

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**Hon'ble Justice Chitta Ranjan Dash
AND
Hon'ble Justice Partha Sarathi Sen**

**F.M.A. 1108 of 2018
Indian Oil Corporation Limited & Ors.
Versus.
Madhududan Majilya & Anr.
With
MAT 1372 of 2017
Madhusudan Majilya
Vs
IOCL & Ors.**

For the IOCL:

Ms. Vineeta Meharia, Adv.
Mr. Amit Meharia, Adv.
Mr. Arjun Mookerjee, Adv.
Ms. Paramita Banerjee, Adv.
Ms. Subika Paul , Adv.

For the respondents:

Mr. Sagar Bandyopadhyay, Adv.
Ms. Soma Kar Ghosh , Adv.
Mr. A. Pathak , Adv.

Last Heard on: : 24.03.2023
Judgment on. : 03.04.2023

PARTHA SARATHI SEN, J. : –

1. In these two intra Court appeals the order dated 10.04.2017 as passed in WP 23810(W) of 2007 by the Hon'ble Single Bench has been assailed. Since both the appeals have been preferred against a common

judgement and since the facts and laws involved in these two appeals are identical, we propose to dispose of these two appeals by a common judgement.

2. Before the Hon'ble Single Bench the aforementioned writ petition was filed challenging the notice of termination dated 25.08.2006 as issued by the Indian Oil Corporation Ltd.(hereinafter referred to as the 'Oil Company', in short) in favour of Madhusudan Majilya being the proprietor of M/S Tarkeswar Gas Service (the respondent in FMA 1108/2008 and the appellant in MAT 1372/2017)(hereinafter referred to as 'the Distributor') whereby and whereunder the said Oil Company terminated the distributorship agreement dated 14.03.1989 as entered by and between them and at the same time also terminated the appointment of the said distributor with immediate effect.

3. The Hon'ble Single Bench while disposing the writ petition by the impugned order expressed the view that the Oil Company had waived their right of termination of distributorship and thus permitted the writ petitioner to participate in the tender process as would be issued by the Oil Company after the expiration of the tenure of five years of the new distributor who took the said distributorship subject to the result of the said writ petition.

4. The Oil Company felt aggrieved and thus preferred FMA No. 1108 of 2018. The writ petitioner was equally not satisfied with the impugned order since his prayer for restoration of his distributorship was not

considered favourably by the Hon'ble Single Bench and thus the said distributor also preferred the appeal being MAT 1372 of 2017.

5. At the time of hearing of these two appeals Ms. Meharia, learned advocate appearing for the Oil Company at the very outset draws attention of this court to the list of dates as handed over by her to us. Attention of this Court is also drawn to page nos. 94 to 97 of the stay petition being CAN 6844 of 2017 as filed in FMA 1108 of 2018. It is contended on behalf of the Oil Company that from the letter dated 13.05.1988 as issued by the Oil Company in favour of the distributor it would reveal that the Oil Company had made the said distributor aware that he is duty bound to operate the distributorship personally on full time basis and that he had to give an undertaking to the Oil Company to that effect. It is submitted that in the said letter dated 13.05.1988, it has also been communicated to the distributor that in the event he is employed anywhere he has to submit his acceptance of resignation letter from his employer prior to issuance of the letter of appointment of distributorship in favour of him. In course of her submission Ms. Meharia, learned advocate for the Oil Company also draws our attention to the Annexure R3 being the copy of the agreement dated 14.03.1989 as executed by and between the Oil Company and the distributor. Attention of this court is also drawn to Clause 23(b), Clause 23C (ii) and Clause 28 of the said agreement. For effective adjudication of the instant appeal, we propose to quote the aforementioned three clauses of the agreement dated 14.03.1989 in verbatim and those are as under:

“23(a).....

(b) it shall be a paramount condition of the agreement that the Distributor himself (if he be an individual) or both the partners of the distributor's firm (if the Distributor is a partnership firm consisting of two partners only) or the majority of the partners of the Distributor's firm (if the Distributor is a firm consisting of more than two partners) or the majority of the office Bearers /Elected Members of the Distributors Co-operative Society(if the Distributor is a Co-operative Society) Managing/ Wholetime or Elected Directors (if the Distributor is a private limited company) as the case may be 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.

(c)(i).....

(ii)The Distributor himself (if he is an individual) or the partners themselves (if the Distributor is a partnership firm) or wholetim Office Bearers/ Elected Members (if the Distributor is a Co-operative Society) shall not, (without prior permission in writing of the Cooperation) take up any other employment or engage in any other business apart from the operation of the distributorship which is the subject matter of this agreement.

.....

...

27. Notwithstanding anything to the contrary herein contained, the Corporation shall also be at liberty at its entire discretion to terminate this Agreement forthwith upon or at any time after the happening of any of the following events namely:-

(a) If the Distributor shall commit a delay, breach or default of any of the terms, conditions, covenants and stipulations contained in the Agreement and fail to remedy such breach within four days of the receipt of a written notice from the Corporation in that regard.”

Drawing attention to Annexure R4 at page nos. 114 and 115 of the aforesaid CAN, it is submitted that on 26.02.2004 the Oil Company received a written complaint dated 23.02.2004 from the District Magistrate, Hooghly whereby the Oil Company was informed that the said distributor had submitted a false affidavit dated 02.09.2003 stating inter alia that he was never engaged in any other services relating to any government or to any educational institute or to any firm and under the cover of the said letter, it was further communicated that the said distributor namely; Madhusudan Majilya was employed in the post of assistant teacher in Chinsurah Sri Ram Krishna Ashram Adarsha Vidyalaya, wherefrom he resigned on 02.09.2003 and such resignation was accepted with effect from 03.09.2003(A.N). Drawing attention to the Annexure R6 at page no.120 it is contended that after being aware of such false affidavit and declaration at the instance of the said distributor, the Oil Company under cover of letter dated 24.03.2004 issued a show cause notice upon the distributor which was duly received by the said distributor. The said distributor under cover of his letter of reply dated 15.04.2004 though raised some lame excuses where however, his appointment in the said school and subsequent resignation therefrom were not denied and disputed. It is further submitted on behalf of the Oil

Company that since the reply to the show cause notice was not satisfactory, the said distributorship was terminated by the Oil Company under cover of its letter dated 25.08.2006 which was impugned before the Hon'ble Single Bench at the instance of the distributor by filing WP 23810(W) of 2007.

6. Drawing attention to the impugned judgement Ms. Meharia, learned advocate for the Oil Company further submits before this Court that the Hon'ble Single Bench while passing the impugned order duly considered the aforementioned facts and came to a finding that the termination of the distributorship is legal and valid but at the same time the Hon'ble Single Bench without rhyme and reason came to a finding that the Oil Company deliberately kept their eyes closed with regard to the working of the aforementioned distributorship. It is further argued that the Hon'ble Single Bench has failed to appreciate that immediately after getting knowledge regarding the false declaration of the said distributor, the Oil Company took appropriate action as against him and inspite of the same the Hon'ble Single Bench permitted the said distributor to take part in the process of selection of the new distributorship on it's expiry after five years on the ground that the Oil Company had waived their right as against the writ petitioner. Ms. Meharia thus submits before this Court that it is a fit case for allowing the appeal of the Oil Company being FMA 1108/2018 and for dismissal of appeal of the distributor being MAT 1372/2017. In support of her contention Ms. Meharia, learned advocate

for the Oil Company placed her reliance upon the following reported decision:-

i.Associated Hotels of India Ltd. vs. S.B Sardar Ranjit Singh (AIR 1968 SC 933);

ii.Union of India and Others vs. N.Murugesan and Others [(2022) 2 SCC 25]];

iii.Kastha Niwarak Grahnirman Sahakari Sanstha Maryadit, Indore vs. President , Indore Development Authority [(2006) 2 SCC 604]];

iv.Sneh Prabha and Ors. Vs. State of U.P and Ors. [(1996) 7 SCC 426];

v. Kerala State Electricity Board vs. Saratchandran P. and Ors. [(2008) 9 SCC 396].

7. While opposing FMA 1108/2018 and supporting MAT 1372/2017 Mr. Bandyopadhyay, learned advocate for the said distributor draws attention of this Court to the letter of reply to show cause notice dated 15.04.2004 as issued by the said distributor addressed to the Oil Company stating inter alia that at the material time i.e. on 02.03.1989 (the date of issuance of letter of appointment of the distributorship) he was working as an assistant teacher in the aforementioned school purely on a temporary basis and since the day of his appointment as a distributor he was discharging his duty in his said business faithfully and diligently and that the officers of the Oil company were aware that he was working as a school teacher at that material time and inspite of the same he was permitted to run the distributorship without any disturbances

which according to the said distributor shall have to be deemed to have a passive consent on the part of the Oil Company to run the business of distributorship along with his service in the said school. Drawing attention to the impugned order Mr. Bandyopadhyay, learned advocate for the said distributor contended that though in the impugned judgement the Hon'ble Single Bench accepted the said contention of the writ petitioner but for no reason whatsoever remained silent to the prayer of the writ petitioner i.e. the prayer for a direction upon the oil company for restoration of his dealership by quashing the aforementioned letter of termination as issued by the Oil Company. It is further argued by Mr. Bandyopadhyay that since the new distributor took the distributorship subject to the result of the said writ petition, the Hon'ble Single Bench while passing the impugned order ought to have cancelled the new distributorship and in not doing so a serious miscarriage of justice have been caused. Mr. Bandyopadhyay in course of his argument places reliance upon the reported decision of **Moumita Poddar vs. IOC** reported in **(2010) 9 SCC 291**. It is thus submitted on behalf of the said distributor that FMA 1108/2018 may be dismissed and MAT 1372/2017 be allowed.

8. We have meticulously gone through the entire materials as placed before us including the impugned order. We have also gone through the reported decisions as cited from the Bar. We have also given our due consideration over the submissions of the learned advocates of the contending parties. We have kept in our mind the order dated 16.03.2023

as passed in this appeal. On perusal of the entire materials as placed before us it reveals to us that prior to issuance of the letter of appointment of distributorship dated 02.03.1989 the Oil Company under cover of their letter of intent (LOI) dated 13.05.1988 made the aforementioned distributor aware that he was to operate the said distributorship personally on full time basis and has to give a written undertaking to that effect and at the same time he has to submit his acceptance of resignation letter from his employer if he is already employed prior to issuance of appointment letter by them. There is no dispute that on completion of the aforementioned formalities on the part of the said distributor, the distributorship agreement dated 14.03.1989 was executed wherein Clause no.23(b), Clause no.23C (ii) and Clause no.27 which are enumerated in the preceding paragraphs are very much vital. It has also been placed before us that after receiving of complaint from the District Magistrate, Hooghly, the Oil Company conducted enquiry and on the basis of such enquiry the head master of Sri Ramkrishan Ashram Adarsha Vidyalaya confirmed that the distributor, Madhusudan Majilya was appointed as an assistant teacher in the said school with effect from 11.05.1988 and that his resignation was accepted on 03.09.2003. In view of such, we have no hesitation in mind to hold that the aforementioned distributor had given a false declaration as well as an undertaking to the Oil Company pursuant to their letter dated 13.05.1988 and even after execution of the agreement dated 14.03.1989 he went on violating the aforementioned terms of the said distributorship

agreement till show cause notice was issued to him by the Oil Company. In course of hearing nothing could be placed before us that such suppression of fact on the part of the said distributor was known to the Oil Company and to its officials and thus inspite of such knowledge, as alleged, the Oil Company and/or its officials have permitted the said distributor to run his distributorship business overlooking the violation of the aforesaid clauses of the distributorship agreement. In our considered view since the said distributor did not approach the Writ Court with clean hands he should not be permitted to seek equity from the self same court condoning his fault of misrepresentation and material suppression.

9. The argument of Mr. Bandyopadhyay, learned advocate for the said distributor is to the effect that the Oil Company ought to have considered the representation dated 30.11.2004 of the said distributor favourably, since in a similar circumstance one M/S. Vivekananda Service Station was permitted to continue his dealership does not sound good to us since in the notice of termination dated 25.08.2006 it has been categorically mentioned by the Oil Company that the facts and circumstances as involved in the present lis is not similar to the case as referred by the said distributor in his representation dated 30.11.2004. It further appears to us that before the Hon'ble Single Bench no material was also placed on behalf of the writ petitioner to substantiate as to how his case stands in the same footing with the case as mentioned in his said representation before the Oil Company. As rightly pointed out by Ms. Meharia that for the sake of argument even if it is found that a benefit has been given

wrongly in favour of any person, another wrong doer cannot claim to perpetuate the same wrong as of right since the same is violative of Article 14 of the Constitution of India. In this regard the reported decision of **Sneh Prabha and others (supra)** is very much pertinent where the Hon'ble Apex Court expressed the following:-

“...Even if a benefit is wrongly given in favour of one or two, it does not clothe with a right to perpetuate the wrong and the court cannot give countenance to such actions though they are blameworthy and condemnable. Equality clause does not extend to perpetuate wrong nor can anyone equate a right to have the wrong repeated and benefit reaped thereunder.”

10. So far as the alleged knowledge of the Oil Company and/or its officers with regard to the employment of the distributor is concerned it appears to us that no materials have been placed either before the Writ Court or before this Court that the Oil Company and/or its officers had acquiesced to the wrong doing of the said distributor rather it appears that as soon as it has come to the knowledge of the Oil Company from the letter of complaint of the District Magistrate, Hooghly that the said distributor has submitted a false affidavit and a false undertaking violating the terms of the agreement, the Oil Company was prompt enough to enquire into the matter and thereafter proceeded in accordance with law in issuing the show cause notice and after obtaining its reply, issued the notice of termination which had been assailed before the Hon'ble Single Bench. We thus find that that there was no element of

acquiescence or active or passive consent on the part of the Oil Company and/or its officers to the wrong doing of the distributor as wrongly alleged by the said distributor.

11. In view of such we thus find sufficient merit in FMA 1108/18 and the same is hereby allowed to the extent prayed for. Since there is no merit at all in MAT 1372/17 the same is hereby dismissed and consequently the letter of termination dated 25.08.2006 as issued by the Indian Oil Corporation Limited in favour of M/S Tarkeswar Gas Service and Shri Mudhusudan Majilya is held to be justified one.

12. With the aforementioned observation both the appeals being FMA 1108 of 2018 and MAT 1372 of 2017 are hereby disposed of to the extent as aforesaid.

13. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)