

28.02.2024

Ct. no.654

Sl. No.6

sn

**IN THE HIGH COURT AT CALCUTTA  
CONSTITUTIONAL WRIT JURISDICTION**

**WPA 4353 of 2024**

**Soumen Chaudhury  
Vs.  
Indian Oil Corporation Ltd. & Ors.**

Mr. Suman Basu  
Ms. Debanwita Pramanik  
..for the petitioners  
Mr. Amit Kumar Nag  
Mr. Partha Banerjee  
..for the respondent nos.1-6

Affidavit of service filed by the petitioner is taken on record.

This writ petition has been filed by the petitioner under Article 226 of the Constitution of India for consideration of his representation dated 6<sup>th</sup> February, 2023 and also for termination of distributorship of private respondent no.7.

The brief fact of the case is as follows. On 22<sup>nd</sup> April, 2012, the petitioner entered into an agreement with the respondent no.7 for running LPG distributorship with a percentage share of distributorship to the extent 70:30 ratio. The LPG distributorship of the Indian Oil Corporation Limited (hereinafter referred to as "IOCL") was granted in favour of the respondent no.7. The petitioner made representation/complaint before the respondent-IOCL alleging violation of Clause 23(c) of the distributorship agreement by respondent no.7 for the

reason of entering into agreement dated 22<sup>nd</sup> April, 2012, without the consent of the Oil Company. Since the representation/complaint of the petitioner was not considered by the respondent-IOCL, hence, this writ petition.

Ms. Debanwita Pramanik, learned advocate for the petitioner submits that as per Clause 23(c) of the distributorship agreement, the distributor without the previous written consent of the Oil Corporation, cannot enter into any arrangement, contract or understanding with a third party. The respondent no.7, in whose favour distributorship has been issued, has violated the aforesaid clause of the distributorship agreement by entering into an arrangement/agreement with the petitioner for running the distributorship. The petitioner made a representation/complaint before the respondent-IOCL alleging of such fact, which has not been acted upon. She prays for appropriate orders directing the respondent-IOCL to consider the representation/complaint of the petitioner.

In reply to the contentions raised on behalf of the petitioner, Mr. Amit Kumar Nag, learned advocate for the respondent-IOCL submits that the agreement between the petitioner and the respondent no.7(distributor) was entered into on 22<sup>nd</sup> April, 2012. The respondent-IOCL has issued a letter of intent on 3<sup>rd</sup> December, 2012. The appointment of the respondent no.7 was made on 27<sup>th</sup>

May, 2013 and the distributorship agreement was entered into between the IOCL and the respondent no.7 subsequent thereto. Since, on the date of agreement between the petitioner and the respondent no.7 (i.e. 22<sup>nd</sup> April, 2012), there was no existence of distributorship agreement, hence the respondent-IOCL cannot bind or hold the distributor for any violation on the basis of an agreement, which has been executed prior to the execution of distributorship agreement by and between the IOCL and the respondent no.7. In the light of his aforesaid submissions, he prays for dismissal of the writ petition.

Admittedly, the agreement between the petitioner and the respondent no.7 has been entered into on 22<sup>nd</sup> April, 2012, which is much prior to the distributorship agreement executed between the IOCL and the respondent no.7, after issuance of letter of appointment on 27<sup>th</sup> May, 2013. In order to appreciate the issue raised in this writ petition, it would be profitable to reproduce clause 23(c)(i) of the Distributorship agreement as hereunder:-

*“(c) Except with the previous written consent of the Corporation:-*

*(i) The Distributor shall not enter into any agreement, contract or understanding whereby the operations of the Distributor hereunder are or may be controlled/carried out and/or financed by any other person, firm or Company whether directly or indirectly and whether in whole or in part.”*

It clearly manifest that the clause 23(c)(i) will be effective from the date of execution of the distributorship agreement and not on any prior date. The agreement between the petitioner and the respondent no.7 was never executed during the subsistence of distributorship agreement. Further as per paragraph no.7 to the writ petition, the grievance of the petitioner is that the private respondent (distributor) after commissioning of the LPG distributorship has refused to share profit in terms of the agreement. Such averment goes to show that the prior agreement has not been acted upon after commissioning. Therefore, the violation of the clause 23(c)(i) by private respondent no.7, as raised in the writ petition, does not hold good. In light of above discussion, the writ petition falls short of merit.

Accordingly, the writ petition being **W.P.A. 4353 of 2024** stands dismissed.

All connected applications, if any, stand dismissed.

Interim order, if any, stands vacated.

There shall be no order as to costs.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat certified copy of the order, if applied for, be given to the parties on compliance of all necessary legal formalities.

( **Bivas Pattanayak, J.**)