

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Raja Basu Chowdhury

FMA 4819 of 2015
with
IA No. CAN 1 of 2021

M/s. Hazra Filling Station
versus
The Indian Oil Corporation Ltd. & Ors.

For the Appellant : *Mr. Kishore Dutta, Sr. Adv.,*
Mr. Jayanta Das.

For the IOCL : *Mr. Manwendra Singh Yadav,*
Ms. Satabdi Naskar.

Hearing is concluded on : *17th November, 2022.*

Judgment On : **8th December, 2022.**

Tapabrata Chakraborty, J.

1. A legal tussle has spiraled up to this Court seeking a quietus to the primary issues as to whether the order of termination of the appellant's dealership dated 16th December, 2011 is perverse, whether the said order

issued by the Senior Retail Sales Manager, Haldia Divisional Office, Indian Oil Corporation Limited (in short, IOCL) suffers from a jurisdictional error, whether at the show cause stage the authority arrived at a finding of guilt against the appellant and as to whether non-communication of the result of test conducted in the MIDCO laboratory at Mumbai maligns the termination proceedings.

2. Shorn of unnecessary details, the facts are that the appellant/writ petitioner was appointed as a dealer of petrol (MS)/ High Speed Diesel Oil outlet in the year 2005 by IOCL. The dealership agreement between the writ petitioner and IOCL was executed on 27th March, 2005. On 24th September, 2010, the Anti Adulteration Cell (AAC), a team consisting of two officers of IOCL on a routine checkup, reached the retail outlet for inspection and started delivery check with 5 litre calibrated measure of the retail outlet and from the first nozzle it was allegedly ascertained that there was a shortage of 90 ml of oil in 5 litres. As the experts of Weights and Measures Department did not turn up on the said date, the AAC sealed the dispensing unit and prepared an inspection report. The AAC again visited the outlet on 27th September, 2010 but in the midst thereof, two delivery units were totally damaged by an unknown vehicle in the intervening night between 25th September, 2010 and the 26th September, 2010. A complaint to that effect was immediately lodged before the Officer-in-Charge, Jagacha police station and the same was registered as FIR No.399/2010 dated 26.09.2010 under Sections 279/427 of the Indian Penal Code (in short, IPC). During pendency of the criminal case, a show cause notice for termination was issued on 28th March, 2011 by the

respondent no. 6 to which a reply was submitted by the appellant on 14th April, 2011. Thereafter a notice dated 29th June, 2011 was issued to the appellant by the Senior Manager (Retail Sales) asking the appellant to furnish additional document, evidence, statement, if any in connection with the show cause notice. The appellant submitted a reply to the same on 21st July, 2011. Thereafter by a memo dated 16th December, 2011 issued by the respondent no.6, the appellant's dealership was terminated. Challenging the said order of termination, the appellant preferred the writ petition which was dismissed on 17th August, 2015 by the judgment impugned in the present appeal.

3. Drawing the attention of this Court to the contents of the show cause notice dated 28th March, 2011, Mr. Dutta, learned advocate appearing for the appellant submits that the respondent no.6 at the show cause stage arrived at a conclusive finding that *'the sealed DU had been fiddled with rendering the electronic components of DU capable of being managed, improved and corrected. Thus the whole exercise of keeping the DU sealed for expert's checking was frustrated'*. The said notice demonstrates totally closed mind at the show cause stage. The learned Single Judge had glossed over and has not returned a finding on the said issue and such infirmity on the face of the records warrants interference in appeal. In support of such contention reliance has been placed upon the judgment delivered in the case of *Oryx Fisheries Private Limited -vs- Union of India and Others*, reported in (2010) 13 SCC 427.

4. Mr. Dutta argues that the result of the test conducted in the MIDCO laboratory at Mumbai was never communicated to the appellant though the same was an important piece of evidence and the appellant was deprived of the opportunity to deal with the same. The learned failed to appreciate that appellant was thus severely prejudiced. There is nothing in the agreement which excludes the operation of the principles of natural justice entitling the appellant to avail all documents on the basis of which the authority proceeds to render its finding. The principles of natural justice must be read into the unoccupied interstices of the agreement entered into by the parties unless there is a clear mandate to the contrary. No adjudicating authority can refuse production of a relevant document only because that document will be of no use to the prosecution. In support of such contention reliance has been placed upon the judgments delivered in the cases of *M.S. Naina -vs- Collector of Customs, West Bengal, Calcutta – I*, reported in 1971 SCC OnLine Cal 202, *State of Orissa Vs. Dr. (Miss) Binapani Dei and others*, reported in AIR 1967 SC 1269 and *Vijay Singh Vs. State of Uttar Pradesh and Others*, reported in (2012) SCC 242.

5. According to Mr. Dutta, the learned Judge failed to appreciate that the impugned order of termination was issued without considering the reply given by the appellant to the show cause notice. The authorities were successful in elbowing out the appellant by setting new benchmarks. Such act is perverse and most unbecoming of a statutory authority and lacks *bonafide*. In support of such contention reliance has been placed upon the judgment delivered in the

case of *B.C. Chaturvedi –vs- Union of India and Others*, reported in (1995) 6 SCC 749.

6. Mr. Dutta argues that the learned Judge failed to appreciate that the decision to terminate the appellant's dealership was without jurisdiction. The Senior Divisional Retail Sales Manager had no authority to do so. As per Clause 15 of the dealership agreement the said decision ought to have been taken by the General Manager of IOCL.

7. Mr. Yadav, learned advocate appearing for IOCL denies and disputes the contention of the appellant and submits that the appellant was granted reasonable opportunity to reply to the show cause notice. The appellant was also granted an opportunity of hearing and as such there had been no violation of the principles of natural justice. The said principles cannot be stretched to a point that they would render the in-house proceedings unworkable. By the show cause notice the appellant was not confronted with definite conclusions.

8. Drawing our attention to the contents of the dealership agreement, Mr. Yadav submits that the appellant is the custodian of IOCL's property including the dispensing units and it was incumbent upon the appellant to preserve and safeguard the same when upon inspection, one of the dispensing units was sealed by AAC on 24th September, 2010. Surprisingly, on the intervening night between 25th September, 2010 and the 26th September, 2010, two delivery units were totally damaged by an unknown vehicle. It thus cannot be ruled out that the said incident was engineered by the appellant to avoid testing of the

dispensing units by the officials of IOCL on 27th September, 2011. The said appellant had thus acted in violation of the marketing discipline guidelines and the dealership agreement.

9. Drawing our attention to the averments made in the affidavit-in-opposition to the stay application, Mr. Yadav submits that upon being served with the notice of termination dated 16th December, 2011, the appellant as a counter blast served a notice to quit and thereafter filed a suit for declaration at Howrah (Sadar) being Title Suit No.194 of 2013. IOCL entered appearance in the same and filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 (in short, the said Act of 1996). The same was allowed on contest and the parties were directed to refer their disputes before the learned Arbitrator. Immediately thereafter the appellant filed another suit at Howrah being Title Suit No.49 of 2014 for eviction and mesne profit. After the writ petition was dismissed, the appellant again filed a declaratory suit being Title Suit No.1496 of 2015 *inter alia* praying for a declaration that the appellant has a right to operation over M/s Hazra Filling Station. In the said suit, IOCL filed an application under Section 8 of the said Act of 1996 and the same was allowed on contest. From the above sequence of facts it would be explicit that the appellant had suppressed material facts in the writ petition and had acted illegally in pursuing the remedy in two fora. Surprisingly, the appellant filed the present appeal in the year 2015 but the stay application had been filed about seven years thereafter.

10. Mr. Yadav argues that upon dealing with all the factual issues, the learned Judge arrived at specific findings and there is no error, least to say any patent error of law in the judgment impugned and as such no interference is called for.

11. In reply, Mr. Dutta submits that in the judgment impugned itself the learned Judge has observed that in the facts of the case the appellant should not be relegated to an alternative forum and that the cause of action of the suit for eviction was different from that of the writ application. The issues and the prayers in the said title suits are not identical to that of the writ application.

12. Heard the learned advocates appearing for the respective parties and considered the materials on record.

13. The contents of the show cause notice cannot be read hyper-technically and the same does not reveal that any definite conclusion was arrived at as regards the alleged guilt of the appellant. The argument that the Mumbai Test Report, which was allegedly favourable to the appellant, was not made available to the appellant constituted blatant violation of the principles of natural justice was rightly discounted by the learned Single Judge since the said report was not even relied upon in the concerned proceedings.

14. The issue of perversity, as argued was considered and rightly negated by the learned Court since the decision towards termination of dealership was taken upon due consideration of the reply submitted by the appellant and upon granting an opportunity of hearing to the appellant. The order of

termination satisfies the test of sufficiency of evidence and the findings and conclusions arrived at are neither patently unfair nor palpably perverse.

15. The jurisdictional error in the order of termination as argued by Mr. Dutta was duly considered by the learned Judge in the backdrop of clause 15 of the dealership agreement juxtaposed with clause 45 of the said agreement and a categorical finding was arrived at that such power to terminate can be issued by any authorised officer of the Corporation and we do not find any infirmity in the same. The clauses as incorporated in the agreement need to be considered together and not in isolation. A particular clause cannot be taken up and highlighted.

16. It is well known that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. There is no dispute as regards the proposition of law laid down in the judgments upon which reliance has been placed by Mr. Dutta but the said judgments are distinguishable on facts and have no manner of application in the present case.

17. We are of the considered opinion that there is nothing wrong with the approach and decision of the learned Single Judge. No arbitrariness, *malafides*, irrationality or perversity could not be established by the appellant warranting the Constitutional Court to interfere with the decision making process or the

decision. We find no infirmity in the judgment impugned warranting interference in the present appeal.

18. Accordingly, the appeal is dismissed. The application being CAN 1 of 2021 has already been dismissed earlier by an order dated 20th July, 2022.

19. There shall, however, be no order as to costs.

20. Urgent Photostat copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Raja Basu Chowdhury, J.)

(Tapabrata Chakraborty, J.)