

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2325 of 2016

Arising out of

Civil Writ Jurisdiction Case No. 17227 of 2012

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Hari Bansh Ishwar, Son of Late Bandi Ishwar, resident of village - Bharani, P.O. + P.S. Bachchwara, District - Begusarai, Presently residing at Mohalla - Jaiyadpatti, P.O. + P.S. Dalsinghsarai, District - Samastipur

.... Appellant/s

Versus

1. Indian Oil Corporation Ltd. having its Registered office at G- 9, Ali Yawar Jung Marg, Bandra (East), Mumbai - 400051 through its Managing Director
2. The Executive Director (Retail Sales), Marketing Department, Indian Oil Corporation Limited, Mumbai
3. Regional Officer (Marketing Division) Eastern Region, India Oil Corporation Ltd., 2 Garihat Road, South Dhakurra, Kolkatta - 700068
4. General Manager (Marketing Division), Indian Oil Corporation Ltd., Lok Nayak Jai Prakash Bhawan, 5th Floor, Dak Bungalow Chowk, Patna - 1
5. Senior Divisional Retails Sales Manager, Indian Oil Corporation Ltd., (Marketing Division), Begusarai Divisional Office, P.O. Barauni Oil Refinery, District - Begusarai - 851114

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjeev Kumar Singh, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 03-07-2017



Delay of 61 days in filing of this appeal is condoned. I.A. No. 469 of 2017 stands allowed and disposed of.

2. Seeking exception to an order dated 19.09.2016 passed by the learned Writ Court in C.W.J.C. No. 17227 of 2012, this appeal has been filed and the only grievance canvassed by the appellant before us was that the learned Writ Court has directed to take recourse to the forum of arbitration in view of Clause 69 of the agreement dated 21.11.1988 and it is the case of the appellant that for relocation of a retail outlet for petroleum product, the remedy of arbitration is not available.

3. It is seen from the records that appellant was granted permission for setting up of a retail outlet in Plot Nos. 4798, 4793 and 4792 at Mauza- Rani, Circle- Bachchwara, District- Begusarai. It seems that the right to the appellant for the aforesaid area was disputed and in a civil proceeding the appellant lost and the right of the appellant to this land was decreed against the appellant. As a consequence thereof, appellant sought relocation of the retail outlet in a different plot bearing Plot No. 721 under Khata No. 686 in Mauza- Rashidpur under Circle Bachchwara, District- Begusarai. However, when this was rejected, the writ petition was filed and the payer made before us was that merely because the appellant did not take further recourse to remedy of approaching the High Court against the order



passed by the lower court, the right accruing to the appellant for relocation under the agreement in question cannot be taken away.

4. Even though the aforesaid argument, when seen in isolation, seems to be attractive, but on going through the documents available on record, we find that when the appellant did not operate the petroleum outlet for more than three years, therefore, the competent authority issued show-cause notice to the appellant in accordance to the agreement in question and thereafter the allotment itself was cancelled by a detailed order passed by the authorities, as is evident from the order of termination dated 29.03.2013.

5. Once the agreement itself was terminated, all disputes arising out of termination of the agreement is subject to arbitration under Clause 69 of the agreement, and therefore, in relegating the appellant to take recourse to the remedy of arbitration, we are of the considered view that the learned Writ Court has not committed any error. Contention of the appellant that the Arbitrator cannot go into the question of relocation of site, cannot be accepted now in the face of the fact that the allocation itself was terminated for various reasons and until and unless the termination is not set aside in a proper proceedings, the question of relocation would not arise.

6. That being so, the learned Writ Court has not committed any error in the matter, once it was apparent from the



record that the dealership agreement for establishment of the petroleum outlet was already terminated.

7. Accordingly, finding no merit, the Letters Patent Appeal stands dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
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