
National Automobiles Vs Indian Oil Corporation Limited

Civil Writ Petition No. 6904/2013

Court: Rajasthan High Court

Date of Decision: May 28, 2014

Citation: (2015) 3 WLN 487 : (2014) 3 WLN 457

Hon'ble Judges: Pratap Krishna Lohra, J

Bench: Single Bench

Advocate: M.S. Singhvi, Sr. Counsel, assisted by Hemant Dutt and A.A. Bhansali, Advocate for the Appellant; Om Mehta, Advocate for the Respondent

Judgement

P.K. Lohra, J.

The petitioner firm M/s. National Automobiles, Barmer, whose partner Prakash Chandra Jain, has laid this writ petition,

assailing the order dt. 28.05.2013 (Annex. 14) passed by the Senior Divisional Retail Sales Manager, Indian Oil Corporation Limited, whereby

dealership agreement dt. 25.09.1967 with the firm has been rescinded by invoking Clause 13 of the dealership agreement. In the order dt.

28.05.2013, the competent authority of Indian Oil Corporation Limited (for short, "IOCL") has concluded that the firm has failed to submit a

reconstitution proposal meeting the policy guidelines of the Corporation inspite of giving sufficient opportunities and consequently concluding that

the firm is running as Benami dealership. The IOCL has also categorized the reconstitution of the firm as unauthorized in want of approval of the

Corporation. According to the version of the petitioner, M/s. National Automobiles was constituted as a HUF proprietorship firm and Shri

Bhanwarlal Jain was proprietor as "Karta". In the year 1975, Shri Bhanwarlal expired and as such his three sons doing business of dealer for

petrol, diesel as well as Kerosene, as agent of IOCL, constituted a partnership firm with all the three as partners. The impugned action of the

IOCL was questioned in the petition on various counts including violation of principles of natural justice.

2. On behalf of IOCL, reply is submitted by stoutly defending their action. The IOCL has taken a specific stand in the reply that despite furnishing

umpteen opportunities the petitioner firm has failed to accomplish reconstitution of dealership agreement and the said failure is directly attributable

to the legal heirs of the then dealer Shri Bhanwarlal Jain. It is also emphasized in the return that there was some internal dispute amongst the legal

heirs of Late Shri Bhanwarlal and one of his daughters Smt. Shanti Devi submitted various representations/complaints alleging therein that she has

not consented for reconstitution of dealership and her signatures on the alleged consent letter are spurious. This sort of awkward situation was an

impediment in reconstitution of dealership and ultimately resulted in termination of dealership. The IOCL has also taken the stand in the reply that

the complaints of Smt. Shanti Devi created a situation wherein IOCL was in dilemma and consequently it was not possible for it to restore supply

of Kerosene to the firm and precisely this the main cause for cropping up of this litigation.

3. On behalf of Smt. Shanti Devi, an application is submitted for her impleadment as party respondent in the writ petition. In the application, the

applicant has stated that originally the firm was proprietorship firm and her father Late Shri Bhanwarlal was its sole proprietor. It is also averred in

the application that her three brothers, who are alleged partners of the firm, have manipulated her consent letter whereas in fact she never

consented for reconstitution of dealership for Kerosene. A reference is also made in the application that at the behest of applicant Smt. Shanti Devi

a family dispute is pending before Addl. District Judge, Barmer, wherein she has claimed partition of the property of Late Shri Bhanwarlal. Mr.

Bhansali, learned counsel for the applicant, has very candidly submitted that although in the suit for partition many properties owned by Late Shri

Bhanwarlal are involved but the Kerosene dealership of the firm, which is the bone of contention in this writ petition is not part of the claim in the

property dispute. However, Mr. Bhansali submits that she being legal heir of Late Shri Bhanwarlal is entitled for her part of share in the Kerosene

dealership and the profit earned by the firm in this behalf. Mr. Bhansali has further submitted that applicant Smt. Shanti Devi is prepared to tender

her affidavit in the form of No Objection before the IOCL for reconstitution of dealership, which was terminated by the impugned order subject to

just objection about her part of the share in the property.

4. Mr. M.S. Singhvi, learned Senior Counsel, has agreed on this proposal of learned counsel for the applicant Smt. Shanti Devi and submitted that

1/7th share of the profit earned out of Kerosene dealership of the firm shall be kept intact in a separate Bank account subject to the condition that

disbursement of the said amount shall remain subject to the decision of suit for partition filed by Smt. Shanti Devi.

5. Mr. Bhansali has very candidly accepted the said proposal without any demur.

6. Mr. Om Mehta, learned counsel for IOCL, has also concurred with the said proposal and submitted that if requisite formalities are undertaken

by Smt. Shanti Devi, IOCL shall take appropriate steps for restoration of Kerosene dealership of the firm and this sort of concurrence of Smt.

Shanti Devi for the said arrangement may result in facilitating supply of Kerosene to the firm.

7. Having heard learned counsel for the parties and considering the fact situation in entirety, the writ petition is disposed of with a direction to the

respondent IOCL to reconstitute dealership in the name of petitioner firm within thirty days from the date of production of the certified copy of this

order. After reconstitution, the IOCL shall also pass appropriate consequential order for restoration of uninterrupted supply of Kerosene to the

petitioner firm within a fortnight thereafter.

8. It is made clear that after reconstitution of dealership and Kerosene supply to the petitioner firm is resumed, the petitioner firm shall demarcate

the share of profit earned by it to the extent of 1/7th and the said amount of profit shall be kept in a separate bank account on yearly basis. The

amount of 1/7th share of the profit earned by the petitioner firm to be deposited in separate Bank account shall remain subject to the outcome of

suit for partition laid on behalf of applicant Smt. Shanti Devi before the competent civil Court and her entitlement for the said amount and

disbursement of the said amount shall also remain dependent on the final outcome of the suit for partition. It is also expected from the petitioner

firm to apprise applicant Smt. Shanti Devi about the yearly accounts of the petitioner firm indicating 1/7th of the profit earned by the firm. Applicant

Smt. Shanti Devi is also directed to furnish her affidavit within ten days from today indicating her no objection before the IOCL for reconstitution of

agreement. Before parting, it is made clear that this arrangement has been made with the consent of the rival parties for restoration of dealership

and supply of Kerosene to the firm and disposal of this writ petition shall have no impact on merits of the civil suit for partition filed by applicant

Smt. Shanti Devi. The partners of the petitioner firm shall be at liberty to raise all objections before the civil Court for partition of the property of

Late Shri Bhanwarlal Jain.