**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**
**ARBITRATION PETITION NO. 84 OF 2024**

Krishna Avdhut Petroleum .. Petitioner
Versus
Indian Oil Corporation Limited .. Respondent

…

Mr. N.V. Walawalkar, Sr. Advocate with Mr.S.M. Sabrad, Kuldeep K., Amey Sawant, Pratik Sabrat for the petitioner.
Mr.Chirag Modi with Sunil Gangan, Shrikant Seegarla, Swapnil Shikhare i/b RMG Law Associates for respondent no.1.
Mr.R.R. Tripathi for respondent no.3.

**CORAM: BHARATI DANGRE, J.**
**DATED : 7th MAY, 2024**

**P.C:-**

1 On 10/4/2024, when it was noted that the supply to the petitioner was stopped, it was argued that the necessary changes in the petitioner Firm were carried out was with the approval of the Indian Oil Corporation (IOC).

The IOC was permitted to file its affidavit in reply and accordingly, the affidavit in reply is filed.

2 Heard learned senior counsel Mr.Walavalkar appearing for the petitioner, Mr.Modi, for IOC, the learned

counsel Mr.Tripathi for respondent no.3, who seek some time to file an affidavit in reply. However, considering his role in the entire scenario, I mujst decline the request as, I cannot postpone the relief which is presently sought in the petition on its consideration.

3 The sequence of events would disclose that the respondent no.1, Corporation who was desirous of letting retail outlets to dealers, issued a Letter of Intent (LOI) to the respondent no.3, offering one such retail outlet at COCO Boisar under the SC (Scheduled Caste) Category, on the terms and conditions set out therein. Subsequent thereto, the respondent no.1 executed a Dealership Agreement with respondent no.3.

However, in the year 2015, the respondent no.3, a SC candidate, contacted the proprietor of the petitioner, Shri Rajendra Vitthal Sambare with a request to execute a partnership deed, and thereafter, a Partnership Deed was executed for inclusion of Rajendra Sambare as a Partner in M/s.Krishna Avdhut Petroleum.

On 23/2/2015, it is the respondent no.3 who approached IOC, with his request, that Rajendra Sambare who belongs to ST category, be permitted to be inducted as a Partner, by reconstituting the proprietorship firm to operate COCO Boisar Retail Outlet, and accordingly, the Partnership Deed was executed on 11/8/2015.

Worth it to note that that the IOC approved the induction of Shri Rajendra Sambare as a Partner of the reconstituted firm, but in the year 2016, since the respondent no.3 expressed difficulty in continuing the operations of the firm, he expressed to respondent no.2 his desire to retire from the dealership of respondent no.1. Accordingly, the proposal for reconstitution, permitting retirement of respondent no.3, was forwarded to IOC, which was approved on 25/2/2017.

4 What is important to note is, on 29/3/2017, with its eyes open, the Dealership Agreement was executed by IOC with Rajendra Sambare and he was permitted to operate the Retail Outlet i.e. COCO Boiser Retail Site.

The Agreement placed on record at page no.85 of the petition, has clearly set out the terms and conditions and in paragraph no.1, the Corporation has categorically declared that he is appointed as its dealer and the dealer has accepted the appointment as the Corporation's 'non-exclusive dealer' for the retail sale or the supply at the premises described in First Schedule appended thereto and/or other products, as are specified in writing by the Corporation from time to time.

The other terms and conditions as regards the licence to be obtained by the dealer and he being governed by provisions of the Petroleum (Production) Act, 1934 along with facilities, outlet, storage licence, leave and licence etc, was clearly contemplated in the said agreement.

5 The clause for Termination of Licence is also specifically contained in the same, with a relevant clause for referring the disputes to arbitration, in case if the dispute arise between the parties.

6 Under the said agreement, the petitioner continued to act as a dealer of the IOC since 29/3/2017 and what is important, is a communication dated 29/3/2018 issued by the Chief Divisional Sales Manager of Indian Oil Corporation, under the subject "change in the constitution of the firm – M/s.Krishna Avdhut Petroleum" and it is necessary to reproduce the contents of the said letter:-

> *"This is to acknowledge receipt of the indemnity Bond dated 08.03.2017 given by Shri Rajendra Vitthal Sambare and their request for reconstitution.*
>
> *We have gone through the contents of the indemnity Bond and are pleased to convey our approval to the changes brought out in the constitution of M/s.Krishna Avdhut Petroleum in the manner set out in the said Indemnity Bond, as well as the arrangements entered into amongst the signatories thereto.*
>
> *Copy of fresh dealership agreement duly executed on 29.03.2017 between M/s.Krishna Avdhut Petroleum and our Corporation is enclosed for your records. The revised dealership set up executed on 29.03.2017 is as follows:*
>
> *Proprietorship – Shri Rajendra Vitthal Sambare.*
>
> *No change in the dealership whether individual or partnership shall be carried out without prior written approval of the Corporation. Violation of this clause or any clause of the dealership agreement will be viewed seriously and may even lead to termination of the dealership.*
>
> *Please acknowledge receipt.*

7 Under the said agreemenet, as well as the aforesaid letter, the petitioner continued as a Dealer of IOC till he received the communication dated 14.3.2024 i.e. almost after a period of seven years, intimating him about Rescinding of reconstitution of the firm M/s.Krishna Avdhut Petroleum, constituted in the year 2015 and 2017 and this letter is an interesting read and I must reproduce the same.

> *"Dear Sir,*
>
> *We write to you in response to your letter dated 14.03.2024, which we received on 20.04.2024. Upon reviewing the contents therein, we find ourselves in a state of utter shock and dismay.*
>
> *Our Retail Outlet was established in 2009, and subsequently, it underwent reconstitution processes in 2015 and 2017, duly approved by Indian Oil as per your acknowledgment in the aforementioned letter.*
>
> *It is perplexing that after seven years, you allege that these reconstitutions do not comply with dealership reconstitution guidelines, rendering them invalid based on an internal investigation by your vigilance department. Your advice to revert back to the original constitution of the firm, namely the sole proprietorship of Shri Devilal Naghuji Ingale, compounds or confusion.*
>
> *Considering that the initial reconstitution occurred nine years ago, followed by subsequent reconstitutions as mentioned, a considerable amount of time has elapsed since then. To comprehensively address the concerns raised, we request the following documents:-*
>
> *i. Full investigation report of the vigilance department, including all annexures.*
>
> *ii. Internal approvals supporting the approval of our reconstitution, along with relevant file notations.*
>
> *iii. The reconstitution guidelines highlighting the specific clauses purportedly voilated.*
>
> *iv. Any other pertinent information or documents related to the issue raised in your letter.*
>
> *<u>We emphasize that this communication is neither an interim nor a final reply.</u> Its sole purpose is to solicit the necessary information and documentation to understand the issue raised after such a prolonged duration.*
>
> *Upon receipt of the requested materials, we undertake to provide our formal response within one month. We urge you to adhere to the principles of natural justice and facilitate the provision of the*

*aforementioned documents to ensure a fair and transparent resolution of this matter.*

*This communication is issued without prejudice to your rights under the law.*

*Your faithfully,*

*Krishna Avdhut Petroleum*

*Proprietor."*

8 Petition is aggrieved by this communication and has approached this Court, by invoking Section 9 of the Arbitration and Conciliation Act, and it is the submission of Mr.Walavalkar that once the dealership of the petitioner was accepted by IOC and he operated under the agreement executed on 29/3/2017, accepting him as the 'Dealer' and unless and until a cause arises, as the one contemplated in Clause 45 of the agreement executed, the termination on the ground of reconstituted partnership is completely untenable. Apart from this, by inviting my attention to the policy of the IOC in favour of SC/ST candidate, it is the submission of Mr.Walavalkar that it is no doubt true that initially the dealership was awarded in favour of the respondent no.3, an SC candidate, who roped him in his proprietary dealership, being an ST candidate, but at the subsequent point of time, the IOC accepted the dealership of the applicant in exclusivity and that is what is indicated in the agreement.

According to Mr.Walawalkar, the termination of his agreement can only be in the contingencies that are stipulated in Clause no.45/46 of his Agreement and none of the contingencies has arose in the present case, which would warrant termination of his dealership, which is purportedly done under the impugned notice.

9 Mr.Modi representing the respondent Corporation has filed the affidavit in reply, which lay its emphasis upon the policy of the IOC.

However, worth it to note that in paragraph no.5 of the affidavit, it is clearly admitted that the dealership agreement was entered with the petitioner on 29/3/2017, but it is contended that it has to be read with the dealership agreement dated 31/10/2015 and the agreement dated 29/3/2017 is executed contrary to the terms and conditions of the Guidelines and Policy of reconstitution, framed by the Ministry of Petroleum and Natural Gas (MOPNG).

What is relevant to note is the following assertion in the said affidavit, "The said reconstitution was allegedly approved by the concerned officers at the relevant time of these respondents without following proper procedure and without applying the appropriate policy of these respondents. I isay that as per the policy governing the reconstitution of the firm, in any dealership, which is reserved for Scheduled Caste (SC) category, the reconstitution i.e. induction of the outside category person in the said category cannot be allowed for more than 25% stake in the said dealership. Thus, in the present case, the entire dealership has been changed from S.C. category to Scheduled

Tribe (ST) category i.e. 100% share has been transferred, which has been wrongly without following the existing policy guidelines applicable at that time"

10 The aforesaid stand runs clearly contrary to the document at Exhibit-G, as well as the agreement that is executed with the petitioner, categorically stating that IOC had accepted the appointment of the petitioner as a Dealer for its retail supply on a non-exclusive basis.

Just because some of the Officials of the IOC are accused of committing the alleged mistake, in permitting the reconstitution, the petitioner definitely cannot be denuded of the right and dealership, which is conferred upon him by a duly executted agreement with the IOC seven years back. Even the stand of Mr.Modi, the reconstituted partnership amounts to reduction in the share of the S.C category candidate, is also a complete misreading of the policy, as what is implicit in the policy is, an outsider other than the SC/ST category shall not avail more than 25% of the shares in a partnership/an agreement and in any case, here is a person from ST category, who has been accepted as an exclusive dealer by the Corporation and he has not roped in any outsider, but he himself is a 100% stakeholder in the said dealership.

11 For these aforesaid two reasons, and apart from the fact that the person who has been inducted or, who is permitted

to operate, as its retail dealer belongs to the ST category. I do not think that the IOC should be so touchy about the dealership being given to a non-SC person, as in any case, being an organ or instrumentality of the State, it must abide by the constitutional mandate and if the dealership is now allotted to a ST person, I find no reason to justify the termination.

12 As far as respondent no.3 is concerned, I must make a specific note that it is at his insistence that the petitioner was inducted as a partner and it is only upon his resignation a fresh Dealership Agreement is entered with the petitioner as an exclusive dealer.

.. For the reasons recorded, I deem it appropriate to grant the relief in terms of prayer clause a(i), (ii) and (iii).

> *(i) stay the effect, implementation and execution of impugned notice dated 14.03.2024 issued by Respondent No.2 to the Petitioner.*
>
> *(ii) to direct the Respondent No.2 to continue the supply of fuel and gas as was done prior to issuance of impugned notice dated 14.03.2024.*
>
> *(iii) to permit Petitioner to operate their fuel pump as was done prior to issuance of impugned notice dated 14.03.2024.*

13 At this stage, Mr.Modi request for stay of this order, as according to it, it would be difficiult to restore the supply to the petitioner which was discontinued on 29/3/2024.

I must decline the request of Mr.Modi, since on the merits, the petitioner has made out a case for grant of interim relief, in exercise of power under Section 9 of the Act, 1996, which is necessary to protect the subject matter of the arbitral dispute and since the balance of convenience as well as prima faie case lies in favou rof the petitioner, who has been unreasonably denied the supply since 29/3/2024 on the guise of the impugned notice, which do not warrant its continuation, upon it being set aside, the necessary supply must be resumed to the petitioner forthwith.

**( SMT. BHARATI DANGRE, J.)**

*Tilak*