appointed shall be the provision of the arbitration and Conciliation Act, 1996 or any statutory modification of or re-enactment thereof and the rules made thereunder and for time being in force shall apply to the arbitration proceedings under this clause.

10. Section 8 of the Arbitration and Conciliation Act, 1996 mandates that any judicial authority before whom an action is brought which is a subject of the arbitration agreement between the parties shall refer the parties to the arbitration. Section 8 of the Arbitration and Conciliation Act reads thus;

“8. Power to refer parties to arbitration where there is an arbitration agreement.” [(1) *A judicial authority, before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party to the arbitration agreement or any person claiming through or under him, so applies not later than the date of submitting his first statement on the substance of the dispute, then,*

notwithstanding any judgment, decree or order of the Supreme Court or any Court, refer the parties to arbitration unless it finds that prima facie no valid arbitration agreement exists.]

(2)The application referred to in sub-section (1) shall not be entertained unless it is accompanied by the original arbitration agreement or a duly certified copy thereof;

[Provided that where the original arbitration agreement or a certified copy thereof is not available with the party applying for reference to arbitration under sub-section (1), and the said agreement or certified copy is retained by the other party to that agreement, then, the party so applying shall file such application along with a copy of the arbitration agreement and a petition praying the Court to call upon the other party to produce the original arbitration agreement or its duly certified copy before that Court]

(3) Notwithstanding that an application has been made under sub-section (1) and that the issue is pending before the judicial authority, an arbitration may be commenced or continued and an arbitral award made”.

11. Mr. Paranjape, learned Counsel for the respondents has, therefore, rightly placed a useful reliance on an Authority of the Hon'ble Supreme Court in the case of ***State of Orissa and others Vs. Gokulnanda Jena, (2003) 6 Supreme Court Cases 465.*** Paragraph 8 of the said judgment can be quoted for advantage which reads thus;

“8. However, we must notice that in view of section 16 read with Sections 12 and 13 of the Act, as interpreted by the Constitution Bench of this Court in Konkan Rly almost all disputes which could be presently contemplated can be raised and agitated before the arbitrator appointed by the Designated Judge under Section 11 (6) of the Act. From the perusal of the said provisions of the Act, it is clear that there is hardly any area of dispute which cannot be decided by the arbitrator appointed by the Designated Judge. If that be so, since an alternative efficacious remedy is available before the arbitrator, a writ court normally would not entertain a challenge to an order of the Designated Judge made under Section 11 (6) of the Act which includes considering the question of jurisdiction of the arbitrator himself. Therefore, in our view even though a writ petition under

Article 226 of the Constitution is available to an aggrieved party, ground available for challenge in such a petition is limited because of the alternative remedy available under the Act itself”.

12. It is crystal clear that the dispute involved in this petition can very well be decided by an Arbitrator. That being so, since an alternate efficacious remedy is available to the petitioners before the Arbitrator, it would not be proper to entertain challenge to the impugned order passed by the respondents.

13. The ratio laid down by the Hon’ble Supreme Court in the case of ***Whirpool Corporation*** (supra) is distinguishable in light of the fact that though a writ Court has a discretion to entertain or not a writ petition, notwithstanding if an effective and efficacious remedy is available, the writ Court normally restricts itself in entertaining any such petition in exercising its jurisdiction in such petitions. It is well settled that availability of an alternate remedy in itself does not operate as a bar in case where a writ petition is filed for enforcement of any fundamental rights or where there is violation of principles of natural justice or where an order or proceedings are wholly without jurisdiction or *vires* of an Act is challenged. However, in the case at hand, what has been urged by the learned Counsel for the petitioners is that there is violation of principles of natural justice, so as to say, copy of the complaint was not furnished to the petitioners. It is a matter of record that after disposing the first writ petition, the petitioners were re-heard by

the respondents after giving full opportunities and examining the documents, affidavits etc. In our view, there is no violation of principles of natural justice.

14. In view of the foregoing discussion, we make it clear that we have not expressed our views on the merits of the case. All the contentions of the parties are expressly left open to be agitated before the Arbitrator in view of the agreement *inter se*.

15. As such, we find that writ petition is liable to be dismissed for the reasons stated hereinabove. Consequently, the writ petition is dismissed. However, there shall be no order as to costs.

[PRITHVIRAJ K. CHAVAN, J.]

[K. K. TATED, J.]