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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 10662/2018**

**ISHWAR SINGH SHARMA**

..... Petitioner

Through: Mr Kirti Uppal, Sr. Advocate with Mr  
Prasoon Kumar and Mr Pranvir Sethi,  
Advocates.

versus

**BHARAT PETROLEUM CORPORATION LIMITED  
AND ORS.**

..... Respondents

Through

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**08.10.2018**

**CM No.41584/2018**

1. Allowed, subject to all just exceptions.

**W.P.(C) 10662/2018 & C.M. No. 41565/2018**

2. The petitioner has filed the present petition impugning an order dated 05.05.2018 passed by respondent nos.1 & 2 (hereafter 'BPCL'), whereby the petitioner's request for accepting the reconstituted firm for being granted a licence to continue to manage the retail outlet of petroleum products, was rejected. This case has a chequered history.

3. The petitioner and his father late Shri Rattan Singh were partners of partnership firm known as M/s Jai Narain and Company (hereafter 'the Firm'). The Firm was granted licence to operate a retail outlet of petroleum products of M/s Burma Cell Oil Storage and Distributing Company of India

Limited (the predecessor in interest of BPCL), and an agreement dated 13.12.1975 captioned “Dispensing Pump and Selling Licence Agreement” (hereafter ‘the Agreement’) was entered into between the parties.

4. The petitioner’s father (Shri Rattan Singh) expired on 19.09.1988. He was survived by his widow, three daughters and two sons (including the petitioner). The information as to the demise of Shri Rattan Singh was communicated to BPCL. Notwithstanding the aforesaid event, the petitioner continued to operate the dealership (the petrol pump). It is his case that he continued to do so as a sole proprietor, being the surviving partner of the erstwhile partnership (the Firm). BPCL claims that the petitioner was allowed to sell the petroleum products from the retail outlet.

5. Apparently, there were some disputes between the legal heirs of Late Shri Rattan Singh and the petitioner’s brother (Mr. Anand Swaroop Bhardwaj – respondent no.3). On 28.12.2004, the petitioner’s brother made a representation to BPCL claiming that he was introduced as a partner in the Firm but, on visit to the office of BPCL, discovered that his name had not been introduced in the Firm.

6. BPCL did not wish to be embroiled in the disputes and advised the petitioner to settle the disputes. Concededly, this was not done and, therefore, on 12.04.2008, BPCL took over the retail outlet and removed the petitioner from the petrol pump.

7. Aggrieved by the aforesaid action of BPCL, the petitioner filed a writ petition [being WP(C) 3051/2008 captioned *Jai Narain & Co. v. Bharat Petroleum Corporation Ltd. & Anr.*] in this Court. The said petition was disposed of by an order dated 10.11.2008 passed by a Coordinate Bench of

this Court, *inter alia*, directing BPCL to grant a personal hearing to the petitioner and other interested parties. Accordingly, the petitioner filed a representation dated 22.11.2008 before BPCL and a personal hearing was also granted to him. The said representation was disposed of by an order dated 07.02.2009 granting the petitioner a final opportunity to submit the requisite documents including NOCs from the other legal heirs of Late Shri Rattan Singh.

8. Aggrieved by the same, the petitioner filed a writ petition [being W.P.(C) 8752/2009 captioned *Ishwar Singh Sharma v. Bharat Petroleum Corporation Ltd. & Anr.*], which was dismissed by an order dated 01.12.2015 by a Coordinate bench of this Court. The Court reasoned that after demise of a partner, the Firm stood dissolved and, hence, ceased to exist and it was at the discretion of BPCL whether to continue with the licensee (the surviving partner) or not. Therefore, no direction could be given to BPCL to continue the dealership with the petitioner as BPCL had not entered into any agreement with the petitioner as a licensee.

9. Aggrieved by the aforesaid decision, the petitioner preferred an appeal before the Division Bench of this Court – LPA No.69/2016 captioned as *Ishwar Singh Sharma v. Bharat Petroleum Corporation Limited and Anr.* Mr Anand Swaroop Bhardwaj also preferred an appeal (LPA no. 519/2016) against the order dated 01.12.2015. During the pendency of the said proceedings, a settlement was arrived at between the petitioner and his brother. Both the appeals, LPA Nos.69/2016 and 519/2016, were disposed of by the Division Bench of this Court on 21.02.2017 by taking the settlement [Memorandum of Understanding (MoU) dated 09.02.2017] on

record. In its order the court also observed: *“BPCL is at liberty to take into consideration the reconstitution of the firm M/s Jai Narain and Co and take an appropriate decision in accordance with law to allow the said firm to operate the retail outlet.”*

10. BPCL did not entertain the request for accepting the reconstituted Firm as its licensee. In these facts, the petitioner’s brother (Mr Anand Swaroop Bhardwaj) filed applications – CM No. 26115/2017 and CM No.18050/2017 – in the disposed of appeals (in LPA 519/2016) articulating the grievance that despite the settlement between the petitioner and the legal representatives of Late Rattan Singh, BPCL had merely cited the previous cancellation (dated 08.05.2009) of the dealership and had refused to consider the matter in the light of the settlement arrived at between the parties.

11. By its order dated 24.11.2017, the Division Bench observed that *“BPCL should, in fact, considered the position emerging as a consequence of the settlement while deciding whether to continue the dealership or not.”* The said applications were disposed of on 06.02.2018 recording the statement made by the learned counsel appearing for BPCL that BPCL would pass a speaking order after granting applicant an appropriate opportunity in this regard. BPCL has, thereafter, passed the impugned order rejecting the petitioner’s request for continuing the reconstituted firm as a licensee.

12. Mr Uppal, learned senior counsel appearing for the petitioner drew the attention of this Court to Paragraph 4 of the impugned order, wherein it was stated that once the dealership agreement (the Agreement) is terminated,

the relationship between BPCL and the licensee comes to an end and, therefore, there was no question for reconstitution of a terminated dealership. He submitted that BPCL had merely repeated the grounds as expressed earlier and had ignored the orders passed by the Division Bench of this Court.

13. This Court finds the aforesaid contention unmerited. A plain reading of the impugned order indicates that BPCL had examined the settlement between the parties, which included provision for reconstitution of the Firm. Insofar the petitioner's brother (Mr Anand Swaroop Bhardwaj) is concerned, BPCL noted that his wife Smt. Sushma is operating a dealership of Bharat Gas LPG Distributorship under the name and style of M/s Chanakya and Sidhartha Gas Company. It was observed that multiple members of the same family cannot operate more than one gas agency or petrol pump, and, therefore, a firm with Mr Anand Swaroop Bhardwaj could not become a partner in the Firm. The MoU dated 09.02.2017 entered into between the parties also provided for Mr Anand Swaroop Bhardwaj to nominate his son or any other party as a partner. BPCL examined the relevant clause of the said MoU and observed that *"it is clear from the language of the clause that the MoU does not provide a concrete proposal for recognition. The open ended language of the clause will result in ever greening of the litigation as the parties can approach BPCL or the court with a fresh reconstitution proposal any time in perpetuity."*

14. In the impugned order, BPCL has observed that it could not be compelled to accept the settlement arrived at between the parties. During the course of the proceedings before BPCL, it was also submitted on behalf

of the petitioner that the minor grandchild of Mr Anand Swaroop Bhardwaj be proposed as a partner. This was also rejected by BPCL and in this view, the said decision cannot be faulted.

15. It is also relevant to state that the decision of the Coordinate Bench of this Court rendered on 01.12.2015 clearly held that BPCL had the discretion whether to accept a reconstituted firm or not. The said decision has not been set aside. BPCL has exercised its discretion; it has examined the proposal submitted by the petitioner and found the same to be not acceptable. This Court finds no reason to compel BPCL to accept the reconstituted firm in terms of the settlement arrived at between the petitioner and his brother. Clearly, BPCL is not bound by the said settlement.

16. In view of the above, the petition is unmerited and is, accordingly, dismissed. The pending application stands disposed of.

17. It is, however, clarified that this would not preclude the petitioner from approaching BPCL to persuade it for granting dealership to a firm reconstituted as per the norms prescribed by BPCL, if any.

**VIBHU BAKHRU, J**

**OCTOBER 08, 2018**  
**MK**