

13-12-2024
ct no. 13
Sl. 5
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FMA 1323 of 2024
With
CAN 1 of 2024
Indian Oil Corporation Limited & Ors.
-Versus-
Sajal Mandal & Anr.

Mr. Manwendra Singh Yadav,
Ms. Satabdi Kundu Naskar
...for the appellants

Mr. Sudipto Panda
Mr. Kallol Basu,
Mr. Sajal Pandit,
Mr. Subrata Ghosh,
Mr. Atreya Chakraborty
..for the respondents

1. The instant appeal has been filed against the judgment and order dated 17th September, 2024 passed by a Single Bench of this Court in W.P.A. No. 22927 of 2018.
2. Learned counsel for the appellants has very succinctly placed the facts of the case. It appears that sometime in the year 2010, the writ petitioner/respondent along with several other candidates participated in a selection process for distributorship of LPG Gas Cylinder under Rajiv Gandhi Gramin Liquid Petroleum Gas Vitarak Scheme.
3. One of the pre-conditions for participation in the distributorship scheme was that the

applicant should have land 20 x 24 meter (approximately 14 decimals) dimension for the purpose of construction of a storage facility for the LPG cylinders.

4. The writ petitioner/respondent had produced a title deed which indicated that he had a title to 14 decimals of land.
5. Based on the draw of lottery system, the writ petitioner/respondent succeeded in the selection process. The appellants entered into a formal agreement with the writ petitioner/respondent on 27th February, 2012.
6. The said agreement, as also the notice inviting application for distributorship and the brochure containing terms and conditions for participation, stipulated that any application or even the terms distributorship agreement, if found to contain any incorrect statement or declaration, would render such agreement liable for termination and/or cancellation.
7. Since after entering into the agreement, the writ petitioner/respondent had been functioning as distributor until 2016 without any complaint or demur. The appellants/oil company also found the writ petitioner/respondent's distributorship was functioning smoothly and satisfactorily.

8. Sometime in the year 2016, a complaint was received from an unsuccessful applicant for the distributorship as also the owner of half the share of the land, offered by the writ petitioner/respondent to the appellants/oil company for construction of the godown space. It was alleged that the land in question belonged to a brother and sister who had equal share therein of 7 decimals each. The writ petitioner/respondent purchased only 7 decimals share of the brother and not the share of the sister. The dimension of the land offered by the respondent was much lesser than the one stated in the application in 2012.
9. The writ petitioner/respondent, immediately upon coming to know of the same, purchased the balance 7 decimals of land from the sister.
10. The appellants/oil company held that the writ petitioner/respondent, has suppressed material facts in the application for distributorship and misrepresentation in the formal agreement entered into with him on 27th February, 2012. His distributorship was cancelled by the appellants by order dated 9th November, 2018. Prior thereto, however, on 27th February, 2017, the oil company has

extended the distributorship for a further period of 5 years.

11. It is submitted by the learned counsel for the appellants that since an enquiry was pending in respect of the writ petitioner's application and/or suppression of facts, the oil company in the usual course of business extended the writ petitioner's contract form in the year 2017 for a further period of 5 years.
12. Upon completion of enquiry as stated hereinabove, the letter of termination dated 9th November, 2018 was issued.
13. The learned Single Bench found that the agreement in question between the writ petitioner/respondent and the appellants/oil company was voidable in nature in the facts and circumstances of the case. The learned Single Bench further found that there was no misrepresentation on the part of the writ petitioner. The omission of the writ petitioner/respondent could at best, be categorized as a mistake.
14. The Single Bench found that the records of the BL & LRO indicated that the writ petitioner was the owner of 14 decimals of land. Having discussed the facts of the case in detail, the Court found that given the

unblemished contract record of the writ petitioner and the performance of the track, the alleged misrepresentation, if any, by the writ petitioner was not fatal to the impugned contract of distributorship between the parties.

15. This Court has carefully considered the arguments advanced by the learned counsel for the appellants and the writ petitioner/respondent and has perused the impugned judgment and the pleadings and documents on record. While it is true that there might have been some misrepresentation on the part of the writ petitioner/respondent, the same cannot absolve the appellants from their responsibility of conducting a complete and comprehensive inspection of the land offered. The appellants in spite of special notice of the petitioner's omission/misrepresentation, while enquiring into same, unconditionally, extended the contract for a further period of 5 years.

16. The appellants must therefore be deemed to have waived any right to terminate the agreement on the ground of such misrepresentation. The waiver by the appellants and the contract having been given

effect to and acted upon would also therefore, as on 2018 attract the principles of and/or analogous to acquiescence and estoppel.

17. Both the parties to the contract have altered their positions irrevocably based on the agreement dated 27th February, 2012 and the subsequent extension in the year 2017. The writ petitioner/respondent could have legitimately expected that the appellants have waived the consequence of any alleged misrepresentation or suppression or misstatement made by him in the application for distributorship. In any event such mistake and/or misrepresentation has been rectified by the writ petitioner/respondent subsequently by purchase of the balance 7 decimals of land.
18. While it is true that the subject-matter of the dispute is a private contract of distributorship between the appellants/oil company and the writ petitioner/respondent, the appellants being other authority within the meaning of Article 12 of the Constitution of India, are bound by the principles of fairness and propriety even in the area of private contract. Reference is made in this regard to the decision of the Supreme Court in ***Kumari***

Srilekha Vidyarthi Vs. State of U.P. & Ors.

reported in ***(1993) 1 SCC 212.***

19. In the facts and circumstances above, without delving into the provisions of the Contract Act, 1872 as has been done by the learned Single Bench, this Court is of the view that the cancellation of distributorship of the writ petitioner/respondent by the appellants/oil company is also unjust and unfair.
20. In those circumstances, the impugned order calls for no interference. F.M.A. 1323 of 2024 shall stand dismissed. Consequently, CAN 1 of 2024 shall also stand dismissed.
21. There shall be no order as to costs.
22. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)