

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10323 of 2017

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Kumari Archana W/o Sri Ajay Kumar, Proprietor M/s Ravipushp Filling Station,
Surheri, District- Gaya, Permanently, Resident Mohalla- Janakpur, P.S.- Mufasil,
District- Gaya.

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Petroleum and Natural Gas, New Delhi.
2. General Manager, Cum Head (Retail) East Bharat Petroleum Corporation Limited, Eastern Regional Office, Kolkata, W. Bengal.
3. The Regional Manager Cum State Head Bharat Petroleum Corporation Limited Exhibition Road, Patna.
4. Sri J.P. Ghosh S/o Not known the then Construction Engineer, Bharat Petroleum Corporation Limited Sipara, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr. Adv. Mr. Amar Prakash
For the BPCL	:	Mr. Sanjay Singh, Adv.
For the Resp. No.1	:	Mr. Alok Kumar Jha

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 18-08-2017

Heard learned counsel for the petitioner and counsel for
the respondents.

In this case, the petitioner is challenging the order dated
11.7.2016 by which the dealership, which has been granted to the
petitioner, has been cancelled.

From the records, it appears that in the year, 2012,
Bharat Petroleum Limited had granted licence for establishment of
retail outlet at Surheri, Gaya, in pursuance thereof, the petitioner
established the retail outlet in the name and style of M/s Ravipushp
Filling Station, Surheri, Gaya, an inspection was made wherein



certain irregularities were found which was communicated vide letter dated 1.9.2016 and called upon the petitioner to file explanation. The petitioner filed her explanation but, was not to the satisfaction of the management of the Bharat Petroleum Corporation Limited whereafter, vide letter dated 20.10.2016, the supply of petroleum product was suspended till the final decision. In the said letter, it has been mentioned that she must give explanation as to why appropriate action including termination of the dealership be not taken against her failing which it will be construed that she has nothing to explain and the Corporation will be at liberty to take action after taking into consideration the reply filed on 14.9.2016 without prejudice to the right as is available to the Corporation which was replied by the petitioner vide show-cause dated 4.11.2016, whereafter, again vide letter dated 29.12.2016, the petitioner was given personal hearing and, in the personal hearing, she appeared and filed her oral submission, whereafter, finally a decision was taken vide letter dated 11.7.2016, thereby cancelled the licence and stopped supply of petroleum products. Learned counsel for the petitioner challenged the action of the Corporation and submitted that it is an arbitrary action.

Learned counsel for the Corporation submits that the dispute can only be resolved through arbitration which is a part of agreement. It is relevant to quote paragraph no. 18A of the Standard



Bidding Document which reads as follows:-

"18.a) Any dispute or difference of any nature whatsoever, any claim, cross-claim, counter-claim or set off of the Company against the Licensee 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 Company or of some Officer of the Company who may be nominated by the Director (Marketing). The licensee will not be entitled to raise any objection to any such arbitrator on the ground that the arbitrator is an officer of the Company or that he has dealt with the matters to which the contract relates or that in the course of his duties as an Officer of the Company, he had expressed view on all or any other 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 may in the discretion of the Director (Marketing) designate another person to act as arbitrator in accordance with the terms of the agreement to the end and intent that the original Arbitrator shall be entitled to continue the arbitration proceedings notwithstanding his transfer or vacation of office as an officer of the Company if the Director (Marketing) does not designate another person to act as arbitrator on such transfer, vacation or office or inability of original arbitrator. 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) of the Company or a person nominated by



such Director (Marketing) 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 provisions of the Arbitration & Conciliation Act 1996 or any statutory modification or re-enactment thereof and the rules made thereunder for the time being in force shall apply to the arbitration proceedings under this clause."

In view of the aforesaid clause, it will not be proper and prudent for this Court to decide the factual aspect of the matter and it will be appropriate that the same should be decided by an Arbitrator. To resolve the dispute, this Court appoints Hon'ble Mr. Justice V. Nath, a retired Judge of this Court, as a sole Arbitrator for the purpose of resolving the dispute. Let this order be communicated to him and he will fix date for appearance of the parties. The parties, on receipt of the notice, will be obliged to cooperate in the disposal of the proceeding without delay.

With the aforementioned observation, this application is disposed of.

(Shivaji Pandey, J)

Rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.08.2017
Transmission Date	NA

