IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12857 of 2013

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M/s Maa Bindhyavasani Fuels Bharat Petroleum Dealer NH-31 Mirganj, Begusarai through its Proprietor Muktinath son of Late Ram Chandra Singh Lohiya Nagar, P.O. - Suhird Nagar, Police Station - Begusarai, District - Begusarai - 851101

.... Petitioner/s

Versus

1. Bharat Petroleum Corporation Limited through its Chairman-cum-Managing Director, Bharat Bhawan, 4 and 6 Currimbhoy Road Belard East, P.V. No. 688, Mumbai - 400001
2. Territory Manager (Retail) Bharat Petroleum Corporation Barauni Territory N.H.-31, P.O. - Papraur, District - Begusarai - 851114

.... Respondent/s

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Appearance:
For the Petitioner/s : Mr. Chaudhary Shyam Nandan, Advocate
For the BPCL : Mr. Madhuresh Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL JUDGMENT
Date: 15-03-2016

Heard Mr. Chaudhary Shyam Nandan, learned counsel appearing on behalf of the petitioner and Mr. Madhuresh Prasad, learned counsel appearing for the respondent Bharat Petroleum Corporation Limited (hereinafter referred to as the 'Corporation') and its authorities.

The petitioner is aggrieved by the order dated 31.5.2013 passed by the Executive Director of the Corporation whereby the appeal preferred by the petitioner has been rejected while affirming the order of termination of dealership agreement dated 01.2.2013 which order of termination of dealership agreement dated 01.2.2013 and the appellate order dated 31.5.2013 are impugned at Annexure-14 and 21 of the writ petition.

The facts are not in dispute rather are admitted. The petitioner happens to be a retail dealer of the respondent Corporation which agreement dates back to 10.12.1990. A copy of the dealership agreement is placed on record today by the Corporation by way of an affidavit and the covenants binds the parties. The reason for the order of termination of the dealership agreement passed on 01.2.2013 and its affirmation in the appellate order passed on 31.5.2013 rests on grounds of breakage of seal as well as of short delivery. In short the weights and measure seals present on the dispensing units present at the retail outlet were found broken on the date of inspection carried out by the quality control of the Corporation team on 15.11.2011, a copy of which is placed at Annexure-7 to the writ petition. It is following such default that a show cause was issued to the petitioner on 18.11.2011 present at Annexure-6 and in response whereto the petitioner filed his reply on 21.11.2011. Interestingly there are two replies which were filed by the petitioner. Whereas Annexure-8 admits to the guilt but the second one present at Annexure-12 deviates from such admission and attributes the breakage of the seals to the vibrations in the dispensing unit. Not being satisfied by the explanation so given by the petitioner and taking note of the binding nature of the covenants present at paragraph-7 to 12 of the agreement read with the Clause 13 providing for consequences for non-observance thereof that vide order passed on 01.2.2013, the Territory Manager passed orders of termination of dealership agreement

impugned at Annexure-14.

It would be necessary to mention that since the retail outlet of the petitioner was facing suspension for the defaults in question that the petitioner came before this court in CWJC No. 2305 of 2013 and while the writ petition was pending consideration in this Court that the dealership agreement was terminated under the orders of the Territory Manager dated 01.2.2013. It is on information given by counsel for the Corporation that the writ petition was disposed of vide order passed on 22.2.2013 leaving it open for the petitioner to avail of the appellate remedy. The appeal has been dismissed vide order of the Executive Director passed on 21.5.2013 impugned at Annexure-21 and the petitioner being aggrieved is before this Court.

I have heard learned counsel for the parties and I have perused the records.

Mr. Chaudhary Shyam Nandan, learned counsel for the petitioner while explaining the fact situation has endeavoured to canvass that the breakage of seals was not a surreptitious act of the petitioner rather it was carried out with due intimation to the authorities of the Weights and Measure Department as is manifest from Annexure-9 and 10. With reference to these reports of the Weights and Measure Department, it is stated that the default has been noticed by the Weights and Measure Department meaning thereby that the seals were not broken clandestinely by the petitioner and though it is an irregularity and the petitioner has not followed the due

process as envisaged under the dealership agreement but that by itself is not sufficient to face a termination. A rather compassionate plea has been advanced by Mr. Shyam Nandan submitting that the petitioner has been a dealer since 1990 and that at no earlier stage was he subjected to any default proceedings. With reference to Annexure-10 of the writ petition, he submits that a complaint was filed by the petitioner before the Inspector, Weights and Measure informing him about the faulty functioning of the dispensing units and seeking permission for its repair which was allowed by the authorities of the Weights and Measure Department. He submits that such permission was granted on 14.11.2011 and on the very next day an inspection was carried out by the quality control unit of the Corporation who obviously found the seals broken and sought an explanation which was given.

The argument of Mr. Chaudhary Shyam Nandan has been contested by Mr. Prasad who simply refers to clause-7 to 13 of the dealership agreement which prohibits the dealer from operating the unit no sooner any irregularity in supply is found or any defect arises in the dispensing units. Mr. Prasad has also referred to clause-9 of the dealership agreement which prohibits the licensee to interfere in any manner with the equipments provided by the company without seeking prior permission. Mr. Prasad has next referred to clause-13 of the agreement to submit that any violation of such of the covenants to the agreement would entail a termination of the dealership agreement

as manifest from clause-13 (7). He thus submits that the orders passed by the authorities of the Corporation in such clear violations which stand admitted from the documents on record, requires no interference.

As I have mentioned at the outset the facts are admitted and the Weights and Measure seals present on the two dispensing units were found broken. It is also an admitted position that no intimation was given by the petitioner to the respondent Corporation either regarding the malfunctioning of the dispensing units or for seeking a permission to break the seals after obtaining such permission from the Weights and Measure Department. Even when clause-7 and 9 of the dealership agreement binds the petitioner and forebears him from interfering with the dispensing units without prior permission from the Corporation and even when the Weights and Measure Department has recommended for such rectification to the company as manifest from Annexure-10 as rightly pointed out by Mr. Prasad, yet there is nothing on record to show that the petitioner ever invited the attention of the Corporation regarding the malfunctioning of the dispensing units or to seek their permission before he proceeded to break the seal. The Weights and Measure seal present on the dispensing units is a certification of the correct supply by the retail dealer and any interference therewith may either cause excessive or short supply. Clause 7 to 9 of the dealership agreement casts an obligation on the dealer to seek prior permission of the Corporation before interfering

with the dispensing units and Clause 13 provides for the consequences for any violation. As I have observed herein above although a plea on equitable grounds has been made by Mr. Chaudhary Shyam Nandan for grant of one more opportunity to the petitioner who has an unblemished record for last 20 years but in the nature of the default so found at the outlet and which stands confirmed in the reply of the petitioner present at Annexure-8 and Annexure-12, I am not persuaded with the passionate plea advanced by Mr. Chaudhary Shyam Nandan to interfere with the impugned orders.

The writ petition is dismissed.

(Jyoti Saran, J)

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