

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1349 of 2010

IN

Civil Writ Jurisdiction Case No. 2147 of 2007

Smt. Rina Madhukar, W/O Shekhar Kumar Madhukar, R/O Mithanpura,
Jagdishpuri, Road No.-4, P.O.- Ramna, P.S.- Mithanpura, Distt.- Muzaffarpur

.... Appellant

Versus

1. The Union of India through the Senior Manager (R.S.), Indian Oil Corporation Ltd., Begusarai Sales Office, B-70, Barauni Refinery Township, Begusarai
2. The Deputy General Manager-cum-State Level Coordinator, Indian Oil Corporation Ltd. (MD), 5th Floor, Lok Nayak Jai Prakash Bhawan, Dak Bungalow Crossing, Patna
3. The State of Bihar through the District Magistrate, Madhubani
4. The Sub-Divisional Officer, Benipatti, Distt.- Madhubani

.... Respondents

Appearance :

For the Appellant : Mr. Amaresh Kumar Sinha, Advocate
For the Respondents : Mr. K.D. Chatterji, Sr. Advocate
Mr. Amlesh Kr. Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

C.A.V. JUDGMENT

(Per: HONOURABLE JUSTICE SMT. NILU AGRAWAL)

Date: 13-05-2016

This intra-court appeal arises out of order dated 23.04.2010, passed in C.W.J.C. No. 2147 of 2007, by which learned Single Judge has dismissed the writ petition holding that the petitioner-appellant had entered into a reconstitution of the partnership deed without prior written consent of the India Oil Corporation Ltd. (hereinafter referred to as the Corporation) and was thus in breach of Clause 47(iii) of the Petrol/ HSD Pump Dealer Agreement entered into between the appellant and two other partners with the Corporation.

2. Heard learned counsel for the appellant and Mr. Kali Das Chatterji, learned Senior Counsel appearing on behalf of the Corporation.

3. The facts of the case are not in dispute. The petitioner was one of the applicants for allotment of a retail outlet of products of the Corporation, pursuant to an advertisement made in newspaper "Hindustan" on 22.02.2004. Petitioner came to be selected and a letter of intent was issued in her favour, but, subsequently, the respondent-Corporation decided to cancel/ withdraw the letter of intent dated 09.04.2007 issued in favour of the appellant. The ground for such cancellation/ withdrawal was that the appellant was already one of the partners in an earlier dealership operating in the name of M/s. Chanda Automobiles Service Station located at Muzaffarpur. The dealership came into existence in the year 1997. An agreement was entered into between the respondent Corporation and the appellant and two other partners on 28.01.1997. There was also a partnership agreement entered into by the appellant along with two other partners on 20.09.1996 wherein Clause 9 stated that any change in the constitution of their partnership shall be with prior written approval of the Corporation and without such written prior consent no change would be effected. However, the appellant stated that in the year 2002 she decided to sever all ties with the erstwhile firm and



withdrew from the partnership. She applied in response to the advertisement issued by the Corporation in the year 2004. She was selected, letter of intent was issued but she received yet another communication stating therein that the same stands cancelled/ withdrawn as the appellant had committed breach of relationship clause 47(iii) of the Agreement entered into between the partners and the Corporation dated 28.01.1997. Clause 47(iii), which has been reproduced by the learned Single Judge, is again reproduced hereinbelow for ready reference :

“47. Except with the previous written consent of the Corporation :

(iii) The Dealer (if it be a firm or a co-operative society) shall not effect any change in its constitution whether in the identity of its partners/ members or in the share/ shares holding of any of them, or in the terms of the Deed of Partnership or of the Bye-laws as the case may be. In the event of the death of any partner/ member of a firm/ co-operative 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 may be made by the heirs of the deceased partner/ member.”

4. Counsel for the appellant submits that in the year 2002, she severed all ties with the earlier partnership/ dealership and



only two partners other than the appellant remained. Once she severed all ties, no relationship subsists either with the Corporation or with the erstwhile M/s. Chanda Automobiles Service Station. The appellant brought on record a series of communications, to show that information, to the said effect has been given to the respondent Corporation on many occasions in the year 2002 itself after reconstitution and severing of ties with earlier partnership.

5. However, learned counsel for the Corporation submits that the so called Agreement dated 12.10.2002 executed amongst the partners of M/s. Chanda Automobiles Service Station is not valid because reconstitution was done in breach of Clause 47(iii) of the Agreement, without any written consent from the Corporation and there was misgivings in this regard. Appellant cannot be permitted to be in more than one outlet of the Corporation.

6. In our view, a partnership deed is an agreement as between the partners for the adventure in the nature of business to be carried out. It binds the partners inter se and brings about a jural relationship inter se. The subsequent agreement as between the partnership firm and the Corporation for dealership binds the two i.e. the firm and the Corporation and is distinct and independent of the partnership agreement which binds the partners inter se and no other person or authority. Thus, merely because the partnership deed

permitted the appellant to retire at will that will bind the partners inter se, but, when it comes with regard to interaction with the Corporation, it is the agreement entered into between the Corporation and the partners that would operate, which necessitated prior consent before withdrawal. No consent was sought nor any consent granted. Therefore, so far as Corporation is concerned, appellant continued to be a partner in the said dealership though as between the partners she stood retired. This being the situation, in view of the relationship clause, the appellant was not entitled to be considered for the award of dealership. Thus, there was no error in the order of the learned Single Judge dated 23.04.2010, passed in C.W.J.C. No. 2147 of 2007 dismissing the writ petition. The order of the learned Single Judge calls for no interference. The appeal is dismissed without cost.

(Nilu Agrawal, J.)

Navaniti Prasad Singh, J.

(Navaniti Prasad Singh, J.)

Rajesh/-

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