IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20688 of 2011

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Gopeshwar Nath Tiwary, Son of Late Ravindra Kumar Tiwary Dealer M/s Baba Petroleum, Bakarpur, Govindchak, P.O. & P.S. Sonepur, District-Saran.

.... Petitioner

Versus

1. The Union of India through Ministry of Petroleum and Natural Gas, New Delhi.
2. Indian Oil Corporation Ltd., through its General Manager-Cum-Duly constituted Attorney, Block-A, Mauryalok Complex [3rd Floor], Dak Bunglow Road, Patna.
3. General Manager, Indian Oil Corporation Ltd., Block-A, Mauryalok Complex [3rd Floor], Dak Bunglow Road, Patna.
4. Divisional Retail Sales Manager, Indian Oil Corporation Ltd., Muzaffarpur Divisional Office, Krishna Complex Akharaghat Road, Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner : M/S. Madhuresh Prasad, Abhay Shankar, Shyameshwar Kumar Singh & Ravi Verma, Advocates

For the Respondents: M/S. Anil Kumar Sinha, Amlesh Verma & Ankit Katriar, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 21-06-2016

The present writ application has been filed for quashing the termination letter dated 31.03.2010 bearing Reference No. MDO/80 issued under the signature of the Divisional Retail Sales Manager, Indian Oil Corporation Limited, Muzaffarpur Divisional Office, whereby and whereunder the petitioner's dealership, namely, M/s Baba Petroleum is sought to be terminated by invoking Clause 58(b)(i) of the dealership agreement, and for other connected reliefs.

2. Mr. Madhuresh Prasad, learned counsel appearing for the petitioner, submits that termination of the dealership of the petitioner, in the facts and circumstances of the case, was arbitrary. It is stated that the dealership agreement was entered into by the

respondent Corporation with the petitioner's grandfather late Sri D. N. Tiwary, and the Petroleum Retail Outlet Dealership was commissioned on 30.03.1993 in the name and style of Baba Petroleum at Govindchak, Sonepur. The said late D. N. Tiwary died on 29.08.1993 leaving behind his last Will dated 27.08.1993 after which he was allowed to continue the business of the dealership for over a decade. All on a sudden in the year 2006 however, the supply of petroleum products was stopped to the outlet for want of proper documentation with regard to the reconstitution of the dealership in absence of a probate order.

3. Learned counsel for the petitioner submits that, as a matter of fact, the petitioner had been permitted to carry on the business right from the year 1993 after the death of the petitioner's grandfather which occurred barely a few months after the dealership was commissioned, and for all practical purposes the petitioner was being treated as dealer of the retail outlet ever since and all that remained was the completion of the formality of furnishing the probated or registered Will of his late grandfather. The respondent Corporation by its letter dated 15.10.1993 had already duly approved continuation of supply to the petitioner.

4. It is submitted that Probate Case No. 132 of 1993 had been filed soon after the death of the petitioner's grandfather which was, however, dismissed for default on 23.11.2000. Upon

coming to know of such dismissal, the petitioner filed Probate Case No. 95 of 2004. Inasmuch as the Will was being disputed by some members of the family, the said case was converted into Title Suit no. 19 of 2008 which ultimately came to be allowed vide judgment dated 18.01.2010 (Annexure- 6) passed in favour of the petitioner.

5. In reply to a show cause dated 17.01.2010, the petitioner by his letter dated 01.02.2010 informed the respondent Corporation about the judgment passed in the Probate case enclosing a copy of the judgment within the time frame of 15 days granted under the show cause notice. It is, therefore, submitted that there was no delay or laches on the part of the petitioner and as soon as the judgment in the Probate case was delivered, the same was made available to the respondent Corporation and the delay, if any, in this regard was owing to the circumstances entirely beyond his control.

6. Mr. Anil Kumar Sinha, learned counsel for the respondent Corporation, on the other hand, submits that the Corporation has acted in accordance with its policy and no fault can be found in the action terminating the dealership of the petitioner. It is a matter of record that the dealership of the petitioner remained inoperative for a period of more than three years after the supply was stopped to it in the year 2006. The petitioner was, therefore, liable to termination when the show cause notice dated 17.01.2010 was issued to him and as such the termination is in accordance with the

Corporation policy.

7. Having heard the parties and on consideration of the materials on record, this Court takes note of a new policy of the respondent Corporation as referred to in its letter dated 01.08.2011 (Annexure- R/4 to the counter affidavit) providing for an extended period for the revival of terminated and inoperative retail outlet dealerships, which is to the following effect :-

> "RO/SKO dealerships having valid dealership agreements and lying inoperative will require Board approval for revival only in cases where they are lying inoperative for more than 5 years for reasons not attributable to the dealer such as restoration of licences by statutory authority /decision on appeals under MDG/Order of Court. Such matters will be forwarded for consideration of Board and depending on the merit of the case, revival with the same constitution at the same location will be approved by the Board.
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> Further, you are requested to immediately examine all pending cases and take immediate action for revival of dealerships, in commercial interest of Corporation, where ROs/SKO dealerships have been inoperative for less than 5 years. This should be subject to compliance of applicable statutory and internal guidelines."

8. It is not in dispute that the petitioner was permitted to run the dealership without demur for a period of more than a decade, subject only to production of the registered or probated Will. The petitioner had duly applied for Probate by filing Probate Case No. 132 of 1993 and, after its dismissal for default, by filing Probate Case No. 95 of 2004, and upon conversion of the same into Title Suit No. 19 of 2008 it was ultimately decided in favour of the petitioner and

the same was duly brought to the notice of the respondent Corporation within the time granted under the show cause notice dated 17.01.2010. It would appear that the formal reconstitution of the firm was impeded only for want of the probated Will, leading to stoppage of supply of petroleum product to the petitioner in the year 2006.

Eventually the probated Will could be made available only in the year 2010, after judgment was passed in Title Suit No. 19 of 2008, and the retail outlet, therefore, remained inoperative until then, clearly for reasons beyond the petitioner's control. This Court is therefore of the view that in the facts and circumstances of the case, the petitioner's claim for revival of dealership merits consideration for the benefit under the new policy referred to above.

9. The impugned letter of termination dated 31.03.2010 (annexure-7) is hereby set aside and the writ application is disposed of with a direction to the General Manager of the Corporation (respondent no. 3) to refer the matter of revival of the dealership of the petitioner to the Board for its consideration in terms of the new policy referred to in the letter dated 01.08.2011 (Annexure-R/4) of the respondent Corporation.

(Vikash Jain, J)

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