IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1423 of 2014

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Smt. Asha Lohia W/O Sri Sidharth Lohia, Resident of Village- Hasanpur Surat, P.S.- Patory, District- Samastipur, Proprietor of the Firm Namely M/S Satyanarain Fuels, Situated at village- Shahpur Undi, P.S.- Patory, District- Samastipur

.... Petitioner

Versus

1. The Union Of India, through the Secretary, Ministry of Petroleum & Natural Gas, Shashtri Bhawan, New Delhi
2. The Indian Oil Corporation Ltd., Bihar State Office, Lok Nayak Bhawan, 5th Floor, Dak Bunglow Chowk, Patna, District- Patna through the General Manager
3. The Deputy General Manager, Indian Oil Corporation Ltd., Bihar State Office, Lok Nayak Bhawan, 5th Floor, Dak Bunglow Chowk, Patna, District- Patna
4. Sr. Divisional Manager (Retail Sales), Begusarai Divisional Office, Indian Oil Corporation Ltd. (M.D.), P.O.- Barauni Oil Refinery, District- Begusarai- 851114
5. The Assistant Manager (Retail Sales), Begusarai Sales Area, Indian Oil Corporation Ltd. (M.D.), Begusarai Divisional Office, P.O.- Barauni Oil Refinery, District- Begusarai- 851114

.... Respondents

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Appearance :

For the Petitioner : Mr. Gautam Kumar. Kejriwal,
Mr. Sunil Kumar Thakur,
Ms. Sushila Agrawal, Advocates
For Respondent No.1: Mrs. Kanak Verma, C.G.C.
For the Respondents: Mr. K.D. Chatterji, Sr. Advocate
Mr. Anil Kumar Sinha
Mr. Amlesh Kumar Varma,
Mr. Ankit Katriar, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
CAV JUDGMENT
Date: 28-08-2015

The present writ petition has been filed for quashing the show cause notice dated 02.01.2014 (Annexure-8) issued by the respondent-Indian Oil Corporation Limited (for short," the Corporation") for termination of petitioner's dealership of the retail outlet business firm issued in her favour for location Shahpur Undi, Patori, District Samastipur on the grounds of her having sworn a wrong affidavit along with application filed by her.

2. I.A. No. 2179 of 2014 has been filed for amendment of the prayer and relief claimed in the main writ application, seeking quashing of the order dated 05.03.2014 passed by the respondent No. 4 terminating the petitioner's dealership and for connected reliefs.

Considering the nature of the prayer, the interlocutory application is allowed and the petitioner is permitted to make appropriate amendments in the writ petition.

3. The issue involved in the present writ petition revolves around a short question as to whether the petitioner has submitted a wrong affidavit with her application where she has denied that she or her spouse or unmarried son or unmarried daughter has a dealership/distributorship or holds letter of intent for Retail Outlet or SKO-LDO dealership or LPG distributorship or RGGLV of any Oil Company.

4. Pursuant to an advertisement of the respondent-Corporation published on 24.09.2011, the petitioner applied for being considered for selection as a retail outlet dealer for the location at Shahpur Undi, Patori, District Samastipur, and complied with the requirements in terms of the Brochure including furnishing of an affidavit for the purpose of multiple dealership norms, it being one

of the eligibility conditions. To question No. 4 of the Application Form as to whether she or any of her specified close relatives including spouse was a dealer or holder of Letter of Intent of any MS-HSD/SKO-LDO dealership or LPG distributorship of any oil company, she answered with a categorical 'No'. A clear statement of denial in that regard was also made in paragraph 2 of her affidavit accompanying the application. It appears that the application withstood the 3 tier process of evaluation in terms of Clause 13.1.1 of the Brochure dated 11.04.2011 of the respondent-Corporation being applicable to the petitioner, namely -

(i) Evaluation of the offered land by the Land Evaluation Committee

(ii) Scrutiny of the documents by the Level-1 Committee,and

(iii) Personal interview by the Interview Committee.

The petitioner was selected and a Letter of Intent was issued on 30.08.2012 as no objection was found against her. Pursuant to the letter of intent, the petitioner obtained various licences and invested more than Rs. 35.00 Lacs in developing the infrastructure of the Retail Outlet which was commissioned and became operational. On 28.06.2013 an agreement was entered into between the petitioner and the respondent-Corporation.

5. Barely six months thereafter on 02.01.2014, the petitioner was served with a show cause notice for termination of her dealership on grounds that she had incorrectly stated facts in her application and in her affidavit amounting to misstatement and for which the dealership awarded to her was liable to be terminated. The petitioner filed her show cause but the same was not accepted and the dealership was terminated by the impugned order dated 05.03.2014 passed by the respondent No. 4.

6. According to the impugned order dated 05.03.2014, the termination has been made on the ground that she had concealed information and provided incorrect/false affidavit at the time of application for the dealership in view of the fact that her husband, Shri Siddharth Lohia, was a franchisee of an Essar Oil Ltd. retail outlet, M/s Gayatri Petroleum, Patori, District Samastipur, Bihar. It was pointed out that in terms of Serial No. 2(e) of the advertisement dated 24.09.2011, a candidate was not eligible for dealership if specified persons including spouse had any LOI /dealership/distributorship of any Oil Company. The contention of the petitioner that such condition was not applicable to her as 'any Oil Company' did not cover a private oil company was not accepted, as had the said clause been intended to refer only to

public sector undertakings, the same would have been specifically mentioned in the advertisement as well as in the Brochure.

7. It may be mentioned in passing that the impugned order of termination dated 05.03.2014 was stayed as an interim measure by order dated 02.04.2014 which was made the subject matter of LPA No. 746 of 2013 at the instance of the respondents. The said LPA was disposed of on 10.07.2015, inter alia, directing the resumption of supply of petroleum products to the petitioner.

8. Mr. Gautam Kejriwal, learned counsel appearing for the petitioner, submits that termination of the petitioner's dealership was wholly illegal, arbitrary and unwarranted. At the outset, he refers to the Guidelines of the Ministry of Petroleum and Natural Gas No. P-39012/1/1999-IOC dated 09.10.2000, clause 1.1(xv) whereof defines an 'Oil Company' as follows —

> "xv. Oil Company means any person, firm or company authorized by Central Government who is engaged in the sale of Motor Spirit, High Speed Diesel, Liquified Petroleum Gas, Superior Kerosene Oil or Light Diesel Oil to consumers or dealers. (Oil Company means any of the four Oil Marketing Public Sector Undertakings viz. Indian Oil Corporation Limited, Bharat Petroleum Corporation Limited, Hindustan Petroleum Corporation Limited and IBP Co. Limited)"

He next relies on the letter No. P-19011/3/2002-IOC dated 19.08.2003 of the Ministry of Petroleum and Natural Gas in the backdrop of the Administered Pricing Mechanism (APM) having been dismantled. While concurring with the draft guidelines submitted by IOC, HPC and BPC for selection of retail outlet dealerships, the Ministry advised, inter alia, at clause (vi) of the said letter as follows —

> "(vi) The multiple dealership norms provided in the guidelines contained in this Ministry's OM No. P-39012/1/1999-IOC dated 09.10.2000 shall be modified to the extent that only one dealership may be allowed to a family Unit consisting of the individual concerned, his/her spouse and unmarried sons/daughters."

He also relies upon a response dated 19.06.2014 to a specific query made under the RTI whether the reference to 'Oil Company' under the guidelines of the Ministry was relatable to the public sector oil companies only or included private oil companies as well. It was informed that

> "Broad guidelines for selection of Retail Outlet issued by MOP and NG is applicable to the Oil Marketing Companies (IOCL, BPCL and HPCL)."

Yet again, he relies on a letter dated 07.07.2014 from the Ministry in response of another RTI application, which once again stated that

> "This Ministry issues only broad guidelines for Public Sector Oil Marketing Companies (viz. IOC, HPCL & BPCL) for selection of Retail Outlets and on the basis of such guidelines Oil Marketing Companies frame their own guidelines and implement. The term "Oil Companies" indicated in the guidelines issued by the Ministry referred to Public Sector Oil Companies (viz. IOCL, HPCL & BPCL) which are under the administrative control of the Ministry."

It is also submitted that clause 6 of the Brochure concerns itself with applicability of multiple dealership norm and provides that none of the members of a 'Family Unit' of a married applicant would be entitled to a new dealership/distributorship of 'any Oil Company' if any other individual of the 'family Unit' already holds a dealership/distributorship or a Letter of Intent of any Oil Company. It therefore, offers no elaboration/clarification on the scope of "any Oil Company' to include a private oil company, but at the same time it does not make a departure from the meaning assigned to 'Oil Company' as contained in the Ministry's letter dated 09.10.2000 nor in its subsequent letter dated 19.08.2003. The connotation of the term was not altered. The Ministry's responses dated 19.06.2014 and 07.07.2014 also indicated the scope of the term to be the same as originally defined in its letter dated 09.10.2000. It is, therefore, submitted that through the years the Ministry itself has consistently and without any doubt or ambiguity whatsoever expressed that 'Oil Company' meant only the PSU Oil Companies. The Brochure of the respondent-Corporation dated 11.04.2011 having not made any change in that regard, must therefore be understood on the same lines, and the Respondent cannot be permitted to propound a different interpretation at a later stage after the petitioner cleared the 3-tier evaluation process where each and every aspect stated in the documents had been scrutinized, evaluated and verified. Moreover, the petitioner had also enclosed the acknowledgement of the Income Tax Return of her husband along with her application which clearly disclosed him to be the proprietor of M/s Gayatri Petroleum. It is therefore submitted that the respondents were well aware of the source of income of the petitioner's husband by way of field verification of credentials.

He finally submitted that for the very first time, a change was effected in the Brochure dated 09.10.2014 wherein Clause 10(A)(i) dealing with multiple dealership norms, came to provide as under:-

> "(i) Fulfill Multiple dealership norms: Multiple Dealership/Distributorship norms means that the applicant or any other member of 'family unit' should not hold a

dealership/distributorship or Letter of Intent (LOI) for a dealership/distributorship of any Oil Company i.e. only one Retail Outlet/SKO-LDO dealership/LPG distributorship or an LOI of an Oil Company will be allowed to a 'Family Unit'.

'Family Unit' in case of married applicant, shall consist of individual concerned, his/her Spouse and unmarried son(s)/daughter(s). In case of unmarried person/applicant, 'Family Unit' shall consist of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s). In case of divorcee, 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s) whose custody is given to him/her. In case of widow/widower, 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s).

Oil Company for this purpose would also include Private sector Oil Marketing Companies as per Gazette notification of 2002."

According to him, therefore, it was as late as in 2014 that for the first time a provision was made in the Brochure declaring an intention to include private sector oil marketing companies after dismantling of the Administered Pricing Mechanism as noticed in the Gazette notification dated 08.03.2002. Considering the consistent view of the Ministry in its various circulars and letters prior to Brochure dated 09.10.2014 referred to above, the petitioner laboured under the bona fide belief and understanding that 'any Oil Company' could only refer to PSU Oil Companies in accordance with the Ministry's letter dated 09.10.2000 which had been reiterated from time to time. The petitioner could by no stretch of imagination be faulted with having filed a false/incorrect affidavit or concealed or suppressed material particulars as there was never any requirement to disclose the fact of her husband holding the dealership of a private Oil Company.

9. Mr. K. D. Chatterjee, learned senior counsel appearing on behalf of the respondents vehemently opposes the writ petition, submitting that the petitioner's selection for the dealership has rightly been terminated and she is not entitled to any relief from this Court in view of her conduct and the suppression of material particulars calculated to keep the respondents in the dark for the purpose of obtaining dealership. At the outset, Mr. Chatterjee submits that the petitioner cannot be permitted to take shelter of the letter dated 09.10.2000 which was issued prior to the dismantling of the Administered Pricing Mechanism (APM), and reliance on the same as well as on subsequent circulars/letters of the Ministry is a mere pretence on her part to justify her understanding of the condition in question. He in turn also relies on the very same letter dated 09.10.2000 to stress that an Oil Company means any person who has been authorized by the Central Government for the

purposes enumerated therein. The Ministry in its resolution dated 08.03.2002 declared its decision to grant authorization for marketing and transportation of fuel to new entrants in the private sector. Pursuant to the said resolution, Essar Oil Limited was granted authorization to market MS and HSD in terms of the letter of the Ministry dated 27.05.2002. Hence, Essar Oil Limited having come into existence by dint of the authorization of the Central Government automatically fell within the definition of 'Oil Company' and therefore, there was no occasion at all for the petitioner to believe that Essar Oil Limited was excluded from the term 'any Oil Company' which term, without further qualification, was wide enough to take into its sweep both PSUs as well as private companies. This aspect of the matter was made clear in the Brochure dated 09.10.2014 by giving an inclusive definition to 'Oil Company' to cover private sector oil marketing companies as well. The purpose, intent and effect of the change by such specific inclusion of private sector oil marketing company was merely clarificatory, and could not be understood as having been made effective for the first time. The petitioner thus ought to have made a full and complete disclosure in the application and the affidavit with regard to her husband's dealership of Essar Oil Limited, which was a fact having a material bearing for the consideration of her eligibility and subsequent selection by the respondents. It is further submitted that the suppression of this material fact by the petitioner prevented the respondents from applying their mind to the relevant facts, and had she made a full and true disclosure, the same could have been subjected to proper scrutiny. In case she was found to be unsuccessful at that stage, the respondents would have been bound to assign reasons for the rejection in writing as provided in clause 10(j) of the Brochure, and that would have provided her sufficient opportunity to challenge the rejection and no prejudice would have been caused to either party.

It is submitted that the petitioner's contention of disclosure having been made in the form of her husband's income tax return ought not to be accepted as such a return would have been looked into at the later stage of evaluation and that too for the limited purpose of consideration of the petitioner's capability to provide finance. The name of the husband's business of which he was a proprietor being mentioned on the acknowledgement of the income tax returns was of no consequence by itself and cannot amount to disclosure by the petitioner.

10. Mr. Chatterjee relied on a number of judicial decisions to

bring home his point that the petitioner deserves no relief.

11. In Mahinder Kumar Gupta vs. Union of India, Ministry of Petroleum and Natural Gas (1995) 1 SCC 85, the Hon'ble Supreme Court has held 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 Government of India intended to group together certain near relations as a unit and one among that unit alone was made eligible to apply for and claim for grant of dealership. Further, economic and social justice as envisaged in the Preamble of the Constitution is sought to be achieved. Therefore, there is a reasonable nexus between the object and the prescription of the eligibility criteria envisaged in the guidelines. … Therefore, the guidelines are

based on public policy to give effect to the constitutional creed of Part IV of the Indian Constitution."

12. The scope of disclosure in an affidavit has been explained in the case of B.R. Chowdhury vs. Indian Oil Corpn. Ltd. (2004) 2 SCC 177 —

"**11.** A combined reading of the offer of appointment and the aforementioned reply of M/s Denis Chem Lab Limited clearly shows that the appellant was an employee on the relevant date. Mere use of the word trainee cannot be taken to say that he was not an employee, particularly so, when his services were confirmed later. In the application filed by the appellant for securing dealership, as against column 8(*c*) whether he was temporarily employed, he has filled as "No". In column 9, as against the present occupation, he has shown as "Nil". These statements made by the appellant in column 8(*c*) and column 9 amount to suppression of material fact. This apart, nothing prevented the appellant from mentioning in column 9 of the application as against the status of employment at least as a trainee. But on the other hand, in column 9 he has shown the status of occupation as "Nil". The contention advanced on behalf of the appellant that the status of occupation as shown was bona fide, cannot be accepted. In view of paragraph 10 of the affidavit filed by him coupled with paragraph 56 of the memorandum, the Corporation was well within its right to terminate the dealership of the appellant. ... This Court in *Kendriya Vidyalaya Sangathan* v. *Ram Ratan Yadav [(2003) 3 SCC 437]* while dealing with the effect of

> suppression of material information took a view that the purpose of seeking information cannot be defeated which has bearing on the selection."

13. Similarly, in the case of Shiv Kant Yadav vs. Indian Oil Corpn (2007) 4 SCC 410, the stand of the appellant therein that the two houses inherited from his father were being used for his personal use only and there was no income in the year 1999-2000 on that account was found to be incorrect as per enquiry report. It was held that there was a requirement to disclose the true and correct fact which did not appear to have been done.

14. In the case of Indian Oil Corporation Limited vs. Raj Kumar Jha Vs. 2012 (2) PLJR 783, it was observed by a Division Bench of this Court as follows –

> "10. The learned single Judge ought not to have interfered with the decision of the Corporation which was taken in consonance with the terms and conditions contained in the advertisement. Besides, may be, in the present case it was a mere typographical error. However, there might be a case of mischief or misrepresentation also. It is difficult to draw a line where an error ends and a mischief or misrepresentation begins. The best way to avoid discrimination is strict adherence to the standards mentioned in the advertisement."

15. Lastly, it is submitted that in view of the decision in Sanjay Kumar Shukla vs. Bharat Petroleum Corporation Limited (2014) 3

SCC 493, this Court would interfere in its writ jurisdiction only if there is overwhelming public interest and not merely if the petitioner seeks relief on technical and legal issues as in the present case.

16. Having heard learned counsel for the parties and upon careful consideration of the materials on record, this Court finds itself unable to be persuaded by the submissions on behalf of the petitioner. It is no doubt true that the Ministry's letter dated 09.10.2000 defined 'Oil Company' to mean only the four PSUs but then, admittedly, these were the only existing companies which were authorized by the Central Government for sale of petroleum products at the relevant time. There was thus no occasion to include any other person within the said definition, which has not been not altered and thus, the definition continued to operate. However, the responses to RTI applications on 19.06.2014 and 07.07.2014 relied upon by the petitioner clarify that the Ministry issues broad guidelines for the Public Sector Oil Marketing Companies, but this merely suggests that Private Oil Companies need not be guided by these guidelines. The same however may not be construed to mean that Private Oil Companies are not 'Oil Companies' as has been sought to be done by the Petitioner.

17. In the instant case, admittedly Essar Oil Limited was authorized by the Central Government in its resolution dated 08.03.2002 for the purpose of marketing MS and HSD. This Court is of the view that consequent upon such authorization, Essar Oil Limited answered to the description of 'Oil Company', even though it was a Private Sector Oil Marketing Company and not one of the PSUs. The prefix 'any' to the term 'Oil Company' is sufficient to include 'all' Oil Companies which had been authorized by the Central Government whether Public or Private, and as such there was no need to alter the phrase in the Brochure issued by the respondent Corporation. There is, thus, no warrant to exclude Essar Oil Limited from the broad sweep of the term 'any Oil Company' as used in the Brochure. This Court is in agreement with Mr. Chatterjee's submission that the amendment in the Brochure dated 09.10.2014 to specifically include private sector oil market companies was merely clarificatory and it has to be held that it merely made explicit what had always been implicit.

18. The decisions of the Hon'ble Apex Court relied upon by Mr. Chatterjee provide a clear pathway to the answer for deciding the petitioner's case. There can be no gainsaying that the petitioner's

husband was already enjoying a dealership in petroleum products and accepting the petitioner's contention in such circumstances, would go contrary to the principle that Government largesse ought not to be distributed in a manner so as to result in concentration of wealth in the hands of a few. Clearly therefore, the petitioner could not be held eligible for the dealership in question. The covert intention of the petitioner is ~~also~~ evident from her affidavit containing a blunt denial of a dealership/LOI within her Family Unit when nothing had prevented her from making a bonafide disclosure of the fact of her husband's dealership of Essar Oil Limited. Had she answered in the positive and been disqualified on that account, she would have had an opportunity to have the matter adjudicated. Instead, her conduct leaves this Court with the feeling that she has acted in a surreptitious manner and made every effort to avoid calling attention to a material fact which would definitely have had a bearing on the decision of regarding her eligibility. The decision of the Division Bench of this Court relied upon by Mr. Chatterjee strikes a note of caution and makes strict adherence to the standards in an advertisement a requirement as it is difficult to draw a line between where an error ends and a mischief or misrepresentation begins. It has to be held that the petitioner has filed a wrong affidavit and has sought to justify her stand on mere technicality and legal contentions, but on the parameters laid down by the Hon'ble Supreme Court, in absence of public interest much less overwhelming, involved in favour of grant of dealership to the petitioner, this Court is not persuaded to accept the stand of the petitioner and grant relief in its writ jurisdiction.

19. In the above circumstances, the writ petition stands dismissed.

(Vikash Jain, J)

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