

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

+ **RFA No. 932/2018**

% ***Reserved on : 30th November, 2018***
Pronounced on : 7th December, 2018

M/S BHARAT PETROLEUM CORP. LTD.

..... Appellant

Through: Mr. Aman Lekhi, ASG (M. No.9810330420), Mr. Anil Batra, Advocate (M. No.9810127096), Mr. Ujjwal Sinha, Advocate (M. No.9971225301), Mr. Dhruv Gupta, Advocate (M. No.9810491438), Mr. Suchakshu Jain, Advocate (M. No.9999930408) & Mr. Piyush Beniwal, Advocate (M. No.9910396352).

versus

PROMILA KISHORE (DECEASED)
THR HER LRS & ORS.

..... Respondents

Through: Mr. Jayant Mudgal, Advocate with Mr. Digvijay Singh, Advocate (M. No.9953119599).

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the defendant no.1/Bharat Petroleum Corporation Ltd. in the suit impugning the Judgment of the trial court dated 11.09.2018 by which the trial court has decreed the suit filed by the respondent/plaintiff (since deceased and represented by her legal heirs being respondents (i) to (iv) in this appeal) and a decree has been passed directing the appellant/defendant no.1 to not disturb the possession of the respondent/plaintiff of the petrol pump being run in the name of Airport Service Station, and the appellant/defendant no.1 has been further directed to reconstitute the petrol pump dealership in favour of the respondent's/plaintiff's legal heirs, after the necessary steps are taken by them for reconstituting the dealership.

2. The facts of the case are that the respondent/plaintiff, Smt. Promila Kishore, filed the subject suit seeking the relief that the appellant/defendant no.1 should be directed to reconstitute the dealership of the petrol pump in favour of the respondent/plaintiff, and the appellant/defendant no.1 should also be restrained from disturbing

the possession of the respondent/plaintiff in any manner of the petrol pump run under the name of Airport Service Station at M.O.R. Pocket Kalkaji, opposite Nehru Place Bus Terminal, New Delhi. The respondent/plaintiff also prayed for an injunction against the appellant/defendant no.1 to not disturb the sale/supply of Diesel, Petrol, CNG etc. The case of the respondent/plaintiff was that the appellant/defendant no.1 had granted a dealership agreement to the reconstituted partnership firm having as partners late Sh. Shyam Sunder Gupta, his wife Smt. Nirmal Gupta (since deceased) and the father of the respondent/plaintiff, late Sh. G.D. Sehgal. Originally, the dealership agreement known as Dispensing and Pump and Selling License Agreement (*hereinafter "DPSL Agreement"*) was executed between appellant/defendant no.1 and Sh. Shyam Sunder Gupta. Sh. Shyam Sunder Gupta and Smt. Nirmal Gupta had requested for reconstitution of the licensee firm by inducting Sh. G.D. Sehgal, late father of the respondent/plaintiff, and this was done by the appellant/defendant no. 1 whereby a fresh DPSL Agreement dated 21.11.1983 was executed between the appellant/defendant no.1 and the partnership firm of Sh. Shyam Sunder Gupta, Smt. Nirmal Gupta

and Sh. G.D. Sehgal. As per Clause 13(b) of the Agreement, on the death or retirement or permanent incapacity of a partner of the licensee firm though the appellant/defendant no.1 could terminate the Agreement at its option but the appellant/defendant no.1 could also exercise the option of continuing the DPSL Agreement between the surviving or continuing partners of the licensee firm. This clause 13(b) reads as:- *"On the death or retirement or permanent incapacity of any partner of the License (if a firm), the Company may at its option at once determine this Agreement, and if the option shall not be exercised the Agreement shall continue as between the company and the surviving or continuing partners of the Licenses. The legal representatives of the deceased partner or the retiring partner shall be liable for all obligations of the Licenses incurred up to the death or retirement, and shall not be entitled to claim from the company any portion of the security deposit. The death of a partner shall be notified by the Licenses to the company in writing within 24 hours of such death."* The respondent/plaintiff pleaded that on 21.01.1991/Mark P1, a representation was given to the appellant/defendant no.1 that the two partners, Sh. Shyam Sunder Gupta and Smt. Nirmal Gupta had retired

from the partnership firm and the partnership business was being carried on in the name of the respondent/plaintiff, Smt. Promila Kishore, the daughter of Sh. G.D. Sehgal, the sole surviving partner. The appellant/defendant no.1 however for reasons best known to it did not take any steps in terms of the request letter dated 21.01.1991, and therefore, another representation dated 30.06.2000/Mark P2 was given by the two partners, Sh. Shyam Sunder Gupta and Smt. Nirmal Gupta, to the appellant/defendant no. 1 to allow them to retire from the firm and the petrol pump business to be carried on by the sole surviving partner being Sh. G.D. Sehgal and by inducting the respondent/plaintiff, Smt. Promila Kishore, in the partnership. Sh. G.D. Sehgal died on 01.12.2002 and the factum of his death was duly communicated to the appellant/defendant no. 1. The other two partners, Sh. Shyam Sunder Gupta also died on 30.11.2005 and Smt. Nirmal Gupta died on 30.10.2005. The appellant/defendant no.1 instead of drawing out a proper DPSL Agreement in the name of the respondent/plaintiff, instead appointed the respondent/plaintiff only as a 'Temporary Dealer' vide Appointment Letter dated 25.06.2003. The respondent/plaintiff once again wrote her letter dated 02.06.2009 for

grant of dealership agreement to her and this request was pending since the year 1991. The respondent/plaintiff had earlier written a similar letter to the appellant/defendant no.1 on 23.05.2008. The respondent/plaintiff also pleaded that there were policy guidelines which were issued by the appellant/defendant no.1 in the year 2008 whereby the dealership was to be reconstituted in case of death of one of the partners in favour of remaining partners or legal heirs. The appellant/defendant no.1 in response to the request made by the respondent/plaintiff vide Letter dated 02.06.2009 wrote its Letter dated 19.04.2010 that reconstitution can be done, provided, NOC is given from all legal heirs of the deceased partners i.e. Sh. Shyam Sunder Gupta and Smt. Nirmal Gupta. The respondent/plaintiff therefore submitted vide her Letter dated 05.06.2010, alongwith the NOC-cum-affidavit of the legal heirs of the deceased partners, Sh. Shyam Sunder Gupta and Smt. Nirmal Gupta. The appellant/defendant no.1 raised a flimsy objection that the NOC submitted were not in the prescribed format and the respondent/plaintiff was again asked to give the NOC within 30 days. Pleading that the appellant/defendant no.1 was acting arbitrarily and that the appellant/defendant no.1 ought to

have acted upon the NOC-cum-affidavit of the legal heirs of the two partners, Sh. Shyam Sunder Gupta and Smt. Nirmal Gupta, the subject suit was filed.

3. The appellant/defendant no.1 contested the suit by filing the written statement. It was not disputed in the written statement that the partnership firm was reconstituted on 21.11.1983 and the DPSL Agreement was entered into by the appellant/defendant no.1 with the partnership firm of Sh. Shyam Sunder Gupta, Smt. Nirmal Gupta and Sh. G.D. Sehgal. It was also admitted by the appellant/defendant no.1 that there was a policy decision of the appellant/defendant no. 1 of the year 2008 containing a Clause 3.5 as per which the dealership agreement had to be reconstituted/entered into with the legal heirs of the deceased partners. In the written statement itself this Clause 3.5 of the 2008 Policy was reproduced as under:-

“In case 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 dealership distributorship shall be reconstituted with the surviving partner(s)”.

It was pleaded that the NOC-cum-affidavit given by the respondent/plaintiff was not in the prescribed format and therefore could not be acted upon. It was also pleaded that after the death of the respondent/plaintiff, Smt. Promila Kishore, the request of all other legal heirs for reconstitution of the DPSL Agreement with one legal heir of the deceased respondent/plaintiff, namely Smt. Annu Sabharwal (respondent no. 1(iii)/plaintiff no. 3) was rejected vide Letter dated 31.12.2012, and which was sent in response to the Letter dated 23.11.2012 of the said legal heir of the respondent/plaintiff. It was pleaded that there was only a 'Temporary License Agreement' granted to the respondent/plaintiff, Smt. Promila Kishore and this 'Temporary License Agreement' will therefore amount to termination of the main license agreement and the respondent/plaintiff, Smt. Promila Kishore, has no right for grant/execution of the DPSL Agreement in her favour. It was also pleaded that no formal proposal was submitted to the appellant/defendant no.1 for reconstitution in terms of the representation dated 21.01.1991, and therefore, the request was rejected. The suit was, therefore, prayed to be dismissed.

4. After pleadings were complete, the trial court framed the following issues:-

“11. From the pleadings of the parties, following issues were framed:

ISSUES:

1. Whether the suit is barred by the provisions of Section 14 and 41 (e) of the Specific Relief Act? OPD-1
2. Whether Smt. Promila Kishore was the sole proprietor of the retail outlet namely M/s Airport Service Station since 1982? OPP
3. Whether the legal heirs of Smt. Promila Kishore have locus standi to continue the present suit after her demise? OPP
4. Whether the legal heirs of Smt. Promila Kishore do not have locus standi to continue the present suit after her demise? OPD-1
5. Whether Smt. Promila Kishore had not approached this court with clean hands and had suppressed the material facts? OPD-1
6. Whether plaintiff is entitled to decree of declaration as prayed for? OPP
7. Whether the plaintiff is entitled to decree of permanent injunction as prayed for? OPP
8. Whether the plaintiff is entitled to decree of mandatory injunction as prayed for?
9. Relief.”

5. Evidence was thereafter led by the parties and these aspects are recorded in paras 12 and 13 of the impugned judgment, which read as under:-

“12. During the plaintiff evidence, plaintiffs examined only witness PW-1 Ms. Annu Shabharwal who tendered her affidavit Ex. PW-1/A and relied upon following documents:

Mark P-1 is the copy of the letter dated 21.01.1991 written by Sh. G.D. Sehgal, Sh. Shyam Sunder Gupta and Mrs. Nirmal Gupta to the defendant no.1.

Mark P-2 is the copy of letter dated 30.06.2000 written by Sh. Shyam Sunder Gupta and Mrs. Nirmala Gupta to defendant no.1 seeking permission to retire in favour of the plaintiff.

Mark P-3 is the letter dated 20.10.2010 written by the plaintiff to defendant no.1.

Ex.PW1/3 is the letter dated 25.06.2003 written by defendant BPCL to the plaintiff appointing her as temporary dealer.

Ex. PW1/4 is the letter dated 19.02.2010.

Ex.PW1/5 is the letter dated 19.04.2010 written by the defendant no.1 to the plaintiff.

Ex.PW1/6 is the letter dated 05.06.2010 written by plaintiff to defendant no.1.

Ex.PW1/7 is the joint affidavit of defendant no. 2, 3 & 4 giving their no objection.

Ex.PW1/8 is the letter dated 14.09.2010 written by defendant no.1 to plaintiff.

Ex.PW1/10 is the letter dated 29.10.2010 written by defendant no.1 to the plaintiff.

Ex.PW1/11 (Ex.D1W1/7) is the show cause notice dated 18.03.2008 sent by the defendant no.1 to the plaintiff.

Ex.PW1/12 is the letter dated 23.05.2008 written by the plaintiff to the defendant no.1 (also Ex.D1W1/8).

13. During defendant evidence, defendant examined one witness **D1W1 Sh. Saibal Mukherjee** Territory Manager (Retail) of defendant no.1 who tendered his affidavit as Ex. D1W1/A and relied upon the following documents:

Ex.D1W1/1 is the GPA dated 28.10.2013.

Ex.D1W1/2 is the DPSL agreement dated 19.10.1973 executed between defendant no.1 and Sh. Shyam Sunder Gupta and Nirmal Gupta.

Ex.D1W1/4 is the letter dated 21.11.1983 and written by DPSL agreement.

Ex.D1W1/5 is the letter dated 02.04.2004 written by BPCL to the plaintiff.

Ex.D1W1/6 is the letter dated 19.02.2005 written by BPCL to the plaintiff.

Ex.D1W1/7 is the Show cause notice dated 18.03.2008.

Ex.D1W1/8 is the letter dated 23.05.2008.

Ex.D1W1/9 is the reply dated 09.07.2008.

Mark D-1 is the copy of the standard format.

Ex.PW1/DX1 is the letter dated 23.11.2012 written by the LRs of the plaintiff to the defendant no.1 intimating about the death of the plaintiff and details of the LRs.

Ex.PW1/DX2 is the letter written by defendant no.1 to the LRs of plaintiff declining their request to reconstitute the firm.

Ex. D1W1/11 (Ex.D1W1/PX2) is the New Policy guidelines dated 01.12.2008.”

6. The trial court has decreed the suit by observing that there is indeed a Policy of the appellant/defendant no. 1 of the year 2008 whereby there takes place reconstitution of the dealership in the name of the legal heirs of the deceased partners and that this aspect is an admitted stand of the appellant/defendant no.1 (as per its written statement). The trial court has also found as a fact that the respondent/plaintiff had written Letters dated 21.01.1991 and 30.06.2000 as the receipt of these Letters by the appellant/defendant no. 1 was admitted by its witness D1W1/Sh. Saibal Mukherjee, Territory Manager (Retail) of the appellant/defendant no.1. The trial

court has further recorded that no objection was ever raised by the appellant/defendant no.1 to the two Letters dated 21.01.1991 and 30.06.2000 written by the appellant/defendant no.1 to the respondent/plaintiff. The trial court has therefore held that there was no occasion to appoint the respondent/plaintiff only as a temporary dealer i.e. the respondent/plaintiff had to be appointed as a regular dealer by executing the DPSL Agreement with the respondent/plaintiff. The trial court also has rightly further noted that no communication was ever given by the appellant/defendant no.1 to Sh. Shyam Sunder Gupta and Smt. Nirmal Gupta during their lifetimes that they are not giving the necessary NOCs inasmuch as the case of the respondent/plaintiff was that these were duly given in terms of various letters written to the appellant/defendant no.1, and as stated above. The trial court has also noted that in the letter dated 25.06.2003/Ex.PW1/3 appointing the respondent/plaintiff as a 'Temporary Dealer', it is specifically written by the appellant/defendant no. 1 that they were agreeable, in principle, to appoint the respondent/plaintiff as an interim dealer on the same terms and conditions as contained in the 1983 DPSL Agreement. The trial

court has then held that appellant/defendant no.1 which is a Public Sector Undertaking and 'State' under Article 12 of the Constitution of India cannot act arbitrarily and for this purpose, the trial court has rightly placed reliance upon the judgments of the Hon'ble Supreme Court in the cases of ***Kumari Shrilekha Vidyarthi and Ors. v. State of UP and Ors., (1991) 1 SCC 212*** and ***Bharat Petroleum Corporation Limited v. B.M. Motors and Ors., (2014) 16 SCC 749***. The trial court has also referred to the fact that appellant/defendant no.1 was at fault because it was never the case of the appellant/defendant no.1 in its Letter dated 19.04.2010/Ex.PW1/5 that the NOC-cum-affidavit of Sh. Shyam Sunder Gupta and Smt. Nirmal Gupta were not in the prescribed format. In spite of all the aforesaid proven facts and documents, the respondent/plaintiff yet vide her Letter dated 05.06.2010/Ex.PW1/6 had furnished the NOC/affidavit/Ex.PW1/7 of all three legal heirs of Sh. Shyam Sunder Gupta and Smt. Nirmal Gupta who were sued as defendant nos. 2 to 4 in the suit but they never contested the suit and were proceeded *ex parte*.

7. I do not find any illegality or perversity, whatsoever, in the aforesaid reasoning and conclusions of the trial court, and if at all

there is any perversity or illegality, it is in the grossly illegal actions of the appellant/defendant no.1. In order to appreciate the valid reasoning and conclusions of the trial court, the relevant paras of the impugned judgment are reproduced as under:-

“21. Initially, the partnership comprised Sh. Ganesh Dass, Sh. Shyam Sunder Gupta and Smt. Nirmal Gupta and the partnership firm had executed DPSL agreement with the defendant no.1 Corporation and this fact is also proved by the letter dated 21.11.1983 Ex.D1W1/4 (colly) written by the defendant no.1 to firm M/s. Airport Service Station regarding the reconstitution whereby defendant no.1 agreed to the reconstitute of the dealership and the copy of the DPSL agreement is also part of the said letter. D1W1 admitted the letters Mark P-1 and P-2. Mark P-1 is the copy of the letter dated 21.01.1991 written by Sh. G.D. Sehgal confirmed by Sh. Shyam Sunder Gupta and Mrs. Nirmal Gupta written to the defendant no.1 giving their consent to induct the plaintiff in the petrol pump. In pursuance of the letter Mark P-1, no correspondence was exchanged between the plaintiff and defendant no.1 in this regard until the year 2000. Mark P-2 is the copy of letter dated 30.06.2000 written by Sh. Shyam Sunder Gupta and Mrs. Nirmal Gupta to defendant no.1 seeking permission to retire and requesting to induct the present plaintiff in the dealership.

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23. The partnership earlier had 3 partners and out of the 3 partners, 2 partners expressed their intention and sought permission to retire vide letter dated 21.01.1991 Mark P-1. Though there was no formal execution of the documents dissolving and reconstituting the firm but the mark P-1 supported by Mark P-2 had the effect of dissolving the existing firm and inducting the plaintiff as a partner in place of Sh. Shyam Sunder Gupta and Mrs. Nirmal Gupta.

24. Therefore, necessary inferences have to be drawn from the subsequent conduct of the parties. The action of defendant no.1 to appoint the plaintiff as temporary dealer vide letter dated 25.06.2003 Ex.PW1/3 fortifies the aforementioned conclusion. Further, it is also to be noted that before 25.06.2003 when the letter for temporary dealership was issued to plaintiff, Sh. Ganesh Dass, father of the plaintiff, had already died on 01.12.2002. The defendant no.1 knew about the

death of Sh. Ganesh Dass and there is a reference in this regard in the letter dated 25.06.2003 Ex.PW-1/3. This letter Ex.PW1/3 in the beginning itself stated that "..... you have informed the corporation about the death of one of partner Sh. Ganesh Dass and requested the Corporation to permit the legal heirs to continue the business pending completion of formalities for award of dealership to the satisfaction of the corporation....."

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26. Further, D1W1 during his cross-examination had admitted that as per record of defendant no.1, no communication was given to Sh. Shyam Sunder Gupta and Ms. Nirmal Gupta at any point of time regarding the formalities to be completed. D1W1 also admitted that as per their record, Sh. Shyam Sunder Gupta and Ms. Nirmal Gupta were alive when document Ex.PW1/3 was issued. Had the defendant no.1 treated Sh. Shyam Sunder Gupta and Ms. Nirmal Gupta as partners, there was no occasion to appoint the plaintiff as a temporary dealer. Not only that, D1W1 also admitted that no communication was ever given to Sh. Shyam Sunder Gupta and Ms. Nirmal Gupta during their lifetime informing about the grant of temporary dealership to deceased partner and also admitted that no NOC was ever demanded from Sh. Shyam Sunder Gupta and Ms. Nirmal Gupta during their lifetime regarding grant of temporary dealership to the plaintiff. D1W1 also admitted that defendant corporation neither responded to Mark P-1 dated 21.01.1991 nor raised any objection or protest to the contents of the said document. This being the case, the only inference which can be drawn is that the partnership was reconstituted on 21.01.1991 and plaintiff was treated as a partner in the firm and after the death of one of the partners i.e. Sh. Ganesh Dass on 01.12.2002, the plaintiff being the sole surviving partner was granted temporary dealership. Plaintiff being the daughter of the other partner was also the legal heir and the act of the defendant no.1 reflects that it treated the plaintiff as the sole proprietor of the petrol pump dealership.

27. In these circumstances, since Sh. Shyam Sunder Gupta and his wife Ms. Nirmal Gupta had ceased to be the partner as on 21.01.1991 or latest by 30.06.2000, no question arose for getting the NOC from the retired partners as Sh. Shyam Sunder Gupta and Ms. Nirmal Gupta had long ceased to be partners. The question, if at all, would have been to seek the NOC of the other LRs, if any, of Sh. Ganesh Das. Not only that, letter Ex.PW1/3 appointing the plaintiff as temporary dealer specifically stated that defendant no.1 is agreeable in principle, to appoint her as an interim dealer on the same terms and conditions as contained in the earlier agreement of 1983. Under these circumstances, the appointment of the plaintiff as a temporary

dealer pending completion of formalities tantamount to treating the plaintiff as a sole proprietor of the firm.

28. The contention of the Ld. Counsel for defendant that the NOC was not furnished by the plaintiff in the prescribed format and therefore the plaintiff is not entitled to the dealership has no merit. In the first instance, once Sh. Shyam Sunder Gupta and Ms. Nirmal Gupta have ceased to be partners and the partnership firm stood reconstituted, there was no occasion to get the NOC of the legal heirs of Sh. Shyam Sunder Gupta and Ms. Nirmal Gupta. Even otherwise, the plaintiff had furnished the NOC Ex.PW1/7 by way of joint affidavit of defendant no. 2, 3 & 4 which was not accepted by the defendant no.1 as defendant no.1 asked for the NOC in prescribed format in this regard. Ld. Counsel for defendant further contended that it was a contractual relation between the parties and defendant no.1 is free to terminate the contract by giving 90 days notice. In my considered opinion, defendant no.1 is an instrumentality of state and is expected to act fairly and reasonably. Reliance in this regard can be placed upon **Kumari Shrilekha Vidvarthi etc. Vs. State of UP and Ors; AIR 1991 SC 537** wherein it has been held that contractual obligation cannot divest state of fairness in its action. Further, in **BPCL Vs. B.M. Motors AIR 2015 SC 251**, it has been held that petitioner corporation being a public sector entity is expected to act fairly and objectively to prevent one party taking undeserved advantage over other on technical or procedural ground. It is worthwhile to note that on the first date of appearance itself, the defendant no.1 had conceded the relief sought by the plaintiff with a rider that NOC was to be provided by defendants no.2 to 4. Defendant no.1 cannot be allowed to blow hot and cold in the same breath and deprive the plaintiff of her rights existing under the contract.

29. In my considered opinion, the defendant no.1 was at fault as vide letter dated 19.04.2010 Ex.PW1/5 written by the defendant no.1 to the plaintiff, it simply asked for the NOC from legal heirs of Sh. Shyam Sunder Gupta and Ms. Nirmal Gupta. This letter Ex.PW1/5 did not ask for any prescribed format for submission of the NOC. Once the plaintiff had become the implied partner in the reconstituted firm, there was no occasion for her to get the NOC from the LRs of Sh. Shyam Sunder Gupta and Mrs. Nirmal Gupta. In spite of that, plaintiff vide letter dated 05.06.2010 Ex.PW1/6 had furnished the copy of the NOC/ affidavit Ex.PW-1/7 of all the three LRs who are defendant no.2 to 4. Defendant no.2 to 4 had no right, title or interest in the dealership in the first instance and asking the plaintiff to again furnish the NOC in same prescribed format tantamounts to give arm twisting handle to defendant no .2 to 4 to exploit the situation. This becomes all the more

important considering the fact that defendant no.2 to 4 did not even contest the present case and after the appearance by their counsel, defendant no.2 to 4 were proceeded ex-parte.”

(Underlining Added)

8. This Regular First Appeal came up for admission on 19.11.2018. The appeal was argued almost entirely with respect to all relevant issues in the case and the judgment was to be pronounced in the open court. This Court also *prima facie* made observations that in the facts of the present case, the appellant/defendant no. 1 has been acting unfairly and harassing the ordinary citizens of this country, and therefore, this Court was inclined to pass serious observations against the appellant/defendant no. 1 and its officers while disposing of the appeal, and this is so recorded in the order dated 19.11.2018 which reads as under:-

“Caveat No.1047/2018

1. Counsel appears for the caveators. Caveat stands discharged.

+RFA No.932/2018 and C.M. Nos.47783/2018(stay) & 47784/2018(exemption)

2. Only because counsel for the appellant says that he will take instructions from the appellant, this appeal is adjourned otherwise this Court, after hearing arguments on behalf of the appellant/defendant, was inclined to pass serious observations against the appellant and its officers while disposing of the appeal.

3. Re-notify on 30th November, 2018.”

9. However, instead of taking instructions with respect to whether or not this appeal is pressed, the Ld. Additional Solicitor General (ASG) has now appeared for the first time and has sought to address a few points of arguments before this Court. Only and only because the appellant/defendant no. 1 is a Public Sector Undertaking and is represented by an ASG, in deference I have heard the Ld. ASG, but in my opinion it is an unacceptable practice of a litigant that when after arguments are complete instead of inviting a judgment, an adjournment is taken only for the purpose of taking instructions, but instead thereafter renewed efforts are made to re-argue the matter which would have reached a *quietus* on 19.11.2018. With this preliminary recording of certain facets, let us now examine the arguments urged by the Ld. ASG for the appellant/defendant no. 1.

10. It is argued on behalf of the appellant/defendant no. 1 that the respondent/plaintiff was appointed as a 'Temporary Dealer' only, and the same was accepted by the respondent/plaintiff, therefore, the respondent/plaintiff will not have a right to a regular petrol pump dealership. It is also argued that the respondent/plaintiff as a sole proprietor cannot be granted the dealership. It was further argued that

since NOC was not given in the prescribed format, the dealership was not reconstituted in the name of the respondent/plaintiff.

11. I have failed to find any substance whatsoever in any of the arguments which have been urged on behalf of the appellant/defendant no.1 because the admitted facts are that the reconstituted dealership agreement was entered into on 21.11.1983 by the appellant/defendant no.1 with three partners, namely Sh. Shyam Sunder Gupta, Smt. Nirmal Gupta and Sh. G.D. Sehgal. Indeed there is admittedly a 2008 Policy whereby the legal heirs of the deceased partners or surviving partners have to be granted dealership. Legal heirs of two of the three partners namely, Smt. Nirmal Gupta and Sh. Shyam Sunder Gupta, had given their NOC for granting the dealership to the respondent/plaintiff, and except raising a technical objection of the NOC not being in the prescribed format (even the written statement does not say that what would be an illegality which is not complied with and in what prescribed format the same would have been complied with). The Letters written by the respondent/plaintiff being Mark P-1 and Mark P-2 dated 21.01.1991 and 30.06.2000 were received by the appellant/defendant no.1 for reconstitution and were

never objected to, as admitted by D1W1. After the death of Sh. Shyam Sunder Gupta and his wife Smt. Nirmal Gupta, the NOC was duly given by all three legal heirs, and who were sued as defendant nos. 2 to 4 in the suit but they never appeared and were proceeded *ex parte* i.e. the LRs of Sh. Shyam Sunder Gupta and Smt. Nirmal Gupta had no objection to the grant of dealership to the respondent/plaintiff. Really, therefore, the present case is a case of the appellant/defendant no.1 wrongly contesting the suit for the sake of it.

12. The aforesaid facts show that except taking technical objections on different occasions, the appellant/defendant no.1 does not have any valid or substantial defence whatsoever, either to the suit or to the requests made from the year 1991 for granting the dealership in the name of the respondent/plaintiff. The present is not a case where there is any fraud or cheating in getting the dealership license or there is any fraud or cheating in continuing the dealership or that the dealership being illegally transferred to a third person, or that allegedly prejudice has been caused to the appellant/defendant no.1 by the respondent/plaintiff, and who was otherwise entitled to claim dealership license in terms of Clause 3.5 of the 2008 Policy which is

already reproduced above as also para 13(b) of the 1983 DPSL Agreement.

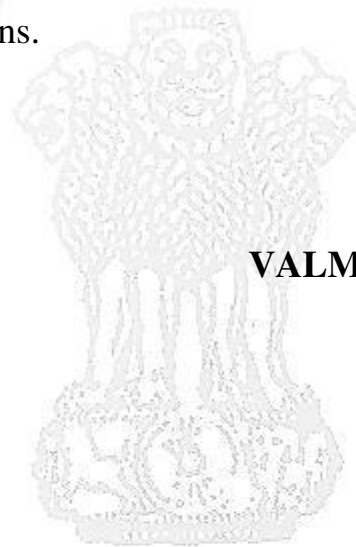
13. It is highly unfortunate that appellant/defendant no. 1 which is a Public Sector Undertaking has been harassing the respondent/plaintiff, since deceased, and thereafter her legal heirs, by not only refusing to grant the dealership agreement to which the respondent/plaintiff was entitled to, and now her legal heir is legally entitled to, and now even in spite of the categorical impugned judgment giving correct reasoning and conclusion, this appeal has been filed. Further, the fact is that despite taking an adjournment for taking instructions after the appeal was argued, once again the appeal was sought to be argued through a Government Law Officer. Therefore, while dismissing this appeal with costs of Rs. 1,00,000/- to be paid by the appellant/defendant no.1 to the contesting legal heir namely Smt. Annu Sabharwal/respondent no.1(iii) of the original respondent/plaintiff, Smt. Promila Kishore. A copy of this judgment be placed before the Board of Directors of the appellant/defendant no.1 so as to show how the officers of the appellant/defendant no.1 are unnecessarily harassing common citizens of this country for no valid

reasons, whatsoever. A copy of this judgment also be sent by the Registry of this Court to the concerned Secretary in the Ministry of Petroleum and Natural Gas, so that the said Ministry can take proper note and bring to the notice of the appellant/defendant no.1 that harassment of the citizens of this country is unacceptable.

14. The appeal is accordingly dismissed and disposed of with the aforesaid observations.

DECEMBER 7, 2018
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VALMIKI J. MEHTA, J



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