

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.18497 of 2021
(Through hybrid mode)

Varsha Mahananda

....

Petitioner

Mr. J. Pal, Advocate

-versus-

***Bharat Petroleum Corporation Ltd.
and another***

Opposite Parties

Mr. S.Patnaik, Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER
25.02.2022

Order No.

- 07.** 1. Petitioner has challenged communication dated 17th May, 2021, by which the oil company did not accept her request for recalling order dated 22nd December, 2018. Mr. Pal, learned advocate appears on her behalf and submits, purported refusal by the oil company is on allegation that his client's husband is partner in running a Retail Outlet (RO) under Indian Oil Corporation Limited (IOCL). He submits, his client resigned from being a partner on 7th July, 2010. IOCL terminated dealership in respect of the RO on 31st January, 2011. The continuing partner, without reference to husband of his client, filed writ petition [WP(C) no.4187 of 2011 (Shri Soumya Rajan

Megh and another v. Divisional Retail Sales Manager, Indian Oil Corporation Ltd. and others)]

2. His client's husband applied for being added as party. By order dated 13th August, 2019, the husband was added as opposite party no.4. He hands up copy of order dated 16th November, 2019 passed in said writ petition, disposing of it.

Following from said order is reproduced below:-

“Perusal of Clause-2, the Period Agreement under Annexure-3, it reveals that petitioners continued to enjoy the contract for last fifteen years, i.e., from March, 2004, which by now is over. In that view of the matter, it would open for the opposite parties to take action in accordance with law.

Interim order dated 23.02.2011 against order 31.01.2011 under Annexure-9, shall not be acted upon.

The writ petition is disposed of. Interim order dated 23.02.2011 passed in Misc. Case No.2978 of 2011 stands vacated in view of disposal of the writ petition. All other IAs/Misc. Cases, if any are also disposed of.”

He reiterates, his client's husband did not have any connection with the terminated RO and as such, the oil company, Bharat Petroleum Corporation Limited (BPCL) has acted unreasonably.

3. Mr. Pattnaik, learned advocate appears on behalf of BPCL and submits, under disqualification clause 10 there is negative requirement that applicant or any other member of 'family unit' should not hold, inter alia, dealership of any oil company as only one RO will be allowed to a 'family unit'. In response to his client's mail dated 7th August, 2018, IOCL as inferred, as per their record petitioner's husband is one of the partners of the RO dealership. Hence, show cause was issued to petitioner. Subsequent thereto there was litigation and direction upon his client to consider petitioner's representation. By impugned communication, the representation was duly dealt with on reasons. There should be no interference.

4. The notice/advertisement inviting application was issued by opposite party oil company on 19th October, 2014. Petitioner's husband had sought to resign from being a partner in running the RO on 7th July, 2010. It appears from impugned communication that IOCL terminated the dealership on 31st January, 2011 i.e. more than five months after petitioner had tendered his resignation. The husband made interim application IA no.13052 of 2018 in the writ petition filed by the partner. The application said, inter alia, as follows:-

“5. That, admittedly for violation of the terms and condition and keeping in view the marketing disciplinary guidelines of the oil company the dealership license stood terminated on 31.01.2011.

6. That, admittedly the writ petitioner has challenged the termination order in this writ application without impleading the present petitioner as a party. The writ petitioner was not authorized by this petitioner to file this writ appeal. The writ petitioner is liable to produce the authorization letter if any.

7. That, under the facts and circumstances of the case this present petitioner as a outgoing partner is a necessary party in the proceeding and/or has nexus in the issue that arise for consideration in this writ application and therefore he should be impleaded as a party in this writ proceeding.

8. That, this present petitioner begs to submit that the writ petitioner has challenged the termination order behind the back of the present petitioner without any intimation to him.

9. That it is expedient for the interest of justice to implead the present petitioner and more particularly as opp. Party no.4 as described in the schedule below to confirm that he is out of the dealership under clause 46 or at least from the date of termination otherwise the petitioner shall suffer heavy and irreparable loss and injury.”

No further proof is necessary to establish the fact that in said writ petition, petitioners were the other partner and the partnership firm itself, known as, Maa Santoshi Filling Station.

5. As aforesaid, by order dated 16th November, 2019, the writ petition of the other partner was disposed of. It will be noticed from above extract of said order that the Division Bench found, petitioners continuing to enjoy the contract for last 15 years. Petitioners can only mean partner of herein petitioner's husband and the firm. The husband, also as aforesaid, was added as party only on 13th August, 2019. This fact coupled with the husband's clear contention of reason for wanting to have been added as party in that writ petition, makes it clear that his partner had accepted the resignation and thereafter proceeded to run the RO on his own. Furthermore, disposal of the writ petition, vacating the interim order, restores the order of termination dated 31st January, 2011. As a consequence the said dealership itself stood terminated long before the notice and petitioner's application in response. As such there can be no confusion thereafter on interpretation regarding whether or not the 'family unit' of petitioner was involved in running another RO.

6. The writ petition succeeds. Impugned communication is set aside and quashed. Opposite party no.2 is directed to proceed pursuant to Letter of Intent dated 28th January, 2017.

7. The writ petition is disposed of.

(Arindam Sinha)
Judge

RKS

