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W.P(MD)No.13009 of 2024

THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 01.08.2024

Pronounced On : 09.08.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13009 of 2024

and

W.M.P.(MD)Nos.11549 & 14711 of 2024

V.Thirugnanasambandam

... Petitioner

Vs.

The Divisional LPG Sales Head,
Indane Divisional Office,
Indian Oil Corporation Ltd.,
No.2, Race Course Road,
Chockikulam,
Madurai-625 002.

... Respondent

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 of the impugned order passed by the respondent in reference No.MIDO/121/2024 dated 11.06.2024 and in reference No.MIDO/121/24 dated 12.06.2024 and quash the same and consequently, direct respondent to take appropriate action regarding the reconstitution of dealership based on the Will executed by the petitioner's father dated 27.09.2001.

(Prayer amended vide order dated 04.07.2024 in W.M.P.(MD)No. 12929 of 2024 in W.P.(MD)No.13009 of 2024 by GRSJ)



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WEB COPY For Petitioner : Mr.H.Lakshmi Shankar

For Respondent : Mr.K.Muraleedharan

ORDER

Heard both sides.

2. The petitioner's father K.Veluchamy was appointed as LPG Distributor by IOCL in the year 1988. The dealership was then a proprietary concern run in the name of “Jothi Gas Agencies”. Subsequently, the proprietary concern was reconstituted as partnership. The petitioner had 49% while his father had 51% share. The petitioner's father reached the age of 90 years on 07.01.2022. He therefore wrote to the respondent for inducting the petitioner's son Vignesh Prabhu. He wanted to transfer his share in the partnership. But the process could not be completed for various reasons. Veluchamy passed away on 15.01.2024. The petitioner thereupon wrote to the respondent for reconstituting the distributorship since by virtue of the Will executed by his father on 27.09.2001, he had become the sole proprietor of “Jothi Gas Agencies”. Since the respondent did not act on the petitioner's request, this writ petition came to be filed.



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3. When the matter was taken up for hearing, the learned standing counsel for the corporation informed the Court that the petitioner's request has been rejected. Thereupon, the writ prayer was amended challenging the rejection order.

4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. Reliance was placed on the order dated 02.09.2022 made in W.P.No.6314 of 2017. The learned counsel called upon this Court to set aside the rejection order and grant relief as prayed for.

5. The respondent has filed counter affidavit and also typed set of papers. The learned standing counsel took me through its contents. According to the respondent, the request made by Thiru.Veluchamy in the year 2022 was not processed. The respondent had called upon the petitioner as well as Thiru.Veluchamy to furnish certain documents. Since the said documents were not furnished, the application for reconstitution came to be closed. Now, Veluchamy is no more. The question of making nomination in favour of the petitioner does not arise. The respondent cannot take cognizance of any Will



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executed by the deceased Veluchamy. The petitioner has to necessarily obtain NOC from his siblings. Since the petitioner is not able to furnish such NOCs from the other legal heirs of Veluchamy, the question of reconstitution of the distributorship on the basis of the Will does not arise. The learned standing counsel was at pains to submit that the respondent cannot go against their own norms and policies. The respondent pressed for dismissal of the writ petition.

6. I carefully considered the rival contentions and went through the materials on record.

7. The basic facts are not in dispute. Veluchamy was originally the LPG distributor for the respondent corporation. Later, the proprietary concern (Jothi Gas Agencies) was reconstituted and the petitioner was inducted as partner. Veluchamy had 51% share, while the petitioner had 49% share. The question is whether the distributorship should be once again reconstituted and it should be converted into proprietary concern. The corporation insists that the petitioner must have received nomination during the life time of Veluchamy. It is seen that during his life time, the letter dated 07.01.2022 was sent proposing to confer 51% of shares on the petitioner and 49% of shares on the petitioner's son. In other words, Veluchamy wanted his son and grandson to become the



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partners. It is true that in response to the said application, the corporation called upon the applicants to submit as many as 18 documents. Unfortunately, the documents were not submitted during the life time of Veluchamy. Veluchamy himself passed away on 15.01.2024. Now the question that calls for consideration is whether reconstitution can take place on the strength of the Will dated 27.09.2001 executed by Veluchamy in favour of the petitioner. It is relevant to mention here that the Will is a registered document (Document No. 46/2001). A learned Judge of this Court vide order dated 02.09.2022 in W.P.No.6314 of 2017 (K.Jayakumar Vs. HPCL & others) had held that claim can be made under a Will also.

8. This issue has to be viewed from a commonsense perspective. It is not as if the petitioner is relying on some registered instrument executed just before the demise of Veluchamy. The Will was executed as early as on 27.09.2001. Veluchamy had not revoked the same during the 23 years he lived thereafter. The corporation has also not received any rival claim or objection. Even during January 2022, Veluchamy wrote to the corporation expressing his desire to divest himself of all ownership since he had turned 90. This Will can be treated as nomination for all practical purposes. There is yet another aspect. The partnership was covered by the terms of the deed dated 16.03.2009. Clause 14



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of the partnership deed is to the effect that the retirement, insolvency or death of any transfer shall not dissolve the partnership and the other partners shall continue the partnership with or without admitting the new partners subject to prior written approval of IOCL. In other words, it was clearly contemplated that the demise of K.Veluchamy will not put an end to the partnership. Even after his demise, it was open to Thirugnanasambandam to continue the business. If Thiruganansambandam wanted to take his son as additional partner, he must get permission from IOCL. This only means that for inducting Vignesh Prabhu, permission would be required. Otherwise, reconstitution of the dealership from partnership into a proprietary concern is something automatic. This is the natural effect of the terms of the partnership deed. It is not the case of the respondent that any restraint order had been obtained by the other legal heirs of Veluchamy against reconstitution.

9. The respondent has not taken note of the three aspects.

A. The desire expressed in clear terms for giving up his interest in the firm in favour of his son and grandson is evidenced by the letter dated 07.01.2022.

B. An unambiguous bequest is in favour of the petitioner in the registered Will dated 27.09.2001.



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C. The terms of the partnership deed indicates that on death of a partner, the partnership will not be dissolved and that the remaining partner can continue the business. No restraint order has been issued by any jurisdictional civil Court at the instance of the other legal heirs of the deceased Veluchamy.

10. In this view of the matter, the the impugned rejection orders are set aside. The respondent is directed to reconstitute the petition mentioned dealership recognizing the petitioner as the sole proprietor of the “Jothi Gas Agencies”. This shall be done by the respondent as expeditiously as possible. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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