

19.02.2024
Ct. 654
Sl.no.6
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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

WPA 13764 of 2023

With

CAN 2 of 2023

Rakhi Sharma

-Vs-

Indian Oil Corporation Ltd. And Ors.

Mr. Ramesh Dhara

Ms. Mousumi Chowdhury

... for the petitioner

Mr. Amit Kumar Nag,

Mr. Partha Banerjee

... for the IOCL-applicant

Mr. Wasim Ahmed,

Sk. Md. Masud

... for the State

In Re: CAN 2 of 2023

This is an application for modification and/or clarification of the judgment and order dated 25th August, 2023 passed in WPA 13764 of 2023.

By dint of a dealership agreement, the petitioner was engaged as an agent to deal with Superior Kerosene Oil. In view of clause 28(a) of the dealership agreement, the agent was restricted from entering into an arrangement and/or agreement with a third party without the consent of the oil company. The applicant (hereinafter referred to as "IOCL") received a letter dated 12th April, 2023 from one Amal Shankar Nandi on the allegations that the writ petitioner had assigned the

SKO agency to third parties, namely, one Sanatan Bera and Avijit Maji, after entering into the dealership agreement with the oil company. The applicant-IOCL in view of the aforesaid letter directed the Director of Consumer Goods (Food & Supply), Government of West Bengal to suspend the supply of Superior Kerosene Oil to the writ petitioner and accordingly on 6th June, 2023, the Director of Consumer Goods (Food & Supply), Government of West Bengal, suspended the supply of Superior Kerosene Oil to the writ petitioner. The said order was assailed in the writ petition, which was quashed by this Court vide its judgment and order dated 25th August, 2023. The applicant-IOCL by the present application for modification and/or clarification of the judgment of this Court has sought for liberty to proceed in accordance with law in respect of another complaint dated 12th June, 2023, received from one Sanatan Bera with the allegations that the writ petitioner has entered into an agreement with him and one Avijit Maji for dealing with financial aspect as well as to take care of day to day affairs of the said agency.

The petitioner by filing affidavit-in-opposition to the said application of the applicant-IOCL denied, *inter alia*, the averments made therein and contended that since the writ petition was disposed of by a judgment, the question of clarification and/or modification or granting any liberty to proceed with another complaint in the matter does not arise.

Mr. Amit Kumar Nag, learned advocate for the applicant-IOCL submits that the petitioner was engaged as an agent to supply Superior Kerosene Oil on the basis of dealership agreement. As per Clause 28(a) of the said agreement, the agent was restricted from entering into arrangement and/or agreement with a third party without the consent of the Oil Company. The petitioner violated the said clause in the agreement and entered into an arrangement and/or agreement with one Sanatan Bera and Avijit Maji for dealing with financial aspects and also to take care of the day-to-day operation of the agency which was informed by one Amal Shankar Nandi vide his letter dated 12th April, 2023. For such violation, the Director of Consumer Goods, Food & Supply, Government of West Bengal, was directed by the applicant-IOCL to stop supply of superior kerosene oil to the agency of the petitioner. Accordingly, in compliance with such direction, the Director of Consumer Goods stopped supply of superior kerosene oil to the petitioner by its order dated 6th June, 2023. The writ petitioner challenged the aforesaid order in the writ petition. By judgment dated 25th August, 2023, the Hon'ble Court set aside the impugned order of the Director of Consumer Goods. Another complaint was also submitted by one Sanatan Bera on 12th June, 2023 with the allegation that the petitioner has entered into an agreement with him and one Avijit Maji for financial needs. The said complaint

was pleaded in the affidavit-in-opposition to the writ petition, however, at the time of disposal of the writ petition, the validity and/or legality of the said complaint was not decided by the Hon'ble Court. In the above premise, by filing the present application, the applicant-IOCL seeks liberty for initiating appropriate show-cause proceeding in accordance with law against the petitioner for violation of the terms and conditions of the dealership agreement.

Mr. Ramesh Dhara, learned advocate for the petitioner, in reply, submits that complaint in respect of which liberty has been sought for to initiate proceeding against the petitioner by the applicant-IOCL is not at all a subsequent event occurring after disposal of the writ petition. The said complaint was pleaded in the affidavit-in-opposition and after considering the entire aspect, the Hon'ble Court was pleased to quash the order passed by the Director of Consumer Goods, stopping supply of superior kerosene oil to the petitioner-agent. Further after pronouncement of judgment, the Court becomes a *functous officio* and, therefore, the modification and/or clarification of the judgment is uncalled for. To buttress his contention, he relies on the decision of the Hon'ble Supreme Court passed in ***Arcelor Mittal Nippon Steel India Limited versus Essar Bulk Terminal Limited*** reported in ***(2022) 1 SCC 712*** and ***Bholi (Dead) By L.Rs versus***

Lachhman Singh & Ors [Appeal (Civil) Case No. 953 of 2004]. He prays for dismissal of the application.

In reply to the contentions of the petitioner, Mr. Nag, learned advocate for the applicant-IOCL submitted that in its affidavit-in- opposition, the IOCL has categorically stated of the complaint dated 12th June, 2023, which has not been controverted by the petitioner. However, such complaint has not been dealt with by the Court in its judgment. As such, the applicant-IOCL is constrained to file the present application for modification and/or clarification seeking liberty to initiate proceeding on the basis of the said complaint against the petitioner. He prays for appropriate orders.

The petitioner in the writ petition challenged the order passed by the Director of Consumer Goods, Food & Supply, Government of West Bengal dated 6th June, 2023 suspending supply of superior kerosene oil to the petitioner which has been passed on the basis of the complaint dated 12th April, 2023 by one Amal Shankar Nandi. The applicant-IOCL filed its affidavit-in- opposition to the writ petition denying *inter alia* the averments made in the writ petition and also pleaded of the complaint dated 12th June, 2023 submitted by one Sanatan Bera. Thus, there cannot be any quarrel that the pleadings relating to the complaint dated 12th June, 2023 was before the Hon'ble Court. On being seisin of the entire materials on record, the Court passed the

order setting aside the impugned order dated 6th June, 2023 passed by the Director of Consumer Goods (Food & Supply), Government of West Bengal. By the present application for modification/ clarification, the applicant-IOCL has tried to open the case for a fresh consideration on a material that was already before the Court and thus there cannot be reconsideration of the matter on merits. Moreover, after pronouncement of judgment, the Court becomes *functous officio* as has been rightly argued by Mr. Dhara, learned advocate for the petitioner relying on *Arcelor Mittal Nippon Steel India Limited (supra)* and *Bholi (Dead) By L.Rs (supra)*. The rule of law envisages finality of judgment which is absolutely imperative and carries a great sanctity. The parties cannot be permitted to reopen a concluded judgment of the Court by filing interlocutory application in the form of modification/clarification application. If such is permitted, it would be a far reaching adverse impact on the administration of justice. Hallmark of a judicial pronouncement is its stability and finality. A judicial pronouncement cannot be subject to modification once a judgment has been pronounced by filing application for modification/clarification which is not envisaged in law [***See Supertech Limited versus Emerald Court Owner Resident Welfare Association and Others*** reported in **(2023) 10 SCC 817**]. Therefore, the application for modification/clarification filed by the applicant-IOCL falls short of merit.

In the light of the above discussions, the application for modification and/or clarification being CAN 2 of 2023 stands dismissed.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(**Bivas Pattanayak, J.**)