

11.07.2024
Ct. No. 09
Item No.04
Cp

WPA No. 17762 of 2023

Blue Flame HP Gas Agency

Vs.

Hindustan Petroleum Corporation Limited & ors.

Mr. Prantik Garai

Mr. Arka Mahalanabis

....for the petitioner.

Mr. Biswanath Chatterjee

Mr. Sobhan Pathak

.....for the respondent nos. 1 to 4.

1. The writ petition has been filed challenging the suspension notice dated August 9 2021 and the termination notice dated February 21, 2022, issued by the Hindustan Petroleum Corporation Limited (HPCL). The petitioner was a dealer and had entered into a dealership agreement with HPCL on August 30, 2018 for supply of LPG filled Cylinder/equipments to various consumers for the marketing location Belghoria. The agreement was valid for 10 years. The dealership agreement was terminated by an order dated February 21, 2022.

2. The grounds for termination were:-

a) That the petitioner was dependent on transfer of customers from other distributors

instead of soliciting new customers for domestic and commercial supply of LPG gas.

- b) The petitioner continuously requested consumers of other distributors to be attached to it.
 - c) Inability to arrange adequate delivery infrastructure.
 - d) Non-payment of outstanding dues of Rs.4, 49,918/-, despite several opportunities and reminders.
 - e) From the very beginning, credit supply of loads were allowed to the petitioner.
 - f) Although, HPCL supported the dealership by transferring 7456 consumers in a phased manner, but the customer holding of the petitioner reduced to 7918.
 - g) Since commissioning, the petitioner could only enroll 380 new connections and the figure was meager.
3. The termination was preceded by a suspension. The termination was effected upon issuing a show cause notice to the petitioner. The petitioner did not clear the outstanding dues which ultimately came to Rs.5,26,280.86/-. The other reasons have been briefly discussed hereinabove.
4. Clause 38 of the contract provides for settlement of dispute by arbitration. The petitioner invoked the

said clause. The learned arbitrator passed an award. The issues before the learned arbitrator were as follows:-

“Common Issues: -

Whether the Respondent rightfully terminated the Dealership Agreement Dt. 30/08/2018 by issuing Letter of Termination Dt. 21/02/2022 in terms of the relevant clauses of the Agreement.

Uncommon Issues: -

(1) Whether it was the duty of the Respondent to inform the Claimant the Order of stop loading on 18/07/2021 and arbitrary closure of Sales Portal on 20/07/2021.

(2) Whether it was the duty of the Respondent to act fairly before imposing a demand of Rs. 4,65,490/- on account of TAR when the portal was closed by the Respondent on 20/07/2021 and there being no default on the part of the Claimant.

(3) Whether the Respondent ought to have afforded a reasonable opportunity of Personal Hearing before issuance of the Termination Order.

(4) Is the Respondent entitled to an Award for Rs. 5,84,577/- as pleaded in paragraph 28 of the Statement of Defense with Counter Claim.

(5) Is the Respondent entitled to an Award for Interest @18% p.a. from 01/04/2022 up to the date of repayment by the Claimant in respect of Principal awarded sum.

(6) Is the present Arbitral proceeding liable to be dismissed with costs for false and vexatious claims by the Claimant against the Respondent.”

5. The prayers made by the petitioner in the statement of claim are as follows:-

“(xi) The Claimant had prayed for the following orders;

(A) Set aside the Termination letter Dt. 21.02.2022 and restore the Dealership Agreement to recognize the Claimant as an authorized dealer of HPCL.

(B) To declare the action of Termination by HPCL as invalid.

(C) To quash, set aside and/or recall letters issued by the Respondent. dated 23/07/2021, 09/08/2021, 27/08/2021, 02/11/2021 and 21/02/2022.

(D) Return back customer forcefully transferred by the Respondent without written reasons.

(E) Consider interim Relief/Awards

(F) Produce documentary and reconciled statement of TAR for Rs 4,49,918 as on 23/07/2021 & Rs. 4,84,072 as on 02/11/2021 and status of Claimants payment of Rs. 5,20,000 on 19/07/2021.”

6. The prayers in the writ petition are as follows:-

- (a) A writ in the nature of mandamus commanding the respondent company to recall the suspension notice dated 09.08.2021 and termination notice dated 21. 02.2022 and restore the LPG dealership of the petitioner firm with immediate effect;
- (b) A writ in the nature of mandamus commanding the respondent company to pay compensation for illegal termination of the distributorship of the petitioner firm;
- (c) An appropriate writ/writs, order/orders, direction/directions be issued to set aside and quash the suspension notice dated 09.08.2021 and termination notice dated 21. 02.2022 and direct the respondent company to restore the LPG dealership service of the petitioner firm following the MOP & NG guideline;***”

7. Thus the issues before the arbitrator and the issue

before this court are similar. The termination notice issued by the authority was also the subject

matter of the arbitration and prayer (a) in the writ petition also challenges the said order. It is true that the arbitrator found that the termination was unlawful, but the arbitrator refused to restore the dealership. The petitioner did not challenge such refusal. Challenging the award of the arbitrator, the HPCL has moved the appropriate court under Section 34 of the Arbitration and Conciliation Act praying for setting aside of the award. The award has been stayed. At this juncture, passing any order in this writ petition would amount to modification and/or alteration and/or vacation of the order of stay granted by the appropriate court.

8. The petitioner submits that the issue involved in this writ petition is not a part of the award. This court does not accept such contention as the petitioner has specifically prayed that the suspension order and the termination notice should be recalled and the LPG dealership should be restored. Once the award has been stayed, the finding of the learned arbitrator that the termination was unlawful, has also been stayed. At this juncture, unless the Section 34 proceedings are disposed of it would not be possible for this court to restore the dealership, inter alia, holding that the termination was bad.

9. The petitioner urges this court to decide the issue on its own merits with regard to restoration of dealership, but unless the termination order is ultimately set aside or the Section 34 proceeding is disposed of by affirming the findings of the learned arbitrator, with regard to the illegality in the termination, supply cannot be restored.
10. Under such circumstances, the writ petition is disposed of.
11. The petitioner may renew such prayer at a later stage.
12. This liberty cannot be construed as an opinion of this court on the right of the petitioner to once again get restoration of dealership. Such prayer will be decided at the appropriate stage, in accordance with law.
13. There shall be no order as to costs.
14. All parties are to act on the basis of server copy of this order.

(Shampa Sarkar, J.)