

09.12.2024
Ct. No. 24
Sl. No. 37
tbsr

WPA 28288 of 2024

FMJ Filling Station, Indian Oil Retail Outlet & Anr.
Vs.
Union of India & Ors.

Mr. Goutam Dey
Mr. Dibyendu Bhattacharya
Mr. Prateep Bera
Ms. Ankita Ghosh
....for the petitioners

Mr. R. N. Bag
Mr. Santosh Kumar Pandey
Mr. Tridip Mishra
Mr. Sk. Md. Wasim Akram
.....for the UOI

Mr. Amit Kumar Nag
Ms. Pritha Bhaumik
....for the respondent nos. 2 to 3

A retail outlet dealership of IOCL was being run at SH-11, Domkal, Murshidabad by M/s. Bhanwar Lal Jain. The said business run by partnership was transform into individual business in pursuance to procedure of reconstitution of IOCL dealership from M/s. Bhanwar Lal Jain to M/s. Arjuman Akter under the proprietorship name of FMJ Filling Station. The reconstitution from partnership business to proprietorship in the name of petitioner was duly approved by the IOCL. The petitioner was running the business.

It is the case of the petitioner. The petitioner was served by a show-cause of IOCL on 16th May, 2024 disclosing some irregularities observed in reconstitution of M/s. FMJ Filling Station from erstwhile M/s. Bhanwar Lal Jain. The petitioner has replied to the said show-cause. The authority after giving a proper opportunity of being heard to the petitioner, has passed an order of termination of retail outlet dealership of the petitioners vide letter dated 14th November, 2024. Challenging the said letter, the instant writ petition has been preferred.

Learned counsel for the petitioner submits that the letter of termination issued by the IOCL is illegal and purposive. He submits that reconstitution was made as per the provisions, the meeting of minutes of the reconstitution has been duly forwarded. He further submits during such meeting the erstwhile partners have appeared and the documents which were required for reconstitution has been duly submitted. He further submits that the complaint regarding the forging signature of the erstwhile partners is not tenable in the eye of law. He further argued the alleged complaint lodged by the erstwhile partners was already withdrawn. They have also accepted that the signature appearing in the process of reconstitution/deed and document was signed by them. He further submits that the order on the basis of such signatures which was admittedly not

forged cannot be sustained. He prayed necessary order for setting aside the order of termination.

Learned counsel appearing on behalf of the IOCL submits that the instant writ petition is not at all maintainable in the eye of law. He has referred the necessary paragraph of the agreement between the petitioners and the IOCL, wherein he demonstrated that the agreement is determinable in nature. Both the parties in agreement had the option to terminate the license after giving prior notice. The nature of the agreement being determinable, according to the provisions of Section 14(1)(c) of Specific Relief Act, the instant petitioner cannot claim for specific performance of the contract, rather they may ask for any compensation. He also submits that the disputed question of fact cannot be decided by a writ Court.

Learned counsel appearing on behalf of the Union of India has placed reliance upon a clause of arbitration as appended in the agreement itself and submitted that there are some disputed question of fact which can only be determine by making a reference to arbitrator as enumerated in paragraph 61(A) (page 38 to the writ petition).

Having heard the learned counsels for the parties, it appears to me that the petitioner before this Court has challenged the order of termination of the

IOCL dated 14th November, 2024, the sole ground for termination of the IOCL is that they have received an order of central vigilance to the effect that the signature appearing in the Deed of Dissolution of partnership as well as the affidavit of the erstwhile partners are forged. The petitioners have also demonstrated a peculiar fact before this Court that the person whose signatures appears to be forged and stated by the central vigilance that, these are forged, they themselves admitted that they are not forged documents and all complaint as lodged by them were withdrawn. Attending the fact of the writ petition is such a nature that there are some facts and counter facts; furthermore, the facts which are appearing in the complaint was also turned 180°. At this situation this writ Court cannot determine who is speaking the truth. Thus, it is prudent for the petitioners to approach the arbitrator to determine the issue on the basis of the fact.

At this juncture I find no justification to entertain the petitioner.

However, the petitioners are at liberty to approach the arbitrator according to the law. Arbitrator shall dispose of all the issues of disputed question of facts according to the law.

Accordingly, the writ petition is disposed of.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Subhendu Samanta, J.)