

HIGH COURT OF GUJARAT**MM PETROLEUM
Versus
INDIAN OIL CORPORATION LTD****Date of Decision:** 30 March 2009**Citation:** 2009 LawSuit(Guj) 209**Hon'ble Judges:** [Akil Kureshi](#)**Case Type:** SPECIAL CIVIL APPLICATIO**Case No:** 11062 of 2002**Final Decision:** Petition dismissed**Advocates:** [Tushar Mehta](#), [Nanavati Associates](#)**Akil Kureshi, J.**

[1] Petitioners have challenged an order dated 27.8.02 passed by the General Manager, Indian Oil Corporation, whereby the dealership agreement dated 6.10.86 for running the RO dealership at Highway Road Keshod, District Junagadh was terminated.

[2] The petitioner, a partnership firm consisting of certain erstwhile partners, was granted the said dealership of IOC on certain terms and conditions. It is not in dispute that after initially granting the said dealership, the partnership itself underwent certain changes with the approval of the IOC. Lastly, there were three partners, Shri Arjanbhai Bhima, Shri Keshav Bhima and Smt. Valiben Bhima who were the partners by virtue of agreement dated 6.10.86. In the year 1987, two partners Shri Keshav Bhima and Smt. Valiben Bhima wanted to retire and the sole surviving partner Arjanbhai Bhima wanted to induct two new partners, namely, Nileshkumar Bhogabhai and Bharatkumar Bhogabhai. There is correspondence in the record to show that to approve such a change, IOC was approached. To this correspondence, I shall revert back at a slightly later stage. At this stage, I may, however, record that admittedly such a change in the partnership firm was not approved by the IOC. Eventually, on the ground that the petitioner firm had undergone changes, after issuance of show cause notice and considering the reply filed by the petitioner, on behalf of the IOC, the above-mentioned impugned order came to be passed.

[3] Learned Senior Advocate Shri Tushar Mehta for the petitioner by drawing my attention at length on the several documents and pleadings on record submitted that the change in the partnership was necessary on account of reasons of inability of outgoing partners to look after the partnership business and in the form of sole surviving partner to effectively to run the dealership. He contended that at all stages, IOC was informed about the changes and in fact, by the Local Office, it was recommended that the changes be approved. It was further contended that in any case, the outgoing partners were ready to carry on with the business if the IOC did not approve of the change in the partnership in the constitution.

[4] On the other hand, on behalf of the IOC, learned advocate Shri Nandish Chudgar opposed the petition and contended that the petitioner partnership firm could not have been reconstituted without the prior written sanction of IOC and that the petitioner firm could not have included new partners permitting old partners to retire unauthorizably.

[5] Having thus heard the learned Counsel appearing for the parties, I find that the dealership agreement is sufficiently clear in this regard. Clause 47 of the agreement reads thus:

47. Except with the previous written consent of the Corporation:

The Dealer shall not enter into any arrangement contract or understanding whereby the operations of the Dealer hereunder are or may be controlled, carried out and/or financed by any other persons, firm company whether directly or indirectly and whether in whole or in part;

The Dealer himself (if he be an individual) or partners/members or any of them of the Dealer (if the Dealer is a firm/co-operative society shall not take up any other employment or engage in any other business apart from the running of the retail outlet which in the subject matter of this Agreement.

The Dealer (if it be a firm or a cooperative society) shall not effect any change in its constitution whether in the identity of its partners/members or in the share/shares holding of any of them, or in the terms of the Deed of partnership or of the by-laws as the case may be. In the event of the death of any partner/member of a firm cooperative society which has been appointed as a Dealer hereunder the surviving partners/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 partner/member.

It can thus be straightway seen that as per Clause 47, if the dealership is a partnership firm, it could not have without the previous written consent of the Corporation effect any change in the constitution whether in the identify of its partners or in the terms of deed of partnership.

[6] This requirement has to be seen strictly since the petitioner was given a dealership of running a petrol pump which is done after scrutiny and on certain considerations. Any change in the partnership therefore had to be with the previous written consent of the principal. Even otherwise, when the petitioner firm was dealing with sensitive business of distribution of petrol, it was necessary that the IOC knew whom they were doing business with. It was, therefore, absolutely essential that any change in the partnership in the form of inducting new members and permitting old members to retire had to be previously approved by the IOC. Admittedly, there was no written sanction by the IOC to such a change.

[7] Learned Counsel for the petitioner, however, strenuously attempted to canvass that there was in fact no concluded change in the constitution. He tried to submit that inducting new partners at the expense of old partners was only a proposed change. The contention, however, is not borne out from the record. Firstly, in response to the show cause notice dated 26.4.02 wherein the petitioner was called upon to explain the unauthorized change in the partnership firm, in its reply dated 25.5.02, no such representation is made. All that is stated is that the reconstitution of the firm has already been under correspondence with the State office of the IOC. In fact, request is made that such a change be regularized. As pointed out by the learned Counsel for the respondent from the correspondence, it also emerges that on 23.4.01, the IOC conveyed to the petitioner that the proposal for post facto approval of reconstitution of the firm is under consideration. In a letter dated nil produced at Annexure N, page 59 of the petition, written on behalf of the petitioner, it is stated that it was difficult to deal with the Government authorities and therefore, they have inducted the names of Nileshkumar Boghabhai and Mr. Bharatbhai Boghabhai to maintain the upto date records of the firm. It is further stated that such changes were with good intention and made to retain the RO business at Keshod. This would conclusively show that in so far as the petitioners are concerned, the change had already been effected. It was only the question of such change being approved or disapproved by the IOC. In the petition also, no specific stand has been taken that the partnership firm was not actually reconstituted and the same was only a proposed change. Learned Counsel inviting my attention to para 16 of the petition wherein it is stated as follows:

16. The petitioners state and submit that if the respondents did not approve the change whereby the petitioners Nos. 4 and 5 retired from the partnership, the respondents ought to have first given an option to the respondents Nos. 4 and 5 to

run the petrol pump as per the original partnership without the petitioners Nos. 2 and 3. The respondents Nos. 4 and 5 were and are ready to run the retail outlet without any change in the constitution of the partnership firm and as per the agreement entered into by and between the petitioners Nos. 4 and 5 and Arjanbhai Bhimabhai (now deceased) as partners of the petitioner No. 1 firm.

It also furthers the contention of the respondents that reconstitution had already been effected.

[8] In view of the above discussion, only conclusion possible is that the petitioner partnership firm had undergone material change in the year 1997 when two of its partners retired and two new partners were inducted. Though at some stage, correspondence suggests that the petitioner approached the IOC terming this as proposed change, in view of the discussion hereinabove, it remains conclusively established that even the petitioner treated such a change as final. This, coupled with the admitted fact that such a change was never approved either previously or ex post facto by IOC, there was clear breach of Clause 47 of the dealership agreement by the petitioner.

[9] It is true that at the State level, such changes were recommended for approval. Such approval, however, was never granted by the competent authority. In that view of the matter, I do not find that the impugned orders suffers from any illegality.

[10] The alternative contention that if the changes were not approved by the IOC, the erstwhile partners should have been given the opportunity to continue the business in the original form can only be treated to be an argument to salvage an otherwise losing proposition. There is no legal foundation or backing to such an offer. When the petitioner unauthorisedly changed the composition of the firm cannot seek to revert back to the original situation to run the business.

[11] In the result, the petition fails and is hereby dismissed. Rule is discharged.