

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6726 of 2014

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Umesh Paswan Son of Late Baleshwar Paswan Resident of Village - Noonpur, Post Office - Dharhara, Police Station - Hajipur Sadar, District - Vaishali.

.... Petitioner

Versus

1. The Indian Oil Corporation Ltd. through its Chairman, Having its Registered Office at G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai, Maharashtra, India.
2. The Director (Refineries), Indian Oil Corporation Ltd (Refineries Division), Scope Complex, Core - 2, 7, Institutional Area, Lodhi Road, New Delhi - 110003.
3. The Director (HR), Indian Oil Corporation Ltd, 3079/2, Sadiq Nagar, J.B. Tito Marg, New Delhi - 110049.
4. The General Manager, Indian Oil Corporation Ltd, Bihar State Office, Lok Nayak Jai Prakash Bhawan (5th Floor), Dak Bunglow Chowk, Patna - 800001.
5. The Senior Divisional Manager, Retail and Sales, Indian Oil Corporation Ltd, Maurya Complex, A Block, 3rd Floor, Dak Bunglow Road, Patna - 800001.
6. The Assistant Manager, Retail and Sales , Indian Oil Corporation Ltd, Maurya Complex, A Block, 3rd Floor, Dak Bunglow Road, Patna - 800001
7. The Field Officer, Retail and Sales, Indian Oil Corporation Ltd, Maurya Complex, A Block, 3rd Floor, Dak Bunglow Road, Patna - 800001.

.... Respondents

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Appearance:

For the Petitioner : Mr. Bindhyachal Singh, Advocate
Mr. Parijat Saurav, Advocate

For the Respondents : Mr. Anil Kumar Sinha, Advocate
Mr. Abhimanyu Deo, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT

Date: 26-04-2016

Heard learned counsel for the petitioner and learned
counsel for the Respondent Corporation.



2. The present writ petition has been filed for quashing the order dated 23.10.2013 contained in letter bearing Ref. No. BSo/RET/LAC passed by the respondent no. 2, the Director (Refineries), Indian Oil Corporation Ltd. (Refineries Division), Scope Complex, Core-2, 7, Institutional Area, Lodhi Road, New Delhi- 110003, whereby the respondent no. 2 has dismissed the appeal of the petitioner's father (now deceased) and has upheld the termination of the dealership of his Retail outlet styled as M/s Lichhavi Auto Centre, Tajpur Road, Mahua, Vaishali, Bihar.

3. At the very outset this Court takes notice of the supplementary counter affidavit filed on behalf of the respondent Corporation which is taken on record subject to furnishing of welfare stamp said to be presently unavailable. Learned counsel for the respondents states that welfare stamp shall be furnished as soon as the same is available.

4. Enclosed with the said affidavit is a copy of the memorandum of agreement dated 31st January, 1986 entered into between the respondent Corporation and the petitioner's father. Clause 69 of the agreement provides for the forum of arbitration for resolution of disputes, as follows :-

"69. Any dispute or difference of any nature whatsoever or regarding any right, liability, act, omission or



account of any of the parties hereto arising out of or in relation to this Agreement shall be referred to the sole arbitration of the Director Marketing of the Corporation, or of some officer of the Corporation who may be nominated by the Director Marketing. The Dealer will not be entitled to raise any objection to any such arbitrator on the ground that the arbitrator is an officer of the Corporation or that he has to deal with the matters to which the contract relates or that in the course of his duties as an officer of the Corporation he had expressed views on all or any of the matters in dispute or difference. In the event of the arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason the Director Marketing as aforesaid at the time of such transfer, vacation of office or inability to act, shall designate another person to act as arbitrator in accordance with terms of the Agreement. Such person shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is also a term of this contract that no person other than the Director Marketing or a person nominated by such Director Marketing of the Corporation as aforesaid shall act as arbitrator hereunder. The award of the arbitrator so appointed shall be final, conclusive and binding on all parties to the Agreement, subject to the provision of the Arbitration Act, 1940, or any statutory modification or re-enactment hereof and the rules made thereunder and



for the time being in force shall apply to the arbitration proceedings under this clause. The award shall be made in writing and published by the Arbitrator within six months after entering upon the reference or within such extended time not exceeding further four months as the sole arbitrator shall by writing under his own hands appoint."

5. Considering that the parties to the agreement had intended to settle their disputes and differences through the forum of arbitration, this Court is not inclined to enter into the merits of the matter and would relegate the petitioner to seek redressal of his grievances through arbitration proceeding.

6. In this situation, learned counsel for the petitioner then requests that an appropriate arbitrator be appointed by this Court, considering that under the newly amended provisions of the Arbitration and Conciliation Act, 1996 by the Amendment Act of 2015, certain classes of persons have been rendered ineligible from being appointed as Arbitrator based on the relationship of the parties or the counsels. It is submitted that the person contemplated to be appointed as arbitrator under the agreement, namely the Director Marketing or some other Officer of the Corporation being his nominee, is no longer eligible to be so appointed.



7. In the above view of the matter and in the interest of justice, this Court appoints Hon’ble Mr. Justice Jayanandan Singh, a retired Judge of this Court residing at ‘Shristi’, East Boring Canal Road, Patna as the sole Arbitrator for entering upon the reference with respect to the disputes between the parties in accordance with the provisions of the Arbitration and Conciliation Act, 1996.

8. The petitioner must approach the said Arbitrator within one month along with a certified copy of this order and file his statement of claims, whereupon the said Arbitrator will proceed with the adjudication expeditiously. The fees of the Arbitrator shall abide by the Fourth Schedule of the Act, and shall be borne equally by the parties.

9. With the aforesaid directions, the writ petition stands disposed of.

(Vikash Jain, J)

Chandran

AFR/NAFR	AFR
CAV DATE	
Uploading Date	30.04.2016
Transmission Date	