

CWP-24185-2017

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-24185-2017 (O&M)

Date of Decision: 20.07.2023

Sohan Lal Amrohi

...Petitioner

Versus

Union of India and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Saurav Khurana, Advocate for the petitioner

Mr. Ankur Sharma, Senior Panel Counsel
for the Union of India-respondent No.1

Mr. Raman Sharma, Advocate for respondent Nos.2 and 3

Mr. Harsh Jain, Advocate for

Mr. Deepender Singh, Advocate for respondent No.4

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 17.07.2017 (Annexure P- 9) whereby Dealership Agreement of the petitioner has been terminated by respondent No.3.

2. The brief facts of the case which are necessary for the adjudication of the present case are that the petitioner is a sole proprietor of M/s Amrohi Gas Agency. The petitioner was allotted dealership of LPG on 12.02.1983 and tenure of the dealership was 10 years. On 25.02.2008, a show cause notice was issued to the petitioner alleging shortage of cylinders and regulators which culminated into termination of dealership. The matter travelled upto Hon'ble Supreme Court which

vide order dated 12.08.2013 (Annexure P-1) restored Gas Agency of the

petitioner. The respondents filed Review Petition No.34080 of 2013, wherein respondent-corporation pointed out that petitioner is involved in multiple criminal cases, thus, order dated 12.08.2013 passed by Hon'ble Supreme Court needs to be reviewed. The review petition came to be dismissed vide order dated 24.04.2014 (Annexure P-3). The respondent-corporation restored dealership of the petitioner, after executing a fresh agreement. The duration of fresh dealership was 4 years 7 months and 10 days. The respondent-corporation issued show cause notice dated 16.11.2015 (Annexure P-5) to the petitioner alleging that petitioner has violated terms and conditions of Dealership Agreement to the extent that petitioner is involved in criminal cases and he has been declared proclaimed offender. The petitioner filed his reply to the show cause notice. The respondent vide order dated 17.07.2017 (Annexure P-9) after granting opportunity of hearing and considering reply to the show cause notice came to a conclusion that petitioner has violated Clause 29B(d) and (n) of the Dealership Agreement, thus, Dealership Agreement needs to be terminated. Accordingly, by impugned order dated 17.07.2017, the agreement was terminated.

3. Learned counsel for the petitioner *inter alia* contends that respondent-corporation has terminated Dealership Agreement forming an opinion that act of the petitioner amounts to involvement of petitioner in an offence involving moral turpitude, however, petitioner at that point of time was convicted under Section 138 of Negotiable Instruments Act, 1881 (for short '**NI Act**') which cannot be called as an offence involving

in few cases, however, thereafter was discharged/acquitted on account of compromise with the complainants. The petitioner as on date is not involved in any other offence. All the matters including cases where he was convicted stand settled. The petitioner unfortunately, during the period in question, was dragged in criminal proceedings and he has no criminal antecedents.

4. Mr. Raman Sharma, learned counsel for the respondent Nos.2 &3-corporation submits that petitioner was convicted under Section 138 of NI Act and offence of dishonor of cheque attracts stigma of moral turpitude. The petitioner was declared proclaimed offender in many cases which caused disrepute to the organization, thus, competent authority rightly terminated contract in question.

5. I have heard the arguments of learned counsels for the parties and perused the record with their able assistance.

6. The respondent-corporation after passing of order dated 12.08.2013 by Hon'ble Supreme Court preferred a review petition wherein reference of 13 pending criminal cases was given. The review petition came to be dismissed. The respondent brought on judicial record all pending criminal cases against the petitioner, however, failed to get any favourable order. The respondent-corporation has terminated distributorship of the petitioner holding that offence under Section 138 of NI Act involves moral turpitude. The respondent-corporation was pointed out judgments of Courts, however, it has returned a finding that

it is not correct proposition of law and every case has to be decided on

facts of each case. Though respondent-corporation has returned a finding that each case has to be decided on its own facts, however, it has failed to point out how violation of Section 138 of NI Act involved moral turpitude. The respondent-corporation has further returned a finding that the petitioner has been declared proclaimed offender and it has caused disrepute to the organization. The petitioner has either already been acquitted or discharged from all the cases. The respondent-corporation has noticed that appeal of the petitioner against conviction has been dismissed, however, there is no reference of the appeal which was dismissed.

7. The impugned order seems to be passed without advertent with question of moral turpitude especially when all the criminal cases were registered against the petitioner alleging violation of Section 138 of NI Act. It is settled proposition of law that an offence in one particular situation may involve moral turpitude and may not in another situation. Expression 'moral turpitude' has not been defined under General Clauses Act, 1897. The Hon'ble Supreme Court in ***State Bank of India and Others Vs P. Supramaniam; (2019) 18 SCC 135*** has adverted with expression moral turpitude. The Hon'ble Supreme Court has held:

“13. Ordinarily, the tests that can be applied for judging an offence involving moral turpitude are:

(a) Whether the act leading to a conviction was such as could shock the moral conscience or society in general;

(b) Whether the motive which led to the act was a base one, and

(c) Whether on account of the act having been committed the perpetrators could be considered to be of a depraved character or a person who was to be looked down upon by the society. [Mangali v. Chhakki Lal, 1962 SCC OnLine All 215 : AIR 1963 All 527]

14. The other important factors that are to be kept in mind to conclude that an offence involves moral turpitude are : the person who commits the offence; the person against whom it is committed; the manner and circumstances in which it is alleged to have been committed; and the values of the society. [Jorabhai Hirabhai Rabari v. Distt. Development Officer, 1995 SCC OnLine Guj 117 : AIR 1996 Guj 3]”

8. In view of afore-stated facts and circumstances, this Court finds it appropriate to allow the present writ petition and direct the respondent-corporation to pass a fresh order. Accordingly, petition is allowed and respondent-corporation is directed to pass fresh order after granting opportunity of hearing to the petitioner and considering the changed facts and circumstances as well as circumstances prevailing on the date of passing impugned order. Fresh order be passed within three months from today.

(JAGMOHAN BANSAL)
JUDGE

20.07.2023
Mohit Kumar

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