

P. Sukhadev Vs. the Commissioner of Endowments Andhra Pradesh, Hyderabad and Others

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Court : Andhra Pradesh

Decided On : Mar-20-1997

Reported in : AIR1997AP271; 1997(3)ALT202

Judge : M.N. Rao and ;M.H.S. Ansari, JJ.

Acts : [Indian Contract Act, 1872](#) - Sections 201 and 202; [Constitution of India](#) - Article 226; CALTEX Act, 1977

Appeal No. : Writ Petn. No. 358 of 1996

Appellant : P. Sukhadev

Respondent : The Commissioner of Endowments Andhra Pradesh, Hyderabad and Others

Advocate for Def. : Adv. General, Govt. Pleader, for Endowments, ;M. Adinarayana Raju and ;Duba V. Nagarjuna Babu, Adv.

Advocate for Pet/Ap. : K.G. Kannabhiran, Sr. Counsel, for D.V. Sitharam Murthy

Judgement :

ORDER

1. The brief facts relevant for purpose of consideration of the controversy in the instant case are that:

The 2nd respondent -- Devasthanam by a Registered lease deed executed on 5-10-1962 in favour of CALTEX, about 700 Sq. yards of vacant land of the Devasthanam was leased out to CALTEX for a period of ten years at a rental of Rs. 35/- per month. The dealership for running the retail outlet (petrol bunk) was given to 2nd respondent -- Devasthanam by CALTEX by a separate 'Dealer' Agreement. The terms and conditions of the Dealership Agreement evidence that CALTEX shall install tanks, pumps, equipment etc., at its own cost and the dealer shall pay a monthly rent of Rs. 10/- on the 1st of every month for use of the equipment which sum was subsequently enhanced on the expiry of the initial term of dealership. The 2nd Respondent --Devasthanam managed the service station for the purpose and use of temple vehicles for about fifteen years and on account of increase in the establishment charges and other administrative defects, the 2nd Respondent --Devasthanam took a decision for leasing out the service station and the same remained closed for about six months and after passing a Resolution on 3-6-1978, a public auction was conducted on 15-7-1978. The petitioner herein was one among the five bidders who participated in the auction and was declared the highest bidder, having agreed to pay Rs. 825/- per month for a period of five years commencing from 2-11-1978 to 1-11-1983 and was granted the agency to manage the retail outlet (petrol bunk). That is how the petitioner became the agent of 2nd Respondent -- Devasthanam for running the petrol bunk. The terms and conditions on which the petitioner was appointed as such agent to run the petrol bunk is evidenced by written agreements. It may also be mentioned here that on the expiry of the initial period of agency, the petitioner has been re-appointed as agent from time to time.'

2. As already noticed, there is a Registered lease deed in respect of the land on which the petrol bunk is situated with the Oil Company formerly CALTEX India and after the nationalisation of petroleum companies, the 3rd Respondent -- Hindustan Petroleum Corporation Limited (for short 'HPCL') as successor in interest is vested with all rights including those pertaining to contracts or leases obtaining with the CALTEX. The 3rd Respondent -- Corporation has on the expiry of earlier lease

obtained another Registered Lease Deed from the 2nd Respondent -- Devasthanam -- Lessor. The current lease, we are informed at the bar, expires shortly. The lease in respect of the land is a matter between respondents 2 and 3 and is not directly in issue or for consideration in these proceedings.

3. Apart from the lease in respect of the land, CALTEX had by a Dealership Agreement appointed 2nd Respondent -- Devasthanam and subsequently, by an agreement dated 11-3-1991, the 3rd Respondent -- Corporation has appointed the 2nd Respondent -- Devasthanam as its dealers for the retail sale or supply at the aforesaid premises, the petroleum products.

4. As regards the relationship between the petitioner and the Devasthanam, as already noticed above, the same is evidenced by the agreements executed between the petitioner and the 2nd Respondent -- Devasthanam from time to time. The said agreements are similar in nature except to the extent of enhanced rentals and the duration specified therein. In all other aspects, the various agreements with regard to agency executed between the petitioner and the 2nd Respondents -- Devasthanam are similar. The last such agreement is executed for a period of three years commencing from 1-11-1992 and expiring by 31-10-1995 on a monthly rent of Rs. 2500/-. The terms and conditions contained therein leave no room for doubt that this agreement is an agreement of Agency whereby the 2nd Respondent -- Devasthanam has appointed the petitioner as its agent to run the retail outlet (petrol bunk) subject to the terms and conditions contained therein. Though in the said agreement, there is reference to land which is a small vacant bit of land situated behind the service station but the same has also been included as a part of the said agreement and is accordingly governed by the Agency Agreement. The Agency agreement has been referred to sometimes in the pleadings and other correspondence as lease, in our view erroneously.

5. The various terms and conditions stipulated in the Agency Agreement inter alia provide that during the term of the agreement, the agent (petitioner) is solely responsible for payment of sales tax, income-tax and submission of returns etc., apart from obtaining licences from various departments. Further the agent should abide by the rules and conditions framed from time to time by respondent No. 3-

Corporation and the agent shall be solely responsible for any violations. The agent is made responsible for bearing all expenses for the repairs to the pump etc., and also maintenance charges of the building. The period of agreement has been specifically specified as three years i.e., from 1-11-1992 and lastly it is stipulated that the agent should hand over the service station and the site to the Devasthanam authorities in the same condition as it was taken at the beginning without any compensation or for any im-provements made. When the first such agency agreement was entered into between the petitioner and the 2nd respondent-Deva-sthanain the permission of 3rd respondent-Corporation was obtained.

6. From the foregoing, it is apparent that insofar as the land on which the petrol bunk is constructed, it belongs to the Devasthanam and is subject matter of a separate lease in favour of 3rd respondent-Corporation. By and under the said lease deed the lessee (HPCL) is entitled to hold the land subject to the terms and conditions contained therein and for the period prescribed therein.

7. Insofar as the dealership i.e., running of the Retail Outlet (petrol bunk) is concerned, a separate arrangement is evidenced by a Dealership Agreement containing the terms and conditions on which the 3rd respondent-Corporation has appointed the 2nd respondent-Devasthanam as a dealer to run the retail outlet. The paramount condition as specified in clause 44 of the Agreement is that the dealer himself shall personally take active part in the management and running of the retail outlet. Clause 45 of the said Dealership Agreement, however, prescribes that except with the previous consent of the Corporation, dealer (Devasthanam) shall not enter into arrangement, contract or understanding whereby the operations of the Dealer may be controlled or carried out by any other person. The Dealership Agreement between the 3rd respondent and the 2nd respondent-Devasthanam as subsisting on date is evidenced by a Memorandum of Agreement dated 11-3-1991 and is for a period of fifteen years.

8. The Undertaking in India of CALTEX (Acquisition of Shares of Caltex Oil Refining (India) Limited and the Undertakings in India of Caltex (India) Limited) Act, 1977 is not of much relevance to the instant case except that whatever rights,

title and interest which CALTEX had stood vested in the Central Government including those in leases, and such rights have thereafter been transferred in favour of the 3rd respondent (HPCL). In the instant case, as already noticed, third respondent has subsequent to the said Act entered into separate agreements in its own name with the 2nd respondent-Devasthanam.

9. It is the contention of Sri K. G. Kannabhiran, learned Senior Counsel for the petitioner that the agency in effect is one coupled with interest and is irrevocable and in the alternative as long as the main dealership agreement of the 2nd respondent-Devasthanam with HPCL is subsisting for running the petrol bunk, the agency of the petitioner shall be co-terminus with the said dealership of the 2nd respondent and cannot be terminated during the subsistence of the agreement of the Principal, Reliance for the said contention is placed upon S. 202 of the Indian Contract Act.

10. Learned Advocate General representing the 2nd respondent-Devasthanam, however, contended that no interest has been created in the property which forms the subject matter of agency and the agency cannot be termed as one coupled with interest. It is further submitted by the learned Advocate General that S. 202 of the Indian Contract Act has no application to the instant case. The agency agreement which specifically stipulates the duration as well as the mutual obligations of the parties expired on 30-10-1995 and the petitioner can have no claim thereafter, it is contended.

11. Section 202 provides that where the agent has himself interest in the property which forms the subject matter of the agency, the agency cannot in the absence of an express contract be terminated to the prejudice of such interest. From the very inception, when the agency for running the petrol bunk was auctioned and the petitioner was declared the highest bidder, the arrangement was subject to specified terms and conditions and was evidenced by an agreement duly executed by and between the petitioner and the 2nd respondent-Devasthanam. The most significant aspect of that agreement is as to the duration of the agency. The last such agreement executed by and between the petitioner and 2nd respondent-Devasthanam is also evidenced by an agreement and the duration of the same is

for the specified period of three years commencing from 1-11-1992. The period expired on 30-10-1995. In view of the very terms of the contract by which the petitioner was appointed as the agent for a fixed term, the expiration of the term puts an end to the agency. Section 202 of the Contract Act, in the circumstances of the present case, therefore, has no application. It is not a case of termination or revocation of the agency. The instant case is one where the period of agency expired, thus putting an end to the agency. It is significant to note what is assailed in the above writ petition, is not any order of termination or revocation, but the inaction on the part of respondents 1 and 2 in not extending the term.

12. We accordingly reject the contention of the petitioner that the agency of the petitioner is irrevocable. We hold that the agency came to an end on the expiry of the period specified in the agreement. We need not, in the circumstances, consider the question whether in the facts and circumstances of the case on hand the agency is one coupled with interest.

13. Sri K. G. Kannabhiran, learned senior counsel representing the petitioner next contended that the arrangement between the parties is a Tri-partite Arrangement and therefore the agency of the petitioner cannot be unilaterally determined by the 2nd respondent-Devasthanam. The said contention is sought to be substantiated on the ground that under the Dealership Agreement dated 11-3-1991 between the 3rd respondent-Corporation and the 2nd respondent-Devasthanam who has been appointed as the dealer, cannot except with the permission of the 3rd respondent-Corporation appoint an agent. The appointment of the petitioner, it was contended, was with the specific approval of the 3rd respondent-Corporation and therefore unless the 3rd respondent-Corporation approves the termination of the arrangement, it is not open to the 2nd respondent-Devasthanam to unilaterally terminate the agency of the petitioner. As already noticed, it is the 2nd respondent-Devasthanam that has been appointed as the dealer to run the petrol bunk and permission under clause 45 of the Dealer Agreement was granted by the 3rd respondent-Corporation as a one time measure to the 2nd respondent-Devasthanam to appoint an agent to run the petrol bunk. No condition or provision in any of the agreements have been brought to our notice which stipulates that even for termination of the agency of the petitioner prior permission of the 3rd

respondent-Corporation has to be obtained. The contract of agency between the petitioner and the 3rd respondent is governed by a bilateral contract fixed in duration and stipulating the conditions and mutual obligations of the parties thereto. When the terms and conditions as contained in the agreement are clear and unambiguous, there is no scope for reading into those terms and conditions something not contained therein on the basis of analogy.

14. We therefore reject the contention of the learned senior counsel that without the express permission of the 3rd respondent-Corporation, the agency agreement between the petitioner and the 2nd respondent-Devasthanam cannot be terminated.

15. Lastly, it was contended that the conduct of the parties was such that the agency though created for a duration, would be extended from time to time. The said contention is unfounded. The conduct of the parties is apparent from the very first agreement executed between them i.e., between the petitioner and the 2nd respondent-Devasthanam when the petitioner was appointed as an agent to run the petrol bunk. The duration of the agency was expressly and specifically stipulated. There is no clause or provision for renewal or extension of agency. On each occasion, there was a fresh appointment after expiry of the terms of agency and evidenced by written agreements stipulating the duration for which the petitioner was appointed as the agent. There is no contractual or statutory obligation cast upon 2nd respondent-Devasthanam to renew the appointment or extend the duration of the petitioner's agency.

16. Incidentally, it was also contended that the 2nd respondent has no right to auction the agency and reference was also made to the assertion made in the counter affidavit of the 3rd respondent to that effect. We are, however, not concerned with that aspect of the matter in the instant proceedings. Apart from the fact that the 2nd respondent-Devasthanam has stated that a resolution dated 19-9-1996 has been passed by the Founder Trustee to run the retail outlet departmentally, we are of the view that no decision on this aspect is warranted in these proceedings. The petitioner is no longer the agent and has, therefore, no locus standi to question as to how the respondents should carry out their

contractual obligation.

17. In the result, the above writ petition is dismissed, but in the circumstances without costs.

18. After the judgment is pronounced, Shri Sitharama Murthy, learned counsel for the petitioner has requested that time may be granted till 9-6-1997 for the petitioner to hand over possession. The petitioner has filed a Memo undertaking to vacate the premises by 9-6-1997. The Memo is recorded. The petitioner shall vacate and hand over possession in terms of the Memo by 9-6-1997.

19. Petition dismissed.

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