

SUPREME COURT OF INDIA

Bharat Petroleum Corp.Ltd.

Vs.

B.M.Motors

C.A.No.4595 of 2014

(T.S.Thakur and C.Nagappan JJ.)

17.04.2014

JUDGMENT

C.NAGAPPAN, J.

1. Leave granted.

2. This appeal is preferred against the judgment dated 30.5.2013 of the Division Bench of the High Court of Judicature at Allahabad in Writ Petition (Civil) No.59450 of 2012. Respondent No.1 therein viz. M/s Bharat Petroleum Corporation Limited is the appellant herein.

3. Briefly the facts leading to the filing of the writ petition are as follows: Respondent No.1 herein, partnership firm was constituted on 26.6.1973 consisting of four partners with the following profit sharing ratio:

(1) Subhash Chandra 1%

(2) Brijrani 33%

(3) Ramesh Kumar Tandon 33% and

(4) Roop Rani Tandon 33%

A licence agreement was executed on 12.8.1975 between the said firm and the then M/s Burmah Shell Oil Storage & Distribution Company of India Ltd. to run a retail outlet and the business was carried on. Subsequently another agreement was entered between all the four partners on 3.5.1984 under which the partner nos.1 and 2 referred to above demanded 100 litres of petrol per month, to which the partner nos. 3 and 4 agreed and partner nos. 1 and 2 further agreed that with effect from the said date the business of the petrol pump in the name of firm will be run by partner nos. 3 and 4 and partner nos. 1 and 2 shall have no right, share or interest in the running of the business and also in the assets or the liabilities of the firm. As per the Agreement the outlet was run in the firms name by partner nos.3 and 4.

4. As agreed upon, partner nos.3 and 4 referred above supplied 100 litres of petrol per month to partner nos. 1 and 2 and dispute arose in the year 1993 and partner nos. 3 and 4 filed a civil suit in Civil Suit No.368 of 1995 on the file of Civil Judge Senior Division Kannauj for permanent injunction to restrain partner nos. 1 and 2 from interfering in the management and working of the retail outlet. The said suit was decreed ex-parte on 14.1.2004. Partner nos. 1 and 2 who are respondent nos. 2 and 3 herein, have filed an application to set aside the ex-parte decree and the said application is said to be pending. The appellant "Corporation stopped supply of petrol to the outlet and respondent No.1 herein namely the firm filed another civil suit in Suit No.582 of 1998 against the Corporation to restore supply. In the said suit respondent Nos. 2 and 3 herein namely partner nos.1 and 2 referred to supra filed an application to implead themselves as defendants and the said application was dismissed by the trial court and challenging that order a writ petition came to be filed by respondent nos. 2 and 3 herein and that also was dismissed.

5. Partner no.4 Roop Rani Tandon expired on 11.6.2011 and a letter was sent by the firm on 22.3.2012 to the Corporation intimating the death of the partner. The Corporation stopped supply on 30.3.2012 and directed to apply for a temporary dealership. The firm filed Writ Petition No.19606 of 2012 to restore the supply and the High Court after hearing both sides by its order dated 3.9.2012 directed the Corporation to dispose of the representation. The Corporation by order dated 31.10.2012 rejected the representation of the firm. Aggrieved by the same the firm filed Writ Petition © No.59450 of 2012 to quash the impugned order dated 31.10.2012

and for direction to restore supply. Partner no.3 Ramesh Kumar Tandon also died during pendency of the writ petition leaving his widow and son as legal heirs. The legal heirs impleaded themselves as partners of the firm in the writ petition. The High Court after hearing both sides by impugned judgment dated 30.5.2013 directed the firm namely the writ petitioner, to make payment of amount equivalent to 100 litres of petrol per month from July 1993 to the date of the judgment and on such payment directed partner nos.1 and 2 referred to supra to give No Objection Certificate for reconstitution of the firm and further directed the Corporation to take a decision regarding the reconstitution of the firm. It was further observed in the order that even after payment is made, if partner nos. 1 and 2 do not give no objection, the Corporation shall reconstitute the firm waiving the No Objection. Challenging the judgment, Bharat Petroleum Corporation Limited has preferred the present appeal.

6. The learned counsel appearing for the appellant “corporation contended that the agreement dated 3.5.1984 reconstituting the firm was not intimated to the Corporation and only after the death of partner Roop Rani Tandon the request for reconstitution of the firm was received in the year 2012 and the said proposal was not in accordance with their policy for reconstitution of partnership dealership and the High Court erred in directing the Corporation to proceed with the reconstitution of the firm waiving No Objection Certificate from respondent nos. 2 and 3 herein and hence the impugned judgment is liable to be set aside.

7. Per contra the learned counsel appearing for the firm namely respondent No.1 herein contended that after the agreement dated 3.5.1984 respondent Nos. 2 and 3 herein are no longer partners of the firm and said fact was intimated to the Corporation and after the death of partner Roop Rani Tandon a request for reconstitution was submitted in writing and the Corporation is obliged to reconstitute the firm and the impugned judgment is sustainable. The learned counsel appearing for respondent nos. 2 and 3 submitted that even after the agreement dated 3.5.1984 respondent nos. 2 and 3 continued to be partners of the firm though their entitlement was restricted to the supply of 100 litres of petrol per month or its value thereof.

8. We carefully considered the rival contentions of the parties. The firm M/s B.M. Motors was constituted on 26.6.1973 with four partners and the said firm was running the retail outlet from 12.8.1975 onwards. It is also admitted that all the four partners entered into subsequent agreement dated 3.5.1984 and as per the terms and conditions

of the said agreement partner nos. 1 and 2 namely respondent nos.2 and 3 herein would receive 100 litres of petrol per month or its value thereof. They further agreed that they will have neither right in the retail outlet nor claim right in the assets or liabilities of the firm and partner nos. 3 and 4 would run the retail outlet in the name of the firm. A reading of the agreement dated 3.5.1984 clearly reveals that respondent nos. 2 and 3 herein have virtually retired from the partnership and their entitlement was only to supply of 100 litres of petrol per month from the said date. In other words it cannot be said that the original partnership deed continued thereafter. It is also relevant to point out that partner nos. 3 and 4 were recognized as partners of the reconstituted firm from that date. The agreement dated 3.5.1984 was also acted upon and it is not in dispute that 100 litres of petrol per month was supplied to respondent nos. 2 and 3 herein till June 1993.

9. Thereafter the firm instituted a suit being Civil Suit No.368 of 1995 against Respondent nos. 2 and 3 herein seeking for decree of permanent injunction to restrain them from interfering in the management and working of the plaintiffs retail outlet and the suit was decree ex-parte on 14.1.2004. Though respondent nos. 2 and 3 herein have claimed that they have filed an application to set aside the ex- parte decree and the same is still pending and the decree is in force. In other words the retail outlet in the name of the firm continue to be run by partner nos. 3 and 4 only for nearly three decades. In such circumstances the agreement dated 3.5.1984 is in effect the retirement deed executed by respondent nos. 2 and 3 herein from the firm B.M. Motors and it has to be treated as No Objection Certificate in so far as they are concerned.

10. Respondent No.1 herein in its counter affidavit dated 31.01.14 have stated that in compliance of the direction of the High Court in the impugned judgment, it had sent the bank draft/pay order dated 10.6.2013 for a sum of Rs.8,64,650/- issued by Canara Bank Kannauj Branch to respondent nos. 2 and 3 herein towards the value of 100 litres of petrol per month for the period from June 1993 to June 2013. Respondent Nos. 2 and 3 in their letter dated 28.6.2013 shown as Annexure CA-2 to the counter affidavit of respondent no.1 have acknowledged the receipt of the said pay order and have stated that they have kept the said pay order as security and will not encash it till the final decision is taken by the Corporation in respect of reconstitution of the firm. It appears that the said pay order has not been encashed and had expired. Be that as it may the order passed by the High Court is, in our opinion, just and equitable inasmuch

as, while it had protected the interests of the retiring partners- respondents 2 and 3, it had ensured that they do not frustrate either the agreement by which they had surrendered their rights in the profit and losses of the partnership or interfere with the smooth running of the business by the continuing partners, in breach of the decree passed in their favour. The arrangement arrived at between the partners may not have been disclosed to the petitioner corporation but such non- disclosure should not be allowed to result in termination of the agency especially when one of the parties is acting unreasonably or armtwisting the other party, to extract an extra pound of flesh from it. The petitioner-corporation would in such a case be expected as a public sector entity, to act fairly and objectively to prevent one party taking undeserved advantage over the other on technical or procedural grounds. There is no gain saying that while considering reconstitution of the partnership the petitioner-corporation shall be free to stipulate conditions that would protect its business interest, goodwill and reputation among its consumers.

11. Since the Bank draft received by respondents 2 and 3 has not been encashed we direct that the first respondent firm shall deposit a sum of Rs.8,64,650/- with the Registrar of the High Court of Allahabad, to be released in favour of respondent Nos. 2 and 3 herein, upon surrender of the bank draft/pay order dated 10.6.2013 received by them from respondent No.1. The needful shall be done within a period of one month from the date of judgment. Upon the deposit of the amount as aforesaid, the proposal for reconstitution of the 1st respondent-firm submitted to the appellant-corporation, shall be considered for acceptance, treating agreement dated 3.5.1984 entered into between the original partners as a No Objection Certificate by respondent Nos. 2 and 3 to such reconstitution. The appeal is disposed of accordingly. No costs.