IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.Nos.22207 of 2011

Sri Balaji Enterprises,
rep. by its Managing Partner .. Petitioner

Vs

Bharath Petroleum Corporation Ltd.,
rep. by its Territory Manager (Retail),
Irugur, Ravathur P.O.,
Coimbatore-641 103. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records of the respondent made under Ref.CBE.TO.RO (SRI BALAJI)010(i)/05/11 dated 7.9.2011 and quash the same and direct the respondent to approve the reconstitution of the firm as submitted under the application dated 2.7.2010 or application dated 8.11.2010.

For Petitioner : Mr.M.Palani

For Respondents : Mr.O.R.Santhanakrishnan

ORDER

The petitioner has come forward with the present Writ Petition, seeking the following:

> "Issue of Writ of Certiorarified Mandamus, to call for the records of the respondent made under Ref.CBE.TO.RO (SRI BALAJI)010(i) /05/11 dated 7.9.2011 and quash the same and direct the respondent to approve the reconstitution of the firm as submitted under the application dated 2.7.2010 or application dated 8.11.2010."

2. The petitioner is a partnership firm applied for grant of licence for dealership in carrying out retail outlet in petroleum products to the respondent Corporation. Originally when an application was made in 1974, it was Burmah Shell

company, which was subsequently taken over by the respondent Corporation. The licence was granted in terms of the application submitted by the petitioner firm on 29.8.1974. Ever since the petitioner was running and carrying on the dealership business without any complaints whatsoever. In 1976, Burma Shell was taken over by the Government of India under the Acquisition Act and thereafter it was run by the respondent Corporation. However, the dealership was not disturbed and the petitioner firm continued with their licence to carry on their business. Originally the firm had two partners namely, Mr.A.M.V.Jayaraman and his sister Mrs.O.Narmadha in 1975. But the partnership has undergone a change in 1996 by inducting two more partners, namely, son of Mrs.O.Narmada, Mr.O.Ravi and daughter of Jayaraman, Mrs.K.Sasikala. From 1996, having four partners but functioning under the same name and style as M/s.Sri Balaji Enterprises. According to the petitioner firm, for running a dealership firm, they fulfilled all the conditions and for use of business, a vast area of land measuring 14,685 sq.ft. was earmarked by the firm. The respondent after being satisfied with the conditions complied with by the petitioner firm, decided to continue the dealership and also entered into an agreement with the petitioner firm on 18.10.2012. Several conditions were prescribed under the agreement between the petitioner firm and the respondent Corporation for continuing the dealership and one of the conditions that was agreed upon by the parties was, that the constitution of the licensees, firm shall not undergo any change and shall not admit new members as partners and not to allow any partner to withdraw from the partnership without obtaining previous consent in writing from the Company. According to the respondent Corporation, in case, there is induction of any partner, the permission has to be obtained.

3. While matters stood thus, one of the partners, namely, Mrs. O Narmada died on 9.4.2009 and the death of the partner was duly informed to the respondent Corporation. On the death of Mrs.O.Narmada, her daughter in law Mrs.R.Hemapriya was inducted in her place as partner and partnership was reconstituted which fact was also informed to the Registrar of Firms. Thereafter, by application dated 2.7.2010, the firm requested the respondent to approve the reconstitution of the firm and permit the firm to continue to carry on its business under the same name and style of M/s.Sri Balaji Enterprises with the following partners, namely, Mr.A.M.V.Jayaraman, Mr.O.Ravi, Mrs.K.Sasikala and Mrs.R.Hemapriya. At this, the respondent Corporation informed the petitioners by their letter dated 24.4.2011 to obtain No Objection Certificate (NOC) from other legal heirs of the deceased for inducting R.Hemapriya as one of the partners in the place of deceased Narmada. The deceased Narmada had left behind her three sons and two daughters and one daughter-in-law

of her predeceased son. After the death of Mrs.O.Narmadha, a partition suit was filed before the Additional District Judge/Fast Track Court No.IV, Bhavani by one of her sons, namely, Mr.O.Jagadeesan in O.S.No.12 of 2007. The said suit came to be decreed on the basis of terms of compromise entered into by the parties, namely, the legal heirs of the deceased O.Narmada. A decree was passed on 8.10.2009 and as per the terms of the decree, the Petroleum products dealership was allotted to the firm comprising the above mentioned four partners. These partners were arrayed as defendants in the suit including the firm. However despite the compromise decree which recognized the reconstituted partnership, the respondent Corporation insisted the petitioner partnership firm to get NOC from all other surviving legal heirs. At this, the respondent Corporation was informed that in view of the compromise decree, there was no need to submit any NOC as such compromise decree which has become final, is binding on all the parties. In spite of the above facts, the respondent Corporation had issued a communication on 7.9.2011 stating that the compromise decree cannot be considered in lieu of required NOC in the form as provided by the respondent Corporation from the other legal heirs and the existing partners were directed to forward NOC from other legal heirs in the required firm on or before 28.9.2011, failing which, the dealership shall be deemed to have come to an end on 23.09.2011. This communication from the respondent is put to challenge in the writ petition.

4. Mr.M.Palani, learned counsel appearing for the petitioner would submit that the insistence by the respondent Corporation to get NOC from other legal heirs of the deceased Narmada, cannot be countenanced in law since the compromise decree dated 8.10.2009 is very clear and in terms of the compromise decree, the petroleum products dealership shall be run by four partners (reconstituted partnership). Once the compromise decree is binding on the parties, the question of obtaining NOC does not arise at all and such procedure appears to be a redundant exercise. The learned counsel would submit that a compromise decree has higher status than the NOC in terms of its legal validity. Therefore, the respondent Corporation cannot insist upon NOC. According to him, in the normal circumstances, the insistence for NOC may be followed in terms of the Corporation Regulations and guidelines, but the demand for NOC in the face of the compromise decree, is uncalled for particularly the interest of the petitioner against any objection from other legal heirs is always secured by virtue of the Civil Court decree.

5. Per contra, Mr.O.R.Santhanakrishnan, learned counsel appearing for the respondent Corporation would vehemently oppose the contentions put forth on behalf of the petitioner. He would

draw the attention of this Court to the new Guidelines for Reconstitution of Retail Outlet Dealership, which are applicable to the case on hand. He would particularly draw the attention of this Court to paragraph 3 of the said Guidelines, which provides reconstitution of Commissioned dealerships/ distributorships and in sub para 3.5, it was provided as under :

> "3.5. 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 partner(s)."

Though he would submit that reconstitution of partnership is permissible under certain exigencies, however, for such reconstitution, NOC has to be obtained from other legal heirs. According to the learned counsel, this clause has to be read in conjunction with annexure to be attached for application for Reconstitution of Commissioned dealerships/distributorships, wherein, Columns 4 and 5 are provided as under:

> "4. In case of reconstitution involving legal heir due to the death of the proprietor/partner, the legal heir certificate and NOC from other legal heirs.
>
> "5. NOC from other legal heirs in case of reconstitution where the other legal heirs of the deceased partner are not interested in becoming partners."

6. According to the learned counsel, the Corporation is bound by its guidelines and there cannot be any slightest deviation from the guidelines. According to the learned counsel for the Corporation, the compromise decree cannot be substituted for NOC to be obtained from the other legal heirs and in any event, the compromise decree is not binding on the part of the Corporation, since the Corporation was not a party to the suit proceedings. According to the learned counsel, it is always open to the firm to obtain NOC from the other legal heirs who are not interested in joining the petitioner firm and in such event, the firm can be in a position to fulfill the obligation cast upon them under the guidelines issued by the Corporation. According to the learned counsel, merely because there was a compromise decree, the same cannot be a document acceptable since the Corporation has nowhere in the guidelines provided such substitution. In the said circumstances, the learned counsel would submit that unless NOC obtained by the petitioner firm from the other surviving legal heirs, it cannot continue its business and therefore, the impugned order passed by the

Corporation ought to be given effect to.

7. The learned counsel appearing for the petitioners at this would submit that once a compromise decree was passed and the properties were partitioned among the legal heirs, it would not be desirable and possible to obtain NOC from the other legal heirs. But in any event, the legal heirs are bound by the compromise decree and the Corporation was not made as party in the suit proceedings because the suit was filed for partition among the legal heirs. The Corporation was neither necessary nor proper party. The learned counsel appearing for the petitioners would also rely upon a decision of the Hon'ble Supreme Court reported in "(2014) 16 SCC 749 (Bharat Petroleum Corporation Limited versus B.M.Motors and others)", wherein, the learned counsel would draw the attention of this Court to the observation made in similar circumstances by the Hon'ble Supreme Court in para 11, which is extracted as under:

> "11. ..... Be that as it may the order passed by the High Court is, in our opinion, just and equitable inasmuch as, while it had protected the interests of the retiring partners-respondents 2 and 3, it had ensured that they do not frustrate either the agreement by which they had surrendered their rights in the profit and losses of the partnership or interfere with the smooth running of the business by the continuing partners, in breach of the decree passed in their favour. The arrangement arrived at between the partners may not have been disclosed to the petitioner corporation but such non- disclosure should not be allowed to result in termination of the agency especially when one of the parties is acting unreasonably or arm-twisting the other party, to extract an extra pound of flesh from it. The petitioner-corporation would in such a case be expected as a public sector entity, to act fairly and objectively to prevent one party taking undeserved advantage over the other on technical or procedural grounds. There is no gain saying that while considering reconstitution of the partnership the petitioner-corporation shall be free to stipulate conditions that would protect its business interest, goodwill and reputation among its consumers."

The learned counsel, would therefore, submit that such insistence on the part of the Corporation is unreasonable and arbitrary.

9. This Court has considered the rival submissions put forth

by the respective learned counsels and perused the materials and pleadings placed on record.

10. Although the policy guidelines provide for obtaining NOC from the legal heirs in case of reconstitution of a partnership as referred to by the learned counsel for the respondent Corporation, the policy guidelines cannot be relied upon blindly that too in isolation. The basis for issuance of such guidelines is that the Corporation should not be confronted with any objections from the other legal heirs who were left out from the partnership in the event of reconstitution of the partnership. In this case, as contended by the learned counsel for the petitioners, the compromise decree has full force of law and binding upon the parties. Once the decree is binding upon the parties, the interest of the Corporation is well secured against any possible objection from other partners who are not part of the partnership firm. As rightly contended by the learned counsel for the petitioners, the compromise decree is more valuable in law than mere NOC from the other partners. Moreover, the partnership firm merely being reconstituted by inducting one of the legal heirs in the place of the mother-in-law and the firm as such did not change the name and style and business operation and it remained same. The insistence by the Corporation in the teeth of compromise decree dated 8.10.2009 is not called for since the policy guidelines cannot be mechanically and blindly insisted upon to be followed. No matter what documents are submitted by the partnership firm in reconstitution of the partnership firm, such pedantic approach by the respondent Corporation appears to be per se unreasonable, unjust and irrational, particularly in view of the fact that the petitioner firm seems to be successfully running dealership since 1976. In the absence of any objections as on date and in the absence of valid objections from any other legal heirs, this Court does not see any justification on the part of the respondent Corporation to compel the existing reconstituted partnership to obtain NOC from the other legal heirs whether it is their liking or not, the compromise decree is a decree passed by the competent Court which cannot be wished away or turned away by the Corporation while reconstituting the partnership firm. The Corporation while taking a decision in this regard, is expected to adopt a plausible and pragmatic approach and not adhere to meaningless rigidity, after all, the ultimate aim of the Corporation is to secure interest against needless objections from the legal heirs who are not joined the partnership firm. In this case, this Court is of the considered view that the interest of the Corporation against such objections from other legal heirs, is fully secured in view of the compromise decree.

11. In the above circumstances, this Court does not see any

legal impediment for the Corporation to accept the compromise decree passed in O.S.No.12 of 2007 in the place of NOC. In the said circumstances, the impugned communication dated 7.9.2011 of the respondent insisting production of NOC by the petitioner firm from the other legal heirs, is unwarranted and uncalled for and the same cannot be countenanced both in law and on facts. Hence, the impugned proceedings in Ref.CBE.TO.RO (SRI BALAJI) 0/10(i)/05/11 is hereby quashed and consequently, the respondent is directed to approve the reconstitution of the petitioner firm as sought for without insisting upon NOC.

12. Accordingly, the Writ Petition is allowed. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

suk

To

Bharath Petroleum Corporation Ltd.,
rep. by its Territory Manager (Retail),
Irugur, Ravathur P.O.,
Coimbatore-641 103.

+1cc to Mr.O.R.Santhana Krishnan, Advocate, S.R.No. 43517
+1cc to Mr.M.Palani, Advocate, S.R.No. 43091

W.P.No.22207 of 2011

EV(CO)
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