

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.01.2017

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.33695 of 2013

M/s. Sri Venkatesa Traders

rep. By Smt.Vathsala, Partner,
Carrying on business at
37/2-D, Salem Main Road,
Salem District.

... Petitioner

Vs

Indian Oil Corporation Limited,
rep. By its Divisional Retail
Sale Manager,
Marketing Division,
Salem Divisional Office,
Kondalampatty,
Salem 636 010.

... Respondent

The writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of impugned letter in Ref.4104/45/13-14, dated 15.11.2013 issued by the respondent herein and quash the same, consequently direct the respondent to grant permission to reconstitute/reorganize the petitioner firm viz., M/s. Sri Venkatesa Traders based on the application dated 29.04.2013 within a stipulated time fixed by this Court.

For Petitioner : Mr.M.R.Jothimanian

For Respondent : Mr.Abdul Saleem

ORDER

This writ petition has been filed seeking a Writ of Certiorarified Mandamus to call for the records of impugned letter in Ref.4104/45/13-14, dated 15.11.2013, issued by the respondent herein and quash the same, consequently, direct the respondent to grant permission to reconstitute/reorganize the petitioner firm viz., M/s. Sri Venkatesa Traders based on the application dated 29.04.2013, within a stipulated time.

2.It is the case of the petitioner that the petitioner firm is a partnership concern consisting of the petitioner and her husband late G.Ravi as partners at present. The respondent has granted retail out let dealership for the petroleum products in the name and style of M/s.Sri Venkatesa Traders way back in the year 1972. At that time Mr.M.K.Srinivasan and Mr.M.K.Gopalan were the partners. The said M.K.Gopalan is the father-in-law of the petitioner herein and after his death, the petitioner, Vathsala has been inducted as a partner in the said firm in the year 1995, after obtaining necessary permission from the respondent Corporation. Thereafter, the Manager of the said partnership firm one Kannan, had created bogus documents and changed the partnership deed and on knowing this fact, the petitioner and her husband lodged a complaint to the police and also to the CTO concerned and the same are still pending. Whiles, the respondent issued a letter on 17.09.2008 suspending the retail petrol outlet for violation of condition and the petitioner challenged the same in W.P.No.23219 of 2008 and obtained an interim order of stay on 23.09.2008 and in continuous operation of the retail outlet as on today. Further, the aforesaid G.Ravi, husband of the petitioner died on 29.01.2013 and the petitioner took steps to reconstitute the partnership deed and had made an application to the respondent Corporation seeking permission for the same. The respondent Corporation, rejected the said application in Ref.No.4104/41/13-14 on 29.04.2013, by merely stating that W.P.No.23219 of 2008 is pending before the Court and hence, reconstitution cannot be granted. Aggrieved against the said rejection, the petitioner has preferred the present writ petition.

3. Learned counsel appearing for the respondent Corporation would submit, only after receipt of intimation from the Commercial Tax Officer, the respondent Corporation came to know about the amendment made by the partnership deed which is in violation of the dealership and hence, they have passed the order in Ref.No.SLMDO/R/3113, dated 17.09.2008 suspending the sales and supplies to the petitioner's firm. It is against that order, the petitioner had obtained an interim stay in W.P.No.23219 of 2008, till the outcome of the said writ petition, the petitioner's request for reconstitution cannot be granted and hence, the impugned order passed by the respondent is appropriate.

4. Learned counsel for the petitioner would submit that, the respondent Corporation without properly appreciating the facts had merely rejected the request of the petitioner for reconstitution. Earlier, One Kannan, who was working as a Manager of the Firm had forged the documents and amended the registration before the Commercial Tax Office and the petitioner

had preferred the writ petition and obtained an interim order. However, at present the petitioner's husband G.Ravi, who was one of the partner of the firm died and on account of his death, the petitioner made a proper application seeking reconstitution of the partnership firm before the respondent Corporation. It is further case of the petitioner that on coming know about the alleged amendment and the registration, immediately the petitioner had also lodged a complaint before the police for initiating action against the said Kannan and only just because the irregularity committed by the said Kannan, the petitioner had filed the W.P.No.23219 of 2008 and as such, had not committed any violation of policy conditions. Moreover, the petitioner had made the bonafide plea that on the death of her husband the partnership firm had to be reconstituted, the petitioner is ready and willing to abide by any conditions imposed by this Court for reconstitution of partnership firm.

5. In reply to the contention of the petitioner, learned counsel for the respondent would state that in the event of any orders being passed by this Court in the writ petition, the petitioner shall not claim any right, on permission being granted by the respondent Corporation, if there is any dispute with regard to reconstitution of partnership firm.

6. In the light of the aforesaid submission, this court is inclined to pass the following order:

(i) The impugned order passed by the respondent Corporation is set aside.

(ii) The respondent Corporation is directed to consider the application dated 29.04.2013 in accordance with law and pass orders as expeditiously as possible preferably within a period of six weeks from the date of receipt of a copy of the order subject to the condition to be imposed by the Corporation.

This writ petition is disposed off on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

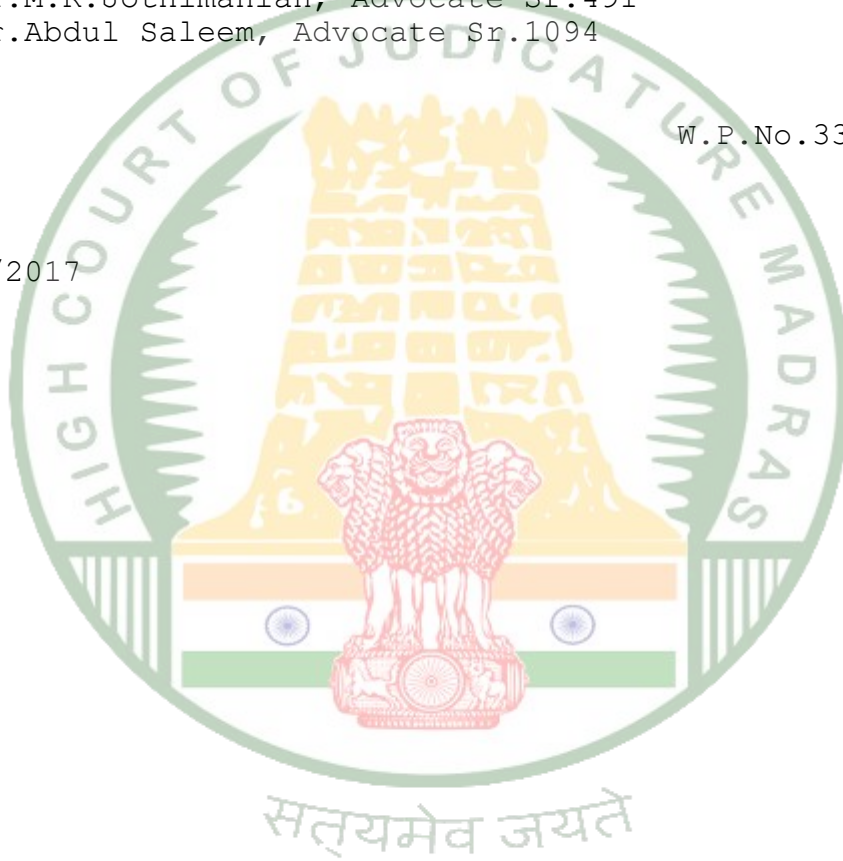
smi
To

The Divisional Retail Sale Manager,
Indian Oil Corporation Ltd.,
Marketing Division,
Salem Divisional Office,
Kondalampatty,
Salem 636 010.

+1cc to Mr.M.R.Jothimanian, Advocate Sr.491
+1cc to Mr.Abdul Saleem, Advocate Sr.1094

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