

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

204-2

CWP-3360-2014 (O&M)

Reserved on : 04.10.2023

Pronounced on : 11.10.2023

M/s Hari Ram Piara Lal

..... Petitioner

Versus

Union of India and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Neeraj Kumar Jain, Senior Advocate with
Mr. Sandeep Khunger, Advocate and
Mr. Saksham Khunger, Advocate
for the petitioner.

Mr. Ashish Rawal, Advocate for Union of India

Mr. Raman Sharma, Advocate for HPCL.

Mr. Nitin Thathai, Advocate
for respondent No.3

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking direction to respondent No.2-HPCL to restore dealership as the termination of dealership has been held illegal and invalid vide award dated 29.08.2013 passed by an Arbitrator. The petitioner is further seeking setting aside/modification of award dated 29.08.2013 to the extent Arbitrator has denied the restoration of the dealership of the petitioner.

2. The brief facts which are necessary for the adjudication of the present petition are that the petitioner is a partnership firm and respondent-

Corporation is engaged in the business of manufacture and supply of

petroleum products. The petitioner pursuant to an advertisement was allotted retail outlet by respondent-Corporation. A dealership agreement dated 22.09.1987 was executed between petitioner and the respondent. The petitioner re-constituted its entity in 2004 and accordingly agreement was executed between respondent and re-constituted firm.

3. The respondent entered into an agreement with M/s SGS India Private Limited (for short 'SGS') whereby SGS was authorized to conduct marker test with respect to oil sold by retail outlets of the petitioner. On 11.07.2007, an official of SGS namely Mandeep Singh, to conduct inspection/test came at retail outlet of the petitioner. Mandeep Singh conducted marker test and found adulteration. On the basis of report of marker test followed by another test at the premises of the respondent, a show cause notice dated 21.09.2007 came to be issued to petitioner whereby petitioner was called upon to show as to why dealership agreement should not be terminated. The petitioner filed reply to aforesaid show cause notice. The respondent did not find reply of the petitioner satisfactory and accordingly, dealership agreement came to be terminated vide order dated 30.04.2008.

4. The petitioner invoked arbitration clause against the termination order. By order dated 25.05.2012 passed in Civil Appeal No.2253-2255 of 2010, Supreme Court appointed Justice R.V. Raveendran (Retd.) sole arbitrator to decide the dispute between the petitioner and respondent.

5. The Arbitrator vide award dated 29.08.2013 decided the dispute. The Arbitrator formed an opinion that Mandeep Singh an employee of SGS could not conduct inspection in the absence of an official

of HPCL appointed under Clause 7 of Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) order, 2005 (for short '2005 order'). The Arbitrator on the basis of evidence led by both sides concluded that official of SGS had conducted inspection and drawn samples in the absence of sales officer of petitioner-Corporation, thus, sample was drawn by an unauthorized person. The test report of a sample, drawn by an unauthorized person cannot be relied upon. The Arbitrator further concluded that Marketing Discipline Guidelines, 2005 being merely guidelines issued by the Ministry cannot override or supersede or prevail over Clause 7 of 2005 Order which is a delegated legislation having statutory flavour. The conclusion drawn by Arbitrator reads as :

“54. In view of the above, the claims and counter-claims are decided and disposed of by this award, in the following manner:-

(A) The termination of dealership of claimant, by respondent is declared to be illegal and invalid.

(B) The claimant is not entitled to restoration of dealership, but only entitled for damages of Rs.45,000/- for wrongful termination equivalent to loss of earning for three months.

(C) The claimant is entitled to Rs. 50,000/- as damages for injury to goodwill.

(D) The claim of arrears of rent, made by the claimant, is held to be inarbitrable, without prejudice to the right of the lessors of the premises to claim any rent due or other relief in accordance with law.

(E) The counter claim of respondent is allowed in part and the claimant is directed not to enter upon or use the

retail outlet premises of the respondent. The claimant is further directed to remove its belongings, if any, from the respondent's retail outlet premises.

(F) The counter-claims of respondent for damages for loss of business and for loss of goodwill, are rejected.

(G) The amounts awarded (Rs.95,000/- in all) to the claimant shall carry interest at 15% per annum from date of the award to date of payment.

(H) The claimant is entitled to recover from HPCL, as arbitration costs, the entire 50% of Arbitrator's fee and DAC administrative costs deposited by it with DAC, plus Rs.25,000/-, as lawyer's fee. The respondent is directed to bear its own cost.

6. The Arbitrator declared termination of dealership illegal and invalid and awarded damages to the extent of Rs.40,000/- for wrongful termination, however, in view of judgment of Supreme Court in **Indian Oil Corporation Ltd. Vs. Amritsar Gas Services, (1991) 1 SCC 533**, did not restore dealership on the ground that in view of Section 14 of Specific Relief Act, 1963, restoration of dealership cannot be granted. The Arbitrator further observed that inability of Arbitrator to grant relief of restoration will not come in the way of claimant seeking appropriate public law remedy, if any, available in law, for restoration of dealership, on the basis of findings in the award. Hence, the petitioner has preferred present petition seeking restoration of dealership.

7. The respondent preferred objection petition under Section 34 of of Arbitration Act before District Judge, Chandigarh. The matter came up for consideration before Additional District Judge, Chandigarh who vide

order dated 10.10.2017 dismissed objection petition of the respondent. The learned ADJ concluded that Court under Section 34 of Arbitration Act cannot sit like appellate authority over the award passed by Arbitrator and cannot re-appreciate the evidence. The Arbitrator has properly appreciated the evidence, therefore, it has to be relied upon. The Objecting Court turned down plea of the respondent with respect to presence of sales officer of the respondent-HPCL. With respect to judgment of Calcutta High Court in *Ramesh Kejriwal Vs. Union of India, 2011(33) RCR (Civil) 112*, cited by the respondent, it was held that in the said case, there was no dispute with respect to presence of sales officer.

8. Learned counsel for the petitioner submits that Arbitrator has returned categorical finding to the effect that termination of dealership was illegal and invalid. The Arbitrator has further observed that inability of Arbitrator to grant relief of restoration will not come in the way of petitioner seeking appropriate public law remedy on the basis of findings in the award. The petitioner would be left high and dry if despite declaration of termination invalid, dealership is not restored. This Court in exercise of power conferred by Article 226 has authority to restore dealership because agreement was executed between petitioner and a public sector undertaking i.e. Government authority. The contract was undoubtedly a non-statutory contract, however, it was executed with Government authority thus, non-restoration of dealership despite categorical findings of Arbitrator would be contrary to rule of law and justice.

9. Counsel for the respondent submits that in view of judgment of Hon'ble Supreme Court in Amritsar Gas Services (supra), the dealership agreement cannot be restored. It was a contract between two parties and

respondent has every right to terminate the contract. The allotment of retail outlet does not create absolute right in favour of the dealer and respondent-Corporation, if at any stage, finds that dealer is not working as per terms and conditions of the contract, can terminate dealership agreement. No public law is involved, thus, the jurisdiction of this Court cannot be invoked to restore the dealership agreement.

10. I have heard the arguments of learned senior counsel for the petitioner and learned counsel for the respondent and perused the record with their able assistance.

11. A two Judge Bench of Hon'ble Supreme Court in **M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703** has adverted with ambit and scope of interference in contractual matters. Objection of the respondent with respect to maintainability of writ in contractual matters stands answered by Hon'ble Court. The Hon'ble Court has held:

“82. We may cull out our conclusions in regard to the points, which we have framed:

82.1. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

82.2. The principle laid down in Bareilly Development Authority [Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116] that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457], may not continue to hold good, in

the light of what has been laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and as followed in the recent judgment in Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847].

82.3. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent State in a case by itself to ward off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.

82.4. to 82.6 XXXX XXXX XXXX

82.7. The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. Again, the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.

82.8 XXXX XXXX XXXX

82.9. The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.

82.10. XXXX XXXX XXXX

82.11. *Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the fundamental right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible rule in favour of the Court turning away the petitioner to alternate fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the writ court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be*

an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553]. It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition”

From the conspectum of above cited judgment, it can be easily gleaned that there is no bar to entertain writ petition in contractual matter though contract is a non-statutory contract.

12. A Division Bench of this Court in **Bharat Petroleum Corporation Limited and Another Versus Pal Filling Station and Others, 2015 SCC OnLine P&H 7906** has held that the decision to terminate dealership was harsh and highly disproportionate to the detected irregularity. The petitioner therein was never penalized in 26 years, no fault was found in diesel dispensing unit, no adulteration, short measuring or variation of stock was found. Thus, order of termination was set aside.

12.1 Andhra Pradesh High Court in **Ram Lal Agarwal Versus Indian Oil Corporation Limited; Writ Petition No.30227 of 2013** has held that writ petition is maintainable against termination of dealership agreement when no serious disputed questions of fact requiring consideration are involved. The petitioner therein was not permitted to cross-examine officials of the corporation, however, a lot of weight to the version of those officers was assigned. The Court found that the competent authority was supposed to consider past performance of the dealer while assessing nature of disciplinary action and permit cross-examination of the officers of the corporation. The Court set aside termination order.

12.2. Allahabad High Court in **M/s Chaudhary Filling Point, Kazipur through its Proprietor and Another Versus State of U.P. through Principal Secretary Food and Civil Supplies and Others; 2019 SCC OnLine All 3620** has held that remedy of arbitration in view of judgment of Hon'ble Apex Court in IOCL Versus Amritsar Gas Service; 1991 SCC (1) 533 is not an efficacious and proper remedy in case of termination of dealership. The Court set aside termination order noticing that competent authority did not consider that at what point of time unauthorized tampering/soldering was done in the dispensing unit and how the dealer is manipulating distribution of fuel. There was periodical inspection by weight and measurement department officials and seal was found intact. The respondent has failed to show impact of tampering/soldering on delivery unit. The delivery of fuel was found accurate prior to and after the checking. Merely on assumptions that tampering/soldering was found in the delivery unit of the dealer, dealership cannot be terminated.

12.3. Hon'ble Supreme Court in **Indian Oil Corporation Limited Versus Amritsar Gas Service and Others ; 1991 (1) SCC 533** has held that Arbitrator apart from other prayers cannot allow prayer of setting aside of order of termination of dealership agreement. The Hon'ble Apex Court while setting aside award of Arbitrator held that Arbitrator cannot restore dealership agreement and he can grant compensation of notice period.

12.4. In **Bharat Petroleum Corporation Limited Versus Jagannath and Co. and Others; 2013 (12) SCC 278**, Hon'ble Supreme Court dismissed appeal of the corporation and upheld order passed by High Court. In this case, an inspection was conducted by officials of the BPCL. During the inspection, certain irregularities were found for which samples were

drawn and sale of all the products was suspended. Dispensing units and tanks were sealed. The samples were sent to quality control laboratory of the corporation which confirmed that samples have failed to meet the required specifications. The corporation terminated dealership agreement and dealer preferred writ petition before High Court which came to be allowed. The High Court set aside termination order on the ground of rejection of request of the dealer to draw fresh samples and get the same re-tested. The corporation filed review petition which came to be dismissed. The corporation preferred SLP before the Apex Court. The Apex Court upheld order of High Court on the ground that corporation has failed to comply with the guidelines and Petroleum Act, 1934.

12.5. In *Hindustan Petroleum Corporation Limited and Others Versus Super Highway Services and Another; 2010(3) SCC 321* Hon'ble Supreme Court dismissed special leave petition of the corporation and upheld order of the High Court. The Hon'ble Court held that cancellation of dealership agreement of a party is a serious punishment and cannot be taken lightly. The corporation has to act fairly and in complete adherence to the rules/guidelines framed for the said purpose. The non-service of notice to the aggrieved person before termination of his dealership agreement offends the well-established principles of natural justice. Hon'ble Court declined contention of the corporation that there was arbitration clause in the dealership agreement.

13. In the case in hand, the Arbitrator vide award dated 29.08.2013 declared determination of dealership illegal and invalid. The respondent-Corporation filed objection petition under Section 34 of Arbitration Act which came to be dismissed. This Court by separate order of even date has

dismissed FAO No. 2490 of 2018 of the respondent-Corporation, thus, as on day, the factual position is that termination was invalid and illegal. The Arbitrator has declined to restore dealership on the ground that Arbitrator has no power to restore dealership in view of Section 14 of Specific Relief Act, 1963. The respondent did not terminate dealership agreement invoking Clause 3 of the agreement whereas it was terminated in terms of Clause 58 read with Clause 27 on the ground that claimant had adulterated the product and as a consequence, the business was carried on by the petitioner in a manner prejudicial to the good name of the Corporation. Clause 27 and relevant extracts of Clause 58 of the dealership agreement are reproduced as below:

27. All the products supplied by the corporation to the dealer hereunder shall be in accordance with the specifications laid down by the corporation from time to time. The dealer shall take every possible precaution against contamination of the corporation's products by water, dust or other things injurious to their quality and shall not in any way directly or indirectly alter the specifications of the said products as delivered. The corporation shall have the right to exercise at its discretion at any time and from time to time quality control measures for products marketed by the corporation and laying with the dealer. The opinion of the district manager for the time being at the corporation's district office at Chandigarh as to whether any product of the corporation has been contaminated shall be final and binding upon the dealer. In the event of the said district manager finding that the contamination has been due to any act or default of the dealer or of his servants or agents, the corporation shall have the right, without being bound to do so, to remove

the contaminated products and to destroy or otherwise deal with the same without making any payment therefore to the dealer and without prejudice to the corporation's right to terminate this agreement forthwith.

58 *Notwithstanding anything to the contrary herein contained, the corporation shall also be at liberty to terminate this agreement forthwith upon or at any time after the happening of any of the following events, namely:*

XXXXX

(i) If the dealer shall contaminate or tamper with the quality of any of the products, supplied by the corporation.

XXXXX

(m) If the dealer shall either by himself or by his servants or agents commit or suffer to be committed any act which, in the opinion of the District Manager of the corporation for the time being in Chandigarh, whose decision shall be final, is prejudicial to the interest or good name of the corporation or its products, the Regional Manager shall not be bound to give reason for such decision.

14. The respondent terminated agreement holding that petitioner had adulterated the product. The Arbitrator has declared termination illegal and invalid. While adjudicating present writ petition, it is not necessary to look at reasons and findings recorded by Arbitrator while holding termination invalid. This aspect stands examined while adjudicating FAO No.2490 of 2018.

15. Applying afore-cited judgments of Hon'ble Supreme Court as well as different High Courts, this Court is of the considered opinion that it would be travesty of justice and contrary to rule of law if despite upholding

order declaring termination invalid and illegal, writ jurisdiction of this Court is not invoked to restore dealership agreement.

16. In the wake of above-noted facts and findings, this Court is of the considered opinion that the present petition deserves to be allowed and accordingly allowed. The respondents are directed to restore dealership agreement.

11.10.2023
anju

(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>