

# **IN THE HIGH COURT AT CALCUTTA**

**Constitutional Writ Jurisdiction**

**Appellate Side**

**Present :-**

**The Hon'ble Justice Moushumi Bhattacharya**

W.P.A 17467 of 2021

with

IA No. CAN 1 of 2022

Anup Kumar Biswas

vs.

Union of India & Ors.

|                                |   |                                                                                                                                              |
|--------------------------------|---|----------------------------------------------------------------------------------------------------------------------------------------------|
| For the petitioner             | : | Mr. Subir Sanyal, Adv.<br>Mr. Biswajib Ghosh, Adv.<br>Ms. Debjani Roy, Adv.<br>Mr. Avirup Chatterjee, Adv.<br>Mr. Sumitava Chakraborty, Adv. |
| For the respondent nos. 2 to 5 | : | Mr. M. S. Yadav, Adv.<br>Ms. Saswati Chatterjee, Adv.<br>Ms. Satabdi Naskar (Kundu), Adv.                                                    |
| For the respondent no. 6       | : | Mr. Goutam Brahma, Adv.<br>Mrs. Pampa Saha, Adv.<br>Mr. Arijit Dey, Adv.                                                                     |
| Last Heard on                  | : | 15.03.2023.                                                                                                                                  |
| Delivered on                   | : | 23.03.2023.                                                                                                                                  |

**Moushumi Bhattacharya, J.**

1. The petitioner has challenged a letter dated 27.10.2021 issued by the Indian Oil Corporation Limited (IOC) addressed to the petitioner whereby the petitioner has been asked to furnish documents for reconstitution of the Partnership Firm M/s. Ashadeep Gas Services failing which the petitioner's Distributorship would be suspended with effect from 1.11.2021.

2. The petitioner claims to be a person with disabilities having applied for and obtained the LPG license under the "Physically Handicapped" category.

3. The petitioner is essentially aggrieved by IOC's insistence for reconstitution of the Partnership Firm as the petitioner is not willing to induct the private respondent no. 6, who is the daughter of the petitioner's deceased brother and erstwhile partner of the firm. The petitioner's brother died on 30.4.2021. The petitioner informed IOC of the passing away of his brother on 1.5.2021.

4. Learned Counsel appearing for the petitioner relies on Clause 10 of the Deed of Partnership to submit that on the death of any partner, the remaining partner will be at liberty to carry on the business of the Partnership Firm as the sole proprietor and that induction of the heirs of the deceased partner will be according to the wish of the surviving partner. Counsel also relies on Clause 17 of the Deed which provides for the surviving partner continuing as the sole proprietor. Counsel submits that the petitioner intends to carry on the Distributorship as the sole proprietor as the petitioner was selected in his

individual capacity in the PwD category and that the petitioner inducted his brother only for facilitation of the business at the relevant point of time.

5. Learned counsel appearing for IOC relies on Clauses 3.7 and 3.9 of the Reconstitution Guidelines, 2020 which requires reconstitution of the Partnership Firm with the surviving partner and persons nominated by the deceased partner. Counsel further relies on Clause 21 of the Distributorship Agreement which casts an obligation on the Distributor to inform IOC giving necessary particulars of the heirs and legal representatives of the deceased partner.

6. Learned counsel appearing for the private respondent no. 6 submits that the writ petition is premature since no prejudicial measures have been initiated against the petitioner.

7. Ashadeep Gas Services is the Distributor and the party with which IOC entered into the agreement on 30.3.2018. The petitioner inducted his brother as a partner on 27.9.2016 citing the plea of the petitioner's disability. The petitioner's brother was hence a partner of Ashadeep at the time of execution of the Distributorship Agreement on 30.3.2018. The petitioner's brother died on 30.4.2021 and IOC wrote to Ashadeep on 5.5.2021 requesting for a fresh reconstitution of the Distributorship within 6 months, i.e., by 31.10.2021. According to counsel, the petitioner is not willing to induct the surviving heir of the petitioner's deceased brother. The petitioner relies on several clauses of the Partnership Deed which permit the petitioner to carry on the business of the Partnership Firm as the sole proprietor.

8. Clause 21 of the Distributorship Agreement provides that in the event of death of any of the partners, the Distributor shall immediately inform the Corporation (IOC) giving necessary particulars of the heirs and legal representatives of the deceased partner and the Corporation shall have the option of either to continue the distributorship with the said firm or to have a fresh agreement of distributorship with any reconstituted firm or to terminate the distributorship agreement. The clause further provides that the decision of the Corporation shall be final and binding on all the parties concerned. Clause 23(a) further provides that the Distributor (the petitioner in this case) undertakes to promptly carry out and perform all the directions and orders made by the Corporation.

9. Clause 21 makes it clear that IOC is entitled to either continue with the distributorship of the existing firm or have a fresh agreement of distributorship with any reconstituted firm or even terminate the Distributorship Agreement. In the present case, the series of correspondence between Ashadeep Gas Services and IOC indicate that IOC has taken a decision to carry on business with the reconstituted partnership firm consequent to the death of the petitioner's brother. This would appear from IOC's letter of 9.9.2021 wherein IOC clarified its stand with regard to the issue of reconstitution.

10. The petitioner does not have an answer as to why the petitioner is unwilling to reconstitute the partnership following the death of the petitioner's brother. The Clauses of the Partnership Deed are not relevant since the terms on which the Partnership Firm/Ashadeep entered into the Distributorship Agreement with IOC on 30.3.2018 are material for the present controversy.

This is all the more so, since the petitioner requested for induction of his brother as a partner on 27.9.2016 on the plea of the petitioner's disability. It is clear that the petitioner now wants to resist the reconstitution of the Distributorship Agreement by seeking to continue the Distributorship Agreement as the sole proprietor of Ashadeep. This falls within the restrictions of Clause 21 of the Distributorship Agreement which gives the sole decision-making power in this regard to IOC. The petitioner does not have the option to decide as to whether the petitioner intends to continue as the sole proprietor by not inducting the legal heir of the deceased partner.

11. The entire issue in any event becomes academic in view of a letter written by the petitioner to IOC on 29.10.2021 stating that the petitioner wants to induct the private respondent no. 6 as the only legal heir of his deceased brother as a partner to the Distributorship subject to the consent of the private respondent. The petitioner had also sought for 15-20 days to complete all the formalities. This letter is part of the records before the Court. The petitioner hence cannot resile from that position.

12. In any event, the document under challenge of 27.10.2021 merely threatens suspension of Distributorship with effect from 1.11.2021. The writ petition was filed soon after that. Since IOC did not take any steps against the petitioner for suspension, the writ petition is also premature. The petitioner has not been able to show any act on the part of IOC which has curtailed any of the petitioner's rights under the Constitution of India warranting interference of the writ court. The decision cited by IOC, namely, *Ramana Dayaram Shetty vs. International Airport Authority of India*; (1979) 3 SCC 489 on

the point of implementation of policy is not necessary to be adverted to since the clauses in the Distributorship define the rights of the parties. No further interpretation of the Clauses is necessary. The decision cited on behalf of the petitioner, namely, *Indian Oil Corporation Ltd. vs. Roy and Company; (2018) 1 CHN 199* simply refers to the duty cast on a statutory body to act fairly and reasonably in contractual matters which is precisely what the respondent has done in the present case.

13. There is thus nothing in the present facts which would persuade this Court to interfere and grant the reliefs prayed for. The interim order passed on 1.11.2021 by a Co-ordinate Bench is vacated.

14. WPA 17467 of 2021 is accordingly dismissed without any order as to costs. CAN 1 of 2022 which was filed for vacating of the interim order is also disposed of in terms of this judgment.

15. The prayer for stay made on behalf of the petitioner is considered and refused.

Urgent photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfillment of requisite formalities.

**(Moushumi Bhattacharya, J.)**