

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1738 of 2016

In
Civil Writ Jurisdiction Case No.2845 of 2015

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1. Akshay Kumar Agrawal, Son of Late Kameshwar Prasad, and
2. Kamal Kumar Agrawal, Son of Late Kameshwar Prasad, Both
Residents of Mohalla K.K Road, Lalbagh, P.S. Town, District
Darbhanga

... .. Appellants

Versus

1. Chairman, Bharat Petroleum Corporation Limited at Bharat Bhawan, Ward
No. 6 Currimbhoi Road, Ballard Estate Mumbai 400001.
2. Regional Manager (Retail), Eastern Region, Bharat Petroleum Corporation
Ltd at Kolkata.
3. State Coordinator Bihar, Bharat Petroleum Corporation Limited, Exhibition
Road, Patna.
4. Territory Manager (Retail), Muzaffarpur at Village: Sherpur (Near narayanpur
Amamt Railway Station) N.H. 28 Post MTI Bela Muzaffarpur.

... .. Respondents

Appearance :

For the Appellants	:	Mr. Lalit Kishore, Senior Advocate Mr. Anil Kumar Sinha, Advocate Mr. Kumar Ravish, Advocate Mr. Kashyap Kaushal, Advocate
For the Respondents	:	Mr. Sanjay Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 08-01-2018

Heard learned counsel for the parties.

Appeal has been preferred by the two appellants against the
judgment and order dated 18.03.2016 passed by the learned single
Judge.

The writ application was disposed off by the learned single
Judge which for all practical purposes has left the appellants in
lurch and that is why they have been compelled to prefer the



appeal seeking a decisive direction on the status as well as continuance as a dealer for the respondent Bharat Petroleum Corporation Limited.

It is a peculiar case in the sense that a cooperative society, in existence in the year 1960, was granted dealership for running a retail outlet by what was known as Burma Shell Oil and Distribution Company, a private company in existence then. In the year 1976, the Burma Shell Company was taken over by a legislation by the Government of India and all assets and liability of Burma Shell Company was vested in a new entity known as Bharat Petroleum Corporation Limited.

It seems that the retail outlet in question ran into bad times as the cooperative society virtually ran aground and were not in a position to run the retail outlet efficiently. Those days since it was one of the few retail outlets operating in the town of Laheriasarai in the district of Darbhanga even the District Administration was facing a lot of difficulty in procuring fuel especially during Emergency and during conduct of assembly or parliamentary elections. The then District Magistrate intervened with the Company and found volunteer in the present appellants who were willing to run the retail outlet on a regular basis. There is evidence to show that the retail outlet with all its infrastructure was handed



over to the appellants by the Company. This transpired in the year 1977. Since 1977, the outlet has been running regularly without any let and hindrance. The Company also has been doing business with these appellants. Though the retail outlet has been running in the name of DLCC, i.e. original cooperative society's name, but all financial transactions and dealings have been with the present appellants. This relationship has lasted 40 years. The problem has arisen because the Oil Ministry is now putting pressure on all the dealerships, their owners to put out their details in the public domain. When the Company started looking for the original dealership licence and agreements, these appellants are not in a position to provide the same and they are being threatened with stoppage of supplies.

Obviously, the original dealership agreement entered with the cooperative society in the year 1960 is proving to be elusive now after almost 57 years. Even the Company does not seem to have a copy thereof. Arm twisting and threatening the present appellants to produce one cannot beget them the results in the background in which they were inducted as operating agent of the dealership. Though there was a relationship created between the Company and the present appellants, but it never got formalized by way of a dealership agreement.



The submission of Mr. Lalit Kishore, learned Senior Counsel representing the appellants, is that they are willing to abide and go by whatever directions are issued by the Company so that they can be recognized as a dealer. They do not mind a change in the name of the dealership, but if there is a technicality coming in the way of the change of the dealership then the name can continue, but these appellants should be shown to be the dealers of the Company so that they can continue to operate the dealership and the problem which they are facing due to the firm stand taken by the Company can be defused.

A relationship virtually of a dealer has been allowed to be continued for almost 40 years. There are no original claimants from the cooperative society and the Company has never been approached after 1977. And in fact the Court is informed that the society is for all practical purposes in liquidation. If there are no claimant or objector from the cooperative society and for almost 40 years these appellants have been running the show for the Company and that too successfully and economically, in the peculiarity of the facts and circumstances, the relationship ought to be formalized.

Learned counsel representing the Company submits that the current guidelines and the policy of the Company as well as the



Oil Ministry does not permit them to go for a new dealership agreement or create a dealership in favour of these appellants and, therefore, they are prevented from granting any kind of status to these appellants.

What is being urged at the bar on behalf of the Company is a typical bureaucratic kind of response. They have been in relationship with the present appellants for 40 years, only the formalization of that dealership by documenting is required. The facts which has been taken note of by the Court indicates that it is a fit case where equity runs in favour of these appellants and 40 long years of association with the Company does create some kind of a right for consideration for formalizing and recognizing them as a dealer of the Company. The retail outlet is still running. The Company is only threatening them with stoppage of supplies. If the relationship has been cosy for 40 years, it is time that it is formalized as a legal relationship instead of a working/living relationship. Therefore, the Court directs the respondent Company to execute a dealership agreement with the present appellants and put the controversy at rest.

The appeal is allowed in terms of the above.



Before parting the Court is not unmindful of the fact that the order passed above is in the uniqueness of the facts of this case and does not create a precedent for a referable point.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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