IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present: - Hon'ble Mr. Justice Subhendu Samanta.

IN THE MATTER OF

WPA 25731 of 2024

Avijit Kr Modak
Vs.
Indian Oil Corporation Ltd

For the Petitioners : Mr. Subir Sanyal, Adv.,
Mr. Chittapriya Ghosh, Adv.,
Mr. Asit Baran Ghosh, Adv.,
Mr. Ramesh Dhara, Adv.,
Mr. Somesh Kumar Ghosh, Adv.,
Mr. Sourajit Mukherjee, Adv.,
Mr. Trijit Mitra, Adv.

For the respondent : Mr. M.S Yadav, Adv.,

Reserved on : 07.04.2025

Judgment on : 23.07.2025

Subhendu Samanta, J.

1. Father of the petitioner namely Dulal Kar Modak, since deceased through an agreement dated 15th June, 2004, was appointed by the Indian Oil Corporation limited (IOCL) as distributor for liquefied Petroleum Gas (LPG) in Cylinder for households in the area of Khatra and adjoining areas within 15 KMs Radius in the District of Bankura.

2. Father of the petitioner started business under name and style M/s. Mina Indane at Netaji Road Khatra in the district Bankura as a

sole proprietor. There are different disputes between the father of the petitioner and IOCL authorities consequent thereof several writ petitions were filed. Sometimes selling license of the father of petitioner was terminated and again it was revived by the order of this court, thereafter again it was terminated. However, said Dulal Kar Modak expired on September 15, 2016. In terms of Clause 27 (D) (I) of the distributorship agreement dated June 15, 2004 the agreement was terminated on the death of the sole dealer/distributor. Petitioner approached the authority with a prayer to renew the license in his name, being denied, the petitioner approached this court in a writ petition being WP No. 19811(W) of 2017. A co-ordinate Bench vide its order on January 30th, 2018 has allowed the writ petition and directed IOCL authority to appoint petition as LPG Distributor in the place of deceased father. Being aggrieved, IOCL preferred a mandamus appeal being **FMA 1716 of 2018**. Hon'ble Division Bench of this court vide its order dated 18.04.2024 disposed of the said mandamus appeal with directions as follows--

> ***10. Be that as it may, no enquiry having been held against deceased respondent/writ petitioner during his lifetime, everything abated on his death when the oil company did not proceed to prove the change/changes. When everything has abated and the allegation as made has not been proved, no fault can be found in the application filed by the respondent/writ petitioner for his appointment/engagement as LPG distributor. He (respondent/writ petitioner) according to law or moral is not supposed to inherit the sin of his deceased father.***

> ***11. We do not affirm the order of Hon'ble Single Bench directing the appellants/oil company to give appointment/engagement to the petitioner within a specified time inasmuch as for giving an appointment/engagement the oil company is required to be satisfied about fulfilment of different norms set out by the company in its guidelines and the petitioner has to fulfil those norms and conditions specified in the guidelines. The company in such matter conduct itself in a transparent manner and the proposed distributor will know what the conditions and norms he has to fulfil.***
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> ***12. Accordingly, we set aside the conclusion reached by Hon'ble Single Bench and allow this appeal directing the appellants/oil company reconsider the application of the petitioner in the light of Clause 3.4 of the 2013 guidelines. It is made clear that the decision shall be taken within a period of three months from the date of receipt of a copy of this order.***

3. In pursuance to the directions, the respondent authority has given a hearing to the petitioner and passed the impugned reasoned order thereby petitioner's prayer was turned down with observation that- **"considering the facts and circumstances stated above, we regret to inform that your application for re-constitution dated 9th February 2016 is hereby rejected"**

4. Hence this writ.

5. Mr. Subir Sanyal Learned Senior Counsel, appearing on behalf of petitioner submits the respondent authority acted illegally in denying the right of the petitioner to continue with the business. He further submits that the grounds mentioned in the impugned reasoned decision is palpably arbitrary and illegal. Mr. Sanyal further

argues that the petitioner cannot be denied to the license citing previous conduct of his deceased father. He further submits that according to the re-constitution policy the petitioner has submitted no objection affidavit of all the legal heirs of deceased dealer as well as other relevant documents but the authority concerned has asked for succession certificate regarding confirmation of legal heirs of deceased distributor. He submits that there is no provision of the brochure for asking succession certificate to prove heir ship of distributor. He further argued that the respondent authority also illegally asked for submissions of several licenses such as trade license, fire license, PESO license which were standing in the name of deceased father. Mr. Sanyal further submits that prior to execution of agreement between the petitioner and IOCL said licenses cannot be renewed in the name of the petitioner. He further submits that in the earlier litigation, Hon'ble Division Bench has specifically directed the respondent authority to consider the petitioner's application in light of clause 3.4 of re-constitution guideline 2018, the said guideline was not properly followed by the respondent authority.

6. Mr. M.S. Yadav Learned Counsel appearing on behalf of the respondent authority submits that the business of the farm namely, M/s Meera Indane has drastically destroyed the repetition of IOCL in the liquidity. There are several complaints against the distributor of the said firm. There are several litigation against the said farm moreover, District Magistrate Bankura, had twice revoked the selling

license of LPG of the said farm. The said order of the revocation was not set aside of any order of this court. Thus the business of said farm cannot be continued. Mr. Yadav further argued that present petitioner being one of the heirs of the erstwhile distributor (deceased) had no right of novation of contract. The agreement between deceased distributor and IOCL has already been terminated upon his death, thus, the present petitioner cannot claim any right in the said business. He further argued that the Hon'ble Division Bench of this court as well as Hon'ble Supreme Court in several decisions had made it clear that past performance of business of a form has to be looked into in the matter of continuation of the business by the successors. Mr. Yadav further argued that it is prerequisite condition to run LPG Distributorship business to place necessary statutory licenses. The petitioner could not place trade license, fire license, PESO license at the time of personal hearing, in absence of those statutory license the petitioner cannot run LPG distributorship business. He further submits as per re-constitution policy succession certificate of deceased distributor regarding confirmation of number legal heirs is required to be placed. The petitioner in the personal hearing has admitted that he having not such succession certificate. Mr. Yadav further submits that in absence of those certificates and considering the post and misconduct and malpractices of M/s. Meera Indane, the prayer for re-constitution of the petitioner has justifiably turned down.

7. Mr. Yadav further argued that there are no illegalities in the impugned reasoned order. Thus the writ petitioner is liable to be dismissed.

8. Having heard the Learned Counsel for the parties, also considering the rival submission of the parties it appears that the Hon'ble Division Bench while disposing of the mandamus appeal has directed the respondent authority to reconsider the application of the petitioner in the light of clause 3.4 of 2018 guidelines. It is undoubtedly crystal clear from the previous litigation between the petitioner and IOCL that during first writ petition the respondent authority has also demonstrated, through affidavit regarding the past alleged misconduct, malpractices of sole distributor (deceased) of M/s. Meena Indane. During the earlier litigation it was the firm ground of IOCL authority that as reputation of respondent authority has been destroyed by the conduct of erstwhile distributor, accordingly, same farm cannot be allowed to run the business. The said pleadings and contentions of IOCL was not considered by the Hon'ble Co-ordinate Bench of this court wherein such coordinate bench has directed the authority concerned to grant dealership license in the name of the petitioner.

9. Being aggrieved by the said order a mandamus appeal was preferred by the concerned authority wherein the same argument was

advanced by the appellant (IOCl). On considering the submission of IOCL the Hon'ble Division Bench has made it clear in paragraph 10 of the said judgment that the petitioner cannot inherited the sin of his deceased father. So it is abundantly clear that the plea of the IOCL regarding alleged past misconduct by deceased father of the petitioner had no implication in deciding petitioner's right of re-constitution in the said business.

10. When a view, expressed by a Single Judge of this court was affirmed by the Division Bench in appeal, respondent authority (IOCL) cannot again allowed to raise the same issue, it is barred by principle of Res-judicata.

11. It appears from the reasoned order of the concerned authority that they time and again has disclosed the past disputes and litigation between the deceased father of the petitioner and IOCL. The entire reasoned order was passed on the basis of such notice that the IOCL authority shall not allow the petitioner to continue the business on the ground which was already decided by this court be not good ground to consider.

Clause 3.4 of the guideline of the re-constitution of commission dealership/distributorship disclosed that –

3.4 The Sole Proprietor / Partner(s) can resign from the distributorship after three years of commissioning of a distributorship and transfer his/her/their shareholding in favour of family member(s) / existing *partner(s)/outside partner(s). However, in case of induction of outside category partner(s) in SC/ST distributorships, the share of incoming outside category partner(s) will be restricted to 25%.*

12. So, from the said clause it is clear that the re-constitution may be made in favour of the legal heirs of deceased sole distributor provided that other legal heirs have expressed their unwillingness. Detail guidelines for re-constitution of LPG distributorship 2022 in Clause 2.8.8 defined legal heirs certificate as follows –

2.8.8 Legal heir certificate: Legal Heir Certificate is required to be submitted, by the person claiming to be legal heir, to OMCs to establish Legal heirs of the deceased Proprietor/Partner(s). In case the same is getting delayed, then the Incoming partner/legal heir(s) can submit an affidavit sworn before 1" class Magistrate or any other competent authority in the concerned State by all the legal heir(s) of the deceased (including incoming legal heir(s)) declaring that they are the only legal heir(s) of the deceased.

OMCs can approve reconstitution in such cases. However, the reconstituted distributorship will have to indemnify the OMC against any claims or demands which may be made in future by any person claiming to be legal heir and would also have to face consequences such as termination of distributorship. (Annexure L1)

In case the person(s) claiming to be legal heir of deceased has/have already obtained Succession Certificate, the need for seeking Legal Heir

Certificate can be dispensed with. If the Legal Heir Certificate is not generally issued in the jurisdiction/State where the Distributorship is operating than Succession Certificate to be taken.

13. In the above mentioned clause, it is clear that an affidavit sworn before 1st Class Magistrate or any other competent authority in concerned state regarding legal heirs of deceased is sufficient to prove the hardship of deceased distributor. The cases where legal heir certificate is not generally issued in a State, then only succession certificate is required to be placed. In this particular case the petitioner has already placed legal heirs certificate through the competent authority. Thus the respondent authority had acted illegally for asking succession certificate from the petitioner. It further appears that concerned fire license, PESO licence, trade license were standing in the name of deceased father of the petitioner erstwhile distributor. After demise of the distributor the said license were not renewed, the statutory authorities cannot proceed to issue license without necessary order/ sanction of the respondent oil company regarding their intention with do business with the petitioner. IOCL is well aware about the fact but they have asked for such statutory license from the petitioner which they know is not possible to be placed in the hearing.

14. During the course of argument Mr. M. Yadav has placed a decision of Hon'ble Division Bench of this court in APO No. 43 of 2013 Indian Oil Corporation Limited Vs. Roy and Company and Ors.

wherein the Hon'ble Division Bench has held that the Oil Company must have examined passed and present performance of the farm with regard to its business and license under it. Mr. Yadav argued that the past and present performance of present farm is disputed. Thus, the authority concern must not issue license in favour of the petitioner. In perusing the observation of Hon'ble Division Bench in Roy & Company (supra), it appears the IOCL authority was directed to allow the surviving partners of Roy & Company to run the business after death one of the partners and there were the allegation in running the business by the surviving partners. On that score the Hon'ble Division Bench has directed to allow re-constitution by the surviving partners considering the unblemished past and present performance of the farm through the surviving partners; but, in the present case the facts situations are completely different. The petitioner has only applied for re-constitution. Thus the question of performance of business by the petitioner is not an issue here.

15. In **Sanjanam wid (MS) Vs. Hindustan petroleum and Corporation Ltd. (2005) 8 SCC 242**. The Hon'ble Apex Court has held that the appellant before the Hon'ble Supreme Court had allowed to continue business after demise of one of the heirs partner purely an ad haq basis. Moreover, there are some complain in running of such business. Thus the appellant had no right while she already violated the terms of the contract; the facts scenario of the cited case is totally different to that of the present case.

16. Mr. M. Yadav Learned Counsel for the petitioner also placed a decision of Hon'ble Apex Court in **Assistant Excise Commissioner Vs. Issac Peter and Ors. (1994) 4 SCC 204** . Mr. Yadav submits that the terms in the Clause 3.4 of the said reconstitution policy, is not a mandate upon the Oil Company to reconstitute the firm, it is only discretionary. The petitioner has no right to claim of continuance of distributor business. In the said judgment the Hon'ble Apex Court has perused, the observation decided <u>doctrine fairness and reasonableness of contract wherein the state is a party</u>. After perusing the observation the Hon'ble Apex Court it appears to me that the Clause 3.4 of the re-constitution policy has empowered the Oil Company for re-constitution of the business by any legal heir of deceased distributor. The term "may" is not mandatory but it is truly discretionary.

17. The respondent authority being instrumentality of state as defined under Article 12 of the Constitution must act legally and reasonably. They should not proceed beyond the scope of the guideline. Respondent authority being instrumentality of a State is completely duty bound to act within the strict periphery of the statute/ re-constitution guidelines. Under the scheme of constitution of India, there are difference between a citizen of India and state authority regarding permissibility of their respective action. While a citizen of India can act anything in accordance with law but state or instrumentality of a state can only act in accordance with the statute

or guidelines made for that purpose. It has no authority to disregard any terms of the guidelines/statute or they also are not authorisedto interpret the said guidelines in their favour.

18. In this particular case it is curious to observe that the respondent authority has placed affidavit- in- opposition in this case which contained allegation regarding the past conduct of deceased distributor in most of the paragraphs while the same pleadings of the respondent authority has negated by the coordinate bench of this court and affirmed by the Hon'ble Division Bench in earlier litigation.

19. In passing the reasoned order the respondent authority also opined that as the previous conduct of the business of deceased distributor had polluted the repetition of the IOCL, thus, the petitioner cannot be allowed to run the business.

The action of respondent authority remind me a story of HITOPODESH, where a lion tried to kill a deer with allegation that predecessor of such deer had polluted the stream.

20. In this particular case the respondent authority had illegally denied petitioner in a notion which was already deprecated by this court in the earlier litigations.

21. Under the above observation I am of a view that acts and action of the respondent authority in passing impugned reasoned order is arbitrary. The respondent authority has not properly complied the direction of the Hon'ble Division Bench. In deciding the prayer of the

petitioner for re-constitution, they also flouted the terms of the guideline for re-constitution of LPG distributorship by confusing themselves in the earlier conduct of the deceased father of the petitioner.

22. Under the above observation the instant writ petition appears to be meritorious. The impugned reasoned order dated September 11, 2024 by the respondent authority is hereby set aside.

23. The respondent authority is directed to pass an order reconstitution strictly in terms of the guideline and to convey their consent regarding allowing the petitioner to run the distributorship license within 06 weeks from the date of this order.

24. Under the above observation the writ petition is disposed of.

25. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)