IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3198 of 2013

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1. M/S Lakshmi Mahto Ram Chandra Prasad, a partnership firm at Nariyal Bazar, Near Canara Bank, P.S.- Madhubani, Town and District- Madhubani and having its Branch Office at P.O.- Sakari, Pandaul, District- Madhubani through its partner namely Ramchandra Prasad, S/O Late Mahaveer Mahto, R/O Nariyal Bazar, Near Canara Bank, P.S.- Madhubani, town and district- Madhubani
2. Shiv Kumar Mahto S/O Late Lakshmi Mahto Nariyal Bazar, Near Canara Bank, P.S.- Madhubani, town and district- Madhubani

.... Petitioner/s

Versus

1. The Indian Oil Corporation Ltd. having its registered office at Mumbai through its Chairman Cum Managing Director
2. The General Manager, Indian Oil Corporation Ltd. Bihar State Office, Marketing Division, Eastern Region, Lok Nayak Bhawan, Dak Bunglow Road, P.S.- Kotwali, Distt.- Patna
3. The Divisional Manager, Indian Oil Corporation Marketing Division, Muzaffarpur
4. The Assistant Manager (Retail Sales) Indian Oil Cooperation, Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Senior Advocate
Mr. Uday Chandra Prasad, Advocate
Mr. Manoj Kumar, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, Advocate

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT

Date: 19 -05-2017

In the present writ application, the petitioner seeks a writ in the nature of certiorari for quashing a letter dated 29.11.2012 by which the representation filed by the petitioner for revival of SKO/LDO agencies has been rejected. A further direction to the respondents is sought for to restore the supply of kerosene oil to his licensed dealership unit which have remained under suspension by the impugned order

The brief facts as described in the present 'lis' is as follows:-

1. The petitioners firm was constituted in the year 1964 by seven parties and was granted a wholesale dealership of kerosene oil for Rajnagar Block and Madhubani.

2. After 4 to 5 years of constitution of the partnership, the petitioner's firm was granted wholesale dealership of Kerosene oil and retail petrol pump outlet for Sakari Madhubani.

3. On 22.10.1975 one of the partners Sakali Devi died and another partner namely, Sukdeo Mahato retired from the firm and as such vide letter dated 22.11.1976, the change of the

body of the firm reducing it to five partners, was communicated to the respondents.

4. During course of time, in the year 1983, the Respondents vide letter dated 10.01.1983 (Annexure-3) asked the petitioner to discharge the formalities related to reconstitution of the firm so that the same could be brought on the records of the respondents.

5. The petitioners carried out their entire obligation thereafter, the petitioners firms and its partners continued with the business operations alongwith the business after 1998.

6. On 27.06.1998, one of the partner Lakshmi Mahto died but the firm continued to function in terms of the clause 3 of the partnership deed, and to set the record straight, a deed incorporating the change was made on 28.06.1998 (Annexure-4) with the four partners namely Raj Kumar Singh (late) Saroveri Devi (late) Ramchandra Prasad (existing surviving Partner) and Shiv Kumar Mahato (petitioner no. 2 herein).

7. In this deed at Clause-4, the partners fairly incorporated that the firm would not stand dissolved with the death of any of the partners and would continue to operate with the surviving partners or the legal heirs/representatives of the deceased-

partners. This deed was communicated to the respondent corporation and the firm continued to operate without any obstruction from any corner during the period 1998-2002.

8. On 22.04.2002, Raj Kumar Sinha, another partner died followed by the Sarovari Devi on 29.01.2003 leaving the firm with only two surviving partners namely, Shiv Kumar Mahato and Ram Chandra Prasad. However, the petitioner's firm continued in terms of the clause 4 of the previous deed dated 28.06.1998.

9. The petitioner's firm duly intimated the respondent corporation about the change in the body of the firm and continued to function till the year 2007.

10. In the year 2007, the respondent corporation for the first time asked the petitioner to take steps for furnishing particulars with respect to the reconstitution of the firm for the purpose of maintaining official records of the respondent corporation which was duly responded by the petitioners vide their letter dated 16.08.2007 by which they requested the corporation to allow them three months time to prepare the necessary documents so that they could develop unanimity amongst the existing legal heirs of the deceased partners (Annexure-5). This letter of request was rejected by the respondent corporation on 22.08.2007 with a

direction to the petitioners to furnish documents at the earliest as per requirements for the purposes of reconstitution of the petitioner's firm.

11. The petitioners were however, not provided with the required formats as a result of which they were totally unaware regarding the expected requirements of the respondents with regard to the changes in the petitioner's firm.

12. The respondent Corporation vide its letter dated 12.09.2007 suspended the supply of products to all the four kerosene dealership outlets, after a few months and also suspended the supply of product to the petrol pump outlet at Sakari Madhubani. Hence, the present writ application.

13. Learned Senior Counsel Shri Y.V. Giri further submitted that the petitioner's firm had been running the business all along and maintaining the legal heirs and dependent family members after the sequential demise of the partners, out of the income of the joint family business being cooperated by the surviving partners but on the suspension of the license which was the only source of livelihood of the petitioners, there was internal chaos due to which the required particulars, specially, the no objection from all legal heirs could not be arranged and furnished to

the respondent corporation. However, the petitioner's firm vide letter dated 20.07.2010 requested the respondent to revoke the suspension of supply under Clause 3.5 of the revised policy/guidelines, which envisaged that in case of unwillingness of the legal heirs of the deceased partners, the reconstitution of the firm would be effected. This clause was also in tune with the clause -4 of the term referred to earlier.

14. The petitioners referred to Clause 3.5 of the revised guidelines/policy for reconstitution of the Indian Oil Company, Eastern Region dated 01.12.2008 provided that in cases of death of one of the partner(s), the partnership shall be reconstituted with the legal heir(s) of the deceased partner(s) and surviving partner(s). However, if there is no legal heir(s) or the legal heir(s) has expressed unwillingness, the dealerships/distributorship shall be reconstituted with the surviving partners.

15. Hence the petitioners had prayed vide letter date 20.07.2010 that in such a situation the reconstitution of the partnership firms with legal heirs of the deceased partners namely, Ram Chandra Sinha, was not possible, as the legal heirs of the deceased partners having expressed unwillingness, their partnership should continue with the surviving heirs and partners, and the

corporation may revoke the suspension of petroleum products of the point of SKO Agency, Madhubani and SKO/LDO Agency, Rajnagar.

16. The petitioner's representations dated 20.07.2010, 23.08.2011 and also 20.02.2012 by which the petitioners had made a request for resumption of supply before the office of the respondent General Manager, Patna did not meet with any success.

17. Consequently, the petitioners came before the High Court by filing CWJC NO 6532 of 2012 which was disposed of vide order dated 30.04.2012 by which the petitioners were directed to file a representation before the respondents to look into the grievance and pass a fresh order as per revised policy/guidelines for reconstitution of RO Dealership/LPG distributorship/SKO & LDO dealership (Annexure-11).

18. That in pursuant of Hon'ble High Court direction the petitioners gave detailed representation along with aforesaid order to Respondent nos. 2,3 and 4 requesting to provide the details of all such particulars documents etc. required for the purpose of reconstitution of firm and to secure the restoration of supply of products.

19. That on demand made by the respondent

authority the petitioners furnished all Family Member Certificate of the partners vide letter dated 21.07.2012.

20. That by representations dated 28.08.2012, 10.10.2012 and 22.11.2012 the petitioners demanded NOC pro forma from the respondent corporation but for reasons best known to itself the respondents did not furnish the NOC pro forma.

21. That instead of considering the grievance of the petitioners the respondent no. 2 vide letter dated 29.11.2012 bearing Ref. No. BSO/LMRP dated 29.11.2012, disallowed the claim of the petitioners for revival of the SKO/LDO agencies.

Constrained by the Act of the respondents the petitioners have now sought expeditious remedy under Section 226 of the constitution.

Learned Sr. Counsel appearing on behalf of the petitioner submits that though the petitioners' firm duly intimated the respondent corporation about the change in the texture of the body of the firm and continued his business till the year 2007 without any objection from the respondent corporation, it was only in the month of August, 2007, that certain documents were called for regarding reconstitution of the firm of the petitioners. The petitioners responded to the same vide their letter dated 16.08.2007 praying for three months time to fulfill all legal formalities for reconstitution of the firm (Annexure-5). However, despite the petitioners' letter dated 16.08.2007 and the affidavit of the petitioners dated 17.08.2007 requesting for time, the respondents vide letter dated 12.09.2007 suspended the license of the petitioners till the submissions of the requisite documents.

Learned senior counsel for the petitioners further submits that the respondent corporation suspended the supply products to all the four kerosene oil dealership points and also the supply of product of petrol pump outlet at Sakari Madhubani even though at no point of time did they provide the required format for the purpose of furnishing particulars so as to make the petitioners be made conscious of the particulars required to be furnished by them in support of the partnership firm.

The petitioners further submits that in view of the direction passed in CWJC No. 6532 of 2012 disposed of on 30.04.2012, they preferred a representation along with the aforesaid order requesting them to provide the details of all such particulars which were required to be furnished by the petitioners. In the said representation, the petitioner had also referred to the revised policy dated 01.12.2008 which provided for continuation of the firm after the death of the partners by the surviving partners also the legal heirs of the surviving partners. Nevertheless, the authorities have failed to consider the case and ignoring all the issues and contentions of the petitioners vide their order dated 29.11.2012 (Annexure-15) disallowed the representation stating that his dealership for the retail outlet of Ms. Laxmi Mahato, Ram Chandra Prasad, Sakri was terminated vide their letter dated MBO/RO dated 31.03.2010. In the impugned order dated 29.11.2012 the respondents have stated that the SKO/LDO agencies – Ms. Laxmi Mahto, Ramchandra Prasad, Sakri, (District Darbhanga), Sakri (District Madhubani), Rajnagar and Madhubani had not responded to several communication sent to them earlier. As such the respondent came to the finding that since the petitioners had not responded to their demand for documents for almost five years after suspension, the representation for revival for SKO/LDO agencies in question was being disallowed. It was further contended by the petitioner that such an action of the respondents was wholly unreasonable, arbitrary and warranted interference by this Court.

Learned counsel appearing on behalf of the respondent-Corporation however submits that the impugned order passed by the respondents are wholly legal and valid inasmuch as the retail outlet (Petrol pump, Sakkri) has already been terminated on

31.03.2010, whereas supplies to the petitioner SKO/LDO dealership have been suspended since September, 2007. It is submitted that in the wake of such facts and circumstances, the dealership cannot be revived due to their own fault.

Learned counsel for the Corporation further submits that the retail outlet of the petitioners' firm had remained inoperative since October, 2007 and the matter regarding reconstitution of firm was taken up by the corporation in several occasion including letter dated 08.09.2009. However, the petitioners vide their letter dated 23.09.2009 had requested for time of one month to furnish the requisite documents for reconstitution but having failed to do so despite several reminders the corporation vide letter dated 31.03.2010 terminated the said retail outlet after issuing a show cause notice dated 18.01.2010.

Referring to the policy guidelines of the Indian oil corporation for constitution, for resitment, change of location at LOI stages and revival of retail outlet dealership/SKO-LDO dealership, dated October, 9, 2006, Counsel for the respondents further submitted that as per Clause -4 of the guidelines for revival of dealership at Clause 4.5 it has been stated that dealerships inoperative from a date prior to 01.04.2002 will not be considered for revival. Further in Clause 4.6, it has been stated that dealership remaining inoperative for a period more than three years will not be revived. Thus, the petitioners' case for revival cannot be accepted, moreso, because the retail outlet has already been terminated.

Controverting the submission of the learned counsel appearing on behalf of the Indian oil corporation, learned senior counsel has submitted that not only is the impugned order contained in Annexure-15 bad for want of proper consideration in the light of the guidelines and the Clause 3. 5 for reconstitution for RO dealerships/LPG distributorship/ SKO-LDO dealership dated 1st December, 2008 the order of cancellation/termination dated 31.03.2010 which has been brought on record by the respondent for the first time in their present counter affidavit is wholly illegal and arbitrary as it has been issued in utter violation of the principles of natural justice. At no point of time was either notice dated 18.01.2010 issued or served on the petitioner nor was the termination order dated 31.03.2010 ever served on the petitioner or brought on record in the earlier writ application by the respondents. It is only in the present counter affidavit that the respondents have averted to the same and brought on record and have made it a condition for rejecting the representation of the petitioners vide Annexure-15. Thus, the impugned stands wholly vitiated as being violative of the Principles of Natural Justice and are fit to be set aside.

The question which arises for determination, thus, is whether the petitioner's firm could be said to be functional and operative during the period the documents called for were not provided. The answer to the said lies in Clause 4 of Annexurer -8 where the Respondents had been informed regarding the continuation of the partnership with the rest surviving members.

Having heard learned counsel for the petitioner and learned counsel for the respondent corporation and upon consideration of the materials available on record, it appears that in view of clause 3.5 of the policy dated 01.12.2008 the partnership firm was to continue upon death of some other partners by the remaining partners Clause 3.5 clearly states as follows:-

> ***"In cases of death of one of the partner(s), the partnership shall be reconstituted with the legal heir(s) of the deceased partner(s) and surviving partner(s). However, if there is no legal heir(s) or the legal heir(s) has expressed***

unwillingness, the dealership/distributorship shall be reconstituted with the surviving parters(s).

Thus, there was no question of the partnership firm having been rendered dysfunctional as vide annexure -8 dated 22.09.2010 the petitioner Ramchandra Prasad had already informed that the dealership be reconstituted with the surviving partners.

The other submission of the counsel for the petitioners that the termination order of the retail outlet stands vitiated for want of show cause notice also hold credence as the respondents had not been able to demonstrate as to whether any show cause notice had been given and duly served on the petitioners before issuance of Annexure- C which is order of termination dated 31.03.2010. Thus, the same having been issued in contravention of principles of *audi alteram partem*, the same stands vitiated and cannot be sustained. Accordingly, order dated 31.03.2010 contained in Annexure-C is quashed.

So far as the resumption of dealership of SKO/LDO is concerned, the question of revival of dealership can well be considered in view of the fact that the same has not been terminated till date and no material has brought forth by the corporation to show that the present policy does not permit revival/resumption. In fact, the policy of the year 2006 referred to during the course of argument stands negated as it stands superseded by the policy dated 01.12.2008, which alone would govern the petitioners in the given facts and circumstance of the present case.

In the result, the writ application is allowed. The impugned order as contained in Annexure-15 letter dated 29.11.2012 are set aside.

The Corporation is directed to resume the supply of the SKO/LDO outlets and also restore the retail outlet of the petitioners within a period of three months from today on receipt/production of a copy of this order.

(Anjana Mishra, J)

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AFR/NAFR	NAFR
CAV DATE	16.03.2017
Uploading Date	20.06.2017
Transmission Date	