



IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT APPEAL No.85 OF 2022

1. Sanjoy Kumar Jalan,
Son of Late Lakshmi Narayan Jalan,
Resident of Hijuguri, PO, PS & District:
Tinsukia, Assam.

2. Ramesh Kumar Jalan,
Son of Late Lakshmi Narayan Jalan,
Resident of Hijuguri, PO, PS & District:
Tinsukia, Assam.

3. Smti. Shanti Devi Jalan,
Wife of Late Lakshmi Narayan Jalan,
C/o Dr. Pankaj Goel, Resident of
Parbotia Feeder Road, in front of A.R.
Wine, PO, PS & District: Tinsukia,
Assam.

4. Smti. Amita Goel,
Wife of Dr. Pankaj Goel,
Resident of Parbotia Feeder Road, in
front of A.R. Wine, PO, PS & District:
Tinsukia, Assam.

.....Appellants

-Versus-

1. M/s M.P. Jalan, a partnership firm
registered under the provisions of the
Indian Partnership Act, 1932, having its
registered office at Hijuguri, PO, PS &
District: Tinsukia, Assam, PIN – 786125,
represented by its one of the partner,
Shri Rajesh Jalan, son of Late Laxmi
Narayan Jalan.

2. Shri Rajesh Jalan,
Son of Late Laxmi Narayan Jalan,
C/o M.P. Jalan, Hijuguri, Opposite
Hijuguri Town Outpost, PO, PS &
District: Tinsukia, Assam, PIN – 786125.

3. M/s Indian Oil Corporation Limited
(Assam Oil Division), having principal
place of business and office at Digboi
Town, PO: Digboi, District: Tinsukia, PIN
– 786125, Assam.

4. The General Manager (Retail Sales),
Indian Oil – AOD, Indian Oil Corporation
Limited, Indian Oil Bhavan, Sector-III,
Noonmati, Guwahati – 781020, Kamrup
(Metro), Assam.

5. The Deputy General Manager (Retail
Sales), Tinsukia Divisional Office, Indian
Oil – AOD, Indian Oil Corporation
Limited, Sripuria Road, PO & District:
Tinsukia, PIN – 786125, Assam.

6. Indian Oil Corporation Limited, Indian
Oil – AOD, State Office, (Marketing
Division), Noonmati, Sector-III,
Guwahati, Kamrup (Metro), PIN –
781020, Assam, represented by its
General Manager.

.....Respondents

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE KARDAK ETE**

For the Appellants : Mr. P. Bora, Senior Advocate,
assisted by Ms. K. Sarma,
Advocate.

For the Respondents : Mr. G. Rahul, Advocate for
respondent Nos.1 & 2 (writ
petitioners).

: Mr. M.K. Choudhury, Senior
Advocate, assisted by Ms. D.
Borah, Advocate for respondent
Nos.3 to 6.

Date of Judgment & Order : 17.10.2023.

JUDGMENT & ORDER (ORAL)

[Sandeep Mehta, C...]

Heard Mr. P. Bora, learned senior counsel for the appellants. Also heard Mr. G. Rahul, learned counsel, representing the respondent Nos.1 & 2 (writ petitioners) and Mr. M.K. Choudhury, learned senior counsel, representing the respondent Nos.3 to 6.

2. The appellants herein have approached this Court by way of this intra-Court writ appeal seeking to assail legality and validity of the judgment and final order dated 01.02.2021 rendered by the learned Single Judge in WP(C) No.3549/2020, whereby the decision of the respondent Indian Oil Corporation Limited (hereinafter referred to as "Corporation") in stopping the supply of fuel to the Retail Outlet in question was reversed and the Corporation was directed to take on record the proposal submitted by the writ petitioners (respondent Nos.1 & 2 herein) for reconstitution of the dealership strictly in accordance with the Rules by giving opportunity of hearing to the writ petitioners and other stakeholders. A further rider was imposed by the learned Single Judge that the consideration would have to be limited only towards the requirements raised in the letter dated 10.07.2020 and the Corporation would not be at liberty to embark upon deciding the legality of the partnership which as per the learned Single Judge could only be decided by a Civil Court of competent jurisdiction.

3. Brief facts relevant and essential for disposal of the writ appeal are noted herein below:-

The Retail Outlet in question for dealing in petroleum productions/fuels was allotted to Shri M.P. Jalan by the respondent Corporation way back in the year 1967. Shri M.P. Jalan passed away on 13.04.1989. It is claimed that during the lifetime of Shri M.P. Jalan, a partnership firm came to be registered under the name and style of M/s M.P. Jalan with Shri Lakshmi Narayan Jalan and Shri Rajesh Jalan (respondent No.2 herein) being its partners. However, it is further an admitted position that the prayer for reconstitution of the dealership was never sought to be approved in terms of the Policy Guidelines.

4. Shri Lakshmi Narayan Jalan (father of the appellant Nos.1 & 2) seems to have forwarded a letter to the Senior Divisional Manager, IOCL on 08.06.1999 praying for introduction of his son and grandson of Shri M.P. Jalan, namely, Shri Rajesh Jalan (respondent No.2 herein), as a partner of the firm M/s M.P. Jalan, Tinsukia. However, the fact remains that the Retail Outlet was never reconstituted in the name of the partnership firm and continued to function as a proprietorship concern in the name and style of M/s M.P. Jalan. From 22.08.2020, the respondent Corporation stopped supply of fuel and other petroleum products to the Retail Outlet, whereupon the captioned WP(C) No.3549/2020 came to be filed by the respondent Nos.1 & 2, wherein the appellants herein were not impleaded as party respondents. As indicated, the learned

Single Judge proceeded to dispose of the aforesaid writ petition in the manner noted above.

5. The appellants herein being the remaining legal heirs of Shri M.P. Jalan sought permission to file an appeal against the impugned judgment & order dated 01.02.2021 and after being so permitted, they have preferred the instant intra-Court writ appeal for challenging the judgment dated 01.02.2021.

6. Mr. P. Bora, learned senior counsel representing the appellants, vehemently and fervently urged that there is no dispute that the proprietorship firm M/s M.P. Jalan was never reconstituted in the records of the respondent Corporation by seeking the appropriate approval. He contended that irrespective of the fact that a fresh partnership firm in the name and style of M/s M.P. Jalan was registered with the Registrar of Firms, the fact remains that Shri Lakshmi Narayan Jalan, the father of the appellant Nos.1 & 2 and husband of the appellant No.3 herein was one of the partners in the said firm. Thus, the appellants herein have an equal stake in the business of the Retail Outlet. He referred to the Retail Outlet Dealership Policy Guidelines, particularly, Clause B pertaining to reconstitution, and urged that there is no dispute about the proprietor Shri M.P. Jalan not having made a nomination for issuance of the fresh Letter of Intent (LOI) to the nominee. The appellants herein have never expressed their unwillingness to participate in the business of the Retail Outlet.

As per Mr. Bora, the action of the respondent Corporation to stop supply of fuel to the Retail Outlet was based on a complaint submitted by the appellants herein and thus, it was imperative for the learned Single Judge to have provided the opportunity of hearing to the appellants and that the judgment & order passed by the learned Single Judge is liable to be interfered with solely on the ground of having been passed in gross violation of the principles of natural justice and the writ petition was liable to be dismissed on the ground of non-joinder of necessary parties.

On these submissions, Mr. Bora implored the Court to accept the writ appeal and set aside the impugned judgment & order passed by the learned Single Judge.

7. Mr. M.K. Choudhury, learned senior counsel representing the respondent Corporation, vehemently and fervently submits that upon expiry of the proprietor of the sole proprietorship firm M/s M.P. Jalan and since no nomination was made by Shri M.P. Jalan, it was imperative for the person/persons interested to continue the business of the firm, to have approached the Corporation with a proper proposal seeking reconstitution of the Retail Outlet dealership. The obligation to seek the reconstitution is totally upon the legal heir/legal heirs interested in operating the dealership after death of the original dealer and failure to do so would result into a situation where the dealership would be run for 6(six) months under the "Holiday Scheme". If the affairs/disputes between the rival

claimants /legal heirs are not sorted out within a period of 6(six) months, the OMC has no option but to cancel the dealership. Mr. Choudhury also supported the contentions advanced by Mr. P. Bora, learned senior counsel for the appellants.

8. Per contra, Mr. G. Rahul, learned counsel representing the respondent Nos.1 & 2/writ petitioners, vehemently and fervently opposed the submissions advanced by the learned senior counsel for the appellants. He contended that the firm was reconstituted in the year 2011 with the induction of Shri Lakshmi Narayan Jalan and Shri Rajesh Jalan. Shri Lakshmi Narayan Jalan also passed away in the year 2012. His legal heirs being the appellants herein never took any steps to stake a claim for participating in the business of the dealership nor did they seek any induction in the firm and thus, the claim being led by the appellants herein to be allowed to join the business, is time barred and cannot be accepted. His contention was that as a matter of fact, the other legal heirs of Shri Lakshmi Narayan Jalan have formally relinquished their rights in favour of Shri Rajesh Jalan. However, Mr. Rahul was not in a position to dispute the fact that the sole proprietor Shri M.P. Jalan did not make any nomination during his lifetime. The firm was reconstituted in the year 2011 with the induction of Shri Lakshmi Narayan Jalan, the father of the appellant Nos.1 & 2 herein and Shri Rajesh Jalan. However, even at that point of time, there was no effort to seek formal reconstitution of the Retail Outlet

dealership from the IOCL. He urged that the direction given by the learned Single Judge that the family members/legal heirs desirous of seeking a right to participate in the business of the Retail Outlet dealership should approach the Civil Court of competent jurisdiction, is absolutely just and legal and does not warrant any interference.

9. We have considered the submissions advanced at bar and have gone through the impugned judgment & order and the material placed on record.

10. First and foremost, we must observe that there is no dispute that the appellants herein and the respondent No.2 Shri Rajesh Jalan are the legal heirs of Late Lakshmi Narayan Jalan, son of Late M.P. Jalan as per the succession certificate placed on record. Thus, they also fall in the category of equally placed legal heirs of the same category as that of the respondent No.2, Shri Rajesh Jalan. There is no dispute that as per the Policy Guidelines for reconstitution, reproduced supra, reconstitution has to be allowed in favour of the legal heirs/family members with the consent of the legal heirs. It is only in the case, where some of the legal heirs have expressed unwillingness, the dealership can be reconstituted with the surviving partners. In the present case, the fact as to whether all the legal heirs have expressed their unwillingness, is purely a question of fact and as such, the writ Court would be loath to enter into such disputed questions of facts.

Indisputably, after the death of the original LOI holder, the burden to seek reconstitution of the Retail

Outlet dealership lies upon the legal heir/legal heirs interested in continuing with the business of the dealership as provided under Clauses 4, 5 & 9 of Guideline G. Since in the case at hand, the legal heir interested in continuing the business of the Retail Outlet dealership being the respondent No.2 Shri Rajesh Jalan, who did not initiate any process for reconstitution, the issue of time barred claim would not arise as against the other legal heirs. Sub-clauses 4, 5 & 9 of Clause G of the Policy Guidelines are reproduced herein below for the sake of ready reference:-

“G. Reconstitution of commissioned dealerships

4. In cases of death of the sole proprietor/all partners, reconstitution may be made in favor of the legal heir(s)/family member(s) with the consent of legal heir(s). In such case, induction of outside partner(s) will also be permitted. However, the maximum share of outside incoming partner(s) will be restricted up to 49% till a period of 3 years from the date of commissioning. In cases of death of the sole proprietor/all partners, if there is no eligible legal heir(s)/family member(s)/nominee(s) of the Sole proprietor/Partner(s) or legal heir(s)/family member(s)/nominee(s) of the Sole proprietor/Partner(s) express unwillingness, the dealership shall be terminated.

5. In cases of death of partner(s), the dealership shall be reconstituted with the legal heir(s)/family member(s) with the consent of Legal heirs of the deceased partner(s). However, if there is no legal heir(s) or legal heir(s) have expressed unwillingness, the dealership shall be reconstituted with the surviving partner(s).

9. Dispute in case of induction of nominee/legal heir/family member amongst partners: Partner(s) can transfer his/her shareholding in the dealership to Legal heir(s)/family member(s)/outsider(s), subject to adherence to applicable statutory provisions and the incoming partner meeting the eligibility criteria. However, if there is any dispute with regard to the induction amongst the surviving/existing partners, then in such cases the dispute may be resolved

expeditiously by the dealership. In such cases, OMC would sent a notice to all partners calling them for personal hearing to resolve the dispute for operation/ reconstitution of dealership and take an undertaking from the dealership confirming to resolve the dispute within 6 months. In case any partner(s) does not attend, personal hearing may be given to the attending partners. However, communication on action proposed to be taken would be sent to all the partners.

During the dispute period, the dealership may be operated by the partner(s)/legal heir(s)/family member(s) as per the share out of existing partners prior to the induction of the new partners. OMC may allow operation of such dealership for a period of 6 months or as may be decided on case to case basis. If the dispute remains unresolved, then the dealership may be placed under 'Holiday Scheme', giving the parties a reasonable time to settle their dispute and revert back for the dealership.

10. Temporary Arrangement for operation of dealership in case of death of proprietor/partner(s): In cases of death of proprietor/partner(s), temporary arrangement is to be made through legal heirs of the proprietor/surviving partner(s) to continue the dealership till formal reconstitution. OMC may allow operation of such dealership through Legal heirs of the proprietor/surviving partners for a period of 6 months after demise of the dealer/partner(s) as may be decided on case to case basis. In case of non-receipt of reconstitution proposal, after expiry of 6 months, the Surviving partners should be given an option of 'Holiday Scheme' to sort out their issues within reasonable time and revert back for dealership."

11. Under sub-clause 10 of Clause G of the Policy Guidelines, in case the temporary arrangement for operation of the dealership continues beyond 6(six) months, the option has to be given by the Corporation to run the dealership under the "Holiday Scheme" to the surviving partners for sorting out their issues within the reasonable time and to revert back for the dealership.

Under this Clause, the burden is upon all the partners to come out with an amicable solution, failing which the Corporation would have to proceed under sub-clause 10 of Clause G. This precisely was the action taken by the respondent Corporation when it directed the stoppage of fuel supply to the dealership in question. It may be stated here that even the mother of the appellants being the widow of Shri Lakshmi Narayan Jalan has forwarded letters regarding attempt to make fraudulent entries in the partnership of the firm.

12. Considered in light of the facts and circumstances noted above and the mandate of the Guidelines, we are of the firm view that the impugned judgment, whereby the learned Single Judge interfered in the decision taken by the respondent Corporation to stop supply of fuel to the pump in question on the ground that the legal heirs could not arrive at a resolution, did not warrant any interference in exercise of the extraordinary writ jurisdiction.

13. In the peculiar facts of the case, we hereby give liberty to all legal heirs of Late M.P. Jalan to sort out their differences and to revert to the respondent Corporation for reconstitution of the firm. If the above process is not completed within a period of 6(six) months, the respondent Corporation shall be at liberty to take appropriate steps as per the applicable Guidelines. Till then, the respondent No.2, namely, Shri Rajesh Jalan, shall be allowed to operate the fuel pump in question under the "Holiday

Scheme". The impugned judgment & order dated 01.02.2021 passed by the learned Single Judge in WP(C) No.3549/2020 is reversed.

14. The writ appeal is allowed in these terms.

JUDGE

CHIEF JUSTICE

Comparing Assistant