

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15503 of 2016

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Kaushalya Kumari, W/o - Late Ajay Kumar Yadav, R/o - Mohalla - Bhawanipur, Jirat, P.S. - Chhatauni, District - Motihari, East Champaran.

... .. Petitioner/s

Versus

1. Indian Oil Corporation Ltd. through its General Manager cum State In-charge, Lok Nayak Bhawan, Dakbunglow Chauk, Patna-800001.
2. General Manager cum State In-charge, Lok Nayak Bhawan, Dakbunglow Chauk, Patna - 800001.
3. The Deputy General Manager LPG, Indian Oil Corporation Limited, Lok Nayak Bhawan, Dakbunglow Chauk, Patna-800001.
4. The Chief Area Manager, Indian Oil Corporation Limited, 1st Floor, Shahi Bhawan, Exhibition Road, Patna.
5. The Sales Officer, Indian Oil Corporation Limited, 1st Floor, Shahi Bhawan, Exhibition Road, Patna.
6. Girija Nandan Prasad Ray, Son of Ruplal Rai, R/o Village- Lahladpur, Police Station- Madhuban, District- East Champaran, at Present resides at Village/ Mohalla- Pataura Missision Chauk, Police Station- Muffasil Motihari, District- East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Siddharth Prasad, Adv. Mr. Shyameshwar Kumar Singh, Adv.
For the Respondent No.1to6:	:	Mr. Sandeep Kumar, Adv. Mr. Sanjay Kumar, Adv.
For the I.O.C.L	:	Mr. Ankit Katriar, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 26-04-2019 This writ application has been preferred for issuance of a writ in the nature of a writ of mandamus commanding the respondent Corporation to resume the supply of LPG to the petitioner's distributorship firm while processing of the reconstitution of the firm in terms of the letter dated 05.05.2015 issued by the Indian Oil Corporation Limited as contained in Annexure '4' to the writ application.



A further prayer has been made to consider the petitioner's application for reconstitution of the distributorship firm having regard to the fact that the partner other than the petitioner's husband has been arrested in connection with the alleged murder of the petitioner's husband.

The facts as disclosed in the writ application would show that the husband of the petitioner and private respondent no.6 were the partners and they constituted a firm which was awarded the distributorship of Liquefied Petroleum Gas (LPG) by the respondent corporation. The partnership firm was running in the name and style of M/s Sri. Krishna Gas Agency at Motihari.

Unfortunately, the husband of the petitioner was shot at on 08.04.2015, he sustained injuries and later on he succumbed to the injuries on the same day giving rise to Chhattauni P.S. Case No.69 of 2015. In course of investigation the name of respondent no.6 transpired, he was arrested and was put behind the bar. A charge-sheet has also been filed. This Court has been informed that the case is at the stage of framing of charge as the discharge petition of respondent no.6 has already been rejected by the learned Court below and a challenge to the said order of the learned Court below is



pending before this Court.

In the aforesaid circumstance, now, since one of the partners out of two has died, the partnership firm has by virtue of the provisions of the Partnership Act be dissolved but there is a provision in partnership deed for reconstitution of the partnership firm. Clause '14' has been referred to in this regard. Learned counsel for the petitioner submits that Clause '14' permits an automatic inclusion of the legal heir of the deceased partner in the partnership firm and by virtue of operation of Clause '14' of the partnership deed, the firm would not automatically dissolve. The dispute in the present case has arisen because in the given facts and circumstance the legal heir of the deceased partner (petitioner) is not ready to join the partnership with respondent no.6 who is an accused in the murder case of her husband.

Learned counsel for the private respondent no.6 submits that if the petitioner has any difficulty with respondent no.6 in joining the partnership, the legal heir of private respondent no.6 is ready to join the firm with the petitioner and for that purpose respondent no.6 would be willing to go outside the partnership. This is one solution which has been suggested at the Bar but that is not acceptable to the petitioner for the



obvious reason.

A perusal of Annexure '4' to the writ application would show that the Indian Oil Corporation Limited has called upon the respondent no.6 to submit a fresh partnership agreement between him and the legal heir of the deceased partner. The Letter dated 5515 (Annexure '4') is reproduced hereunder:-

"To,

Girija Nandan Prasad Roy,

Partner

M/s Sri Krishna Gas

Chhatauni, Motihar-845401

Ref:-PAO/SRIKRISHNA/15-16/1

Date 05.05.2015

Sub:- Death of Sri Ajay Kumar Yadav, the partner of M/s Sri Krishna Gas, Chhatauni, Motihari.

Vide letter ref ER/LPG/206/22 dated 11.8.1994 you and Sri Ajay Kumar Yadav had been awarded a LPG distributorship in partnership. Since then you have been running the distributorship in the name and style as Sri Krishan Gas agency at Chhatauni Chowk, Motihari, Dist-East Champaran. A distributorship agreement was signed by the partners with Indian Oil on 29.08.2014.

As you are aware that Sri Ajay Yadav, 50% partner in Sri. Krishna Gas was fired a bullet in his neck on 08.04.2015. He was injured seriously and succumbed on death on 15.04.2016 in Patna. Due to death of one of your partner, the existing distributorship agreement with Indian Oil has become invalid.

As per your clause 14 of the partnership deed dated 18.03.1994 submitted to OCL, after the death of one of the partner, the legal heir of the deceased partner shall be inducted as partner in the partnership.

In view of above, you are advised to submitted a fresh partnership agreement between you and the legal heir of deceased partner immediately. You along with legal heir of deceased partner are also advised to sign a fresh distributorship agreement with Indian Oil by 31.5.2015 failing which action as per IOCL policy guideline shall be initiated.

This is issued without prejudice to the coron's other rights."



Thanking you

For Indian Oil Corp. Ltd.

Sd/-

(Arjun Prasad)

Ch. Area Manager”

On the last occasion when the case was taken up for consideration on 27.03.2019 this Court passed the following order:-

“After hearing learned counsel for the parties, this court finds that a peculiar situation exists in the present case. There was a partnership firm in which husband of the petitioner and respondent no. 6 happened to be the partners. Husband of the petitioner has been murdered. Allegedly the name of respondent no. 6 has transpired in connection therewith. He has been charge-sheeted also and is an accused in the said case.

Because of the death of the husband of the petitioner the partnership firm, as per the policy of the Indian Oil Corporation Limited (hereinafter referred to as the ‘IOCL’), is required to be reconstituted in order to run the business with IOCL. The predicament of the petitioner is that on the one hand under the IOCL policy, it is said that she is compulsorily required to reconstitute the firm with respondent no. 6, she finds it impossible to continue with the partnership with respondent no. ‘6’ because he happens to be an accused in the murder case of husband of the petitioner.

Mr. Sinha, learned counsel representing the IOCL submits that under the policy of the IOCL the firm is to be reconstituted and if one of the partners of the firm or his/her legal heir is not willing to join the partnership he or she has to go out of the same.

Learned counsel however hasten to add that so far as the policy of the IOCL is concerned, it talks of the aforesaid condition in the cases where one of the partners is not willing to continue with the partnership business. The policy however nowhere talks of a situation like the present one wherein one of the partners cannot for the reasons stated hereinabove join the another partner in the partnership firm.

This court would like that this situation be discussed by the respondents and the court should be apprised of a possible resolution which may be indicated



by them by filing an appropriate affidavit within two weeks from today.

List this case on 16th April, 2019 under the same heading.”

Again on 16.04.2019 when a supplementary affidavit was filed on behalf of the petitioner placing on record the revised Guidelines of 2018, this Court took note of that in its order dated 16.04.2019 which is reproduced herein:-

“ A supplementary affidavit has been filed on behalf of the petitioner. With the supplementary affidavit the Detailed Guidelines for Reconstitution of LPG Distributorship, 2018 which has come into effect from 1st November, 2018 has been enclosed as Annexure ‘6’.

Mr. Siddharth Prasad, learned counsel representing the petitioner submits that under the new Guidelines of 2018, the situation which has come up for consideration in the present case has been taken care of and the new guidelines provides that where one of the partners is facing a criminal proceeding and charge against him is framed then he would go out of the partnership and the remaining partner may reconstitute the partnership by inducting a new partner.

Mr. Sandeep Kumar, learned counsel for the private respondent submits that he would file a reply of the counter affidavit to the supplementary affidavit of the petitioner.

In the circumstances, let this case be listed under the same heading on 24th April, 2019.”

Today, this Court has heard the submissions of the parties. It is the submission of learned counsel representing the petitioner that now in view of the revised guideline, Clause



3.12.2 since the charges against respondent no.6 is likely to be framed very soon, he cannot continue as a partner of the firm. The submission is that the Indian Oil Corporation Limited should consider reconstitution of the firm by allowing the legal heir of the deceased partner to take new partners in the firm or the firm may be allowed to be converted in a sole proprietorship firm.

Learned counsel for the Indian Oil Corporation Limited as well as the private respondent no.6 has opposed the submission of learned counsel for the petitioner as according to them, this Court sitting under Article 226 of the Constitution of India would not be the appropriate forum to take such decision.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that the Indian Oil Corporation Limited would be the best suited party to consider the request of the petitioner together with the objection if any on behalf of the private respondent no.6 and, thereupon, to take a decision in accordance with its own Guidelines which has been recently revised in the year, 2018. Learned counsel for the respondent no.6 has an apprehension that if the Indian Oil Corporation Limited would not consider his objection and take a decision contrary to the law, the reconstitution of the firm may



be allowed illegally to benefit the petitioner. This Court has no reason to go into such aspects of the matter which are based on mere apprehension at this stage. The petitioner as well as private respondent no.6 will be at liberty to place their case before the competent authority of the Indian Oil Corporation Limited (Respondent No.3) within a period of 30 days from today who will consider the submissions of the parties keeping in mind the prevailing Guidelines whatsoever are there and the law on the subject and shall take an appropriate decision which should be communicated to the parties within a period of 60 days from the date of receipt of the submissions. It is made clear that the competent authority of the respondent Corporation shall take decision by applying an independent mind based on the materials, the Guidelines and the law on the subject as this Court has not gone into the merits of the contentions of the parties and it has been for the present left open for the competent authority of the Corporation to decide the dispute.

The writ application stands disposed of, accordingly.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

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