

GAHC010087922018



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/149/2018

1. INDIAN OIL CORPORATION LTD.,
A CO. REGISTERED UNDER THE COMPANIES ACT 1956 AND HAVING ITS
REGISTERED OFFICE AT G-9, ALI YAVAR JUNG MARG, BANDRA (EAST),
MUMBAI 400051, REPRESENTED BY ITS CHAIRMAN

2: THE CHIEF MANAGER
RETAIL SALES
INDIAN OIL CORPORATION LTD. IO-AOD STATE OFFICE
INDIAN OIL BHAVAN, NOONMATI, GUWAHATI-2 .

.....Writ Appellants

-VERSUS-

1. SMT NIBEDITA ROY,
W/O SISIR KUMAR ROY, PROPRIETOR/DEALER, SARADAMONI FILLING
CONCERN, TARAPUR, KARIMGANJ ROAD, SILCHAR, AND A R/O CENTRAL
ROAD, MAA ANANDAMOYEE FASHIONS, P.O. AND P.S. SILCHAR, DIST.
CACHAR, PIN 788001.

.....Respondent/Writ Petitioner

2:THE INSPECTOR OF LEGAL METROLOGY,
DEPTT. OF WEIGHTS AND MEASURES, SILCHAR,
DIST. CACHAR, ASSAM, PIN 788001.

3:THE UNION OF INDIA,
REPRESENTED BY THE SECY.,
MINISTRY OF PETROLEUM AND NATURAL GAS,
GOVT. OF INDIA, NEW DELHI, PIN 110001.

.....Pro-forma Respondents

– BEFORE –
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

For the Appellant(s) : Mr. M.K. Choudhury, Senior Advocate assisted by
Mr. M. Sarma, Advocate.

For the Respondent(s) : Mr. U.K. Nair, Senior Advocate assisted by Mr. A.
Chakraborty, Advocate for respondent No.1.

Date of Hearing & Judgment : 02.08.2023

JUDGMENT & ORDER (ORAL)

[Sandeep Mehta, CJ]

The instant intra-Court writ appeal is preferred by the appellant Indian Oil Corporation Ltd. (IOCL) for assailing the order dated 29.03.2018 passed by the learned Single Bench accepting the writ petition, being WP(C) No.3567/2013, preferred by the respondent/writ petitioner against the termination of her Petroleum Retail Outlet dealership vide order dated 20.09.2012 as well as the order dated 22.05.2013 rejecting the appeal preferred against the order of termination of dealership.

2. The facts in nutshell relevant and essential for disposal of the writ appeal are noted hereinbelow.

The respondent/writ petitioner was awarded with the dealership of a retail outlet by the Indian Oil Corporation Ltd. (IOCL) at Silchar town vide order dated 27.11.1993, in pursuance whereof she established a petrol pump in the name and style of M/s. Sardamani Filling Concern at Tarapur area of Silchar town in the district of Cachar. The Dispensing Unit (DU) of the petrol pump required periodical re-calibration. The respondent/writ petitioner wrote a letter dated 28.11.2011 to the Legal Metrology Department (Weights and Measures Department) [W&M Department] informing the authorities that re-calibration exercise be carried out in her presence before 09.12.2011 as she would be travelling to Kolkata for medical treatment on that day. However, the W&M Department visited the petrol pump of the respondent/writ petitioner on 10.12.2011, carried out the re-calibration exercise by opening the machine and sealed the DU by unusual process. The exercise was carried out in presence Mr. Gaurav Suman, the representative of the Original Equipment Service Manufacturer (OEM), which had supplied and installed the machinery.

3. It is stated that nothing unusual was found in the Unit when the W&M Department carried out re-calibration exercise on 10.12.2011. However, on 13.12.2011, a team of the Anti-Adulteration Cell (AAC) of the IOCL visited the petrol pump of the respondent/writ petitioner, opened the DU and reportedly found an additional fitting in the MSDU (Motor Spirit Dispensing Unit). During this inspection, it was noted that the seal put by the W&M Department was intact. On the very same day i.e. on 13.12.2011, the operation of the petrol pump was suspended; an explanation was called from the respondent/writ petitioner by letter dated 19.12.2011 to which she submitted reply denying the allegations leveled against her.

- 4.** A Joint Inspection Committee was constituted by the IOCL authorities which visited the site on 25.03.2011 and, upon conducting inspection, submitted a report stating therein that there was an additional/unauthorized gear in the DU of the petrol pump by means whereof it was possible to manipulate the actual quantity of delivery of the MS Oil, thereby indulging in short supply of fuel.
- 5.** On the basis of the said report of the Joint Inspection Committee, a show-cause notice dated 08.06.2012 was served upon the respondent/writ petitioner calling her to explain as to why the dealership should not be terminated. The respondent/writ petitioner submitted her reply dated 21.06.2012 denying the allegations leveled in the show-cause notice dated 08.06.2012.
- 6.** The IOCL authorities thereafter issued the order dated 20.09.2012 terminating the dealership of the respondent/writ petitioner, who preferred an appeal on 10.10.2012 assailing the order of termination. However, such appeal came to be rejected by order dated 22.05.2013.
- 7.** The orders dated 20.09.2012 and 22.05.2013 were put to challenge by the respondent/writ petitioner by filing WP(C) No.3567/2013.

The said writ petition came to be accepted by the learned Single Bench by order dated 29.03.2018 with the following pertinent observations and findings.

“21. From a close scrutiny of the statements made by the respondent nos. 2 to 6 in their affidavit, it is be apparent that the basic plea of the respondents 6 has been that the petitioner has used an additional gear to manipulate the delivery of M.S. However, surprisingly enough, no such additional gear had been seized by the IOCL authorities. Not only that, during the surprise check carried out on 13/12/2011, save and except the officials of the IOCL, no other independent witness or official from any other department was present at the site.

22.

23. *There is no wrangle at the bar that the responsibility to properly maintain the D.U. Lies with the IOCL. It is also admitted by the respondents that the very purpose of sealing the D.U was to ensure that there is no scope for the retailer to manipulate the supply MS or HSD to the customers Since it is not in dispute that there was no unauthorised unit found by the authorities barely two days before the surprise check i.e. on 10/12/2011 when the W&M Department officials had recalibrated and sealed the DU in presence of the representative of Service Provider and considering the fact that the writ petitioner herself was not present on 13/12/2011, it was incumbent upon the respondents to come out clear as to how the DU could be manipulated with the seals intact. However, as noted above, the respondents have failed to explain as to how a Dispensing Unit could be tempered with without breaking the seal of the W & M Department. Although the IOCL officials had suggested that the sealing procedure adopted by the W & M Department in this case was not correct, even assuming the same was true, there is nothing on record to confirm the aforesaid position.*

24. *It would be further significant to note herein that the petitioner had preferred an appeal against the order of termination dated 20/09/2012. It appears that matter was heard by the respondent no. 4 but the order dated 22/05/2013 rejecting the appeal has been issued by respondent no. 5 who did not hear the submission advanced on behalf of the writ petitioner. Not only that, the order dated 22/05/2013 issued by the appellate authority goes to project a completely new dimension in the matter which was hitherto not raised either by the AAC or the Joint Inspection Committee. The relevant portion of the order dated 22/05/2013 bearing the observation of the appellate authority is quoted herein below for ready reference :-*

“Totaliser in a Dispensing unit registers the total volume dispensed by the unit. The totaliser readings are very important as these are used during verification of stock at the RO. Stock variation beyond permissible limits in MS or HSD may indicate irregularities at RO including adulteration of product or its unauthorised purchase or sale. Totalisers are sealed to prevent any manipulation of its reading. Sealing is done in such a way that any attempt to take out totaliser will result in breaking of seal or the seal wire. In the instant case the sealing system had been tampered so that one could take out totaliser with seal intact. Thus it was possible to sell product without totaliser of the Dispensing Unit. In the condition it was observed the entire totaliser system was found tampered with and the very object of putting totaliser was being defeated. Therefore, the appellant’s contention that the allegation cannot be termed as established intended tampering of totaliser seals leading to

manipulation of totaliser reading is devoid of merit.”

25. The aforesaid observation made by the appellate authority clearly contradicts the consistent stand of the AAC and the Joint Inspection Committee that the “W & M Seals were found intact”. The above observation of the appellate authority, therefore, not only indicates a complete shift in the stand of the IOCL from what was earlier projected in the AAC Unit report and the report of the Joint Inspection Committee, but the same in the opinion of this Court, makes out a completely new case not contemplated by the Show Cause Notice dated 08/06/2012. The aforesaid contradiction not only goes to the root of the matter but also makes the allegation levelled in the Show Cause Notice dated 08/06/2012 as wholly untenable on the face of the record.

26. It would be pertinent to mention herein that the Show Cause Notice dated 08/06/2012 has clearly stated that the sealing of the DU was not proper and therefore, it was possible to manipulate the DU. But as has been noted above, it is the responsibility of the IOCL authorities to ensure proper sealing of the DU and therefore, it is not understood as to how the dealer could have been held responsible for any defect in the sealing procedure. Alternately, if the view of the appellate authority is taken on its face value, then also, manipulation of the DU by the dealer, in the facts of this case, would not be possible without the complicity of the W & M department official or the representative of the OEM. It would be significant to note herein that no such allegation has been made by the IOCL against the W & M Department or the OEM representative.”

8. Manifestly, the learned Single Bench found varying stands in the report of the Joint Inspection Committee and the findings recorded by the Appellate Authority in the order dated 22.05.2013. Going deep into the factual aspects of the matter, the learned Single Bench held that the allegations leveled in the show-case notice dated 08.06.2012 were wholly untenable on the face of the record.

The said judgment dated 29.03.2018 rendered by learned Single Bench is put to challenge in this intra-Court writ appeal.

9. Learned Senior counsel Mr. M.K. Choudhury, assisted by Mr. M. Sarma, learned counsel representing the appellant vehemently and fervently contended

that the learned Single Judge exercised the power of judicial review by delving into the disputed question of facts and thus, the impugned judgment does not stand to scrutiny. He contended that the finding recorded by the Joint Inspection Committee in its report dated 25.03.2012 conclusively established that the Dispensing Unit (DU) had been tampered with by the dealer and thus, termination of dealership was the only possible consequence of such an action. He thus implored the Court to accept the writ appeal and set aside the impugned judgment.

10. *E-converso*, Mr. U.K. Nair, learned Senior counsel assisted by Mr. A. Chakraborty, learned counsel representing the respondent/writ petitioner vehemently and fervently opposed the submissions advanced by Mr. Choudhury. He urged that there are grave contradictions in the report of the Joint Inspection Committee dated 25.03.2012; show-cause notice dated 08.06.2012 and the findings recorded by the Appellate Authority in the order dated 22.05.2013 rejecting the appeal of the respondent. He thus urged that the impugned order passed by the learned Single Bench does not warrant any interference and hence, the writ appeal merits dismissal.

He further draws the Court's attention to the observations made in the order dated 20.09.2012, wherein the Senior Division Retail Sales Manager, IOCL observed that though sealing of DU is the responsibility of the Legal Metrology Department but inspite thereof, the burden was shifted on to the dealer with the observation that she was responsible to point out/inform the Legal Metrology Department in case of any procedural lapses. He highlighted the following observations made in the order passed by the Senior Divisional Retail Sales Manager and urged that the findings so recorded are self-contradictory :

“Though sealing of DUs is the responsibility of the Legal Metrology

department, but the dealer is equally responsible to point out/inform the legal metrology authority, in case of any procedural lapses. A copy of the correct sealing procedure was already made available to you to enable you to show/guide the Legal Metrology personnel during recalibration of DUs. However, in your matter, you have failed to point out/inform the legal metrology authority of the correct sealing procedure and thereby enjoyed the benefits out of the gap. Therefore, your claim that you cannot be made liable for any short coming of the Legal Metrology department is unjustified and cannot be accepted.

In the joint inspection report 25.03.2012, it was observed by the committee that the mechanical totalizer can be removed from the MRA of the DU without disturbing/tampering the W&M Seal which left ample scope for manipulation of the totalizer. On this, your attempt to prove that the W&M seal of the totalizer unit was not tampered and it is the fault of the personnel of the Legal Metrology department who wrongly affixed the seals cannot be accepted.

The correct procedure for sealing of DUs has already been circulated to each and every dealer, so that the dealer can request and guide the W&M personnel to put the seals in order, in case of any wrong fixing done by the authority. Therefore, you have to shoulder the responsibility to guide the Legal Metrology personnel on the correct sealing procedure of sealing, if any wrong fixing of the seal was done. Hence your explanation in this regard cannot be accepted.

11. Attention of the Court was also drawn to the findings recorded in the order of the Appellate Authority and it was urged that the same are in apparent contradiction of the findings recorded in the report of the Joint Inspection Committee. Mr. Nair also urged that no report of the OEM was sought for verifying the alleged tampering in the Dispensing Unit and hence, the impugned orders of termination and rejection of the appeal were unsustainable in the eyes of law. He thus contends that the learned Single Bench was perfectly justified in accepting the writ petition and sought dismissal of the appeal.

12. We have given our thoughtful consideration to the submissions advanced at Bar and have also gone through the material available on record.

13. On a comparative analysis of the report of the Joint Inspection Committee

dated 25.03.2012, order dated 20.09.2012 terminating the dealership and the order dated 22.05.2013 passed by the Appellate Authority, it is apparent that there are contradictory findings in these three actions. The discussion made and reasoning assigned by the appellate authority for affirming the termination of the dealership of the respondent/writ petitioner on account of tampering of totalizer seal, as mentioned in the Appellate Authority's order dated 22.05.2013, is in total contradiction of the show-cause notice dated 08.06.2012 and the order of the jurisdictional authority dated 20.09.2012.

However, it cannot be denied that the learned Single Bench delved deep into the disputed factual issues and re-appreciated evidence while passing the impugned order, which is not within the domain of powers of judicial review conferred upon this Court by virtue of Article 226 of the Constitution of India.

14. In view of the discussion made above, we are of the opinion that extensive probe into the correctness or otherwise of the factual matrix of the case should have been undertaken by the Appellate Authority. Thus, it is a fit case warranting remand of the matter to the Appellate Authority for fresh consideration of the appeal of the respondent/writ petitioner on merits.

Consequently, we hereby set aside the order dated 29.03.2018 passed by the learned Single Bench. The order dated 22.05.2013 passed by the Appellate Authority is also quashed and set aside.

15. The matter is remanded to the Appellate Authority, who shall provide opportunity of hearing to the respondent/writ petitioner as well as the appellants.

16. The parties shall be at liberty to file fresh written submissions and the appeal shall be decided by the Appellate Authority by reasoned/speaking order

after dealing with the submissions advanced by the parties.

17. The entire exercise, as directed above, will be completed within a period of 3(three) months from this order.

The appeal is allowed accordingly.

JUDGE

CHIEF JUSTICE

Comparing Assistant