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

+ W.P.(C) 18120/2006

% Date of decision : 16th November, 2009

UNITED ENGINEERS SERVICE STATION Petitioner

Through: Mr.Kamal Mehta, Advocate.

versus

INDIAN OIL CORPORATION LTD. & ORS. Respondents

Through: Mr. M.M. Kalra with Mr. Kunal Kalra,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

ORDER

By letter dated 21st July, 1999 Indian Oil Corporation Ltd., the respondent No.1 herein cancelled the dealership of petitioner M/s. United Engineers Service Station's in the retail outlet located at Kalkaji, Okhla Road, New Delhi. The respondent No.1 took possession of the retail outlet thereafter.

2. Termination of petitioner's dealership and rejection of representation dated 26th February, 2003 was made subject matter of challenge in Civil Writ Petition No.2281/2003 which was disposed of on 25th November, 2005. The respondent No.1 was directed to take a fresh decision on the representation dated 26th February, 2003 and the order dated 12th March, 2003 rejecting the representation made by the petitioner for restoration of the dealership, was set aside.

3. The respondent No.1 by their letter dated 2nd June, 2006 informed the petitioner that the matter was re-examined by the Ministry of Petroleum & Natural Gas and it was decided to revoke the termination order dated 21st July, 1999 and the petitioner's dealership could be restored. The letter however stated certain conditions which had to be satisfied by the petitioner. The petitioner was to execute a fresh agreement with the respondent No.1.

4. In the interval between the cancellation of dealership vide letter dated 21st July, 1999 and the restoration dated 2nd June, 2006, the respondent No.1 had renovated the premises and had set up an Art Gallery, a Convenio Store

and a full-fledged service station having automatic car wash facility etc. A portion of the *convenio* had been rented out to third parties. The service station was rented out to a party paying Rs.50,000/- per month as license fee.

5. The petitioner contends that upon restoration of the dealership status quo ante existing before the termination of dealership vide letter dated 21st July, 1999 stands restored and vide letter dated 2nd June, 2006, the petitioner is entitled to use the entire area including the service station.

6. Learned counsel for the respondent No.1 has drawn my attention to the letters written by the respondent no.1-Oil Company that only retail outlet operations were being handed over to the petitioner. It is submitted by the respondent No.1 that the petitioner has illegally and in an unauthorized manner occupied the service station area and there is no agreement as of now under which the service station area has been handed over to the petitioner.

7. Vide letter dated 2nd June, 2006 the termination order dated 21st July, 1999 was recalled but this has to be read along with the other letters written by the respondent No.1. By letter dated 20th September, 2006 the petitioner was informed by the respondent No.1 that they were ready and willing to hand over retail outlet operations to the petitioner. Schedule I thereto incorporates a list of equipments which were subsequently handed over to the petitioner. It is the contention of the respondent No.1 that the equipment at the service station was not handed over to the petitioner and does not form a part of the said list. My attention in this regard was drawn to the letter dated 25th September, 2006 written by the respondent No.1 stating that a dealership agreement was required to be entered into. It was stated that the respondent no.1 was earning revenue of Rs.50,000/- per month from the service station under the special arrangement with another Operator. It was stated that running of the service station was/is not part of the petrol/HSD dealership agreement and the respondent no.1 would hand over the service station after terminating the agreement with the present operator subject to the petitioner compensating the revenue being earned by the respondent No.1 and fee revision from time to time. It is the case of the respondent No.1 that the petitioner unilaterally and illegally took over the

service station after the same was vacated by the earlier Operator. It is stated that this was done without any specific permission from the respondent No.1 and is in violation of law. In these circumstances, show cause notice was issued to the petitioner vide letter dated 29th November, 2006 and the petitioner has rushed to this Court. One of the contention also raised by the respondent No.1 in the counter affidavit is that they have incurred substantial capital expenditure after the dealership was cancelled in 1999 and they have modified the premises and accordingly they are entitled to fix charges for operation of the service station.

8. The aforesaid facts reveal that there is a dispute between the petitioner and the respondent No.1 oil company. The petitioner claims that he is entitled to operate and manage the service station, in terms of the restoration letter dated 2nd June, 2006 @ Rs.88/- p.sq.mtr. but the claim of the respondent No.1 oil company is that the petitioner has unauthorisedly occupied the service station area and there is no agreement between the parties for occupying the service station area. As of now Show Cause Notice has been issued but no decision has been taken and the petitioner's case is still under consideration. It is stated that rate of Rs.88/-p.sq.mtr. is not applicable to category A sites as the entire equipment belongs to respondent no.1. Keeping in view the defence raised by the respondent No.1 oil company, it would not be proper to interfere at this stage and quash the show cause notice. The respondent no.1-oil company being a State has to act in a non-discriminatory manner and rationally, but at the same time it is to take care of their commercial interest. It is also noted that there is an arbitration clause between the petitioner and the respondent No.1 oil company. In these circumstances, the Writ Petition is dismissed. The observations made in this Order are for the purpose of deciding the Writ Petition and the respondent No.1 will decide the show cause notice without being influenced by any observations made above. Petitioner, if aggrieved, will be at liberty to challenge and question the order that may be passed by the respondent No.1 in accordance with law.

No costs.

SANJIV KHANNA, J.

NOVEMBER 16, 2009.
J/P