



W.P(MD)No.6550 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.07.2022**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)No.6550 of 2012
and
M.P(MD)Nos.1 and 2 of 2012

Azeez Khan Agencies(Firm)

... Petitioner

Vs.

1.The Senior Regional Manager-Retail,
Hindustan Petroleum Corporation Ltd.,
Madurai Region,
Third Floor, Rakesh Towers,
Bye-pass road, Madurai-625 010.

2.The District Revenue Officer,
Sivagangai District.

3.The District Supply Officer,
Sivagangai District.

4.S.M.Jamil Beevi

5.A.Yasmine

6.Rashidha Banu

7.Raikhana Sherifa

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order in reference in MDRO/MVM/RET dated 23-04-2012 passed by the first respondent and quash the same and consequently direct the first respondent to renew the dealership agreement with the petitioner.

For Petitioner : Mr.J.Barathan
for T.R.Jeyapalam

For Respondents : Mr.M.Sridhar
for R1
Mr.P.Thambi Durai
Government Advocate
for R2 and R3
No Appearance
for R4 to R7

ORDER

The present writ petition has been filed challenging an order passed by the first respondent herein, wherein the dealership agreement for sale of superior kerosene of the writ petitioner firm was terminated on the ground that one of the partners has passed away and the petitioner firm has not reconstituted the firm.



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2. The learned counsel for the petitioner has submitted that originally the superior kerosene dealership was standing in the name of an individual, by name, Azeez Khan. On 22.09.1999, the said Azeez Khan entered into a partnership agreement with his daughter Syed Ayeeshal and son-in-law Akbar Ali by way of a registered partnership agreement. As per the said agreement, Azeez Khan retained 10% of the share and the balance 90% was held by his daughter and son-in-law. This partnership agreement was also approved by the first respondent corporation.

3. The learned counsel for the petitioner further submitted that the said Azeez Khan had passed away on 12.11.2006. The learned counsel for the petitioner referred to Clause 17 of the said partnership agreement to impress upon the Court that in case of death of any one of the partners, the partnership firm will not get dissolved and the remaining partners are free to continue the business of the firm in such a manner as they might deem appropriate. According to the learned counsel for the petitioner, the existing partners, namely, Syed Ayeeshal and Akbar Ali are continuing



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the firm as per the clause in the partnership agreement, which was already approved by the first respondent. Hence, the first respondent was not right in invoking Clause 31 of the dealership agreement and terminating the dealership on the ground that the firm has not been reconstituted after the death of one of the partners.

4. Per contra, the learned counsel for the respondent Corporation had contended that as per Clause 31 of the dealership agreement, the Corporation is entitled to terminate the dealership agreement when the dissolution of the partnership of the dealers firm takes place or death of any partner of the firm takes place. In the present case, one of the partners of the firm had passed away on 12.11.2006 and hence, the respondent Corporation is entitled to terminate the dealership agreement, especially when the other legal heirs of deceased Azeez khan have made objections for continuing the dealership agreement with the writ petitioner firm.

5. I have carefully considered the submissions made on either side.



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6. On 22.09.1999, the individual dealer Azeez Khan had entered into a partnership agreement with his daughter and son-in-law by way of a registered document. As per clause 17 of the said document, even after the death of one of the partners, the remaining partners are entitled to continue the firm and the firm will not get dissolved. This partnership agreement has also been approved by the first respondent Corporation and after the said agreement, all the communications to the dealership has been addressed only to the firm and not in the individual name of Azeez Khan.

7. It is seen from the records that other sisters of Syed Ayeeshal had made some objections to the first respondent Corporation with regard to the continuation of the dealership agreement with the petitioner firm. Though there is a Clause in the dealership agreement for termination of the dealership agreement due to the death of one of the partners, the said power is only an enabling provision. When there is a Clause in the partnership agreement that the partnership will continue even after the death of one of the partners, the first respondent



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corporation will not be entitled to invoke Clause 31 of the dealership agreement.

8. The private respondents namely respondents 4 to 7, though have been served in the month of June 2012, for the past 10 years, they have not engaged any counsel. Even though their names have printed in the cause list, they have not chosen to appear and defend the writ petition.

9. In the light of the above said facts, this Court passes the following orders:

(i) The impugned order, under which the termination of dealership was effected, is hereby set aside and the first respondent is directed to continue the dealership with the petitioner firm.

(ii) The private respondents, namely 4 to 7, if they are aggrieved by the fact that they are not being made as partners in the firm or have any grievance over the continuation of the firm, they are at liberty to



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approach the competent Civil Court for dissolution of the partnership.

(iii) The petitioner firm has to comply with the other rules and regulations of the first respondent corporation.

10. With the above observations, this Writ petition stands allowed.

No costs. Consequently, connected Miscellaneous Petitions are closed.

05.07.2022

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Index : Yes / No
Internet : Yes / No

To

1.The District Revenue Officer,
Sivagangai District.

2.The District Supply Officer,
Sivagangai District.



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R.VIJAYAKUMAR ,J.

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Order made in
W.P(MD)No.6550 of 2012

Dated:
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