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Calcutta High Court

Case No: A.P.O. No. 266 of 2010, A.P.O.T. No. 368 of 2010 and W.P. No. 16 of 2009

Hindustan Petroleum Corporation Ltd.	APPELLANT
Vs	
Dulal Krishna Saha	RESPONDENT

Date of Decision: Aug. 25, 2011

Acts Referred:

- Arbitration and Conciliation Act, 1996 - Section 5
- Constitution of India, 1950 - Article 12, 14, 226, 227
- Specific Relief Act, 1963 - Section 14, 16

Citation: (2012) 1 CHN 586

Hon'ble Judges: Shukla Kabir Sinha, J; Pinaki Chandra Ghose, J

Bench: Division Bench

Advocate: Debajyoti Datta and Rakhshanda Qamar, for the Appellant; K.K. Bandopadhyay, Ram Agarwal, Kumar Gupto, Nibedita Pal and Ramesh Dhare, for the Respondent

Judgement

Pinaki Chandra Ghose, J.
This appeal is directed against a judgment and/or order dated 11th May, 2010 passed by the Hon"ble Single Judge whereby His Lordship was pleased to hold as follows:-

Having taken the fullest advantage of the unequal bargaining position of the partnership firm, HPCL merely relied on the expiry of the dealership agreement for snapping the relationship of HPCL with the firm without adjudicating the merits of the case of HPCL against the firm, the third respondent has filed to consider this factor as well.

HPCL, in my opinion, in order to refuse the prayer for renewal of the dealership agreement or for entering into a fresh agreement has taken an absolutely vindictive approach and such approach should be and is held as arbitrary, unreasonable and unfair approach on its part to refuse the petitioner or rater the firm an opportunity of renewal or extension of the dealership agreement between the firm and HPCL. HPCL being an

authority under Article 12 of the Constitution cannot be permitted to act in breach of Article 14 of the Constitution in order to snap the relationship with the firm. HPCL as an authority cannot also be permitted to act as a private individual in determining the dealership agreement in question or in not renewing or making a fresh agreement with the firm.

Finally, as I have said above, the third respondent instead of adjudicating the proceedings before him on merits has thought it prudent to merely set out HPCL"s allegations contained in its said show-cause and the HPCL said letter dated 19 November 1997, by which HPCL expressed its inability to renew the agreement, in support of his conclusion that since there was no existence of contractual relationship between the petitioners and the Corporation "the revival/resumption of supplies to the petitioners" firm is not permissible and possible under the existing rules and policy guidelines of the Corporation".

In the name of adjudicating the proceedings, the third respondent, I think, has really acted as an agent of HPCL.

Thus the impugned order of the Senior Regional Manager of HPCL dated 29th October 2008 is set aside and as a natural consequence thereof HPCL is directed to either renew or enter into a fresh "dealership agreement" with the partnership firm in question within a period of three weeks from the date of communication of this order.

However, the petitioners herein in their turn will submit an affidavit to HPCL within two weeks from the date of receipt of this order stating that they will run the Kerosene Oil Agency as a partnership firm as before on the basis of the above renewed or fresh dealership agreement.

If no affidavit is submitted as directed above by the petitioners, HPCL will not be obliged to renew or enter into a fresh "dealership agreement".

The writ petition is disposed of.

The facts of the case briefly are as follows:-

One Sri Dulal Krishna Saha during his lifetime held a licence to act as a superior kerosene oil agent (hereinafter referred to as SKO). He entered into an agreement for obtaining supply of kerosene oil with Esso Std. Eastern Inc. Subsequently, the said Esso Std. Eastern Inc. was taken over by Hindustan Petroleum Corporation Limited (hereinafter referred to as HPCL) and as such Sri Dulal Krishna Saha had to enter into a fresh agreement with HPCL on 3rd October, 1975 for receiving supply of superior kerosene oil.

2. After his demise, his three sons, Nikhil Kumar Saha, Ashim Kumar Saha and Shyamal Kumar Saha formed a partnership firm under the name and style of M/s. Dulal Krishna

Saha and continued the said business. After the partnership was constituted an agreement was entered into between them and HPCL for obtaining supply of kerosene oil.

3. The kerosene oil is distributed under the Public Distribution System (shortly known as P.D.S.) and the said system governs by the West Bengal Superior Kerosene Control Order, 1968 till very recently. They also obtained a licence from the Directorate of Consumer Goods, Food and Supplies Department, Government of West Bengal.

4. It is the case of the writ petitioners in the writ petition that two of the partners namely Nikhil Kumar Saha and Ashim Kumar Saha wanted to retire from the said partnership firm and it was agreed between them that Shyamal Kumar Saha would continue with the said kerosene oil agency as a sole proprietor of the firm. Accordingly, three partners executed and registered a deed of dissolution of the said partnership firm dated 31st July, 1992. Thereafter, Shyamal Kumar Saha approached HPCL for accepting him as a sole proprietor of the said firm and further requested HPCL to enter into a fresh dealership agreement. HPCL did not reply to the said letter. Accordingly, the three brothers continued to run the said agency under the partnership.

5. There was some financial stringency faced by the writ petitioners in the writ petition and they obtained a loan from one Nityahari Kundu. A portion of the land was ostensibly conveyed in favour of the said Nityahari Kundu as a security, on the condition that the land will be allowed to be used by the petitioners for the business purpose and would be re-conveyed to the petitioners after the loan is repaid. The loan was duly repaid by the writ petitioner and land was re-conveyed in favour of the petitioners and necessary documents were executed.

6. On 21st December, 1995, a show-cause notice was issued by the respondent No. 4 and on 30th May, 1996 the said agency licence of the partnership was cancelled with immediate effect. The said order was issued by the Directorate of Consumer Goods, West Bengal on the ground that the writ petitioner violated the Kerosene Oil Control Order, 1968. Subsequently, the said order was set aside by the appellate authority on the basis of an appeal preferred by the writ petitioner. Thereafter, from time to time the said licence was renewed by the said authority.

7. On 29th July, 1996 HPCL issued a show-cause notice to the writ petitioners which was duly replied by a letter dated 19th August, 1996 by the writ petitioners. After the restoration of the said agency licence, the writ petitioners by their letter dated 15th October, 1997 approached the Chief Regional Manager, HPCL for allocation of kerosene oil in their favour.

8. Nityahari Kundu filed two writ petitions before this Court. In one writ petition, he questioned the inaction on the part of the HPCL against the said partnership firm and in the other writ petition he challenged the order of restoration of the petitioners'' licence by

the licensing authority. Both the writ petitions were dismissed.

9. After such dismissal of the writ proceedings filed by Kundu, the partners of the firm were informed that the contractual relationship between the partnership and HPCL seized to continue from the date of the expiry of the said dealership agreement dated 4th March, 1997. A show cause notice dated 29th July, 1996 was issued by the HPCL on the ground that the writ petitioners committed breach of certain clauses of the agreement. However, no step was taken in respect of the said show cause notice by HPCL.

10. The writ petitioners through their Advocates, replied the said letter dated 21st November, 1997. HPCL was informed that the writ petitions initiated by Nityahari Kundu were dismissed for non-prosecution. It was further informed that no effect was given to the partnership agreement between the said Nityahari Kundu and the partners of the partnership firm at any point of time.

11. In spite thereof, no effective step was taken by the HPCL to continue with the supply. Hence, a writ petition was initiated by the writ petitioners being W.P. No. 28617 (W) of 1997. The said writ petition was disposed of by the Court directing the authority to consider the writ petitioners'' representation as contained in the letter dated 21st November, 1997 and to pass a reasoned order thereon.

12. It appears that the respondent authority by its letter dated 25th February, 1998 wrote to the petitioners that the allocation of kerosene oil could not be made in their favour on the ground that no contractual relationship exists between the parties after the expiry of the dealership agreement.

13. On 22nd June, 1998 a Circular was issued by HPCL requesting the petitioners to make necessary underground storage facility and to obtain explosive licence, failing which HPCL would stop "supply of kerosene" to the petitioners. On 11th August, 1998 all the partners jointly wrote to HPCL requesting to withdraw the said show-cause notice and to resume allocation of kerosene oil to run the said agency under the partnership.

14. It was further pointed out that kerosene oil agency licence of the partnership was renewed by the concerned authority till 31st March, 1999.

15. In spite of the best efforts of the petitioners, they failed to obtain allocation of kerosene oil in their favour. The petitioners initiated a writ proceedings being W.P. No. 2800 of 1999 and on 4th January, 2000 an interim order was passed directing that if no appointment had been made in place of the petitioners as dealer then HPCL should not make any appointment without the express leave of the Court. However, the said writ petition was dismissed and an appeal was preferred by the writ petitioners and the Division Bench was pleased to set aside the judgment passed by the Hon''ble Single Judge by its order dated 26th August, 2008. The Division Bench directed the competent authority of the respondent to take a final decision with regard to the charges mentioned in the show-cause notice dated 29th July, 1996 after taking note of the reply of the

appellant in answer to the said show-cause notice. The competent authority was further directed to grant a reasonable opportunity of hearing to the appellants (respondents herein) or their authorized representatives while taking the final decision in the matter.

16. It was further stated that if authorities are satisfied that the reply of the writ petitioners (respondents herein) the agreement in question should be renewed for further period subject to compliance of the relevant formalities, if there be any. However, if the respondent oil company is not satisfied with the explanations of the appellants, then in that event appropriate reasons should be furnished.

17. Pursuant to the said order of the Division Bench the competent authority on 29th October, 2008 passed by His Lordship primarily holding that "since there is no existence of contractual relationship between the petitioners and the corporation the revival/resumption of supplies to the petitioners" firm is not permissible and possible under the existing rules and policy guidelines of the corporation".

18. The said order of the said authority is under challenge in these proceedings and after analyzing the facts, the Hon"ble Single Judge held as follows:

I wonder why HPCL did not proceed to adjudicate the proceedings in spite of the prompt reply to the show-cause notice by the partners and after repeated reading and consideration of the impugned order and the stand taken by HPCL in this proceedings, I am at a loss to appreciate as to what prompted HPCL not to adjudicate the proceedings initiated by it against the partners on the basis of HPCL"s alleged prima facie satisfaction that the partners were guilty of acts which entitled HPCL to immediately terminate the dealership agreement between the firm and HPCL.

However, instead of adjudicating the proceedings or rather keeping the said proceedings pending for three years, HPCL found it convenient to write to the partners not before 19th November 1997 that since the dealership agreement had "expired with effect from 4th March 1997 and since the said agreement had not been renewed further the contractual relationship "pertaining to the dealership business" ceased "from the date of expiry of dealership agreement" and the said agreement was as such determined with effect from the date of expiry of that agreement.

The Court further held as follows :

HPCL therefore issued the said letter determining the so-called contractual relationship between the HPCL and the firm solely on the ground of the expiry of the period of the agreement and nothing else.

19. It is the fact that one of the partners Shyamal sought for HPCL"s permission whether HPCL would recognize as the sole proprietor of the dealership business. By virtue of the agreement amongst the partners since no consent was received from HPCL, no step was taken by the partners for treating Shyamal as a sole proprietor of the said agency. But it is

pointed out that the partnership was reconstituted without prior consent from the HPCL.

20. On the other hand, it is submitted that the partners took the consistent stand and continued with the partnership and the proceedings initiated by the licensing authority against the firm which was subsequently cancelled and the agency was restored the licence after satisfying themselves that no wrongful act or acts were committed by the partners in running the kerosene oil agency. The Hon''ble Single Judge also noted the fact that instead of adjudicating the proceedings initiated by HPCL it simply allowed the time to run and eventually wrote to the partners that the "contractual relationship" between the firm and HPCL came to an end on the expiry of the said dealership agreement.

21. Further it would be evident that from the said order the said Regional Manager in the name of adjudication of the proceedings highlighted in His Lordship''s Order that due to the expiry of the period of the agreement dated 4th March, 1997 and since the agreement had not been renewed under Clause 33 of the dealership agreement, the same could not be renewed.

22. His Lordship further held as follows:

In my opinion, the third respondent instead of adjudicating the proceedings before him on merits, has refused to exercise his authority as he was under an obligation to do under the said order of the Division Bench, as the third respondent was not sure, as HPCL was not, as to whether any breach was at all committed by the firm, or its partners, of the dealership agreement in the first place. The third respondent has simply said in the end that since the contractual relationship between HPCL and the partners came to an end, renewal of dealership agreement was not possible.

As I have said above HPCL did not adjudicate the proceedings initiated by it with the issuance of the said show-cause against the firm, as HPCL really never intended to terminate the dealership agreement during its subsistence, as HPCL found no fault or default on the part of the firm in running the agency.

23. His Lordship further held that the said Senior Regional Manager has also failed to consider the provisions contained in Clauses -14 and 17 of the agreement.

24. Being aggrieved and dissatisfied with the judgment and/or order dated 11th May, 2010, the appeal has been filed by the HPCL.

25. Mr. Debajyoti Datta, learned Advocate appearing on behalf of the appellants contended that the respondents are guilty of violating the terms of the dealership agreement by constituting a fresh partnership agreement without the prior written approval and/or consent of the appellant.

26. He further pointed out that a registered document can only be cancelled by another registered document to give effect to such cancellation. The registered deed of dissolution of partnership had not been cancelled by any other registered deed and the same is subsisting.

27. Mr. Datta further submitted that nobody can claim dealership of the appellants as a matter of right. A dealership agreement rescinded and/or withdrawn in accordance with the agreement so entered into between the parties.

28. Shyamal Kumar Saha signed the letter dated 19th August, 1996 in his individual capacity and not as a partner of the said firm. HPCL only came to know of the new partnership between Shyamal Saha and Nityahari Kundu from the writ petitions filed by the said Nityahari Kundu. The said fact was suppressed from HPCL.

29. According to Mr. Dutta, the question of Nityahari Kundu or the initial dissolution of the partnership is a closed chapter and on these acts and conducts of the respondents, steps were taken to terminate their dealership. He further submitted that if a partnership is dissolved by a registered deed of dissolution which had not been cancelled by another registered instrument, then the earlier partnership cannot continue without reconstitution of the partnership.

30. He further submitted that the appellate authority of the Directorate of Consumer Goods, Food and Supplies Department did not adjudicate upon the existence of the firm. The said authority was simply adjudicating over the issue of supply of kerosene oil.

31. It is the case of the HPCL that since the contractual relationship between HPCL and the partners came to an end, renewal of dealership agreement was not possible. The Hon"ble Single Judge has totally ignored the other findings in the said order. The Hon"ble Single Judge was wrong in holding that HPCL did not adjudicate the proceedings initiated by it with the issuance of the said show-cause notice against the firm, as HPCL really never intended to terminate the dealership agreement during its subsistence.

32. The Hon"ble Single Judge was erred in holding that the 3rd respondent has failed to take into account the provisions contained in Clauses 14 and 17 and read with combined for proper appreciation and proper adjudication on the merits of the proceedings before him.

33. Mr. Datta, learned Advocate further submitted that the Hon"ble Single Judge without any basis came to the finding that HPCL, in order to refuse the prayer for renewal of the dealership agreement or for entering into a fresh agreement has taken a stand which is arbitrary, unreasonable and unfair.

34. He further relied upon a decision of State of U.P. and others Vs. Bridge and Roof Co. (India) Ltd., and submitted that the writ petition was not maintainable. Firstly, the contract between the parties is a contract in the realm of private law. It is not a statutory contract.

It is governed by the provisions of the Contract Act. Any dispute relating to interpretation of the terms and conditions of such a Contract cannot be agitated and could not have been agitated in a writ petition. He further submitted that it is not a case of declaration that in the Writ Court the Court can direct that the contract is still subsisting nor such prayer has been made out in the writ petition. Therefore, he submitted that matter cannot be adjudicated in the writ jurisdiction. Since it is a matter relating to interpretation of terms of the contract, it should be adjudicated before the appropriate forum.

35. In support of his contention he relied on Mrs. Sanjana M. Wig Vs. Hindustan Petro Corporation Ltd., where the Supreme Court held as follows:

18. It may be true that in a given case when an action of the party is dehors the terms and conditions contained in an agreement as also beyond the scope and ambit of the domestic forum created therefor, the writ petition may be held to be maintainable; but indisputably therefor such a case has to be made out. It may also be true, as has been held by this Court in Amritsar Gas Service and E. Venkatakrishna that the arbitrator may not have the requisite jurisdiction to direct restoration of distributorship having regard to the provisions contained in section 14 of the Specific Relief Act, 1963; but while entertaining a writ petition even in such a case, the Court may not lose sight of the fact that if a serious disputed question of fact is involved arising out of a contract qua contract, ordinarily a writ petition would not be entertained. A writ petition, however, will be entertained when it involves a public law character or involves a question arising out of public law functions on the part of the respondent.

20. We are further of opinion that in this matter no case has been made out for grant of relief of restoration of the dealership. The contract stood terminated on the death of the appellant''s partner. No case of novation of contract has been made out. It is also not the case of the parties that any other or further agreement between the parties came into being. The arrangement was an ad hoc one. The appellant did not derive any legal right to continue the business for an indefinite period. Moreover, she allegedly violated the terms of the contract.

36. He further submitted that the Writ Court should not direct a mandamus to enter upon an agreement which would constitute a private contract.

37. Mr. Datta also pointed out that the agreement between the parties also contained of an arbitration clause and therefore, the Writ Court should not ordinarily exercise its power of judicial review where disputes arose between the contractor and parties on the question of liability under the terms of the contract.

38. Mr. Datta further relied on Empire Jute Company Ltd. & Ors. vs. Jute Corporation of India Ltd. & Anr., reported in 2007 (14) SCC 680 where the Supreme Court held as follows:

18. The power of judicial review vested in the superior courts undoubtedly has wide amplitude but the same should not be exercised when there exists an arbitration clause. The Division Bench of the High Court took recourse to the arbitration agreement in regard to one part of the dispute but proceeded to determine the other part itself. It could have refused to exercise its jurisdiction leaving the parties to avail their own remedies under the agreement but if it was of the opinion that the dispute between the parties being covered by the arbitration clause should be referred to arbitration, it should not have proceeded to determine a part of the dispute itself.

20. A similar view was taken by this Court in Sanjana M. Wig vs. Hindustan Petroleum Corpn. Ltd. holding : (SCC p. 247, paras 12-13)

12. The principal question which arises for consideration is as to whether a discretionary jurisdiction would be refused to be exercised solely on the ground of existence of an alternative remedy which is more efficacious. Ordinarily, when a dispute between the parties requires adjudication of disputed question of facts wherefor the parties are required to lead evidence both oral and documentary which can be determined by a domestic forum chosen by the parties, the Court may not entertain a writ application. (See Titagarh Paper Mills Ltd. vs. Orissa SEB and Bisrra Lime Stone Co. Ltd. vs. Orissa SEB.)

13. However, access to justice by way of public law remedy would not be denied when a lis involves public law character and when the forum chosen by the parties would not be in a position to grant appropriate relief.

22. The legal position has undergone a substantial change, having regard to section 5 of the Arbitration and Conciliation Act, 1996 vis-■-vis provisions of the Arbitration Act, 1940. The said provision reads as under :

5. Extent of judicial intervention. - Notwithstanding anything contained in any other law for the time being in force, in matters governed by this part, no judicial authority shall intervene even where so provided in this part.

39. He further submitted that in the facts and circumstances of this case if the writ petitioners are suffered at all, they are only entitled to get damages and, therefore, it has to be determined by the learned Arbitrator and the Court has no power to direct issue of mandamus directing the authorities to enter into a contract between the parties.

40. He also relied upon a decision of Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others, where the Supreme Court held that the relief of restoration of the contract granted by the Hon''ble Single Judge is contrary to law being against the express prohibition in sections 14 and 16 of the Specific Relief Act.

41. He further submitted that the contract being admittedly revocable at the instance of either party is in accordance with the clause 28 of the agreement. The only relief which can be granted on the finding of the breach of the contract is nothing but damages, He

also contended that the reasons given in the order of the Hon"ble Single Judge for granting the relief of restoration of the distributorship are untenable and contrary to law.

42. He contended that even if it is illegal termination of the contract by the appellant corporation, the respondents are liable to only get damages. He further submitted that the questions of public law based on Article 14 of the Constitution do not arise for decision in the present case and the matter must be decided strictly in the realm of private law governed by the general law relating to contracts with reference to the prohibition of the Specific Relief Act providing for non-enforceability of certain types of contracts.

43. He further relied upon the case of Indian Oil Corporation Ltd. (supra) where the Supreme Court held as follows :

para- 14. The question now is of the relief which could be granted by the arbitrator on its finding that termination of the distributorship was not validly made under clause 27 of the agreement. No doubt, the notice of termination of distributorship dated March 11, 1983 specified the several acts of the distributor on which the termination was based and there were complaints to that effect made against the distributor which had the effect of prejudicing the reputation of the right of termination of distributorship under clause 27. However, the arbitrator having held that clause 27 was not available to the appellant-Corporation, the question of grant of relief on that finding has to proceed on that basis. In such a situation, the agreement being revocable by either party in accordance with clause 28 by giving 30 days" notice, the only relief which could be granted was the award of compensation for the period of notice, that is, 30 days. The plaintiff-respondent 1 is, therefore, entitled to compensation being the loss of earnings for the notice period of 30 days instead of restoration of the distributorship. The award has, therefore, to be modified accordingly. The compensation for 30 days notice period from March 11, 1983 is to be calculated on the basis of earnings during that period disclosed from the records of the Indian Oil Corporation Ltd.

44. He also relied upon the decision of Md. Bafati Mia vs. State of West Bengal & Ors., reported in 2008 (2) CHN where this Hon"ble Court held as follows:

Para - 8. A perusal thereof would clearly shows that not only the appellant petitioner surrendered the licence on 29th of January, 2003 but he premises on which the licence had been granted was demolished by the owner of the building. This would be an added ground to reject the prayer of the petitioner at this stage. It is even in the pleadings of the petitioner in the writ petition that the premises had been vacated by the petitioner towards the end of January, 2003. Learned Counsel for the appellant/petitioner also submitted that taking into consideration the facts and circumstances of the case a mercy chance should be given to the appellant/petitioner to apply again. We are unable to accept such a request. Even in exercise of jurisdiction under Article 226/227 of the Constitution, the High Court would only pass orders for enforcement of legal rights or in aid of doing substantial justice. We are unable to grant any such relief to the petitioner. The appeal is

treated as on day"s list and both the appeal and the application are dismissed accordingly."

45. He also relied upon the decision of India Trading Oil Co. & Ors. vs. Hindustan Petroleum Corporation Ltd. & Ors. where he submitted that admittedly in the instant case there has been an agreement which is of private character and nature though object of agreement was to sell and distribute petroleum product to public. But this fact of contractual obligation on part of dealer cannot be said to be of a public character.

46. In these circumstances, he submitted that the Hon"ble Single Judge wrongly passed the order of mandamus directing the appellant either to renew or to enter into a fresh dealership agreement with the partnership firm within a period of six weeks from the communication of the said order to the appellant.

47. Mr. Bandopadhyay, learned Senior Advocate appearing on behalf of the respondents contended that admittedly Shyamal made a prayer to HPCL requesting them to permit Shyamal to continue with the dealership business and to act as a sole proprietor in respect of the partnership firm in question, such prayer was not acceded to by the HPCL. Therefore, such relationship between the partnership firm and HPCL was continued to be in existence. It is submitted that show-cause notice was issued by HPCL on 29th July, 1996 after the letter addressed by Shyamal on 6th November, 1993. According to him, such show-cause notice issued by HPCL is nothing but a counter-step which was taken after the show-cause notice was issued by the Directorate of Consumer Foods and Supplies Department. In the show-cause notice dated 29th July, 1996 allegations have been made against the partners regarding transfer/sale of a portion of the land in favour of Nityahari Kundu. Therefore, such show-cause notice cannot be substantiated by the HPCL. Since, it was issued in violation of the various clauses of the dealership agreement dated 4th March, 1987, eply in respect of such show-cause notice was also addressed by the firm but HPCL did not proceed to adjudicate the proceedings. Admittedly, no step was taken and, therefore, the matter of show-cause notice came to an end and should have been treated as a closed chapter. Admittedly, Nityahari Kundu filed writ petitions which were dismissed and the chapter of Nityahari Kundu was treated to be a closed chapter which was within the knowledge of HPCL.

48. From the conduct of the HPCL it is evinced that they were in a desperate attempt to close down the relationship between the writ petitioners and the HPCL. He further pointed out that the senior regional manager in dealing with the matter in the name of the adjudication of the proceedings has only passed an order relating on the foundation that the relationship between the petitioners in the corporations had come to and end. In these circumstances, he submitted that the Hon"ble Single Judge has correctly allowed the writ petition and issued the said order.

49. He further relied on the following decisions in support of his contention:

1. Anil Kumar Vs. Presiding Officer and Others,

2. Bareilly Electricity Supply Co. Ltd. Vs. The Workmen and Others,

3. Roop Singh Negi Vs. Punjab National Bank and Others,

4. Metal Box Company of India Ltd. Vs. Their Workmen,

5. Comptroller and Auditor-general of India, Gian Prakash, New Delhi and Another Vs. K.S. Jagannathan and Another,

50. He also submitted that the enquiry report submitted by the enquiry officer only contained the charges against the respondent/writ petitioners and he submitted that the said Senior Regional Manager only merely recorded that those charges were proved without assigning any reason. Therefore, he submitted that there was no enquiry was made properly. According to him, this enquiry has to be a quasi-judicial enquiry and should have been made after following the principle of natural justice and the said Officer has a duty to act judicially. Therefore, he submitted that such order cannot be sustainable in law.

51. He also contended that mere production of a document does not amount to proof. He further submitted that the application of principle of natural justice does not imply that what is not in evidence can be acted upon. He further submitted that no documents were produced to substantiate the order so passed by the said authority.

52. He further submitted that adequate opportunity must be given to the parties so that if any stigma is given on the party, he must get a chance to deny that and that must be on the basis of the materials so placed before the Court. According to him, in the instant case no documents were produced before the authority and on the basis of which such conclusion can be drawn.

53. He also submitted that the order of appellate authority must be that the enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties the purport evidence collected during an investigation by the investigating officer against the accused by itself could not be treated to be evidence in the proceedings.

54. He further submitted that no witness was examined to prove any document. According to him, in fact, the order passed by the said authority, is without any materials and there is no evidence which can legitimately apply against the writ petitioners.

55. The submissions made on behalf of the appellants that in the given facts the nature of the agreement between the parties is within the domain of private realm and the dispute between the parties arose on the question of breach of contract and the show-cause notice was issued on the basis of such breach. Therefore, Mr. Dutta, learned Advocate

appearing on behalf of the appellants drew our attention to clause 28 of the agreement and placed reliance on clause 28 of the said agreement wherefrom it would appear that the said contract between the parties is revocable at the instance of either party. Therefore, if any breach of contract is committed by a party, then remedy lies for damages. Therefore, at the most, if a breach has been committed by the corporation by not extending the time or supplying the kerosene, the writ petitioners cannot have any right to continue with the said agreement and the order so passed by the Hon''ble Single Judge directing a mandamus to renew the agreement cannot be accepted. Therefore, it appears to us that the relief of restoration of the distributorship is untenable, as directed by the Hon''ble Single Judge and contrary to law. Therefore, it appears to us that the Hon''ble Single Judge granting such relief in favour of the writ petitioners committed an error of law which is apparent on the face of the said order.

56. It is a fact that Corporation instead of taking positive steps in the matter waits for a long only to see that the agreement between the parties can lapse by efflux of time. Therefore, in the present case the matter must be decided strictly in the realm of private law rights governed by the general law relating to contracts with reference to the provisions of Specific Relief Act providing for non-enforceability of certain doubts of contracts. It is, therefore, noticed on that ground we proceed to consider and decide the contentions raised before us.

57. It appears to us that the agreement was for a particular period. It is true that the foundation of the writ petitioners'' case is on the basis of the agreement which was entered into between the Corporation and the partnership firm. It is also the duty of the dealer to observe and perform the provisions of the terms and conditions laid down in the said agreement. It is also a fact that in the instant case it cannot be brushed aside that the partnership was reconstituted by a deed of partnership and excepting one partner other partners retired from the partnership. No material has been placed before this Court to show that the said partnership firm again reconstituted by a registered deed of partnership and partners were readmitted.

58. Therefore, these facts were not considered by the Hon''ble Single Judge. It appears that the writ petitioners cannot have taken any steps in the matter to carry out and to perform his duty under the said agreement after changing the nature of the partnership except with the previous written consent of the Corporation. Therefore, those facts, in our considered opinion, cannot be brushed aside.

59. It further appears to us that the agreement shall remain in force for ten years of 4th March, 1987. We have also noted Clause 29, Clause 31 and Clause 33 of the agreement. Analysing the said Clauses it would show that either party shall have a right to terminate the agreement after giving one month''s notice.

60. We have also noticed that in Roop Singh Negi (supra) the Court dealt with the matter with regard to the departmental enquiry holding that the nature of the transfer is nothing

but a quasi-judicial proceeding as it appears to us that in the facts and circumstances of this case the said decision cannot be a help to the respondent. Similarly, the decisions of Anil Kumar''s case (supra); Barelly Electricity Supply''s case (supra); Metal Box Company''s case (supra) and Comptroller & Auditor General''s case (supra) also cannot be a help to the respondents in the facts and circumstances of this case.

61. We have also noticed that the Division Bench decision of this High Court in Md. Bafati Mia''s case (supra) where the Court held that even in exercise of jurisdiction is required under Article 226/227 of the Constitution of India, the High Court would only pass orders for enforcement of legal rights or in aid of doing substantial justice. The Division Bench also held that it is true that even in the writ jurisdiction there is no absolute bar for this Court to entertain the writ petition in exercise of jurisdiction under Article 226/227 of the Constitution of India. But this discretion has to be used with care and caution. It is the duty of the petitioner to establish the basis for his claim.

62. In the instant case, we find that the relationship between the petitioner with the appellants came to an end and further the Clauses of the agreement would show that it would come within the purview of the private contract and as such we feel that the Court would exercise its jurisdiction with care and caution.

63. We have also noticed a decision in State of U.P. vs. Bridge & Roof (supra) where the Court held that the writ petition is not maintainable on the ground that firstly the contract between the parties is a contrary on realm of private law. It is not a statutory contract, it is governed by the provisions of the Contract Act or, may be, also be certain provisions of the Sale of Goods Act. Any dispute relating to interpretation of the terms and conditions of such a Contract cannot be agitated, and could not have been agitated in a writ petition. Furthermore, the said agreement (as in the instant case contained an Arbitration Clause) the Supreme Court held that it is a matter either for arbitration as provided by the contract or for Civil Court, as the case may be, not can come within the purview of writ jurisdiction.

64. The Court further held as follows:-

There is yet another substantial reason for not entertaining the writ petition. The contract in question contains a clause providing inter alia for settlement of disputes by reference to arbitration [Clause 67 of the Contract] The Arbitrators can decide both questions of fact as well as question of law. When the contract itself provides for a mode of settlement of disputes arising from the contract, there is no reason why the parties should not follow and adopt that remedy and invoke the extraordinary jurisdiction of the High Court under Article 226. The existence of an effective alternative remedy - in this case, provided in the contract itself- is a good ground for the Court to decline to exercise its extraordinary jurisdiction under Article 226. The said Article was not meant to supplant the existing remedies at law but only to supplement them in certain well recognized situations. As pointed out above, the prayer for issuance of a writ of mandamus was wholly misconceived in this case since the respondent was not seeking to enforce any statutory

right to theirs nor was it seeking to enforce any statutory obligation cast upon the appellants. Indeed, the very resort to Article 226 - whether for issuance of mandamus or any other writ, order or direction - was misconceived for the reasons mentioned supra.

65. We have also noticed another decision in Sanjana M. Wng (Ms) (supra) and in the light of the said decision we can come to the conclusion and held that the contract stood terminated after the expiry of the period mentioned therein. No case of novation of contract has been made out in the writ petition. It is also not the case of the parties that any other or further agreement between the parties came into being. The respondents, in our opinion, did not turn any legal right to continue with the business for a indefinite period. Moreover, it appears that the terms of the contract had been violated.

66. We have also noticed a decision in Empire Jute Company Ltd. (supra) where the Supreme Court held that a writ petition is ordinarily maintainable if arbitration clause exists. Where arbitration agreement exists and dispute between the parties is covered thereby, Writ Court should not ordinarily exercise its power of judicial review.

67. After considering the test laid down in the decisions we come to the conclusion and find that at the most, in our considered opinion, the claim of the writ petitioners lies in damages and in the given facts we hold that the Hon''ble Single Judge could not have granted the mandatory direction as given in the said order HPCL are directed to either renew or enter into a fresh "dealership agreement" with the partnership firm in question within a period of three weeks from the date of communication of this order.

68. Hence, we set aside the order passed by the Hon''ble Single Judge and allow this appeal.

69. For the reasons stated hereinabove, we dispose of this appeal.

70. Photostat certified copy of this judgment, if applied for, be supplied to the parties.

S. Kabir Sinha, J.

I agree