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

+ W.P.(C) 3796/2006 & CM APPL. 20158/2014

SHRI VIJAY KUMAR JAIN ..... Petitioner  
Through Mr. Bijender Singh, Advocate

versus

INDIAN OIL CORPORATION LTD. & ANR. .... Respondents  
Through Mr. M.M. Kalra with Ms. Sonali  
Kumar, Advocates

Reserved on : 13<sup>th</sup> January, 2016  
Date of Decision : 09<sup>th</sup> March, 2016

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**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN**

**J U D G M E N T**

**MANMOHAN, J:**

1. Present writ petition has been filed seeking quashing of show cause notice dated 26<sup>th</sup> July, 2004 and termination order dated 13<sup>th</sup> September, 2004 by virtue of which petitioner's LPG distributorship was terminated.
2. The show cause notice dated 26<sup>th</sup> July, 2004 mentioned fourteen irregularities observed during a surprise inspection of petitioner's distributorship by Indian Oil Corporation Limited officials. The show cause notice further stated that the said fourteen irregularities were in breach of various terms and conditions of the Distributorship Agreement and more particularly its Clauses 4,6,7,11,14(a&b),15 and 16. The petitioner was called upon to show cause as to why action should not be taken against him in terms of the distributorship agreement within seven days.

3. The above mentioned show cause notice was replied by the petitioner vide letter dated 4<sup>th</sup> August, 2004 taking various defences. On 29<sup>th</sup> April, 2004 the respondent no. 1 herein wrote a letter addressed to all Indane Distributors under Delhi Area office informing them about the receipt of large number of cylinders with tampered tare weight. The distributors were advised to take immediate corrective action to restrict inflow of such tare weight cylinders in the system. On 01<sup>st</sup> June, 2004, the respondent no. 1 again addressed a letter to all Indane distributors in Delhi area informing them about the high inflow of tampered tare weight cylinders at both the Delhi based bottling plants.

4. On 13<sup>th</sup> September, 2004, the petitioner's distributorship agreement dated 03<sup>rd</sup> August, 2003 was terminated by respondent no. 1. In the said letter, it was stated that in reply to the show cause notice, the petitioner had admitted various irregularities/malpractices and had assured the respondent no. 1 that he would take care that no such irregularities/malpractices occur in future. It was, however, pointed out that during a subsequent inspection on 09<sup>th</sup> August, 2004 of the petitioner's godown by the respondent-corporation's field officer, serious irregularities /malpractices such as overcharging, variation in physical filled stock in the godown etc. were once again observed. Due to the above-mentioned irregularities, the petitioner was found to have violated various terms and conditions of the distributorship agreement more particularly clauses 4, 6, 7, 11, 14(a&b), 15, 16, 27(a&b) and his distributorship agreement was terminated forthwith.

5. To give a complete picture, the respondent no. 1's show cause notice, petitioner's reply thereto and termination order are reproduced hereinbelow:-

"A)

**Show cause notice**

*You have been operating as our Indane Distributor at Delhi in the name and style of M/s. Vee Vee Enterprises on various terms and conditions contained in the Indian (LPG) distributorship agreement*

*dated 03.08.2003.*

*That during the surprise inspection carried out of you distributorship on 19.07.2004 by team of our Officers, following irregularities/malpractices were observed:*

- 1. Godown not opened till 1000 Hrs.*
- 2. Cylinders issued Ex-Godown @ Rs.280/- to the hoteliers.*
- 3. Overcharging in release of new connection vide SV No.5774469 (Con No.41744) to the tune of Rs.150/-. PR not issued, cylinder not installed at residence.*
- 4. Six Refill vouchers issued against Six different customers were found in possession of one person, on enquiry the person revealed that he has taken these cylinders for his restaurant.*
- 5. 235 cylinders segregated for variation in painted tare weight and actual tare weight.*
- 6. 10% SQC and 100 PDC record available but seems to be fabricated.*
- 7. Godown structure is satisfactory, however, grass grown in open space in the licence area.*
- 8. No Sand in sand buckets.*
- 9. Notice offering Cash and Carry rebate not displayed. At least 25% of total sale is Cash and Carry.*
- 10. Showroom is cramped and shabby and there is no place of customer to sit.*
- 11. No Indian installation provided.*
- 12. No computerization manual working.*
- 13. Two bundles of Refill vouchers confiscated from showroom generated for unauthorised refill supplies.*
- 14. Stock register not updated since 12.07.2004.*

*From the above, it is construed that you are not personally supervising the day to day functioning of the distributorship resulting into such irregularities/malpractices, poor customer services, unsafe practices and non-adherence to the terms and conditions of the agreement and other instructions issued to you from time to time by the Corporation. Such irregularities and mismanagement of the distributorship causes serious harm to the Indian Brand and is prejudicial to the interest and good name/interest of the Corporation and its products.*

*The above act of yours are in clear violation of various terms and conditions of the distributorship agreement and more particularly of Clauses No.4,6,7,11,14 (a&b), 15 and 16 as well as the policy guidelines of the Corporation circulated to you from time to time.*

*In view of the above, you are hereby called upon to show cause within 7 days of the receipt of this letter as to why action should not be taken against your distributorship in the terms of the distributorship agreement. Please note that in case no satisfactory reply is received from you within the time given above, we shall take such further necessary action as may be deemed fit in terms of the distributorship agreement to protect the interest of the Corporation.*

**B)**

**Reply of Show Cause**

*"It is in furtherance of the show cause notice issued to the undersigned pursuant to the surprise inspection carried out on 19.07.2004, whereby few irregularities were observed. The undersigned is hereby explaining and replying each irregularity as follows:*

*(1) On 19.07.2004, the Godown Keeper has left the keys of godown at his residence. And from godown he called at the residence of the undersigned to get another set of keys. Consequently, the brother of the undersigned reached godown to open the same.*

*(2) As far as cylinder issued @ Rs.280/- to the hoteliers is concerned, it is stated that we are issuing refill vouchers to our domestic customers and have no idea that they might be handling over the same to any other persons including hoteliers. But now onward we will keep a strict watch over the customers, who are receiving refill vouchers. We are realising that a constant watch over our Godown keeper is also necessary to curb such kind of malpractices (if prevailing). The undersigned is assuring that such irregularity may soon be curbed.*

*(3) On Saturday evening around 6 p.m. sister of consumer (consumer no.41744) came to get the new connection. She gave Rs.1050/- for new connection and received PR on which number was written. The photocopies of the same having been retained by the inspection officer also. Therefore, it is clear that PR has been issued to her. It is pertinent to mention that the lady was in urgent need of new connection and therefore, she requested that DB be given to her so that she could get the connection immediately the load come. To facilitate her DB has been handed over to her. But before inspection team she misrepresented the facts for the reasons best known to her. It is stated that we have not overcharged the consumer and issued PR also. Later on an apology letter has been put forth by her and consumer (consumer no.41744). The apology letter dated 19.07.2004 is appended hereto.*

(4) As till date the Indian Oil has given the concession that whenever customers ask for cylinder the distributor must provide the same to him. And moreover, we are precisely issuing refill vouchers to the customers against the domestic connection. Although we are putting our best to forbid these customers from handling over these vouchers for any other purposes. We have neither idea nor any system to trace that for what purposes these vouchers are being used. But in future we will keep a strict watch, wherever possible.

(5) 235 cylinders were not tare-weight by the undersigned distributor. Since your order dated 1<sup>st</sup> June, 2004 till date, 251 tare-weight cylinders have been collected from various customers. These tare-weight cylinders came in our load. Although, it is difficult to watch each and every cylinder in load. Despite that we have returned to Tikri Plant 36 tare-weight cylinders in different loads. And in July 2004, itself we have returned 4 tare-weight cylinders in different loads. We are further assuring and asserting that neither we have tampered nor we have any intention to tamper any cylinder supplied to us.

(6) That said record is genuine and authentic and you may subject the same to strict proof.

(7) The grass grown cut down after regular interval of 10 to 15 days. The same has been cut down now.

(8) Due to storm, the sand in buckets must have diminished and but now sand buckets are full of sand.

(9) Generally, the display of cash and carry rebate is displayed since opening of godown till closure of the same. It is pertinent to mention that whenever we left the display board hang at night time, it was found that mischievous people scratched the same. Therefore, the same is displayed since opening of godown till closure of the same.

(10) That the said showroom is allotted by DDA as per norms specified by the Indian Oil. It is affirmed that in showroom we have four chairs for public/customers and three chairs for staff. Undoubtedly, the space available for the showroom is not enough for proper arrangement, therefore, we are planning to engage an interior decorator to have maximum utilisation of the available space.

(11) We have purchased a computer on 08.07.2004 and feeding and installing process has started and due to scarcity of space in the showroom of the undersigned, the Indane installations have to be removed for some time for above stated purpose.

(12) We have purchased a computer on 08.07.2004 and feeding and installing process has been already initiated by Khan Enterprises and the computer will start functioning soon installing and feeding process be over.

(13) Due to placement of 6 Kaward Camps in our surrounding area, they all look up to the undersigned distributor for refilling of the cylinders for purpose of bhandara. Therefore, to accommodate their requirement of 50 cylinders each day, few refill vouchers were kept. Although the undersigned is assuring that in future we will get such requirement sanctioned from you before supplying the cylinders.

(14) The godown statement maintained on daily basis and same is up date also. But our accountant visits twice a week i.e. on Tuesday and Saturday. Due to some personal problems he did not came on 17.07.2004 and sought permission on telephone to visit on 19.07.2004 in the evening. Therefore, under prevailing circumstances accounts till 12.07.2004 were up dated.

It is worth mentioning that the undersigned has met with an unfortunate happening of decoity and inhumanly stabbed and consequently, sustained severe and grave injuries on 21.05.2003 at his showroom. The undersigned is already a physically handicapped person therefore, injuries took much time to heal. After the said incident, the undersigned remained in hospital for months. Even till date, the condition of the undersigned is too prone that he has to be under constant medical observation and treatment. Due to the foregoing reason, the undersigned could not manage the said distributorship personally, which might be a cause of few irregularity/infirmity. But as the undersigned is back in routine, he will take care that no such irregularity, malpractice be observed in future. The undersigned also assure that he will put his best to curb such alleged infirmities.

The present reply be taken on record."

C)

### **Termination Letter**

"You have been operating as our Indane LPG distributor at Delhi in the name and style of M/s Vee Vee Enterprises vide distributorship Agreement dated 03.08.2003 executed between you and Indian Oil Corporation Ltd. on the terms and conditions mentioned in the said agreement.

*Show Cause Notice reference NO.DAO/LPG/Vee Vee dated 26.07.2004 was issued to you on account of various irregularities/malpractices detected during the surprise inspection of your distributorship. It was also observed that you are not personally supervising day to day functioning of distributorship resulting into such irregularities/malpractices, poor customer services, unsafe practices and non-adherence to the term and conditions of the distributorship agreement.*

*In your reply dated 04.08.2004 to the aforesaid show cause notice you while admitting various irregularities assured that you would take a care that no such irregularities/malpractices are observed in future. However, during a subsequent inspection by our Field officer of your godown on 09.08.2004 future serious irregularities/malpractices such as overcharging, variation in physical filled stock in the godown were observed and the same were also conveyed to you vide letter reference No.LPG/PK Vee/01 dated 09.08.2004 which has been duly received by you.*

*Your response dated 04.08.2004 to the said Show Cause Notice as well as your reply dated 10.08.2004 to our letter dated 09.08.2004 has been carefully considered but the same is not found to be satisfactory and you have failed to give any tenable reasons for such serious irregularities/malpractices mentioned in the show cause notice particularly with regard to irregularities/malpractices like:-*

- 1. Refills being provided Ex-Godown for unauthorized non domestic use at premium.*
- 2. Overcharging for release of new LPG connections.*
- 3. Tampering of Tare-weight of 235 LPG cylinders.*
- 4. Mandatory records of SQC/PDC being fabricated.*

*You have thus violated various terms and conditions of the distributorship agreement and more particularly Clause No.4,6,7,11,14 (a&b) 15,16,27 (a&b) of the distributorship agreement.*

*It has been observed that in the past also have you have been indulging into various malpractices/irregularities and action against your distributorship was taken number of times for said malpractices. However, in spite of earlier warning and limited penal action taken against you, you have again violated terms and conditions of the distributorship agreement as mentioned in the show cause notice.*

*In view of the above, it has been decided to terminate your distributorship Agreement forthwith. Please note that the*

*distributorship Agreement dated 03.08.2003 stands terminated and you are advised to return all the equipments and stationery to our representative and also reconcile your account and clear the outstanding immediately.”*

6. Upon receipt of the termination order, the petitioner invoked the arbitration clause seeking various claims against the respondent-corporation including restoration of the distributorship.

7. Subsequently, the petitioner wanted to withdraw the arbitration proceedings with liberty to file a writ petition seeking restoration of the distributorship. The petitioner preferred a writ petition being W.P.(C) 1548/2006 whereby the decision of the arbitrator was challenged which was dismissed. Even the LPA preferred by the petitioner impugning the decision of the learned Single Judge was dismissed. The petitioner then filed a special leave petition wherein the Supreme Court permitted the petitioner to withdraw the arbitration claim petition and pursue the relief of restoration by way of a writ petition.

8. Learned counsel for petitioner stated that petitioner was awarded distributorship as he was seventy per cent differently abled. He stated that petitioner suffered a murderous attack on 22<sup>nd</sup> May, 2003 in which his assistant was killed and because of which he remained hospitalised till 28<sup>th</sup> June, 2003 and thereafter, bed ridden for a year. He pointed out that an FIR No.159/2003 was lodged on 22<sup>nd</sup> May, 2003 under Sections 302/307/394/397/34 IPC at Police Station Bhajanpura, Delhi.

9. Learned counsel for petitioner contended that respondent no. 1 did not take into account the petitioner's response to the four alleged violations that formed the basis of the impugned order. He stated that the petitioner had fairly explained the allegation of refills being provided ex-godown for unauthorised non-domestic use at premium rates and had assured the respondent no. 1 that such violations would not recur.

10. In any event, he stated that the violation of such kind for the first time did not entail the penalty of termination in terms of Marketing Discipline Guidelines, 2001.

11. Learned counsel for the petitioner contended that respondent no. 1 had not given any reasons for rejecting the petitioner's explanation with respect to allegations of overcharging for release of new LPG connections.

12. Learned counsel for the petitioner also stated that though the problem of cylinders with tampered printed weight was endemic all throughout Delhi, yet no action had been taken by respondent no. 1 against any other distributor. He stated that the respondent no. 1 had failed to substantiate that the tare weight problem was either owing to the petitioner or petitioner did not comply with its instructions in this regard.

13. He further stated that the conclusion that mandatory records of SQC/PDC had been fabricated was not borne out by any forensic or scientific evidence.

14. Learned counsel for petitioner lastly submitted that the Marketing Discipline Guidelines, 2001 provided not only a procedure, but also a formula to categorise a particular irregularity as minor/major and it provided calibrated penalty for consecutive violations. According to him, the impugned termination order was in violation of the Marketing Discipline Guidelines, 2001 and consequently, petitioner was entitled to restoration of the distributorship.

15. On the other hand, learned counsel for respondent No.1 stated that it was not for the first time that allegation of mis-conduct and acting in breach of the contract had been levelled against the petitioner. He stated that petitioner had been indulging in various malpractices and penalty had been imposed upon him from time to time.

16. Learned counsel for respondent No.1 pointed out that in July-August,

1989, petitioner was issued a caution letter as it was established that petitioner had not supplied refill to registered consumers against booking for over a month and petitioner's delivery staff had been caught red handed pilfering product from filled cylinders.

17. Learned counsel for respondent No.1 stated that in February, 1994, the Controller Weights and Measures had reported to Ministry of Petroleum and Natural Gas that delivery men of petitioner had been caught red handed pilfering product from filled cylinders along with a transferring device called 'Bansari'. The petitioner was warned to take immediate corrective action.

18. Learned counsel for respondent No.1 further stated that in August, 1994, General Manager, (LPG) had advised Deputy General Manager, (LPG-Marketing Operations), about a number of irregularities observed at petitioner's enterprise and had instructed to call explanation of the distributor to initiate disciplinary action. He, however, stated that the petitioner did not give any explanation.

19. He stated that subsequently, complaints of large scale diversion and not supplying refills to the registered customers flooded the area office. He pointed out that in fact, unruly aggrieved crowd created law and order situation at the distributorship, which resulted in transfer of customers of the petitioner to adjoining distributors. It was pointed out that at that stage, the petitioner was even booked under Marketing Discipline Guidelines, 2001.

20. Learned counsel for respondent No.1 also stated that in March 1995, due to a large number of complaints and large scale irregularities, the petitioner was issued a show cause notice and was cautioned that his dealership would in future be terminated. He stated that petitioner's dealership at that stage was not terminated only because he was differently abled. The petitioner was, however, imposed fine of Rs.13,000/- and was debarred from issuing any SV/TSV/TV/TTV for three months.

21. In August, 2000, another complaint for non-supply of rubber tube against collected amount, delay in refill supply and rude behaviour was received. The petitioner was once again cautioned.

22. In March-May, 2003, there was another complaint against the petitioner for rude behaviour and for not attending to leakage complaints. The petitioner was once again cautioned under Marketing Discipline Guidelines, 2001 for minor offence.

23. Learned counsel for respondent No.1 stated that in June, 2003, a team of officers of respondent's Head Office had established that petitioner's staff had indulged in rude behaviour. The petitioner was once again penalised under Marketing Discipline Guidelines, 2001, for a second instance of minor irregularity and was fined.

24. Learned counsel for respondent No.1 stated that the show cause notice dated 26<sup>th</sup> July, 2004 was issued for violating the terms of the agreement and not under Marketing Discipline Guidelines, 2001. He contended that there was admission of malpractices on the part of the petitioner in his reply and therefore, the termination letter was justified.

25. Learned counsel for respondent No.1 submitted that in the present case the termination order had been issued in accordance with the agreement executed between the parties. According to him, the same is corroborated by the fact that the petitioner invoked the arbitration clause.

26. Learned counsel for respondent No.1 lastly submitted that the present writ petition was not maintainable as it raised disputed questions of fact.

27. Having heard the learned counsel for parties, this Court is of the view that allegations of malpractice against the petitioner are serious. From the record, it is apparent that the petitioner had been found guilty of violating the terms of the contract and/or indulging in serious malpractices on too many occasions. Consequently, it cannot be said that the alleged violations did not

entail the penalty of termination in terms of Marketing Discipline Guidelines, 2001.

28. This Court is also of the view that the defences of petitioner were considered by the respondent no.1. Also the defence of the petitioner with regard to the allegation of overcharging for release of new connections, tampering of tare weight and refills being provided for unauthorised domestic use at premium as well as fabrication of mandatory record involve serious disputed questions of fact which cannot be adjudicated upon in writ proceedings. Further, the petitioner had an alternative effective remedy wherein disputed question of facts could be adjudicated, which he voluntarily withdrew.

29. Moreover, the agreement executed between the parties is revocable and the only relief which could be granted to the petitioner even if the termination order is set aside is award of compensation. In the opinion of this Court, just because the petition has filed a writ petition instead of an arbitration petition, the petitioner cannot seek a better or larger relief. In any event, the facts of the present case do not warrant a restoration of the dealership.

30. Accordingly, the present writ petition and application are dismissed, but with no order as to costs.

**MANMOHAN, J**

**MARCH 09, 2016**

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