IN THE HIGH COURT AT CALCUTTA

CIRCUIT BENCH AT JALPAIGURI

CIVIL APPELLATE JURISDICTION

APPELLATE SIDE

MAT 109 OF 2024

With

CAN 1 of 2024

Smt. Nabanita Malakar

VS

Indian Oil Corporation Limited & Ors.

Before: The Hon'ble Justice Arijit Banerjee
&
The Hon'ble Justice Biswaroop Chowdhury

For the Appellant	Mr. Debasish Kundu, Sr.Adv., Mr. Nabankur Paul, Adv., Mr. Milindo Paul, Adv. Ms. Sutapa Sen Paul, Adv. Ms. Bedashruti Bose, Adv. Mr. Subham Das, Adv. Mr. Bodhisatya Ghosh, Adv.
For the IOCL	Mr. Bikramaditya Ghosh, Adv., Ms. Supriya Singh, Adv.
CAV on	08.04.2025
Judgment on	25.04.2025

<u>Arijit Banerjee, J. :-</u>

1. This appeal is directed against a judgment and order dated November 27, 2024, whereby, a learned Judge of this Court dismissed the appellant's

writ petition being WPA 347 of 2023, primarily on the ground of existence of an alternative remedy.

2. The brief facts of the case are that one Runu Sarkar carried on business of dealership of Indian Oil Corporation Limited (in short 'IOCL') and, operated a Petrol Pump since 2007 under the name and style of M/s. Khitish Service Center in the PMP (W) category. Runu found it difficult to run the retail outlet. She entered into negotiation with the appellant herein sometime in the year 2020. They submitted a joint application to IOCL for transfer of the dealership in favour of the appellant.

3. Preliminary approval was granted by IOCL and ultimately the appellant was appointed as dealer under a dealership agreement dated November 29, 2021.

4. In June 2021, a Multiple Disciplinary Team, (in short, 'MDT') visited the said retail outlet and carried out inspection of the two Dispensing Units (DUs). It was found that the electronic parts of one of the two DUs had been tampered with.

5. By a letter dated July 6, 2021, IOCL called upon the erstwhile dealer, Runu, to submit her explanation. By a letter dated July 12, 2021, Runu contended that there was no anomaly as the Executive Director and Sale Head, West Bengal State Office, Siliguri Divisional Office, Indian Oil Corporation Limited, after calibrating the fuel dispensers had sealed the same and the seal was intact when the certificate of rejection was served on Runu.

6. Not finding Runu's response to be acceptable, by a letter dated April 18, 2022, the Divisional Retail Sales Head-F, Siliguri Divisional Office,

Indian Oil Corporation Limited, called upon the appellant herein to show cause as to why her dealership should not be terminated, on the ground of violation of the Marketing Discipline Guidelines, 2021, and clause 42 of the Dealership Agreement.

7. By a letter dated May 3, 2022, the appellant contended that she was appointed as a dealer only on November 29, 2021, and the outlet was handed over to her on December 1, 2021. The entire incident of alleged tampering with the DU had occurred much prior thereto and during the time when the business was being run by the erstwhile dealer, Runu. The appellant herein had not committed breach of any clause of her dealership agreement. She was not aware of tampering with the DU or any anomaly in the DU.

8. By a notice dated January 24, 2023, IOCL terminated the appellant's dealership. Challenging such notice, the appellant approached the learned Single Judge by filing the present writ petition.

9. Appearing for the appellant/writ petitioner, Mr. Debasish Kundu, learned Senior Advocate, urged the following points before the learned Single Judge as also before us:-

(i) The petitioner's dealership could not be terminated on the basis of alleged tampering with the DU at a time when the petitioner was not the dealer of IOCL. The charge of manipulation of the DU related to a period during June/July, 2021, much prior to the execution of the dealership agreement dated November 29, 2021, in favour of the writ petitioner. Therefore, issuance of the show cause notice for termination of the petitioner's dealership and all subsequent steps are illegal, arbitrary, mala fide and in breach of the petitioner's fundamental right guaranteed under Article 19(1)(g) of the Constitution of India.

(ii) Before terminating the petitioner's dealership, no opportunity of hearing was granted to her by IOCL. Hence, there was a breach of the principles of nature justice.

(iii) Prior to the execution of the dealership agreement in favour of the writ petitioner, there was no privity between IOCL and the petitioner. Hence, for incidents which allegedly occurred prior to the date of such agreement, the petitioner could not be made liable. The termination of the petitioner's dealership is a result of mechanical and arbitrary exercise of power by IOCL.

(iv) The marketing guidelines apply only to dealers. At the relevant time, the petitioner was not a dealer of IOCL. Therefore, the marketing guidelines could not be applied to her and she could not be held liable for breach of any provision of those guidelines.

(v) Although the dealership agreement contains an arbitration clause, the same does not stand in the way of the Writ Court to grant relief where a person's fundamental right has been infringed or there is breach of the principles of natural justice or where the order impugned is without jurisdiction, as in the present case. In this connection learned Senior Counsel relied on the decisions of the Hon'ble Supreme Court in the cases of ***Harbanslal Sahnia & Anr. v. Indian Oil Corporation Ltd. & Ors., reported at (2003) 2 SCC 107***; ***ABL International Ltd. & Anr. v. Export Credit Guarantee Corporation of India Ltd. & Ors. reported at (2004) 3 SCC 553; and Indian Oil***

Corporation Ltd. v. Amritsar Gas Service & Ors., reported at (1991) 1 SCC 533.

(vi) No disputed question of fact is involved and there is no impediment to the Writ Court exercising its jurisdiction in the facts of this case.

(vii) A Coordinate Bench, in an appeal preferred against the learned Single Judges refusal to pass an interim order, by an order dated June 15, 2023, had granted interim protection to the writ petitioner by permitting the appellant to operate the Petrol Pump for a period of 4 months from the date of the order or till disposal of the writ petition, whichever was earlier. Therefore, a Coordinate Bench found merit in the writ petitioner's case.

10. Appearing for IOCL, Mr. Bikramaditya Ghosh, learned Counsel, made the following submissions:-

(i) On June 26, 2020, the erstwhile dealer, Runu, and the appellant herein submitted a joint application for reconstitution of the dealership.

(ii) On June 5, 2021, the appellant executed a letter of indemnity stating that the appellant herein had taken over the assets and liabilities of the 'erstwhile dealership firm'. The newly constituted firm shall continue to operate the dealership business and would pay all outstanding dues etc. for the period till the dealership agreement was executed in her favour.

(iii) On June 24, 2021, during calibration, the concerned DU was found to be tampered with.

(iv) On July 6, 2021, a detailed letter with finding of facts was issued by IOCL to the said retail outlet.

(v) On July 12, 2021, an explanation was submitted by the erstwhile dealer.

(vi) Referring to the minutes of a meeting dated October 15, 2020, held between the erstwhile dealer, Runu Sarkar and the writ petitioner on one hand and the representatives of IOCL on the other hand, learned Counsel submitted that much prior to execution of the dealership agreement by IOCL in favour of the present appellant, she had taken over management and control of the concerned retail outlet. Therefore, at the time when the anomaly in the dispensing unit was detected, this appellant was in effective control of the retail outlet.

(vii) Whenever at any outlet, IOCL finds tampering with or manipulation in the DU, the marketing guidelines and the dealership agreement empower the oil company to terminate the dealership. This was done in the present case also.

(viii) The dealership agreement contains an arbitration clause. Several fact finding enquiries have to be held to decide the dispute between the parties. Writ Court is not the appropriate forum. The writ petitioner should be relegated to arbitration.

11. **<u>Observations of learned Single Judge</u>**

While dismissing the writ petition, the learned Single Judge observed, inter alia, as follows:-

> "……. On the existing facts already discussed above, to come to a conclusive finding with regard to the obligation of the petitioner under the said letter of indemnity also requires a detail fact finding enquiry which is not the job of the Writ Court, more so when the

arbitration proceeding is contemplated under dealership agreement.

Insofar as the contention of the petitioners that the marketing guidelines would only apply against the dealer and all the incidents of tampering as alleged took place during the tenure of the erstwhile dealer, therefore, no liability of the erstwhile dealer can be foisted upon subsequent dealer, the same is also required to be adjudicated by a detail fact finding enquiry in the light of the existing records. The existing records do not and cannot unimpeachably demonstrate that the petitioner did not have any nexus or connection with the alleged incident of tampering of DU and the liability as alleged against the petitioner by the oil company cannot be brushed aside summarily. To come to a logical conclusion on this issue a summary proceeding like a writ petition is not the proper remedy moreso when there is a specific provisions for arbitration under the dealership agreement executed with the petitioner.

….. However, when from the records of the proceeding it appears to the Constitutional Court that, the facts are so disputed triable issue would arise, then a writ court should refrain itself from exercising its high prerogative writ jurisdiction. In the instant case, as discussed above from the record of the proceeding, it appears that to ascertain the conduct of the petitioner several fact finding enquiries are required to be carried out which would give rise to several triable issues. Hence this constitutional court thinks it fit not to exercise its discretion in the facts and circumstance of this case. Accordingly the ratio laid down ***In the matter of: ABL International Ltd. & Anr. (supra) and In the matter of: Amritsar Gas Services & Ors. (supra)*** shall not apply in the facts and circumstances of the case.

It is equally trite that mere existence of an arbitration clause in a contract shall not debar the petitioner to maintain a petition under Article 226 of the Constitution of India. Relief granted under Article 226 of the Constitution of India are equitable and discretionary. The power of the constitutional court is plenary to see that justice is done whenever the court is satisfied that there is breach of any constitutional right or any other legal right of an aggrieved person. The nature of proceeding under Article 226 is summary. When the court finds several fact finding enquiry is required to be made and if necessary to conduct a proper witness action between the parties, the constitutional court shall seldom exercise its power under Article 226 of the constitution. The court shall relegate parties to a civil action and there is no hard and fast rule for the same. It depends on facts and circumstances of each case. In the instant case, the records and submissions made in the proceeding clearly show that, there was no breach of natural justice as the petitioner was granted opportunity of hearing before issuing the impugned termination order. The termination order speaks for the same in detail. The impugned termination order terminating the dealership of the petitioner records several

> findings on the basis of detail fact finding enquiry conducted from time to time. To assess the correctness and propriety of the allegation, a competent forum needs to go for examination of detail facts and records and if necessary on the basis of witness action, which is not the job of the writ court. More so, the parties have agreed for the arbitration which otherwise is a competent forum to assess the impugned order of termination on merit after causing necessary fact finding enquiries on the basis of the existing records. Here, the self-restriction comes on a writ court not to adjudicate on those fact finding issues. Thus, this court is of the considered and firm opinion that in the facts and circumstances of the case, the instant writ petition is not maintainable and for complete adjudication on the said impugned decision for termination of the dealership of the petitioner, the petitioner should invoke the arbitration clause and to proceed for arbitration reference."

Court's decision

12. The sole question that arises in this appeal is whether or not the learned Single Judge was justified in dismissing the appellants' writ petition in view of existence of an arbitration clause in the dealership agreement executed by and between the appellant/writ petitioner and IOCL.

13. Learned Senior Counsel for the appellant urged that existence of an arbitration agreement is not a complete bar to maintainability of a writ petition. He is quite right. Availability of an alternative remedy is never an absolute bar to the maintainability of a writ petition. Indeed, the High

Court's jurisdiction under Article 226 of the Constitution of India can never be ousted.

14. However, the High Court has imposed on itself a restriction and ordinarily does not entertain a writ petition when an alternative remedy is available to the aggrieved party. Such alternative remedy in no manner touches on the High Court's jurisdiction under Article 226 of the Constitution. Notwithstanding existence of an alternative remedy, the High Court readily entertains a writ petition in certain cases, e.g., when the petitioner's grievance arises from the breach of the principles of natural justice or when an order passed or an action of an authority within the meaning of Article 12 of the Constitution of India, is without jurisdiction or where the vires of a statute is under challenge. Issuance of writs is an extra-ordinary remedy and, therefore, when an alternative and reasonably efficacious remedy is available to an aggrieved party, generally the High Court will require him to exhaust that avenue before exercising the high prerogative writ jurisdiction of the High Court.

15. One category of cases where the High Court refuses to exercise writ jurisdiction is where disputed questions of fact are involved. A writ proceeding is summary in nature. A writ application is decided on the basis of affidavits. The Writ Court is not an appropriate or convenient forum for resolution of factual disputes. The nature of disputes may be such that the same can be resolved only upon a trial being held and evidence of witnesses being recorded. Therefore, in the writ petitions concerning factual disputes, the writ Court is reluctant to exercise its jurisdiction and normally relegates

the parties to a civil forum, be it Court or Tribunal or Arbitration if there be an arbitration agreement between the parties.

16. In the present case, we have noted above that Runu Sarkar obtained dealership of IOCL sometime in 2007. Finding it difficult to run the petrol pump business, she negotiated with the appellant herein namely Nabanita Malakar, and they jointly submitted an application to IOCL for transfer of the dealership in Nabanita's name. (This was in June, 2020)

17. In June 2021, Nabanita executed a letter of indemnity in favour of IOCL stating therein that she had taken over the assets and liabilities of the 'erstwhile dealership firm'. The letter also stated that the newly constituted firm shall continue to operate the dealership business till a dealership agreement was executed in Nabanita's favour.

18. The anomaly in the dispensing unit in the concerned petrol pump was detected on June 24, 2021. Ultimately on the basis of such alleged tampering with the dispensing unit, Nabanita's dealership was cancelled by IOCL. One of the questions that arise is whether or not Nabanita is responsible for tampering with the dispensing unit. She says she is not responsible. The dealership agreement was executed in her favour only on November 29, 2021 and she was handed over possession of the petrol pump on December 1, 2021.

19. On the other hand, IOCL, referring to the indemnity letter dated June 5, 2021, and the minutes of a meeting dated October 15, 2020, held between Runu and Nabanita on one hand and the representatives of IOCL on the other hand, contends that much prior to inspection of the concerned dispensing unit and detection of the anomaly therein, Nabanita had stepped

into the shoes of Runu and was in charge, control and management of the concerned petrol pump. The tampering was detected when Nabanita was the *de facto* dealer although formal dealership agreement was executed by IOCL in her favour in November 2021.

20. Whether or not the tampering of the dispensing unit was done when Nabanita was in fact running the petrol pump and was in effective control thereof, is essentially a factual issue which is required to be determined, if necessary, by recording evidence of witnesses. This can be conveniently and more effectively done in an arbitration. The Writ court is not the proper forum for resolution of such factual disputes.

21. Hence, in our considered view, the learned Single Judge was perfectly justified in dismissing the writ petition and relegating the writ petitioner to arbitration. Whether or not IOCL rightly cancelled Nabanita's dealership is a question which can be answered only upon determination of certain disputed factual issues.

22. In any event, the view taken by the learned Single Judge is an eminently plausible one. It is settled law that in an intra Court appeal, the Division Bench shall not interfere with the learned Single Judge's order only because the Division Bench may have a different view. The order impugned must be clearly wrong before the Appeal Court intervenes and reverses it or modifies it.

23. The propositions of law in support of which learned Senior Counsel for the appellant cited precedents are well established and we have no quarrel with the same. However, the *ratio decidendi* of those decisions do not advance the appellant's case in the present facts and circumstances. Hence,

we have consciously refrained from discussing the decisions cited by learned Senior Counsel for the appellant.

24. In view of the aforesaid, this appeal and the connected application fail and are dismissed. There will be no order as to costs.

25. In the event the appellant initiates arbitration or approaches any other forum which is open to her in law including any statutory appellate forum, that forum is requested to decide the appellant's grievance in accordance with law without being influenced by any observation in this order or in the order of the learned Single Judge which is assailed before us.

26. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

I agree.

(**Biswaroop Chowdhury, J.**) (**Arijit Banerjee, J.**)