201 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 12656 of 2020 (O&M)
DATE OF DECISION: 22.04.2021

M/s National Gas Service &Ors.

…Petitioners

versus

Bharat Petroleum Corporation Limited & Ors.

…Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Amit Jhanji, Advocate,
for the petitioners.

Mr. Raman Sharma, Advocate
for the respondents.

(Heard through video conferencing)

ARUN MONGA, J. (ORAL)

1. Quashing herein, *inter alia,* has been sought of an order dated 16.03.2020(Annexure P-18), whereby Liquefied Petroleum Gas (LPG) Distributorship of the petitioner No.1 firm, operational for the last 33 years, was terminated. A consequential relief has also been sought that application dated 19.07.2019 of the nominee/ wife(petitioner No.3) of proprietor (petitioner No.2) of the distributor firm, be re-considered for substituting her as the proprietor in the Distributorship, in place of her husband.

2. The genesis of *lis*in hand is involvement of petitioner No.2 as a prime accused in FIR No. 124 dated 24.01.2017, registered under Sections 148, 149, 302, 427, 201, 120-B IPC, pursuant whereto in the criminal trial he was later held guilty by the Sessions Court and convicted, *inter alia,* under Section 302 IPC and awarded life imprisonment vide judgment dated

19.10.2019. Appeal bearing No. CRA-D-954 of 2019 against his conviction is stated to be pending before this Court and the same has not come up for hearing due to heavy pendency of cases before this Court.

3. In the interregnum of registration of FIR and conclusion of the criminal trial of petitioner no.2, he nominated his wife as his nominee for being substituted as Proprietor of the LPG distributorship. Petitioner No.2 and 3 then jointly filed an application dated 19.07.2019 seeking reconstitution of the distributorship.

4. Without taking any decision on the pending application of the petitioner no.3/nominee-wife, respondent No.1 Bharat Petroleum Corporation Limited (Oil Management Company-OMC) invoked Clause 28(d) of the distributorshipagreement and passed an order dated 19.10.2019, whereby distribution ship of LPG was suspended. It would be apposite to reproduce the relevant of Clause 28 of the agreement, as below:-

> *"28. Notwithstanding anything to the contrary herein contained, the corporation shall also be at liberty at his entire discretion to terminate this agreement forthwith upon or at any time after the happening of any of the following events, namely,*
>
> *Xxxx*
>
> *<u>(d) If the distributor or any partner in the distributor's firm or any whole time of office bearer of the cooperative society appointed as distributor hereunder shall be involved in any criminal offence relating to moral turpitude."</u>*
>
> *(Emphasis supplied)*

5. Subsequently, application dated 19.07.2019 seeking reconstitution of the distributorship by petitioner no.3 was also rejected by the OMC. Instead, the distributorship itself, earlier under suspension, was terminatedvide impugned order dated 16.03.2020. Hence, the writ petition.

6. In return filed by OMC, a preliminary objection, *inter alia,* has been taken with regard to the maintainability of the writ petition on the ground that there is an arbitration clause in the distributorship agreement and once the parties have accepted and signed the clause, the writ petition is not maintainable and arbitration proceedings ought to have been resorted to by the aggrieved party.

7. Before dwelling on the merits of the case, it would, therefore, be appropriate to deal with preliminary objection first.

8. Clause 38 of the agreement specifically provides for referring of the dispute between parties to the sole arbitration of Director (Marketing) of the Corporation or of some officer of the Corporation, who may be nominated.

9. Indisputably, petitioner No.2 and respondent No.1/OMC have signed the arbitration clause. Any grievance/ dispute between them has, therefore, necessarily to be referred to an arbitrator. To that extent, it is held that writ petition against respondent OMCis not maintainable on behalf of petitioner No.2.

10. Accordingly, as regards the challenge to the termination of distributorship vide impugned order dated 1603.2020, to that extent the writ petition is dismissed, with liberty to petitioner No.2 to approach this Court after the decision of his pending criminal appeal, in case he is acquitted and his distributorship is thereafter not restored by the OMC at that stage.

11. Another aspect of the matter, apart from termination of the distributorship, that requires adjudication is the right of the nominee of a proprietor/partner of distributorship to seek reconstitution of the

distributorship, in the event of incapacity of a proprietor/partner to operate/ manage the same. Irrefragably, at this stage there is a cloud on the capacity of distributor/ petitioner No.2 to manage the distributorship owing to his having been convicted by Sessions Court in a murder case and appeal qua the same being simply admitted, the fate of which would be known on its final disposal. What transpires herein, therefore, is that on being incapacitated, distributor/ petitioner No.2 had indeed nominated his wife/ petitioner No.3 to be considered for reconstitution of the distributorship in terms of "Guidelines for Reconstitution of LPG Distributorship, 2018" (Annexure P-4) framed by OMC.

12. Relevant of Clause 3 of the Guidelines, ibid reads as under:-

> *"**3 Reconstitution of Commissioned Distributorship***
> *3.1. Nomination by proprietor/ partners:*
> *3.1.1 Proprietors/ partners of existing distributorship may nominate, in the form to be prescribed, person(s) he/ she desires to transfer his/ her share <u>in the event of his/ her death or incapacitation</u>. Such nomination will, however, be limited to proprietor/ partner(s) own or his/ her spouse's children (including step children); son in law/ daughter in law; parents (including step father/ step mother); Brother/ Sister(including step brother and step sister); grand-parents (both maternal and paternal); grand-children." (emphasis supplied)*

A perusal of the above vis a vis clause 28(c) of the distribution agreement leaves no manner of doubt that the same have been framed considering all kinds of possibilities of incapacitation of proprietor/ partner which include death and/ or being convicted. Incapacity herein would essentially mean, incapacity to manage and operate the distribution ship. OMC itself being fully conscious of the same, in its order of termination, invoked clauses 23(b) read with 28(c) of thedistribution agreement which envisage incapacity to manage the LPG distribution due to conviction in an offence under IPC, involving moral turpitude.

13. Question arises whether Petitioner No.3, being nominee/wife of the incapacitated/convicted proprietor/petitioner No.2,can now approach the OMC for reconstitution of LPG distribution ship in terms of Clause 3 of the policy guidelines, *ibid.*

14. Learned counsel for the respondent-OMC strenuously argues that all the rights of the petitioner No.3 claimed vide her application dated 19.07.2019 also necessarily flow out of the distribution agreement and, therefore, even she cannot seek exemption from the arbitration clause and the matter has to be necessarily referred to the arbitration.

15. I do not find any force in the said aforesaid argument, as other than mere technicality that petitioner no.3 had filed her application dated 19.07.2019 seeking reconstitution of the distributorship prior to the termination of the distributorship, there is nothing to show that she could not have applied for the same after the termination. In other words, *de facto* she had indeed filed her application during the period when the distributorship was under suspension and but same is/was to be considered only after formal *de jure*termination of distributionvide impugned order dated 16.03.2020 (Annexure P-18). What flows from the sequence of events, therefore, is that even after termination of the distributorship petitioner no.3 is well within her right to approach respondent No.1 as a nominee of the distributor/ petitioner No.2 in view of his (petitioner No.2) having become incapacitated pursuant to his conviction, qua which an appeal is still pending.

16. A perusal of the Clause 3 of Guidelines, supra reveals that OMC is cognizant of the situation where proprietor/ partner of a distributorship is rendered incapacitated by virtue of conviction, in that event nominees are entitled to apply for reconstitutionbut such nomination will be limited to proprietor/ partner(s) own or his/ her spouse's children (including step children); son in law/ daughter in law; parents (including step father/ step mother); Brother/ Sister(including step brother and step sister); grand-parents (both maternal and paternal); grand-children.

17. It is also made clear that, post termination, relief to petitioner No.3 qua restoration/re-constitution of distributorship, in any case, cannot be granted by the Arbitrator to be appointed in accordance with arbitration clause. Reference may be had to judgment rendered by Apex Court in **Indian Oil Corporation Ltd. Vs. Amritsar Gas Service &Ors.**[1]. Relevant para No.14 thereof is reproduced hereunder:-

> *"The question now is of the relief which could be granted by the arbitrator on its finding that termination of the distributionship was not validly made under clause 27 of the agreement. No doubt, the notice of termination of distributionship dated March 11, 1983 specified the several acts of the distributor on which the termination was based and there were complaints to that effect made against the distributor which had the effect of prejudicing the reputation of the appellant-Corporation; and such acts would permit exercise of the right of termination of distributionship under clause 27. However, the arbitrator having held that clause 27 was not available to the appellant-Corporation, the question of grant of relief on that finding has to proceed on that basis. In such a situation, the agreement being revokable by either party in accordance with clause 28 by giving 30 days' notice, the only relief which could be granted was the award of compensation for the period of notice, that is, 30 days. The plaintiff-respondent 1 is, therefore entitled to compensation being the loss of earnings for the notice period of 30 days instead of restoration of the distributorship. The award has, therefore, to be modified accordingly. The compensation for 30 days notice*

---

[1] 1991(1) SCC 533

> *period from March 11, 1983 is to be calculated on the basis of earnings during that period disclosed from the records of the Indian Oil Corporation Ltd."*

A perusal of the above would reflect that it is only the computation of damage/ compensation which could be adjudicated by way of arbitration proceedings and power to restore/re-constitute the distributorship is not vested with arbitrator. Even otherwise, petitioner no.3 is not a signatory to any arbitration agreement.

18. On a court query in the passing reference, learned counsel for the OMC informs that the concerned LPG distribution ship, after its termination, has till date not been re advertised and/or allotted to anyone else and all its earlier existing consumers/clients have been temporarily assigned to other LPG distributors in the vicinity.

19. As an upshot of the discussion above, respondent No.1 is directed to reconsider the application of petitioner No.3 afresh, post the termination of the distributorship, and pass speaking orders by giving cogent reasons in case the same does not find favor with the respondent No.1-OMC.The earlier application dated 19.07.2019 was filed jointly by petitioners No.2 and 3, before the termination. As of now, distribution ship has been terminated. It would, therefore, be appropriate to permit petitioner No.3 to file fresh application in substation of her earlier one filed jointly with petitioner no.2, *albeit* now in her capacity as nominee of her husband to seek reconstitution of the distributorship as per guidelines above after the termination. Decision on the application be taken by the competent authority within a period of 60 days of petitioner No.3 approaching fresh complete application along with web print of this order.

20. In the parting, this Court would, however, like to express its appreciation on the noble and the benevolent intent of the concerned authorities while framing the Guidelines of 2018, particularly Clause 3 thereof, which is nothing but an humanitarian gesture to save the entire family to perish from penury and resultant starvation, if one of the members who is distributor/ proprietor commits an offence involving moral turpitude. The person who has committed such an act is personally responsible for the consequences thereof and members of his entire family cannot be penalized and made to suffer a punishment for his offence. The rest of family is entitled to have a right to live which is envisaged under Article 21 of the Constitution of India and stands on a much higher pedestal than the gains and losses envisaged in the commercial agreement of distribution contained at Annexure P-1.

21. Writ petition is accordingly disposed of with aforesaid observations.

22. Pending application(s), if any, are also disposed of.

April 22, 2021 **(ARUN MONGA)**
Jiten **JUDGE**

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No