
(2021) 02 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (C) No. 3549 Of 2020

M/S M P Jalan And Anr

APPELLANT

Vs

M/S Indian Oil Corpn. Ltd. And 3 Ors

RESPONDENT

Date of Decision : 01-02-2021

Acts Referred:

Constitution Of India, 1950 — Article 12, 226

Citation : (2021) 02 GAU CK 0006

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : G Rahul, Mk Choudhury

Final Decision : Allowed

Judgement

1. The extra ordinary jurisdiction conferred to this Court by Article 226 of the Constitution of India is sought to be invoked by means of filing of the present petition. The issue revolves around stoppage of a retail outlet of petroleum products by the respondents from 22.08.2020 by stopping supply of materials. Amongst various grounds of challenge, it is alleged that the said stoppage was without any notice or opportunity and further grievance is also regarding non-consideration of the reconstitution proposal of the petitioner no. 1.
2. Before dealing with the issue at hand, it would be convenient to narrate the facts of the case in brief.
3. Two petitioners have joined together in this present petition. While the petitioner no. 1 is a partnership firm, the petitioner no. 2 is one of the partners. The petitioner no. 1 was initially a sole proprietorship and way back in the year, 1967, a dealership/retail outlet/petrol pump was duly allotted to the said firm at Hijuguri in the District of Tinsukia by the Indian Oil

Corporation Limited (hereinafter, 'IOC'). In course of time, the constitution of petitioner no. 1 was changed from proprietorship firm to a partnership firm and it is also a fact that the partnership was registered in the year 1989. In the meantime, there were changes of partners and such changes were intimated to the respondent corporation.

4. When the said petrol pump was in operation, a letter dated 10.07.2020 was issued by IOC on the subject 'reconstitution of the firm named M/s

Mahabir Prasad Jalan' notifying certain discrepancies which was in connection with the firm's constitution. For ready reference, the discrepancy

observed by the committee of the Corporation reads as follows:-

'THE PROPOSAL IS CONTRADICTORY. THE WILL SUBMITTED BY MP JALAN STATES THE RETAIL OUTLET SHALL BE IN

THE NAME OF RAJESH JALAN, RAMESH JALAN, SURESH JALAN AND SANJAY JALAN. BANK LETTER SHALL BE WITHIN 3

MONTHS OF PROPOSAL. MEDICAL FITNESS CERTIFICATE OF ALL INCOMING TO BE SUBMITTED AUDITED BALANCE SHEET

NOT VISIBLE'.

The letter made it specific that if the reconstitution proposal was not submitted within 15 days, there will be a suspension of the sales and supplies. It is

the case of the petitioners that no opportunity was granted before issuance of the said letter and further that the WILL referred in the letter was not

even probated.

5. In response to the said communication, the petitioners wrote letter dated 21.07.2020 whereby certain time was sought for in view of the ongoing

pandemic of COVID-19. Ultimately, vide letter dated 07.08.2020, the respondent corporation was apprised with all the facts with supporting

documents and the proposal, as directed, was sent. The aforesaid letter dated 07.08.2020 was sent by registered post which was duly received as is

evident from the track assignment report. That apart, the said letter was also issued online at the official email id of the respondent corporation.

However, without any further correspondence, the supply to the retail outlet of the petitioners was abruptly stopped w.e.f. 22.08.2020 without

assigning any reason. Thereafter, a communication was issued on 18.09.2020 by the corporation to the petitioners directing handing over the operation

of the retail outlet premises to any other operators on holiday scheme. This letter

has been brought on record by filing an additional affidavit dated 25.09.2020. It is the case of the petitioners that the aforesaid letter makes it apparent regarding the oblique intention of transferring the business to a 3rd party.

6. When this writ petition was moved, this Court vide order dated 06.10.2020 while issuing notice, had recorded the basic contentions of the respondent corporation in support of the impugned action, namely:-

i) There were unresolved contentious issues pertaining to the reconstitution of the partnership,

(ii) The annual return submitted by the petitioner No. 1 has been rejected by the system as a result of which the supply of petroleum automatically gets suspended.

7. In support of the aforesaid submissions, the respondent corporation has filed an affidavit-in-opposition on 16.12.2020. In the said affidavit, certain complaints by the legal heirs of Laxmi Narayan Jalan have been mentioned and the annual return which was contended to be not accepted was of the financial year, 2016-2017.

8. The petitioners have responded to the said affidavit-in-opposition by filing a rejoinder affidavit on 06.11.2020 countering the grounds taken by the

corporation. Referring to the annual returns prior as well as subsequent to the year, 2016-2017, the petitioners contended that similar returns were

accepted by the corporation and therefore, non acceptance for the year, 2016-2017 cannot be a reason at all for the impugned action. As regards,

complaint by certain family members who were legal heirs of Laxmi Narayan Jalan, it has been contended that such complaints are wholly irrelevant

inasmuch as, all changes in the partnership have been diligently informed to the respondent corporation. Though, a ground of Benami operation was

also sought to be taken by the corporation by referring to a circular dated 09.05.2013, the petitioners has contended that the said circular admittedly

does not have any application inasmuch as, it is effective only from the date of issuance i.e. 01.10.2013 whereas, the instant business is continuing

since 1967. As regards, complaints by I.P. Jalan, S/o Lt. Mahavir Prasad Jalan, it is contended that I.P. Jalan who was a partner had left the

partnership way back in the year, 1972 and in this regard, he had executed a declaration before the learned Court of Magistrate, Tinsukia. The Income

Tax returns for the years, 1981 onwards would show that I.P. Jalan was not a partner. It has further been contended that the reconstitution of the

dealership was strictly in accordance with the policy guidelines of the corporation.

9. I have heard Shri G. Rahul, learned counsel for the petitioners. I have also heard Shri M. K. Choudhury, learned Sr. counsel assisted by Shri P.

Bhardwaj, learned counsel appearing on behalf of the IOCL, the respondents, who has also produced the records of the case in original.

10. Shri G. Rahul, learned counsel for the petitioners submits that the impugned action of the respondent authorities is absolutely unreasonable and

arbitrary and is based on irrelevant and extraneous factors. On the other hand, the relevant factors have not been taken into consideration at all. The

learned counsel submits that neither of the two principal grounds taken up by the respondent corporation in support of the impugned action which was

recorded by this Court in its order dated 06.10.2020 are factually correct or legally tenable. There was no contentious issue in the constitution of the

firm and the alleged discrepancy, whatsoever, in the annual return for the year, 2016-2017 is absolutely whimsical inasmuch as, returns prior and

subsequent to the said year of 2016-2017 which were similar have been accepted without any complaints. He further contends that if there was any

defect or discrepancy in the annual return for the year 2016-2017, the subsequent returns could not have been accepted and raising an issue after

almost 3 years apparently smacks malice in law as well as on facts. By drawing the attention of this Court to the policy guidelines for reconstitution,

more specifically, clause G (5), it is stated that reconstitution has been done strictly in accordance with the said clause. By referring to the letter dated

10.07.2020 of the corporation enumerating discrepancies which included a WILL, Shri Rahul submits that as per clause L (3) of the policy guidelines,

there is a requirement that in case of WILL, the same has to be probated by a competent Court which is admittedly not done in this case. The learned

counsel has also referred a letter dated 19.11.2020 which has been issued during the pendency of the writ petition and brought on record by an

additional affidavit filed on 24.11.2020 by which a decision to uninstall the dispensing unit from the retail outlet was conveyed which was to be done

from 04.12.2020. This Court, however, vide order dated 02.12.2020, had stayed further action. The learned counsel submits that even assuming that

there is some dispute regarding the constitution of petitioner no. 1 firm, IOC on its own cannot stop the supply unless directed by a competent Court of law and prima facie there are no grounds for raising any dispute.

11. Shri M. K. Choudhury, learned Sr. counsel for the respondent corporation has raised a preliminary objection of non-joinder and has questioned the maintainability of the writ petition. He contends that the initial business being allotted to a sole proprietorship firm, namely, M/s M.P. Jalan, it is the said proprietorship firm which is being recognized by the corporation. The sole proprietor having expired and there being a dispute regarding ownership of business in question, all the legal heirs are necessary parties and non-joinder of the said parties is itself is a ground for dismissal of the writ petition. By referring to Clause G (4) of the policy guidelines, the learned Senior counsel has submitted that the procedure laid down to be followed in case of death of sole proprietor was not done by the petitioners. Further, dispute which may arise between the family members has not been resolved as per clause G (9). The said clause itself provides for handing over the business under "Holiday Scheme" and therefore, no illegality can be attributed for issuing the letter dated 18.09.2020 to that effect. It is further contended that the petitioners have never filed "No Objection" by the other legal heirs. The further submission is that the other partners of the partnership firm had lodged complaint before the respondent corporation and the corporation has simply followed the guidelines while taking the impugned decision. The learned Senior Counsel finally submits that questions of facts are involved in the writ petition which cannot be gone into. He accordingly prays for dismissal of the writ petition.

12. In his reply, Shri Rahul, the learned counsel for the petitioners submits that none of the grounds of defence are tenable. Specifically meeting the objection of non-joinder, the learned counsel has drawn the attention of this Court to the prayer in the writ petition wherein it has been prayed that the proposal for reconstitution be considered by hearing "all the stake holders". Secondly, he submits that the alleged dispute by the other partners would at best be to the extent of 50% of the business as the petitioner no. 2 who holds 50% share can run the business. In any case, the learned counsel contends that a dispute amongst the partners in a partnership firm can be confined only to the profit sharing and the same has to be

adjudicated by a competent Court of law. The learned counsel also contends that while the corporation is insisting that they are following the policy

guidelines, Clause G (9) provides for a waiting period of 6 months and in the instant case, from the date of stoppage i.e., 22.08.2020, the letter for

handing over to a 3rd party was issued in a period just over a month which show hot haste on the part of the respondent corporation.

13. The rival contentions of the learned counsel for the parties have been duly considered and the materials placed before this Court, including the original records have been carefully examined.

14. As noted above, this Court vide order dated 06.10.2020 had recorded the principal grounds projected by the corporation in support of its decision.

However, in the interest of justice, considering that the observations was recorded at the initial stage of issuing notice, this Court would also take into

consideration the other points urged by the corporation and would attempt to answer the same. But before going into the contentions raised on merits,

let us first deal with the preliminary objection of non-joinder.

15. In the objection raised in the affidavit-in-opposition of the corporation, it has been contended that the writ petition is bad for non-joinder of

necessary parties. To consider the said objection, it has to be seen whether the parties who ought to have been arrayed as respondents are necessary

parties and such consideration has to be from the point of view of the facts and circumstances of the case. The grievance raised in the writ petition is

with regard to the stoppage of supply from 22.08.2020 and the alleged inability to remove the discrepancies specified in the letter dated 10.07.2020,

this Court is of the opinion that for determining the issue relating to the said grievance, the presence of the legal heirs of Laxmi Narayan Jalan is not

necessary. This Court also finds force in the submission of the learned counsel for the petitioners that taking into consideration the nature of relief

prayed for, wherein consideration for proposal of reconstitution of the petitioner no. 1 be done by giving adequate opportunity to all the stake holders,

no prejudice would be suffered by any of the legal heirs. For ready reference, the relevant part of the prayer in the writ petition is extracted

hereinbelow:-

â??...A writ in the nature of Mandamus shall not be issued directing the respondents to forthwith consider the proposal for reconstitution of

the petitioner No.1 submitted by the petitioner No. 2 on 07.08.2020, in accordance with the existing Policy Guidelines for reconstitution and

after giving an adequate opportunity of hearing to all the stake holders of M/s M.P. Jalan, Tinsukia and pending consideration of

the reconstitution proposal to restore the supply of fuel/ oil/ other petroleum products to the petitioner No.1.

16. The Hon'ble Supreme Court in a catena of decisions had laid down the distinction between a proper party and a necessary party. Way back in

the year, 1963, the Hon'ble Supreme Court in the case of Udit Narain Singh Malpaharia Vs. Additional Member Board of Revenue, Bihar &

Arn., reported in AIR 1963 SC 786 has laid down as follows:

To answer the question raised it would be convenient at the outset to ascertain who are necessary or proper parties in a proceeding.

The law on the subject is well settled: it is enough if we state the principle. A necessary party is one without whom no order can be made

effectively; a proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and

final decision on the question involved in the proceeding.

From the above, the legal heirs can at best be termed as proper parties and not necessary parties and therefore, the preliminary objection of non-

joinder fails.

17. Coming to the merits of the case, it is seen that the present business is a running concern for the last more than 50 years and the complaint is not

with regard to any malpractice, pilferage etc., or even out of any public complaint. Further, the letter dated 10.07.2020 had only mentioned about a

discrepancy which was connected with the proposal for reconstitution of the petitioner firm and submission of legible audited balance sheet. The said

query being responded to on 07.08.2020 which as per record has been received, there was no occasion to stop the supply on 22.08.2020. No

communication, whatsoever has been issued to the petitioners informing the fate of consideration of the communication dated 07.08.2020. It is a

settled law that all decisions taken by an authority not only have to be communicated but also be informed by reasons. In the instant case neither there

was any communication nor any reasons were assigned. As regards the issue regarding the WILL in question, as observed above, Clause L(3) makes

it clear that WILL, if any, has to be probated by a competent Court and it is a admitted case that the WILL has not been probated.

18. In the present proceeding, the respondent corporation has tried to bring some more justification by way of affidavit. In this connection, this Court is

reminded of the following observation of the Honâ??ble Supreme Court in the case of Mohinder Singh Gill-vs- The Chief Election Commission,

reported in 1978 AIR 851. The said observation was made after referring to the oft cited case of Police Commissioner of Police, Bombay Vs.

Gordhandas Bhanji, reported in AIR 1952 SC 16, wherein, Honâ??ble Justice Vivian Bose observed as follows:

â??An attempt was made by referring to the Commissionerâ??s affidavit to show that this was really an order of cancellation made by him

and that the order was his order and not that of Government. We are clear that public orders, publicly made, in exercise of a statutory

authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what

was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to

affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used

in the order itself.â??

19. Though, by following the mandate laid down by the Honâ??ble Supreme Court, this Court is not even required to look into the other reasons, for

doing substantial justice, consideration of the same also does not come to the aid of the respondent corporation. The objection with regard to the

annual returns for the year, 2016-2017 cannot be accepted inasmuch as, all previous and subsequent annual returns which are similar in nature have

been accepted without any complaints. Referring to the communication dated 09.05.2013 of Benami operation, the said communication, on a bare

reading makes it clear that it is not applicable to the present case which is a running concern since the last more than 5 decades. Though, nothing was

mentioned regarding any complaints submitted by the legal heirs, even if those are considered, it is on record that Shri I.P. Jalan has left the

partnership in the year 1972 and the income tax returns filed by the firm clearly contends the names of the partners which is a registered partnership

of the year, 1989. The hot haste shown by the corporation to uninstall the dispensing units (DUs) almost immediately vide letter dated 19.11.2020 does not appear to be reasonable at all and rather, smacks of malice in law. The relevant clause, namely, Clause G (9) itself provides for a period of 6 months for resolution of disputes amongst the members in the dealership.

20. Apart from the aforesaid facts and circumstances, what intrigues this Court is that even if some legal heirs raised a dispute on the partnership,

such dispute has to be raised in a competent Court of law and upon adjudication, there has to be a decree in their favour. However, in the instant case,

it appears that the corporation which is a party in this proceedings has also played the role of an adjudicator which is grossly against the principles of

natural justice as well as the common law doctrine i.e., justice, equity, and good conscience. While the role of the corporation should have been to

advise the legal heirs who had allegedly submitted complaints to equip themselves with a decree of an appropriate Court, the corporation has stopped

the supply abruptly from 22.08.2020 which cannot be said to be in the interest of public service. The corporation being a Govt. of India enterprise is a

State within the meaning of Article 12 of the Constitution of India and has a solemn duty to act in a fair, impartial and transparent manner with the

ultimate objective to secure public interest. As observed above, there is no allegation of malpractice and considering that the business of the petitioners

is a running concern since the last more than 50 years, such action to abruptly stop the supply is wholly unreasonable and arbitrary and accordingly

interfered with by this Court. The subsequent action of taking recourse to Holiday Scheme and attempting to uninstall the dispensing units are also

interfered with by this Court.

21. In view of the above, the present writ petition is allowed by directing the respondent corporation to forthwith restore the supply of fuel and all other

petroleum products to the petitioners's outlet. In case, the respondent corporation wishes to go ahead in the exercise to consider the reconstitution,

the corporation is directed to take on record the proposal submitted on 07.08.2020 for reconstitution and take final decision strictly in accordance with

the Rules and by giving opportunities to the petitioners and any other person who are stake holders. It is made clear that such consideration has to be

limited only towards the requirements raised in the letter dated 10.07.2020 and

cannot embark upon deciding the legality of the partnership as such which can only be decided by a Civil Court of competent jurisdiction. It is needless to say that the long tenure of more than 50 years of business by the petitioner No. 1 which is without any blemish would be a relevant consideration while deciding the reconstitution proposal.

22. Writ petition accordingly stands allowed. No cost(s). The original records are returned herewith to the learned Standing Counsel, IOC.