

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.312/2022

Shri Timirendu Bhaumik, son of Late Gopi Ballabh Bhaumik, aged about-56 years, resident of Badurtala Lane, Krishnanagar, P.O. & Sub-Division-Agartala, P.S-West Agartala, District-West Tripura.

----Petitioner(s)

Versus

1. The Indian Oil Corporation Limited (IOCL), represented by its General Manager, Noonmati, Guwahati-787020.
2. The General Manager (LPG), Indian Oil Corporation Ltd., IOAOD State Office, LPG Department, 2nd Floor, Sector-3, P.O.-Noonmati, Guwahati-781020, Assam (APPELLATE AUTHORITY).
3. The Deputy General Manager (LPG-S), Silchar Area Office, Indian Oil Corporation Limited (IOCL), Jagannath Apartment, First Floor, Hospital Road, Silchar-788005.
4. The Manager (LPG- SALES), Indian Oil Corporation Limited, Agartala-II, LSA under Silchar Area, PO-Kunjaban, Agartala-799006.
5. The State of Tripura, through the Secretary, Department of Food, Civil Supplies and Consumer Affairs, Civil Secretariat, Agartala, PO-Agartala Secretariat, Pin-799010, West Tripura.
6. The Inspector, Legal Metrology, Government of Tripura, Office of the Deputy Controller, Legal Metrology, Gurkhabasti, Agartala, Pin-799006.

-----Respondent(s)

For Petitioner(s)	: Mr. Sankar Lodh, Advocate.
For Respondent(s)	: Mr. B.N. Majumder, Sr. Advocate, Mr. Rajib Saha, Advocate, Mr. Sajit Ch. Sen, Advocate.

HON'BLE THE CHIEF JUSTICE (ACTING)

Date of hearing and Judgment : **6th February, 2023.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Sankar Lodh, learned counsel appearing for the petitioner. Also heard Mr. B.N. Majumder, learned senior counsel assisted by Mr. Rajib Saha, learned counsel appearing on behalf of the respondents- IOCL.

2. Challenge in the present writ petition has been made to a letter dated 23.11.2020 (Annexure-8 to the writ petition) as well as appellate order dated 16.03.2022 (Annexure-11 to the writ petition) whereby the petitioner being the proprietor of a Gas Agency was found liable for not giving C&C rebate to the LPG consumers and a penalty of Rs.1,73,292/- was imposed on him for such irregularities.

3. The facts of the case, in brief, are that petitioner being the sole proprietor of M/S. Satyanarayan Gas Agency, Hapania, Agartala was engaged in distribution of LPG cylinders of IOCL to the consumers since 2000. On 18.08.2020, the Inspector, Legal Metrology, Government of Tripura, respondent No.6 herein, conducted an inquiry in the gas agency of the petitioner and found two cash memos with rubber stamp showing rebate of Rs.27.60. Thereafter, the Deputy General Manager (LPG-S), Silchar Area

Office, IOCL, respondent No.3 herein, issued show-cause notice dated 07.09.2020 upon the petitioner who gave a detailed reply thereto. Subsequently, respondent No.6 issued a show-cause notice upon the respondent No.3. On receipt of the same, respondent-IOCL conducted an inspection in the agency of the petitioner and submitted a report stating that all the customers who purchased refilled LPG cylinders through "cash and carry" system received rebates. But all on a sudden, the respondent No.3 vide impugned letter dated 23.11.2020 held the petitioner liable for not giving C&C rebate and imposed penalty of Rs.1,73,292/-. Being aggrieved, the petitioner challenged the said letter by filing one writ petition being WP(C) No.816 of 2020 before this Court which was disposed of vide order dated 10.12.2020 giving liberty to the petitioner to file an appeal before the appropriate authority. Pursuant thereto, the petitioner approached the Appellate Authority by preferring an appeal which was dismissed vide order dated 16.03.2022 directing the petitioner-distributor to pay the calculated penalty of Rs.1,73,292/- to the Corporation within 30 days from the date of disposal of the appeal. Aggrieved thereby, the petitioner has preferred this writ petition. Hence, this case.

4. Mr. Sankar Lodh, learned counsel appearing for the petitioner, contends that the respondents committed illegality in imposing penalty upon the petitioner. He also contends that initially show-cause notice was issued upon the petitioner for not giving rebate to the customers of non-Home Delivery but on receipt of inspection report wherein it revealed that the petitioner has given rebate to the customers, the respondents shifted from their stand and imposed punishment for using rubber stamp on the cash memos showing rebate of Rs.27.60 without issuing any prior notice on this issue. Counsel further contends that using rubber stamp on the cash memos showing the rebate is not an irregularity within the meaning of MDG guidelines, 2018 and hence, imposition of penalty upon the petitioner on that count is illegal and liable to be interfered with. He also contends that as per Legal Metrology Act the respondent No.6 has no jurisdiction to seize or to initiate any proceeding on such allegation. Counsel further contends that in view of the change in the software the petitioner could not operate the same and accordingly, the consumers who personally visited the gas agency and filled up their cylinders in person were extended the benefit of rebate of Rs.27.60 and in this connection an inspection was conducted and show-cause notice was issued upon the petitioner to which he submitted his explanation stating that the rebate was extended and he has also gathered a

signature campaign of the customers and the same has been placed before the respondent-authorities who without considering the same has imposed punishment with penalty upon the petitioner. Accordingly, he prays for allowing the writ petition by setting aside the impugned letter dated 23.11.2020 as well as the impugned appellate order dated 16.03.2022.

On the other hand, Mr. B.N. Majumder, learned senior counsel assisted by Mr. Rajib Saha, learned counsel appearing on behalf of the respondents-IOCL, fairly contends that he is in agreement with the submissions advanced by the learned counsel for the petitioner and prays for remanding the matter back for consideration.

5. Having heard the submissions of learned counsel for the parties and perused the documents on record, it is seen from the order of the appeal that the penal order and the order in appeal have travelled beyond the scope of the show-cause notice and the order in appeal has not dealt with regard to the rebate that has been extended by the petitioner to the consumers and in view of the same, this Court feels that the appellate order has not appreciated the case and the same is passed without application of mind.

Accordingly, the writ petition is allowed and the impugned letter dated 23.11.2020 (Annexure-8 to the writ petition) and the impugned

appellate order dated 16.03.2022 (Annexure-11 to the writ petition) are hereby set aside.

6. In terms of above, the writ petition is allowed and accordingly disposed of.

Pending application(s), if any, also stands disposed of.

CHIEF JUSTICE (ACTING)

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