

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11974 of 2016

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1. Smt. Pawan Kumari Yadav Wife of Late Umesh Kumar, M/S Prakash Distributors, Sursand, Vill.- Diwari, PS. Sursand, Dist.- Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Food & Consumer Protection, Government of Bihar, Patna.
2. The Principal Secretary, Department of Food & Consumer Protection, Government of Bihar, Patna.
3. The Special Work Officer, Department of Food & Consumer Protection, Government of Bihar, Patna.
4. The District Magistrate, Sitamarhi.
5. The Sub- Divisional Officer, Sitamarhi.
6. The District Supply Officer, Sitamarhi.
7. The Director (Marketing) Bharat Petroleum Corporation Ltd. Bharat Bhawan, 4 & 6 Currimbhoy Road, Ballard Estate, Post Box. 688, Mumbai.
8. The Territory Manager (Retail), Muzaffarpur, Bharat Petroleum Corporation Ltd. A Govt. of India Enterprises, Muzaffarpur (Retail) Territory, Village- Sherpur, Near Narayanpur Anant Railway Station, NH-28, PO- MIT, Bela Muzaffarpur.- 842005.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Prasoon Sinha,
For the State	:	Mr. Raghwanand, GA II
For the Corporation	:	Mr. Madhuresh Prasad, Mr. Abhay Shanker.

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 09-03-2017

Heard the parties.

In the present writ petition, petitioner is challenging the order, as contained in memo no. 435 dated 17.3.2016, passed by the District Magistrate, Sitamarhi by which her application to recognize the reconstituted firm, grant of licence to the firm and allocate quota of Kerosene Oil has been rejected, as firm has been constituted after the demise of her husband, namely, late Umesh Kumar, who was the proprietor of M/s Prakash



Distributors, Sursand and was having a wholesale dealership of Kerosene Oil awarded by the Bharat Petroleum Corporation (hereinafter referred to as the Corporation).

Question has been raised in the present case that earlier M/S Prakash Distributors was a proprietorship firm but on the death of the sole proprietor it has been reconstituted as partnership firm and petitioner is partner of Prakash Distributors. Objection has been raised by the District Magistrate that on the death of sole proprietor the licence which was granted to him will automatically cease to operate and in terms of Clause 9 of the Bihar Trade Articles (Licenses Unification) Order, 1984 (hereinafter referred to as Unification Order, 1984) present newly constituted firm cannot be recognized as licence cannot be inherited by heirs and successors of the sole proprietor.

In the present case late Umesh Kumar was proprietor of M/s Prakash Distributors having wholesale dealership of Kerosene Oil was awarded by the respondent Corporation. He was accordingly issued licence by the District Authority under Unification Order, 1984. Due to death of husband of the petitioner on 6.1.2015 the supply of Kerosene Oil was stopped by the District Authority which causes hardship to the petitioner and family members. Subsequently the said proprietor firm was



reconstituted as partnership firm which was approved by the oil Company without any demur. After taking proper approval from Oil Company, the petitioner applied to the District Magistrate for grant of licence and for allocation of quota of Kerosene Oil to M/s Prakash Distributors annexing the letter of reconstitution of the firm and the dealership agreement with Oil Corporation, received in the office of the District Magistrate, Sitamarhi on 1.9.2015.

The District Magistrate after placing reliance on the provision of Unification Order, 1984 rejected the claim of the petitioner mentioning therein that Clause 9 of the Unification Order, 1984 does not envisage that on the death of the licensee, on reconstitution, licence would be granted to the new partnership firm which is under challenge before this Court.

This issue is no longer res integra, as this issue has come for consideration in the case of Raj Shekhar Kumar & others v. The State of Bihar & others (C.W.J.C. No.7956 of 2011) and in the case of M/s Satyadeo Tiwari and others v. The State of Bihar and others, reported in 2006(4) PLJR 817. The fact of this case is identical to those cases. In that case licence was granted to proprietorship firm, on the death of sole proprietor, the firm was converted into partnership firm which was accepted by the Corporation. In that case the District



Administration has refused to renew the licence on the ground of death of the sole licensee. This Court has interpreted Clause 9 of the Unification Order, 1984 permits induction of stranger to the family, in such situation immediate heir and successor of erstwhile would not be deprived from their entry and their name would be added, amended, or replaced in the licence, if otherwise read, will lead absurd situation, will not serve the purpose of the provision. It will be relevant to quote relevant portion of the order passed in C.W.J.C. No.7956 of 2011:

“The fact that the category of entries is not exhaustive but merely illustrative goes to show that the entries of a like nature are also amenable to addition, deletion and alteration by the licensing authority.

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 right 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”.

This Court is also of the same view that on the death of the father automatically heirs and successors will step into shoe. Licence was granted to the firm which was at relevant time in the nature of proprietorship firm, on death of sole proprietor firm was converted as partnership firm.

Learned counsel for the State submits that Clause 9 of the Unification Order, 1984 speaks that there can be a deletion and alteration in the name of licensee subject to the condition that application has been filed by the licensee, as has submitted that no such application has been filed by the sole proprietor and as such Clause 9 of the Unification Order, 1984 will not come in aid of present petitioner.

The interpretation which has been propounded by the State is not acceptable in view of the fact, in case of partnership firm, alteration and deletion in the licence is



acceptable, it does stand to reason that in the case proprietorship firm on the death of the sole proprietor situation would be otherwise, this Court is of the view that there is no any hurdle in getting substitution of the name of heirs and successors of the family members provided there should not be any dispute in the family.

In such view of the matter, this Court is of the view that this case is squarely covered by the aforesaid two judgments. The District Magistrate, Sitamarhi is directed to take action within one month from the date of receipt/production of a copy of this order. The impugned order dated 17.3.2016 is set aside. Writ of mandamus is issued to the District Magistrate, Sitamarhi for allotment of Kerosene Oil within a period of one month.

Accordingly this writ petition is allowed.

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.3.2017
Transmission Date	NA

(Shivaji Pandey, J)

