IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12884 of 2014

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M/s Vindhya Vashini Enterprises having its registered office at 336, Station Road, Buxar, P.S. and District- Buxar, through its Proprietor Chandra Kant Singh, S/O Sri Tarkeshwar Singh, Resident of village- Dullhapur, P.S.- Simri, District- Buxar

.... Petitioner

Versus

1. The Government of India through its Secretary, Ministry of Petroleum and Natural Gas, Shastri Bhawan, New Delhi- 110001
2. The Chairman, Indian Oil Corporation Limited, having its registered Office at G-9, Ali Yavar Jang Marg, Bandra (East), Mumbai- 400051
3. The Director Marketing, Indian Oil Corporation Limited, G-9, Ali Yavar Jang Marg, Bandra (East), Mumbai- 400051
4. The General Manager, Indian Oil Corporation Limited, 5th Floor, Lok Nayak Jai Prakash Bhawan, Dak Bunglow, Frazer Road, Patna- 800001
5. The Chief Area Manager, Indian Oil Corporation Ltd., Indane Area Office, 1st Floor, Shahi Bhawan, Exhibition Road, Patna- 800001
6. Shri Brajesh Kumar, father's name not known to the petitioner, at present working as Field Officer (Assistant Manager), Indane Area Office, 1st Floor, Shahi Bhawan, Exhibition Road, Patna- 800001
7. M/s Sonamati Indane through its Proprietor Sanjay Kumar Singh, Son of Dharmraj Singh, Resident of College Gate, Charitravan, Near Jitendra Medical Hall, Buxar

.... Respondents

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Appearance :

For the Petitioner : Mr. Vinod Kanth, Sr. Advocate
Mr. Manoj Priyadarshi
Mr. Ajay Kumar Singh, Advocates
For Respondent No.1: Mrs. Kanak Verma, C.G.C.
For the I.O.C. : Mr. K.D. Chatterji, Sr. Advocate
Mr. Anil Kumar Sinha,
Mr. Amlesh Kr. Verma,
Mr. Ankit Katriar, Advocates
For Respondent No.7: Mr. Bindhyachal Singh,
Mr. Rameshwar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date: 15-10-2015

The present writ petition has been filed for quashing the order contained in letter No. PT/LPG/52 dated 30.06.2014 issued by the respondent No. 6, by which permission granted on ad hoc basis to the petitioner to supply LPG to the consumers of Buxar area has been withdrawn and the petitioner has been asked to transfer those consumers to another service; for treating the petitioner as the regular distributor at Buxar as it had been catering to the consumers at Buxar since 1989 pursuant to the erstwhile Distributor, Smt. Jagir Kaur, proprietress M/s Chahal Gas Service, having left for Mohali; for holding that the respondents have no authority to direct the transfer of rural consumers to any other distributor; and for connected reliefs.

2. The short foundational facts involved in the preset writ petition may be summarized for the sake of convenience. The petitioner was awarded LPG Distributorship for Dumraon in terms of an Agreement dated 04.02.1987 entered into with the respondent Indian Oil Corporation Limited (for short, "IOCL"). It subsequently transpired that one Smt. Jagir Kaur, proprietress of M/s Chahal Gas Service who was the existing LPG distributor for Buxar, moved away to Mohali (Punjab), and pursuant thereto the urban and rural customers of the said M/s Chahal Gas Service came to be transferred to the petitioner on an ad hoc and temporary basis for a period of one year in terms of the IOCL's letter dated 19.07.1989, which period was subsequently extended from time to time by letters dated 11.05.1991 and 17.04.1993, and finally by letter dated 18.05.2004 extending the arrangement till further advice, but subject to withdrawal at any point

of time without assigning any reason.

3. Learned senior counsel for the petitioner, Mr. Vinod Kanth, states that under the above arrangement between the parties, the petitioner has been allowed to operate as the LPG distributor for both places, Dumraon and Buxar, for the past over two and a half decades. The petitioner was made to comply with all the procedures and formalities ordinarily required in the case of a regular distributorship even in respect of the temporary distributorship for Buxar. The petitioner has serviced the customers of Buxar area for a long period of over 25 years to the complete satisfaction of the respondent-IOCL, and by dint of the long uninterrupted spell of satisfactory service rendered by it and the respondent-IOCL it not having taken any overt steps for appointment of another LPG distributorship at Buxar, the petitioner naturally came to harbor a legitimate expectation for its regularization as the LPG distributor for both urban and rural areas of Buxar. It is submitted that the decision to terminate the petitioner's distributorship for Buxar which had all the trappings of a regular LPG distributorship, and to require it to transfer the Buxar consumers to M/s Sonamati Indane, Proprietor Sri Sanjay Kumar Singh (Respondent No. 7), impedes the petitioner's constitutional right to carry on trade and also impinges upon its right to continuance of its means of livelihood with dignity. Such action is

thus wholly illegal, arbitrary and violative of Articles 14, 19(1)(g) and 21 of the Constitution of India. Equally, it has been argued, the impugned action of the respondent-IOCL cannot stand the test of judicial review, having been taken without issuance of any prior show cause notice and without any reasons having been assigned for the decision. Reliance is placed upon the judgment in Mahabir Auto Services Vs. Indian Oil Corporation [(1990) 3 SCC 752] wherein it has been observed as follows : —

> *"18. Having considered the facts and circumstances of the case and the nature of the contentions and the dealing between the parties and in view of the present state of law, we are of the opinion that decision of the State/public authority under Article 298 of the Constitution, is an administrative decision and can be impeached on the ground that the decision is arbitrary or violative of Article 14 of the Constitution of India on any of the grounds available in public law field."*

4. Mr. Kanth further submits that the impugned order dated 30.06.2014 is liable to be set aside even otherwise as it has been passed terminating the distributorship of the petitioner without following the procedure laid down in the respondent-IOCL's own Policy Circular No. SL/1601/02011 dated 06/08.08.2013 which, inter alia, requires a certain procedure to be followed prior to transfer of LPG consumers from one Indane distributor to another and includes publishing of an advertisement in two local newspapers. Moreover, such transfer requires the Area Manager to obtain approval of the General Manager, the latter being the competent authority for that

purpose. It is also submitted that the respondent-IOCL being covered within the meaning of ‘State’, derives its power to engage in contracts by virtue of the powers embedded in Article 298 read with Article 299 of the Constitution of India. Such power has to be exercised in a judicious manner and not arbitrarily as in the instant case. It is well-settled that if thing is required to be done in a certain manner then it must be done in the prescribed manner or not at all. In the absence of any advertisement being published or other procedure followed, the impugned order is not sustainable in law.

5. It is further submitted on behalf of the Petitioner that the advertisement dated 18.05.2012 as modified by the corrigendum dated 27.05.2012 as well as the notice published on 04.09.2013, proposed to appoint a regular LPG distributor, inter alia, for only the urban area of Buxar in the open category. It is, therefore, submitted that the petitioner ought not to be disturbed at least in respect of the rural consumers of Buxar area being serviced by it, as even under the said advertisement there is no proposal to appoint a regular LPG distributor for such consumers and they would therefore be put to considerable hardship. There can be no rationale behind requiring transfer of the petitioner’s consumers of Buxar area in its entirety without there being a decision for appointment of another distributor for the rural area.

6. Mr. K. D. Chatterji, learned senior counsel for the respondent-IOCL, on the other hand, submits at the very outset that the writ petition itself is not maintainable inasmuch as the nature of the dispute sought to be raised by the petitioner falls within the realm of a commercial contract simpliciter. Clause 37(a) of the Agreement dated 04.02.1987 contemplates that any disputes or differences of any nature whatsoever shall be referred to the Sole Arbitration of the Director (Marketing) of the Corporation or of some officer of the Corporation. He relies upon a decision of the Apex Court in Radha Krishna Agarwal Vs. The State of Bihar [(1977) 3 SCC 457] to submit that even though the scope of judicial review in contractual matters has subsequently been widened, the fact remains that the petitioner's grievance arises from the terms of the contract itself, which is amenable to alternative remedy.

7. Mr. Chatterji submits that from the very beginning, the petitioner was well aware of the terms and conditions of the permission which had been granted on a purely ad hoc basis, and also that the respondent-IOCL had exclusive domain to decide the distributorship territory from time to time. This was recognized and accepted by the petitioner in its unequivocal written undertakings to the IOCL. The petitioner was admittedly granted permission to cater to the consumers of the extended area of Buxar on temporary basis in

terms of the letter dated 19.07.1989 on the same terms and conditions stipulated in the distributorship agreement dated 04.02.1987 entered into between the parties in respect of the petitioner's Dumraon distributorship. Clause 1(b)(iii) of the said agreement would show that the respondent-IOCL had always reserved the right with itself with regard to the area of operation of the distributorship in the following terms : —

> *"(iii) Without prejudice to the above the Corporation shall also be entitled to require the Distributor to effect minimum sales of indane in accordance with the policy that may be formulated from time to time by the Corporation and shall be further entitled at its sole discretion to reduce, restrict, modify, or alter the area of the distributorship territory and the decision of the Corporation shall be final and binding on the Distributor. ..."*

8. It is therefore submitted that the petitioner was well aware all throughout that the Buxar area had been offered to it on a purely temporary basis and mere lapse of time cannot now infuse it with any enforceable right beyond the terms of the arrangement itself. The petitioner had not only accepted the arrangement without demur but had also given its written undertakings to the effect that the Buxar market would be catered by it only on temporary basis and it was accepted that the permission was liable to be withdrawn at 15 days' notice upon which it would finalise and settle the accounts with IOCL, and also that it would not be entitled for any compensation after withdrawal of the permission and was not entitled to claim any

right to continue as distributor for the Buxar market. It is, therefore, submitted that the petitioner cannot claim any right to appointment as a regular distributor for Buxar market, urban or rural, in the face of its own undertakings, much less one enforceable through writ jurisdiction of this Court.

9. It is further submitted that the petitioner's claim cannot be entertained for yet another reason. Reference is made to the Brochure which contains the Multiple Distributorship Norm governing award of LPG distributorship. On the face of it, the same unexceptionably prohibits grant of more than one LPG Distributorship to a person/family unit. Even if the respondent-IOCL were sympathetic to the cause of the petitioner, it was helpless in the matter, being bound by the Multiple Distributorship Norm. If the petitioner's claim for regularization of its distributorship to Buxar were to be considered, it would not only be in direct violation of the Multiple Distributorship Norm as it would amount to grant of two LPG Distributorships to the petitioner, but would also fall directly in the teeth of the decision in Mahinder Kumar Gupta v. Union of India, Ministry of Petroleum and Natural Gas, [(1995) 1 SCC 85] in which the Hon'ble Supreme Court upheld the Government Policy of restricting grant of LPG distributorships to only one out of a named group in order to prevent concentration of wealth, observing that such

guidelines were based on public policy. In other words, had the petitioner applied for for grant of LPG distributorship for Buxar area afresh under the advertisement, its application would have been thrown out at the very threshold on ground of ineligibility under the Multiple Distributorship Norm. That being so, the question of regularization of Distributorship for Buxar area in favour of the petitioner merely on the strength of long passage of time during which the petitioner was allowed to operate on strictly ad hoc basis for commercial reasons, cannot arise.

10. As regards the petitioner's objection with regard to non-observance of the procedure under the respondent-IOCL's policy/circular, it is submitted that the same merely provides an internal procedure intended for the benefit of the consumers by way of information of transfer of distributorship, and it is not open to the petitioner to found a claim for setting aside the impugned order on grounds of procedural irregularities.

11. It is lastly submitted that there is also a statutory bar in entertaining the petitioner's claim if one adverts to the provisions of Section 23 of the Contract Act 1872, as no contract can validly be entered into, the consideration or object of which is not lawful, thus, forbidden by law, or in effect defeats the provisions of any law or is opposed to public policy. The guidelines restricting grant of multiple

distributorships having been held to be a matter of public policy, would therefore offend Section 23 of the Contract Act 1872 as well.

12. Mr. Bindhayachal Singh, learned counsel appearing on behalf of the intervenor-respondent No. 7 voices similar objections as the respondent-IOCL. In addition, he submits that the impugned order dated 30.06.2014 is in fact not a termination order of the petitioner's distributorship but merely a withdrawal of permission which had been granted to the petitioner on a purely ad hoc and temporary basis and which was liable to be withdrawn with 15 days' notice at any time. No detailed procedure for such withdrawal of permission was required to be observed, much less in terms of the policy/circular of the respondent-IOCL relied upon by the petitioner which is relevant for the purpose of termination of a distributorship. The writ petition is not fit to be entertained as the petitioner's claim adversely affects public policy and equity, apart from unjustifiably attempting to deny the legally secured rights of the respondent No. 7.

13. As regards the petitioner's reliance upon the decision in Mahabir Auto's case (supra), it is submitted that the same cannot be applied to the facts of the present case inasmuch as the observations of the Hon'ble Supreme Court in that decision were made in absence of any written agreement between the parties, whereas in the present case there is a full-fledged written agreement

between the parties pursuant to which the petitioner has even tendered written undertakings unequivocally accepting the terms of the arrangement.

14. It is further submitted that the petitioner cannot be permitted to approbate and reprobate, as on the one hand, it seeks regularization of its distributorship for Buxar on terms and conditions contained in the agreement dated 04.02.1987 relating to Dumraon market, while in the same breath it also questions the respondent-IOCL's action taken under the very same agreement for withdrawing the consumers of Buxar area from the petitioner. Reliance is placed on the decision in Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd. [(2011) 10 SCC 420] to submit that the Petitioner cannot be permitted to blow hot and cold, or approbate and reprobate, as having knowingly accepted the benefits of the contract, it is estopped from denying the validity or binding effect of such contract upon him.

15. He further submits that the withdrawal of permission by the impugned order dated 30.06.2014 has rightly been issued by the Area Manager, he being the authority who had initially granted permission for the extended area in terms of the letter dated 19.07.1989 on behalf of the respondent-IOCL. The petitioner's objection with regard to the competent officer, being the General

Manager, who alone could have withdrawn the petitioner's temporary distributorship for Buxar market, is thus completely misconceived.

16. It is lastly submitted that while it would make little difference to the respondent-IOCL whether the outlet is operated by one distributor or the other, it is the Respondent No. 7 who is suffering loss of its business despite having been awarded the distributorship. The instant writ petition is no more than a mere attempt at somehow depriving the Respondent No. 7 and preventing him from taking over the Buxar market to enable the Petitioner to prolong its unfair enrichment for as long as possible.

17. Having heard the parties at length and on a careful consideration of the materials on record, this Court is of the view that the writ petition cannot succeed and the Petitioner has unnecessarily protracted the litigation, frivolously claiming a relief which ex-facie is not admissible to it by any stretch of imagination.

18. Even if the existence of alternative remedy be not treated as a bar, in the instant case, the petitioner has singularly failed in making out a case of arbitrary action on the part of the respondents, and has even prima facie been unable to show that the impugned order suffers from arbitrariness, perversity and procedural irregularity or some similar significant infirmity.

19. This Court is in agreement with the submissions made

on behalf of the Respondents. The respondent-IOCL has rightly opposed the claim of the Petitioner for being treated as the regular distributor for Buxar area in view of the dictum of the Hon'ble Supreme Court in Mahinder Kumar Gupta's case (supra), wherein it was observed as follows : —

> *"5. The Preamble to the Constitution envisages the securing of economic and social justice to all its citizens; accorded equality of status and of opportunity assuring the dignity of the individual. Article 39(b) postulates that the ownership and control of the material resources of the community are to be so distributed as to best subserve the common good. Clause (c) prevents concentration of wealth and means of production to the common detriment. Since the grant of dealership or distributorship of the petroleum products belongs to the Government largesse, the Government in its policy of granting the largesse have prescribed the eligibility criteria. One of the eligibility criteria is that one among the near relations or partners or associates in other words among a named group of persons alone should have dealership and there should not be any concentration by them in the distribution of its petroleum products through the dealership. ... The petitioners/appellants dehors the guidelines have no independent right to have business or avocation in the distribution or production or ownership of one of the petroleum products. Production and distribution of the petroleum products are the exclusive monopoly of the State under Article 19(6) of the Constitution. As a part of its policy of the distribution of its largesse Government have prescribed the eligibility criteria to the persons to obtain dealership for distribution of petroleum products. The distribution of the largesse of the State is for the common good and to subserve the common good of as many persons as possible. ... Therefore, the guidelines are based on public policy to give effect to the constitutional creed of Part IV of the Indian Constitution."*

20. The Respondents have also rightly contended that the Petitioner cannot be permitted to approbate and reprobate. Having enjoyed the fruit of the arrangement for the Buxar area for a number of years, the Petitioner cannot now question the withdrawal of the said territory under that very arrangement whereby the respondent-IOCL had reserved the unrestricted right to do so. The principle

underlying the concept of 'approbate and reprobate' has been reiterated in R.N. Gosain v. Yashpal Dhir [(1992) 4 SCC 683] in the following terms : —

> *"10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'."*

21. The petitioner's allegation of arbitrariness in withdrawal of the Buxar rural area from it in the absence of any regular distributorship being appointed for such area is equally misconceived, as any consideration of the petitioner's claim for regularization of its distributorship even for the Buxar rural area would violate the Multiple Distributorship Norm by which all parties were bound and thus be opposed to public policy.

22. This Court is therefore of the view that in the instant case, the petitioner's contention is no more than a desperate and frivolous bid to somehow clutch on to technicalities in order to somehow retain within its control the consumers of Buxar area which had been permitted to it on temporary and ad hoc basis. The petitioner cannot feign innocence and disregard the terms of the written agreement as well as its own undertakings to the respondent-IOCL with regard to the ephemeral nature of the permission granted to it. Similarly, the Petitioner cannot be permitted to take shelter of the plea

of legitimate expectation to justify a claim itself mired in illegitimacy, as if mere passage of time might erase the operation of the Multiple Distributorship Norm. The petitioner's claim is not only obviously inadmissible and opposed to public policy but also clearly lacks bona fides, being a specious attempt, a mere disguise and a covert device, to cloak the unfair advantage of unjustifiable enrichment it seeks to gain. The solitary intent and purpose behind the whole exercise undertaken by the Petitioner through the Writ Petition is to linger and delay the transfer of consumers of Buxar area to the respondent No. 7, despite surely being fully conscious of the fact that it never had even an iota of entitlement or any legal right to do so, much less aspire for regularization of the Buxar distributorship in its favour.

23. In the result, the writ petition stands dismissed. The petitioner shall pay an amount of Rs. 10,000/- (Rupees ten thousand) by way of costs which should be deposited with the Patna High Court Legal Services Authority, Patna and proof of payment furnished before this Court within a period of six weeks from today. If he fails to do so within the stipulated time, the Registry of this Court shall inform the District Magistrate, Patna, who shall take steps for recovery of the said amount from the petitioner as arrears of land revenue and deposit the said amount with the Patna High Court Legal Services Authority without any delay.

(Vikash Jain, J)

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