IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

205 CWP-36765-2019 (O&M)
Date of Decision : 21.08.2023

Rajwant Kaur and another .... Petitioners

Versus

Union of India and others .... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.A.P.S.Sandhu, Advocate
for the petitioners.

Mr. Ankur Sharma, Sr. Panel Counsel for
Mr. Chandan Gaddi, Advocate
for respondent No.1-UOI.

Mr. Raman Sharma, Advocate
for respondents No.2 to 4.

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<u>JAGMOHAN BANSAL, J. (Oral)</u>

1. The petitioners through instant petition under Articles 226/227 of Constitution of India are seeking setting aside of order dated 05.12.2019 (Annexure P-8) whereby dealership agreement dated 28.07.2011 has been terminated.

2. The brief facts which are necessary for the adjudication of the present petition are that the petitioner was allotted petrol station i.e. retail outlet by respondent No.2. Dealership agreement dated 28.07.2011 came to be executed between petitioner and respondent No.2. The Department of Legal Metrology, Punjab along with police officials on 27.07.2013 raided premises of the petitioner. Material irregularities were found in the oil

dispensation. An FIR No.23 dated 27.02.2013 came to be registered against three persons. It is apt to notice here that respondent had allotted petrol pump to a proprietorship concern i.e. Sardar Filling Station. Petitioner No.1 is proprietor of said concern. FIR was not registered against the petitioner and it was registered against her three employees. The police after completing investigation presented its report under Section 173 Cr.P.C. The trial Court vide judgment dated 19.12.2017 held employees of the petitioner guilty and vide order dated 19.12.2017 sentenced to imprisonment to the extent of period undergone along with fine of Rs.1,000/-. The Department of Legal Metrology filed complaint against the petitioner which came up for consideration before JMIC, Zira who vide judgment dated 12.04.2016 though held the petitioner guilty yet extended benefit of probation under Probation of Offenders Act.

The respondent-Corporation issued a show cause notice dated 30.04.2015 calling upon the petitioner to show cause as to why necessary action be not taken against her for the violation of terms and conditions of the dealership agreement. The petitioner filed reply to aforesaid show cause notice. The respondent-Corporation issued another show cause notice dated 16.12.2018 calling upon the petitioner to show cause as to why necessary action including termination of dealership agreement should not be taken against her. The Corporation vide impugned order dated 15.12.2019 terminated dealership agreement of the petitioner. The dealership has been terminated on the ground that employees of the petitioner as well as petitioner has been convicted and petitioner has violated terms and conditions of the agreement.

3. Mr. Sandhu, Advocate *inter alia* contends that alleged offence

was committed in February' 2013 whereas impugned termination order has been passed on 05.12.2019 i.e after the expiry of more than 06 years from the date of commission of alleged offence. The employees of petitioner were arrested and in the trial they were found guilty. The respondent-Corporation has never carried out independent enquiry and has passed impugned order simply relying upon findings recorded by trial Court. The petitioner is not beneficiary of alleged irregularities. Arrest of employees and their conviction vindicate stand of the petitioner

4. Per contra, Mr. Sharma, Advocate relying upon clauses 15, 18, 22, 55(a) and 55(k) submits that petitioner has violated terms and conditions of the agreement, thus, respondent was competent to terminate the contract. The argument of petitioner that manipulation was committed by employees is irrelevant because it was total responsibility of the petitioner to look after petrol pump and comply with terms and conditions of the contract. It is a purely contractual matter and Corporation has every authority to terminate contract.

5. In support of his contention, Mr. Sharma, Advocate placed reliance upon judgment of Hon'ble Supreme Court in ***Indian Oil Corporation Ltd. vs. Amritsar Gas Service, (SC) 1991(1) SCC 533.***

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. The conceded position emerging from the record is that the petitioner was allotted petrol pump in 2011 and a raid was conducted by State authorities on 27.02.2013. Material irregularities were found in dispensation system. Two employees of the petitioner came to be arrested. *Challan* was presented against the employees and they came to be

convicted. Police neither registered FIR against the petitioner nor *challan* was presented against her, however, at a later point of time, complaint was filed by Department of Legal Metrology against her. The petitioner came to be held guilty, however, she was released on probation. The respondent-Corporation did not carry out either independent inspection or enquiry against the petitioner. The Corporation is solely relying upon court proceedings. The show cause notice against the petitioner was issued in 2015 and impugned order came to be passed in 2019. The petrol pump is still in operation which the Corporation is operating through third party on *adhoc* basis.

8. 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. The Court has held :

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

9. The corporation is relying upon clauses 15, 18, 22, 55(a) and 55 (k) of the agreement which are reproduced as below :

"*15 The dealer will take such care of the outfit and of the building and structures on the premises as also of the receptacles or containers in which the Corporation's products may be supplied to him as a business man of ordinary prudence would take of like premises, outfit,* *receptacles and containers belonging to himself. The dealer shall be responsible for all loss or damage to the outfit, receptacles, containers and premises normal wear and tear expected. All disputes as to liability hereunder shall be decided by the Corporation's Regional Manager at Bathinda whose decision shall be final and the dealer shall pay to the Corporation within a week of receipt of a notice in writing requiring him to do so. The amount determined as being due on account of any such loss or damage.*

X X X X

18 The dealer shall not remove the outfit or any part thereof from its position on the said premises nor deliver possession thereof to any other person, Firm or company other than the Corporation nor encumber nor sell the same, nor do anything whereby the outfit may be seized or taken in execution or attached, destroyed or injured or whereby the title of the Corporation thereto may in any way be affected, destroyed or prejudiced.

X X X X

22. The dealer shall not add to or alter the premises layout or outfit in any manner whatsoever or place in or attach to any part of the said premises or the outfit any signboard, pictures handbills, advertisements or things of a similar nature except with the prior written approval of the Corporation. If the dealer shall commit a breach of this clause the Corporation shall have the right without previous notice forth with to terminate the agreement and/or to reinstate the premises, layout and/or outfit to its/their/former condition in all respects and the dealer shall pay the cost of such reinstatement to the Corporation on demand, failing which the Corporation may treat such amount as being an arrear of a bill preferred by the Corporation in terms of clause

10 of this agreement.

X X X X

55 Notwithstanding anything to the contrary herein contained, the Corporation shall be at liberty to terminate this agreement forthwith upon or at any time after the happening of any of the following namely:-

(a) If the dealer shall commit a breach of any of the 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.

X X X X

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

10. From the perusal of above quoted clauses, it comes out that owner of petrol pump is supposed to take care of all the equipment receptacles and apparatus. The petitioner being proprietor of the concern cannot be held liable for illegal criminal act and omissions of her agents/employees. The clauses relied upon by respondent-Corporation do not enjoin that proprietor of petrol pump is responsible for illegal act and omissions of its employees/agents. A proprietor can be held responsible for act and omissions of his employees if he has actively participated or agents have committed illegal act with the consent of the proprietor or illegality committed by employees was in the knowledge of proprietor.

11. In the case in hand, there is allegation of tempering of seal affixed by Legal Metrology Department as well as delivery of less oil than required. It means there was loss of oil to every customer of the petitioner. Neither in the impugned order nor from the pleadings, it can be culled out that tempering in the equipment was carried out with the active connivance or knowledge of the petitioner. There is nothing on record disclosing that the petitioner was part of illegal gain arising out of alleged activities. Conviction of employees by trial Court indicates that employees were responsible for the alleged offence. It is apt to notice that petitioner was neither named in the FIR nor *challan* was present against her. The respondent-Corporation has not conducted any independent enquiry. The Corporation despite knowledge in 2013 did not take action till 2019. The petitioner continued to work from 2013 to 2019, however, no irregularity was found.

The respondent has right to terminate agreement if there is illegal act or omission on the part of the petitioner, however, agreement cannot be terminated mechanically or in an arbitrary manner. The contract executed between the petitioner and respondent is not a statutory contract, however, it is an agreement executed between the private party and a Government instrumentality. Thus, act of respondent can be tested on the touchstone of Articles 14, 19 and 21 of Constitution of India. The action of respondent is not immune from judicial review. The judgment cited by learned counsel for the respondent in ***Amritsar Gas Services's case (supra)*** is not applicable in the case in hand.

12. In the wake of aforesaid facts and discussion, this Court is of the considered view that the petition deserves to be allowed and

accordingly allowed and the order dated 05.12.2019 passed by respondent is hereby set aside.

(JAGMOHAN BANSAL)
21.08.2023 **JUDGE**
anju

Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*