***IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 1st December, 2015**

+ **W.P.(C) 8752/2009 & CM No.5984/2009 (for stay)**

ISHWAR SINGH SHARMA ..... **Petitioner**

Through: Mr. Prasoon Kumar & Mr. K. Kumar, Advs.

Versus

BHARAT PETROLEUM CORPORATION LTD. & ANR. ..... **Respondents**

Through: Mr. Anil K. Batra & Mr. Prins Kumar, Advs. for R-1&2.
Mr. K.K. Rohatgi, Adv. for R-3 to 7.

CORAM:-
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the order dated 7th February, 2009 of the respondent No.2 Territory Manager (Retail), Delhi of the respondent No.1 Bharat Petroleum Corporation Ltd. (BPCL) rejecting the representation of the petitioner and the respondent No.3 Sh. Anand Swarup Bhardwaj. The petition also seeks a mandamus to the respondents No.1 &2 BPCL to permit the petitioner to continue to run the business as before from the Petrol Pump at village Bawana, Narela Road, Delhi.

2. The petition was entertained and vide order dated 6th May, 2009, the respondents No.1&2 BPCL was restrained from giving effect to the impugned order dated 7th February, 2009. The said interim order has continued till now. Pleadings have been completed. The counsels have been heard.

3. The position which emerges is as under:

(i) The petitioner and his father Sh. Ratan Singh, as partners of M/s Jai Narain & Company, were granted dealership, by the respondents No.1&2 BPCL, of the petrol pump aforesaid and a "Dispensing Pump and Selling Licence Agreement" was executed between the petitioner and his father as partners of M/s Jai Narain & Company on the one hand and the respondents No.1&2 BPCL on the other hand.

(ii) The said Sh. Ratan Singh, father of the petitioner, died on 19th September, 1988 leaving behind besides the petitioner, the respondents No.3 to 6 also as his natural heirs.

(iii) The petitioner, after the death of his father, was allowed by the respondents No.1&2 BPCL to continue running the subject petrol pump on a temporary basis.

(iv) Thereafter disputes and difference arose between the petitioner on the one hand and his other siblings on the other hand. It appears that at one stage the petitioner also entered into a Partnership Deed with the son of the respondent No.3 viz. Sh. Sidharth Bhardwaj (impleaded as respondent No.7) for purposes of the said dealership of the respondents No.1&2 BPCL.

(v) That in view of the said disputes, the respondents No.1&2 BPCL vide letter dated 12th April, 2008 to M/s Jai Narain & Company and to the petitioner terminated the dealership and, it is informed, also re-entered the petrol pump / dispensing station and since then BPCL itself has been running the said petrol pump / dispensing station.

(vi) The petitioner earlier filed W.P.(C) no.3051/2008 impugning the said termination and which writ petition was disposed of vide order dated 10th November, 2008 directing the respondents No.1&2 BPCL to consider the case of the petitioner in terms of the Guidelines / Policy dated 17th November, 2005 and to pass a reasoned order after giving a personal hearing to the petitioner and to all other interested parties. It was further directed that any decision so taken by the respondents No.1&2 BPCL shall be subject to the orders if any passed by a Civil Court which may adjudicate upon the disputes between the petitioner and his other siblings. The respondents No.1&2 BPCL were also restrained from creating any third party rights in the subject petrol pump.

4. It is in pursuance to the aforesaid directions in the earlier writ petition that the order dated 7th February, 2009 impugned in this petition came to be passed.

5. After hearing the counsels it is quite evident that today also the dispute between the petitioner and his siblings as to the entitlement to

continue as the dealer and / or with respect to the aforesaid partnership of M/s Jain Narain & Co. continues. On enquiry, I am however told that no civil proceedings in this regard have been instituted till date.

6. The counsel for the petitioner has pegged his case on the following Clause in the Agreement supra dated 13th December, 1975 entered into by the petitioner and his father as partners of M/s Jai Narain & Company with respondents No.1&2 BPCL described in the Agreement as "Company":

> "13.(a) Notwithstanding anything to the contrary herein contained the Company shall be at liberty to terminate this Agreement forthwith upon or at any time on the happening of any of the events following:-
>
> (b) On the death or retirement or permanent incapacity of any partner of the Licensees (if a firm) the Company may at its option at once determine this Agreement, and if the option shall not be exercised the Agreement shall continue as between the Company and the surviving or continuing partners of the Licensees. The legal representatives of the deceased partner or the retiring partner shall be liable for all obligations of the Licensees incurred up to the date of death or retirement, and shall not be entitled to claim from the company any portion of the security deposit. The death of a partner shall be notified by the Licensees to the Company in writing within 24 hours of such death."

and has contended that under the aforesaid clause the petitioner as the surviving partner is entitled to continue as the dealer of respondents No.1&2 BPCL. Attention is also invited to the following paragraphs of the Guidelines supra:

> "II. <u>Reconstitution within family</u>
>
> 1. The definition of family for the purpose of reconstitution of dealership distributorship shall be the same as defined in the guidelines for selection

> of dealer / distributor, which means that the 'family' will consist of the individual, his / her spouse and unmarried son(s) and unmarried daughter(s)."

and it is further argued that though the petitioner had attempted to join the respondent No.3 as a partner in the said business but the same was turned down by respondents No.1&2 BPCL on account of the wife of the respondent No.3 being a licensee of an LPG Depot under the respondents No.1&2 BPCL.

7. The counsel for the respondents No.3 to 7 has contended that the factum of the wife of the respondent No.3 being a licensee of respondents No.1&2 BPCL for an LPG Depot is not an embargo to the respondent No.3 joining the partnership of M/s Jai Narain & Company as a minority partner and it is argued that it is so admitted by respondents No.1&2 BPCL also.

8. However there is no challenge by the respondent No.3 of the said decision of respondents No.1&2 BPCL not to allow respondent No.3 to join the partnership of M/s Jai Narain & Company. The said aspect thus cannot be gone into in this petition. The respondents No.3 to 7 have in fact neither challenged the earlier communication dated 12th April, 2008 of termination of dealership nor the order dated 7th February, 2009 of rejection of the representation. On a reading of the pleadings it is also found that respondent No.3 had filed W.P.(C) No.1554/2005 in this regard but which was withdrawn on 28th February, 2005.

9. The only case to be considered is of the petitioner.

10. As per Section 42 (c) of the Partnership Act, 1932, subject to contract between the petitioners, a firm is dissolved by the death of a partner. I have asked the counsel for the petitioner, whether there is any provision in the Partnership Deed of M/s Jai Narain & Co. to the contrary.

11. Neither counsel is able to answer. No copy of the Partnership Deed has been placed on record by either of the parties.

12. The counsel for the petitioner seeks adjournment to look at and file the Partnership Deed.

13. The matter cannot be adjourned in such fashion. It may be noticed that the petitioner was not even willing to argue the matter when the same came up on 4th November, 2015 and by way of last opportunity, the matter was listed for today for hearing inasmuch as it was found that the petitioner, after obtaining the interim order, had been taking adjournments and keeping the petition alive for the lasts nearly six years. If adjournments are to be given in such fashion, no matter before the Courts will attain finality.

14. The ordinary presumption in law being that a partnership stands dissolved upon the death of a partner and there being nothing to show to the contrary, it has but to be held that the partnership firm of M/s Jai Narain & Co. whom BPCL had appointed as its dealer stood dissolved and hence ceased to exist. Once the partnership stands dissolved and the said presumption has not been rebutted, the question of the dealership of the partnership firm surviving does not arise. Moreover, the Clause of the dealership Agreement set out herein above itself entitles the respondents

No.1&2 BPCL to terminate the dealership upon the death of a partner and vests only a discretion in the respondents No.1&2 BPCL to continue with the surviving or continuing partners. The counsel for the petitioner has not been able to establish that petitioner was accepted as a dealer. Rather from his being allowed to continue as "Temporary Dealer" and to which he did not raise any objection, it is evident that he was not accepted or allowed to continue as a dealer. He, at that time did not urge that he was so entitled under the clause aforesaid of the Dealership Agreement.

15. The Guidelines relied upon by the counsel for the petitioner are with respect to re-constitution at the Letter of Intent stage. The said Guidelines would thus not be applicable. Rather, the Guidelines, as recorded in the impugned order dated 7th February, 2009, provide for continuance only with the consensus of all heirs of deceased petitioner. Clearly, here rather than consensus, there are disputes. Even otherwise, no fault can be found with the decision dated 7th February, 2009 of the respondents No.1&2 BPCL of rejecting the representation because the warring legal heirs of the deceased partner were unable to arrive at any unanimous proposal for continuing the partnership. In the last six years also when the petition has been pending before this Court, no consensus has been arrived at between the warring legal heirs. In these circumstances, no direction can be given to the respondents No.1&2 BPCL to continue the dealership with the petitioner when BPCL had not accepted the petitioner but the firm in which petitioner was the partner as its dealer.

16. There is thus no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

DECEMBER 01, 2015
'gsr'