IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 3416 OF 2024

M/s Shirish & Company (A Registered Partnership Firm represented by its Partner Mr. Shirish Dalichand Oswal Aged 67 Years), Office located at C-1 Hall, 2nd Floor, B.J. Market (Old), Jalgaon – 425 001 ...Petitioner

Versus

Chairman and Managing Director, Hindustan Petroleum Corporation Limited, India and Ors ...Respondents

...

Mr. Mathew Nedumpara, Advocate for Petitioner (on V.C.)
Smt. Anjali Dube, Advocate for Respondents

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CORAM : RAVINDRA V. GHUGE & R. M. JOSHI, JJ
RESERVED ON : APRIL 01, 2024
PRONOUNCED ON : APRIL 05, 2024

PER COURT:

1. The Petitioner has filed this Petition under Article 226 of the Constitution, with the following prayers :

> *(a) To issue more specifically a Writ of Mandamus directing the Respondents to expeditiously renew and settle the validity of Dealership Agreement dated 17.04.2019 for a further period of five years w.e.f 01.04.2024 to 31.03.2029 as per the earlier norms followed for the purpose and incorporating the details of revised partnership deed dated 02.03.2021 in the*

renewed agreement.

(b) to restrain the Respondents not to downsize the existing LPG Customers Inventory of Petitioner as to divert either partly or any geographical segment of the existing 25000 (about) Loyal Domestic LPG Customers to any other Dealer(s) or Agency(ies)

(c) to pass specific order for maintaining the status-quo of the Operative parts of existing Dealership Agreement Terms dated 17.04.2019 even after 31.03.2024, un-till a fresh Agreement is put in place and processes therefor fully complied and accomplished by the Respondents.

(d) To direct the Respondent 1 and 2 to initiate suitable departmental disciplinary action against Respondent No. 6 for creating all such uncalled-for obstacles and strategically harassing the Petitioner by infusing uncertainty for the six decades long Association with the Corporation in LPG Dealership Services and thereby wilfully functioning against the best interests of the Country, Company and Community that definitely calls for interference of this Hon'ble Court.

2. The Petitioner claims to be a registered partnership firm and an LPG domestic/commercial retail dealership of the Respondent Company, since 1979 till 31.03.2024. It claims to have built distribution network and serving LPG cooking gas for about 25000 domestic/commercial LPG consumers in the locality of

Jalgaon. It is claimed that in the year 1994, for the first time, through a formal dealership agreement with the Petitioner, the Respondent Company continued the delivery of their consignments of LPG cylinders and the said agreement is set to lapse on 31.03.2024.

3. It is further claimed by the Petitioner that during 2021 i.e., after about four decades of the last change in the partnership due to the aging of a partner and in view of family re-arrangements and understanding amongst the family members, the partnership and shareholding pattern of the petitioner family business got reorganized amongst family members, through a registered document dated 02.03.2021, subject to the approval of HPCL/Respondents. It is claimed that the reorganization of the partnership did not require pre-approval from the Respondent Company as, during the reorganization of the firm, nobody from outside has ever been inducted into the partnership, as contemplated by the 'Guidelines for reconstitution of LPG Distributorship 2020'.

4. It is claimed by the Petitioner that only an intimation about changes in the shareholding pattern

were needed to be informed via the online system of the Respondent portal under 'Know Your Customer '(KYC) formalities. However, due to outbreak of Covid 19, the KYC formality could not be completed at that point in time. It is claimed that by communication dated 30.01.2024, a request was sent to the Respondent for reconstitution of the retail LPG dealership and to incorporate the changes in the partnership amongst the family members, as per the registered deed dated 02.03.2021. It is claimed that the Respondents were duly and lawfully informed and requested to effect the necessary changes in the shareholding of the firm in the Respondents record. It is claimed that the officials of the Respondent company are not empowered to interpret and enforce any contentious matters concerning the basic structure dealership disputes.

5. The Petitioner issued a legal notice dated 16.03.2024, which was duly replied through email dated 21.03.2024. The said reply is said to be evasive, imaginary and hence, denied by the Petitioner. It is claimed by the Petitioner that the non-compliance of the reconstitution of the Petitioner firms stakeholders

rearranged information, could have been noticed and mentioned in the subsequent annual internal as well as statutory audit's findings. It is claimed that the process of reconstitution of revised dealership combination is a technical aberration and not adversely altering the authenticity of the Petitioner's dealership in any manner.

6. The Petitioner has alleged that these are tactics of the Respondent Company by referring to the conditions of extension of the 2019 agreement. It is alleged by the Petitioner, that it has received information through reliable sources, that Respondent No. 6 is trying to end the present dealership agreement, with an intention to unilaterally migrate the Petitioner's customers thereby intending to cause irreparable damage to the Petitioner. The prayers are founded on these, amongst other submissions and allegations

7. The Respondents have filed an affidavit-in-reply of Srinivas Pratti, Deputy General manager, HPCL opposing the Petition. The Respondents have raised the issue of maintainability of the Petition on the ground

of there being an arbitration clause in the dealership agreement dated 17.04.2019. It is contended that the last dealership agreement with the Petitioner was executed on 17.04.2019, to be effective till 31.03.2024. This was with the partnership firm comprising of four partners, namely, Dalichand Hastimal Oswal, Shirish Dalichand Oswal, Smt. Tarabai Shivraj Jain and Pravin Shivraj Jain.

8. It is further averred that, on 30.01.2024, the Petitioner issued a letter to the Chairman and Managing Director of the Respondent Company mentioning that the Petitioner has reconstituted the partnership of 1982 and executed the said partnership deed on 02.03.2021. According to the Respondents, as per the said reconstitution, there is a change in the shareholding and constitution of the previous partnership firm as two earlier partners, namely, Smt. Tarabai S. Jain and Pravin S. Jain, were retired with effect from 02.03.2021 and the shareholding of the remaining partners has been changed considerably with the induction of 'HUF' as new partner with effect from 02.03.2021. The Respondents claim that the said

reconstitution of the firm is in blatant violation of the terms and conditions, more particularly, Condition Nos. 22 and 24 of the dealership agreement executed between the parties. It is claimed that as per clause 22, the dealer shall not effect any changes in the partnership firm without the previous written approval of the Corporation and in case of any change, whatsoever in the constitution of the allotted dealership, the same has to be effected by mandatorily complying with the provisions of the reconstitution guidelines as framed by the Corporation from time to time.

9. The Respondents have placed reliance on the directions issued by the Ministry of Petroleum and Natural Gas (MOP&NG), based on which the Corporation and other Oil Marketing Companies, have framed policy guidelines for Reconstitution of LPG dealership in 2008. The said guidelines provide a detailed procedure for the distributors, to be complied with in case of reconstitution to be effected by a dealer. The Respondents claim that the Petitioner is well aware of the said guidelines which came into effect since 2008

and the reconstitution proposal was required to be submitted. The Guidelines of 2022 are also said to be within the knowledge of Petitioner. It is claimed that without following the prescribed procedure as contemplated, the renewal of dealership agreement cannot be done. It is also claimed that apart from violation of the reconstitution procedure, two partners were shown to be outgoing and there was a major change in the shareholding of the remaining partners, as well as, the induction of a new partner, which is in violation of clauses 22 and 24 of the dealership agreement.

10. The Respondents have also pleaded about having dealt with the legal notice issued by the Petitioner. There is a specific plea raised by these Respondents that the Petitioner has violated the major terms and conditions of the dealership agreement dated 17.04.2019 and has not responded to the show cause notice issued by the Corporation demanding explanation to the violation of the terms and conditions of the agreement. It is further specifically stated that the Petitioner dealer, on its own, has not lifted the load on

29.03.2024.

11. We have heard the learned Advocates for both the sides, at length and have carefully considered the documents placed on record.

12. The Respondent company has raised an objection regarding the maintainability of the petition on the ground that there exists an arbitration clause in the agreement between parties. The subject matter of this Petition is a commercial agreement of LPG dealership between the Petitioner and the Respondent Company. The last of such agreement has been executed on 17.04.2019, which was in force up to 31.03.2024. There is no denial of the fact that the agreement between the parties is a contract which provides for arbitration under clause 38 of the contract, which clearly shows that in respect of any dispute touching to the terms of the agreement or difference of any nature whatsoever regarding any rights, liability, act, omission or account of any of the parties arising out of or in relation to this agreement, are subject to the Arbitration proceedings.

13. The law on the point of tenability of a

petition in such circumstances, is fairly settled that the jurisdiction of the High Court under Article 226 of the Constitution of India is not totally ousted. A fruitful reference can be made to the judgment of the Hon'ble Supreme Court in case of ***UNITEC Ltd and Others Vs. Telangana State Industrial Infrastructure, AIR OnLine 2021 SC 131***. It is held therein that the jurisdiction of the High Court is not barred even if an arbitration clause exists in the agreement. However, it is further held that it needs to be decided on case to case basis, to assess whether the recourse to public law remedy can be justifiably invoked. Undisputedly, the extraordinary powers of the High Court can be exercised for the purpose of enforcement of fundamental rights or in cases where, on the face of it, the principles of natural justice are flouted or there is discrimination. We, therefore, have no hesitation to hold that the Petition could be entertained in spite of the fact that the agreement of dealership contains an arbitration clause.

14. On merits of the case, there is no dispute amongst the parties about the fact that their

relationship is governed by the Dealership Agreement. The Petitioner also does not deny the applicability of the guidelines of 2008 and 2022, to the company and its dealers. The Record indicates that policy/guidelines in respect of reconstitution of LPG dealership exist since 2008 and in 2022, detailed guidelines for reconstitution of LPG dealership came into effect from 27.05.2022. We have no reason to believe that the Petitioner is unaware of these guidelines. In fact, perusal of the pleadings in the Petition itself shows that there was a reconstitution of the partnership firm in the year 2021 and, according to Petitioner, such reconstitution is only to be intimated. It is contended that owing to Covid 19 pandemic situation, the compliance remained to be completed online.

15. On the other hand, according to company, any reconstitution of a dealer firm can be done only with the prior written consent of the company. Since, this issue involves disputed questions of facts, we do not wish to deal with the same, while exercising jurisdiction under Article 226 of the Constitution of India. Such issue needs to be left to the

consideration/decision of the competent Authority.

16. Suffice it to say that, the stand taken by the Respondent Company is not totally alien to the agreement between parties. During the course of the arguments, the learned Counsel for the Petitioner has made a statement that the Petitioner would take necessary steps for the purpose of compliance of the guidelines in respect of the reconstitution of the firm as per the guidelines applicable. The learned Counsel for the Respondents submits on instructions that the Company would respond to the same in accordance with guidelines and the law. Hence, we do not find it necessary to issue any further directions in this regard. We, however, clarify that the decision may be taken by company, after extending an opportunity of hearing to the petitioner, or follow such procedure as may be prescribed in the dealership agreement and the guidelines applicable.

17. *Prima facie,* we do not find any discrimination by the Respondent Company against the Petitioner, by calling upon it to comply with the guidelines and the terms of the dealership agreement. The Record further

indicates that a show cause notice was issued to the Petitioner for the suspension of the agreement due to the violations of the terms and conditions of the dealership agreement.

18. It is contended by the Counsel for the Petitioner that about 25000 customers of the Petitioner would face difficulties for non supply of LPG cylinders to them, if the dealership agreement is not extended after 31st March, 2024. The learned Counsel for the Respondents Company, on specific instructions, has informed this Court that alternate arrangement has already been made in order to ensure that not a single consumer would suffer in any manner.

19. We find, *prima facie*, that the Petitioner has not taken appropriate steps towards the reconstitution of its partnership as per the guidelines applicable. The Petitioner itself did not lift the load on 29.03.2024. The Respondent Company has a primary duty to supply gas cylinders to its customers. An alternate arrangement has already been made by the Company. Moreover, this Court cannot issue a Writ of Mandamus to the Company, to, *per-force*, extend the

contract/agreement, de-hors the guidelines and the terms applicable. We, therefore, do not find any reason to disbelieve the assurance of the Company, made across the bar. Since care has been taken by the Company to cater to the uninterrupted supply of gas cylinders to the consumers, we do not find any case made out by the Petitioner, so as to direct any ad-hoc extension of the contract/agreement. The extension of the dealership agreement would depend upon the compliance of its terms and the guidelines, without which, a command to extend the agreement cannot be issued by this Court in exercise of it's extraordinary jurisdiction by invoking the Article 226 of the Constitution of India.

20. **This Writ Petition, therefore, stands disposed off.**

21. We clarify that the observations made above, would be restricted to the cause raised in this Petition.

(R. M. JOSHI, J) **(RAVINDRA V. GHUGE, J)**

Malani