Indian Oil Corporation Ltd vs Niloufer Siddiqui & Ors on 1 December, 2015

Author: V. Gopala Gowda

Bench: Amitava Roy, V.Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.7266 OF 2009

INDIAN OIL CORPORATION LTD. … APPELLANT

Versus

NILOFER SIDDIQUI & ORS. … RESPONDENTS

J U D G M E N T

V. GOPALA GOWDA, J.

This Civil Appeal is directed against the impugned judgment and order dated 03.07.2007 passed by the High Court of Judicature at Patna in Second Appeal No. 516 of 1988 whereby it has set aside the impugned judgment and orders therein passed by the courts below on the ground that both the courts below not only committed error of record by misconstruing the facts and evidence on record but also ignored the specific provisions of law as well as the necessary and relevant case laws and also wrongly held that the Title Suit No. 68 of 1978 was barred by the principles of res judicata.

The facts which are required to appreciate the rival legal contentions urged on behalf of the parties are stated in brief hereunder:

> The appellant-Indian Oil Corporation Limited (for short "IOCL") in the year 1971 invited applications from eligible persons under the scheme for awarding the distributorship of Indane Gas (LPG) Agencies in the town of Muzaffarpur, Bihar. The said distributorship was reserved for ex- defence personnel, war-widows and dependants. The respondent no.2- Ex- Captain A.S. Siddiqui and respondent no.3-Ex-Captain Jai Narain Prasad Nishad applied for the said distributorship and

got it. On 15.10.1971 IOCL offered the said distributorship to respondent nos. 2 and 3 along with a third person provided they agreed to enter into a partnership to run the business of distribution of Indane Gas. This was done with a view to rehabilitate more ex-servicemen in the country. However, the third person refused to form partnership.

The IOCL through its letter no. Sales/LPG/ERN/3623 dated 21.10.1971 (hereinafter referred to as "letter of allotment") allotted distributorship of Indane Gas to respondent nos.2 and 3 subject to the terms and conditions mentioned therein. Condition no.2 of the said letter is stated hereunder:

"Condition no.2: This appointment is subject to the conditions contained in our standard agreement which will be sent to you in due course for your signature and you shall sign and return the same to us." Further condition no.8 of the said letter reads thus: "TERMINATION:

Condition no.8: Notwithstanding anything contained herein, the Corporation shall be at liberty to terminate your distributorship without assigning any reason whatsoever by giving you 30 days notice in writing of intention to do so and upon the expiry of the said notice your distributorship shall stand cancelled and terminated without prejudice to the rights of the Corporation in respect of any matter or thing antecedent to such termination." On 17.11.1971 the partnership deed was signed between respondent nos.2 and 3 to carry on the business of distribution of Indane Gas at Muzzafarpur under the name and style of M/s Happy Homes (respondent no.4) on various terms and conditions. Condition no.12 of the said partnership deed reads thus:

"12.No partner shall without the consent of the other partner obtained in writing for the purpose of any of the following acts:-

Engage while he is a partner or be directly or indirectly concerned, in may business other, than that of and competing with the business of the firm.

XXX XXX XXX h. Assign or mortgage his share in the partnership or attempt to introduce and consider as partner..." The respondent no.2 through letter no.59582 dated 04.11.1971 requested the IOCL for supply of the copy of the standard agreement as referred to in condition no.2 of the letter of allotment issued by IOCL. IOCL vide letter dated 12.11.1971 had given an assurance to them to send the said agreement in due course. The respondent no.2 through letter dated 16.12.1971 again requested for a copy of the said standard agreement from IOCL. IOCL vide letter no. 3622 dated 31.12.1971 allayed apprehension of both respondent nos.2 and 3 on the score of non-availability of the said standard agreement and the termination of distributorship. The relevant part of the said letter no. 3622 reads thus:

"...This agreement will be given to you in due course. There is absolutely no secrecy maintained about anything and the agreement as and when ready, would be sent to you... xx xx xx Please in the meantime, we would like you to progress fast regarding commissioning the market..." From 23.03.1972 the partnership firm-M/s Happy Homes started the business of distribution of Indane Gas without the said standard agreement by both the respondent nos. 2 and 3. The distributorship continued to be regulated by the terms of the letter of allotment issued by IOCL to them.

The business of the partnership firm went on smoothly for some time. After few months differences arose between the partners i.e., respondent nos. 2 and 3 due to certain irregularities committed by respondent no.3. The interference of IOCL was sought by respondent no. 2 for the settlement of the said dispute. However, IOCL refused to interfere and asked the partners to settle their dispute themselves. On 27.02.1973 the respondent no. 2 wrote a letter to Directorate General of Resettlement, Ministry of Defence (for short "DGR") with a copy of the same to the Minister of Defence and the Minister of Petroleum requesting either to split the partnership business into two or to permit him to transfer his share in the partnership in the name of his wife Mrs. Nilofer Siddiqui (respondent no.1) or his father Ex-Captain M. Ozair or the widow of Late Captain M. Ammar in whose partnership he had actually applied for the distributorship.

On 31.10.1973 both respondent nos.2 and 3 went to Calcutta to meet the Branch Manager, IOCL. The respondent no.2 expressed his desire to transfer his share in the partnership in the name of either his wife or his father. The respondent no.3 gave oral consent to the desire expressed by respondent no.2. Later, the respondent no.3 confirmed his oral consent by writing a letter dated 15.11.1973 addressed to the Branch Manager, IOCL.

The respondent no.2 through letter dated 17.11.1973 addressed to the Branch Manager, IOCL sought IOCL's permission to transfer his share in the partnership in the name of either his wife or his father. On 02.1.1974, the respondent no.2 joined Bihar Government Services as Deputy Superintendent of Police.

IOCL vide letter dated 25.02.1974 refused to accede to the request for transfer of shares made by respondent no.2 and stated thus: "...you may recall that during the discussions you had with the undersigned as well as our Branch Sales Manager Sri SC Ghosh alongwith your partner, it was clearly advised that unless all the set backs/irregularities under which the distributorship is being operated are set aside, we shall not be forwarding any such request." Thereafter, the respondent no.2 again wrote a letter on 03.3.1975 to the DGR along with a copy of it to IOCL with same request but, DGR vide letter dated 27.3.1975 refused to accede to the request made by the respondent no.2. The same request was also refused by IOCL vide letter dated 17.4.1975.

By a notice published in the daily newspaper 'Indian Nation' the respondent no.2 indicated his intention to transfer his share in M/s Happy Homes in favour of his wife i.e., respondent no.1 and invited objections to the same, if any. The IOCL vide its letter No. Sales/LPG/3710 dated 16.01.1978 terminated the distributorship. The relevant portions of the said letter are extracted as under:

> "It was clearly understood that you will not take up any other business or employment during the continuation of the aforesaid distributorship vide his letter of November, 1973 and September, 1975 Capt. Siddiqui has approached us for our permission to his transferring his share in the aforesaid Distributorship to his father which was not acceded to and he was advised to choose one or the two i.e., either to keep his job or remain our distributor. In addition it was also made clear to you by us and also the Directorate General of Resettlement that he cannot be allowed to transfer his share to his father. But he has persisted with the breach and violation of this agreement and did not resign from the job.
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> xx xx xx In view of the foregoing it has been decided to terminate your distributorship and this letter may be treated as our notice for this purpose. Please note that your distributorship rights shall stand terminated and cancelled on expiry of the period of 30 days without prejudice to the rights of the corporation in respect of any matter or thing antecedent to such termination." On 23.1.1978, the respondent no.2 executed a deed of transfer (Baimokasa) in favour of his wife i.e., respondent no.1 whereby he transferred his share in the partnership in the name of his wife.
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> On 9.6.1978, the respondent no.1 instituted a Title Suit no. 68 of 1978 in the court of Executive Munsif, Muzaffarpur seeking declaration that termination of the distributorship by IOCL vide letter dated 16.01.1978 was illegal, arbitrary and unjustified. The respondent no.1 also prayed for restoration of the distributorship. The trial court vide its judgment and order dated 11.04.1985 dismissed the said suit holding, inter alia, that respondent no.2 had no right to transfer his share in the partnership in the name of his wife i.e., respondent no.1.
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> Aggrieved by the decision of the trial court, the respondent no.1 preferred Title Appeal no. 32 of 1986 in the court of Additional District Judge, Muzaffarpur. The first appellate court vide its judgment and order dated 13.06.1988 dismissed the appeal and upheld the decision of the trial court.

Aggrieved by the decision of the first appellate court, the respondent no.1 preferred Second Appeal no. 516 of 1988 in the High Court of Judicature at Patna by framing certain substantial questions of law and urged various tenable grounds in support of the same. The High Court vide its judgment and order dated 03.07.2007 allowed the appeal by setting aside the judgments and orders passed by the courts below. It declared that the letter of termination dated 16.01.1978 issued by IOCL in terminating distributorship of respondent no.2 to be illegal, arbitrary and unjustified and gave direction for restoration of the distributorship. Hence, this appeal is filed by the appellant questioning the correctness of the impugned judgment and order by framing certain questions of

law.

We have carefully heard Ms. Pinky Anand, the learned Additional Solicitor General on behalf of appellant-IOCL and Mr. Kapil Sibal, the learned senior counsel on behalf of respondent nos. 1, 2& 4. On the basis of factual evidence on record produced before us, the circumstances of the case and also in the light of the rival legal contentions urged by the learned senior counsel on behalf of both the parties, we have broadly framed the following points which require our attention and consideration-

Whether IOCL had the right to terminate the distributorship of respondent nos. 2 and 3?

Whether the provision of Section 14(1)(c) of the Specific Relief Act, 1963 is applicable in the instant case?

What order?

Answer to Point No.1 Ms. Pinky Anand, the learned Additional Solicitor General on behalf of the appellant-IOCL contended that IOCL had the right to terminate the distributorship without assigning any reason. She submitted that the High Court has incorrectly held that IOCL violated Condition no.8 (supra) of the terms and conditions as mentioned in the letter of allotment dated 21.10.1971 by terminating the distributorship without giving 30 days notice to respondent no.2 which was a pre-requisite condition. She further submitted that the said 30 days notice as required under condition no.8 was given in the notice of termination itself. She placed reliance upon the decision of this Court in the case of Her Highness Maharani Shanti Devi P. Gaikwad V. Savjibhai Haribhai Patel & ors[1]. The relevant portion of the judgment cited by her reads thus:

> 54.."5.... it is the court's duty to give effect to the bargain of the parties according to their intention and when that bargain is in writing the intention is to be looked for in the words used unless they are such that one may suspect that they do not convey the intention correctly. If those words are clear, there is very little that the court has to do. The court must give effect to the plain meaning of the words however it may dislike the result. We have earlier set out clause 10 and we find no difficulty or doubt as to the meaning of the language there used. Indeed the language is the plainest..." Thus, the termination of the distributorship of the Indane Gas of respondent no.2 was legal, proper and justified according to the terms and conditions in the letter of allotment issued by IOCL which the High Court had failed to consider and appreciate the same while recording its findings and answering the said substantial question of law.

It was further contended by her that the High Court has erred in coming to the conclusion that respondent nos. 2 and 3 have not committed any breach of the terms and conditions of the standard agreement on the ground that the same was never supplied to them. The finding of the High Court on this point is not only bad in law but also factually wrong. She submitted that the evidence on record clearly shows that respondent nos. 2 and 3 were shown the terms of the standard agreement

and were specifically made aware of clause 21 which prohibited the partners from assigning their shares in favour of outsiders without the consent of IOCL. The fact that respondent no.2 repeatedly sought permission from IOCL for assigning his share to his wife clearly shows that he was aware of such a condition in the agreement. Clause 21 of the standard agreement reads thus:

> "21. The distributor shall not sell, assign, mortgage or part with or otherwise transfer his interest in the distributorship or the right, interest or benefit conferred on him by this agreement to any person. In the event of the Distributor being a partnership firm any change in 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 Distributor..." She further submitted that the validity of termination of distributorship has to be tested on the principles of private law and the law of contract and not on the touchstone of constitutional or public law. In the present case the question involved is purely a question of breach of contract alone between the parties for which the respondent no.1 & 2 at best if they prove the breach on the part of the appellant they are entitled for damages but not declaratory remedy and consequential relief as prayed in the plaint.

> Per contra, Mr. Kapil Sibal, the learned senior counsel on behalf of respondent nos.1, 2 & 4 sought to justify the impugned judgment and order passed by the High Court by urging various factual as well as legal contentions in justification of the impugned judgment.

> It was further contended by him that both the respondent nos. 2 and 3 have fulfilled all the terms and conditions of the letter of allotment of distributorship which was given to them by IOCL. It is IOCL which has violated the said terms and conditions by not sending a copy of the standard agreement despite repeated demands made by respondent no.2 to IOCL. Both the respondent nos. 2 and 3 started their business on 23.03.1972 on the basis of the letter of allotment. At no point of time they were made acquainted with the terms and conditions of the standard agreement by IOCL. He further submitted that the agreement which is not executed by the parties cannot be legally made enforceable against them. Therefore, the terms and conditions of the standard agreement cannot be made binding upon them as they have not executed the same. Thus, the termination of the distributorship of Indane Gas as per the terms and conditions enumerated in the said standard agreement is illegal as has been rightly held by the High Court in its reasoned judgment by answering the substantial question of law in favour of respondent no.1 & 2.

> It was further contended by him that as per condition no.8 of the letter of allotment IOCL reserved the right to terminate the distributorship without assigning any reason by giving 30 days notice in writing. The purpose of the said 30 days notice was to afford time to both the respondent nos. 2 and 3 to advance their explanation

against such intended termination made by the IOCL by invoking its right under condition no.8. He further submitted that IOCL itself has completely violated the terms enumerated in condition no.8 of letter of allotment. It has arbitrarily terminated the distributorship by issuing a letter without giving any notice to them by giving irrelevant reasons which is in violation of the principles of natural justice as well. In his further submissions he assailed the condition no.8 of the letter of allotment itself. He submitted that the said condition is unconscionable in so far as it gave IOCL an unfettered right to terminate the distributorship of Indane Gas in favour of both the respondent nos. 2 & 3 without assigning any reason whatsoever. He fortified his submission by placing strong reliance upon the decision of this Court in Central Inland Water Transport Corporation Limited & Anr. V. Brojo Nath Ganguly & Anr.[2] which has been followed by the Constitution Bench of this Court in the case of Delhi Transport Corporation v. DTC Mazdoor Congress and Others.[3] The relevant paragraph from Central Inland Water Transport's case (supra) cited by the learned senior counsel is extracted in the later part of this judgment.

It was further contended by him that IOCL, being a Government of India Undertaking is bound to act fairly and its conduct is subject to scrutiny on the touchstone of Article 14 of the Constitution of India. He further submitted that it is clear from the evidence on record that the action of IOCL was high handed and arbitrary. He placed strong reliance upon the decision of this Court in the case of Mahabir Auto Stores and Ors v. Indian Oil Corporation & Ors.[4] Paragraph 12 of the aforesaid case reads thus:

"12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in Radha Krishna Agarwal v. State of Bihar. It appears to us, at the outset, that in the facts and circumstances of the case, the respondent company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See Radha Krishna Agarwal v. State of Bihar at p. 462, but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration; it depends upon facts and circumstances of a particular transaction whether hearing is

necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to E.P. Royappa v. State of Tamil Nadu, Maneka Gandhi v. Union of India, Ajay Hasia v. Khalid Mujib Sehravardi, R.D. Shetty v. International Airport Authority of India and also Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay. It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case." Mr. V.K. Monga, the learned counsel on behalf of respondent no.3 in his contentions supported the arguments advanced by Ms. Pinky Anand, the learned ASG on behalf of appellant-IOCL.

After careful considerations of the findings of the High Court both on fact and law and considering the rival legal submissions made on behalf of the parties, we agree with the arguments advanced by Mr. Kapil Sibal. We have examined the material on record and on the basis of the admitted facts, it is clear that there is no dispute that the appellant-IOCL offered distributorship of Indane Gas (LPG) to respondent nos.2 and 3 vide its letter of allotment dated 21.10.1971 on certain terms and conditions.

It is also an admitted fact that both respondent nos. 2 and 3 got the partnership firm registered as per the terms and conditions of letter of allotment and at least twice requested IOCL to send the Company's standard agreement for signature, but IOCL failed to send it to them. Hence, it can be inferred from the pleadings and evidence on record that the Company's standard agreement was never executed by them.

On 23.03.1972 both the respondent nos. 2 and 3 started their business without the said standard agreement being signed by both of them. The partnership business continued to be regulated by the terms and conditions of the letter of allotment issued by IOCL. Hence, the claim of IOCL that both the respondent nos. 2 and 3 were aware of the said standard agreement is unsusceptible in law. There is nothing on

record to show that both the respondent nos. 2 and 3 had any knowledge or had ever agreed to the terms of the said standard agreement. We agree with the submission made by Mr. Sibal that the agreement which is not executed by the parties cannot be legally made enforceable against them. Therefore, the High Court has rightly held that the standard agreement cannot be said to be legally binding upon the respondent nos. 2 and 3 as the same has never been executed between the allottes and IOCL.

Further, Section 7 of the Indian Contract Act 1872, specifically provides that acceptance must be absolute. It reads thus:

"In order to convert a proposal into a promise the acceptance must – (1)be absolute and unqualified.

(2)be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted; and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but; if he fails to do so, he accepts the acceptance." It is clear from the pleadings and evidence on record that the standard agreement was never supplied to both the respondent nos. 2 and 3 and the said standard agreement cannot be said to be executed between the allottes and IOCL. Thus, as per the facts and circumstances of the case and also in the light of the aforesaid statutory provision of the Contract Act, the said standard agreement in question cannot be said to be a concluded contract between the parties in law. Consequently, it cannot be made binding upon the allottes of distributorship by IOCL.

As far as the alleged violation of clause 21 (supra) of the standard agreement by respondent nos. 2 and 3 is concerned, it is clear that the said standard agreement is not binding upon the parties for the reasons stated supra and when the said standard agreement is not binding, then the question of violation of terms and conditions does not arise. Rather IOCL has violated condition no.2 (supra) of the letter of allotment by not sending the standard agreement to both the respondent nos. 2 and 3.

We agree with the contentions advanced by Mr. Sibal that condition no.8 of the letter of allotment is unconscionable as it gives IOCL an unfettered right to terminate the distributorship without assigning any reason. In the instant case, respondent no.2 is far weaker in economic strength and has no bargaining power with IOCL. At the time when the letter of allotment was issued, respondent no.2 had no other means of livelihood and was dependent on the grant of Indane Gas agency by IOCL for sustenance of himself and family members. The letter of allotment contains standard terms and respondent nos. 2 and 3 had no opportunity to vary the same. Condition no.8 of letter of allotment provides for unilateral termination of distributorship without assigning any reason which is liable to be read down in the light of Article 14 of Constitution of India as well as observations made by this court in Central Inland Water Corporation Limited's case (supra). The relevant paragraph cited by the learned senior counsel is reproduced hereunder:

"89. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample underfoot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualize the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organizations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances." Further, it has been rightly contended by the learned senior counsel Mr. Sibal by placing reliance upon Mahabir Auto Stores's case (supra) that IOCL being a Government of India Undertaking is bound to act fairly, reasonably and its conduct is subject to scrutiny on the touchstone of Article 14 of the Constitution of India.

Answer to Point No.2 Ms. Pinky Anand, the learned Additional Solicitor General on behalf of the appellant-IOCL contended that the High Court has erred in granting the relief of restoration of distributorship as the same is contrary to the provision of Section 14(1)(c) of the Specific Relief Act, 1963 (for short "the Act"). She further contended that the agreement in the instant case is determinable in nature and as per the provision of Section 14 (1)(c) of the Act, the agreement which is determinable in nature cannot be specifically enforced by the court. Thus, the High Court has erroneously held that the provision of Section 14(1)(c) of the Act is not applicable to the facts situation of the case.

She further contended that the High Court has wrongly directed IOCL to restore the terminated distributorship as the same is bad in law. She submitted that once a distributorship, even if it is terminated in breach of the contract, cannot be restored in favour of the respondent no. 2 and the only remedy available is to claim damages from IOCL. She placed strong reliance upon the judgment of this Court in the case of Indian Oil Corporation Ltd. v. Amritsar Gas Services & Ors.[5].

On the other hand, Mr. Kapil Sibal, the learned senior counsel contended that the question of maintainability of suit under Section 14(1)(c) of the Act was never raised by IOCL either before the trial court or before the first appellate court. He further submitted that it is apparent from the letter of allotment and the conduct of the parties that neither the contract was revocable nor it had become void for any reason. Thus, the provision of Section 14(1)(c) of the Act is not attracted in the instant case as has been rightly held by the High Court.

He further contended that the Amritsar Gas Services & Ors. case (supra) relied upon by IOCL in its contentions has no relevance in the instant case for the reason that the said case relates to the Law of Arbitration. In the instant case, it is clear from the letter of allotment that there was no arbitration clause enumerated therein to attract the Law of Arbitration and related case laws.

We agree with the contentions advanced by the Mr. Sibal. The High Court in the impugned judgment and order has rightly held that the provision under section 14(1)(c) of the Act is not applicable to the facts and circumstances of the instant case. It held thus:

"10.(iii) Furthermore, from the terms of agreement, namely, the letter of allotment and the conduct of the parties, it appears that neither the contract was revocable nor it had become void for any reason whatsoever. Hence, provision of Section 14(1)(c) of the Specific Relief Act is not applicable to the facts and circumstances of the instant case and the suit cannot be legally held to be maintainable under the said provision..." Furthermore, from a perusal of letter of allotment, it is clear that there is no arbitration clause therein. Thus, the case of Amritsar Gas Services (supra) relied upon by IOCL in its contentions is of no relevance.

Answer to Point No.3 For the reasons mentioned supra we are of the view that no error has been committed by the High Court in setting aside the erroneous findings of the trial court as well as the first appellate court in its judgments and orders.

The facts and circumstances of this case are such that we are constrained to make observation that the appellant-IOCL must be very cautious and careful while exercising its power to terminate the distributorship of this nature. For the aforesaid reasons the appeal is liable to be dismissed.

On the issue of cost, we are of the opinion that since the respondents have been litigating for a period of around 37 years, spending precious time in the courts of law seeking justice for themselves, they are entitled thereto in the facts and circumstances of the case. The respondent nos. 2 and 3 are ex-servicemen in whose favour the distributorship was awarded, the same was terminated arbitrarily and unfairly. This conduct on the part of IOCL defeats the laudable object of the scheme of the Government of India by which distributorship was allotted in favour of the ex-defence personnel, war-widows and dependants. Thus, respondent nos. 1 & 2 deserve to be awarded with costs.

Accordingly, we pass the following order-

i) This Civil Appeal is dismissed. The order dated 13.12.2007 granting stay shall stand vacated.

ii) We direct the appellant-IOCL to restore the LPG distributorship in favour of respondent nos. 1 or 2 and 3 forthwith and submit a compliance report to this court.

iii) The cost of Rs. 1 lakh be paid to respondent nos. 1 and 2 within four weeks from the date of receipt of the copy of the Judgment.

iv) All pending applications are disposed of.

... ... J . [V . G O P A L A G O W D A]
.....J. [AMITAVA ROY] New Delhi, December 1, 2015

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[1] (2001) 5 SCC 101
[2] (1986) 3 SCC 156
[3] 1991 Supp (1) SCC 600
[4] (1990) 3 SCC 752
[5] (1991) 1 SCC 533