

23-12-2019
Subrata

I N T H E H I G H C O U R T A T C A L C U T T A
C i v i l A p p e l l a t e J u r i s d i c t i o n
Appellate Side

M.A.T.No.1912 of 2019

Arup De

-vs-

Indian Oil Corporation Limited & Ors.

with

CAN No.12337 of 2019

Mr. Debajyot Basu

Mr. Joyjit Dutta

Ms. Reshmi Mukherjee ...for the appellant

Mr. M.S. Yadav

...for IOCL

As the issue involved in the appeal is very short, we have treated the appeal as on the day's list.

This is an appeal from a judgement and order dated 6th December 2019 in a writ application [WP No.25024(W) of 2018] passed by a learned single judge of this court. His lordship refused to entertain the writ since it had become "infructuous".

The distributorship of LPG Gas in Dhupguri was the subject-matter of the writ.

At an earlier point of time, the dealership of one Bimala Gas Services had been terminated by Indian Oil Corporation Limited (IOCL). Subsequently, a selection process started in which the present appellant-writ petitioner claimed to be successful and entitled to appointment as a distributor.

Bimala challenged the termination. The matter went up to the Supreme Court. The dealership of Bimala was restored. The present appellant had appeared before the Supreme Court as submitted by learned counsel for IOCL.

The appellant by filing this writ sought enforcement of his selection. In the writ, Bimala was not a party.

The petitioner filed two applications (CAN No.9380 of 2019 and CAN No.5570 of 2019) asking for addition of Bimala as the party respondent and for incorporation of the records of the earlier writ in an amendment of the writ petition.

The flaw, in our opinion, in the impugned judgement and order dated 6th December 2019 is that the proceedings brought by Bimala, which resulted in restoration of their dealership, have been countenanced by the court without impleading Bimala in the writ. Whether the present writ had become infructuous or could only be determined by impleading Bimala as a party and considering the facts and evidence of the previous writ. The rights and equities of the parties ought to have been determined fully and conclusively by this exercise.

In those circumstances, we set aside the impugned judgement and order dated 6th December 2019 and remand the writ application to the learned single judge for consideration.

Let affidavits be exchanged in the writ application according to the following directions: Affidavit-in-opposition to be filed by 20th January 2020; affidavit-in-reply may be filed by 31st January 2020.

The application (CAN No.9380 of 2019) appears in the cause title of the impugned order while the other connected application (CAN No.5570 of 2019) does not. For the ends of justice, we dispose of both the aforesaid connected applications by directing that Bimala Gas Services and their partners, as mentioned in prayer (a) of the application (CAN No.5570 of 2019), be added as party respondents in the writ petition by 6th January 2020.

The department is directed to carry out the amendment.

The appellant is to file a supplementary affidavit in the writ bringing on record the subsequent events, including the record of proceedings by the aforesaid date.

The amended writ petition together with the supplementary affidavit is to be served upon the appearing respondents and also on the added respondents.

We request the learned single judge to hear out the writ as expeditiously as possible.

Learned counsel for the Oil Corporation submits that dealership has been restored in favour of Bimala Gas Services. To this, learned counsel for the appellant

submits that this agency has not yet started functioning.

We make it clear that any change in status quo regarding appointment of distributors shall be made only with the leave of the learned single judge.

The appeal and the connected injunction application (CAN No.12337 of 2019) are accordingly disposed of.

[I.P. Mukerji, J]

[Md. Nizamuddin, J]