

Hindustan Petroleum Corporation Ltd.,

Vs

Mayzur Islam Mallick and Others

Civil Appeals No. 7541 of 1997 with Nos. 7542-43 of 1997

(Suujata V. Manohar, R. C. Lahoti JJ)

31.05.1999

JUDGMENT

SMT. SUJATA V. MANOHAR, J. -

1. M/s. Caltex (India) Ltd., the predecessor-in-interest of the appellant M/s. Hindustan Petroleum Corporation Ltd., entered into two agreements both dated 30-11-1975 with Respondent 5 as the sole proprietor carrying on business in the name and style of M/s. National Oil Trading Co., granting Respondent 5 dealership in kerosene at two places of business - Bagnan and Kolaghat. These agreements were replaced by two agreements both dated 6-7-1984 entered into by the appellant with Respondent 5 as the sole proprietor carrying on business under the firm name and style of M/s. National Oil Trading Co. granting him dealership in kerosene at Bagnan and Kolaghat. The material parts of clauses 14 and 17 of these agreements are as follows :

"14. The dealer shall not sell, assign, mortgage or part with or otherwise transfer his interest in the dealership or the right, interest or benefit conferred on him by this agreement to any person. In the event of the dealer being a partnership firm any change in the constitution of the firm, whether by retirement, introduction of new partners or otherwise howsoever will not be permitted without the previous written approval of the Corporation notwithstanding that the Corporation may have dealings with such reconstituted firm or impliedly waived or condoned the breach or default mentioned hereinabove by the dealer. In the event of the death of any of the partners, the dealer shall immediately inform the Corporation giving the necessary particulars of the heirs and legal representatives of the deceased partner and it shall be the option of the Corporation either to continue the dealership with the said firm or to have a fresh agreement of dealership with any reconstituted firms or to terminate the dealership agreement and the decision of the Corporation in that behalf shall be final and binding on all the parties concerned. No claim on premature termination for compensation or otherwise will be made or sustainable against the Corporation on account of such termination.

17-A. * * *

B. It shall be a paramount condition of the agreement that the dealer himself (if he be an individual) or both the partners of the dealer firm (if the dealer is a partnership firm consisting of two partners only) or the majority of the partners of the dealer firm (if the dealer is a firm consisting of more than two partners) or the majority of the members of the dealer's cooperative society (if the dealer is a cooperative society), as

the case may be, shall take active part in the management and running of the dealership and shall personally supervise the same and shall not under any circumstances do so through any other person, firm or body.

C. Except with the previous written consent of the Corporation :

(i) The dealer shall not enter into any arrangement, contract or understanding whereby the operations of the dealer hereunder are or may be controlled, carried out and/or financed by any other person, firm or company, whether directly or indirectly and whether in whole or in part;

* * *

2. Respondent 1 who is the nephew (brother's son) of Respondent 5 contends that there was a family settlement of 13-5-1980 under which it was agreed that the kerosene dealership at Bagnan would come to the share of Respondent 1 while the kerosene dealership at Kolaghat would remain with Respondent 5. There is a dispute about this family settlement and a separate litigation between the parties is pending. By a registered deed of cancellation of 3-4-1990, the family settlement is said to be cancelled. Respondent 5 also executed a power of attorney dated 26-7-1984 authorising Respondent 1 to conduct the business of kerosene dealership at Bagnan. Thereafter it seems that the Senior Sales Officer, Calcutta Regional Office of the appellant submitted a report dated 5-2-1990 to the appellant stating that it had come to its notice that Respondent 5 who was the dealer at Bagnan and Kolaghat had entered into a partnership agreement and had also executed a power of attorney in favour of Respondent 1 to conduct the said dealership business at Bagnan. Thereupon the appellant wrote a letter of 19-2-1990 to Respondent 5 pointing out that the action of Respondent 5 was contrary to the terms of the agreement of 6-7-1984 and that he could not reconstitute his firm or appoint any partner without approval from the appellant. Respondent 5 cancelled the power of attorney in favour of Respondent 1 on 27-3-1990.

3. Respondent 1 filed a writ petition being CO No. 20144(W) of 1993 praying, inter alia, for substitution of his name for the dealership of kerosene at Bagnan. The High Court, however, directed the Director of Consumer Goods, Department of Food and Supply to decide the question after hearing the parties. The Director of Consumer Goods by his order dated 12-6-1996 rejected the application of Respondent 1 for the substitution of his name as the dealer of the appellant at Bagnan, since Respondent 1 was not an agent of the appellant for the supply and distribution of kerosene at Bagnan.

4. Thereupon Respondent 1 filed another writ petition being CO No. 10363(W) of 1996 challenging the order of the Director of Consumer Goods dated 12-6-1996. Respondent 1 prayed for a stay of the Director's order which the High Court refused. However, on appeal to the Division Bench of the High Court, the Division Bench by its order dated 10-10-1996 directed the Director of Consumer Goods to decide the question afresh. While deciding the interim application the High Court commented on various provisions of the West Bengal Kerosene Control Order of 1968. On the basis of the findings so given by the Division Bench in its order of 10-10-1996 the Director of Consumer Goods passed an order dated 24-1-1997 granting a licence to Respondent 1 for dealership at Bagnan. A special leave petition against the order of 10-10-1996 was dismissed without notice to the appellant. The appellant, however, declined to supply kerosene to Respondent 1 whereupon a contempt petition was filed by Respondent 1 against the appellant. The Division Bench of the High Court by its order dated 16-5-1997 directed the appellant to supply the kerosene to Respondent 1.

All these orders in the interlocutory proceedings in the second writ petition are under challenge here at the instance of the appellant.

5. The supply and distribution of kerosene in the State of West Bengal is governed by the West Bengal Kerosene Control Order of 1968 issued under Section 3 of the Essential Commodities Act read with Section 7(1) of the said Act and Order No. 26(11)-Com.Genl./66 dated 18-6-1966 of the Government of India, Ministry of Commerce. Under the West Bengal Kerosene Control Order of 1968, there are specific provisions which govern the purchase and sale of kerosene. The Order provides for the grant of various kinds of licences. Among them, para 5 provides for the grant of a licence to an agent; and para 6 provides for the grant of a licence to a dealer. In para 3 an "agent" is defined as follows :

"3. (a) 'agent' means a person who has been appointed as an agent of an oil distributing company by such company and has been granted a licence under para 5 of this Order;"

While a "dealer" is defined as follows :

"3. (c) 'dealer' means a person who has been granted a licence under para 6 of this Order authorising him to carry on trade in kerosene oil;"

An "oil distributing company" is defined in para 3(h) to mean "a company specified in Schedule II to this Order". The appellant is one of the oil distributing companies so included in Schedule II. Under para 4, there is a ban on trading in kerosene without a licence. It provides that no person other than an oil distributing company shall carry on trade in kerosene unless he is in possession of a valid licence issued under this Order. Para 5 provides for the grant of a licence to an agent. The Director of Consumer Goods is authorised to grant a licence to any agent in West Bengal authorising him to carry on trading in kerosene as such agent. Under sub-para (2) of para 5 a licence granted under sub-para (1) shall be in Form A and shall be subject to such conditions as are specified therein. Sub-para (3) of para 5 is as follows :

"5. (3) No agent shall sell, supply or transfer kerosene to any person other than a dealer duly licensed under para 6 of this Order, or a holder of a permit or delivery order issued under para 11 of this Order."

Therefore, an agent who is appointed as an agent by an oil distributing company requires a licence in Form A. Condition 1 of the licence in Form A, prescribes that a licensee may sell kerosene to any licensed dealer or hawker or to the holder of any permit or delivery order issued by the Director [vide para 5(3)]. Under condition 2, the licensee shall submit to the Director or the District Magistrate, as the case may be, a monthly statement showing the amount of kerosene released monthly by the oil distributing companies for sale in each of the areas mentioned on this licence, and shall be bound to report at once to the office any change in these quantities which he may have to make by order of the oil distributing companies. An agent thus gets his supply of kerosene from the oil distributing company and he, in turn, can supply kerosene only to a dealer, a hawker or a holder of a permit or delivery order.

6. Para 6 deals with the grant of a licence to a dealer. This licence has to be in Form B. Under the terms and conditions of a licence granted to a dealer in Form B, condition 1 states that a licensee may purchase kerosene from any agent, or subject to the approval of the licensing authority, from

any other dealer holding a licence under the provisions of this Order. A dealer, therefore, gets his supply of kerosene either from an agent or from another licensed dealer. Under condition 2 he, in turn, is entitled to sell kerosene to a consumer or, subject to the approval of the licensing authority, to another dealer duly licensed and shall not sell it to any agent. The two licences, that is, the licence to an agent and the licence to a dealer, are different in character. An agent has to be appointed by the oil distributing company as its agent. Thereafter the agent is required to obtain a licence under para 5. A dealer, however, does not have any connection with the oil distributing company. He can get a dealer's licence under para 6 which entitles him to purchase kerosene from an agent or another dealer as specified in para 6; and he, in turn, is entitled to sell kerosene to a consumer or to another dealer subject to the conditions specified in the said paragraph and the terms and conditions of his licence.

7. In the present case, Respondent 5 is an agent of the appellant Oil Distributing Company and he holds an agent's licence in Form A. This licence, inter alia, is for the area of Bagnan. If Respondent 1 wants this licence to be transferred to his name, he must first of all be appointed as an agent by the appellant Company. Only thereafter will he be entitled to obtain an agent's licence. The Director of Consumer Goods had, therefore, rightly rejected Respondent 1's application by his order dated 12-6-1996 since Respondent 1 had not been appointed its agent by the appellant Company for kerosene dealership in the area of Bagnan. The High Court while granting the interim order of 10-10-1996 has wrongly come to the conclusion that the grant of a licence to an agent does not depend upon the party being appointed an agent, and that the Director of Consumer Goods can grant a licence under para 5 in Form A to a person before he is appointed as an agent by an oil distributing company. Possibly there was a misreading of paras 5 and 6. Therefore, the order dated 24-1-1997 of the Director of Consumer Goods to give a licence to Respondent 1 as an agent without Respondent 1 having been appointed as an agent by the appellant, as also the interim direction of the High Court of 16-5-1997 directing the appellant to supply kerosene to Respondent 1 for distribution in Bagnan, are based on a misconception of the West Bengal Kerosene Control Order of 1968.

8. The appeals are, therefore, allowed and the impugned orders dated 24-1-1997 and 16-5-1997 are set aside and the interim order of the Single Judge of the High Court is restored. Respondent 1 shall pay to the appellant costs of the appeals.