

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO.4207/2021

Prasanna s/o Madhukarrao Dhok,
Aged about 53 years, Occupation : Nil.
R/o. Plot No.8, Ramdeo Colony,
Ambatoli, Fulchur, Gondia.
Tahsil and District Gondia.

..... **PETITIONER**

..V E R S U S..

- 1] Union of India,
through its Secretary to the Department of
Petroleum and Natural Gas,
Secretariat, New Delhi.
- 2] Joint Chief Controller of Explosives,
West Circle, Belapur, Navi Mumbai,
through Controller of Explosives.
- 3] Indian Oil Corporation Limited,
through its Managing Director,
G-9, Ali Yawar Jung Marg, Bandra(East),
Mumbai-51.
- 4] Indian Oil Corporation Limited,
through its Area Manager, First Floor,
Basyplex, Akarshan Complex,
Ramdaspath, Central Bazar Road,
Nagpur.

..... **RESPONDENTS**

Shri R.L.Khapre, Senior Advocate with S/Shri A.S.Shukla and D.R.Khapre,
Advocates for petitioner.

Shri Vijay Bramhe, Advocate for respondent nos. 1 and 2.

Shri Sunil Manohar, Senior Advocate with Shri A.V.Khare, Advocate for
respondent nos. 3 and 4.

CORAM : A.S.CHANDURKAR and SMT. M.S.JAWALKAR, JJ.
DATE : 17th MARCH, 2022.

ORAL JUDGMENT (PER A.S.CHANDURKAR, J.)

In view of notice for final disposal issued earlier the learned counsel for the parties have been heard by issuing **Rule** and making the same returnable forthwith.

2. The petitioner who has been appointed as distributor by the Indian Oil Corporation-respondent nos. 3 and 4 has challenged the order dated 15.01.2020 terminating the distributorship agency granted to him as well as the earlier orders dated 20.09.2019 suspending the distributorship and 18.12.2019 seeking to recover an amount of Rs.7,52,950/- from the petitioner.

3. The facts relevant for adjudicating the challenges raised in the writ petition are that the petitioner has suffered 85% disability and holds a disability certificate issued by the Civil Surgeon. The petitioner was awarded Indane distributorship at Gondia under the physical handicapped category on 22.05.2012. Distributorship Agreement was signed on 23.05.2012 and the outlet was commissioned on 29.05.2012. According to the petitioner, he was conducting the distributorship business in accordance with the terms and conditions imposed by the respondent nos. 3 and 4 in the distributorship agreement. The said respondents however acting upon two complaints proceeded to issue show cause notice on 20.09.2019 and at the same time suspending the said Distributorship Agreement. It was stated that there was contravention of Clauses 21, 23(b) and (c-i) of Distributorship Agreement. The petitioner replied to the aforesaid show cause notice on 22.09.2019 denying the allegations made therein. Thereafter yet another show

cause notice was issued to the petitioner on 15.11.2019 alleging violation of the very same clauses that were mentioned in the earlier notice. The petitioner replied to that show cause notice on 07.12.2019. The respondent nos. 3 and 4 by the order dated 18.12.2019 directed the petitioner to pay an amount of Rs.7,52,950/- towards shortage of equipment. On 15.01.2020 the respondent nos. 3 and 4 proceeded to terminate the Distributorship Agreement. Being aggrieved, the petitioner has challenged the aforesaid action of termination of the distributorship agency.

4. At the outset Shri Sunil Manohar, learned Senior Advocate for the respondent nos. 3 and 4 raised a preliminary objection to the maintainability of the writ petition on the ground that as per Clause 37 of the Distributorship Agreement there was an arbitration clause under which all questions, disputes and differences arising under or in relation to the Distributorship Agreement were to be referred to arbitration. According to the learned Senior Advocate it was submitted that since the remedy of invoking the arbitration clause was available to the petitioner, the writ petition was not liable to be entertained. It was not the case of the petitioner that the respondent nos. 3 and 4 had acted in breach of principles of natural justice while terminating the distributorship agreement. The show cause notices issued by the respondent nos.3 and 4 had been replied to and thereafter the distributorship agreement came to be terminated. It was thus submitted that the writ petition was not liable to be entertained on merits.

5. In reply to the aforesaid objection Shri R.L.Khapre, learned Senior Advocate for the petitioner submitted that notwithstanding the existence of Clause 37 in the Distributorship Agreement, the writ petition was maintainable since the

petitioner was seeking the relief of restoration of the distributorship agency after setting aside the order of termination. Such relief was not likely to be granted in the arbitration proceedings and this Court under Article 226 of the Constitution of India could in the facts of the case direct restoration of the distributorship agency. Inviting attention to the decision in *Harbanslal Sahnia and another vs. Indian Oil Corporation Limited and ors. (2003) 2 SCC 107* it was submitted that if it was demonstrated that the distributorship agreement had been terminated for an irrelevant or non-existent cause, its correctness could be examined in writ jurisdiction without requiring the parties to invoke the arbitration clause. He then submitted that the question as to whether the relief of restoration of the distributorship agency could be granted by an Arbitrator was the subject matter of reference to a larger Bench made by the Hon'ble Supreme Court in *Ankur Filling Station vs. Hindustan Petroleum Corporation Limited and another (2011) 12 SCC 749*. This was in view of the earlier decisions holding otherwise. Attention was then invited to *Ankur Filling Station vs. Hindustan Petroleum Corporation Limited through its Managing Director and others 2018 SCC Online SC 3697* wherein the aforesaid reference was considered. A Bench of three learned Judges noted the arguments on behalf of Hindustan Petroleum Corporation that in a given case. There may not be an absolute bar for an Arbitrator to grant restoration of the distributorship agency in the facts of a case. After noting those arguments, the question was not answered and the parties were permitted to raise all legal issues before the Arbitrator. It was thus submitted that there was no bar to entertaining the writ petition and therefore the writ petition ought to be entertained and decided on merits. He also referred to the decision in *M/s. Allied Motors Ltd vs. M/s. Bharat Petroleum Corporation Ltd. AIR 2012 SC 709*. The learned Senior

Advocate then referred to Civil Application No.2155/2021 by which a prayer was made to amend the writ petition for challenging the order dated 25.10.2021 which was passed by the Appellate Authority holding that since the distributorship agreement was not terminated under the Marketing Discipline Guidelines, the appeal as filed by the petitioner challenging the termination of distributorship agreement was not maintainable. It was submitted that the said appeal had been preferred under Clause 4.4 of the Marketing and Discipline Guidelines and the same ought to have been entertained. It was thus submitted that the writ petition be adjudicated on its merits.

6. In reply to the aforesaid submissions Shri Sunil Manohar, learned Senior Advocate for the respondent nos. 3 and 4 urged that the larger Bench of the Hon'ble Supreme Court in ***Ankur Filling Station*** (supra) had noted the arguments on behalf of Hindustan Petroleum Corporation that in a given case the Arbitrator could grant restoration of the agency depending upon the facts of the case and the surrounding circumstances. There was hence no reason to entertain the writ petition since the petitioner could claim the relief of restoration of agency before the Arbitrator. Inviting attention to the decision in ***Union of India and others vs. Puna Hinda (2021) 10 SCC 690*** it was urged that the Hon'ble Supreme Court had observed that even though the jurisdiction of the High Court was wide, with regard to matters of contractual nature in the field of private law having no statutory flavour, they were liable to be adjudicated by the Forum agreed by the parties. In absence of any element of public law being involved, there was no reason for the petitioner to invoke writ jurisdiction. As regards the order dated 25.10.2021, it was submitted that the appeal preferred by

the petitioner was rightly found to be not maintainable as the distributorship agency was not terminated under the Marketing Discipline Guidelines. It was therefore submitted that the writ petition was not liable to be entertained on merits.

7. We have heard the learned Senior Advocates for the parties at length and with their assistance we have gone through the documents on record. It is undisputed that on 23.05.2012 the respondent nos. 3 and 4 entered into a Distributorship Agreement with the petitioner. By that agreement the petitioner was granted agency for distribution of Indane cylinders. As per Clause 27 of that Agreement the respondent nos. 3 and 4 had liberty to terminate the agreement on the happening of the events stated in that Clause. As per Clause 37 (a) all questions, disputes and differences arising under or in relation to the agreement were to be referred to arbitration. It is further not in dispute that the petitioner was issued two show cause notices on 20.09.2019 and 15.11.2019 which he replied on 22.09.2019 and 07.12.2019 respectively. Thereafter on 15.01.2020 the distributorship agreement came to be terminated since it was found that there was contravention of Clauses 21, 23(b) and (c-i) of the Distributorship Agreement. It is in the aforesaid context that the petitioner has challenged the termination of the distributorship agency.

8. The existence of the arbitration clause vide Clause 37 of the Distributorship Agreement is not in dispute. According to the petitioner, since he seeks the relief of restoration of the distributorship agency it would be beyond the scope of the arbitration proceedings and thus the action of terminating the distributorship agency has been challenged by filing writ petition under Article 226 of the Constitution of India. On the other hand, the respondent nos. 3 and 4 contend

that it is always open for the petitioner to seek such relief in terms of the distributorship agreement before the Arbitrator. In this backdrop the question of maintainability of the writ petition would have to be considered.

9. In *E.Venkatakrishna Vs. Indian Oil Corporation and another (2000) 7 SCC 764* the distributorship of the appellant therein was terminated by the Indian Oil Corporation. The said dealer filed a writ petition seeking restoration of the distributorship but the same was dismissed by the learned Single Judge after holding that there was arbitration clause in the contract. The appellant then invoked the arbitration clause and the Arbitrator in his award proceeded to grant monetary benefits. The Arbitrator also observed that the distributorship was liable to be restored to the appellant. In proceedings challenging that award, the High Court held that what was arbitrable was only the dispute or difference in relation to the agreement. The question of restoration of distributorship would not arise in the agreement. The award was therefore set aside which was thereafter challenged before the Hon'ble Supreme Court. It was held by the Hon'ble Supreme Court that if the Arbitrator found that the termination of the distributorship was unlawful, he could award damages just as any Civil Court could grant in a civil suit.

In *Harbanslal Sahnia and another* (supra), the termination of dealership agreement was challenged by filing writ petition. The defence that the agreement contained an arbitration clause was raised by Indian Oil Corporation which was accepted by the High Court. In challenge to the said order before the Hon'ble Supreme Court, it was observed that the rule of exclusion of writ jurisdiction on account of availability of an alternate remedy was a rule of discretion and not one of

compulsion. After finding that the appellant therein was seeking enforcement of his fundamental rights and there was failure of principles of natural justice, it was held that the High Court ought to have entertained the writ petition.

The aforesaid two decisions were noted in *Ankur Filling Station* (supra) and the matters were referred to a larger Bench for re-consideration of aforesaid two decisions. The reference was then considered in *Ankur Filling Station* (supra) and the arguments on behalf of Hindustan Petroleum Corporation were noted that there may not be an absolute bar for the Arbitrator to grant restoration in the facts of a case and the relief could be granted in the award depending upon surrounding circumstances. On those arguments, the larger Bench did not consider it necessary to answer the question of law and observed that same could be done by a larger Bench of five Hon'ble Judges. The parties were permitted to raise all legal issues before the Arbitrator.

10. From the aforesaid decision of the larger Bench while seeking to answer the reference, it is clear that the larger Bench has observed that there could not be an absolute bar for the Arbitrator to grant restoration of the agency in the facts of a case and such relief could be considered depending on surrounding circumstances. It thus becomes clear that the scope to direct restoration of distributorship agency has been left open for being considered by the Arbitrator in arbitration proceedings. In other words, a party after invoking the arbitration clause could claim restoration of the distributorship agency by making out a case in that regard. There is no decision pointed out after the decision in *Ankur Filling Station* (supra) which bars the Arbitrator from granting such relief. In that view of the matter the basis for the

petitioner to invoke writ jurisdiction namely, that the Arbitrator would not be in a position to grant the relief of restoration of distributorship agency that has been terminated cannot be considered a justifiable reason not to avail that remedy under Clause 37 of the Distributorship Agreement. It would be for the petitioner to seek such relief by making out a case in that regard. The learned Senior Advocate for the petitioner relied upon the decision in ***Union of India vs. Tania Construction Private Limited (2011) 5 SCC 697*** to urge that the writ petition ought to be entertained. However, the aspect which cannot be ignored is that the petitioner having signed the Distributorship Agreement which contains Clause 37 there has to be a strong case for permitting the petitioner to bypass Clause 37 and invoke writ jurisdiction. The learned Senior Advocate for the respondent nos. 3 and 4 is justified in relying upon the decision in *Puna Hinda* (supra) to contend that in absence of the action of termination of the distributorship agency having some public law character attached to it, there would be no reason to entertain the writ petition. We find that the present dispute arises purely out of a contractual agreement between the parties in the field of private law not having any statutory flavour. The question whether the respondent nos. 3 and 4 were justified in invoking Clauses 21, 23(b) and (c-i) of the Distributorship Agreement for terminating the same can be best examined by the Arbitrator under Clause 37 of the Distributorship Agreement. We are therefore not inclined to entertain the writ petition on merits since the petitioner has the remedy of invoking Clause 37 of the Distributorship Agreement and taking recourse to arbitration. Apprehension of the petitioner that under Clause 37 the arbitration is to be undertaken by the Director (Marketing) of the respondent nos. 3 and 4 can be taken care of by the provisions of the Arbitration and Conciliation Act, 1996 if the

petitioner so desires.

11. For the aforesaid reasons, the writ petition is not entertained on merits. By keeping the points raised as regards challenge to the termination of the distributorship agreement and the order of recovery open, the writ petition stands dismissed. Rule is discharged with no order as to costs.

(SMT.M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)

12. At this stage, the learned Senior Advocate for the petitioner prays that the interim order granted on 26.10.2021 be continued for a period of four weeks. This request is opposed by the learned counsel for the respondent nos. 3 and 4. As the interim order is operating since 26.10.2021, it is continued for a period of four weeks and shall cease to operate automatically thereafter.

(SMT.M.S.JAWALKAR, J.)

(A.S.CHANDURKAR, J.)

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