

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

WPA 17594 of 2023

**Md. Musir Ahmed @ Md. Musir Ahmed Sardar & Anr.
Vs.
Indian Oil Corporation Limited & Ors.**

Mr. Suman Dey
..for the petitioner

Mr. Siddhartha Banerjee
Mr. Jyoti Rauth
Mr. Rakib Hussain Khan
Mr. Anjan Bhandari
..for the Respondent

Item No.08

Heard & Judgment on: 14.08.2023

Bibek Chaudhuri, J.

Affidavit of service be kept with the record.

The issue involved in the instant writ petition is as to whether any subsequent change in the distributorship which has been denied in the letter of intent (LOI) should be considered as a mere

irregularity or substantial illegality resulting in cessation of LOI by the Oil Company.

Now, the facts in brief to elucidate the issue that requires to be answered in the instant writ petition as per narration in the first paragraph of this judgment.

Indisputably, the petitioner was selected for distributorship of LPG cylinders as per draw of lot and LOI was issued in favour of the petitioner No.1 on 24th April, 2019. After receiving LOI the petitioner No.1 executed a deed of partnership on 9th February, 2021 inducting one Md. Rofikul Hassan Molla. The petitioner No.2 herein is a partner and declared that both the petitioners would run LPG distributorship in the partnership business. It is further not disputed that paragraph 5.4 of the LOI stipulates:-

“You are not permitted to induct anyone as your partner nor make change in the constitution of the proposed distributorship in a manner other than what was intended at the time of application, without prior approval from the Corporation.”

Thus, paragraph 5.4 is explicitly clear that in order to change the nature of business from proprietorship to partnership, prior permission shall have to be taken by the distributor and only after receiving approval from the Corporation, the said business can be

converted from proprietorship to partnership. Materials on record suggest that both the petitioner Nos.1 and 2 executed a deed of partnership on 9th February, 2021 solely for the purpose of running the distributorship of LPG.

The learned advocate for the petitioner submits before me that previously on rejection of the petitioner's representation on 19th July, 2022 and consequent withdrawal of the letter of intent given to the petitioner, both the petitioners moved WPA 771 of 2023 wherein a Co-ordinate Bench was pleased to dispose of the said writ petition directing the IOC to consider the representation made by the petitioners on 29th December, 2022 and to pass a reasoned order thereon after giving an opportunity of hearing to the petitioners within a period of four weeks from date. There is a specific rider in the order passed by the Co-ordinate Bench in the above mentioned writ petition that the decision shall be grounded on the existing policy of the IOC on reconstitution of the partnership deed and a particular fact of the case.

As per the direction of this Court in the aforesaid writ petition the respondents considered the case of the petitioners and rejected the representation and recalled the letter of intent. It is submitted by the learned advocate for the petitioner that the said reasoned order is nothing but a replica of the earlier order of rejection of LOI without

considering the guidelines for reconstitution of LPG distributorship – 2022 published by the Indian Oil Corporation, the respondent herein.

I have gone through the entire record meticulously. It is already recorded that the restrictive clause in the letter of intent stipulates that if the distributor wants to change the nature of his business from proprietorship to partnership, prior approval of the IOL is necessary. The approval was not taken. On close reading of the order dated 20th April, 2023 in WPA 771 of 2023 a Co-ordinate Bench clearly directed that the decision shall be grounded on existing policy of the IOC on reconstitution of partnership deeds. The existing policy which is a matter on record is the stipulation or conditions laid down in the letter of intent. The Co-ordinate Bench never directed the IOC to dispose of the case on the basis of guidelines for reconstitution of LPG distributorship –2022.

The learned advocate for the IOL in course of his argument refers to the daily proceeding while disposing of the representation filed by the petitioners as per the order passed in WPA 771 of 2023 and took me to the recordings where the petitioner No.1 accepted that mistake has been done while inducting a partnership without prior approval from the Corporation, but requested to grant another opportunity. Thus, the distributor already accepted his mistake. In

view of such acceptance the representation filed by the petitioners was rejected.

Lastly but not the least LOI was granted in favour of the petitioner No.1 in the year 2019. Partnership deed was executed without approval of the Corporation in the year 2021. The guideline for reconstitution of the LPG distributorship came into effect on and from 27th May, 2022. Therefore, the said guideline is not applicable in the instant case considering the fact that the petitioner No.1 changed the nature of business from proprietorship to partnership without approval of the IOL in violation of clause 5.4. This Court does not have any scope to reconsider the findings made by the competent authority being Indian Oil Company.

In view of such circumstances, the instant writ petition is summarily **dismissed**.

(Bibek Chaudhuri, J.)