

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.32847 of 2013

Sri Venkateswara Oil Agencies,
rep. by its Partner,
Mr.B.Sethuraman,
No.47, Old Police Lane,
GST Road, Madurantagam - 603 306.

... Petitioner

Vs.

1. Indian Oil Corporation Ltd.,
rep. by its Chief Divisional Retail Sales Manager,
Chennai Divisional Office,
No.500, Anna Salai, Chennai 600 018.

2. B.Punitha ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the 1st respondent to continue the supply of kerosene to the petitioner as per the Memorandum of Agreement dated 06.08.1987.

For Petitioner : Mr.M.Gnanasekar

For 1st Respondent : Mr.Mohammed Fayaz Ali

For 2nd Respondent : No appearance

ORDER

The petitioner has come up with this Writ Petition seeking a direction to the 1st respondent to continue supply of kerosene to him as per the Memorandum of Agreement, dated 06.08.1987.

2. According to the petitioner-Oil Agency, it is a partnership concern consisting of partners viz. (i) M.B.Balaji Venkateshwar (ii) B.Sethuraman and (iii) M.R.Bakthavachalu and it was appointed as a Kerosene dealer by the Indian Oil Corporation in Maduranthakam Taluk. The profits of the petitioner-Oil Agency after deducting the legitimate expenses was divided among the partners viz. (i) M.B.Balaji Venkateshwar (45%); (ii) M.B.Sethuraman (45%) and (iii) M.R.Bakthavachalu (10%), respectively. The Deed of Partnership, dated 03.07.1987

envisages the conditions that in case of death of any partner, the partnership shall not be dissolved by the survivors and they shall be at liberty to purchase the share of the deceased partner in the capital and assets of the business for such sum as may be agreed upon between the surviving partners and the legal representatives of the deceased partners.

3. It is further stated that one of the partners, viz. Balaji Venkateshwar expired on 22.09.2011 leaving behind his wife B.Punitha and one adopted daughter B.Rithika, apart from his parents. After his death, the existing partners mutually agreed in the meeting held on 13.06.2012 regarding the re-organization of partnership, as under:

(i) They will submit a joint application for re-organization;

(ii) M.R.Bakthavachalu wishes to retire and to transfer his 10% of his share to his son B.Sethuraman;

(iii) They have agreed to submit fresh proposal with 55% share to B.Sethuraman and 45% share to B.Punitha;

(iv) Re-organization proposal will be submitted latest by 30.06.2012.

4. Thereafter, the 2nd respondent executed a deed of relinquishment on 19.03.2012 and subsequently, the 1st respondent directed the petitioner to submit requisite details by incorporating the changes mentioned. On 17.10.2012, the petitioner was directed to register their firm with the Registrar of Companies. An application for reconstitution of the commissioned dealership was submitted along with the required details including the notarized affidavits from the petitioner and the 2nd respondent and subsequently, the 1st respondent, by a letter dated 16.04.2012 directed the petitioner to submit a modified re-organization proposal in view of the letter dated 13.03.2013.

5. The grievance of the petitioner is that since the 2nd respondent had withdrawn her consent directly to the 1st respondent, revised proposals were submitted to the 1st respondent and that the 2nd respondent is evading signing of documents. Since the 1st respondent stopped supply of kerosene from 01.11.2013 onwards, having no other effective alternative remedy, the petitioner is before this Court by way of the present Writ Petition.

6. The 1st respondent/IOC filed a counter affidavit and has stated that the 2nd respondent-Punitha is the wife of the deceased Balaji Venkateshwar and she was willing to continue the business in the place of her husband and all the partners including the 2nd respondent were called for a meeting by the

1st respondent/IOC to their Chennai Divisional Office. During the meeting, they accepted to submit a joint application for reconstitution with 55% share to the petitioner-Sethuraman and 45% share to the 2nd respondent-Punitha and the petitioner's father, M.R.Bakthavachalu, aged 72 years, expressed his willingness to retire. The minutes of the meeting were drawn and signed by the existing partners and the application for reconstitution of dealership dated 29.06.2012 was received by the 1st respondent on 09.07.2012.

7. It is further stated in the counter that the 1st respondent/IOC received another reconstitution application on 29.12.2011 from the existing partners for reconstituting the dealership with Bakthavatchalu with 10% share and the petitioner-Sethuraman with 90% share along with Relinquishment/Release Deed from the 2nd respondent-Punitha. While the subsequent proposal was under process, the 1st respondent/IOC received a letter dated 12.04.2012 from the 2nd respondent-Punitha stating that her signatures were obtained in the Relinquishment/Release Deed in duress and coercion and that she did not know the contents of the said Deed. Thereafter, once again, an interview was conducted for the petitioner-Sethuraman, his father Bakthavachalu and the 2nd respondent-Punitha on 10.08.2012 and to that effect, Minutes was signed by all the three agreeing to the terms and conditions raised during interview and the petitioner made all efforts to settle the dispute amicably. The proposed partnership deed along with the affidavits for existing and incoming partner duly vetted by the Corporation's Law Department was sent to all the three partners stating that they should submit the affidavits duly notarized within 15 days from the date of receipt of the letter. Despite sending reminders to the petitioner, documents were not submitted.

8. As the petitioner failed to comply with the requirement, the 1st respondent/IOC disconnected the supply of kerosene with effect from 01.11.2013 and thereafter, the petitioner gave an undertaking dated 11.11.2013 stating that he will complete all the formalities before 30.11.2013 and requested the 1st respondent/IOC to condone the delay. Therefore, based on the undertaking given by the petitioner, the 1st respondent/IOC resumed supply of kerosene from 11.11.2013. However, it is the contention of the 1st respondent/IOC that the petitioner, having undertaken to send the required documents for reconstitution under a joint meeting dated 10.08.2013, has approached this Court, burying the essential facts and has snatched an order of interim direction dated 29.11.2013 from this Court. As the act of the petitioner caused severe hardship and loss to them, the 1st respondent/IOC prayed dismissal of the Writ Petition.

9. Heard the learned counsel on either side and perused

the material documents available on record.

10. Facts stated supra are not in dispute. The grievance of the petitioner is that in spite of an interim order of this Court, the 1st respondent/IOC is abstaining from supplying kerosene to their Agency. However, it is the case of the 1st respondent/IOC that if the petitioner and the 2nd respondent appear before them with a re-constitution proposal and submit the requisite documents, continuance of supply of kerosene could be considered.

11. In the case on hand, one of the partners, viz. M.B.Balaji Venkateshwar expired and his wife B.Punitha has expressed her willingness to continue partnership in the place of her husband. Moreover, the father of the deceased partner had relinquished his 10% share to his other son, the petitioner herein. The only recourse available to the petitioner herein is that the 2nd respondent-Punitha has to appear along with him before the 1st respondent/IOC with the reconstitution proposal, to enable the 1st respondent/IOC extend the dealership to the petitioner.

12. At this stage, learned counsel appearing for the 2nd respondent submitted that he has already given change of vakalat for the 2nd respondent and this Court had directed the Registry to print the name of the 2nd respondent in the cause list and the same is printed. As there is no appearance for the 2nd respondent even today and as the matter is pending since 2013, this Court directs the petitioner as also the 2nd respondent to appear before the 1st respondent/IOC on 15.11.2017 with the re-constitution proposal and required documents. If the parties fail to appear before the 1st respondent/IOC on the specified date, it is open to the 1st respondent/IOC to record the same and decide the issue in accordance with law within one month from the date of appearance of the parties. Till such a decision is taken, the 1st respondent/IOC shall supply kerosene to the writ petitioner/Oil Agency based on the Memorandum of Agreement, dated 06.08.1987.

This Writ Petition is disposed of with the above direction. No costs. Consequently, connected M.P.No.1 of 2013 and M.P.Nos.1 and 2 of 2014 are closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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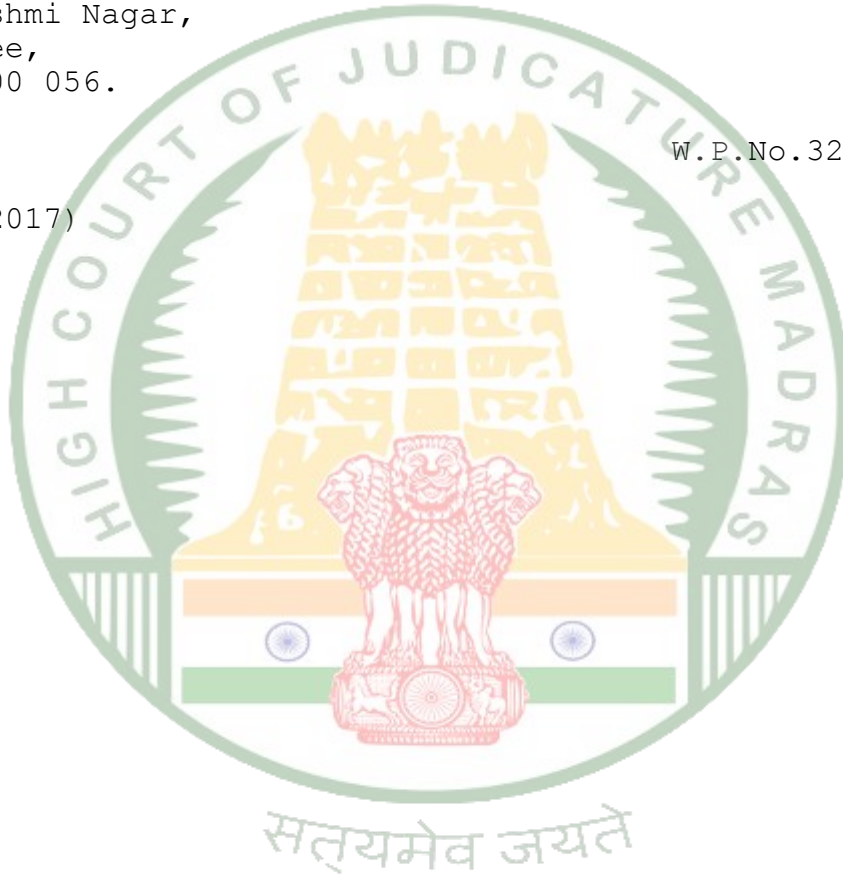
The Chief Divisional Retail Sales Manager,
Indian Oil Corporation Ltd.,
Chennai Divisional Office,
No.500, Anna Salai,
Chennai 600 018.

Copy To

B.Punitha,
W/o.Late M.B.Balaji Venkateswara,
No.3, Lakshmi Nagar,
Poonamallee,
Chennai 600 056.

W.P.No.32847 of 2013

MN(CO)
CA(24/10/2017)



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