

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 260 of 2015**

*{Arising out of Order dated 15/07/2013 passed in Writ Petition(C) No. 5034 of 2007 by
the learned Single Judge}*

- Ajay Kumar Soni S/o Late Shri Parasram Soni, aged about 60 years, R/o Sidharth Chowk, Tikrapara, Post & PS Tikrapara, Raipur C.G.

----Appellant/Petitioner**VERSUS**

- Hindustan Petroleum Corporation Ltd. Through Senior Regional Manager and Constituted Attorney, L.P.G. Regional Office, L.P.G. Bottling Plant, Post and PS Mandir Hasaud, District Raipur Chhattisgarh

-----Respondent

For Appellant	:	Mr. Jitendra Pali, Advocate
For Respondent	:	Mr. N.Naha Roy, Advocate

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice**Hon'ble Shri Parth Prateem Sahu, Judge****Order on Board****Per P.R. Ramachandra Menon, C.J.****05/11/2019**

1. The challenge is against dismissal of the writ petition filed by the appellant with regard to granting of L.P.G. distributorship under the Freedom Fighters' quota.
2. Heard Mr. Jitendra Pali, learned Advocate for the appellant as well as Mr. N.Naha Roy, Advocate appearing for the respondent-Petroleum Company.
3. The sequence of events is as follows: The father of the appellant was allotted the L.P.G. dealership under the name and sell as "Viplav Gas Service" under the Freedom Fighter category, way back on 12-03-1987, and he was running the show. It is stated that the father of the appellant executed a WILL in favour of the appellant on 06-09-1994, whereby the appellant was to be

recognized as the sole proprietor after demise of the father. Thereafter, an application was submitted by the father of the appellant for reconstitution of the partnership on 19-04-1995, inducting the appellant also as a working partner and this was approved by the respondent-Company as per the proceedings dated 25-04-1997. In fact, at this time, the appellant was serving under M/s Bharat Aluminum Company Ltd. and in terms of approval, he resigned from the employment and continued as a partner of the firm, joining hands with the father. The partnership deed contained clauses to the effect that the partnership shall not be dissolved after death of the father and that the appellant could continue the business under the same name and style. It was accordingly that an agreement was executed between the dealers and the respondent-Company on 28-04-1997 with reference to the terms of partnership deed. It is pointed out that the Ministry of Petroleum and Natural Gas had also issued necessary guidelines with regard to the Reconstitution and Revival of L.P.G. distributorship in case of death of the dealer, which virtually assert the rights of the legal heirs to continue the assignment. It is pointed out that the father expired and left behind three sons including the appellant and a daughter; besides his widow. There was some dispute with regard to the properties left out by the deceased. Though, the appellant submitted an application to effect the reconstitution of the dealership, based on the WILL, a rival claim was put-forth by the brothers of the appellant for the L.P.G. dealership. Met with the situation, the appellant applied for obtaining probate of the WILL before the Additional District Judge, Raipur. But in the meanwhile, the dealership was terminated on 11-06-2005, as the appellant had failed in furnishing the probated WILL or No Objection from the other legal heirs. This resulted in filing WP No. 2649/2005 before this Court challenging the order dated 11-06-2005. The said writ petition was disposed off by a learned Single Judge of this Court on 19-09-2005, giving appropriate direction

to have the 'probate application' be finalized by the Additional District Judge, Raipur and giving a consequential direction to have the outcome applied with regard to the pending dispute as to the dealership.

4. Pursuant to the above verdict, the matter was finalized by the Additional District Court who passed an order on 04-03-2006 whereby probate was granted in favour of the appellant. Though, necessary proceeding was filed and copy of the probate was made available, the respondent-Company did not consider the same, which made the appellant to approach this Court by filing WP No. 5679/2006. When the said matter was taken up for consideration on 16-04-2007, it was submitted from the part of the distributor Company that in view of having obtained the probate, the representation preferred by the appellant/writ petitioner would be considered and finalized in accordance with law. However, the claim came to be rejected as per order dated 31-05-2007, observing that the appellant had not submitted 'No Objection' from the legal heirs and hence the Company was not in a position to accede to the request. This, according to the appellant is not correct, insofar as, the Company had assured and undertaken before the learned Single Judge in WP No. 5679/2006, that they would consider the matter in the light of the probate and hence it was not open for them to take a 'U-turn' and reject the representation. It was accordingly, that the order was sought to be challenged by filing writ petition, again.
5. It is brought to the notice of this Court that when the matter was pending consideration before the learned Single Judge, an advertisement was issued by the respondent Company on 12-11-2007, inviting applications from persons who were desirous of starting the dealership under the Freedom Fighters' category. Immediately, the same was sought to be stayed by the appellant by filing I.A. dated 06-05-2008 before this Court, but the fact remained that no interim order was passed by the learned Single Judge. The writ petition was

pending for quite long and later, it was finalized by the learned Single Judge by passing judgment on 15-07-2013, a copy of which has been produced as Annexure A/1, which is put to challenge in this appeal.

6. As per Annexure A/1, it has been noted that, by virtue of subsequent developments, the proceedings were finalized by the Company pursuant to advertisement dated 12-11-2007 and dealership was given in favour of another person, as per the proceedings dated 23-03-2011. Since third party interest had been created; it was held as not possible to have the same interdicted in the writ petition, more so, since, the aggrieved party was not brought in the party array. It was accordingly, that the writ petition came to be dismissed, which is sought to be challenged in this appeal.
7. The learned counsel for the appellant submits that the respondent Company had never brought to the notice of learned Single Judge by filing any proceeding, that any third party interest was created. The particulars of the person to whom the dealership was given pursuant to advertisement dated 12-11-2007, were virtually hidden and the appellant/writ petitioner was not in the position to know about the same. This being the position, no adverse inference ought to have been drawn against the appellant to deny the benefit, who was fighting for the cause for quite long, more so, when it was already assured before this Court that the matter would be finalized based on the rights and liberties of the appellant with reference to the probate.
8. The learned counsel for the respondent Company submits that the Company was waiting for quite long and the dispute was only among the legal heirs of the deceased father of the appellant who was allotted the dealership under the Freedom Fighters' category. Specific reference is made to the order dated 31-05-2007, where the sequence of events has been adverted to. It is pointed out that the legal heirs of the deceased were quarreling among themselves

with regard to the rights and interest and ultimately probate was applied for in relation to the WILL executed by the deceased and it was later obtained by the appellant. It is also true that a submission was made by the Company before the learned Single Judge that representation would be considered in light of the probate issued. But then, the Company obtained letters of objection from the mother and brother of the appellant, to the effect that the dispute had not become final and that they had already challenged the issuance of probate by way of appropriate proceedings before the appellate Court, where it was pending.

9. The communication issued to the appellant to produce the 'NOC' from the other legal heirs of the deceased was not acted upon. In the said circumstance, the respondent Company proceeded with further steps for allotting the dealership under the Freedom Fighters' category by issuing advertisement dated 12-11-2007 inviting applications from all concerned who were eligible. The appellant was quite aware of the said proceedings, who approached this Court by filing I.A. No. 01/2008 dated 06-05-2008 seeking for stay of further proceedings; which however was not granted by the Court. This being the position, there is no much pith or substance in the submission made by the learned counsel for the appellant that third party right was created all of a sudden or that he was not aware of the developments.

10. After hearing both the sides, we find that, though the factum of finalization of the proceedings, pursuant to the advertisement, was never put on record by the respondent-Company, it remains a fact that, the advertisement issued way back in the year 2007 was very much within the knowledge of the appellant, who sought to stay further proceedings by filing I.A. It is also a fact that, no interim order was passed by this Court, which was also very much within the knowledge of the appellant. Still, no steps were pursued from the part of the appellant to cause the writ petition to be amended with reference to

subsequent developments challenging the advertisement and also by raising any prayer for setting aside the advertisement and all further proceedings based on the said advertisement. In the absence of any such steps for amendment of the pleadings and prayers, to get the advertisement set aside, no relief could have been granted by the learned Single Judge. In the said circumstances, we are of the view that, this is not a matter where interference is possible with regard to grievance projected by the appellant.

11. The writ appeal stands dismissed accordingly.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge