

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **LPA 216/2010**

% Reserved on: 19th April, 2010

Decided on: 6th May, 2010

1. SHALIMAR GAS,
(through its partners)
Block B, Pocket F, Site No. 1,
Behind Govt. Middle School,
Gas Godown, Shalimar Bagh,
Delhi-110088

2. MRS. ARUNA NANDA,
BC-1, Second Floor Flat,
Shalimar Bagh, New Delhi.

3. ANIL KUMAR,
GH 5, & 7/577,
Paschim Vihar,
Delhi-110087.

..... Appellants

Through: Mr. Pardeep Gupta, Mr. Suresh Bharti,
Mr. Laxmibai Leitanthem, Advocates.

versus

1. M/S INDIAN OIL CORPORATION LTD,
Regd. Office: G-9,
All Yavar Jung Marg,
Bandra (East), Mumbai-400 051.

2. M/S INDIAN OIL CORPORATION LIMITED,
(Through its General Manager)
World Trade Centre,
Babar Road, New Delhi-110 001.

..... Respondents

Through: Mr. Abhinav Vasisht and Mr. Raman
Kumar, Advocates.

CORAM:

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MUKTA GUPTA**

1. Whether the Reporters of local papers may be allowed to see the judgment? Not necessary
2. To be referred to Reporter or not? Not necessary
3. Whether the judgment should be reported in the Digest? Not necessary

MUKTA GUPTA, J.

1. The present appeal arises out of the judgment dated 23rd March, 2010 passed in W.P. (C) No. 13411/2009. The writ Petitioners/Appellants herein in the said writ petition, inter alia sought quashing of the order dated 9th November, 2009 of the Respondent No. 2 terminating its distributorship and a direction to restore the supply of gas cylinders in terms of Memorandum of Agreement dated 15th February, 2007 to the Appellants.

2. The Appellant No.2, widow of late Sqn. Leader Ramesh Nanda, who was killed in an air crash in the year 1978 in the course of his duty, was allotted an Indane gas distributorship as a sole proprietor of M/s Shalimar Gas, the Appellant No. 1. The Appellant No. 2 continued looking after the

management of the Appellant No. 1 till 2003 herself or with the help of the two daughters.

3. On 26th February, 2003 the Appellant No. 1 was converted into a partnership firm with the Appellant No. 2 and her two daughters as partners. After the marriage of her daughters, the Appellant No. 2 entered into a partnership with Appellant No. 3 Anil Kumar on 21st December, 2006 with 51% and 49% shares respectively. According to the Respondents from the letter of the Appellant No.2 and inquiry conducted, they came to the conclusion that the Appellant No.2 has assigned/transferred the interest of the distributorship in violation of the terms and conditions of the distributorship agreement and got the approval for reconstitution of the firm by misrepresentation to the Corporation even though the distributorship had already change hands. Hence, the Appellant's distributorship agreement was cancelled vide letter dated 9th November, 2009.

4. Aggrieved by the cancellation, the Appellants filed the writ petition before the learned Single Judge which was dismissed vide the impugned order dated 23rd March, 2010.

5. As per the learned counsel for the Appellants the present is not a case where the Appellant No.2 has sold the agency, but because of her ill health

she could not be an active partner and thus was not available for day-to-day signing. However, she continued to maintain the major shares and thus the Distributorship Agreement is not liable to be cancelled. According to him in a partnership, either of the partners can sign the documents. It is stated that in terms of Clause 27 (a) a written notice to remedy the breach was essential. It is further contended that the termination is in violation of clauses 21 and 23 of the agreement.

6. On the other hand learned counsel for the Respondents submits that from the various letters of the Appellant No. 2 and the admissions made in her statement recorded during the vigilance investigation, it is clear that she had sold of the Appellant No. 1 and thus the license was liable to be terminated. It is also contended that the notice contemplated under clause 27 (a) has already been furnished and Appellants had ample time to rectify the breach of the terms and conditions of the agreement.

7. We have heard learned counsel for the parties and perused the records. We find that vide letter dated 15th December, 2006 the Respondents Indane Oil Corporation Limited (in short 'IOCL') accorded its approval for the reconstitution of the Appellant No. 1. Soon thereafter, it appears that the Appellant No. 2 had difficulties with Appellant No. 3 and in this regard a number of letters were written by her to the IOCL complaining about his

conduct. In reply to the said letters the Respondents wrote back clearly stating that the Appellant No. 2 would remain the major partner with a share of 51% and would be fully responsible/ accountable for all the deeds and accounts of her and the other partner in terms of the Distributorship Agreement and Marketing Discipline Guidelines, 2001. By letter dated 1st February, 2007 the Respondents also warned the Appellants of any violation of the rules, norms and terms and conditions of the Distributorship Agreement and it was reiterated that the Appellant No. 2 was advised to fully involve herself in the day-to-day running of the distributorship and the signatures of the documents thereon. It is only after this warning that formal agreement was entered into between Appellant No. 1 with the Appellant No. 2 and 3 as its partners and the Respondent No. 1 on 15th February, 2007. Subsequent thereto the Appellant No. 2 sought certain documents from the Respondents which ordinarily ought to have been in her possession, if she was in the control of the business and thus an inquiry was conducted into the matter by the vigilance department of the Respondents wherein the statement of Appellant No. 2 was recorded. In the statement though she denied having sold the agency however, she admitted that she was not permitted to enter the showroom and the godown of the agency by the Appellant No. 3 and had no say, access, approach or control in the management or supervision of staff or

distributorship since 1.4.2006, and that he got forcibly transferred the bank account from Indian Overseas Bank, Shalimar Bagh to Union Bank of India, Punjabi Bagh and then to Union Bank of India, Shalimar Bagh. Thereafter, a show cause notice dated 13th April, 2009 was given, to which the Appellant Nos. 2 and 3 gave the reply. After considering the letters of the Appellant No. 2, the investigation reports wherein the statement of the Appellant No. 2 was also recorded and the reply to the show cause notice, the Respondents cancelled the distributorship agreement vide letter dated 9th November, 2009.

8. As per the dealership agreement neither could the Appellant no.2 sell the distributorship nor lose control over it. The relevant portions of the dealership agreement are as under:

“21. The Distributor shall not sell, assign, mortgage or part with or other-wise transfer his interest in the distributorship or the right, interest or benefit conferred on him by this agreement to any person. In the event of the Distributor being a partnership firm any change in the constitution of the firm, whether by retirement, introduction of new partners or otherwise howsoever will not be permitted without the previous written approval of the Corporation notwithstanding that the Corporation may have dealings with such reconstituted firm or impliedly waived or condoned the breach or default mentioned hereinabove by the Distributor. In the event of the death of any of the partners, the Distributor shall immediately inform the Corporation giving the necessary particulars of the heirs and legal representatives or the deceased partner and it shall be the option of the Corporation either to continue the distributorship with

any reconstituted firm or to terminate the distributorship agreement and the decision of the Corporation in that behalf shall be final and binding on all the parties concerned. No claim on premature termination of compensation or otherwise will be made or sustainable against the Corporation on account of such termination.

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- 23.(a) The Distributor undertakes faithfully and promptly to carry out, observe and perform all directions and orders or rules made from time to time by the Corporation or its representatives for the proper carrying on of the distributorship of the Corporation.
- (b) It shall be a paramount condition of the agreement that the Distributor himself (if he be an individual) or both the partners of the distributor's firm (if the Distributor is a partnership firm consisting of two partners only) or the majority of the partners of the Distributor's firm (if the Distributor is a firm consisting of more than two partners) or the majority of the Office Bearers/Elected Members of the Distributors Co-operative Society (if the Distributor is a Co-operative Society) Managing/Wholtime or Elected Directors (if the Distributor is a private limited company) as the case may be shall take active part in the management and running of the Distributorship and shall personally supervise the same and shall not under any circumstances do so through any other person, firm or body.
- (c) Except with the previous written consent of the Corporation: -
- (i) the Distributor shall not enter into any arrangement, contract of understanding where by the operations of the Distributor hereunder are or may be controlled/carried out and/or financed by any other person firm or Company, whether directly or indirectly and whether in whole or in part;

- (ii) The Distributor himself (if he is an individual) or the partners themselves (if the Distributor is a partnership firm) or the wholetime Office Bearers/Elected Members (if the Distributor is a Co-operative Society) shall not, (without prior permission in writing of the corporation) take up any other employment or engage in any other business apart from the operation of the distributorship which is the subject matter of this agreement.
- (iii) The Distributor (if it be a firm or a Co-operative Society) shall not effect any change in its constitution whether in the indemnity of its partners or appointment of wholetime Office Bearers or Elected members or in the terms of the Deed of Partnership or of the Bye-laws as the case may be.
- (iv) The Distributor (if it be a private limited company) shall not cause or permit any group transfers or substantial change in its shareholding (transmission by death etc., excluded).

In the event of the death of any partner of a firm/death or retirement of wholetime Office Bearers/Elected Members of Co-operative Society which has been appointed as a Distributor hereunder, the surviving partners remaining members hereby agree to indemnify and keep indemnified the Corporation against any claims or demands which may be made by the heirs of the deceased/retired partner/member.

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27 Notwithstanding anything to the contrary herein contained, the Corporation shall also be at liberty at its entire discretion to terminate this Agreement forthwith upon or at any time after the happening of any of the following events, namely:-

- (a) If the Distributor shall commit a delay, breach or default of any of the terms, conditions, covenants and stipulations contained in the Agreement and fail to remedy such breach within four days of the receipt of written notice from the Corporation in that regard.”

9. We find force in the contention of the learned counsel for the Respondent. We agree with the learned Single Judge that the letters and the statement of the Appellant No. 2 clearly suggest that she had lost control over the partnership for the reason that she had sold the same in breach of clauses 21 and 23 of the agreement. It is also apparent that the induction of the Appellant No.3 as a partner was got approved from the Respondent by the Appellant No. 2 by misrepresentation. The requirement of issuance of show cause notice in terms of clause 27 (a) of the agreement have also been met. Thus, the Respondents rightly cancelled the license granted to the Appellants.

10. We find no infirmity of the impugned order. The appeal is dismissed with a cost of Rs. 15,000/-.

(MUKTA GUPTA)
JUDGE

(MADAN B.LOKUR)
ACTING CHIEF JUSTICE

MAY 06, 2010
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