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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.29930 of 2019
and
W.M.P.No.29842 of 2019

M/s.K.T.S.Nagamanickam Chettiar,
Indian Oil Dealer,
Rep. By its working Partner,
Mr.N.Sudhakaran,
No.209, (Old No.345), Attur Main Road,
Namagiripettai - 637 406.
Namakkal District.

..Petitioner

Vs.

1.The Indian Oil Corporation Ltd.,
Rep. By its Chief Divisional Retail Sales Manager,
Indian Oil Corporation Ltd., Marketing Division,
Salem Divisional Office,
No.234, 1st Floor, NH-7,
Salem - Bangalore Bypas Road,
Kondalampatty, Salem - 636 010.

2.G.Amudhavalli

..Respondents

Prayer: Writ Pet ition filed under Article 226 of the Constitution of India seeking issuance of Writ of Mandamus, forbearing the 1st respondent and their subordinates from in any manner disturbing or stopping supply of petroleum products or interfering the business carrying by the petitioner in the name of M/s.K.T.S.Nagamanickam Chettiar, Petroleum Oil Dealer, situated at No.209 (New No.345), Attur Main Road, Namagiripettai, Namakkal - 637406 in pursuant to the letter of the 1st respondent dated 01.10.2019.

For Petitioner : Mr.M.R.Jothimanian

For Respondents : Mr.R.Ravi for R1

Mr.M.Deivanandam for R2



O R D E R

The petitioner prays for a Writ of Mandamus, forbearing the 1st respondent from disturbing, stopping supply of petroleum products or interfering with the business carried on by the petitioner in the name of M/s.K.T.S.Nagamanickam Chettiar, Petroleum Oil Dealer situated at No.209, Attur Main Road, Namagiripettai, Namakkal pursuant to the letter of the 1st respondent dated 01.10.2019 wherein, the 1st respondent had forwarded a letter received by it from the 2nd respondent seeking an explanation from the petitioner.

2.The facts that led to filing of the Writ Petition are as follows:-

One Mr.K.T.S.Nagamanickam Chettiar was appointed as dealer by the 1st respondent / Oil Corporation in the year 1970 to carry on business in retail outlet of petroleum products at Namagiripettai in Salem District (Now Namakkal District). The said Nagamanickam Chettiar died in 1982. In a partition suit between the family members, the business in petroleum products was allotted to two of his sons namely, one Sudhakaran and Viswanathan. They were running the business in partnership till Viswanathan died in the year 2002.

2.1.After the death of Viswanathan, his only daughter, the 2nd respondent herein was inducted as a partner on 01.04.2004. Pursuant to such induction, a dealership agreement was also entered into between the newly constituted partnership firm and the Indian Oil Corporation on 11.12.2006. On 04.02.2019, a memorandum of understanding was entered into between the partners and one S.Srinath, son of Sudhakaran, one of the partners, in and by which, the 2nd respondent agreed to retire from the business on receipt of certain compensation and the said Srinath was to be inducted as a partner in the business. Consequent upon this, on 04.02.2019, the 2nd respondent wrote to the Senior Divisional Manager, Indian Oil Corporation, expressing her no objection for reconstitution of the partnership in the Petrol Bunk business.

2.2.On 07.02.2019, an application for reconstitution was also made wherein, the petitioner, one of the partners, Sudhakaran and the 2nd respondent had signed. An application for reconstitution of the dealership signed by all the parties was also submitted to the Corporation on 06.02.2019. An undertaking, confirming the details furnished in the application was also submitted on 06.02.2019. The Indian Oil Corporation however, without acting upon the said application and the undertaking, required the partners to appear in person to affirm the said undertaking.



2.3.It is at that time, the 2nd respondent went back on the undertaking given by her and raised a dispute. Therefore, the reconstitution was not carried out. Thereafter, the 2nd respondent wrote a letter to the Indian Oil Corporation, requesting the Oil Corporation to stop supply of petrol and diesel to the Petrol Bunk. She had also gone on to state that she is cancelling the licence for her 50% share. This letter was forwarded to the petitioner requiring the petitioner's explanation. There upon, the petitioner has come up with this Writ Petition.

3.The 2nd respondent has filed a counter wherein, she had claimed that her share in the profits was not paid for over a period and therefore, though she had given her consent, she has now withdrawn the same. The Oil Company has filed a memo stating that it does not intend stopping supply. The written instructions received by the counsel is also placed before this Court wherein, it is stated that the reconstitution could not be put in place because of the objections made by one of the partners, who had earlier consented to the reconstitution.

4.The law on the subject of reconstitution of licencees of Oil Companies is no longer res-integra. It is governed by the judgment of the Hon'ble Supreme Court in Bharat Petroleum Corporation Limited Vs. B.M.Motors and Others reported in (2014) 16 SCC 749 wherein, the Hon'ble Supreme Court has held that the agreement between the parties to retire is to be treated as no objection, as far as reconstitution is concerned. The Hon'ble Supreme Court has also pointed out that the partners cannot go back on it and raise a dispute regarding the no objection subsequently. The practice of the Oil Companies in calling upon the parties to appear in person before them to affirm such no objection has created this kind of anomalous situation, where one of the partners after having consented for reconstitution goes back on it and attempts to hold the other person at ransom.

5.It is also stated that the reconstitution application is presented physically in the presence of all partners to the Official concerned. Therefore, I do not see any justification in the action of the Oil Company in requiring the parties to affirm the reconstitution once again three months after submission of an application for reconstitution. This practice by itself gives scope for parties to derail the process by withdrawing the consent already given.

6.As pointed out by the Hon'ble Supreme Court, by entering into an agreement for reconstitution, the 2nd respondent has virtually retired from the partnership firm and she had agreed to take a quantified sum of money. If she is to dispute the same, her remedy is elsewhere and not by objecting to the



reconstitution. It is well open to the 2nd respondent to make her claim before the appropriate Civil Court for whatever she is entitled to. She cannot derail the reconstitution process after having agreed to the same.

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7.I am therefore, of the opinion that the Writ Petition deserves to be allowed and the same is allowed. There will be a direction to the Oil Corporation not to stop supply and proceed with the reconstitution based on the no objection given by the 2nd respondent earlier in point of time. The rights of the 2nd respondent to claim a share in the profits or whatever are preserved. It is open to her to approach a Civil Court seeking such share.

8.This Writ Petition is allowed with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-IX)

//True copy//

Sub Assistant Registrar

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To:-

1.The Chief Divisional Retail Sales Manager,
Indian Oil Corporation Ltd., Marketing Division,
Salem Divisional Office,
No.234, 1st Floor, NH-7,
Salem - Bangalore Bypass Road,
Kondalampatty, Salem - 636 010.

+1cc to Mr.M.R.Jothimanian, Advocate SR.No.39793

+2ccs to Mr.M.Deivanandam, Advocate SR.No.40656

W.P.No.29930 of 2019
and
W.M.P.No.29842 of 2019

SR(CO)
GMY(08/07/2022)