

GAHC010100452021



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

Case No. : WP(C)/3946/2021

BIJU MAHANTA BORSAIKIA @ BIJU BORSAIKIA AND ANR
W/O- LT. DHANANJOY BORSAIKIA, R/O- NEW SETTLEMENT AREA, PLOT
NO. X-66, DIGBOI TOWN, P.O. AND P.S. DIGBOI, DIST.- TINSUKIA, ASSAM,
PIN- 786171

2: BIKRANT BORSAIKIA
S/O- LT. DHANANJOY BORSAIKIA
R/O- NEW SETTLEMENT AREA
PLOT NO. X-66
DIGBOI TOWN
P.O. AND P.S. DIGBOI
DIST.- TINSUKIA
ASSAM
PIN- 78617

VERSUS

THE OIL INDIA CORPORATION LIMITED AND 4 ORS
REP. BY ITS CHAIRMAN, CORPORATE OFFICE, PLOT NO. 3079/3, SADIQ
NAGAR, J.B. TITO MARG, NEW DELHI- 110049

2: THE INDIAN OIL CORPORATION LTD.
ASSAM OIL DIVISION
REP. BY THE SENIOR AREA MANAGER
DIGBOI
DIST.- TINSUKIA
ASSAM
PIN- 786171

3: THE EXECUTIVE DIRECTOR
NORTH EAST INTEGRATED STATE OFFICE
INDIAN OIL CORPORATION
BAMUNIMAIDAM
GHY-21

4:THE GENERAL MANAGER (LPG-S)
INDIAN OIL CORPN. LTD.
SECTOR-3 NOONMATI
GHY-21

5:THE SENIOR MANAGER (LPG)
TINSUKIA
ASSAM
PIN- 78612

Advocate for the Petitioner : MR. B C DAS, MS.TWINKLE SARMA,MR S PARASHAR,MR. S BORTHAKUR,MS. S KAKATI,MR. A HASAN,MR. N HASAN,MR. P MAZUMDER,MR. S CHAUHAN

Advocate for the Respondent : SC, I O C, MR. ABU JAHID (R- 1 TO 5)

**BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE**

JUDGMENT

Date : 11-12-2024

Heard Mr. S. Parasar, learned counsel for the petitioner. Also heard Mr. A. Jahid, learned counsel for all the respondents.

2. By filing this petition, the petitioners have prayed for a direction to the respondents IOCL to allow and approve the re-constitution of LPG distributorship of M/s Oil Valley Gas Concern, Makum in favour of the petitioners without any insistence or inducting or submitting a fresh proposal along with the legal heir of late Bidya Prabha Borsaikia

3. The brief facts of the case, shorn of unnecessary details, are that the petitioner No.1 and petitioner No.2, are the wife and son of late Dhananjay Borsaikia ,who had operated LPG Gas Agency in the name and style M/s Oil Valley Gas Concern, Makum. While running the gas agency Dhananjay Borsaikia had met with an immature death.

4. The petitioners have filed WP(C) 5586/2015 praying for a direction to the respondents IOCL to reconstitute the said LPG distributor M/s Oil Valley Gas Concern, Makum in the name of the petitioners as they are the legal heirs of late Dhananjoy Borsaikia.
5. In the said writ petition Smti Bidya Prabha Borsaikia, who was arrayed as respondent No.4, the mother of late Dhananjoy Borsaikia, opposed the prayer of the petitioner in the above mentioned writ petition on the ground that she was also one of the legal heir and is also entitled to a share in the gas agency to be reconstituted in the name of the legal heir of late Dhananjoy Borsaikia. During the course of the hearing in the said writ petition, the mother of late Dhananjoy Borsaikia have agreed to execute a fresh partnership deed with the petitioners on the same terms as executed in the deed dated 15.05.2024.
6. Taking note of the submission of the parties, this Court disposed of the writ petition on 01.06.2017 with a direction to the petitioners and the mother of late Dhananjoy Borsaikia to enter into a fresh deed of partnership incorporating the same terms and conditions as contained in the partnership deed dated 15.05.2014. It further directed the respondents to act on the same and issued necessary order reconstituting the LPG gas agency. Thereafter, when the reconstitution was under process and was not completed due to obstruction/objection, by the mother of late Dhananjoy Borsaikia, the writ petitioners again approached this Court by filing WP(C) 5735/2019 praying for a direction to the respondents to allow and permit the petitioners to reconstitute the LPG distributorship by excluding the mother of late Dhananjoy Borsaikia. During the pendency of WP(C) 5735/2019, unfortunately, the mother of late Dhananjoy Borsaikia expired and accordingly, her name was deleted from the array of parties in the said writ petition. On 12.01.2021, the learned counsel for

the petitioners submitted before the Court that upon such development when the matter was informed to the respondent authorities, a communication dated 12.11.2020 has been issued to the petitioners wherein, it has been stated that the proposal for reconstitution has reached with the revised share of the partners and few more days would be required to finalize the matter.

7. Mr. A. Jahid, learned counsel appearing in WP(C) 5735/2019 did not dispute the factum and submitted that reasonable time may be granted for finalizing the matter. Considering the submission of the learned counsel for the parties, this Court disposed of the writ petition vide order dated 12.01.2021 directing the respondents to finalize the proposal for reconstitution submitted by the petitioner.

8. By filing this present writ petition, the petitioners have prayed for a direction to re-constitute the LPG distributorship of M/s Oil Valley Gas Concern, Makum in favour of the petitioners without any insistence or inducting or submitting a fresh proposal along with the legal heir of the late mother of late Dhananjoy Borsaikia.

9. It is noticed that on the same day when the writ petition being WP(C) 5735/2019 disposed of, the communication was issued to the petitioner No.1 i.e. 12.01.2021, which has been annexed as Annexure 12 at page 41 of the writ petition whereby, it has been conveyed that the application for reconstitution of the distributorship with both the writ petitioners as partners has been rejected on the ground that same was not submitted jointly along with the legal heirs of the deceased partner late Bidya Prabha Borsaikia, the mother of late Dhananjoy Borsaikia. It further intimated that new proposal may be submitted for due consideration of the competent authority by the petitioners along with the willing legal heirs of late Bidya Prabha Borsaikia, the deceased partner for re-

constitution of the distributorship. In the event, the legal heir of Smti Bidya Prabha Borsaikia are not willing then the supporting documents thereof be submitted along with the proposal for reconstitution.

10. It is noted that the petitioners have not challenged the aforesaid communication dated 12.01.2021 although have prayed for reconstitution of M/s Oil Valley Gas Concern for reconstitution as the petitioners are the partners.

11. The learned counsel for the petitioners while referring to Clause 3.7 of the Policy Guidelines for Reconstitution of LPG Distributorship 2018 submits that the petitioners being the legal heirs of sole proprietor of the said distributorship who had died are the only legal heirs to be partners on reconstitution of the said distributorship. The reconstitution process, although had started with the late mother of the sole proprietor late Dhananjay Borsaikia, before finalization of the reconstitution, she had expired, therefore, in essence, there is no reconstitution of the distributorship. The Guidelines for Reconstitution of the LPG Distributorship provides that in case of demise or incapacitation of the sole proprietor, the legal heir or family member of the deceased proprietor are to be reconstituted. Since the proposed partner in the reconstitution had died, there is no provision for inclusion of the legal heir of the proposed partner as the requirement is for the legal heir of the sole proprietor. Therefore, he submits that the petitioners are the only legal heirs for the purpose of reconstitution of the LPG distributorship and as such, a direction may be issued to the respondent authorities to reconstitute the LPG distributorship consisting of the petitioners as partners.

12. Mr. A. Jahid, learned counsel on the other hand while referring to Clause 2.6.5 submits that since reconstitution was almost finalized, as the bank account and GST registration was to be formally completed, the earlier reconstitution is

deemed to have been completed. In the reconstitution, the late mother of late Dhananjay Borsaikia was a partner, on her death, her legal heir will be entitled to be included as a partner in the reconstitution process of LPG distributorship. Therefore, the prayer of the petitioner for reconstitution of LPG distributorship consisting of the petitioners as partners has been rejected. The authorities have issued the letter to petitioner No.1 on 12.01.2021 to submit the new proposal for consideration by both the petitioners along with the willing legal heir of late Bidya Prabha Borsaikia, the deceased partner. He submits that in the present petition, the said communication has not been put to challenge by the petitioner, therefore, unless the new proposal is submitted, no consideration can be made for reconstitution.

13. I have considered the submissions made by the learned counsel for the parties and also perused the materials available on record including the Guidelines for Reconstitution of the LPG Distributorship, 2018.

14. Admittedly, the reconstitution process was started consisting of late mother of late Dhananjay Borsaikia (deceased proprietor) and the petitioners, who are the wife and son of late Dhananjay Borsaikia. There were litigations between the parties in respect of the reconstitution of the distributorship on the death of sole proprietor late Dhananjay Borsaikia.

15. As noted hereinabove, this Court directed the respondent authorities to reconstitute the LPG distributorship consisting of the petitioners and mother of late Dhananjay Borsaikia while reconstitution was under process and during the pendency of the writ petition being WP(C) 5735/2019 the mother of late Dhananjay Borsaikia expired

16. As recorded hereinabove, when the order dated 12.01.2021 was passed

by this Court, on the same day, the respondent authorities had rejected the proposal of the petitioners and directed to submit a new proposal including the legal heirs of late mother of the deceased sole proprietor Dhananjay Borsaikia.

17. In order to appreciate the issue involved in the present proceeding, the provision contained in the Guidelines for Reconstitution of LPG Distributorship, 2018 is required to be considered.

18. Clause 2.6.5 of the Guidelines provides as under:-

“2.6.5. In case of death/incapacitation of Selected candidate/LOI Holder, on receipt of information regarding death/such incapacitation, a letter giving opportunity for reconstituting the LOI to legal heir/family member (including married children, daughter-in-law, son in law and grandchildren) subject to their eligibility, will be issued by the Area/Territory/Regional in-charge of IOC/BPC/HPC, as applicable, within 10 (ten) days of receipt of such information. Along with this letter, copy of application form for reconstitution of distributorship at LOI stage and list / format of other documents and other relevant information to be submitted by the applicant, shall be sent. 30 (thirty) days' time will be given for submitting the application. In case of formal request for extending the time another 30 days can be extended by Area/Territory/Regional in- charge of IOC/BPC/HPC.”

19. Clause 3.7 provides as under:-

“3.7. In case of demise or total incapacitation of the Sole Proprietor, if the person(s) nominated expresses unwillingness to be inducted as proprietor/partner(s), or is found ineligible, as per norms applicable for Distributor Selection other than age, educational qualification and multiple distributorship norms as mentioned below (viz. Eligibility criteria for incoming partner(s)), at that juncture, the firm can be reconstituted with the other legal heir(s) or family members of the deceased proprietor with the consent of the legal heirs not willing to join the distributorship. If there is no legal heir(s) or family member/s, or they have expressed their unwillingness, or are found ineligible by OMCs, the distributorship shall be terminated.”

20. On bare perusal of the above clauses it goes to show that in case of demise or total incapacitation of the sole proprietor, firm can be reconstituted with the other legal heirs or family member of the deceased proprietor with the consent of the legal heir not willing to join the distributorship. The clauses does

not indicate that only the first legal heir to be a partner in the reconstitution of the distributorship.

21. The reconstitution had been effected, although it was not completed, whereby the mother of the deceased sole proprietor and the petitioners were included as partners.

22. On consideration of the materials including the guidelines as referred to hereinabove, I find that since the mother of the deceased sole proprietor being a legal heir was entitled to be a partner in the reconstitution of the distributorship, the legal heir(s) of late mother of deceased proprietor is equally entitled to be partners in reconstitution of distributorship as the clauses clearly mentioned that the firm can be reconstituted with the other legal heir(s) or family member(s) of the deceased with the consent of the other legal heir(s).

23. Having considered the relevant clauses of the Guidelines for Reconstitution of LPG Distributorship and also upon consideration of submissions of the parties, I am of the view that interest of justice will be served, if the respondent authorities are directed to reconstitute the LPG distributorship of M/s Oil Valley Gas Concern, Makum in terms of the communication dated 12.01.2021.

24. Accordingly, the writ petition stands disposed of with a direction to the petitioners to submit the proposal as indicated vide communication dated 12.01.2021 passed by the Indian Oil Corporation Limited, DGM(LPG-S), Tinsukia within a period of one month. On receipt of the proposal, the authorities are directed to reconstitute the LPG distributorship in accordance with the Guidelines for Reconstitution of LPG Distributorship. On the vehement submission of the learned counsel Mr. S. Parasar, the respondent authorities are

to include all the legal heirs of the late Bidya Prabha Borsaikia, late mother of late Dhananjay Borsaikia.

25. With the above observation and direction, the writ petition stands disposed of. No order as to costs.

JUDGE

Comparing Assistant