

HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

WRIT PETITION No.20554 of 2007

ORDER:

In this writ petition, under Article 226 of the Constitution of India, the petitioner is seeking verbatim the following relief:

“...to issue an order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondents in not transferring the Retail Outlet Dealership of petitioner's late daughter on to her name as illegal, arbitrary and against the principles of natural justice and consequently direct the respondents herein to transfer the Retail Outlet Dealership of Petrol Pump under the name and style of “Sri Bhagwan Satya Sai Filling Station” situated at the property bearing No: 16-11-T/7/1, in Sy. No: 80 (old) 167 (New), Teegalaguda (V) Main Road, Moosarambagh Bridge, Amberpet, Hyderabad on to the petitioners name and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

2. I have heard the submission of Sri V. Jithender Rao, learned counsel for the petitioner, and of Sri Srikanth Kaveti, learned Standing Counsel appearing for the respondents.

3. I have perused the material record including the reply affidavit.

4. The case of the writ petitioner is this: - ‘She is the mother of late Sunitha Gande, who was physically handicapped, and whose disability was certified at 95%. Her said daughter was allotted, under the quota for physically handicapped persons, a Retail Petroleum Outlet at Amberpet, Hyderabad. The said allotment was made by a Letter of Intent, dated 18.09.1993, addressed to her daughter by the Deputy General Manager (Sales) of the Indian Oil Corporation (IOC). Subsequently, the fourth respondent - Senior Divisional Manager, IOC, issued letter No.SDO/R/937, dated

13.04.1998. By the said letter, the Letter of Intent issued in favour of the daughter of the writ petitioner was cancelled on the ground that the site proposed for the Retail Outlet was not suitable. Questioning the said action, the daughter of the writ petitioner filed W.P.No.29554 of 1998. During the pendency of the said writ petition, the respondents issued fresh notification calling for applications for allotment of Retail Outlets in the same area under the quota reserved for physically handicapped candidates. This Court, by order dated 27.10.1999, allowed the said writ petition, quashed the fresh notification and permitted the daughter of the writ petitioner to establish a Retail Outlet in the site selected by her. The daughter of the writ petitioner took a site on lease on a monthly rent of Rs.10,000/- for a period of 15 years commencing from 31.01.2000, and entered into an agreement with the land owner and started a Retail Outlet under the name and style of "Sri Bhagwan Satya Sai Filling Station" at the premises bearing H.No.16-11-16/T/7/1, Moosarambagh Main Road, Hyderabad. Subsequently, the marriage of the daughter of the writ petitioner was performed with one S. Sudhakar, on 29.10.2000. The daughter of the petitioner, who was pregnant, was neglected by her husband. Hence, she was staying with the writ petitioner. During the eighth month pregnancy, the petitioner's daughter died, on 28.06.2001, due to health complications. The writ petitioner's daughter executed a Will, on 23.06.2000, and bequeathed to the petitioner, all her properties including the Retail Outlet allotted by the respondents. Thereafter, the writ petitioner made several representations requesting the respondents to transfer the Retail Outlet Dealership in her name. However, the respondents did not

consider the said request of the writ petitioner. Therefore, she filed W.P.No.20949 of 2003 seeking a direction to the respondents to transfer the dealership of Petrol Bunk of her daughter in her favour. The said writ petition was disposed of by an order, dated 18.11.2004. The operative portion of the said order reads as under:

“It is very plain that in the case of death of allottee (dealer), the dealership can be transferred to the legal heir including a legal heir in whose favour the rights in the licence are bequeathed by the deceased allottee in the Will. Therefore, there cannot be any objection for the competent authority to consider the request of the petitioner based on the Will. Even if rival claim is put-forth for the dealership, it is always open for the competent authority to consider such rival claim as well as the Will produced by the petitioner and decide the matter.

Therefore, the writ petition is disposed of in the above terms and this exercise may be completed within a period of six weeks from today. There shall be no order as to costs.”

While so, the husband of the writ petitioner's daughter filed W.A.No.149 of 2005 challenging the order passed in the aforestated writ petition. The Writ Appeal was disposed of, on 25.01.2005, with the observation that the competent authority may not take the order of the learned Single Judge as if the Will propounded by the writ petitioner stands proved and that in case the Will is set up by any person and any objection is raised about its validity or legality thereof, it will be for the person propounding the Will to establish the same in accordance with law. Meanwhile, the writ petitioner and her son-in-law entered into a compromise in the matter. O.P.No.2005 of 2004, which was filed by the writ petitioner on the file of the learned II Additional Chief Judge, City

Civil Court, Hyderabad, for grant of Probate Certificate in respect of the Will, dated 23.06.2001, of her daughter was accordingly compromised in view of the settlement arrived at between the writ petitioner and her son-in-law and her son-in-law accordingly filed a Memo reporting 'No Objection' to grant Probate Certificate in favour of the writ petitioner. The said OP was hence, allowed by an order, dated 19.04.2006, and Probate/Succession Certificate was issued to the writ petitioner by the said Court. Thereafter, the writ petitioner submitted necessary documents along with her representations to the fourth respondent – Senior Divisional Manager, IOC, requesting to handover the Retail Outlet of her daughter to her stating that there are no rival claims. However, the respondents have not responded. Hence, the present writ petition is filed.”

5. *Per contra*, the case of the respondents, as stated in the counter affidavit of the Senior Manager (Retail Sales), IOC, is this:

“The daughter of the writ petitioner, Sunitha Gande, was issued Letter of Intent, on 18.09.1993, with regard to the award of the Retail Outlet Dealership at Amberpet; but, no Letter of Appointment was ever issued to her in the above regard. The Letter of Intent issued to the daughter of the writ petitioner was cancelled by the IOC in the year 1998. Consequential to the orders of this Court in the writ petition filed by the daughter of the writ petitioner in respect of the said cancellation, the Letter of Intent was restored *vide* order dated 27.10.1999 passed by the IOC. Thereafter, Retail Outlet was commissioned, on 30.09.2000. But before the execution of the dealership agreement, the daughter of the writ petitioner died (28.06.2001). As such, there is no

dealership agreement entered into recognizing the daughter of the writ petitioner as a dealer of the IOC. The writ petitioner, who claims to be the legal heir on the basis of the Will of her daughter, cannot claim any indefeasible right to be recognized as such by the IOC in respect of the Retail Outlet Dealership at Amberpet. Such a dealership is not a heritable property and it cannot be bequeathed under a testament. The daughter of the writ petitioner was not even a dealer; but, was only a holder of Letter of Intent. Unless a dealership agreement is executed, she could not have assumed the status of a dealer. As per the present policy of the IOC *vide* Circular dated 09.10.2006, the reconstitution of the dealership is allowed at the Letter of Intent stage as per the conditions specified under Clause 2 of the said Circular. The conditions of the said Circular are not fulfilled in the present case inasmuch as there is no proof of substantial investment having been made by the holder of Letter of Intent and as there were disputes between the legal heirs of the holder of Letter of Intent. Reconstitution is permissible by reviving the Outlet at the same location with the approval of the Board of Directors of the IOC. However, in the present case, the Outlet remained inoperative since June, 2001, after the death of the daughter of the writ petitioner. It is learnt that the land owner terminated the lease granted in favour of the daughter of the writ petitioner as long back as in December 2002. The said location is now no longer available for revival of the Outlet. Since the date of death of the daughter of the writ petitioner, the writ petitioner and her son-in-law have been at loggerheads and it was only in April, 2006, her son-in-law purportedly gave 'No Objection Letter' for giving dealership to the writ petitioner. The outlet was defunct

since June, 2001, and the petitioner is not in a position to offer the land for establishing the Outlet. Further, as per the Policy Circular dated 09.10.2006, dealerships which are not in operation from a date prior to 01.04.2002 cannot be considered for revival. Hence, it is not possible or legally permissible to consider the writ petitioner's request for transfer of the Letter of Intent held by her deceased daughter. Hence, the writ petition is devoid of merit and is liable for dismissal."

6. The further case of the writ petitioner, as stated in her reply affidavit, is as follows:

"After passing of the orders by this Court in W.P.No.29554 of 1998, the writ petitioner's daughter established the Retail Outlet under the name and style of "Sri Bhagwan Satya Sai Filling Station" and died within an year of commencement of her dealership. Though the daughter of the writ petitioner executed a Will in favour of the writ petitioner, in view of the disputes between the writ petitioner and her son-in-law, the Outlet was taken over by the IOC and the agreement could not be concluded. The dealership can be transferred to the legal heir in whose favour the rights in the licence are bequeathed by the deceased allottee under a Will. The contrary contention raised by the respondents is untenable. The Policy Circular dated 09.10.2006 is prospective in its operation and is not retrospective. The present policy guidelines cannot be applied to the case of the writ petitioner and her request for transfer of dealership in her favour cannot be denied. In view of the settlement of disputes between the writ petitioner and her son-in-law, and the orders passed by the learned II Additional Chief Judge, City Civil Court, Hyderabad, in

O.P.No.2005 of 2004, the claim of the writ petitioner is genuine. The Retail Outlet, which was taken over by the IOC in the year 2001, can be transferred in favour of the writ petitioner.”

7. I have given earnest and thoughtful consideration to the facts and the submissions made in line with the pleadings, which are narrated supra.

8. From the pleadings and submissions made, the following aspects are noticeable.

The writ petitioner's daughter, who was physically handicapped, was issued a Letter of Intent, dated 18.09.1993, for establishing a Retail Outlet at Amberpet. She was not issued a Letter of Appointment in this regard. The said Letter of Intent was cancelled by the IOC. However, in view of the orders, dated 27.10.1999, passed by this Court in W.P.No.29554 of 1998, the said Letter of Intent was restored by the IOC. The Retail Outlet was commissioned, on 30.09.2000, at a place which was taken on lease for 15 years by the daughter of the writ petitioner. However, the daughter of the writ petitioner died, on 28.06.2001, before entering into a dealership agreement and, as such, there is no dealership agreement between the IOC and the writ petitioner's daughter and, therefore, she has not acquired the status of a dealer. After the death of the writ petitioner's daughter, the writ petitioner made a claim for transfer of the Retail Outlet dealership in her favour by virtue of the Will, dated 23.06.2001, executed by her daughter. Admittedly, her son-in-law raised a dispute and in view of that dispute, the respondents have taken possession of the Retail Outlet and the Retail Outlet is defunct since June, 2001 i.e.,

after the death of the daughter of the writ petitioner. The land owner of the Retail Outlet also terminated the lease agreement/contract of lease in favour of the daughter of the writ petitioner long time back i.e., in December, 2002. Therefore, the location where the outlet was commissioned, on 30.09.2000, is no longer available for revival of the Retail Outlet at the same place. After the settlement of disputes between the writ petitioner and her son-in-law, and in view of the 'No Objection Letter' given by him, O.P.No.2005 of 2004 filed by the writ petitioner for issuance of succession/probate certificate was allowed, on 19.04.2006, by the learned II Additional Chief Judge, City Civil Court, Hyderabad. Thereafter, the writ petitioner made representations for transfer of Retail Outlet dealership of her deceased daughter in her name. Since her request in the representations is not considered, she filed the present writ petition.'

8.1 The respondents contend that in view of the Policy Circular, dated 09.10.2006, and the conditions stipulated therein, the reconstitution of the dealership is allowed at the stage of Letter of Intent if only the conditions specified in clause 2 of the said Circular are satisfied; that since there is no proof of substantial investment having been made by the Letter of Intent holder, the required conditions are not fulfilled in the present case; that since the Retail Outlet in question is defunct since 2001 and the writ petitioner is not in a position to offer the land at the locality for establishment of a Retail Outlet and as the dealership is inoperative from a date prior to 01.04.2002, the request of the writ petitioner cannot be considered, in view of the policy Circular; and, that it is not legally possible to consider the writ petitioner's

representations for transfer of Letter of Intent granted to her deceased daughter.'

9. Admittedly, in the absence of dealership agreement between the writ petitioner's daughter and the IOC, the writ petitioner's daughter cannot be termed as a dealer of the IOC even though the Letter of Intent was restored, on 27.10.1999, and the Retail Outlet was commissioned, on 30.09.2000, during the lifetime of the daughter of the writ petitioner. Since the daughter of the writ petitioner has not attained the status of a dealer, the contention of the respondents that the question of transfer of dealership of the Outlet does not arise for consideration, merits acceptance. Further, the writ petitioner's daughter died, on 28.06.2001, and since then the Retail Outlet remained inoperative. In fact, the Outlet was taken over by the IOC; and, the Outlet is defunct since June, 2001. Further, as the lease agreement entered into by the daughter of the writ petitioner with the owner of the land of the defunct Outlet stood terminated way back in December, 2002, and the petitioner is not in a position to make available any land in the locality for the Outlet, her contention that she is eligible for transfer of Letter of Intent needs no countenance. Though the writ petitioner contends that the Retail Outlet dealership can be granted to her to establish the Retail Outlet at a different place, which she may be able to show in the event she is granted the dealership, on transfer of the Retail Outlet dealership, yet, as on today, she is not in a position to offer any land either of her own or a lease hold land for establishment of the Retail Outlet. As per the present Policy Circular, dated 09.10.2006, of the IOC, the dealerships which are inoperative from a date prior to 01.04.2002

cannot be considered for revival is the submission of the respondents. Though the learned counsel for the petitioner contended that the said Policy Circular is prospective in operation, in the considered view of this Court, this contention needs no countenance in the present case as no dealership agreement was admittedly entered into between the IOC and the deceased daughter of the writ petitioner and her daughter has not attained the status of a dealer. Had there been a dealership agreement prior to the Circular, dated 09.10.2006, this contention might have merited examination, however, as there is no dealership agreement in this case, the said contention does not merit consideration. Further, since the Letter of Intent for the subject Retail Outlet was given to the deceased daughter of the writ petitioner under handicapped person's quota, the question of petitioner claiming transfer of the same does not arise for consideration.

10. To sum up: Since the outlet remained inoperative since June, 2001, after the death of the daughter of the writ petitioner and as the lease agreement was terminated by the owner of the land of the Outlet and as the IOC has taken over the Retail Outlet and as the writ petitioner is not in a position to show any alternate land either of her own or a lease hold land for establishing the Retail Outlet in the event of transfer and as no dealership agreement was entered into between the writ petitioner's deceased daughter and the IOC and as the outlet is defunct from a day prior to 01.04.2002 and as it is possible to hold that the Policy Circular, dated 09.01.2006, can be made applicable to the facts of the case on hand as the deceased daughter of the writ petitioner has not attained the status of the dealer, any of the contentions of the writ

petitioner do not find approval of this Court, in the facts and circumstances of the case.

11. On the above analysis and for the reasons aforestated, this Court finds that the writ petition is devoid of merit. Hence, the writ petition is accordingly dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

M. SEETHARAMA MURTI, J

Date: 10.10.2018
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