

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6986 of 2015

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M/s Choudhary Agency at Nanpur, Post Office- Raipru, P.s - Nanpur, District sitamarhi, through one of its Partner Namely Randhir kumar, son of Ram Briksh Choudhary Resident of Nanpur, P.s Nanpur, District - Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar, the principal Secretary, Food & Consumer Protection Department , Government of Bihar, Patna
2. The Principal Secretary, Food & Consumer Protection Department , Government of Bihar, Patna
3. The Special Work Officer, Food & Consumer Protection Department , Government of Bihar, Patna
4. The District Magistrate, Sitamarhi.
5. The Sub-Divisional Officer Sitamarhi.
6. The District Supply Officer, Sitamarhi.
7. Indian Oil Corporation Ltd. through its Chairman, Indian Oil Bhawan , G9, Ali Yavar Jung Marg, Bandra East , Mumbai-400051.
8. The Chairman , Indian Oil Corporation Ltd. Indian Oil Bhawan , G9, Ali Yavar Jung Marg, Bandra East , Mumbai-400051.
9. The General Manager, Indian Oil Corporation Ltd. Bihar State Office, Loknaya Jaiprakash Bhawan, 5th, Floor, Dak Bunglow Chowk, Patna
10. The Sr. Divisional Retail Sales Manager, Indian Oil Corporation Ltd. 3A, Mauryalok complex, Dak Bunglow Road, Patna
11. The Sr. Division Retail Sales Manager (SDRSM), Muzaffarpur Divisional Office, Krishna 'complex, Adharaghat Road, Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeet Kumar, Advocate
For the State	:	Mr. Anil Kumar Upadhyay, SC-2 Mr. Naresh Prasad, AC to SC 2
For IOC	:	Mr. Anil Kr. Sinha, Mr. Amlesh Kr. Verma Mr. Abhimanyu Deo, Advocates

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA
ORAL ORDER

3 23-09-2016 Heard learned counsel for the petitioner and

learned counsels for the State and for the Indian Oil Corporation.

The petitioner seeks a direction on the



respondents to renew/grant the license to the petitioner-firm under the Bihar Trade Articles Licenses Unification Order and thereafter further direction upon the respondent No. 6, the District Supply Officer, Sitamarhi to allot/supply the quota of Kerosene oil to the petitioner.

The petitioner-firm was earlier the sole proprietorship of Ram Briksh Choudhary who was awarded wholesale Kerosene oil Dealership by the respondent-Indian Oil Corporation. He was also granted the license under the Unification Order on 17.1.2007 which was renewed from time to time and lastly in December, 2012 valid up to 31.12.2013. During his life time the said Ram Briksh Choudhary requested the Respondent-Corporation to incorporate the name of his two sons as partners of the agency, executing a fresh agreement with the newly constituted partnership firm with the same name, M/s. Choudhary Agency. The request was allowed and a fresh agreement with the reconstituted partnership was executed by the Corporation on 8.4.2013. Thereafter request was made to the respondent-authorities for inclusion of the names of the two sons in the licence in the light of the fresh agreement dated 8.2.2013 with the respondent-Corporation by letter dated 9.9.2013. On 20.9.2013 the said Ram Briksh Choudhary died for which the



information was given to the authorities of the respondent-Corporation as also the State and a temporary permission was granted by the respondents to the two sons of deceased Ram Briksh Choudhary for a period of three months. The District Supply Officer, Sitamarhi on the application of the petitioner sought guidelines from the Department which by its letter dated 29.11.2013 stated that reconstituted agency will not be granted the licence as per the opinion of the Law Department. Further, statement was made therein that the deceased had not requested to add the names of the new partners in the licence which was not the correct position. The heirs of the deceased also submitted an application on 29.12.2013 to the respondent-Corporation for reconstitution of the dealership which was allowed and a fresh agreement dated 31.7.2014 with the petitioner-firm was executed. The petitioner-firm as also the Corporation requested the respondent-authorities including the District Magistrate, Sitamarhi and the District Supply Officer, Sitamarhi in the matter but no action has been taken in this regard.

Learned counsel for the petitioner submits that the case of the petitioner is squarely covered by the judgment of this Court dated 21.6.2013 passed in CWJC No. 7956 of 2011 (Raj Shekhar Kumar & Ors. Vs. The State of Bihar & Ors.) in



which under similar circumstances this Court had held as follows:-

“The question would be whether on the death of the sole proprietor of the firm, his heirs and successors who apply for the same can be permitted to continue the firm with necessary alteration in the licence either as a proprietorship concern or as a partnership. It is evident that when a partnership firm is reconstituted with a new person entering into the said firm, he has all rights and liabilities as the earlier partners under the partnership law; the said firm is practically a new firm although the business may continue to be carried on in the name of the old firm. If such induction of an absolute stranger into a partnership firm is permissible in terms of clause-9, this Court is unable to understand as to how the immediate heirs and successors of the erstwhile licensee can be excluded from enjoying the same benefit of continuing the firm by getting their names added into the licence either as proprietor or partner provided there is no dispute within the family with regard to those person or persons being allowed to continue the business of the firm.”

Learned counsel for the State reiterates the stand



of the Department which is in the similar terms as taken in the aforesaid case of Raj Shekhar Kumar (supra).

On a consideration of the facts and circumstances of the case and the submissions of learned counsels for the parties, it is evident that in the present matter the case of the petitioner stands on an even better footing than that of Raj Shekhar Kumar. In the said case this Court had held that the sons of the deceased proprietor were entitled to have the licences. This Court clearly held that if the induction of an absolute stranger into a partnership firm is permissible in terms of clause-9, then this Court was unable to understand as to how the immediate heirs and successors of the erstwhile licensee can be excluded from enjoying the same benefit of continuing the firm by getting their names added into the licence either as proprietor or partner. In the said matter, the erstwhile proprietor of the firm had died, in the present matter the proprietorship itself has been reconstituted as a partnership during the life time of the earlier licensee for which necessary agreement had already been entered into with the respondent-Indian Oil Corporation and permission had already been sought from the licensing authority for such reconstitution and inclusion of the names of the heirs of erstwhile licensee as partners in the



licence.

In the said circumstances, the decision in Raj Shekhar Kumar (supra) clearly applies to the facts of the present matter and the petitioners would be entitled to have their names included in the licence as partners of the firm.

The writ application is, accordingly, allowed with the direction to the licensing authority to consider the application of the petitioner in the light of the decision of this Court in Raj Shekhar Kumar's case (supra) and the observations made hereinabove within a period of one month from the date of receipt/production of a copy of this order.

Upon necessary entries being made in the licence, the petitioner shall also be entitled to the supply of Kerosene oil in accordance with law.

(Ramesh Kumar Datta, J)

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