Form No. J (2)

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

MAT 1828 of 2023

Arup Aich & Anr.
VS.
Indian Oil Corporation Ltd. & Ors.

For the Appellants	:	Mr. Srijib Chakraborty, Mr. Aditya Mondal, Mr. Deeptangshu Kar, Advocates
For the Respondent No. 5	:	Mr. Amales Ray, Ms. Mousumi Bhowal, Advocates
For the respondent Nos. 1 to 4	:	Mr. M. S. Yadav, Mrs. Saswati Chatterjee, Mrs. Satabdi Naskar (Kundu)

Heard & Judgment on: December 11, 2023

DEBANGSU BASAK, J.

1. The appeal is directed against a judgment and order dated June 26, 2023 passed by the learned single Judge in WPA 8821 of 2022.

2. By the impugned judgment and order, the learned single Judge dismissed the writ petition.

3. The appeal is at the behest of the writ petitioners.

4. Learned advocate appearing for the appellants submits that, the writ petitioners and the respondent no.5 entered into a partnership to obtain a Liquefied Petroleum Gas (LPG) distributorship. To such effect, appellant no. 1 paid for the purchase of the land required for the distributorship. Appellant no. 2 paid for the construction of the infrastructure on the land for the distributorship. Appellants and the respondent no. 5 entered into a deed of partnership to record the terms and conditions of the partnership.

5. Learned advocate appearing for the appellants draws the attention of the Court to various documents namely, the deed of partnership, the passbook of the appellant no. 1 as also the complaints made to the Oil Company. He also draws the attention of the Court to the relevant guidelines of the Oil Company governing the distributorship.

6. Learned advocate appearing for the appellants submits that, a WhatsApp chat group was created between the appellants and the respondent no. 5 where, the business of the distributorship was discussed. The appellants also withdrew money from the partnership which was allowed by the respondent no. 5 up to a given point of time. Thereafter, the respondent no. 5 stopped such withdrawal. He points out the contents of the WhatsApp chat group. He also draws the attention of the Court to various indents placed with the Oil Company containing mobile phone number of appellant no. 1. According to him, all these documents read together show that, there was a partnership between the appellants and the respondent no. 5 in respect of LPG distributorship. The factum of partnership between the appellant and the respondent no. 5 was not disclosed before the Oil Company.

7. Learned advocate appearing for the appellants submits that, the Oil Company came out with a scheme for regularizing such a scenario. The respondent no. 5 did not apply for regularization in terms of the scheme. Thereafter, the appellants complained to the Oil Company. He refers to the complaints made. He also refers to the minutes of the meeting prepared by the Oil Company. He submits that, the Oil Company did not consider the evidence placed in the correct prospective. The appellants were not called for a hearing.

8. Learned advocate appearing for the appellants relies upon an unreported decision dated ***July 11, 2018*** rendered in ***WP 7625(W) of 2018 [Rajesh Kumar Surana vs. State of West Bengal & Ors.]*** and an unreported judgment and order dated August 27, 2018 passed by the Appeal Court in an appeal therefrom. He submits that, the issue of locus standi was decided there to say that, a citizen can approach the Court if a statutory authority acts in violation of provisions of law.

9. Learned advocate appearing for the appellants relies upon ***2018 SCC OnLine Cal 11575 [Dhirendra Kumar Maity vs. State of WB]*** for the same proposition. He also relies upon an unreported decision of the Division Bench dated ***March 2, 2016*** passed in ***FMAT 275 of 2015 [Indian Oil Corporation Limited vs. Abdul Matin Laskar]*** and submits that, in similar situations, the distributorship was terminated.

10. Learned advocate appearing for the Oil Company draws the attention of the Court to the steps taken. He submits that on receipt of the complaint, a show cause notice was issued to which the respondent no. 5 responded. Respondent no. 5 was called for a hearing. He refers to the minutes of the meeting in this regard. He submits that, at the hearing, the respondent no. 5 did not acknowledge execution of the deed of partnership. No document was placed before the Oil Company to establish, there was a partnership between the appellants and the respondent no. 5

as claimed. The money trail, claimed on behalf of the appellants was not established. Therefore, the Oil Company found it prudent not to disturb the distributorship agreement of the respondent no. 5. He relies upon ***2018 SCC OnLine Cal 7352 [M/s. Bimala Gas Service & Anr. Vs. Indian Oil Corporation Limited & Ors.],*** an unreported decision dated ***November 10, 2014*** passed in ***WP No. 23431 (W) of 2014 [Deepak Kumar Gupta vs, Indian Oil Corporation Limited & Ors.]*** and another unreported decision of the Division Bench in ***MAT 151 of 2022 [Indian Oil Corporation Ltd. & Ors. vs. Prabir Kumar Baidya & Ors.]*** rendered on ***May 11, 2023***, in support of his contentions. He submits that, on similar circumstances, wherever, the Oil Company terminated the distributorship agreement, the same was turned down by the High Court.

11. Learned advocate appearing for the respondent no. 5 draws the attention of the Court to the complaints lodged. He submits that, the execution of the partnership deed was not admitted. According to him, respondent no. 5 did not enter into any partnership with the appellants. He submits that, money was taken by the respondent no. 5 from the appellants from time to time but that was for different purposes. The WhatsApp chat, according to him, does not establish that the appellants were not in control of the management of the business. Moreover, the mobile phone in the two indents also do not establish the same.

12. Learned advocate appearing for the respondent no. 5 relies upon ***(1987) 3 SCC 538 [Helper Girdharbhai vs. Saiyed Mohmad Mirasaheb Kadri & Ors.]*** for the proposition that what constitute a partnership. He contends that in the facts of the present case, partnership between the appellants and the respondent no. 5 was not established.

13. Learned advocate appearing for the respondent no. 5 relies upon the decision of the appeal Court rendered in ***MAT 1493 of 2018*** *dated* ***March 27, 2019 [Indian Oil Corporation Ltd. Vs. Bimala Gas Services & Ors.]*** and contends that the Oil Company rightly refused to terminate the distributorship agreement.

14. Learned advocate appearing for the respondent no. 5 relies upon ***(2023) 4 SCC 498 [St. Mary's Education Society & Anr. Vs. Rajendra Prasad Bhargava & Ors.]*** and contends that no public law element is involved and that, the disputes are purely private in nature between two private parties and that, a writ petition under Article 226 of the Constitution of India is not maintainable.

15. The respondent no. 5 participated in a selection process for grant of LPG distributorship as a sole proprietor. Such distributorship was granted on March 22, 2016 is the respondent no. 5 as a sole proprietor.

16. Appellants before us, lodged a complaint dated October 14, 2020 with the Oil Company where the appellants alleged that they invested a sum of Rs.9 lac for purchase of godown land and making construction of the infrastructure. Out of the amount of Rs.9 lac, Rs.4 lac was paid through bank transfer and Rs.5 lac by cash. It was also alleged that there was a partnership agreement executed on non-judicial stamp paper on June 12, 2015 recording of equal share between three partners, namely the two appellants and the respondent no. 5. The complaint goes on to say that there was a scheme for regularization float ed by the Oil Company which was not availed of and consequently since, the business is being carried out in violation of the distributorship agreement, it would be appropriate that the respondent no. 5 be directed to take corrective action. It was clarified that appellants were not seeking termination of the distributorship.

17. There is one more complaint dated July 16, 2021 at the behest of the appellants. There also, the same stand was reiterated. Here, the appellants called for intervention by the Oil Company and investigation into the matter.

18. Oil Company issued a show-cause notice to the respondent no. 5 on October 22, 2022. Respondent no. 5 submitted replies on November 4, 2020 and December 3, 2020. In the reply, the respondent no. 5 took the stand that, the title deeds in respect of the land from which the distributorship business is being executed stand, in the name of the respondent no. 5, the audit reports of the respondent no. 5 does not establish any financial transaction with any third parties including the appellants as claimed. The respondent no. 5, however, acknowledged taking a loan of Rs.5 lac in the month of June 2015. He goes on to say that, he executed blank stamp paper and blank demi papers in good faith and made over the same to the appellant no. 1, who manufactured the purported partnership agreement. In this connection, he lodged a General Diary with the police bearing no. 1707 dated November 26, 2022.

19. Oil company called the respondent no. 5 for a hearing. Minutes of such meeting dated February 26, 2021 shows that, eight agenda items were discussed. In such hearing, the respondent no. 5 acknowledged receiving financial aid from the respondent no. 1 and stated that the same did not relate to the distributorship, but was for personal purpose. He stated that the deed mentioned that the transactions were in cash and that the respondent no. 5 took the balance amount for his personal purpose and not for the distributorship business. He denied the partnership deed by claiming that he signed blank papers in good faith at the time of taking loan from the appellant no. 1. He denied entering into any agreement regarding the partnership and, therefore, said that there was no question of regularization of the partnership. He explained the phone number of the appellant no. 1 appearing in the cash memo of the distributorship by saying that since the appellant no. 1 was a good friend, he used to visit the Showroom and that the appellant no. 1 may have changed the same, secretly and it went unnoticed for two months. He was unaware of the updating of the mobile phone number used for SMS identity. He denied the documents of withdrawal of amounts from the partnership as claimed by the appellants. Respondent no. 5 accepted that he created the WhatsApp Group, but did not mention anything further about the messages shared in the group.

20. Issue of maintainability of the writ petition raised on behalf of the respondent no. 5 requires consideration.

21. In ***St. Mary's Education Society and Anr.*** **(supra),** maintainability of a writ petition against the private person or body was considered. There, the educational institution was a private body and in such context, maintainability of the writ petition against a private body was considered. In the present case, the writ petition is directed against Indian Oil Corporation Limited, which is an authority within the meaning of Article 12 of the Constitution of India. Moreover, a contract of distributorship is involved. LPG distributorship affects a large portion of the general public, which is covered by such distributorship. An element of public interest is involved in the distributorship. Furthermore, it is elementary that the distributorship agreement must be awarded in accordance with the law and that any breach of the terms and conditions governing the distributorship agreement should also be appropriately dealt with by the Oil Company.

22. The appellants as writ petitioners complained that the respondent no. 5 was acting in violation of the distributorship agreement and that the Oil Company despite complaints being lodged in that regard did not take appropriate steps.

23. A citizen of India is entitled to approach the Writ Court on the basis of an Article 12 authority not discharging its functions. This view expounded in ***Rajesh Kumar Surana*** **(supra)** was dealt with by the Division Bench in ***Ashok Kumar Giri*** **(supra). In *Ashok Kumar Giri* (supra),** the Division Bench found that the writ petitioner therein was not a busy body and that where the writ petitioner complained of unauthorized construction, the relevant Municipal Corporation initiated proceedings for demolition of such unauthorized construction.

24. Dhirendra Kumar Maity & Ors. (supra) is also of the same view that a citizen is entitled to bring to the notice of the Court any infraction by a statuary authority.

25. The appellants canvas that the Oil Company, an Article 12 authority decided complaints relating to distributorship agreement incorrectly. In such circumstances, it cannot be said that the writ petition was not maintainable.

26. The Division Bench in ***Abdul Matin Laskar*** **(supra)** considered an appeal under Section 37 of the Arbitration and Conciliation Act, 1996 directed against an order dismissing an application under Section 34 of the Act of 1996. The Division Bench on facts, found that the provisions of the distributorship agreement contain inherent powers to terminate the distributorship agreement. It took note of the fact that the award clarified that the Arbitral Tribunal did not arrive any definite finding that the offence alleged in the show-cause notice could never be the ground for termination and that the Arbitral Tribunal gave liberty to the Oil Company to issue a fresh show-cause notice citing the appropriate provision. It held that Arbitral Tribunal did a patent error in law in interfering with the show-cause notice only on the ground of reference to the wrong contractual provision. On such finding, the award was held to be illegal, arbitrary and capricious and set aside.

27. Oil Company relies upon three authorities for the proposition that, disputes with regard to distributorship should not be looked into by the Oil Company in absence of direct evidence. In ***Deepkak Kumar Gupta*** **(supra),** the issue was whether any individual is a partner of a firm or not cannot be decided by the Oil Company and that such disputes need to be decided by the competent Civil Court. Moreover, it was held that the Writ Court is not the proper forum for determining that question.

28. In **Bimala Gas Service and Ors. (supra),** the Single Judge set aside an order of the Oil Company terminating the LPG distributorship. This decision of the learned Single Judge was upheld by the Division Bench in ***Bimala Gas services and Ors*****. (supra).** There, the original allottee continued with the business for a considerable period of time and subsequent to his health condition deteriorating intimated the Oil Company that he converted the distributorship into a partnership by inducting his wife as a partner for effective functioning of the business. The other existing partner filed a suit before a Civil Court with regard thereto. Such parties did not proceed with the suit and thereafter complained to the Oil Company and applied for cancellation. In such context, the decision of the Oil Company to terminate the distributorship was struck down.

29. In the facts of the present case, the complaint is not of induction of a partner who is a family member to the original allottee but to an outsider therein. The complaint is one of suppression also since the land was purchased and the partnership agreement, which is denied by the respondent no. 5, being executed prior to the issuance of the distributorship agreement.

30. What constitutes a partnership was discussed in ***Helper Girdharbhai (supra)*** by the Supreme Court. The Supreme Court noted that there must be three important elements in order to establish a partnership, namely, there must be an agreement entered into by all the parties concerned, the agreement must be to share profits to the business and the business must be carried on by all or any of the persons concerned acting for all.

31. The appellants complained that, there exists a partnership agreement dated June 12, 2015 executed by the appellants and the respondent no.5. Respondent no.5 acknowledges that, he put his signature on stamp paper and demi papers and that these papers were used for the partnership agreement. He explains his signatures by saying that the appellant no.1 gave him personal loan and that made him sign such documents in the blank.

32. These same papers which respondent no.5 claims to be signed by him in the blank are used by the appellants to claim that it is essentially a deed of partnership recording the terms and conditions of the partnership between the appellants and the respondent no.5 in respect of the distributorship business. If the document claimed by the appellants is found to be valid then all criteria laid down in **Helper *Girdharbhai (supra)*** stands satisfied.

33. The oil company cannot be said to be an authority to decide *inter se* disputes between partners of a partnership and the terms and conditions thereof. However, the oil company can decide for itself as to whether a distributor is a partnership, and whether the distributor is feigning ignorance of such partnership or is trying to wriggle out of such partnership in order to avoid the rigors of termination, or not. The oil company possesses every right to decide for itself whether in a given factual matrix, the distributor is guilty of violation of the distributorship agreement warranting remedial measures and the measures to be taken in respect thereof. This aspect was not considered at all by the oil company in the impugned decision.

34. Appellants also placed before the oil company *Whatsapp chats* messages. In response to the show-cause notice as also in the minutes of the meeting, the respondent no 5 acknowledged that, he was the group admin thereof. Print out of *Whatsapp* messages produced before the Court suggests that it relates to the distributorship and that, the parties were discussing about the management as also the share of the profits of such distributorship business. Oil company was required to make a robust, effective and more in depth enquiry with regard to the all *Whatsapp* messages to arrive at a finding as to whether or not the respondent no.5 shared the distributorship business with the appellants as claimed and whether or not the respondent no.5 acted in violation of the distributorship agreement in doing so.

35. Appellants produced pass book of the appellant no.1 to show that money was paid by the appellant no.1 by bank transfer to the vendors of the land on which, the distributorship business is being carried out from. Oil company, therefore, was required to make a greater and more in depth enquiry as to the involvement of the appellant no.1 in the land and whether there was substance in the claim of the appellants that there was a partnership business in view of the appellants alleging that the appellant no.1 provided for the purchase of the land.

36. Other allegations of the appellants that, the mobile phone number was used by the appellants also required proper investigation. In our view, the oil company did not undertake the requisite investigations on the basis of the complaint lodged. It is nobody's case that a distributorship agreement cannot be terminated for violation of the terms and conditions of the distributorship. Whether or not the distributor is guilty of violating the distributorship agreement is a decision to be taken by the oil company and it is in its domain to do so.

37. In such circumstances, we set aside the impugned order of the learned Single Judge. We also quash the decision of the oil company dated February 26, 2021 and the letter dated April 20, 2022.

38. We direct the oil company to consider the complaint of the appellants afresh without being persuaded by any of the observations made herein, after giving an opportunity of hearing to both the appellants and the respondent no.5.

39. Let such exercise be completed within four weeks from the date hereof.

40. MAT 1828 of 2023 is **disposed of** accordingly without any order as to costs.

(Debangsu Basak, J.)

41. I Agree.

(Md. Shabbar Rashidi, J.)

(DD/SD/AD)