IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2015

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

W.P. No. 11468 of 2015
&
M.P. No. 1 of 2015

M/s. Haji A. Mohamed Ismail
Indian Oil Delaer,
rep. By Partners
Mr.Mohamed Hameem,
Mr. Anvarudeen
Smt. Sathika Begam,
2/13, Main Road,
Kollumangudi - 609 403,
Thiruvarur District. ..Petitioner

Vs.

1. The Senior Divisional Retail Sales Manager,
Indian Oil Corporation Ltd. (Marketing Division),
Trichy Divisional Office,
Tiruveni, 3rd Floor, B-35,
Shastri Road, Thillai Nagar,
Trichy - 620 018.

2. The General Manager (Retail Sales),
Indian Oil Corporation Ltd.,
Tamil Nadu State Office,
No.139, Nungambakkam High Road,
Chennai - 600 034. ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the respondents to resume supplies to the retail outlet M/s. Haji A. Mohamed Ismail, Indian Oil Dealer, located at No. 2/13, Main Road,Kollumangudi - 609 403, Thiruvarur District, and further grant time to submit reconstitution proposal in view of th demise of major partner Mrs. Jainnab Nachiya on 21.01.2015.

For Petitioner :: Mr.V. Raghavachari for
Mr.S. Govindarajan

For Respondents:: Mr.R. Ravi for IOC

ORDER

By consent, the main writ petition itself is taken up for final disposal.

2. The deponent of the affidavit submits that he is one of the partners of the petitioner retail outlet, namely, "M/s. Haji A. Mohamed Ismail" and would further state that his father, Haji A. Mohamed Ismail, commenced the petroleum retail outlet business under the landowner category since 1978 as a dealer under the respondent Indian Oil Corporation Limited (IOCL). On 18.03.2000, the said Haji A. Mohamed Ismail passed away leaving behind his wife Mrs. Jainab Nachiya and five children including the deponent as his legal heirs. The death of Haji A. Mohamed Ismail was intimated to IOCL and a proposal for reconstitutiion of the dealership as a partnership firm was submitted on 11.04.2000 with all the legal heirs to be partners. According to the deponent, during the pendency of the above reconstitution application, the dealership was run by him without any lapse and finally, the reconstitution was approved by the IOCL on 27.02.2003 with the following pattern of shares namely, Smt. Jainnab Nachiya - 51%, Mr. Ahmed Mohideen - 2%, Mr.Mohamed Hameem - 16%, Mr. Anvarudeen - 15%, Mr. Mohamed Ishack - 2%, Smt. Sathika Begum - 6% and Mr. Zavid Rahman - 8%.

3. According to the deponent, on account of some difference of opinion, one of the partners, namely, Mr. Ahmed Mohideen was not participating in any of the family interest and issued a legal notice dated 05.12.2014 directly to the 1st respondent instructing him not to accept any proposal of reconstitution wherein any third party could come into family business. The respondent, in turn, sent letters dated 16.01.2015 and 16.03.2015 asking the petitioner firm to sort out partnership disputes, if any, and submit fresh reconstitution proposal at the earliest, in line with the policies of the Corporation and further, informing that failure to do so, would result in stoppage of supplies with effect from 01.04.2015 and that steps will be taken to protect the interest of the Corporation. In response to the same, the petitioner submitted a detailed representation dated 14.04.2015 to the 1st respondent pointing out that they need grant of sufficient time to sort out the issues, that the threat of stoppage of supplies will definitely cause hardship and prayed for permission to continue the business. Since no response was forthcoming, the petitioner has come forward with the present writ petition.

4. Mr.V. Raghavachari, learned counsel for the petitioner has drawn the attention of this Court to the typed set of documents and submitted that the objector is having only a miniscule shareholding interest in the partnership firm and his only grievance appears to be induction of some third party rights in the

firm and admittedly, the family members had not finalised on reconstitution and therefore, the apprehension expressed by him is not at all well-founded and taking into consideration of the fact that the petitioner firm is in operation, right from the year 1978 and also their reputation, they may be permitted to continue their business. In support of this contention, the learned counsel for the petitioner relied on the order passed by this Court dated 06.09.2012 in W.P. No. 21605 of 2012 (M/s. Sekar Agency, rep. By its Partner Mr.P. Srinivasan V. The Indian Oil Corporation Limited, rep. By its Divisional Manager).

5. This Court heard the submissions of Mr.R. Ravi, learned counsel, who accepts notice on behalf of the respondents, who would submit that since, there is some dispute among the partners of the petitioner firm, the respondent Corporation was constrained to send the above said communications. He would further state that in the light of the above said order passed by this Court in W.P. No. 21605 of 2012, appropriate orders may be passed.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it, in the form of typed set of documents.

7. Similar issue came up for consideration before this Court in the above said writ petition, namely, W.P. No. 21605 of 2012 and this Court, by order dated 06.09.2012, disposed of the writ petition and it is relevant to extract paragraph Nos. 4, 5 and 6 of the said order:

> "4. When the matter was posted for hearing on 03.09.2012, the learned counsel for the petitioner submitted that the petitioner will file an affidavit stating the time required to reconstitute the petitioner's partnership firm. Pursuant to which, the petitioner has filed an affidavit dated 04.09.2012 stating that the petitioner is taking necessary steps to reconstitute the firm as early as possible and further three months' time may be given for reconstituting the petitioner's firm. The petitioner firm has invested huge amount for the development of the business. The petitioner agrees and undertakes to reconstitute the firm within a period of three months as per the rules of the respondents. The said affidavit of undertaking filed on 06.09.2012 is recorded.
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> 5. Heard the learned counsel for the respondents.
>
> 6. In view of the affidavit filed by the petitioner, the respondents are directed to grant three months' time to reconstitute the firm and restore the supply to the petitioner firm. Three months' time should be counted from the date of effecting supply. If the firm is not re-constituted as assured, it is open to the respondents to stop supply after the expiry of three months."

8. A perusal of the representation dated 14.04.2015 submitted by the partners of the petitioner firm would disclose that sincere steps have been taken to resolve the issues among the partners of the petitioner firm. It is an undisputed fact that the firm is in existence, right from the year 1978 and is carrying on business, without any complaint, whatsoever and in the light of the facts and circumstances, coupled with the order passed by this Court in W.P. No. 21605 of 2012, this Court is of the view that the 1st respondent can be directed to consider and dispose of the representation dated 14.04.2015 submitted by the petitioner and till such time, the supplies can be effected to the petitioner firm, subject to the usual terms and conditions of the respondent Corporation.

9. In the result, the writ petition is disposed of directing the 1st respondent to consider and dispose of the representation of the petitioner dated 14.04.2015, in accordance with their norms/Rules/Regulations within a period of 12 weeks from the date of receipt of a copy of this order. Till such time, in the interregnum, the respondent Corporation shall resume supplies to the petitioner firm, subject to their usual terms and conditions. No costs. Connected M.P. Is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To
1. The Senior Divisional Retail
Sales Manager,
Indian Oil Corporation Ltd.
(Marketing Division),
Trichy Divisional Office,
Tiruveni, 3rd Floor, B-35,Shastri Road, Thillai Nagar,
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2. The General Manager (Retail Sales),
Indian Oil Corporation Ltd.,
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No.139, Nungambakkam High Road,Chennai - 600 034.

+1 cc to Mr.R.Ravi, Advocate,SR.21652

+1 cc to Mr.S.Govindarajan, Advocate,sR.21653.

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