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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on : August 20, 2007

Decided on : August 31st, 2007

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W.P.(C) 469/2005

SUSHILA KUMAR

..... Petitioner

Through Mr. G.D. Goel with Mr. Sanjiv Goel, Advocates

versus

INDIAN OIL CORPORATION LTD. &

..... Respondents

Through Mr. M.M. Kalra, Ms. Madhu Tewatia for UOI

CORAM:

Mr. Justice S. Ravindra Bhat

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| 1. | Whether reporters of local papers may be allowed to see the judgment.? | yes |
| 2. | To be referred to the Reporter or not? | yes |
| 3. | Whether the judgment should be reported in the Digest? | yes |

Mr. Justice S. Ravindra Bhat:

1. The writ Petitioner is aggrieved by the termination of a LPG (Liquified Petroleum Gas) dealership by the respondent, Indian Oil Corporation (hereafter called "IOC").
2. The facts necessary to decide this case are that the petitioner's husband was a Major-General in the Army. On 7.11.1988, the said Maj.Gen. B.N. Kumar died during engagement with extremists in Punjab. As a gesture of rehabilitation for his family, the IOC decided to grant an LPG outlet to his

widow, the present Petitioner. After a wait of over 5 years, the Distributorship Agreement was executed by the parties on 7.7.1994. The Petitioner commenced business.

3. It is averred that the Petitioner operated the distributorship with out let or hinderance for the eight year period between 1994 and 2001. On 21.4.2001, the IOC issued a show cause notice to her, levelling allegations, including, inter alia, that she had stopped carrying on business. The Petitioner replied on 2.5.2001, denying that there was any breach of the agreement or that she was unavailable at the outlet; she stated that the business was managed under her close supervision. On 5-6-2001, the IOC closed the matter with a “warning” that the Petitioner should personally tend to the business. It is alleged that on 8.6.2001, the Petitioner wrote to IOC stating that since her daughter was in the family way, and in New Zealand, she had to go abroad for a few months. She later left the country.
4. It is an undisputed fact that the petitioner's premises were inspected on 13.7.2001 by the respondent. Among the various observations noted were that the proprietor i.e. the petitioner had informed IOC and authorized one Tarun Kumar to look after the functioning of the unit, in her absence; the report also acknowledged that she was out of India. In these circumstances, on 30.7.2001, the impugned letter terminating the distributorship was issued. After re-counting the previous inspection and the show cause notice and caution letter issued earlier, the impugned letter proceeded to state as follows :

“In your reply to the Show Cause you had stated that the distributorship is being operated by you and that the overall function of the distributorship is being personally looked after by you. However, in spite of your above statement, it has been reported that you are never available at your distributorship and the same is being run and operated by some other person. Your continuous absence from the distributorship clearly shows that the operations of the distributorship are being controlled and carried out by some other persons in violation of the terms and conditions of the distributorship agreement.

That in view of the breaches and violation of the terms and conditions of the distributorship agreement committed by you and your failure to remedy the same in spite of opportunities given to you, it has been decided to terminate your distributorship forthwith. Please note that the distributorship agreement dated 7.7.1994 stands terminated forthwith. You are advised to return all the equipment and stationery to our representative immediately and also to reconcile the accounts and clear the outstandings immediately. You are further advised to hand over the godown premises to our authorised representative immediately. “

5. The petitioner felt aggrieved by the termination of her distributorship; she represented against it on 1.8.2001. Later she wrote to the Union Minister of Petroleum and Natural Gas on 29.8.2001, 11.12.2001, 1.6.2002, 24.1.2003, 17.7.2003 and yet again on 16.9.2004. All these representations and entities proved to be of no avail; the termination letter was not withdrawn. She has therefore preferred the present proceeding, alleging that termination was arbitrary, unfair and made in utter violation of principles of natural justice. It is also alleged that there was no proper application of mind to the facts of this case before the termination letter was issued.

6. The IOC's position in its return is that the present action is highly belated; the termination was effected in July, 2001 whereas the writ petition was filed in December, 2004. That apart it is contended that the petitioner cannot ignore the stipulation in the agreement which required parties to refer the disputes to arbitration. The other objection taken is that the petitioner did not show any material that she was in fact in charge of the distributorship and actually carrying on the business. The previous history whereby she was cautioned against being absent was not, it is alleged, given sufficient attention by her. When the IOC's inspection team visited the premises she was absent. In these circumstances the termination letter was

justified.

7. Mr. Goel, reiterated the allegations in the petition. It was contended that the inspection report on the basis of which the termination letter was issued, itself discloses that the petitioner under compulsion of circumstances, was away temporarily, and had intimated the IOC. Yet the latter chose to give importance to only a part of the report ignoring its entire tenor which indicates that Shri Tarun Kumar was the petitioner's employee and was in charge of the outlet in her absence for a few months. Learned counsel further contended that the petitioner was allotted a distributorship as a measure of rehabilitation since her husband sacrificed his life; even for that she had to wait for more than 5 years. The impugned action is high handed and arbitrary because the petitioner was absent for a few months; that was not for any commercial or business consideration but due to family circumstances i.e. her daughter being in the family way and needing to be attended. Counsel also contended that no undue delay was occasioned in the filing of the petition. The petitioner relied on assurances held out by the authorities that she would be given justice. When these did not materialise, she was constrained to approach the court.

8. Mr. Kalra, learned counsel for the IOC contended that the claim in these proceedings should be declined because the petitioner has approached the court for relief after an inordinate delay. It was contended that if she was really aggrieved, she would have filed the present proceeding at the earliest available opportunity and not waited for 4 years. Learned counsel next contended that having regard to the circumstances i.e. the previous record where she had been expressly cautioned against her absence, a repetition of the same behaviour, justified the IOC's conclusion that she was not in actual possession of the outlet and in her absence the operations were carried on by some one else. Learned counsel also contended that the petitioner should have

asked the IOC for leave to go abroad for a long duration. This was not done; in these circumstances her explanation of compelling family circumstances and the letter dated 8.6.2001, are un-acceptable.

9. The above narrative would show that the sole ground on which the distributorship was cancelled, was the petitioner's absence from the premises when the inspection took place on 13.7.2001. A copy of the inspection report is on record. The report, which is in a standard format, recorded as follows :-

“Proprietor Mrs. Sushila Kumar is out of India recording which property has already informed and authorized, Shri Tarun Kumar to look after the functioning of the distributorship.”

The letter by which the petitioner claims to have informed the IOC about her absence, is disputed by it. A copy of that letter has been produced; it was written on 8.6.2001. It *inter alia* intimates that the petitioner's daughter, who was settled in New Zealand was in advanced stage of pregnancy and was expected to deliver in June; therefore she had to be there for about 3-4 months to help the daughter. The petitioner intimated that she would leave the country in the third week of June and return sometime in October. The counter affidavit has disputed the receipt of the letter and the petitioner's assertion that she had met the Chief Area Manager, who had approved of her request.

10. The two main questions which arise for decision whether the present action is barred on the ground of laches and whether the respondent's action is arbitrary having regard to the circumstances of the case. Article 226 is not regulated by any period of limitation. Yet as a rule of caution and prudence courts desist from granting relief if the litigant approaches it after lapse of considerable time. This rule was evolved as a matter of prudence and convenience, to rule

out adjudication of stale claims. Inherent in the concept of doctrine of laches is the element of subjectivity. What is considered reasonable under certain circumstances may not be so having regard to another set of factors. Here the petitioner waited for 4 years to approach the court. The court cannot be unmindful of the attendant circumstances of her case. Her husband was killed in extremist violence; he was a high ranking Army officer. The petitioner herself had to wait for more than 5 years before the IOC – allotted the distributorship to her. The other relevant fact here is that the petitioner is single and dependent on others and employees, to carry on the business. She was, by her own showing, out of country for about 4-5 months. There is no dispute that she repeatedly represented for restoration of the distributorship. In the overall conspectus of these facts, I am not persuaded that the petition is hit by laches.

11. The sole objection of the IOC is to the petitioner's functioning, in *absentia* as it were. It was insulated, at an early stage that she did not carry on business. However, that show cause notice was dropped. The materials on the basis of which the impugned termination letter was issued, is an inspection said to have been carried out in July, 2001. That inspection report records that Shri Tarun Kumar was an employee of the petitioner, it further states that she was temporarily absent and had informed the IOC. During the hearing although the respondents asserted that the petitioner ought to have applied for leave, no rule or condition in the agreement was brought to my notice compelling her or any other distributor to seek leave from the IOC. Even otherwise the idea of a distributor -even of public agencies having to apply for sanction of leave for compelling reasons, is abhorant. As long as the distributor is in overall control and supervises the outlet efficiently, the public agency – at least as in the case like the present should not be too intrusive. The IOC's approach in this case appears to have been schizophrenic to say the least. On the other hand the inspection report recorded that the petitioner's employee

was present and acknowledged her absence. Yet that very material was seen in a twisted manner to issue the termination letter. These circumstances clearly betray a biased attitude, and utter non-application of mind. I have no doubt therefore that the impugned termination letter was arbitrary and unreasonable.

12. In the light of the above conclusions the petition has to succeed. A direction is issued to the respondents to restore LPG distributorship to the petitioner and also attach customers who had been distributed to other dealers. This process shall be completed within ten weeks from today.

13. Petition is allowed in the above terms. No costs. Order dasti.

(S.RAVINDRA BHAT)
JUDGE

AUGUST 31st 2007
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