IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

904 WRIT PETITION NO.6282 OF 2021

J R RANA IOCL DEALER PADEGAON THR ITS PROPRIETOR/SURVIVING PARTNER SUMANBAI RADHAKISAN RANA
VERSUS
UNION OF INDIA THR ITS SECRETARY AND OTHERS

Mr. V. P. Bakal, Advocate for the petitioner
Mr. R. R. Bangar, Advocate for respondent No.1
Mr. A. P. Bhandari, Advocate for respondent Nos. 2 to 4.

CORAM : RAVINDRA V. GHUGE & S. G. DIGE, JJ.

DATED : 21st April, 2022

PER COURT :-

1. By this petition filed on 05th April, 2021, the petitioner has put forthwith prayer clause 'B', 'C', 'D', 'E', 'F' and 'G' as under:-

> "B) Issue writ in the nature of certiorari or any other writ in the like nature, quash and set aside impugned letter dated 10.09.2020 issued by respondent authorities thereby returning the proposal of reconstitution of dealership agreement and for that purpose issue necessary orders.
>
> C) Hold and declare that the demand made by respondent authorities for getting NOC from legal heirs of deceased partner Jagannath Sahebram Rana is Arbitrary, bad in law or against the policy of reconstitution

of IOC, without application of mind and for that purpose issue necessary orders.

D) Issue writ in the nature of mandamus or any other writ in the like nature, order, direct respondent authorities to enact dealership agreement in favour of petitioner i.e. Sumanbai Radhakisan Rana and for that purpose issue necessary orders.

E) Issue writ of mandamus or any other writ in like nature, order, direct the officers of respondent to follow clause 3.5 of updated policy of reconstitution dated 29.07.2013 as well as clause 2(5) of policy of reconstitution dated 16.10.2008 (policy of IOCL) and for that purpose issue necessary orders.

F) Pending hearing and final disposal of present writ petition, Issue writ of Prohibition or any other writ in like nature, order, restrain the officers of respondent from Charging the petitioner with exorbitant TCS Charge to the tune of 1% and direct concern respondents to charge TCS to the tune of 0.1% or as per law and further direct the respondent not to take any coercive steps against petitioner and for that purpose issue necessary orders.

G) Issue Writ of Mandamus or any other writ in the like nature, order, direct respondent authorities to follow proper procedure in enacting the reconstitution of dealership agreement with the petitioner i.e. Sumanbai Radhakisan Raba in consonance with spirit of policy of the respondents and for that purpose issue necessary orders."

2. A partnership firm by name J R Rana was set up by Radhakisan Sahebram Rana and Jagannath Sahebram Rana, in 1969. One of the partner's namely Radhakisan Sahebram Rana passed away on 8th June, 2005. His widow Sumanbai Radhakisan Rana was inducted as a partner in the firm as a legal heir, in 2006. The partnership deed between Jagannath and Sumanbai was forwarded to the respondent company for the purpose of executing a dealership agreement between the firm and the company. The partnership deed was executed on 13th July, 2006 by Radhakisan and Sumanbai. The partnership deed continued in the name and style of J R Rana. The profits and losses were to be shared equally between the two.

3. The above stated partnership deed was forwarded to the IOCL for the purpose of executing a dealership agreement on 15th December, 2005. Further representations were tendered on 10th September, 2006 and 6th August, 2009 praying for reconstitution of the dealership agreement. On 13th September, 2010, the petitioner submitted a detailed representation to the respondent authorities requesting that the proposal for reconstitution of dealership be considered as early as possible. Supplies from the company and regards the petroleum products, were continued uninterruptedly.

4. On 23rd January, 2012, one of the original surviving partners namely Jagannath, passed away.

Apparently, no steps were taken for inducting the LR's of Jagannath so as to have the partnership firm continued with a legal status. By letter dated 13th February 2012, the petitioner Sumabai intimated the company as regards the death of Jagannath. It is averred that on 9th April, 2012, the LR's of deceased Jagannath gave consent to the company vide an affidavit to continue the supply of the petroleum products till the reconstitution of the partnership firm.

5. It is pleaded in the petition that Sumanbai invited the LR's of Jagannath for reconstituting the dealership agreement as per the policy of the company of the year 2008 and 2013. It is undisputed that no steps were taken under the Partnership Act for maintaining the legal status of the partnership firm after the demise of Jagannath since Sumanbai was the sole person on record. Infact, Sumanbai had unilaterally taken a shop licence and TIN as a sole proprietor of M/s J R Rana. It is pleaded that a dispute arose amongst the LR's of Radhakisan and the LR's of Jagannath. The LR's of Jagannath did not file any document as required by the policy of the company for reconstituting the partnership firm to the extent of the dealership agreement with the company. The grandsons of Jagannath preferred Regular Civil Suit No. 401/2014 before the Trial Court. The suit was disposed off relegating the parties to Arbitration under Section 8 of the Arbitration and Conciliation Act 1996.

6. The LRs. of Jagannath approached the Arbitrator praying for stoppage of supplies to the firm J R Rana. It is further stated in the petition that Mr. V. Krishnamoorthy, the Chief Manager/ Head of Maharashtra State (Zonal Chief) Mumbai delivered an arbitration award on 8th July, 2016 rejecting the claim of the grandsons of Jagannath. The operative part of the award reads thus :-

> "1) The prayers of the Claimants are dismissed.
>
> 2) The Respondent No.2 Firm is hereby directed that they should put up the proposal to Respondent No. 1 once the legal heirs of Mr. Jagannath Sahebram Rana get their heirship certificates as legal heirs of the deceased partner Mr. Jagannath Sahebram Rana for introducing them as incoming partners in the firm. Claims of Respondent Nos. 2 as Sole Proprietorship, the TIN/Shop Licence Nos obtained without consent as Sole Proprietorship are hereby dismissed.
>
> 3) The Respondent No. 2 Firm is hereby directed to run the firm as partnership firm in its true sense and abide by the terms and conditions of the partnership deed in toto.
>
> 4) Respondent No.1 Corporation are directed that they should ensure that the supplies are being made only to the partnership firm as per the Dealership Agreement. Necessary credentials should be cross-checked to ensure that the directions are complied with.
>
> 5) Respondent No. 1 Corporation are directed that the process of Reconstitution of

> the firm should be completed within the permissible time frame of the Respondent no.1 Corporation from the date of submission of all required documents by the Firm.
>
> 6) Fresh Dealership Agreement should be executed without fall by Respondent No.1 Corporation and the Partnership firm immediately after Reconstitution is completed."

7. Sumanbai filed an application under Section 34 of the Arbitration and Conciliation Act 1996 for challenging the order of the sole arbitrator before the learned District Judge-1. The said proceedings were partly allowed upholding the rejection of the claims of the grandsons of Jagannath by order dated 18th July, 2017 in M.A.R.J. I. No. 346/2016. However, the learned Court quashed and set aside the directions at Sr. Nos. 2 to 6 issued by the arbitrator. The parties were granted liberty to seek rendition of accounts of the firm till 23/01/2012.

8. The LR's of Jagannath preferred Arbitration Appeal bearing No. 08/2017 and the Corporation preferred Appeal No. 9/2017, along with connected matter before this Court. By order dated 13th February, 2019, this Court relegated the matter to the learned Principal District Judge for adjudication of dispute between the litigating parties. By order dated 25th November, 2019, the application filed by

Sumanbai was partly allowed upholding clause 1 of the order of the Arbitrator i.e. rejecting the claim of the claimants and setting aside clause 2 to 6. This decision has attained finally.

9. The learned Advocate for the petitioner has vehemently contended that the petroleum company be directed to reconstitute the dealership agreement. Issue is, as to whether the respondent company could reconstitute the dealership agreement with a non-existing firm. Sumanbai is now operating a shop and not a partnership firm. The erstwhile partnership firm R J Rana acquired the dealership of the petroleum company on the basis of it being a firm. There is no dispute amongst the parties that a firm cannot survive with a single partner. It is conceded by the petitioner that the partnership firm is legally no longer in existence. By the order of the learned District Judge, it has been concluded in paragraph No. 32 that no person can be forced to be a partner with the present petitioner. The partnership firm was never reconstituted after the demise of Jagannath. All the parties and claimants are aware of the factum of the firm not being in existence. The learned District Judge, therefore, concluded that there is no partnership firm existing in the eyes of law, vide it's judgment dated 25th November, 2019.

10. It goes without saying that as J R Rana was earlier a partnership firm, the reconstitution of the

dealership agreement would be permissible only if the partnership firm has a legal existence. Once the partnership firm does not exist in the eyes of law, it would be farfetched for the petitioner to pray for a writ of mandamus from this Court to direct the petroleum company to reconstitute the dealership agreement.

11. In view of the above, since the very legal foundation of the petitioner firm has been taken away and the firm is no longer in existence, it would be a futile exercise to direct the petroleum company to reconstitute the dealership agreement, with retrospective effect.

12. In so far as the prayer of the petitioner that the company is charging exorbitant TCS (Tax Collected at Source) charge to the tune of 1% instead of 0.1%, the learned Advocate for the Corporation submits that the petroleum products were continued to be purchased by the petitioner and she herself has executed an undertaking that until the partnership firm is reconstituted, the petroleum products may be supplied and the company can deduct the TCS charge at the tune of 1%.

13. In view of the above aspect, we do not find that our writ jurisdiction deserves to be invoked on such issue and since there is an undertaking executed by the petitioner, we would not be entertaining the prayer for recovery of the

money.

14. This petition is, therefore, dismissed.

(S.G. DIGE, J.) **(RAVINDRA V. GHUGE, J.)**

ssp