

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19283 of 2016

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1. M/s Sahu Agency, Wholesale Dealer Kerosene Oil, Indian Oil Corporation Ltd.
Chhoti Keshopur, Jamalpur, District-Munger.
 2. Prabhakar Kumar
 3. Sudhakar Kumar
- Both are sons of Late Parmanand Sah, resident of Jamalpur, District-Munger.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Food & Civil Supply and
Commerce Department, Government of Bihar, Patna.
2. The Principal Secretary, Food & Civil Supply and Commerce Department,
Government of Bihar, Patna.
3. The Collector-cum-District Magistrate, Munger.
4. The District Supply Officer, Munger.
5. The Indian Oil Corporation Ltd. through Sr. Divisional Manager, Block A,
Mauryalok Complex, 3rd Floor Dak Bunglow Road, Patna-1.
6. The Divisional Manager, (RS), Indian Oil Corporation, Barauni.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Adv. Mr. Dhananjaya Nath Tiwari, Adv.
For the State	:	Mr. Arvind Ujjwal , SC and M. N. Roy, AC to SC -4
For the I.O.C.		Mr. Anil Kr. Jha, Sr. Adv. Mr. Sanat Kumar Jha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 26-04-2017

Heard learned counsel for the petitioners and learned
counsel for the respondents.

In this case, the petitioners are challenging the order
contained in Memo No. 994 dated 29.09.2016 (Annexure-1) passed
by the Collector, Munger by which the petitioner's allotment of
Kerosene oil has been stopped in terms of Departmental letter



no. 8346 dated 26.10.2015 (Annexure-2) issued by the Secretary, Government of Bihar and letter no. 1381 dated 25.02.2016 (Annexure-3) issued by the Joint Secretary, Government of Bihar respectively.

The father of the petitioners was running a proprietorship firm in the name and style of M/s Sahu Agency Wholesale Dealer Kerosene Oil, having taken Wholesale Kerosene Oil dealership from the Indian Oil Corporation (herein after referred to as "I.O.C.") and subsequently entered into an agreement with the Indian Oil Corporation (I.O.C.) and was granted wholesale license, vide License No. 39 of 1985, by the District Magistrate, Munger. The father of the petitioners decided to convert the proprietorship to partnership firm, inducted Prabhakar Kumar (petitioner No. 2) and Sudhakar Kumar (petitioner No. 3) as partners of M/s Sahu Agency, Jamalpur, Munger accordingly converted the proprietorship firm as partnership firm. After re-constitution of the firm, a fresh agreement dated 14.02.2008 with the I.O.C., has been made and accordingly, an application was made by the father of petitioner nos. 2 and 3 before the District Magistrate, Munger for addition of their names in the license under the provisions of Bihar Trade Articles (Licenses Unification) Order, 1984.

The Collector, Munger has given due consideration to



the application, passed the order, included the name of petitioner nos. 2 and 3 on 18.07.2014 in the license and accordingly, the necessary formal license order was to be issued inserting the names of petitioner nos. 2 and 3 in the body of license but before issuance of the formal license, unfortunately, the father of the petitioners, Parmanand Sah died on 20.07.2014 whereafter the Collector, Munger placing reliance on two letters, has stopped the allotment of kerosene oil.

In the meantime, the Collector sought clarification from the Joint Secretary, Food and Supply Department, Government of Bihar for next step to be taken in the matter and till date, no instruction has been received by the Collector.

The counsel for the petitioners submits that it is a very hard case where the proprietorship firm has been converted into partnership and the partnership firm entered into an agreement with the I.O.C. and there is no objection of the I.O.C. that the Agency to run under the restructured partnership firm as father has converted as partnership firm from proprietorship firm. After restructure of the firm, a proper application was filed, the Collector took a decision, accordingly, passed the order in the file, which could not be carried out by issuance of formal license, but unfortunately, the father of petitioner nos. 2 and 3 died.



Clause 9 of the Unification Control Order 1984 deals induction of name of third person in license is as follows:-

9. Addition and alteration to licence.- The Licensing Authority [after giving due opportunity] may make necessary additions, deletions and alterations in the entries made in the licence relating to godown, place of business, names of partners, trade articles etc., on the application of the licensee”.

The aforesaid clause postulates that the proprietor can make an application for inducting even a stranger in the firm by the process of addition, alteration in the license.

In the present case, petitioner nos. 2 and 3 are own sons of the original proprietor, namely, Parmanand Sah, he converted the firm from proprietorship to partnership inducting the names of his son and entered into an agreement with I.O.C. and filed application for necessary alteration of license and the application for induction of petitioner nos. 2 and 3 was approved by the Collector under clause 9 of the Unification Control Order accordingly, it was merely issuance of corrected license which is a clerical job.

This issue has already been gone into by this Court in



two judgments, ie. in C.W.J.C. No. 3414 of 2016 (Satyadeo Tiwari and Ors. vs. The State of Bihar and Ors. and its analogous cases) and C.W.J.C. No. 7956 of 2011 (Raj Shekhar Kumar and Ors Vs. The State of Bihar and Ors.) where the question was raised whether on the death of the sole proprietor of the firm, his heirs and successors, who had applied, can be permitted to continue the firm with a necessary alteration in the license of firm either as proprietorship or partnership firm.

The Court, after discussing the scope and ambit of clause 9 of the Unification Control Order, held that the provision cannot be read in a restrictive manner it has to be given the full amplitude when the stranger can be allowed to be inducted, by making necessary alteration, it cannot be given restriction to deprive the close family members to be added in the license and has been held, in case of death of father, either in the proprietorship or partnership firm, in the event of filing of application, necessary alteration cannot be refused.

It will be relevant to quote relevant paragraph of the said judgment which runs 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. In the aforesaid view of the matter, in my view, the provision of clause 9 of the 1984 Order regarding addition, deletion and alteration in the entry made in the licence has full force in the facts and circumstances of the case and the licensing authority ought to have considered the application of the petitioners and not taken the stand that the same is not permissible”.

This case is better than those cases, which have been referred herein above where the facts were not that the proprietorship firm has also been converted into partnership, which was accepted by the I.O.C.. As the application was filed by the



father of petitioner nos. 2 and 3 to induct their names which was allowed by the Collector, mere formality of license was to be issued but in the meantime father died, it does not stand to the reason that when all the formalities have been completed, merely clerical job for fresh license was to be done, now they cannot be prevented to get fresh license with proper alteration.

In such view of the matter, this Court directs the Collector to issue a proper license in favour of petitioner nos. 2 and 3 and also grant allotment of the kerosene oil.

Let all the processes be completed within four weeks from the date of receipt/production of a copy of this order.

With the aforesaid observation/direction, this petition is allowed.

(Shivaji Pandey, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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