

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.12.2020

C O R A M

The Hon'ble Mr. A.P.SAHI, THE CHIEF JUSTICE
and
The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

W.A.No.354 of 2020
and
CMP.No.5950 of 2020

M.Manickam ... Appellant/4th Respondent

Vs.

- 1.I.Pour GKC and RKC & Sons
Registered Partnership Firm,
Rep. by Ramakrishnan Ipour,
Managing Partner,
No.254, Lal Bahadur Shastri Street,
Puducherry - 605 001. ... 1st Respondent/Petitioner
- 2.Hindustan Petroleum Corporation Limited (HPCL)
A Public Limited Company,
Through the General Manager (South)
Having their registered office at
No.8. No.1, Thalamuthu Natarajan Building,
4th Floor, Gandhi Irwin Road, Egmore,
Chennai - 600 008.
- 3.The Deputy General Manager (Trichy Retail Region)
Hindustan Petroleum Corporation Limited,
Having their Regional Office at at
No.90, Second Floor, MDSR Enclave,
Bharathidasan Road, Cantonment, Tiruchy-620 001.
- 4.The Chief Regional Manager,
Hindustan Petroleum Corporation Limited,
Having their Regional Office at
No.90, Second Floor, MDSR Enclave,
Bharathidasan Road, Cantonment,
Tiruchy-620 001.

.. Respondents 2 to 4/
Respondents 1 to 3

This Writ Appeal is filed under Clause 15 of the Letters of Patent to set aside the order dated 14.02.2020 made in W.P.No.15060 of 2019 and consequently dismiss the W.P.No.15060 of 2019.

Prayer in WP.No.15060/19: Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus, calling for the records relating to impugned communication bearing Ref.No.TRRO/RN/RET dated 20.05.2019 issued by the 2nd Respondent in continuation of decision communicated by the 3rd respondent to the Petitioner's firm vide communication bearing Ref.No.TRO/DG-LEG/RET dated 31-12-2015 and quash the same and consequently direct the respondent Nos.1 to 3 regularise the reconstitution proposal submitted by the petitioner's firm.

For Appellant : Mr.D.Bharatha Chakravarthy

For Respondents : Mr.AR.L.Sundaresan, S.C.
Assisted by Mr.M.Vaikunth for R-1

Mr.O.R.Santhanakrishnan
for R2 to R4

J U D G M E N T

SENTHILKUMAR RAMAMOORTHY J.,

This writ appeal is directed against the order dated 14.02.2020 in W.P. No.15060 of 2019. The said writ petition was filed by the first Respondent herein challenging the communication dated 20.05.2019 of the Second Respondent, the Hindustan Petroleum Corporation Limited (the Petroleum Corporation) and for a consequential direction to the Respondents 2 to 4 herein to regularise the reconstitution proposal of the first Respondent.

2. A partnership firm under the name and style of IPOUR G.K.C. & R.K.C. and Sons Petrol Bunk (the Partnership Firm) was constituted under a Partnership Deed dated 07.01.1986. The partners of the Partnership Firm were Ipour Munuswamy Chettiar, Smt.M.Susila and Shri.I.M.Manickam (the Appellant herein). A partnership firm under the name and style of Ipour G.K.C. & R.K.C. and Sons (the Old Partnership Firm) had been constituted earlier by Ipour Munuswamy Chettiar, Shri.R.Jayaraman and Shri.R.Guru. Upon the exit of Ipour Munuswamy Chettiar from the Old Partnership Firm with effect from 01.04.1985, the partners thereof agreed that he would taken over the petrol bunk business at Lal Bahadur Sastry Street, Pondicherry. In connection with the same, he inducted his wife, Smt.M.Susila, and his son, I.M.Manickam, as partners and constituted the Partnership Firm under the aforesaid Partnership Deed with effect from 01.04.1985. Under the terms of the said Partnership Deed, the profits and losses of the partnership were required to be shared in the

proportion of 51% to I.R.Munuswamy Chettiar, 25% to I.M.Susila Devi and 24% to I.M.Manickam. Clause 11 of the Partnership Deed specified that in the event of death or retirement of one of the partners, the Partnership Firm shall not be dissolved but shall continue among the surviving partners and the male heirs of the deceased or retired partners. As per Clause 13 thereof, disputes are required to be referred for resolution by arbitration. Pursuant thereto, a Dealership Agreement dated 15.04.1986 (the Dealership Agreement) was executed by and between the Petroleum Corporation and the Partnership Firm. The Dealership Agreement was for a period of one year. As per Clause 66 of the Dealership Agreement, disputes were required to be resolved by arbitration. On 09.02.1990, a Family Arrangement was executed as between the Appellant, namely, I.M.Manickam, on the one hand, and his father, Ipour Munuswamy, his brothers, I.M.Udhayasankar, I.M.Radjasegarane and I.M.Ramakrishnan on the other. This Family Arrangement pertained primarily to the truck business and was revoked by a Family Arrangement dated 15.12.1993 relating to division of properties.

3. According to the first Respondent herein, the Appellant executed a Release Deed dated 30.11.1993, retired from the Partnership Firm and relinquished his rights in the Partnership Firm in favour of his father, Ipour Munuswamy Chettiar, and his mother I.M.Susila Devi, i.e. the other partners. In consideration of the release, the Appellant is stated to have received the amounts due to him as regards the capital account, current account, accrued profits and goodwill. Thereafter, another Family Arrangement dated 15.12.1993 (the Fuel Business Family Agreement) was executed by and between the family members of I.R.Munuswamy Chettiar, including the Appellant herein. The Fuel Business Family Arrangement records that the petrol bunk in the name and style of IPOUR GKC & RKC and Sons Petrol Bunk would be absolutely owned by I.M.Udhayasankar, I.M.Radjasegarane and I.M.Ramakrishnan. It further states that the SKD Dealership of M/s.IPOUR Jayaram and Munuswamy at Madagadipet shall be transferred in favour of I.M.Manickam. Clause 6 thereof specifies that I.M. Manickam would retire from the Partnership Firm, which would be reconstituted thereafter with I.M.Udhayasankar, I.M.Radjasegarane and I.M.Ramakrishnan as the partners. Clause 9 records that the original partners of the Partnership Firm would submit the necessary documents to the Petroleum Corporation for reconstitution. Pursuant to the Fuel Business Family Arrangement, it appears that I.R.Munuswamy, I.M.Susiladevi and I.M.Manickam, by letter dated 15.12.1993, requested the Petroleum Corporation for permission to reconstitute the Partnership Firm. However, disputes ensued as between the members of the family. In these circumstances, by communication dated 03.06.1996, the Petroleum Corporation informed the Partnership Firm that they

have not received any proposal in respect of the reconstitution of the retail outlet and the kerosene dealership.

4. Later, I.R.Munuswamy Chettiar died on 11.02.2015. After his death, by communication dated 12.02.2015, the Petroleum Corporation informed his legal heirs and the surviving partners of the Partnership Firm that the resumption of supplies does not constitute recognition of the continuation of the dealership on a permanent basis. Thereafter, by communication dated 24.03.2015, I.M. Udhayasankar, Shri I.M. Radjasegarane and Shri I.M.Ramakrishnan enclosed the application form for reconstitution and requested the Petroleum Corporation to accept the said application and take necessary action. W.P. No.9064 of 2015 was filed by the Partnership Firm through I.M. Ramakrishnan in these facts and circumstances. The said writ petition was disposed of by order dated 30.10.2015. By the said order, the Petroleum Corporation was directed to process the application for reconstitution forthwith by calling upon the applicants to produce the requisite documents. The Court further held that because the no objection from I.M.Manickam as well as the release deed had been produced, it is not necessary to produce a fresh letter of no objection from I.M.Manickam. Pursuant thereto, a detailed representation dated 01.03.2016 was issued by the Partnership Firm to the Petroleum Corporation seeking permission for reconstitution at the earliest. In response, by communication dated 14.03.2016, the Petroleum Corporation stated that the request for reconstitution cannot be considered unless there is consensus among the surviving partners and the legal heirs of the deceased. Therefore, the surviving partners and legal heirs were informed that they should arrive at a consensus and thereafter apply for reconstitution. A further communication dated 20.05.2019 was once again issued stating that the surviving partners and legal heirs should arrive at a consensus and thereafter apply for permission for reconstitution of the Partnership Firm. The said order was challenged in W.P. No.15060 of 2019 which resulted in the impugned order.

5. We heard Mr.D.Bharatha Chakravarthy, the learned counsel for the Appellant; Mr.O.R.Santhanakrishnan, the learned counsel for the Petroleum Corporation(R2 to R4); and Mr.AR.L.Sundaresan, the learned senior counsel for the first Respondent assisted by the learned counsel Mr.M.Vaikunth.

6. Mr.Bharatha Chakravarthy submitted that the writ petition was not maintainable for several reasons. His first objection to the maintainability is on the ground that the writ petition was filed on behalf of the Partnership Firm by Mr.I.M.Ramakrishnan. Mr. Bharatha Chakravarthy submitted that

the said Mr. Ramakrishnan is not a partner of the Partnership Firm. The Partnership Firm has also not been duly re-constituted on the basis of an agreement as between the surviving partners of the Partnership Firm which includes the Appellant herein. Consequently, the writ petition was filed and prosecuted without the requisite authority from the Partnership Firm. The next contention of Mr. Bharatha Chakravarthy is that there are unresolved disputes between the partners of the Partnership Firm as also between the surviving legal heirs of Mr. Munuswamy Chettiar. Any dispute relating to the Partnership Firm is required to be resolved in accordance with the arbitration clause specified therein. Likewise, any dispute relating to the Dealership Agreement is also required to be resolved in accordance with the arbitration clause in the Dealership Agreement. Besides, there are several disputed questions of fact and therefore the writ petition should not have been entertained by the learned single Judge.

7. On the contrary, Mr. AR.L. Sundaresan, the learned senior counsel for the first Respondent relied heavily on the Release Deed dated 30.11.1993, which was executed by the Appellant herein during the life time of his late father, Ipour Munuswamy Chettiar. By inviting the attention of the Court to the clauses of the Release Deed, Mr. Sundaresan pointed out that the Appellant herein retired from the Partnership Firm on 30.11.1993 and acknowledged that all amounts due to him from the Partnership Firm were received by him. He also relied upon the Fuel Business Family Arrangement and pointed out that Clause 4 of the Fuel Business Family Arrangement expressly states that the petrol bunk in the name and style of M/s. IPOUR G.K.C. and R.K.C. and Sons Petrol Bunk shall be absolutely owned by and in the exclusive enjoyment and management of I.M. Udhayasankar, I.M. Ramakrishnan and I.M. Radjasegarane. He also referred to and relied upon the order passed by this Court on 30.10.2015 in W.P. No.9064 of 2015, whereby the Petroleum Corporation was directed to process the application for reconstitution. In fact, he pointed out that this Court directed the Petroleum Corporation to call for requisite documents but not insist upon the no objection of the Appellant herein because he had previously executed both a no objection letter and the Release Deed. In these facts and circumstances, Mr. Sundaresan submitted that the communications dated 01.03.2016 and 20.09.2019 from the Petroleum Corporation are totally unwarranted, and that the Partnership Firm submitted an application for reconstitution in the specified format as early as on 24.03.2015. Accordingly, the Petroleum Corporation should have considered the reconstitution proposal and accepted the proposal in view of the Release Deed and the Fuel Business Arrangement referred to supra. Therefore, he submits that the impugned order of the learned single Judge whereby it was concluded that the

Petroleum Corporation is not justified in refusing to recognize the reconstitution is fully justified.

8. The learned counsel for the Petroleum Corporation submitted that the dealership was offered to the Partnership Firm in which the late I.R.Munuswamy Chettiar, I.M.Susila Devi and I.M. Manickam were partners. Upon the death of Munuswamy Chettiar, the surviving partners and the legal heirs of Munuswamy Chettiar should have arrived at a comprehensive settlement in respect of the petrol bunk business and based on such settlement, they should have submitted a reconstitution proposal. In this case, no such conclusive settlement was arrived at as is evident from the documents on record and the litigation. Therefore, the Petroleum Corporation was fully justified in calling upon the surviving partners of the Partnership Firm and the legal heirs of Munuswamy Chettiar to first arrive at a full and final settlement and thereafter submit a proposal for reconstitution. Although the Petroleum Corporation framed revised policy guidelines for reconstitution with effect from 01.12.2000 and such revised policy enables reconstitution in case of death of one of the partners by including the legal heirs of such partner, he submitted that this process could not be followed in the present case on account of the continuing disputes with regard to the rights of the Appellant in the Partnership Firm. Therefore, he submits that the stand taken by the Petroleum Corporation is justified.

9. By way of a brief rejoinder, Mr.Bharatha Chakravarthy pointed out that the Release Deed and the Fuel Business Family Arrangement were not duly acted upon by the parties thereto on account of the continuing disputes between them. Therefore, the Appellant did not receive the benefits that he was required to receive in terms of the aforesaid documents. On this basis, he submits that he cannot be ousted from the Partnership Firm by relying upon the above documents.

10. We considered the submissions of the learned counsel/senior counsel for the respective parties and examined the materials on record.

11. A preliminary objection was raised that the writ petition was not maintainable. This objection is on the basis that Mr.I.M.Ramakrishnan, who filed the writ petition as the Managing Partner of the Partnership Firm, is not a partner of the Partnership Firm. Consequently, he does not have the authority to file the writ petition. In order to test the said contention, it is necessary to examine the Partnership Deed and other relevant documents on record. On perusal of the Partnership Deed dated 07.01.1986, it is clear that the partners of the Partnership Firm, M/s.IPOUR G.K.C. and R.K.C. and Sons Petrol Bunk, were I.R.Munuswamy Chettiar, I.M.Susila

and I.M.Manickam. I.R.Munuswamy Chettiar died on 11.02.2015. Upon his death, the Partnership Firm should have been reconstituted in accordance with Clause 11 thereof which is as under:

"In the event of death or retirement of one of the partners the company shall not be dissolved but it shall continue among the other partners and the male heirs of the deceased or retired partners."

From the above, it is clear that the Partnership Firm would not stand dissolved upon the death of a partner but would continue by inducting the male heirs of the deceased or retired partner. In this case, upon the death of I.R.Munuswamy Chettiar, the male heirs of I.R.Munuswamy Chettiar should have been inducted as partners. Upon their induction, the partnership should have been reconstituted. Similarly, the Fuel Business Family Arrangement also records at clause 6 that the Partnership Firm would be reconstituted and that I.M. Manickam would sign necessary documents for such purpose. There is no evidence that this had been done and no reconstituted partnership deed is on record. Even the affidavit in support of the writ petition does not specify the basis for assumption of the mantle of managing partner by I.M. Ramakrishnan. The other surviving partner, I.M. Susila, and the other male legal heirs of Munuswamy Chettiar were not arrayed as parties. Consequently, in our view, I.M.Ramakrishnan does not have the authority to file and prosecute the writ petition in the capacity of Managing Partner of the Partnership Firm.

12. The second objection is that the Partnership Deed contains an arbitration clause and that the disputes pertaining to the business or the affairs of the Partnership Firm should have been referred for arbitration. The relevant clause in the Partnership Deed is clause 13, which is as under:

"Any dispute which might arise between the partners or with their heirs or representatives of one of them on the subject of the present company and of its winding up shall be referred to Arbitrators, chosen by each of the partner and the representatives or their umpire to be appointed in the manner provided by law and such reference in all respects as to the mode of consequences thereof conform to the provisions contained in the Arbitration Act, 1940."

Thus, all disputes as between the partners or between the partners and the legal heirs of one or more partners are required to be resolved through arbitration. Therefore, the

question arises as to whether the present dispute would be covered by the arbitration clause in the Partnership Deed. On examining the relief requested for in the writ petition, it is clear that the first Respondent/Petitioner has challenged the communication dated 20.05.2019 of the Petroleum Corporation and as a consequential relief prayed for a direction to regularize the reconstitution proposal in respect of the Partnership Firm. Therefore, the subject matter of the writ petition is the refusal of the Petroleum Corporation to reconstitute the Partnership Firm. It may be true that such reconstitution was refused on the basis of the unresolved disputes as between the surviving partners and the legal heirs of the late I.R.Munuswamy Chettiar. Nonetheless, the subject matter of the writ petition is a dispute which cannot be resolved by arbitration under the Partnership Deed. Consequently, this objection is not tenable.

13. Be that as it may, it remains to be considered as to whether the present dispute would be within the scope of the Dealership Agreement between the Partnership Firm and the Petroleum Corporation. The said Dealership Agreement was executed on 15.04.1986 and is for a period of one year. It provides for arbitration in respect of disputes arising out of the agreement or in relation thereto by reference to sole arbitration of the Managing Director of the Petroleum Corporation or an Officer nominated by him. The present dispute certainly pertains to the fuel retail dealership between the Petroleum Corporation and the Partnership Firm. Therefore, it would definitely come within the scope of the arbitration clause in the Dealership Agreement.

14. Even otherwise, we note that the Release Deed is in favour of Ipour Munuswamy Chettiar and I.M. Susila, whereas the Fuel Business Family Arrangement provides for the reconstitution of the Partnership Firm through the exit of the original partners and the induction of the other male heirs of Munuswamy Chettiar. There is no evidence that these agreements were acted upon by fulfilling reciprocal obligations thereunder. Consequently, in our view, there are several disputed questions of fact relating to the validity and enforceability of documents such as the Release Deed and the Fuel Business Family Arrangement. Therefore, the learned single Judge should have refused to exercise the discretionary jurisdiction under Article 226. Instead, the learned single Judge proceeded to record findings with regard to the genuineness of the Release Deed. On that basis, the learned single Judge further recorded a finding that the Petroleum Corporation is not justified in refusing to recognize the reconstitution of the Partnership Firm. In our view, the aforesaid conclusions on disputed questions of fact were not justified.

15. As noted earlier, two avenues are open to the surviving partners and legal heirs of I.R.Munuswamy Chettiar. As regards inter se disputes relating to the Partnership Firm, such disputes should be resolved in accordance with Clause 13 of the Partnership Deed which authorizes the arbitral tribunal to decide disputes not only between the partners but also between partners and the legal heirs of the deceased or retired partners. As regards disputes between the Partnership Firm and the Petroleum Corporation, once again, there is an arbitration clause in the Dealership Agreement. Even otherwise, as stated earlier, I.M. Ramakrishnan is not empowered to file and prosecute the writ petition on behalf of the Partnership Firm. In this factual and contractual context, the learned single Judge should have declined to exercise jurisdiction. For all these reasons, we conclude that the order of the learned single Judge cannot be sustained .

16. In the result, the writ appeal is allowed and the order of the learned single Judge dated 14.02.2020 is set aside. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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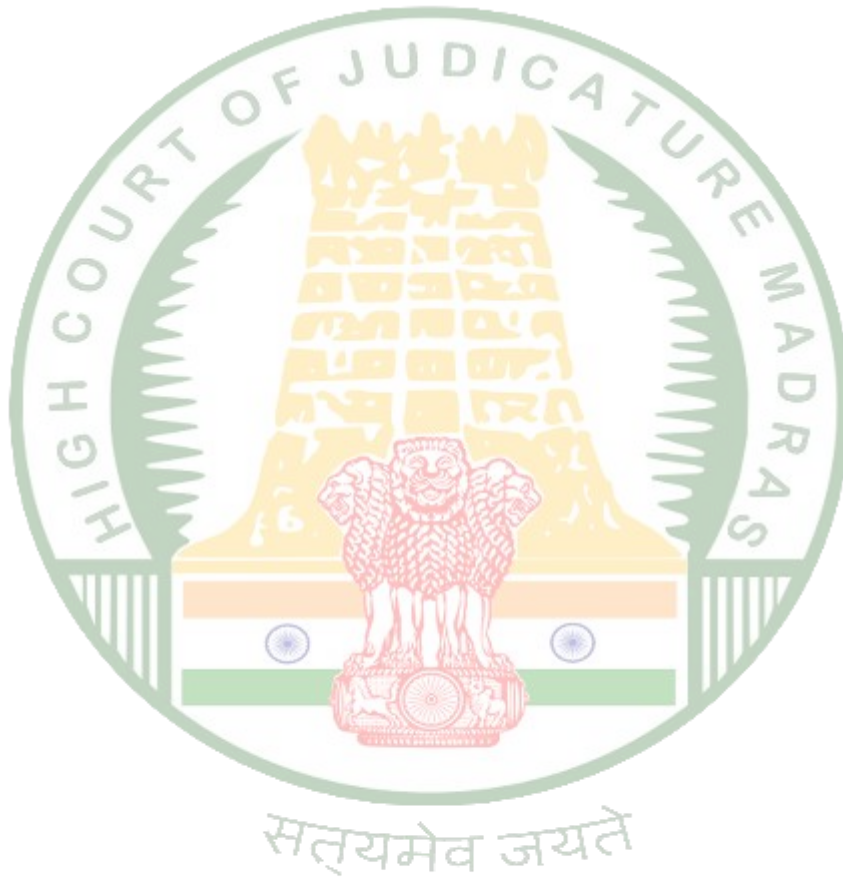
To

- 1.The General Manager(South)
Hindustan Petroleum Corporation Limited(HPCL)
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+1cc to M/s.T.Saikrishnan, Advocate SR.38359

W.A.No.354 of 2020

RP (CO)
CB (16/12/2020)



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