

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.3079 of 2020

**Shambhu Malakar
Vs.
Union of India and others**

For the petitioner	:	Mr. Surya Prasad Chottopadhyay, Mr. Arjun Samanta
For the respondent nos.5 and 6	:	Mr. Abhijit Basu, Mr. Arghya Kamal Das
For the BPCL	:	Mr. Puspendu Chakraborty, Mr. Arkadipta Sengupta
Hearing concluded on	:	17.02.2023
Judgment on	:	23.02.2023

Sabyasachi Bhattacharyya, J:-

1. The present dispute revolves around a Liquefied Petroleum Gas (L.P.G.) distributorship of the Bharat Petroleum Corporation Limited (in short, “the BPCL”), which is the respondent no. 2 herein.
2. On October 7, 2013, the BPCL had published a newspaper advertisement for allotment of LPG distributorship at Gopalpur in Nadia, West Bengal. The same was reserved for the Other Backward Classes (OBC) category.
3. The LPG distributorship was ultimately granted to a partnership firm, namely “M/s Shib Shakti Bharatgas”. The respondent no. 5 (belonging to the OBC category) and her husband, the respondent no. 6, are the partners

of the said firm. Accordingly, a Letter of Intent was issued in favour of the respondent no. 5 on September 29, 2014 and a Distribution Agreement was executed on January 4, 2016 by the BPCL in favour of the firm.

4. The petitioner, who is admittedly not an OBC but a Scheduled Caste person, allegedly executed two registered lease deeds of twenty years in favour of the respondent no. 5, both on October 7, 2013, in respect of the petitioner's land in Gopalpur.
5. On the same date, that is, October 7, 2013, the petitioner also entered into another notarised agreement with respondent no. 5 for the latter to execute a partnership deed in favour of the former in respect of the distributorship upon obtaining the same, with the petitioner as a 95% partner and the respondent no. 5 a 5% partner.
6. A purported "Deed of Partnership cum Memorandum of Understanding" was executed between the petitioner and the respondent no. 5 on November 19, 2014. Again, on November 10, 2015, the petitioner entered into another Deed of Partnership with the respondent nos. 5 and 6 for continuing the business of Shib Shakti Bharat Gas with the petitioner having 90% share and the respondent nos. 5 and 6 having 5% share each in the profit and loss of the firm.
7. It is argued by learned counsel for the petitioner that the petitioner, in good faith, had provided the capital for the LPG distributorship and had obtained tax clearances, conversion certificate, registration, etc. for the distributorship. It is alleged that thereafter the petitioner successfully conducted the business of the distributorship and the respondent nos. 5

and 6 did not participate in any manner, apart from taking their share of profits and salary.

8. However, after a few years, the respondent nos. 5 and 6 allegedly attempted to take control of the entire business from the petitioner in contravention of the terms of the agreements entered into between them and in gross breach of trust.
9. The petitioner has, thus, filed the instant writ petition seeking execution of a fresh LPG distributorship business by the BPCL in favour of the petitioner in terms of the agreements between the petitioner and respondent nos. 5 and 6, intervention by the BPCL and permission to the petitioner to carry on the LPG distributorship business till adjudication of the disputes between the petitioner and respondent nos. 5 and 6.
10. Learned counsel for the petitioner, by placing reliance on several clauses of the documents produced by the petitioner, contends that the respondent nos. 5 and 6 are duty-bound to formally induct the petitioner as partner to the distributorship business.
11. Moreover, the petitioner has spent huge resources for running the business for so long whereas the respondent nos. 5 and 6 took no part in the success story.
12. The petitioner, acting on the assurance of and on the basis of agreements with the respondent nos. 5 and 6, invested the land, money and other resources and single-handedly conducted the business for several years. By representing himself as a partner of the distributorship business, he obtained tax clearances, conversion certificate, registration and various

other permissions from the concerned authorities. There was no objection from any quarter at any point of time.

13. The respondent nos. 5 and 6 are, thus, bound by Estoppel from denying the rights of the petitioner as a partner in the business, it is argued.
14. Learned counsel for the respondent nos. 5 and 6 submits that a civil suit is pending at the instance of the said respondents, challenging the authenticity and legality of the deeds and agreements produced by the petitioner on the ground of fraud and misrepresentation. Although the said suit was dismissed for default, a restoration application under Order IX Rule 9 of the Code of Civil Procedure is pending in connection therewith. Since the matter is *sub judice*, no relief can be granted to the petitioner on the basis of such manufactured documents.
15. Moreover, the petitioner, not being an OBC person, does not qualify for the distributorship-in-question.
16. Learned counsel for the BPCL argues that no cause of action has been disclosed in the writ petition against the BPCL. The entire dispute is between the petitioner and the respondent nos. 5 and 6. There has never been any communication between the BPCL and the petitioner.
17. Moreover, the BPCL argues that the entire conduct of the petitioner is mala fide since admittedly, the petitioner, who is not an OBC, has sought to run the distributorship in the Benami of the respondent nos. 5 and 6, thereby unlawfully usurping a vacancy specifically reserved for persons of the OBC category.
18. Upon learning about the writ petition, the BPCL issued a show cause notice to M/s Shib Shakti Bharatgas on the ground of violation of several clauses

of the distributorship agreement, to which a reply was also given by the petitioners.

- 19.** In order to ascertain the contours of the distributorship agreement between the BPCL and the respondent nos. 5 and 6, certain relevant clauses of the same are to be looked into.
- 20.** Clause 21 of the agreement provides that the distributor shall not sell, assign, mortgage or part with or otherwise transfer his interest in the distributorship or the right, interest or benefit conferred on him by the agreement to any person. In the event of the distributor being a partnership firm, any change in the constitution of the firm, whether by retirement, introduction of new partners or otherwise will not be permitted without the previous written approval of the BPCL notwithstanding that the BPCL may have dealings with such reconstituted firms or impliedly waived or condoned the breach or default by the distributor.
- 21.** Clause 23 (b) provides that the distributor himself or both partners (as in the present case) shall take active part in the management and running of the distributorship and shall personally supervise the same and shall not under any circumstances do so through any other person, firm or body.
- 22.** Clause 23 (c) (i) stipulates that the distributor shall not enter into any arrangement, contract or understanding whereby the operations of the distributor are or may be controlled/carried out and/or financed by any other person, firm or company, whether directly or indirectly and whether in whole or in part.

- 23.** Clause 28 empowers the BPCL to terminate the agreement in case of violation of any of its terms and on failure to remedy the breach within four days of the receipt of a written notice from the BPCL in that regard.
- 24.** Both the BPCL and respondent nos. 5 and 6 are contractually bound to the terms of the distributorship agreement. On the contrary, there is no agreement between the petitioner and the BPCL which can bind the BPCL.
- 25.** The newspaper advertisement, whereby applications for distributorship were invited for the present vacancy, clearly specified that the same was reserved for OBC category candidates, which criterion is not satisfied by the petitioner. The letter of appointment dated January 4, 2016, given to respondent no. 5 by the BPCL with regard to the LPG distributorship, clearly specifies that the appointment as regular LPG distributor of Bharatgas at Gopalpur was being given under the category 'OBC' on the terms and conditions of the distributorship agreement.
- 26.** The Detailed Guidelines for Reconstitution of LPG Distributorship, 2020 formulated by the Ministry of Petroleum and Natural Gas of the Government of India, which binds the BPCL, also acquire relevance in the context.
- 27.** Sub-Clause 3.14 of the Guidelines speaks of induction of outside category partner in SC/ST distributorship and does not extend to the OBC category.
- 28.** Sub-Clause 3.16 of the Guidelines provides the process of reconstitution of commissioned distributorship and contemplates an application by the distributor, which is subjected to scrutiny of a two-member Reconstitution Scrutiny Committee (RSC).

- 29.** Sub-Clause 3.20 envisages non-refundable application processing fee and reconstitution fee for reconstitution of commissioned distributorships.
- 30.** Clause 4 contemplates specific scenarios requiring reconstitution.
- 31.** Sub-Clause 4.5 thereof provides for condoning of cases of change of constitution done without OMC (Oil Marketing Companies) approval, if otherwise meeting all conditions/criteria related to reconstitution.
- 32.** Sub-clause 4.5.1 provides for condonation by OMC on one-time basis after taking a suitable undertaking from the distributor requesting condoning of the past actions, confirming understanding of the provisions of the agreement for compliance in future and issuance of Letter of warning by OMC. In such event, such distributorship would be required to pay a ratification fee of Rs. 2 lacs or gross distributorship commission on highest two months' refill sales in preceding year plus applicable GST, whichever is more. The cases covered by the above clause are, where unauthorized persons had entered into the distributorship/operated the distributorship fully or in association with the proprietor/partner(s) by entering into such arrangements; however, the distributorship has rectified or requested for rectification of the mistake and reverting to the last approved set-up.
- 33.** Sub-clause 4.5.2 of the Guidelines provides for cases where distributorships have inducted outside partner(s) without taking approval from OMC. In such instances, upon request from the distributorship, the proposal would be considered for approval. Upon reconstitution, the distributorship would have to pay a ratification fee of Rs. 5 lacs or gross distributorship commission on highest four months refill sales in preceding year plus GST, whichever is more, and OMC would issue a letter of

warning. The proposal, when given, has to be scrutinized by the office as provided therein.

- 34.** Hence, a detailed procedure has been provided even under the Guidelines in cases where outside partners have been inducted without taking approval of the OMC. However, none of the pre-requisites, either of a request by the distributorship, subsequent scrutiny by the concerned authorities or payment of ratification fees, has taken place in the present case.
- 35.** Hence, from no perspective can it be said that the writ petitioner was inducted as a partner into the distributorship at any point of time.
- 36.** Insofar as induction of an outsider is concerned, in any event, the same is absolutely discretionary on the part of the authorities and there is no right whatsoever, contractual or legal, of the distributors, far less of the outsider, to be enforced at the instance of the outsider, here, the petitioner.
- 37.** The purported agreements between the petitioner and the respondent nos. 5 and 6 are not only denied by the latter, those were challenged in a suit before a competent civil court. Although the suit was dismissed for default, a restoration application is pending and there was never any conclusive determination on the issue of veracity, authenticity and/or legality of such documents.
- 38.** Even if the said documents were to be held authentic, the same are in no way binding on the BPCL for issuance of a mandamus against the BPCL. The writ petitioner, at best, has remedies before the civil court in damages and/or for breach of trust or other remedies in criminal law against the respondent nos. 5 and 6, since the dispute sought to be raised is entirely a

private dispute between the petitioner and the respondent nos. 5 and 6, none of whom fall within the category of 'State' under Article 12 of the Constitution of India.

- 39.** In any event, the said documents would not, by any stretch of imagination, have binding effect on the BPCL. Moreover, the said purported agreements are for an illegal consideration, that is, securing the LPG distributorship earmarked for the OBC category, to which the petitioner does not belong. Over and above, the documents are contrary to the Guidelines for Reconstitution of Partnership, 2020, which have statutory force, and also violate the distributorship agreement between the BPCL and the respondent nos. 5 and 6. This vitiates the enforceability of the contracts under the Contract Act.
- 40.** In fact, there is no public law element involved in the present matter at all.
- 41.** Hence, the present writ petition is not even maintainable in the eye of law.
- 42.** In such view of the matter, there is no scope of granting any relief to the petitioner. Hence, W.P.A. No.3079 of 2020 is dismissed on contest, however, without any order as to costs.
- 43.** Urgent certified copies, if applied for, be issued to the applicants subject to compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)