IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

DATE OF DECISION: MAY 13, 2015

Aman Oil and Company, Ambala City

.....Petitioner

VERSUS

Union of India and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

1. Whether Reporters of local papers may be allowed to see the judgement?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Harkesh Manuja, Advocate,
for the petitioner.

Mr. V. K. Kaushal, Advocate,
for UOI-resondent No.1.

Mr. Ashish Kapoor, Advocate,
for respondent Nos.2 to 4.

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AUGUSTINE GEORGE MASIH, J. (ORAL)

C.M. No.2570 of 2015

Application is allowed.

Letter dated 27.12.2014 is taken on record as Annexure P-24.

C.M. No.5885 of 2015

Application is allowed.

Additional affidavit is taken on record.

C.M. No.1149 of 2015 & C.W.P. No.4959 of 2014

The matter was taken up for hearing on 21.04.2015, when the following order was passed:-

> "*Counsel for the petitioner prays for some time to seek instructions if a person, who is eligible as per the latest policy of the respondent-oil Company could be indicated as a partner in the petitioner-firm and the details of the re-constituted firm be submitted to the respondent-company. He further submits that counsel for the respondents may also seek instructions whether such action taken by the petitioner could be considered by the respondent-company as per the prevalent policy.*
>
> *In view of the above, counsel for the respondent is directed to seek instructions in this regard from the respondent-company.*
>
> *List on 06.05.2015 for further consideration.*"

In response to the said order, additional affidavit of Deputy Manager (RS), Ambala, Indian Oil Corporation Ltd., Panipat Divisional Office, Panipat, has been filed, wherein in Para 3, it has been mentioned that the policy guidelines No.212-05/2013 dated 09.05.2013 have provision for condoning the unauthorized act of a firm, where the constitution of the partnership deed is changed without approval of the Indian Oil Corporation. Under this policy, circular Clause 2 deals with additional scenarios, which reads as under:-

> "*2.1 Constitution is currently in line with approved set up and past deviations have been rectified.*
>
> *Approach:*
>
> *(a) Take undertaking from the dealer requesting for condoning the past actions and confirming understanding of the*

> *provisions of agreement for compliance in future.*
>
> *(b) Divisional Retail Sales Manager (DRSM) to approve with letter of warning.*
>
> *Explanation:*
>
> *Dealer(s) to provide complete details of the case along with an undertaking (as per Appendix 1(a)) requesting for condoning the past actions and confirming understanding of the provisions of agreement for compliance in future.*
>
> *The same would be processed ensuring that all the past deviations have been rectified and is in line with the approved set up, which should meet the extant guidelines of dealership agreement.*
>
> *Divisional Retail Sales Manager (DRSM) will approve the same and will issue a Letter of Warning (as per Appendix 1 (b)).*
>
> *In such cases as there is no reconstitution being done hence no application fee/reconstitution fee may be charged and if required fresh dealership agreement may be executed."*

A perusal of the above would show that in an admitted case, where there has been deviation from the original constitution of the firm without the approval of the Indian Oil Corporation, the rectification of such deviation has been permitted. An undertaking has to be taken from the dealer, requesting for condoning the past accounts and confirming understanding of the provisions of agreement for compliance in future and the Divisional Retail Sales Manager can approve the same with a letter of warning. Explanation has also been given, according to which dealer is to provide complete details of the case alongwith an undertaking, requesting for condoning the past acts and conforming understanding of the provisions of the agreement for compliance in future. The process of the same is for ensuring that all past deviations have been rectified and is now in line with the approved set up, which should meet the guidelines of dealership agreement. Rider has also been imposed that in such case, where the Divisional Retail Sales Manager approves the same with issuance of a letter of warning, in such cases no reconstitution is done. Hence, no application fee/reconstitution fee may be charged and if required fresh dealership agreement may be executed.

All these indicate that the purpose of the policy is to give a chance to the erring dealer to bring the dealership within the conformity of the policy of the Indian Oil Corporation. The rectification, therefore, is with an intent to facilitate and help the dealers for correcting the wrongs/omissions/commissions, if any, committed by them. A perusal of Appendix 1(a) appended alongwith the policy further puts everything in the right perspective, which reads as under:-

> "*Undertaking to be given by the dealer(s) under Scenario 2.1 executed on Non judicial stamp paper of appropriate value as applicable in the concerned state.*
>
> *Appendix-1(a)*
>
> *UNDERTAKING*
>
> *This is to confirm that M/s ________, location, district, has been operating as a duly approved dealership of IOCL since ______. As per the dealership agreement executed with the Corporation on _________ (date of effect of dealership*

agreement) we are the approved proprietor/partners in the above mentioned dealership as per the following approved constitution:

(100% in case of proprietorship and specified ratio in case of partnership firm).

The constitution of the dealership was changed by me/us on ___________ without approval of the Corporation, however subsequently. I/we have restored the constitution of the firm to its last approved setup as per dealership agreement effected on __________.

Indian Oil Corporation Limited is requested to take cognizance of the above and condone the mistake committed by us and subsequent rectification/restoration of the earlier approved constitution (set-up) of the dealership.

I/we further confirm to have gone through and fully understood various clauses of the dealership agreement and would fully comply by the same in future.

I/we undertake to take full responsibility of our actions in the past and to indemnify the Corporation for any contingency/liability arising out of our actions in the past.

(Deponent)

Signatory(s) to earlier approved set up of the dealership."

Petitioner is ready and willing to dissolve the partnership and reconstitute it but it would not be possible for it to restore the constitution of the firm as the earlier partners would not be available now if the application is required to be submitted by the original partners.

This assertion of counsel for the petitioner is not as per the undertaking, which is to be given as one or more partners can move an application for giving an undertaking to this effect. Thereafter, the Indian Oil Corporation would proceed to take a decision on the basis of the said undertaking. It is clarified that if an application/undertaking is submitted by one of the partners of the originally constituted approved firm, the same will be considered as a valid undertaking on behalf of the firm. This observation has been made keeping in view the peculiar facts and circumstances of the present case. The application/undertaking given by the petitioner shall be considered and decided by the respondents as per the policy circulated dated 09.05.2013 within a period of three weeks from the date of submission of said application/undertaking.

The writ petition is disposed of with the above observations.

May 13, 2015 **(AUGUSTINE GEORGE MASIH)**
khurmi **JUDGE**