THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

WRIT PETITION No.12268 of 2007

ORDER:

This writ petition is filed questioning the order of the respondent, dated 28.05.2007.

2. Heard the learned Counsel appearing for the petitioner and the respondent.

3. The writ petitioner is a firm, the partners of which are septuagenarian couple. The firm took the dealership of distribution of LPG (cooking gas) in Eluru, West Godavari District, as long back as in the year 1964. At that time, it was the East Coast Gas Company, which was the principal distributor of gas of which the petitioner was distributor. Subsequently, Parel Investments and Trading Private Limited (for short "PITPL") became the successor of the East Coast Gas Company and the petitioner firm continued to be its agent. The management of PITPL was taken over by the Parel Investments and Trading Private Limited and Domestic Gas Private Limited (taking over management) Act 29 of 1979 by virtue of which Hindustan Petroleum Corporation Limited (for short "HPCL") became the custodian. As custodian of PITPL, an agreement was entered into by HPCL with the petitioner firm on 17.03.1995 appointing the petitioner as an agent for storage and sale of L.P.Gas for domestic, industrial and commercial use and consumption.

4. Clause 28 of the said agreement reads that the partners of the agent (if a firm) further agree that they shall not cause accept or bring about any change in constitution of the firm without obtaining prior consent in writing of the company. When the agreement was entered into

in between the petitioner and HPCL on 17.03.1995, the partners of the firm were aged about 62 years and 56 years.

5. Since both the partners of the firm became old, they wanted to induct a working partner in the firm for which letters were addressed continuously in the year 1999, 2000, 2001, 2003 and November, 2005 requesting the HPCL to permit them to change the constitution of the firm by inducting a working partner. Only on 29.12.2005, the respondent/Corporation gave a reply stating that the request of the firm cannot be entertained in view of the current guidelines. The copy of the guidelines was not furnished but the petitioner obtained the same by filing an application under the RTI Act. As per the guidelines issued by the Government of India, Ministry of Petroleum & Natural Gas, on 17.11.2005, the following guidelines are laid down:-

"III. <u>Reconstitution outside the family:</u>

Reconstitution outside the family can be done only under the following circumstances without any restriction on time period.

i) In case of the death of the sole dealer/distributor, in favour of the legal heir. However, if there is no legal heir(s) or the legal heir(s) has expressed unwillingness, the dealership/distributorship shall be terminated.

ii) In case of death of a partner in a partnership firm, in favour of the legal heir(s). However, if there is no legal heir (s) or the legal heir (s) has expressed unwillingness, it can be reconstituted with the remaining partner(s).

iii) In case of incapacitation due to serious illness/accident (to be certified by a Medical Board duly recognized by the Government) of dealers/distributors/partner, he/she may induct a minority partner.

iv) In case where the age of the dealer/distributor/partner is more than 60 years, he/she may induct a minority partner."

In view of the above guidelines, which clearly provides an opportunity to the petitioner firm to induct an outsider as a partner of the firm in view of the age of the existing partners, again request was made to the respondent/Corporation to accord permission but the same was once again refused and the respondent/Corporation have called upon the petitioner firm to enter into a fresh agreement with HPCL so as to consider their request.

6. According to the petitioner firm, since there was no need to enter into a fresh agreement with the HPCL in view of the Act passed by the Parliament, by and under which, the HPCL has taken over PITPL, the petitioner firm filed W.P.No.8070 of 2007 and by that time, the representation made by the petitioner firm dated 31.01.2007 was pending with the respondent/Corporation, therefore this Court by Order dated 19.04.2007 disposed of the writ petition directing the respondent/Corporation to pass appropriate orders on the representation made by the petitioner firm for according permission for reconstitution of the firm.

7. In pursuance to the said directions, the Chief Regional Manager-LPG, HPCL has passed the impugned order on 28.05.2007 rejecting the request of the petitioner firm with the following directions:-

> "(1) The petitioner is advised to sign the standard HPCL LPG Distributorship Agreement in order to secure entity and recognition as HPCL LPG Distributor and to abide by the terms and conditions thereof with immediate effect to regularize/ratification of LPG business with the HPCL;
>
> (2) Pursuant to the signing of the HPCL LPG Distributorship Agreement with the HPCL, the petitioner is at liberty to seek for consideration of reconstitution proposal to the HPCL;

> (3) Upon receipt of reconstitution proposal from the petitioner, the HPCL may consider such representation of reconstitution proposal if the petitioner as HPCL LPG Distributor meets the requirement of HPCL's reconstitution policy and guidelines framed thereunder;
> (4) Upon such decision of reconstitution by the HPCL, HPCL shall communicate the same in writing to the petitioner within reasonable stipulated period; and
> (5) In case the petitioner has not come forward to sign the standard HPCL LPG Distributorship Agreement to abide by the terms and conditions thereof within 15 days from the date of receipt of this reasoned Order, the HPCL is at liberty to terminate the implied contract with the petitioner for breach of violation of the terms and conditions thereof and under policy guidelines of the HPCL and as per law."

Aggrieved by the above said directions of the respondent, the present writ petition is filed.

8. Learned Counsel appearing for the petitioner submits that the impugned order calling upon the petitioner to enter into a fresh agreement with HPCL is arbitrary and cannot be sustained in view of the provisions of the Repeal Act, 2005 which clearly saves the agreement entered into between the parties under the provisions of Parel Investments and Trading Private Limited and Domestic Gas Private Limited (Taking over management) Act 29 of 1979 pursuant to which the petitioner has already entered into an agreement on 17.03.1995. It is submitted that the respondents cannot insist for a fresh agreement and they cannot say that the agreement dated 17.03.1995 is not binding on the respondent/Corporation. The impugned order is illegal and contrary to the provisions of the Repeal Act 14 of 2005. The agreement dated 17.03.1995 clearly provides for change of constitution of firm by inducting a minor partner from outside the family with the consent of the respondent/Corporation. Since the respondent/Corporation has

threatened the petitioner to enter into a fresh agreement with HPCL with the consequences of termination of the agency, the present writ petition is filed.

9. This Court vide interim orders dated 14.06.2007 directed the petitioner to enter into a fresh agreement with the respondent without prejudice to the rights of the petitioner firm which will be decided in the main writ petition. Pursuant to the said directions of this Court, the petitioner has entered into a fresh agreement with the respondent/Corporation without prejudice to his rights with regard to the challenge made by the petitioner in the writ petition.

10. Learned Counsel appearing for the respondent submits that merely because there is a saving clause in the Repeal Act 2005, the petitioner cannot refuse to enter into a fresh agreement with the respondent, that the said Repeal Act saves only the agreement entered, but to avail the benefits provided for the dealers who have entered into agreements with the respondent, the petitioner has to enter into a fresh agreement with the respondent. It is further submitted that since the agreement has been entered into pursuant to the interim directions of this Court, the writ petition is liable to be dismissed with a liberty to the respondent/Corporation to consider the request of the petitioner to permit change in the constitution of the partnership firm.

11. From the above facts about which there is absolutely no controversy, the point to be seen is as to whether there is need for the petitioner firm to enter into a fresh agreement with the respondent/Corporation which has now taken over the business of L.P.Gas.

12. As noticed from the above, right from 1964, the petitioner firm has been doing the business of distribution of L.P.Gas from the time when the business was owned by East Coast Gas Company. Subsequently, PITPL took over the same and by Act 14 of 2005, the PITPL made by the HPCL. Act 29 of 1979 is enacted taking over, in the public interest, of the management of the undertakings of the Parel Investments and Trading Private Limited and the Domestic Gas Private Limited, pending acquisition of those undertakings, with a view to maintaining a service essential to the life of the community, namely, the bottling, transporting, marketing and distribution of liquefied petroleum gas, and for matters connected therewith or incidental thereto. The Act was called 'the Parel Investments and Trading Private Limited and Domestic Gas Private Limited (Taking over of Management) Act, 1979 and it came into force with immediate effect from 26.05.1979.

13. Subsequently, the Parliament enacted the Parel Investments and Trading Private Limited and Domestic Gas Private Limited (Taking Over of Management) Repeal Act, 2005 on 31.03.2005 repealing the previous Act of 29 of 1979. Clause (2) of the said Act of the Parliament reads as under:-

> "**Repeal and savings**:- (1) The Parel Investments and Trading Private Limited and Domestic Gas Private Limited (Taking Over of Management) Act, 1979 (29 of 1979) is hereby repealed.
> (2) On the repeal of the Parel Investments and Trading Private Limited and Domestic Gas Private Limited (Taking Over of Management) Act, 1979 (29 of 1979), the management of the Parel Investments and Trading Private Limited and Domestic Gas Private Limited shall be vested and deemed to have been vested in the respective board of directors of the said Companies to be appointed after such repeal and possession of the assets of the said Companies relating to their business other than the business relating to liquefied petroleum gas and not taken

over by the Central Government by the Act so repealed shall be deemed to have been taken over by, and continued with, the said Companies through their respective board of directors, as may be appointed in accordance with the law for the time being in force.

(3) Notwithstanding such repeal and without prejudice to the provisions contained in the General Clauses Act, 1897 (10 of 1897) with respect to repeals, anything done or action taken including any agreement entered into under any provision of the Parel Investments and Trading Private Limited and Domestic Gas Private Limited (Taking Over of Management) Act, 1979 (29 of 1979), by the Central Government or the Custodian appointed by it shall continue to be in force and have effect as if this Act had not been passed."

14. In view of the above provision, more particularly, sub-clause (3) of Rule 2, it is manifest that all the agreements entered into under the Act 29 of 1979 shall be continued to be in force and have the effect as if Act 14 of 2005 has not been passed. The petitioner firm entered into agreement with the HPCL as a custodian of PITPL under the provisions of Act 29 of 1979 and even though the said Act has been repealed by Act 14 of 2005, all the agreements entered into under the previous Act were saved.

15. As already stated, the petitioner has entered into an agreement with the PITPL, custodian HPCL on 17.03.1995 and since this agreement with the HPCL as the custodian of PITPL is saved by the Repeal Act, the respondent/Corporation cannot insist the petitioner firm to enter into a fresh agreement with the respondent/Corporation. The agreement entered into by the petitioner on 17.03.1995, is clearly saved and the direction of the respondent is contrary to the said provisions and the threat held out by the Corporation that if no fresh agreement is entered into, the agreement be cancelled is clearly arbitrary, unfair and unjust.

16. I see no substance in the submission of the learned Counsel appearing for the respondent that since the petitioner firm has already entered into the agreement with the respondent/Corporation, the writ petition is liable to be dismissed as infructuous for the reason that the said act of the petitioner was pursuant to the interim directions, dated 14.06.2007, given by this Court and was without prejudice to his rights. Merely because the petitioner has already entered into an agreement with the respondent, the writ petition cannot be said to be infructuous.

17. In view of the foregoing discussion, it is held that the direction of the respondent/Corporation calling upon the petitioner to enter into a fresh agreement cannot be sustained and the same is liable to be set aside.

18. With regard to the request of the petitioner to induct an outsider into the firm in view of their age, by now, both the partners are aged about 80 years, the terms of the agreement, the guidelines issued by the competent authorities clearly provides that there is such an option to a distributor which has to be done with the consent of the Corporation. Therefore, since the request of the petitioner firm is squarely within the ambit of the above provision both in the agreement and also the prevailing guidelines, the respondent/Corporation is bound to consider the same and accord necessary permission to the petitioner.

19. In the result, the writ petition is allowed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

M.S.K.JAISWAL, J

Date: 7th November, 2017
Dsr/Smr