

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13463 of 2016

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M/s Saran Filling Station, a proprietorship firm having its office at Nehru Chowk, Chapra, District Saran through its proprietor Bhaskar Bhardwaj son of Ajit Narayan Singh resident of Mona Pakri, Police Station - Chapra, Dist- Saran.

.... Petitioner

Versus

1. M/s Bharat Petroleum Corporation Ltd. thought its Chairman & Managing Director, having its Registered Office at Bharat Bhawan, 4 & 6 Currimbhoy Road, Ballard Estate, P.B. No. 688, Mumbai- 400001.
2. The Area Manager, Bharat Petroleum Corporation Ltd. P.O. Pakri, Via- Anisabad, Patna.
3. The Territory Manager (Retail), Bharat Petroleum Corporation Ltd., P.O.- Pakri, Via- Anisabad, Patna.
4. The Area Marketing Manager, Bharat Petroleum Corporation Ltd., P.O. Pakri, Via- Anisabad, Patna.
5. The Regional Manager, Bharat Petroleum Corporation Ltd., Q.C.C. East Kolkata.

.... Respondents

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Appearance:

For the Petitioner : Mr. Neeraj Kumar Gupta, Advocate

For the Respondents : Mr. Siddhartha Prasad
Mr. Om Prakash Kumar, Advocates

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 20-11-2017

The present writ petition has been filed for setting aside the order dated 04.03.2013 (Annexure-11) communicated vide letter dated 25.02.2016 (Annexure-10) passed by the Territory Manager (Retail), Patna (Respondent No. 3) whereby and whereunder, the dealership agreement dated 24.01.2011 has been terminated by the respondent no. 3; for restraining the respondent authorities from taking any action in furtherance of the order dated 04.03.2013 and communicated vide letter dated 25.02.2016 as contained in Annexure 11 and 10 respectively; and for directing the respondent authorities to reinstate/restore the dealership of the petitioner and subsequent thereof resume sales from and supply to retail outlet.



2. Learned counsel for the petitioner makes a short submission to assail the impugned order dated 25.02.2016 (Annexure-10), to the effect that the same has not been passed in compliance of the order of this Court dated 24.06.2014 passed in CWJC No. 24193 of 2013 in the earlier round of litigation which was disposed of with a direction to the petitioner to file a proper reply to the show cause notice dated 27.07.2012 for its disposal by the competent authority by a reasoned order. It is stated that a show cause reply dated 05.07.2014 was duly filed by the petitioner, but the impugned order has been passed merely enclosing a copy of the earlier termination order dated 04.03.2013 said to have been passed by the respondents. It is submitted that such order dated 04.03.2013 is clearly ante-dated, inasmuch as, the same was never brought to the notice of the Court in CWJC No. 24193 of 2013, disposed of on 24.06.2014 requiring the respondents to pass a reasoned order.

3. Learned counsel for the respondents on the other hand, submits that the order of this Court dated 24.06.2014 was passed in CWJC No. 24193 of 2013 in absence of a counter affidavit and hence the fact of termination of the order having already been passed earlier on 04.03.2013 could not be brought on record. It is pointed out that the show cause reply of the petitioner filed pursuant to the order of this Court is substantially the same as the earlier show cause reply dated 14.08.2012. By the impugned order, the respondents have duly taken note of the earlier show cause reply of the petitioner. The respondents have also enclosed photo copies of the envelopes in which the termination order dated 04.03.2013 is said to have been dispatched by registered post to both the addresses, namely, the petrol pump as well as the residential address of the petitioner and neither of them could be delivered as evident from the relevant postal remarks.

4. Having heard the parties and on a consideration of the materials on record, this Court is not inclined to interfere in the matter. The respondents have refuted the claim of the petitioner that the termination order dated 04.03.2013 was ante-dated by enclosing copies of envelopes with registered receipts and the postal remarks thereon, which *prima facie* appears to support the stand of the respondents that the termination of the petitioner's dealership had in fact been effected in the year 2013 itself, but it



could not be brought to the notice of the Court for want of counter affidavit being filed in CWJC No. 24193 of 2013. Moreover, the show cause replies filed by the petitioner dated 05.07.2014 and 14.08.2012 respectively, are almost identical in material respects. It also appears that the issue relating to termination involves disputed questions of fact, which this Court is not inclined to enter into in its extra ordinary writ jurisdiction, more so, when the petitioner has alternative remedy by invoking arbitration in view of Clause 18 of the agreement dated 24.01.2011 between the parties (Annexure-1) which the petitioner shall be entitled to avail of.

5. The writ petition accordingly stands dismissed.

(Vikash Jain, J)

Chandran/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	22.11.2017
Transmission Date	N.A.

