

CWP No.6201 of 2015 (O&M)

[1]

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.6201 of 2015 (O&M)
Date of decision:03.04.2018**

Varinder Kumar

...Petitioner

Versus

Indian Oil Corporation Limited and another

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Sunil Chadha, Senior Advocate, with
Ms. Swati Verma, Advocate, for the petitioner.

Mr. Ashish Kapoor, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

The petitioner is aggrieved against the letter dated 08.01.2015 issued by the Indian Oil Corporation Limited (hereinafter referred to as the "Corporation"), by which reconstitution proposal submitted by the petitioner has been returned on the ground that it cannot be processed and he has also made a prayer for directing the respondents to accept the reconstitution proposal in terms of the Additional Guidelines for reconstitution of RO/SKO-LDO Dealerships dated 21.05.2013 (hereinafter referred to as the "Guidelines").

In brief, the Corporation allotted the dealership for its retail outlet (installing HSD Pump) at village Kala Sanghian, District Kapurthala to Suresh Kumar S/o Baldev Krishan on 19.01.1979. The said Suresh Kumar operated the dealership in the name and style of M/s Vijay Service Centre. It is alleged that Suresh Kumar entered into a partnership deed on 15.09.1979 with his

father Baldev Krishan and brother (petitioner herein) Varinder Kumar, in which they were partners in equal shares. It is further alleged that both Suresh Kumar and Baldev Krishan had passed away on 06.09.1993 and 17.06.1997 respectively and the petitioner has been running the dealership as a sole proprietor. It is also alleged that the partnership deed dated 15.09.1979 was never submitted to the Corporation but according to the petitioner, the Corporation knew it very well that the affairs of the retail outlet are being managed by the petitioner from the last many years. It is further averred that the family of Suresh Kumar, comprising of his widow and five children, had migrated to USA after his death and are now the US citizens. It is further averred that the petitioner had been operating the retail outlet without any interference from the year 1997 till February 2013 but on 05.02.2013, he received a letter from the Corporation, asking him to submit the documents mentioned in the said letter. Although it is averred that the petitioner had submitted the documents available with him but on 07.06.2013, he again received another letter from the Corporation by which he was informed that he had been operating the dealership since long against the extant guidelines of the Corporation and was asked to appear in person on the date, time and place mentioned in the letter.

The petitioner received another letter dated 30.09.2013 by which the Corporation had asked the petitioner to submit the reconstitution proposal in terms of the policy of the Corporation so that it may be processed and fresh dealership proposal may be issued, if required.

In response, it is alleged that the petitioner sent a letter to the SDRSM (RS), Jalandhar DO for transferring the outlet in his name alleging

that after the death of Suresh Kumar, he has been managing the affairs of the outlet as a Manager and in the same letter, he has averred that the outlet is being run by him as a sole proprietor for the last more than 12 years and enclosed an application with a request for transfer of the same in his name. The petitioner received communications from the Corporation continuously vide letters dated 16.10.2013, 30.10.2013 and 31.01.2014 by which he was informed that he had not submitted the requisite documents in relation of reconstitution proposal as per the policy of the Corporation. Ultimately, the Corporation, vide its letter dated 08.01.2015, informed the petitioner that it had received a letter from the Law Office of Mohammad Ali from US dated 06.08.2013, in which he has mentioned that Mrs. Mohinder Kumar, the surviving spouse of Suresh Kumar (original allottee) and their five children have desired that the dealership and ownership of the premises be transferred in their names or in the name of a trust established under the name of Suresh Kumar and had asked as to how the dealership may be transferred in the name of the wife and children of Suresh Kumar or a trust established by them. In the impugned letter dated 08.01.2015, the Corporation had referred to the letter of the Advocate Mohammad Ali dated 06.08.2013, which was sent on behalf of the legal heirs of Suresh Kumar, and rejected the reconstitution proposal made by the petitioner on the ground that he had failed to attach any document of any legal heir of Suresh Kumar in his favour.

Learned counsel for the petitioner has submitted that the Corporation has issued the additional guidelines and has referred to Clause 2.3(i) of the Guidelines to contend that being the brother of Suresh Kumar, he would be eligible for induction. Clause 2.3(i) of the Guidelines reads as

under:-

“2.3(i) Where proposed constitution requires approval for induction of “family” member or blood relative of approved signatory.

List of blood relatives will be defined as per Section-56(2)(v) (Explanation) of Income Tax Act, 1961 (permitting receipt of any sum of money from any “relative”), as under:-

- * Spouse of the individual
- * Brother or Sister of the individual
- * Brother or Sister of the spouse of the individual
- * Brother or Sister of either of the parents of the individual
- * Any lineal ascendant or descendant of the individual
- * Any lineal ascendant or descendant of the spouse of the individual
- * Spouse of the persons referred in above six categories”.

He has further referred to Clause 2.4 which deals with the specific conditions applicable to scenario 2.3, which reads as under:-

“2.4 Specific conditions applicable to scenario 2.3:

- i. Where IOC by its conduct has recognized the current set up
- ii. Only in cases where performance of dealership has been satisfactory and/or continuation of dealership is in commercial interest.
- iii. An indemnity bond, will be taken from new proprietor/partner(s) indemnifying Corporation against any claim from any other party.
- iv. This will be subject to higher applicable reconstitution fee.

Explanation of specific conditions

- i. Where IOC by its conduct has recognized the current set up by supplying product to the firm and the changeover is established to have taken place before 01.01.2003 as can be ascertained through documents like Income Tax Returns, Balance Sheet, Bank account, Selling License, Sales Tax Returns, etc. In other words each case to be properly checked to avoid any possibility of post 01.01.2003 total changeover case being processed and approved under the garb of being pre 2003 case.

- ii. Only in cases where performance of dealership has been satisfactory and/or continuation of dealership is in commercial interest.
- iii. An indemnity bond (as per Appendix-III), will be taken from the prospective proprietor/partner(s) indemnifying Corporation against any claim from any other party.
- iv. This will be subject to higher applicable reconstitution fee.”

Counsel for the petitioner has contended that the petitioner is the brother of Suresh Kumar who can be incorporated in terms of Clause 2.3(i) because he fulfills the specific conditions provided in Clause 2.4 of the Guidelines and that the Corporation has recognized the petitioner for a long time as its dealer and there has never been any complaint about his performance which has been found to be satisfactory and indemnity bond has also been filed. It is further submitted that at no point of time, family members of deceased Suresh Kumar had ever applied for the transfer of the dealership in their names and the petitioner has been throughout recognized as the dealer by the Corporation, therefore, in view of the aforesaid Guidelines, the petitioner is fully eligible for the purpose of change of constitution of dealership, which requires to be changed in the name of the petitioner and has nothing to do with the heirs of Suresh Kumar.

Learned counsel for the Corporation has submitted that the petitioner is not recognized as the Dealer by the Corporation at any point of time and there is no question of recognizing any partnership firm, which was allegedly constituted by the petitioner with his deceased father and brother on 15.09.1979 as it was never brought to the notice of the Corporation. Besides this, he has referred to Clauses 35 and 46(i) of the Standard Dealership Agreement, which read as under:-

“35. The Dealer shall not sell, assign, mortgage, charge or part with or otherwise transfer his interest in the dealership or any right or interest or benefit conferred by this Agreement or grant any licence in connection with the said premises and/or outfit or any part thereof to any person, firm or company nor allow any other person, firm or company to use the premises or the outfit or any part thereof except to the extent necessary under the terms of Agreement and specifically permitted in writing by the Corporation.”

“46. Except with the previous written consent of the Corporation:

(i) The Dealer shall not enter into any arrangement contract or understanding whereby the operations of the Dealer hereunder are or may be controlled, carried out and/or financed by any other person or company whether directly or indirectly and whether in whole or in part.”

It is further submitted that even in the letter of appointment of the dealership dated 19.01.1979 issued in favour of the deceased Suresh Kumar, it was categorically mentioned that *“you shall not effect any change in your constitution whether in the identity of your partners/members or in the share/shareholding of any of them or in the terms of the Deed of Partnership or of Bye Law as the case may be”*. It is further submitted that in the Guidelines issued by the Government of India, Ministry of Petroleum & Natural Gas in regard to the reconstitution of Retail Outlet dealerships/LPG Distributorships/SKO-LDO dealerships, it is provided that *“in cases of death of the sole dealer/distributor, reconstitution may be made 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”*. He has further referred to the Revised Policy guidelines for Reconstitution RO Dealerships/LPG Distributorships/SKO-LDO dealerships dated 29.07.2013, in

which Clause 3 of the Reconstitution of Commissioned dealerships/distributorships and Clause 3.4 in particular deals with the cases of death of the sole dealer, which reads as under:-

“3.4 In cases of death of the sole dealer/distributor, reconstitution may be made in favour of the legal heir. However, if there is no legal heir(s) or legal heir(s) has expressed unwillingness, the dealership/distributorship shall be terminated.”

He has also submitted that the Guidelines dated 21.05.2013, relied upon by the petitioner, dealing with this aspect and has referred to the followings:-

Explanation

This scenario will be useful in carrying out reconstitutions (in line with reconstitution policy dt. 1.12.2008) in cases where based on primary or secondary document {as per para 1.1(i)}, a set up has been formally recognized and there is a need/request for further reconstitution which otherwise is meeting prevailing norms more specifically as explained in para 3.0.

Application from the legal heirs is to be taken and based on the nature of document the approval is to be given by competent authority for completion of steps as enumerated in the approach given in 1.1(i).”

“The Committee besides confirming that any signatory (including legal heir/family member) is not part of set up needs to ensure that induction of one of such member is not possible. For this, the committee may rely upon (i) Relinquishment deed, if any, given by the signatories of the dealership. OR (ii) In case signatory(s) of the dealership agreement have expired then NOCs from their legal heirs OR (iii) if the same is not possible then a suitable notice in the newspaper in this regard may be considered.”

He has further submitted that until and unless there is a relinquishment deed of the rights in the dealership, inherited by the natural heirs of Suresh Kumar, and is presented by the petitioner, the Corporation

cannot process the application of the petitioner for the purpose of reconstitution of dealership in his name.

After hearing learned counsel for the parties and taking into consideration the aforesaid facts and circumstances especially the fact that except for running the affairs of the dealership as a Manager which the petitioner has himself mentioned in his letter, the partnership deed dated 15.09.1979 was never brought to the notice of the Corporation which is, thus, totally non-existent and that the Guidelines regulating the issue of reconstitution of dealership specifically provides that in case of death of sole dealer, the constitution may be made in favour of the legal heir(s) but if there is no legal heir or the legal heir has expressed their unwillingness, then the dealership agreement has to be terminated but still the Corporation has given a chance to the petitioner that in case he wanted reconstitution of the dealership in his name, he had to obtain consent of the legal heirs of Suresh Kumar, who was the original dealer and in the wake of the letter dated 06.08.2013 received by the Corporation from the Law Office of lawyer of the legal heirs of Suresh Kumar who wanted the transfer of dealership in their names or in the name of a trust to be established by them, the petitioner has rightly been found to have no right to claim the dealership.

Thus, in view of the aforesaid discussion, there is hardly any merit in the present petition for the purpose of interference by this Court and hence, the same is hereby dismissed, though without any order as to costs.

April 03, 2018
vinod*

(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No