

May 5, 2022
Serial No.19
Court No.1
SG

MAT 235 of 2022
with
CAN 1 of 2022

Ashoke Dutta
vs.
Indian Oil Corporation Limited and others

Mr. Soumen Das,
Mr. Dipankar Chakraborty,
Mr. Nikhil Kumar Roy, Advocates
... for the appellant
Mr. Puspendu Chakraborty, Advocate
... for the respondent Nos.1 to 4
Mr. Rajdeep Mazumder,
Mr. Moyukh Mukherjee, Advocates
... for the respondent No.5

By this appeal the writ petitioner has challenged the order of learned Single Judge dated 27.01.2022 whereby the writ petition being WPA 9998 of 2020 has been dismissed.

The appellant had approached the writ Court with the plea that the father of the appellant being a freedom fighter, had formed a proprietorship firm under the name and style of “M/s. Freedom Services” and the said firm was represented through the father who was awarded a licence for distribution of LPG gas cylinders.

Further plea of the appellant is that a partnership firm was formed sometime in 2003-2004 including the father as also respondent No.5. The father of the appellant died on 02.07.2014 and thereafter respondent No.5 was carrying on the business in spite of objection of the appellant.

In the writ petition, a prayer was made objecting to continuance of the licence in the name of respondent No.5.

Learned Single Judge has taken note of the rival contention of the parties and submission of learned counsel for respondent Indian Oil Corporation Limited that upon the death of appellant's father, an affidavit dated 29.09.2014 was sworn by the appellant and other legal heirs of the deceased father giving consent for grant of distributorship in favour of respondent No.5. Learned Single Judge has also noted submission that in the year 2014, certain criminal proceedings were registered against the appellant which made him disentitled for holding the distributorship.

Accordingly learned Single Judge has come to the conclusion that there was no fault on the part of respondent Indian Oil Corporation Limited in transferring the distributorship in favour of respondent No.5 and appellant has been granted liberty to agitate the grievance against respondent No.5 before the civil court.

Submission of learned counsel for the appellant is that the observations made by learned Single Judge in respect of execution of affidavit dated 29.09.2014 is incorrect as no such affidavit was sworn and the affidavit is a forged document. His further submission is that the observations related to registration of the criminal case will also come in the way of the appellant if he

approaches the civil court and the civil court should independently decide the issue.

Learned counsel for respondent Indian Oil Corporation Limited as also respondent No.5 have supported the impugned order of learned Single Judge.

Having regard to the fact that the remedy of approaching the civil forum/court has been left open to the appellant and also considering the documents which have been pointed out by learned counsel for the appellant while raising the plea that no such affidavit was executed, we are of the opinion that if the appellant approaches the civil forum/court, then the issue needs to be decided by the competent forum/court on the basis of evidence in accordance with law without being influenced by any observation made by learned Single Judge.

With the above observations, we dispose of the present appeal.

Urgent certified copies of this order, if applied for, be urgently made available to the parties upon compliance of requisite formalities.

[Prakash Shrivastava, C.J.]

[Rajarshi Bharadwaj, J.]