

THE HON'BLE THE ACTING CHIEF JUSTICE SRI PINAKI CHANDRA
GHOSE
AND
THE HON'BLE SRI JUSTICE VILAS V. AFZUL PURKAR

WRIT APPEAL NOs.927 AND 944 OF 2012

DATED:31.7.2012

WA No.927 of 2012

Between:

Hindustan Petroleum Corporation Ltd. ... Appellants
(A Govt. of India Enterprise)
Regd. Office at 17, Jamshedji Tata Road
Mumbai
Rep. by its Chairman and Managing Director
and another

And

Koganti Venkata Siva Ramesh Prasad
and others ... Respondents

WA No.944 of 2012

Between:

Gogineni Sailaja ... Appellant

And

Koganti Venkata Siva Ramesh Prasad
and others ... Respondents

THE HON'BLE THE ACTING CHIEF JUSTICE SRI PINAKI CHANDRA
GHOSE
AND
THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

WRIT APPEAL NOs.927 AND 944 OF 2012

COMMON JUDGMENT:

(per the Hon'ble the Acting Chief Justice Sri Pinaki Chandra Ghose)

These appeals are directed against the order dt.18.6.2012 passed by the Hon'ble Single Judge in W.P. No.20228 of 2011.

As both these appears arise out of one order, they are being disposed of by this common judgment.

The writ petition was filed by respondent No.1 – writ petitioner to declare the letter of respondent No.2 in Ref: VJRO: HS: RET dt.11.7.2011 approving the proposal to include the name of respondent No.4 therein, as illegal, arbitrary and contrary to the guidelines issued by respondent No.1 therein - Hindustan Petroleum Corporation Limited and consequently to direct respondent Nos.1 and 2 therein to include the name of the writ petitioner as a partner in the proposed reconstitution of retail outlet dealer of M/s.Lakshmi Narayana Traders, Tenali, Guntur District.

The Hon'ble Single Judge by the order under appeal allowed the writ petition setting aside the above said letter and directed respondent No.2 therein to make an endeavour to enforce Clause 2.5 of the Guidelines, and in case any of the partners take the view that the writ petitioner has incurred any disqualification, it shall be for respondent No.2 to decide that question, duly giving opportunity to the writ petitioner.

Being aggrieved and dissatisfied with the said order, Hindustan Petroleum Corporation Limited and its Senior Regional Manager of the Vijayawada Retail Region (respondent Nos.1 and 2 in the writ petition)

filed W.A. No.927 of 2012, whereas respondent No.4 in the writ petition filed W.A. No.944 of 2012.

The facts of the case in brief are as follows. M/s. Lakshmi Narayana Traders, Tenali of Guntur District, a Partnership Firm was appointed as a dealer of Hindustan Petroleum Corporation Limited (HPCL). One of the partners of the said firm, K. Vishnu Vardhana Rao, died on 8.8.2010 leaving behind his wife, daughter and son as legal heirs. Daughter of the deceased, Smt. G. Sailaja (respondent No.4 in the writ petition and the appellant in W.A. No.944 of 2011), requested for reconstitution of the firm with 25% of his father share to be given to her. The reconstitution with the said proposal was approved by the HPCL. The wife of the deceased and mother of the writ petitioner, namely, Smt. Koganti Nagaraja Kumari, who is respondent No.3 in the writ petition, gave notarized affidavit giving no objection in favour of her daughter Smt. G. Sailaja and also stated that her son – writ petitioner should not be inducted as partner due to his criminal record. Daughter of the deceased – Smt. Sailaja also submitted a letter stating that her brother was convicted for an offence under Section 509 of the Indian Penal Code for one month imprisonment and fine of Rs.1,000/- by the Court of Principal Assistant Sessions Judge, Tenali and the appeal preferred against the said judgment was also dismissed. Under these circumstances, the constitution of the firm was reviewed by the HPCL and was reconstituted with the partners – 1. Sri K. Sri Raja Babu, 2. Smt. G. Sailaja, 3. Sri C. Sudhakar and 4. Smt. K. Naga Sironami. The induction of the writ petitioner K. Venkata Siva Ramesh Prasad was not considered as he was convicted in a criminal case.

As per the terms and conditions of the dealership agreement and also the Revised Policy Guidelines for Reconstitution of Retail Outlet Dealerships, which were issued from time to time by the HPCL, the reconstitution of the firm was duly accepted by the HPCL. It is further evident from the letter dt.11.7.2011 issued by the HPCL to M/s. Lakshmi Narayana Traders, Tenali, that the HPCL was pleased to approve the proposal for reconstitution in principle and advised to file Registered

Partnership Deed as approved by them to be executed between the partners. However, the writ petitioner challenged the reconstitution of the firm and the letter addressed by the HPCL to the firm.

The Hon'ble Single Judge in the impugned order observed that the question as to whether the conviction against the petitioner has become final, whether the said conviction is in relation to any offence involving 'moral turpitude' and whether the petitioner incurred disqualification from being appointed as a dealer could have been examined by respondent No.2 (in the writ petition) alone. That was the point tried to be urged before the Court. His Lordship held that the expression 'moral turpitude' is not defined anywhere and the question as to whether an individual is convicted for an offence, involving moral turpitude, needs to be examined from various angles after giving opportunity to the affected person and accordingly His Lordship allowed the writ petition and set aside the said letter issued by the HPCL accepting the reconstitution of the firm made in terms of the guidelines of the HPCL. His Lordship further directed respondent No.2 therein to make an endeavour to enforce Clause 2.5 of the Guidelines, and in case any of the partners take the view that the writ petitioner has incurred any disqualification, it shall be for respondent No.2 to decide that question.

Learned counsel appearing on behalf of the appellants (HPCL and respondent No.4 in the writ petition) drew our attention to Section 509 of IPC and contended that applicant for dealership must not have been convicted for an offence involving 'moral turpitude'. The definition of 'moral turpitude' cannot be found out anywhere including the IPC. For the sake of convenience, Section 509 of IPC is extracted hereunder:

“509. Word, gesture or act intended to insult the modesty of a woman:-

Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.”

It appears to us that offence under Section 509 of IPC itself satisfies the term 'moral turpitude' and it does not require any explanation whatsoever. Further, the writ petitioner suffered conviction for the said offence, which was also confirmed in appeal. The said fact has not been denied by the writ petitioner. Further, even the mother of the writ petitioner herself gave a notarized affidavit confirming the fact of conviction of the writ petitioner under Section 509 of IPC which has since been confirmed in appeal. The offence being of such a nature, HPCL cannot be faulted for not considering the claim of the writ petitioner while approving the reconstitution of the firm. Accordingly, in our opinion, the order so passed by His Lordship with regard to 'moral turpitude' to be further determined by respondent No.2 does not stand in the eye of law. On the contrary, it appears to us an endeavour was made by the writ petitioner only to get an order from the Court.

The dealers, who enters into agreement with the oil companies, are bound by the guidelines issued by HPCL from time to time. Reconstitution of the firm in the matter proposed by the partners of the firm since found to be in accordance with the guidelines of the HPCL, it was duly accepted by the HPCL and hence in our opinion the same cannot be questioned. In view of that, we find that the order so passed by the Hon'ble Single Judge cannot sustain in the eye of law and should be set aside. We, therefore, set aside the order passed by His Lordship.

The appeals are accordingly allowed and the writ petition stands dismissed. No costs.

PINAKI CHANDRA GHOSE, ACJ

VILAS V. AFZULPURKAR, J

31.7.2012

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