

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :: 16.10.2015

Delivered on :: 30.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.P.No.9064 of 2015

IPOUR GKC & RKC & SONS
a Partnership Firm Rep by their Managing
Partner Shri Ramakrishnan Ipour No.254 Lal
Bahadur Shastri Street
Puducherry 605 001 ... petitioner

versus

- 1 Hindustan Petroleum Corpn. Ltd
(HPCL) a Public Ltd Company through the
General Manager (South) No.8 No.1
Thalamuthu Natarajan Building, 4th floor,
Gandhi Irwin Road, Egmore, Chennai 600 008
- 2 The Senior Regional Manager
Hindustan Petroleum Corporation Ltd 90
Second Floor MDSR Enclave Bharathidasan
Road-Cantonment Trichy 620 001 respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the 2nd respondent pertaining to the impugned order dated 12th January corrected as 12th February 2015 bearing Ref. No. TRO/TV/RET and quash the same and consequently direct the respondents to regularize the reconstitution of the petitioners Firm as requested by the petitioners reply dated 19.3.2015.

For petitioners Mrs.Pushpa Menon

For respondents Mr.O.R.Santhanakrishnan

O R D E R

The communication sent by M/s.Hindustan Petroleum Corporation Ltd., on 12 February 2015 to the petitioner, resuming supply of petroleum products on a temporary basis, pending proceedings for reconstitution, consequent to the demise of one of the partners of the firm, is under challenge in this

Writ Petition.

The facts:-

2. The predecessor in interest of the petitioner was awarded a dealership by Caltex Ltd. in 1955, to sell petroleum products. M/s.Hindustan Petroleum Corporation (hereinafter referred to as the Corporation), is the successor in interest of Caltex Ltd. The petitioner, a registered firm, represented by its three partners, entered into a new dealership agreement with the Corporation on 15 April 1986. The dealership agreement was signed by Thiru.I.R.Munisamy, Tmt.Susila Devi and their son Thiru.I.M.Manickam on behalf of the firm.

3. While the firm has been running the outlet, the signatories to the dealership agreement along with three children of Mr.I.R.Muniswamy, entered into three family agreements with respect to the family property, including the petroleum dealership. The third signatory to the dealership agreement Mr.I.M.Manickam relinquished his right in the firm and dealership in favour of three of his brothers. Similarly, Tmt.Rajalakshmi, daughter of Mr.I.M.Muniswamy also released her right in favour of three of her brothers.

4. The petitioner submitted an application for reconstitution of dealership. Though the then Chief Regional Manager has accepted the proposal and directed his office to process the application for reconstitution, further action was not taken. In the mean time, Thiru.I.R.Muniswamy, senior partner died on 11 February 2015.

5. The Corporation by its communication dated 12 February 2012, informed the petitioner that by way of temporary arrangement, supplies would be resumed. It is the said communication, which is challenged in this Writ Petition.

6. The Senior Regional Manager of the Corporation in his counter affidavit justified the action taken for conditional resumption of supplies. According to the Corporation, the dealership agreement has come to an end, consequent to the death of one of the partners of the firm. Sub clause (i) and (ii) of Clause 45 prohibits reconstitution of firm without the prior consent of Corporation. Since the parties have not appeared in person on account of misunderstanding among them, further action was not taken for reconstitution.

Rival submissions:-

7. The learned counsel for the petitioner submitted that the petitioner firm, represented by the three children of Thiru I.R.Muniswami, have submitted a proposal for reconstitution along with the consent letter given by the retiring partner. However, necessary follow up measures were not taken by the Corporation. In the meantime, one of the partners died. The

subsequent event relating to the dealership was taken as a ground to pass an order to treat the dealership cancelled automatically, notwithstanding the release deeds and reconstitution of the firm by the partners with the three children of the managing partner. According to the learned counsel, the Corporation was not correct in passing an adverse order during the currency of the proposal for reconstitution.

8. The learned counsel for the Corporation while justifying the action taken by the Corporation, contended that the very Writ Petition is not maintainable in view of the nature of the communication under challenge. According to the learned counsel, the dealership has come to an end consequent to the death of the senior partner. It was only to help the petitioner, the Corporation reopened the supplies. It was his further contention that all the partners must give their consent for reconstitution. Since Mr.I.M.Manickam, has not given his consent specifically, the Corporation was not in a position to go ahead with the proposal for reconstitution.

Discussion:-

9. The firm by name IPOUR GKK & RKC & SONS having three partners viz., (1) Ipour Muniswamy Chettiar (2) Smt.M.Susila Devi and (3) I.M.Manickam, signed a dealership agreement with the Corporation on 15 April 1986 for running a retail outlet at Survey No.239, Lal Bahadur Shastri Road, Pondicherry. The firm has been running the retail outlet as the authorized dealer of Hindustan Petroleum Corporation.

10. There was a family arrangement in the family in and by which, the dealership was allotted to (i) Ipour Udayasankar Mounissamy (ii) Ipour Radjassekar Mounissamy and (iii) Ipour Ramakrishnan Mounissamy, children of Thiru.Mounissamy, who was a signatory to the dealership agreement.

11. The signatories to the dealership agreement appears to have given no objection for reconstitution of the firm. The beneficiaries of the family arrangement submitted applications for reconstitution of firm so as to enable them to join as partners of the firm. It is the case of the Corporation that application was not processed on account of the failure of one of the signatories to the dealership agreement to appear and indicate his no objection for reconstitution.

12. While so, Mr.R.Muniswamy died on 11 February 2015. The death was intimated to the Corporation by his son, who is stated to be in a strained relationship with other brothers, to whom dealership was allotted by way of family arrangement. The Corporation immediately sent the impugned communication.

13. The core issue is as to whether the Corporation was

justified in reopening supplies without prejudice to the ultimate decision to be taken with regard to continuation of dealership.

14. There is no difficulty to decide the issue involved in this matter in view of the agreement executed by the parties on 15 April 1986. The memorandum of agreement contains the terms and conditions of the dealership. Clause 45 deals with the change in the constitution of the firm.

It reads thus:-

45. Except with the previous written consent of the Corporation:-

(i) The dealer shall not enter into any arrangement contract or understanding where the operations of the dealer hereunder are or may be controlled carried out and financed by any other person, firm or company whether directly or indirectly and whether in whole or in part;

(ii) The dealer (if it be a firm or a cooperative society) shall not effect any change in its constitution whether in the identity of its partners, members or in the share/share holding of any of them, or in the terms of the deed of partnership or the bye-laws as the case maybe, in the event of the death of any partner/member of a firm/cooperative society which has been appointed as a dealer hereunder the surviving partners/members hereby agree to indemnify and keep indemnified the Corporation against any claims or demands which maybe made by the heirs of the deceased partner member."

15. The prior consent of the Corporation is a condition precedent for reconstitution of dealership in view of Clause 45 of the agreement. This provision was inserted mainly to prevent the dealership being transferred to third parties by reconstituting the firm.

16. The agreement was executed not only with the firm. The partners have all signed the dealership agreement. The Corporation was in the know of things with respect to the identity of partners, constituting the firm. The Corporation was therefore correct in sending the impugned communication reopening the supplies, making it clear that such action would not amount to recognition of the continuation of dealership. The provisional decision as communicated to the petitioner was in accordance with the dealership agreement.

17. The learned counsel for the petitioner placed reliance on a decision of this Court dated 29 September 2009 (K.S.S.P. & Bros., Sivakasi, vs. Indian Oil Corporation Ltd., and anr., W.P. (MD) No.10924 of 2008), in support of her contention that in identical circumstances, this Court held that the Corporation must consider and approve the reconstitution of the firm without insisting upon no objection from the other legal heirs of the promoter.

18. The decision in K.S.S.P. & Bros., has no relevance to the issue raised in this Writ Petition. In the said case, the promoter executed a will in favour of the petitioner. The Corporation wanted the petitioner therein to produce no objection certificate from the other legal heirs of the deceased. Since there was no dispute to the will and the firm has already been reconstituted by the petitioner, the learned Single Judge directed the Indian Oil Corporation to consider and approve the reconstitution of the firm without there being a condition to produce no objection certificate.

19. In the subject case, Thiru.Manickam, partner of the firm appears to be not in good terms with his brothers. Though Thiru.Manickam has given no objection for reconstitution, the fact remains that he failed to appear before the Corporation. The Corporation was therefore not in a position to ascertain the genuineness of the no objection letter. It was only under such circumstances, the Corporation wanted the petitioner to produce acceptable materials to prove the consent of other partners.

20. The Corporation in its communication dated 12 February 2015, indicated that a decision would be taken with regard to dealership. The counter affidavit contain a reference with respect to the proposal submitted by the three children of Thiru.I.Munisamy Chettiar for reconstitution of dealership. The Corporation should take a decision in the matter taking into account the fact that the firm has been running this outlet since 1955. The reconstituted firm has been functioning as the authorized dealer of the Corporation for the past 29 years. The petitioner has produced the release deed executed by Thiru.I.Manickam in favour of his brother and no objection for reconstitution. According to the Corporation, Thiru.Manickam, signatory to the dealership agreement failed to appear for confirming the authenticity of the release deed and no objection given by him. Therefore, it is clear that reconstitution proposal has been pending before the Corporation even before the death of Thiru.I.R.Muniswamy. The demise of one of the partners in the meantime made the Corporation to send the impugned communication. Under such circumstances, I am of the view that the proposal for reconstitution of the dealership should be considered by the Corporation afresh.

Direction:-

21. The Corporation is directed to process the application for reconstitution forthwith. It is open to the Corporation to direct the applicants to produce the required documents for taking further action, in case the documents submitted already are not sufficient. Since the petitioner has produced the no objection from Thiru.I.M.Manickam and release deed earlier, there is no need for production of fresh letter of no objection. It is open to the Corporation to issue notice to Thiru.Manikam, enclosing a copy of the release deed executed by him and the no objection given for reconstitution to appear on a particular date to confirm the genuineness of the documents. In case of his failure to respond or submission of objection to the proposal for reconstituting, the Corporation is at liberty to take a decision on merits and in accordance with law. Such exercise shall be completed on or before 31 December 2015. The status quo as indicated in the letter dated 12 February 2015 shall be maintained till a decision is taken by the Corporation in the matter of re-constitution.

22. The Writ Petition is disposed of with the above direction. No costs. Consequently, miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To

1 Hindustan Petroleum Corpn. Ltd
(HPCL) a Public Ltd Company through the
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2 The Senior Regional Manager
Hindustan Petroleum Corporation Ltd 90
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Road-Cantonment Trichy 620 001

+1 cc to M/s. Pushpa Menan, Advocate, sr.59307

+1 cc to M/s.O.L.Santhanakrishnan, Advocate, sr.59309

W.P.No.9064 of 2015

mp co

kra 23/11/2015