(2014) 02 MAD CK 0141

In the Madras High Court

Case No : W.P. No. 3103 of 2007 and M.P. No. 2 of 2007

Sri Ram Trailer Services (Unit II) APPELLANT

Vs

Indian Oil Corporation Ltd. RESPONDENT

Date of Decision : 27-02-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 4 MLJ 408 : (2014) WritLR 615

Hon'ble Judges : P.R. Shivakumar, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

P.R. Shivakumar, J.—Invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India, the writ petitioner has preferred the present writ petition praying for the issuance of a Writ of Certiorarified Mandamus or any other writ or direction or order in the nature of Writ of Certiorarified Mandamus against the respondent, namely Indian Oil Corporation Limited. The writ petitioner has prayed that the records of the respondent in CBDO/R/Palayampudur dated 19.01.2007 be called for and quashed and has also prayed for a further direction to the respondent to offer the dealership in respect of the IOCL retail outlet at Palayampudur. The writ petition has been filed in the name of Sri Ram Trailer Services (Unit II), a partnership firm represented by its partner C. Shanmugam. The following are the averments made in the affidavit filed in support of the writ petition:

i) At the end of 2002, the officials of the respondent in the Coimbatore Region met the deponent C. Shanmugam and explained that they were contemplating appointing dealers for the retail outlets of their product and that such appointment would depend upon his leasing out the land required for putting up the retail outlet to the respondent on a long term basis on low rentals. Pursuant to the same, the deponent acquired lands at Palayampudur village with the sole object of leasing it out to the respondent on concessional terms on the specific undertaking given by the respondent that the dealership of the outlet would be given to him or to the firm in which he was a partner and that he could amortize the cost of acquisition of the land by a long term dealership. On the strength of the understanding and solemn promise made by the respondent, C. Shanmugam (deponent) leased out his land for a very low rental only with such an expectation.

ii) Induced by the said promise, the deponent took on lease 1.05 acres besides acquiring 25 cents of land adjoining the said lease-hold land and expressed his readiness and willingness to lease out the said land to the respondent. Consequently, a lease deed drafted by the respondent was given to him for his signature on the dotted lines. Thus the lease deed came to be executed on 26.03.2003 and the same was registered as document No. 560/2003 in the office of the Sub Registrar, Dharmapuri, where under a total extent of 1.30 acres of land was leased out to the respondent for a period of 30 years at a monthly rent of Rs. 7,500/- for the first block of three years and Rs. 8,600/- for the second block of three years. Thus by gradual increase, in the tenth block of three years the rental would be Rs. 26,400/- per month. Subsequently, he purchased 10 cents out of the land held by him on lease from his Lessor, in order to avoid loss on account of rentals. He was informed by the respondent that the lands taken on lease by the respondent a retail outlet will be developed and either himself or any firm in which he would hold a share or any member of his family would be given the retail outlet established on the said land. The petitioner was paid an advance of Rs. 1,80,000/- before deducting TDS and the respondent was also given the right to sub lease and appoint dealers, agents and licensees.

iii) After the land was taken on lease by the respondent, they agreed to appoint the wife of the deponent, namely S. Gangabhavani, allowed her to operate the said retail outlet on Job Contract basis with effect from 31.03.2003 quoting the appointment as a licence to operate the retail outlet on job contract basis, as the outlet was named "Company Owned and Company Operated outlet" (in short COCO outlet). When C. Shanmugam questioned the same and pointed out that the same was not in tune with the original promise made by them, the officials of the respondent assured that the deponent would not be in any way deprived of the rights agreed to be given by them and that the solemn assurances and promises made by them would be honoured. In this regard, a letter dated 02.04.2003 re-emphasising the basic understanding and the fundamental basis of the contract came to be issued by the respondent. In the said letter, the respondent had stated that in the event of the Corporation deciding not to operate the outlet as a COCO outlet and deciding to operate the outlet through a dealer, the Corporation would first make the offer to the landlord, provided all the terms and conditions and the Corporation policy prevailing at the time were fulfilled. The fact that they had decided to operate the outlet on COCO basis would not be a deterrent factor to honour their commitment to give the first opportunity to the deponent in case of their deciding to allot dealership on regular basis, was the further assurance given by the respondent. As such, they appointed the wife of the deponent as licensee to operate the outlet for a period of one year from 05.10.2003. However, the deponent was informed that the licence would be renewed and the same would be coexistent with the lease of his land.

iv) When the appointment in favour of the wife of the deponent was due to expire on 31.03.2004, the respondent authorised the firm in which the land owner (deponent) is a partner to operate the said outlet from 01.04.2004 to 30.09.2005 and the same was extended thereafter up to 31.12.2006. In or around the first week of December 2005, the deponent approached the respondent with a request to give dealership to his daughter-in-law, as she had entered his household then. At that point of time, the respondent directed the deponent to give a representation to that effect. Such a representation was submitted by the deponent on 06.12.2005 and in the meanwhile, the business in the outlet was performed through the petitioner firm. Great targets were achieved bringing the monthly average sales to 18,000 liters of Motor Spirit and 2,04,000 Kilos of High Speed Diesel Oil. When he had come to Chennai for treatment after Pongal in 2007, the respondent sent a letter dated 19.01.2007 putting the deponent on notice that the ad hoc dealership of the COCO outlet at Palayampudur had not been extended and that the petitioner should deliver possession forthwith. Aggrieved by the said letter, having no other effective and efficacious alternative remedy except to approach this court under Article 226 of the Constitution of India, the petitioner firm is constrained to file the present writ petition to quash the said order and to direct the respondent to make the first offer to the deponent in the event of discontinuing the COCO operation and appointing a dealer. Hence the present writ petition.

2. The writ petition is resisted by the respondent, namely Indian Oil Corporation Limited, on the basis of the counter affidavit filed on behalf of the respondent. The following are the contentions made in the counter affidavit:

i) The retail outlet of Indian Oil Corporation Limited, which is the subject matter of the writ petition, comes under the Salem Divisional Office of the respondent corporation. The petitioner''s contention that the respondent summarily refused to extend the ad hoc dealership and directed the writ petitioner to deliver possession of the retail outlet is totally wrong. Ad hoc dealership of the petitioner had been awarded for a period of one year alone up to 30.09.2006. The contract was extended for a further period up to 30.12.2006. Thereafter, notice of termination of ad hoc dealership was issued advising the petitioner to hand over possession of the retail outlet after the expiry of the contract period.

ii) No doubt, the land for development of the retail outlet was taken on lease from C. Shanmugam by the Indian Oil Corporation Limited and the rentals were paid to him in his individual capacity regularly. The lease agreement came to be executed based on the negotiated terms agreed between the parties, namely C. Shanmugam and the respondent. It is also true that Smt. S.T. Ganga Bhavani, the nominee of C. Shanmugam was selected as the Job Contractor for operating the COCO retail outlet at Palayampudur with effect from 31.03.2003. However, it was also stated therein that whenever the Corporation would decide not to operate the outlet as COCO outlet and would decide to operate the outlet through a dealer, the policy prevailing at that point of time regarding allotment of dealership should be fulfilled. The land for the running of the petroleum outlet at Palayampudur had been leased out by C. Shanmugam to the respondent corporation for a period of 30 years and in that land the respondent developed the COCO retail outlet. Till today, the outlet is operated only as a COCO retail outlet and a dealer for the retail outlet is yet to be appointed.

iii) The ad hoc dealership awarded to the petitioner Sri Ram Trailer Services (Unit II) was purely on temporary basis, without any entitlement for regular dealership. The Corporation is always at liberty to terminate the ad hoc arrangement without assigning any reason and without incurring any liability to pay compensation. By efflux of time, the ad hoc dealership awarded to the petitioner expired on 31.12.2006. The petitioner is also aware of the fact that the ad hoc dealership was given purely on temporary basis and that the retail outlet should be handed over to the respondent once the period is over. The petitioner is running a IOCL retail outlet at Kariamangalam. As such, the contention that the respondent Corporation has gone back from the promise is not correct. The petitioner who was given ad hoc dealership is bound to honour the terms and conditions listed in the appointment letter and is liable to hand over possession of the outlet on the expiry of ad hoc arrangements. The retail outlets are to be handed over to the holders of pending letters of indent. Hence the writ petition is liable to be dismissed with cost.

3. The admitted facts are as follows:

C. Shanmugam, one of the partners of the petitioner firm got 1.05 acres of land on lease, purchased 25 cents adjoining the above said land at Palayampudur and leased out the entire 1.30 acres of land to the respondent Corporation for running a petroleum retail outlet. Subsequently, he has also purchased 10 cents of land out of 1.05 acres he had got on lease, pursuant to which, he became the owner of 35 cents out of the 1.30 acres leased out to the respondent and in respect of the balance 95 cents, he remains the principal lessee. Based on the fact that Shanmugam provided the said land for the development of the petroleum retail outlet, at the first instance, his wife Ganga Bhavani was appointed as contractor for operating the said outlet, as the respondent had decided to run the outlet as a Company Owned Company Operated outlet (in short referred to as COCO outlet). After a period of one year, the petitioner being the firm of which C. Shanmugam was a partner, was granted ad hoc dealership to run the outlet and the petitioner was running the outlet from 01.04.2004 to 31.12.2006 as ad hoc dealer. After the expiry of the said period, the petitioner was served with the impugned notice dated 19.01.2007 informing the petitioner that ad hoc dealership had come to an end by efflux of time and directing the petitioner to hand over possession of the retail outlet at Palayampudur to the respondent for being allotted to a dealer to be appointed by the respondent corporation. Aggrieved by the same and contending that the refusal to offer the dealership at the first instance to C. Shanmugam or his nominee and the attempt to allot the retail outlet to a dealer of the respondent''s choice was against the understanding and promise; that C. Shanmugam or his nominee will be given licence to run the outlet and that in case of the company deciding to appoint a regular dealer, Shanmugam or his nominee would be given the first offer, the petitioner has come forward with the writ petition praying for the above said relief.

4. The arguments advanced by Mr. AR.L. Sundaresan, learned senior counsel appearing on behalf of Mr. V. Kumaravelan, learned counsel for the petitioner and by Mr. V. Anantha Natarajan, learned counsel for the respondent Corporation were heard. The materials produced on both sides were also perused.

5. The learned senior counsel, arguing for the petitioner, contended vehemently that the respondent Corporation having induced C. Shanmugam to acquire the land for the purpose of leasing it out to the respondent Corporation for developing a petroleum retail outlet on the promise that he would be given the dealership under the category of land owner was bound by the principle of promissory estoppel from going back from the commitment that in case the Corporation would decide to allot the petroleum retail outlet to a dealer, the first offer should be made to the land owner, who may come forward to run the petroleum retail outlet, either by himself or by a firm consisting him as a partner or by nominating any one of the members of his family. It is his further contention that though the company might have chosen to develop the petroleum outlet as a COCO outlet, based on the promise made by the respondent Corporation the contract for operation of the outlet came to be given to Ganga Bhavani, the wife of C. Shanmugam, the land owner; that after the initial tenure of her appointment as contractor to run the retail outlet, the petitioner firm was appointed as ad hoc dealer to run it; that subsequently, in January 2007 when the respondent Corporation wanted to convert the COCO outlet into a dealership outlet, it failed to make an offer to C. Shanmugam or his nominee or the petitioner firm of which C. Shanmugam was a partner and on the other hand it wanted the petitioner firm to hand over possession of the retail outlet to the respondent Corporation so as to enable the Corporation to allot the dealership of the said retail outlet to a third party holder of letter of indent; that at that point of time the land owner C. Shanmugam approached the respondent Corporation with the plea that the same should not be done and he should be given the first offer as he would nominate his daughter-in-law to get the dealership; that after making him to submit a representation to that effect, the respondent without making such an offer to the nominee of the land owner, wanted to proceed with their proposal to allot the retail outlet to a third party letter of indent holder and that such an act on the part of the respondent Corporation was unjustified since it was in violation of the understanding based on which the land was leased out to the respondent Corporation. It is also the

further contention of the learned senior counsel that such an attempt on the part of the respondent Corporation should be prevented by the principle of promissory estoppel.

6. Per contra, Mr. V. Anantha Natarajan, learned counsel for the respondent has contended that neither the land owner nor the writ petitioner of which the land owner is a partner, can sustain their contention that the dealership of the retail outlet at Palayampudur should be given either to the petitioner or to any one of the members of the family of C. Shanmugam, for the simple reason that the petitioner firm had already been given dealership of yet another retail outlet at Kariamangalam; that the policy of the respondent Corporation against multiple dealership to the members of the same family will be a fitting answer to the contention raised in the writ petition and that hence the writ petition should be dismissed holding the prayer made therein to be unsustainable. It is his further contention that so long as the company wants to operate the outlet as COCO outlet, the above said promissory estoppel propounded by the writ petitioner cannot be pleaded against giving the contract to any person; that only in the event of the respondent Corporation deciding to convert it into a dealership outlet, the obligation to make the first offer to the land owner would arise provided he is otherwise eligible and not disqualified and that hence the writ petition filed before ever any dealer is appointed should be held not maintainable and liable to be dismissed.

7. This court paid its anxious consideration to the above said submissions made on both sides.

8. Admittedly, the land was provided by C. Shanmugam for running the petroleum retail outlet at Palayampudur by the respondent Corporation. He is the owner of part of the land and part of the land had been taken on lease by him and the entire land of 1.30 acres came to be leased out to the respondent Corporation as per the policy of the respondent that was followed at that point of time. As such, we have to accept the contention of the petitioner that the said Shanmugam obtained part of the land by purchase and part of the land on lease arrangement and leased out the entire land to the respondent Corporation only with the intention of getting the dealership of the outlet to be developed therein, in case the same is allotted as a dealership outlet and to get the job contract to run the outlet so long as it is run by the company as a COCO outlet, has to be accepted as quite reasonable.

9. In fact, it is also not disputed by the respondent Corporation that under the land owners category, land owner is entitled to get the first offer of dealership either to himself or to the firm of which he is a partner or to his nominee being a member of his family. In fact, though the respondent Corporation chose to develop the retail outlet at Palayampudur as a COCO retail outlet, the initial contract for handling the COCO outlet came to be given to Ms. Ganga Bhavani, wife of C. Shanmugam, the land owner. After the initial period of the handling job contract given to Ganga Bhavani was over, the writ petitioner being the firm in

which the land owner was a partner, was given the ad hoc dealership initially for one year and then it was extended up to 31.12.2006. Thereafter, the respondent Corporation chose to call upon the writ petitioner to surrender possession of the retail outlet, informing that the ad hoc dealership had come to an end by efflux of time. It is also not in dispute that by then the respondent Corporation had taken a decision to convert the COCO outlet into a dealership outlet. But the first offer was not given to the land owner and the respondent Corporation intended to allot the dealership in respect of the said outlet at Palayampudur to a third party letter of indent holder. The same was the reason why the land owner chose to make a representation to the respondent Corporation that he was entitled to get the first offer either for himself or for the firm of which he is a partner or for his nominee being one of his family members. The averments found in the counter affidavit itself makes it obvious that the respondent Corporation had by then decided to stop the operation of the outlet at Palayampudur as a COCO outlet and convert the same into a dealership outlet. It is also obvious from the counter affidavit that the respondent Corporation had also taken a view that the dealership had to be given to one of the holders of letter of indent, who have nothing to do with the land owner or his nominee. The same were the circumstances that which made the land owner C. Shanmugam to make a representation on 06.12.2005 to the Divisional Retail Sales Manager, Coimbatore requesting that the dealership of the petroleum retail outlet might be given to Ms. Ambika Praveen Kumar, his graduate daughter-in-law, who was eligible for such dealership. Along with the said letter, Ms. Ambika Praveen Kumar also submitted a letter dated 05.12.2005 to the Divisional Retail Sales Manager, Indian Oil Corporation Limited, Coimbatore expressing her willingness to operate the Indian Oil retail outlet at Palayampudur as full time working dealer. Copies of the said letters have been produced in the additional typed set of papers.

10. The initial letter dated 22.01.2003 offering the land for development of the retail outlet at Palayampudur, a copy of which has been produced in the typed set of papers, shows that, besides stating his offer to give the land for running a retail outlet, the land owner (C. Shanmugam) had also requested that the dealership might be offered in his name or in the name of any one of his family members. The said letter preceded the agreement, which came to be executed on 26.03.2003. The lease deed was followed by a letter dated 02.04.2003 addressed by the Senior Divisional Manager of the respondent, namely Indian Oil Corporation Limited, to the land owner (C. Shanmugam). In the said letter in paragraph 2 it has been provided as follows:

In furtherance to the above, the Corporation states that in the event of the Corporation deciding not to operate the outlet as a "COCO" and decides to operate the outlet through a dealer, the Corporation will first make an offer to the landlord; provided all the terms & conditions, Corporation policy prevailing at that time are fulfilled.

11. It is also evident from the communications between the parties that, though

initially the wife the landlord was given the job contract, subsequently ad hoc dealership was given to the petitioner firm. However, on 19.01.2007, the respondent Corporation chose to send a letter with the following contents:

You have been appointed as our temporary ad hoc dealership of our COCO at Palayampudur, Dharmapuri District.

Vide your letter dated 11.09.06, you have requested us for extension of the ad hoc dealership.

Vide our communication No. CBDO/R/COCO/Palayampudur dated 25.09.06 we had extended the ad hoc dealership on a temporary basis to you for a further period of 3 months effective 01.10.06 to 31.12.06.

The said temporary ad hoc dealership comes to an end on 31.12.06, by efflux of time.

You are hereby advised to hand over the possession forthwith.

12. In an even letter dated addressed to Shanmugam, it has been stated that the COCO outlets in Krishnagiri District and the COCO outlets, which were sought to be converted into dealership outlets, were furnished in Annexure-A and that the land owner Shanmugam could make his offer of preference for the allotment of such COCO outlet on their conversion into dealership outlet. One of the outlets found in the Annexure is the outlet concerned in this writ petition. The same has been found in Sl. No. 5 of the Annexure-A. From the same, it shall be clear that the respondent Corporation decided to covert the COCO outlet at Palayampudur, Dharmapuri District (outlet concerned in this writ petition) into a regular dealership outlet. The above said letter makes it clear that the respondent Corporation had made up its mind before the issuance of the said letter not to continue the outlet at Palayampudur as COCO outlet and on the other hand had decided to convert it into a dealership outlet. The claim of the petitioner is that when the COCO outlet is sought to be converted into a dealership outlet, the deponent C. Shanmugam is entitled to get preferential right to get the dealership either for himself or for a firm of which he is a partner or for any one of the members of his family. The attempt made by the learned counsel for the respondent to show that by the impugned letter dated 19.01.2007, the respondent Corporation simply wanted to put an end to the ad hoc dealership given to the petitioner firm and that it could not be taken as a decision to convert the retail outlet into a dealership outlet from COCO outlet has resulted in failure, for the simple reason that such a decision to covert the COCO outlet into the dealership outlet taken by the respondent Corporation is obvious from its letter dated 19.01.2007.

13. The next contention raised on behalf of the respondent is that though C. Shanmugam, partner of the petitioner firm is entitled to such a preferential allotment in his favour or in favour of the firm of which he is a partner or in favour of a nominee being one of the members of his family, as contemplated

under the Policy Circular No. 43 the family will consist of the land owner, his/her spouse, son and daughter alone. It is the contention of the learned counsel for the respondent that C. Shanmugam wanted the allotment of dealership to his daughter-in-law who, according to the above said policy circular, will not be considered to be a member within his family, he (land owner) is not entitled to seek appointment of his daughter-in-law as dealer for the petroleum outlet at Palayampudur. It is the further contention raised on behalf of the respondent Corporation that as per Policy Circular No. 58-09/2K3 No. RO/6002 dated 08.08.2003, though a land owner may nominate a person from outside his family to be appointed as COCO contractor, no such individual shall be permitted to operate more than one COCO retail outlet as job contractor, either individually or on partnership basis and that since the petitioner had been considered for the appointment as regular dealer for running COCO retail outlet at Kariamangalam, the land owner''s claim for appointment of a member of his family as dealer for Palayampudur retail outlet would be against the policy of the respondent Corporation that one family shall be given only one dealership.

14. The above said contention raised on behalf of the respondent reveals the contradictory and conflicting stands taken by the respondent, besides the same being against its own policies spelt out in the various policy circulars. In this regard, the learned counsel for the respondent relies on the following judgments:

1) IBP Co. Limited v. Nand Kishore Bajpai and Others (pronounced by the Delhi High Court on 08.02.2008);

2) H.P. Auto Care v. Secretary and Others (pronounced by the Madras High Court on 15.12.2009);

3) Kurshed Sharfudeen v. IBP Company Limited (pronounced by the Madras High Court on 24.04.2009); and

4) D. Chinnathambi v. General Manager (pronounced by the Madras High Court on 07.06.2007).

All the above judgments relied on by the learned counsel for the respondent deal with the claim of the ad hoc dealer appointed as maintenance and handling contractor for the COCO outlets for a limited period, for extension of the contract period till a regular dealership was awarded. It has been held therein that such ad hoc dealership can be for a limited period at the end of which the contractor cannot claim any right for the continuation of such arrangement till a regular dealer is appointed.

15. In this case, the land owner has claimed preferential appointment as regular dealer for Palayampudur outlet based on the decision of the respondent Corporation to discontinue the COCO outlet and convert it into a dealership outlet. Though the Policy Circular No. 58-08/2K3 dated 08.08.2003 deals with the operation of retail outlets on COCO basis, it says that in case of high potential locations, the land owner''s nominee within the family can be appointed

as COCO contractor without going through the selection process provided against him capable of running the outlet effectively. In the same circular it has been stated as follows:

Keeping in view the above in respect of COCO ROs to be operated by the nominees of landowners, the following has now been decided:

1.0 Landowner''s nominees from outside family will also be permitted to be appointed as COCO Contractors subject to the condition that no individual/party will be permitted to operate more than one COCO as job contractor, either individually or on partnership basis.

2.0 The land owner will be permitted to give a maximum of 3 nominations for the above purpose. The nominees will be assessed as per the criteria given in para. 10 below and a panel of 2 candidates in order of merit, will be prepared. The No. 1 candidate in the merit panel will be awarded the Job Contract for operation of the COCO RO.

16. From the said particulars found in the above said circular, it is clear that the land owner, namely C. Shanmugam, was induced to get a part of the land on lease and purchased a part of the land to give the entire land on lease to the respondent Corporation to run a petroleum retail outlet as a COCO retail outlet on the promise that if the COCO retail outlet was to be operated through maintenance and handling contractor, it will be awarded to one of his nominees. Policy Circular No. 43 dated 28.12.2002 contains guidelines for selection of dealers for retail outlets beyond the marketing plan. It categorises the dealers in to three as follows:

Category I: Land Owners and Nominees of land owners within family as under:

- Spouse

- Son/Daughter

Category II: Fleet Operators

Category III: Others

There is no dispute and there could be no doubt that the case of the petitioner falls under category I. Of course in the said circular, besides the land owners, nominees of the land owners within the family are restricted to spouse and son/ daughter. However, the same is only for selection of regular dealers for retail outlets. The Circular No. 58-08/2K3 dated 08.08.2003 deals with the appointment of contractors for maintenance and handling in respect of COCO outlets. Clause 1.0 of the circular permits nomination of a person not belonging to the family for appointment as COCO contractor, subject to a condition that such nominee shall not be permitted to operate more than one COCO outlet as job contractor either individually or on partnership basis. Of course, in the case on hand, the petitioner firm has been appointed as COCO contractor for a COCO retail outlet at Karimangalam. The letter of the Divisional office of the respondent

Corporation dated 25.04.2005 shows that the petitioner firm was earlier known as Deepapriya Service Station and it underwent a change of name as Sri Ram Trailer Services (Unit II). The letter dated 25.04.2005 has been issued recognising the change of name of the dealership. The share in the partnership firm, which was allotted the dealership, are as follows:

A. Ganesan: 51%

C. Shanmugam: 49%

17. It is also obvious from the records that the petitioner firm had been allotted the contract of running the COCO retail outlet at Karimangalam. The above said clause in the circular dated 08.08.2003 aimed at preventing multiple dealership states that the nominee of the land owner shall not be permitted to run more than one COCO retail outlet either individually or in partnership with others. It does not say that if the land owner has got the maintenance and handling contract in respect of any other retail outlet either as an individual or as a partner of a firm, it will deprive the land owner from nominating a person to be appointed as maintenance and handling contract or of the COCO retail outlet run on the land given by him to the respondent Corporation. The only restriction is that such a nominee should not have been awarded another contract for maintenance and handling operation in respect of some other outlet.

18. In this case, the land owner has nominated his daughter-in-law as the person either for getting the maintenance and handling contract for being appointed as regular dealer in case of discontinuation of the COCO retail outlet and conversion of the same into dealership retail outlet. It is no one''s case that Ms. Ambika Praveen Kumar, the daughter-in-law of the land owner is ineligible or is having maintenance and handling contract in respect of any other COCO retail outlet. Therefore, the claim of the land owner that the COCO retail outlet should be given to the said nominee of the land owner is well founded.

19. In addition, when the COCO retail outlet is sought to be converted into dealership retail outlet, the land owner has got a right to seek preferential appointment either to himself or to a member of his family. So far as the land owners category is concerned, as per Policy Circular No. 46-03 dated 28.12.2002, the land owner, spouse and son/daughter alone were shown to be the members of the family eligible to be nominated. But the same has undergone a change under Policy Circular No. 60-09/2K3 dated 04.09.2003. In the said circular under the classification of dealership, Category-I land owners and nominees of land owners within the family, the family is defined as under:

- Spouse

- Father/Mother

- Brother/Brother''s wife

- Son/Daughter-in-law.

As per the said circular dated 04.09.2003, it is clear that son and daughter-in-law are considered as members of the family for the purpose of selection for allotment of dealership under the land owners quota. In the case on hand, the land owner has sought dealership to his daughter-in-law, who is no doubt a member of his family as per the above said circular. She is not having any other contract with the Indian Oil Corporation for running another retail outlet. The claim of the land owner that the retail outlet at Palayampudur, on its conversion into a dealership retail outlet from COCO retail outlet, should be allotted to his daughter-in-law, who has been nominated by him for regular dealership and that in case the respondent Corporation decides to continue the same as COCO retail outlet, the contract should be given to her as the nominee of the land owner, has got to be countenanced.

A technical plea of defence taken in the writ petition is that the petition has not been filed by the land owner Shanmugam in his individual capacity and on the other hand, it has been filed in the name of the partnership firm, of which he is a partner and that hence the writ petition should be dismissed as not maintainable. It is contended on behalf of the respondent that the prayer made in the writ petition for the allotment of dealership of Palayampudur retail outlet, on its conversion into a dealership outlet, to his nominee and for allotting the maintenance and handling contract to his nominee till such time the respondent would decide to convert it into dealership outlet, should be negatived. However, the fact remains that the writ petition has been filed in the name of the partnership firm, of which the land owner C. Shanmugam and one Ganesan alone are the partners. As such, it can be construed to be a writ petition filed by those two individuals. Though the other partner may not have the locus standi to maintain the writ petition, the relief can be very well claimed by the land owner, namely Shanmugam, who is very much a petitioner in the writ petition. At the best, it can be said that there is misjoinder of a party. But, it is well known principal that only non-joinder of necessary party shall lead to the rejection of the prayer, if such necessary party is not impleaded even after the same is pointed out. On the other hand, no suit or other proceedings can be dismissed on the ground of misjoinder of parties. In case of misjoinder of parties, if the prayer for the relief can be maintained by the person who is entitled to claim the joining of the other party, shall be a mere irregularity, which will not deter the court from granting the relief to the party, who is entitled to such a relief. In this case, though the writ petition came to be filed in the name of the partnership firm, the affidavit has been filed by C. Shanmugam, the land owner. The prayer has been made for the allotment of dealership/maintenance and handling contract to his nominee. Hence the technical defect will not come in the way of granting the relief sought for in the writ petition. This court, dealing with the writ petition under Article 226 of the Constitution of India, can mould the relief and grant appropriate relief to meet the ends of justice.

In the result, the writ petition is disposed of directing the respondent (Indian Oil Corporation Limited) to appoint Ms. Ambika Praveen Kumar, daughter-in-law of the land owner C. Shanmugam as a regular dealer for the retail outlet at Palayampudur established in the land taken on lease from Shanmugam, on its conversion from COCO retail outlet into dealership retail outlet. If for any reason, the respondent (Indian Oil Corporation Ltd) decides to continue it as a COCO outlet, Ms. Ambika Praveen Kumar, the nominee of the land owner, who is a member of his family being his daughter-in-law, should be given the contract for maintenance and handling operation, unless she is found to be ineligible and that in case of taking a decision to covert it into a dealership outlet at a later point of time, the first option should be given to the land owner C. Shanmugam to name his nominee. The respondent should pass necessary orders in this regard, within eight weeks from the date of receipt of a copy of this order. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.