

GAHC010316802019



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

Case No. : WP(C)/9468/2019

M/S. SARMA AND CO. AND ANR.
KALAIN IN THE DIST. OF CACHAR, REP. BY ITS PROPRIETOR SRI
PRAKASH SINGH, S/O- B.N.SINGH, AGE-42 YEARS, JASHODA TALKIES
COMPOUND, DIST.- TINSUKIA, PIN- 786171, ASSAM

2: M/S SARMA AND CO.
SILCHAR IN THE DIST. OF CACHAR
REP. BY ITS PROPRIETOR
SHREE PRAKASH SINGH
S/O- LT. B.N.SINGH
R/O- JASHODA TALKIES COMPOUND
P.O. DIGBOI
DIST.- TINSUKIA
ASSAM
PIN- 78617

VERSUS

THE UNION OF INDIA AND 4 ORS.
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTER OF PETROLEUM
AND NATURAL GAS, NEW DELHI

2:INDIAN OIL CORPORATION LTD.
(A GOVT. OF INDIA ENTERPRISE) WITH ITS REGD. OFFICE AT G-9 ALI
YAVAR JUNG MARG BANDRA (EAST)
MUMBAI- 400051
REP. BY ITS CHAIRMAN

3:INDIAN OIL CORPORATION LTD.
(ASSAM OIL DIVISION)
DIGBOI REP. BY ITS GENERAL MANAGER
PIN- 786171
DIST.- TINSUKIA
ASSAM

4:SUNITA SINGH
W/O- SRI SAILESH SINGH AND D/O- LT. BISWANATH SINGH
D-73
NEHRU NAGAR
BHOPAL- 462003

5:CHIEF DIVISIONAL RETAIL SALES MANAGER
SILCHAR DIVISIONAL OFFICE
SILCHA

Advocate for the Petitioner : MR. B P BORAH, MR J. B. CHOUDHURY,G. GOSWAMI,MR R S RONGHANG,A KALITA,MR P J DUTTA

Advocate for the Respondent : ASSTT.S.G.I., SC, I O C,MR. A CHOUDHURY,MR. A GOYAL

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 03-09-2024

1. Heard Ms. G Goswami learned counsel for the petitioner. Also heard Mr. M.K. Choudhury, learned senior counsel assisted by Mr. P Bhardwaj, learned counsel for the respondent IOCL and Mr. A Goyal learned counsel for the respondent No.4.
2. The present application under article 226 of the Constitution of India is filed assailing a letter dated 20.11.2019 issued by the Chief Divisional Retail Sales Manager, IOCL inter-alia suspending the sales and supply of the retail outlet and SKO agency belonging to the petitioner.
3. The impugned communication dated 20.11.2019 reflects that there has been a dispute between the legal heirs of the original distributor namely, Lt. B.N. Singh as regards their shares in the dealership firm. Accordingly for an amicable settlement, a meeting was held and in the said meeting a proposal was put by the IOCL that the legal heirs should resolve

their dispute amicably and in the event there is no resolution or settlement between the legal heirs of the said proprietor, the dealership of Retail Outlet/SKO Agency Dealership shall be put into "Holiday Scheme". It is apposite to record here that a period of six months was given for resolution of such dispute.

4. The record also reveals that a meeting was held on held on 21.05.2019, however, no resolution was arrived at during the six months period granted. Accordingly, the sale and supply to M/s Sharma and Co. Silchar (Retail Outlet & SKO Dealership Agency) and M/s Sharma & Co. Kalain (Retail Outlet & SKO Agency Dealership) was suspended with immediate effect. It was also decided that the supply of the quota will be diverted to the nearest SKO agencies and accordingly the petitioner was requested to peacefully handover operations of the business outlets of M/s Sarma and Co. Silchar and M/s Sharma and Co. Kalain to Indian Oil Corporation Ltd with all the assets therein. It was further asserted by way of the impugned order that such order was passed in line with the provision of Clause G (9) of MOP & NG Reconstitution guidelines.

5. Ms. Goswami learned counsel for the petitioner referring to the "Holiday Scheme", which is part of the records, submits that a Retail Outlet or a proprietorship firm can be put under "Holiday Scheme" only when there is Non Performance and fall in sale. According to her admittedly the agencies were put under "Holiday Scheme" only for the reasons of failure to resolve the dispute between the shareholders and admittedly there is no allegation that there is either non performance or fall in sale and therefore, the impugned orders are liable to be interfered with being arbitrary and being not in conformity with the "Holiday Scheme".

6. Per contra, Mr. Choudhury, learned senior counsel appearing for

the IOCL submits that even if it is assumed that non performance or nil sales is a condition for putting an agency/dealer under "Holiday Scheme", the Corporation will not be powerless to suspend the supply when there is dispute among the legal heirs affecting the business.

7. Mr. Choudhury further contends that there is already a guideline and resolution/notification for reconstitution of dealerships and in terms of said notification also, the Corporation will be within its competent to suspend and/ or to cancel such dealerships when such dispute is not resolved. He further contends that in fact the agreement between the Corporation and the dealers also empowers the Corporation to terminate such license by following the due procedure as prescribed under such guidelines as well as under the terms of the contract.

8. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.

9. From the reading of the "Holiday Scheme", dated 21.12.2016, it is seen that "Holiday Scheme", prescribes the ground and procedure for termination of dealership and under such scheme when performance of the retail outlet is found to be Non Performing for the reason of low sale/ nil sale, for reason of temporary financial problem or dispute amongst family members/partners after death of proprietor/partner etc. In terms of the scheme, such performance are to be reviewed after putting the dealership under "Holiday Scheme" for a period of six months and if the performance remains the same, the dealer is required to be counselled for next three months and even if there is no improvement, the dealer can be terminated.

10. Though an issue has been raised as regards non settlement of the dispute amongst the legal heirs/family members on the death of the

original proprietor, however, it is not case that due to the dispute amongst the family member after death of the family member there is fall in performance, fall in sale etc.,.

11. It is seen from the impugned order that only reason for putting the dealers under holiday scheme is for the reason of dispute amongst the legal heirs and nothing is reflected as regards performance of the dealer.

12. It is recorded herein that the "Holiday Scheme" emphasizes on performance of the retail outlet and such performance is measured and made relatable to low sale/nil sale, though such performance in low sale and reason may be for the dispute amongst the family members/partners after death of proprietor/partner etc. Thus the dispute must result in non performance and such non performance is measured in terms of low sale/nil sale. Therefore, in absence of any of the finding in the impugned order that the dispute resulted in non performance of the dealership in question in terms of sale, in the considered opinion of this court the dealership could not have been terminated. Such action on the part of the respondent is therefore, do not conform with the power that has been granted under the "Holiday Scheme" and thus such action of the respondent can be termed as unreasonable and arbitrary. Accordingly the impugned order is interfered with by quashing the same.

13. However, this Court cannot be oblivious of the terms of the contract and the other statutory/regulatory provisions/guidelines holding the field which empowers the corporation to terminate a dealership and /or to suspend supply. Therefore, it is made clear that though the order dated 20.11.2019 is interfered, however, same shall not be treated as a comment of any right and liability of the contesting parties to act in accordance with the terms of the contract as well as statutory and other regulatory

provisions under which the Corporation/ or the dealer are entitled to protect their rights. Accordingly, the present order shall not take away any right of the Corporation to act in accordance with law.

14. Accordingly, in the aforesaid terms, the present writ petition stands disposed of and the interim order passed earlier shall merge with the present order.

JUDGE

Comparing Assistant