IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5714 OF 2019

Petroleum Dealers Association,
Dadra And Nagar Haveli .. Petitioner
v/s.
Union of India And Ors. .. Respondents

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Mrs. Nikita Badheka, a/w. Ms. Lata Nagpal, for the Petitioner.

Mr. Chirag Mody, a/w. Ms. Nikita Lad, i/b. Ashok Purohit & Co., for the Respondents.

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CORAM: G.S. KULKARNI &
JITENDRA JAIN, JJ.

DATE : 16th OCTOBER, 2023

P.C:-

We have heard Mrs. Badheka, learned Counsel for the Petitioner and Mr. Mody, learned Counsel for Respondent Nos. 2 and 3 Indian Oil Corporation (ICCL). Respondent No.1-Union of India appears to be a formal party, is not represented, although served.

2. This petition is filed by the Petroleum Dealers Association of Dadra & Nagar Haveli, with respect to 7 members, in relation to

their business being conducted in the Union Territory of Dadra and Nagar Haveli. The grievance of the Petitioner is in regard to a security being insisted to be furnished by the Petitioner's members by way of a bank guarantee purportedly in terms of clause 41 (a) as contained in the dealers agreement as entered between the members of the Petitioner and the Respondent–IOCL.

3. Mrs. Badheka, learned Counsel for the Petitioner, has submitted that the present dispute is not a contractual dispute. It is her contention that the dispute pertains to a statutory obligation, which is required to be complied by the dealer under the Central Sales Tax Act in as much as it contemplates submission of Form C in respect of inter-state transactions. The contention of the Petitioner is that Form C is issued by the appropriate jurisdictional authorities, within a span of three months and, therefore, it is not possible for the members of the Petitioners to comply any monthly requirement in that regard. It is on such statutory complexion, Mrs. Badheka would submit that the case of the Petitioner is restricted for the reliefs as raised in the present petition.

4. The prayers as made in the petition reads thus:

> *"A. Writ of Mandamus, or such other Writ in the nature of Mandamus holding that requirement for bank guarantee for the differential tax for supply made against C Forms cannot be insisted upon as per letter dated 07-02-19, 01-03-19, 15-04-19, and resultantly*

threatening to stall the supply of HSD and Petrol is violation of fundamental rights of the Petitioner to carry on trade, commerce, or profession.

B. Writ of Prohibition, or such other Writ in the nature of Prohibition, directing the Respondents to desist from stopping supply of High-Speed Diesel Oil (HSD) and Motor Spirits Oil (hereinafter referred to as 'Petrol') as indicated in letters dated 07-02.19, 01-03-19, and 15-04-19.

C. Writ of Mandamus, or such other Writ in the nature of Mandamus, directing the Respondents to stop insisting of Bank Guarantee for the period of 150 days for differential tax for supply made against C Forms as excessive deprivatory, illegal, unreasonable, unjust and contrary to the requirements of only furnishing Security Deposit per clause 41(a) the distribution agreement.

D. Pending the notice, admission, and final hearing of the matter, the Court be please to grant injunction restraining the Respondent Nos. 2 and 3 from insisting upon furnishing of Bank guarantee.

E. Pending the notice, admission, and final hearing of the matter, the Court be pleased to restrain the Respondent Nos. 2 and 3 from stopping the supply of HSD and Petrol to the Petitioners and their members.

F. Ex parte ad interim relief in terms of prayer (D) and (E) may kindly be granted.

G. Such other writs as this Hon'ble Court may deem fit.

H. Hearing of this Petition be expedited.

I. The Petitioner are filing this Petition with utmost urgency and therefore the Petitioner pray liberty to submit additional submissions and documents with the prior permission of the Court.

J. Such further relief(s) as deemed fit and proper in the facts and circumstances of the case."

5. Mrs. Badheka has also drawn our attention to a detailed representation as made by the Petitioner in this regard, the last of such representation being representation dated 25th April 2019 (Exhibit L) which is signed by the members of the Petitioner Association. It is her submission that the said representation as also the earlier

representations in regard to the Petitioner's contentions have not been decided.

6. Mr. Mody, learned Counsel for the Respondents, would oppose the petition, drawing our attention to the reply affidavit filed on behalf of Respondent No.2 of Sunil Vikram Singh, on behalf of the IOCL. He has submitted that the dispute in question as raised in the present petition is in fact a dispute arising under the dealership agreement. It is submitted that the contentions as raised by the Petitioners are required to be raised in arbitration proceedings as per clause 61.A of the dealership agreement. It is, thus, submitted that the petition needs to be dismissed.

7. The above rival contentions fall for our consideration.

8. After having heard learned Counsel for the parties and after having perused the record, we are of the opinion that there certainly appears to be a friction which is caused between the parties although the relation between the parties is contractual in view of the statutory mechanism, which is in operation under the Central Sales Tax Act and, more particularly, in respect of release of Form C, which are required to be furnished by the Petitioner to the IOCL, to avail the benefit of the tax paid. The Petitioners are admittedly the dealers of the petroleum products as supplied by the Respondent IOCL. In our

opinion, in the peculiar facts of the case, it would be appropriate that the statutory mechanism is required to be discussed between the parties and appreciated in its proper perspective so that the dispute in this regard as asserted in the present proceedings can be resolved amicably.

9. We also note that although the Petitioner had made detailed representations from time to time, there was neither a hearing nor a decision taken on such representation, which in fact is not to the benefit of both the parties.

10. We are, accordingly of the opinion that the present petition needs to be disposed of by directing the Respondent - Deputy General Manager, IOCL, to hear the Petitioner and after appreciating the contentions of the Petitioner on the statutory canvass as involved, take an appropriate decision by passing a reasoned order on such representation by keeping open all contentions of the parties.

11. We may also note that it would be in the interest of both the parties that the issues are resolved, as the Petitioners are dealers of the Respondent IOCL for quite some time, as also the present proceeding on such issues is pending since 2019. It is not certainly in the public interest of the IOCL to litigate on such issues, hence an endeavour ought to be made to resolve the issues.

12. Needless to observe that till such representation is decided and orders on it communicated to the Petitioner, no coercive action be taken against the members of the Petitioners.

13. In the event if there is any order adverse to the Petitioner, the same shall not be given effect to for a period of two weeks after its communication.

14. The writ petition stands disposed of in the above terms. No costs.

(JITENDRA JAIN, J.) **(G.S. KULKARNI, J.)**