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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 9186/2016 & CM 37148/2016**

INDIAN OIL CORPORATION LTD

..... Petitioner

Through: Mr Rahvi Narayan, Ms Mala
Narayan, Mr Shashwat Goel,
Advocates.

versus

NATIONAL COMMISSION FOR SCHEDULED
TRIBES & ANR

..... Respondents

Through: Mr R.M. Sinha, Advocate for
Respondent No. 1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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09.01.2018

VIBHU BAKHRU, J

1. The petitioner (hereafter 'IOCL') has filed the present petition impugning the minutes of the meetings of respondent no.1 (hereafter 'the National Commission') held under the Chairmanship of its Vice Chairman on 22.04.2016 and 27.07.2016 (hereafter 'the impugned orders') pursuant to a representation dated 22.06.2015 made by respondent no.2.

2. By the impugned order dated 22.04.2016, the Commission had advised IOCL to review its decision to cancel the Distributorship Agreement with respondent no.2 and restore the same in his favour. The Commission had also noticed that there were strong reasons to believe that the dealership had been cancelled with a motive to harass a Scheduled Tribe allottee. By the impugned order dated 27.07.2016, the Commission had once again

advised IOCL to restore the petrol pump to respondent no.2 as it had found the decision of IOCL to be arbitrary and with an intention to harass a member of a Scheduled Tribe. The Commission had further directed that if the same was not done, action would be taken against the erring officials of IOCL under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The controversy involved in the present petition is whether the impugned orders are *ultra vires* the powers of the Commission and/or are otherwise unsustainable.

4. Briefly stated, the relevant facts necessary to address the controversy are as under:-

4.1 IOCL is a public sector enterprise, *inter alia*, engaged in the business of distribution of petroleum products. IOCL entered into a “Petrol/HSD Pump Dealer Agreement” (hereafter ‘the Dealership Agreement’) with respondent no.2 - who is a member of a Scheduled Tribe - appointing him as a dealer to manage a retail outlet at Trimbakeshwar, District Nasik, Maharashtra (hereafter ‘the Petrol Pump’).

4.2 On 16.10.2013, the officers of IOCL and the Anti Adulteration Cell conducted a joint inspection of the Petrol Pump, which was managed by respondent no.2. It is alleged that the inspection revealed that an additional fitting was attached to the pulsar cable in MS dispensing unit. It is further stated that after removal of the unauthorised fitting, the nozzle of the dispensing unit was found delivering 200 ml excess fuel for every five litres in comparison with the quantity being delivered earlier. IOCL further states

that the original equipment manufacturer of the dispensing unit confirmed that the additional fitting was unauthorised and not a part of the equipment. It is stated that respondent no.2 was present at site at the time of inspection on 16.10.2013.

4.3 In view of the above, respondent no.2 was called upon to provide an explanation. He replied by a letter dated 21.10.2013 denying that he was involved in any malpractice. He asserted that dispensing unit was being maintained by the manufacturer and he had no role to play.

4.4 The aforementioned additional fitting pulsar card assembly, which had been sealed in the presence of respondent no.2, was sent for testing and respondent no.2 was also called upon by a letter dated 25.10.2013 to remain present on 11.11.2013 at the laboratory of the manufacturer in Coimbatore so that the test can be conducted in his presence. On 09.11.2013, respondent no.2 confirmed that he would not be present at the testing site and the tests could be conducted in his absence. IOCL alleges that the tests conducted indicates that *“When grounding the green wire of the additional attachment, it gives a short delivery of 100 mls in 5 Liters output. If the green wire is not grounded the delivery was normal...the additional attachment is not part of OEM Equipment. This is producing 100 Ml short for 5 liter of delivery.”*

4.5 The supplies to the Petrol Pump were interrupted and this led respondent no.2 to file a Civil Suit being RCS No. 25 of 2014 captioned *“M/s Trimbakeshwar Petroleum v. Indian Oil Corporation Ltd.”* instituted before a Civil Judge, Nasik. The said suit was subsequently withdrawn after IOCL terminated the dealership with respondent no. 2.

4.6 In the meanwhile, IOCL issued a Show Cause Notice dated 10.03.2014 to respondent no.2 calling upon him to show cause why the Dealership Agreement between the parties not be terminated for violation of Marketing Discipline Guidelines (MDG) and various clauses of Dealership Agreement.

4.7 Respondent no.2 responded to the said show cause notice on 11.04.2014 and was also afforded a personal hearing on 19.08.2014. Thereafter, on 11.02.2015, IOCL terminated the Dealership Agreement with respondent no.2.

4.8 Thereafter, Respondent no.2 made a representation dated 22.06.2015 before the National Commission. The said representation was forwarded to IOCL by the National Commission under cover of its letter dated 10.07.2015 and IOCL was called upon to respond to the same. IOCL submitted its comments and the National Commission held a meeting on 22.04.2016 wherein the Officers of IOCL as well as respondent no.2 (who was termed as the petitioner in the minutes) were also present. Thereafter, under the cover of the letter dated 02.05.2016, the National Commission forwarded the minutes of the aforesaid meeting (the impugned order dated 22.04.2016), *inter alia*, directing IOCL to communicate its decision to the National Commission within a period of three weeks.

4.9 By a letter dated 13.05.2016, IOCL submitted its comments on various issues as discussed during the meeting held on 22.04.2016. Since the comments were not in conformity with the National Commission's advice as recorded in the impugned order dated 22.04.2016, the National Commission

convened another meeting on 27.07.2016. The impugned order dated 27.07.2016 indicates that respondent no.2 had also filed written submission dated 07.06.2016 countering the IOCL's submissions. However, the said submissions are not on record.

4.10 The impugned order dated 27.07.2016 also indicates that respondent no.2 and his representatives arrived after the conclusion of the meeting and after the representatives of the IOCL had left the venue - office of the National Commission - nonetheless respondent no.2 was heard and had, *inter alia*, submitted that “*There has been an attempt to take over the Petrol Pump along with the land from the tribal allottee against all norms which is a clear cut case of violation of rights of a tribal dealer*”.

5. Mr Rahvi Narayan, learned counsel appearing for the petitioner submitted that IOCL had terminated the Dealership Agreement with respondent no.2 after following due procedure. He further submitted that there was no allegation of any discrimination or hostile treatment against respondent no.2 on account of him being a member of the Scheduled Tribe either in his initial response to IOCL or in his representation to the National Commission. He submitted that in the circumstances, the National Commission had no jurisdiction to entertain the dispute between IOCL and respondent no.2. He also submitted that the National Commission has no jurisdiction to issue any directions or orders as a Civil Court and, thus, the impugned orders were wholly without jurisdiction. He relied upon the decision of the Supreme Court in ***All India Indian Overseas Bank SC and ST Employees' Welfare Association and Ors. v. Union of India and Ors.:*** (1996) 6 SCC 606 in support of his contention.

6. Mr R.M. Sinha, learned counsel appearing for respondent no.1 contended that IOCL's action terminating the dealership was wholly arbitrary and unreasonable and, thus, was liable to be set aside.

7. Insofar as the allegation regarding respondent no.2 being discriminated on account of him belonging to a Scheduled Tribe is concerned, he readily conceded that there was no material in this allegation. He also stated that there was no complaint or representation on record where respondent no.2 had made such allegation. He submitted that respondent no.2 was perhaps ill-advised; but, he also asserted that there was no communication or representation on record, which would indicate that respondent no.2 had in fact made any such allegation. He submitted that although the impugned order dated 27.07.2016 referred to written submission dated 07.06.2016, the same was neither on record or available with responded no.2.

8. I have heard the learned counsel for the parties.

9. Article 338A of the Constitution of India provides for constitution of the Commission for Scheduled Tribes. Clause (5) of Article 338A of the Constitution of India specifies the duties of the Commission. Clause 8 of Article 338A provides that while investigating any matter referred to in Clauses (a) or (b) of Clause 5, the Commission shall have all the powers of a Civil Court trying a suit. Clauses 5 to 8 of Article 338A of the Constitution of India are set out below:

“(5) It shall be the duty of the Commission-

(a) to investigate and monitor all matters relating to the safeguards provided for the Scheduled Tribes under this Constitution or under any other law for the time being in force or under any order of the Government and to evaluate the working of such safeguards;

(b) to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes;

(c) to participate and advise on the planning process of socio-economic development of the Scheduled Tribes and to evaluate the progress of their development under the Union and any State;

(d) to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards;

(e) to make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Tribes; and

(f) to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Tribes as the President may, subject to the provisions of any law made by Parliament, by rule specify.”

“(6) The President shall cause all such reports to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.

(7) Where any such report, or any part thereof, relates to any

matter with which any State Government is concerned, a copy of such report shall be forwarded to the Governor of the State who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the State and the reasons for the non-acceptance, if any, of any of such recommendations.

(8) The Commission shall, while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause (5), have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses and documents;
- (f) any other matter which the President may, by rule, determine.”

10. It is apparent from the above that one of the functions of the Commission includes inquiring into the specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes. However, there is no provision that empowers the Commission to issue specific directions or orders. In *All India Indian Overseas Bank SC and ST Employees' Welfare Association and Ors.* (*supra*), the Supreme Court had examined clauses of Article 338, which are similarly worded, and had

observed as under:-

“10. Interestingly, here, in clause 8 of Article 138, the words used are “the Commission shall ... have all the powers of the Civil Court trying a suit.” But the words “all the powers of a Civil Court” have to be exercised “while investigating any matter referred to in sub-clause (a) or inquiring into any complaint referred to in sub-clause (b) of clause 5”. All the procedural powers of a Civil court are given to the Commission for the purpose of investigating and inquiring into these matters and that too for that limited purpose only. The powers of a civil court of granting injunctions, temporary or permanent, do not inhere in the Commission nor can such a power be inferred or derived from a reading of clause 8 of Article 338 of the Constitution.”

11. At this stage, it would be relevant to refer to the operative part of the impugned orders. The operative part of the impugned order dated 22.04.2016 reads as under:-

“8. In view of the position, the Commission advises the Indian Oil Corporation to review the decision already taken to cancel the pump in the name of the applicant and restore the same in his favour keeping in view the flaws as noticed in the procedure adopted. Moreover there are strong reasons to believe that all this has been done with a motive to harass a Scheduled Tribe allottee who has been in the business for the last 20 years and there have been no complaints against him earlier. The Commission orders accordingly. The decision taken by the IOC may be intimated to this Commission within a period of 3 weeks.

9. Failing which another meeting in this regard shall be convened on 20-5-2016 at 11.00 am. District Magistrate, Nashik, Director, Tribal Welfare Department, Maharashtra Government, the entire Anti Adulteration Inspection team who inspected the site, Chairman-cum-Managing Director of IOC

and the Secretary, Ministry of Petroleum and Natural Gas, Government of India and the applicant may be directed to attend the hearing to decide the case.”

12. The operative part of the impugned order dated 27.07.2016 reads as under:-

“7. Upon analysing the submissions of IOCL officials and that of the Proprietor of the IOCL Petrol Pump it has been observed that there has been an attempt to tarnish the reputation of the Proprietor of the pump by not observing the normal procedure prescribed by the IOCL and the Ministry of Petroleum. He has not been given adequate opportunities to prove his honesty and integrity other than calling him to the testing laboratory which is not an authorised entity. There was no shortage or excess stock to prove that something has been manipulated by the Proprietor. He has not been heard by the Director. As far as approaching the IOCL for arbitration it is the choice of the Proprietor to approach the arbitrator or the Constitutional Authority of National Commission for Scheduled Tribes since he belongs to a Scheduled Tribe Community. The Commission has to uphold his integrity and interest of a ST applicant, so long as he has not done any wrong and the IOCL has not been following the prescribed procedures of inspection and the subsequent testing and all that connected with the case. When no irregularity has been noticed by an internal inspection team of the Indian Oil Corporation on the same day, i.e. on 16-10-2013 and also by the anti-adulteration team, it is difficult to believe that anything untoward has been committed by the Proprietor. Another inspection conducted by a Surprise Inspection Team invokes suspicion in the entire procedure adopted. If there have been any extra fittings found in the dispensing unit as alleged by the Surprise Inspection Team, then there should have been some variation in the stock of petrol in the Pump either short of petrol or excess petrol in the stock. But this has not been proved. On the contrary it has been certified that the

stock is intact vis-a-vis the record of sales from the outlet.

8. This Pump has been allotted to a Scheduled Tribe category and is operating from the property of the applicant. The attempt to take over the pump from the ST category allottee also invokes suspicion against the Indian Oil Corporation Limited.

9. In view of the position, the Commission advises the Indian Oil Corporation Limited to restore the Petrol to Shri Sonupat Kalu Nimbekar, the existing Proprietor of the Petrol Pump as the decision of the IOCL is arbitrary, by not following the prescribed procedure with an intention to harass a Scheduled Tribe Proprietor, within 7-days from the date of receipt of this communication from the National Commission failing which action under the Scheduled Caste & Scheduled Tribe (Prevention of Atrocities) Act 1989 shall be initiated against the erring officials of IOCL. A copy of the proceedings is also forwarded to Secretary, Ministry of Petroleum and Natural Gas for appropriate action at his level.”

13. A plain reading of the operative part of the impugned orders indicates that although they are couched as an advice to IOCL, in substance the Commission has issued directions. This Court is of the view that such directions are clearly without any authority of law.

14. It is also doubtful whether the Commission would have the power to examine a particular case of an individual. Under sub-clause (a) of Clause 5 of Article 338A of the Constitution of India, the Commission has the duty to investigate and monitor all matters relating to safeguards provided for Scheduled Tribes under this Constitution or under any other law or under any order of the Government. This, plainly, would not extend to entertain a case of an individual. In terms of sub clause (b) of clause 5 of Article 338A

of the Constitution, the Commission also has a duty to inquire into specific complaints with regard to deprivation of rights and safeguards of the Schedule Tribes. Although the Commission can enquire into a specific complaint; however, the ambit of the complaint must relate to deprivation of rights and safeguards of the Scheduled Tribes. Plainly, this would not include a specific complaint of an individual's contractual rights.

15. In the present case, there was no material before the Commission to even remotely suggest that there was any deprivation of rights and safeguards of any Scheduled Tribe. The representation made by respondent no.2 merely articulated his grievance regarding the action taken by IOCL, which he described as high handed. He had apart from alleging various irregularities had specifically alleged violation of certain rules and regulations. But, he had made no allegation of any discrimination or hostile treatment on account of being a member of a Schedule Tribe.

16. IOCL had also issued a show cause notice to respondent no.2 calling upon him to show cause why the Dealership Agreement be not terminated. Respondent no.2 had responded to the said show cause notice by a letter dated 11.04.2014. In this letter, respondent no.2 had apart from raising other defences also alleged victimisation. However, the allegation of victimisation was not on account of him belonging to a Scheduled Tribe Category but on account of not entertaining the request of the concerned officers of IOCL for arranging a *darshan* at Trimbakeshwar Temple.

17. The relevant extract of the respondent no.2's response to the show cause notice is as under:-

“11. I state that the Sales Officer of the Corporation and the Divisional Manager from time to time have been asking me and my Staff to entertain the Employees of the Corporation as well as other guests and to take them for Darshan at Trimbakeshwar Temple. On an average, every year I am required to attend to about 100 guests including Officers of the Corporation, their relatives, friends, drivers, etc. I spend annually about Rs. Two Lacs for complying with the said instructions. Moreover, either me or my Staff is required to accompany the said persons by leaving our work. I have maintained a list of the Officers of the Company and other persons who have taken such services, and who have been extended such patronage during the last year, and have also maintained accounts about the said expenses. I had requested the Officers not to send such large number of people as it was becoming difficult for me to spend so much time and to incur such expenses. The said fact has annoyed the Officers of the Corporation. It appears that in conspiracy with the Officers of Corporation pre-planned the entire operation and therefore the said inspection was carried out and false allegations are levelled against me. Further I would like to state that on the said day ie 16/10/13 the team had come to my R.O & asked my manager to take them for the Darshan accordingly my manager took them to the temple as it was public holiday and there was huge rush at the temple the darshan was not done in V.I.P manner, so they were annoyed & have taken revenge by making malafied intention.”

18. It is apparent from the above that respondent no.2 was not subjected to any hostile treatment on account of being him belonging to a Scheduled Tribe category. Nonetheless, the Commission in its impugned order dated 22.04.2016 has observed as under:-

“This Pump has been allotted to a Scheduled Tribe category

and is operating from the property of the applicant. The attempt to take over the pump from the ST category allottee also invokes suspicion against the Oil Company.”

19. This Court finds the aforesaid observations to be bereft of any basis, and without any application of mind. The said observations are plainly perverse considering that no such allegation was made by respondent no. 2 in his representation to the Commission or to IOCL. False claims of hostile discrimination on the basis of caste are equally divisive and pernicious to the integrity of the people of this nation as acts of hostile discrimination on that basis.

20. The Commission had also made observations in the impugned order dated 27.07.2016, which was similar to the aforesaid observations made in the impugned order dated 22.04.2016.

21. The contents of paragraph seven of the impugned order dated 27.07.2016 indicates that the Commission has perceived itself to be an Alternate Forum for dispute resolution. The Commission has specifically observed that *“as far as approaching the IOCL for arbitration it is the choice of the Proprietor to approach the arbitrator or the Constitutional Authority of National Commission for Scheduled Tribes since he belongs to a Scheduled Tribe Community”* thereby expressly indicating that since respondent no.2 belongs to a Scheduled Tribe, he has an option to approach the Commission for redressal of his grievance instead of resorting to the agreed dispute resolution method.

22. In view of the above observations, this Court is in no doubt that the Commission has misunderstood its role under Article 338A of the

Constitution of India. The Commission is not an Alternative Forum for dispute resolution and has no adjudicatory function.

23. In view of the above, the petition is allowed and the impugned orders are set aside. The pending application is also disposed of.

VIBHU BAKHRU, J

JANUARY 09, 2018
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