IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF

WPA 20391 of 2023
M/s CLS Limited & Ors
Vs.
Union of India & Ors.

For the Petitioners : Mr. Debabrata Saha Roy, Adv.,
Mr. Pingal Bhattacharyya, Adv.
Mr. Subhankar Das Adv.

For the Respondent No. 2 to 4 : Mr. Biswanath Chatterjee, Adv.
Mr. Sobhan Kumar Pathak, Adv.,

Reserved on : 20.01.2025

Judgment on : 20.02.2025

Subhendu Samanta, J.

1. This matter twice reached before the Hon'ble Division Bench in two appeals against two interim orders passed by this court. The Hon'ble Division Bench had disposed of the appeal directing the court to decide the writ petition on all points.

2. The brief fact of the matter is that petitioner No. 1 is a private limited company registered under company's act 1956. Petitioner No. 2 is the director of petitioner No. 1. Petitioner No. 1 is carrying on trade and business as distributor of Liquid Petroleum Gas marketed by Hindusthan Petroleum Corporation Limited (respondent No. 2 company).

3. It is the case of the petitioner that they started business since the year 2012 in terms of dealership agreement signed between the petitioner No. 1 company and respondent No. 2 corporation. It is the further pleadings of the petitioner that it has been policy and practice of respondent No. 2 corporation to deliver the LPG Cylinders in the godown of Petitioner Company and thereby respondent No. 2 corporation set a target which force the petitioner company to sale as many as cylinders as they do. In order to meet up unreasonable sales target set up by respondent No. 2 corporation, Petitioner had to employ more sale representative to interact with customer which can explore more customers within the area of operation, increase storage capacity of its godown and most importantly acquired a large number of customer base for sailing more and more LPG cylinders as per the dictation of respondent No. 2 corporation.

4. In the year 2016, Unified Selection Guideline (USG) 2016, were propounded as selection criteria for new distributorship of LPG cylinders. On 4th January 2018 a circular being reference No. SL/1601 was issued by Oil Marketing Companies and was titled as <u>"market restructuring- transfer of customers</u>". This circular sought to restructure the LPG selling market by transferring customer of existing distributor. In short, the circular contemplated the compulsory exploration of customers of existing distributors (up to 75% of the Selling limit) and transferred them to those distributors who have fewer customers till they reached 50% of the selling limit.

5. The said circular was issued by CGM (LPG) sales to State LPG heads. In pursuance thereof, IOCL and BPCL issued similar circulars on 4th January 2018, present respondent No. 2 corporation (HPCL) issued said circular on 9th January 2018.

Being aggrieved by circular at 4th January 2018, issued by BPCL, several distributors approached Bombay High Court, wherein the Division Bench of Hon'ble Bombay High Court in writ petition No. 8753 of 2018, vide its judgment dated 30th September 2019 has quashed the said circular issued by BPCL.

6. Against the circular issued by IOCL several writ petition was preferred before the Hon'ble Madurai Bench of Madras High Court. The Hon'ble Single Judge, of Hon'ble Madurai Bench has also adopted the view of the Hon'ble Division Bench of Bombay High Court. Against order of quashing by the Hon'ble Division Bench of the Bombay High Court, BPCL approached the Hon'ble Supreme Court of India in a special leave petition being SIP No. 2425 of 2020 which was admitted by the Hon'ble Apex Court but no order of stay has been passed.

7. Present petitioner has challenged an e-mail communication of respondent No. 2 wherein the respondent No. 2 has intimated the petitioner as follows:-

Dear Distributor,

Please find the attached list of 1429 consumers transferred from Block transfer Anand HP Gas Service (41017796) TO OM HP GAS GRAMIN VITRAK (41017511) along with their old consumer & new consumer nos.

8. It is the case of the petitioner that the impugned communication of respondent No. 2 on the strength of the "market restructuring-transfer of all customers" circular is illegal and arbitrary the said circular issued by the BPCL has already been quashed by the Hon'ble Division Bench. So respondent No. 2 cannot pass direction for transfer of customers from the petitioner to another distributor.

9. Respondent No. 2 Corporation used affidavit- in- opposition against the writ petition and contended that by way of letter of appointment, Respondent Corporation has appointed petitioner as their LPG distributor in the area of South Howrah and other places adjoining Howrah Municipal Corporation. In pursuance to such appointment letter dated 27th February, 2012, one distributor agreement was executed and signed by and between respondent corporation and the petitioner which clearly mentioned terms and conditions of such agreement. The terms are binding upon both the parties thereby.

10. It is the further case of the respondent that clause 39 enumerates a clause of arbitration, it has been provided that if any dispute arose between the parties in connection with the agreement, it shall be referred to and resolve by a sole arbitrator.

11. Learned Counsel for the respondent No. 2 submits that the instant writ petition is not maintainable as the contract between the parties has provided arbitration clause. He submits that without following alternative remedy in arbitration clause, the instant writ petition is not maintainable.

12. It is the further case of the respondent No. 2 that there are relevant clause of the said agreement which enables the corporation to modify, increase, reduce area of territory of the business of petitioner. So it is the sole prerogative of the respondent No. 2 corporation to transfer the customers from the business of petitioner outside its area of business. He further submits that the corporation has acted in terms of the agreement transferred customers are outside area of petitioner. They have not issued the impugned correspondence in terms of the alleged circular dated 09th January 2018.

13. Learned Counsel for the respondent No. 2 submits in the writ petition, the petitioner has challenged circular dated 04th January, 2018 but it would be revealed that the respondent No. 2 corporation has issued the alleged circular on 09th January, 2018.

14. Having heard the Learned counsel, for the parties. This court has to first decide the point of maintainability raised by the respondent company.

15. It is true that one dealership agreement was entered into and signed by and between the parties. The agreement opined both the parties to follow its conditions. It is now well settled that petitioner may approach writ court instead of alternative remedy is available the question as to whether or not this court can exercise its writ jurisdiction in contractual matter has already been settled by the Hon'ble Supreme Court in its decision rendered in **Whirlpool Vs Registrar of Trade Marks Mumbai (1998) 8 SCC 1.** The same view has already been represented by Hon'ble Apex Court in **Rama**

Dayaram Shetty Vs. International Airport Authority of India and Ors. (1979) 3 SCC 489 and **Tata cellular Vs. Union of India (1994) 6 SCC 651.**

16. After considering the issues before this Court and also considering the arbitration Clause appearing in Clause 39 of the dealer agreement, I am of a view that the petitioner not pleaded any breach of distributorship agreement by respondent No. 2 or have not alleged any breach of terms of agreement. The petitioners have only challenged a communication of the respondent No. 2. by virtue of impugned circular which is pleaded to be arbitrary unreasonable and irrational. Thus, I am of a view that the arbitration clause in the dealership agreement cannot debar the writ petitioner to approach writ court. Thus the instant writ petition is quite maintainable in its present offer and prayer in deciding reasonableness of the circular appropo to the dealership agreement, it is required to set out some relevant portion of dealership agreement Clause 3 of letter of appointment issued by respondent No. 2 corporation in favour of petitioner dated 27th February 2012 as follows:-

3. Trading Area: Your trading area of operation will consist of Central Howrah, Baruipara, Bantra, Ichhapur & Baltikuri under Howrah Municipal Corporation Limit as indicated in the attached Map outlined with Green Colour. However, the Corporation is at liberty to change the trading area of operation to facilitate convenience of the customers and to accommodate any other dealership coming in the same area.

17. To justify the trading area in consonance with the dealership agreement necessary clauses of dealership agreement appearing in Clause 2(b) (3) is required to be set out

i………………

ii…………………

iii. without prejudice to the above the Corporation shall so be entitled to require the Dealer to effect minimum sales of HP Gas in accordance with the police that may be formulated from time to time by the Corporation and shall be further entitled at its sole discretion to reduce, restrict, modify or alter the area of the dealership territory and the decision of the Corporation shall be final and binding on the Dealer. The Corporation shall further be entitled to notify, without any legal obligation to do so, from time to time to the Dealer in writing the minimum number of LPG Filed Cylinders' which the Dealer shall be required to uplift in each month. The Corporation shall also be entitled to require the Dealer to maintain during the duration of the Agreement such minimum stock as to meet the customers requirements.

iv. The Dealer will during the continuance of this Agreement confine himself to effect the sales in the area or territory specified hereinabove but the Corporation shall be entitled without the consent of the Dealer to enlarge, reduce, increase or modify such area or territory to such other place as may from time to time be authorised by the corporation in writing

v. The Dealer shall make his best efforts for enrolling customers and canvassing business and for developing and increasing the sale of LPG within the area allotted to him.

18. It is the argument on behalf of the Learned Counsel for the respondent No. 2 that they have issued alleged communication in terms of the agreement. It is the further argument of the respondent No. 2 that corporation has domain or/and is entitled without the consent of the dealer to enlarge, reduce, increase or modify business area of petitioner time to time.

19. Learned Counsel for the petitioner submits that the respondent No. 2 has only acted in terms of the alleged circular dated 9th January, 2018 which has already been quashed.

20. Having heard the parties it appears to me that circular dated 4th January 2018 issued BPCL and IOCL were quashed by the Hon'ble High Court of Bombay and Hon'ble Madurai Bench of Madras High Court. The decision of Bombay High Court is under challenge before the Hon'ble Supreme Court. The Hon'ble Apex Court has not passed any order of stay against the order of Hon'ble Division Bench of Bombay High Court. HPCL (respondent No. 2) herein has issued the similar notification on 09th January, 2018 Hon'ble Division Bench in its order dated 28th February, 2024 in MAT 1849 of 2023 has came to conclusion that the circular dated 09th January 2018 issued by the respondent No. 2 are verbatim representation of corporations of circular dated 04th January, 2018 issued by CGM (LPG) Sales.

21. I am also in consonance with the observation of the Hon'ble Division Bench of this Court and is of view that the law of the land should maintain a parity in deciding issues appearing before courts in different parts of the country.

22. Moreover, the order passed by any High Court in the territory of India, have its persuasive value over the other High Courts in India. To maintain judicial discipline, I am of a view that the action of the respondent No. 2 regarding transfer of customers from petitioner to a new LPG dealer is actually an act of respondent No. 2 in pursuance to the circular dated 9th January 2018, on the basis of circular dated 4th January, 2018 CGM (LPG) Sales which was already been quashed and declared to be unreasonable, arbitrary and irrational by the Hon'ble Bombay High Court.

23. Moreover, through plain reading of the conditions of dealership agreement in 2(b) (iii), (iv), (v) it appears to me that the respondent No 2 corporation may have the authority, without consent of the dealer, to enlarge, reduce, increase or modified area of territory of business of petitioner, but such right of respondent No. 2 cannot allow them to transfer customers from petitioner to in new dealers. Moreover, clause No. 2 (b) (v) has directed dealer to make best efforts in enrolling more customers.

24. I am of a view that customers are the assets of a business, which earned through their business reputation during long unblemished business relation between the dealer and customers, such relations between the dealers and customers cannot be curtailed by corporation (respondent No. 2) by strength of the dealership agreement or by strength of any circular. Heard earned achievements of dealer to collect the customers is the sole properity and prerogative of the petitioner. Thus, transfer of customers and policy thereof appears to me irrational and unreasonable.

25. Under the above observations, the instant writ petition is appears to be meritorious and same is allowed.

26. Impugned memo dated 18th May 2023issued by the respondent No. 2 is hereby quashed. Respondent No. 2 is directed to transfer back 1429 customers to the petitioners who were initially transferred vide e-mail dated 19th August 2023. Respondent No. 2 is directed to complete the exercise within 04 weeks from the date of passing of this order.

27. Under the above observation the writ petition is disposed of.

28. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)