



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

WRIT PETITION NO. 177 OF 2021

PETITIONERS

- : 1. M/s. Ablā & Company, Opposite
Railway Station, Malkapur, Tahsil
Malkapur, District Buldhana, through
its Partner Firoz Farooque Ablā, aged
about 32 years.
2. Rukhsana Farooque Ablā, W/o. Late
Mohammad Faruque Mohammad, Age
56 years, Occ. Housewife, R/o. Shivaji
Nagar, Malkapur, Tahsil Malkapur,
District Buldhana.
3. Firoz Farooque Ablā, Aged about 32
years, Occ. Business, R/o. Shivaji Nagar,
Malkapur, Tahsil Malkapur, District
Buldhana.
4. Shoeb Farooque Ablā, Aged about 19
years, Occ. Business, R/o. Shivaji Nagar,
Malkapur, Tahsil Malkapur, District
Buldhana.
5. Farzana w/o. Mohammad Imran
Memon, Aged about 31 years, Occ.
Household, R/o. Pranav Nagar, Pusad,
District Yavatmal.
6. Rubina Banu W/o. Mohammad Imran
Dulha, Aged about 27, Occ.
Household, R/o. J.P. Nagar, Hingoli,
District Washim.

//VERSUS//

- RESPONDENTS** : 1. Bharat Petroleum Corporation Limited,
Manmad Territory (Retail), Athorty
Manager, Office at Manmad Pradeshik
Karyalaya, Panewadi, Nandgaon Road,
P.O. Manmad, District Nashik 423104.
2. Mohd. Anis Mohd. Ishaque Abba, Aged
about 62 years, Occ. Nil, R/o.
Malkapur, Shivaji Nagar, Tah.
Malkapur, Distt. Buldhana.
3. Johara Begam Mohd. Farooque, Aged
about 64 years, Occ. Household, R/o.
Khatija Apartment, Flat No.102, Old
Basam Stand Akola, Tah. & Dist. Akola.
- Amendment carried out
as per Court's Order Dt.
29.10.2021
4. Mohd. Illiyas S/o. Abdul Kadar Mohd.
Ismail, Aged about 50 years, R/o. Opp.
Banjara Hotel Ajanta Road, Sagwan
Parisar, Buldhana, District Buldhana
443001.
5. Mohd. Bashir S/o. Abdul Kadar Mohd.
Ismail, Aged about 51 years, Opp.
Banjara Hotel Ajanta Road, Sagwan
Parisar, Buldhana, District Buldhana
443001.

Mr. H.S. Chitale, Advocate for the Petitioners.

Mr. Abhay Sambre, Advocate for Respondent No.1.

Mr. A.J. Thakkar, Advocate for Respondent Nos.2 & 3.

Mr. C.S. Dharmadhikari, Advocate for Respondent Nos.4 & 5.

CORAM : **SMT. ANUJA PRABHUDESSAI AND**
MRS. VRUSHALI V. JOSHI, JJ.

RESERVED ON : 18th DECEMBER, 2023.

PRONOUNCED ON : 22nd DECEMBER, 2023.

ORAL JUDGMENT (Per: Smt. Anuja Prabhudessai, J.)

. **Rule.** Rule made returnable forthwith. Petition is heard finally with the consent of learned counsel for the respective parties.

02] The Petitioners question legality of communications dated 09.10.2020 and 17.11.2020, issued by the Respondent No.1-Corporation. The Petitioners also seek direction against Respondent No.1-Corporation to consider the reconstitution proposal without insisting upon NOC as demanded by the impugned communications.

03] The facts leading to this petition are as follows:

The Petitioner No.1-Partnership Firm, which was constituted in the year 1968 by the two partners - Mohammad Ishaque Abla and Abdul Kadar Mohammad Ismail, had been appointed as a dealer and agent by the then Burma Shell Company – the predecessor-in-interest of Respondent No.1-Corporation. Since then, the Petitioner No.1 is engaged in operating a petrol pump and selling petroleum products. The

Petitioner No.1-Partnership Firm was constituted multiple times since 1970. The said fact was not brought to the notice of Respondent No.1-Corporation even at the time of signing Dispensing Pump and Selling Licence (DPSL) dated 01.01.1975, which was based on partnership deed dated 08.08.1968, of which only Mohammad Ishaque Ablah and Abdul Kadar Mohammad were partners. Farooque Ishaque Ablah, son of the original partner Mohammad Ishaque Ablah, who was added as a partner in the year 1971, informed Respondent No.1-Corporation about the death of Mohammad Ishaque Ablah in the year 1999. In 2006, Farooque Ishaque Ablah claimed proprietary right in respect of the said business and submitted reconstitution proposal. The said proposal was not considered for want of NOC of the legal heirs of the original partners. This led to filing of Writ Petition No.611/2015, which was disposed of by order dated 19.06.2016, directing the Respondent No.1-Corporation to consider the documents furnished by the parties and pass suitable order. Pursuant to the said order, a meeting was called but there was no consensus amongst legal heirs of the original partners – Ishaque Ismail Ablah and Abdul Kadar Mohammad Ismail. Since the

Petitioners were unable to obtain NOC from the legal heirs of the deceased partner and the proposal was incomplete, the Respondent No.1-Corporation by communication dated 09.10.2020 conveyed that dealership of M/s. Abla & Co. needs to be placed under 'Holiday Scheme' until the dispute is resolved and reconstitution proposal is submitted by 31.03.2021. The Petitioners submitted a fresh reconstitution proposal. The Respondent No.1 by impugned communication dated 17.11.2020 conveyed that the said reconstitution proposal was incomplete and called upon the Petitioners to submit complete reconstitution proposal as per reconstitution guidelines. Being aggrieved by these two communications, the Petitioners have filed this petition for the aforesaid reliefs.

04] Mr. Chitaley, learned counsel for the Petitioners submits that the Petitioner No.1-Partnership Firm was constituted in the year 1968 with Mohammad Ishaque Abla and Abdul Kadar Mohammad as partners. Subsequently, in the year 1970, two other partners were added. On retirement of one of the partners, Farooque Ishaque Abla was added as a partner in the year 1971.

Since 1977 Mohammad Ishaque Ablā and his son Farooque Ablā were running the partnership business and since 1999 i.e. since the death of Mohammad Ishaque Ablā till the date of reconstitution of the firm in 2020, his son Farooque Ablā had been running the business as proprietorship concern. Learned counsel for the Petitioners submits that the suit filed by Abdul Kadar Mohammad, predecessor of Respondent Nos.4 and 5, for rendition of accounts and permanent injunction has been dismissed by the trial Court and the appeal is pending without any interim relief in their favour. He, therefore, contends that the Petitioners are entitled to run the business till the rights of the parties are finally adjudicated in the civil proceedings. He submits that the decision of Respondent No.1-Corporation putting the Petitioner No.1-Partnership Firm under Holiday Scheme is arbitrary and unjust. Reliance is placed on the decision of the Apex Court in *Bharat Petroleum Corporation Limited Vs. B.M. Motors and Ors. [AIR 2015 SC 251]*.

05] Mr. Dharmadhikari, learned counsel for Respondent Nos.4 and 5 submits that the original licence was in the name of

the two partners viz. Mohammad Ishaque Ablā and Abdul Kadar Mohammad, who had commenced the business in the year 1968 in the name of Respondent No.1-Partnership Firm. Referring to the correspondence dated 30.09.1998 and 06.07.1999 addressed by Abdul Kadar, he submits that this correspondence proves that Abdul Kadar never retired from the Firm. He submits that the changes in the Firm were never brought to the notice of the Respondent No.1-Corporation and that introduction of Farooque Ablā as a partner was disclosed only in the written statement filed in Civil Suit No.06/2012 (Old Special Civil Suit No.03/2000). He submits that though the said suit has been dismissed, the trial Court has recorded clear findings that the Petitioners had failed to prove that Abdul Kadar had retired from the partnership. He submits that the letters dated 08.02.2013, 09.10.2020 and 17.11.2020 clearly establish that the Petitioners have been running the business by suppressing the fact of reconstitution of partnership/dealership from Respondent No.1-Corporation and without submitting complete proposal with consent (NOC) of the other partners. He, therefore, submits that Respondent No.1-Corporation was justified in placing the Petitioners under

‘Holiday Scheme’.

06] Mr. Abhay Sambre, learned counsel for Respondent No.1 submitted that the Petitioners had not disclosed about reconstitution of the partnership. The licence continued to be in the name of the original partners. He submits that the legal representatives of the original partners have not been able to resolve the *inter-se* dispute and the Petitioners having failed to obtain the NOC and submit the complete proposal, the Respondent No.1 has placed the Petitioner No.1-Partnership Firm under the Holiday Scheme.

07] We have perused the records and considered the submissions advanced by learned counsel for the respective parties.

08] It is not in dispute that the Petitioner No.1-Partnership Firm with two partners viz. Mohammad Ishaque Abla and Abdul Kadar Mohammad had been appointed as a dealer and are in the business of running petroleum pump and selling petroleum products since the year 1968. The respondent No.1-

Corporation has placed the Petitioner No.1-Partnership Firm under Holiday Scheme in view of dispute between the legal representatives of the original partners – Mohammad Ishaque Ablal and Abdul Kadar Mohammad. The Petitioners Nos.2 to 6, who are the legal representatives of Mohammad Ishaque Ablal, claim that Abdul Kadar Mohammad had retired from partnership in the year 1977 and since then Mohammad Ishaque Ablal and Farooque Ishaque Ablal were running the partnership business and since the death of Mohammad Ishaque Ablal in the year 1999, Farooque Ishaque Ablal was running the partnership business as proprietorship concern. Whereas the respondent Nos.4 and 5, who are the legal representatives of Abdul Kadar Mohammad, have disputed that Abdul Kadar had retired from the partnership business.

09] It is not for the writ court to go into the disputed facts. Nevertheless, it is on record that Respondent Nos.4 and 5 had instituted a suit in the year 2000, seeking rendition of accounts and seeking to restrain the Petitioner Nos.2 to 6 from running the business. The suit has been dismissed by the trial

Court with a categorical finding that the predecessor of Respondent Nos.4 and 5 was not getting share in profit since 1976. Though the appeal has been filed, there is no interim relief in favour of the Respondent Nos.4 and 5. The letter dated 30.09.1998 addressed by Abdul Kadar Mohammad to Respondent No.1-Corporation also reveals that Mohammad Ishaque Ablah had stopped paying profit since long. The Respondent Nos.2 and 3, who are the other legal representatives of Mohammad Ishaque Ablah, in the written statement filed in Civil Suit No.06/2012 (Old Special Civil Suit No.03/2000), have admitted that Farooque Ishaque Ablah was running the business to the exclusion of others. It is thus not in dispute that the Petitioner Nos.2 to 6 are running the business since long. In such circumstances, exceeding to the request of Abdul Kadar made vide communication dated 06.07.1999 to Respondent No.1-Corporation to discontinue the supply of diesel and petrol to Petitioner No.1 would not benefit either the Petitioners or the Respondents. In fact, such request, which is nothing but an unreasonable arm twisting mode, would stall the running business. Hence, as held by the Apex Court in ***B.M. Motors***

(supra), the Respondent No.1-Corporation is expected as a public sector entity to act fairly and objectively to prevent one party from taking undeserved advantage over the other on technical or procedural grounds. It would, therefore, be equitable to direct Respondent No.1-Corporation to consider reconstitution proposal without insisting for NOC from Petitioner Nos.3 to 6, with liberty to Respondent No.1 to impose any such conditions to protect its business interest, goodwill and reputation amongst its customers. The interest of Respondent Nos.4 and 5 can also be protected by directing the Petitioners to deposit 50% profit till the rights of the parties are adjudicated by the Appellate Court.

10] Hence, the following order:

(i) Respondent No.1-Corporation is directed to consider reconstitution proposal favourably without insisting for NOC from Petitioner Nos.3 to 6, with liberty to impose any such condition deemed fit to protect its business interest. The Petitioners shall deposit 50% of profit before the Appellate Court within six weeks from the date of the order.

(ii) The above directions shall be subject to the final adjudication of the rights of the parties by the Appellate Court.

11] Rule is made absolute in above terms. No order as to costs.

(VRUSHALI V. JOSHI, J.)

(ANUJA PRABHUDESSAI, J.)

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