IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8238 of 2019

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Globus Spirits Ltd., a company incorporated under the Companies Act, 1956 having corporate office at F-0, Ground Floor, The Mira Corporate Suites, Plot No.1 and 2, Ishwar Nagar, Mathura Road, New Delhi-110065 through its Deputy General Manager (HR and Administration) Pritam Singh, Male, aged 45 years, son of Shri Kali Prasad Singh, resident of M.B.J. 283, Kailashpur, Husenabad, P.S. Line Bazar, District Jaunpur (UP)

... ... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Assistant Chief Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna
3. The Excise Commissioner, Bihar, Patna.
4. The Collector, Vaishali.
5. The Superintendent of Excise, Vaishali.
6. The Union of India through the Ministry of Petroleum and Natural Gas, Government of India
7. The Indian Oil Corporation Ltd., Marketing Division, Bihar State Office, Lok Nayak Jaiprakash Bhawan, 5th Floor, Dak Bunglow Chowk, Patna-800001, through its General Manager
8. Hindustan Petroleum Corporation Limited, TC-13 V/V, Vibhuti Khand, Gomti Nagar, Lucknow-226010, through its Manager
9. Bharat Petroleum Corporation Ltd Rajbandh Chatti, Durgapur, through its Manager
10. Bharat Petroleum Corporation Ltd PO Pakri, via Anisabad, Patna-800002, through its Manager
11. Bharat Petroleum Corporation Ltd, Barauni Retail Territory. NH 31, PO Papraur, District-Begusarai-851210, through its Manager

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Adv.
For the Respondent/s	:	Mr. Lalit Kishore, AG.
		Mr. Bishwa Bibhuti Kumar, Adv.
For the Respondent-UOI :		Mr. S. D. Sanjay, Addl, S.G.
		Mr. Anshuman Singh, CGC.
For the Respondent-IOCL:		Mr. Anil Kumar Jha, Sr. Adv.
		Mr. Sanat Kumar Mishra, Adv.
For the Respondent-BPCL:		Mr. Sanjay Singh, Adv.
For the Respondent-HPCL:		Mr. Neeraj Kumar Gupta, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 11-07-2019

Heard Mr. Satyabir Bharti, learned counsel appearing for the petitioner, Mr. Lalit Kishore, learned Advocate General assisted by Mr. Bishwa Bibhuti Singh, learned AC to AG, Mr. S. D. Sanjay, learned Additional Solicitor General assisted by Mr. Anshuman Singh, learned Central Government Counsel for the Government of India, Mr. Anil Kumar Jha, learned Senior Advocate appearing with Mr. Sanat Kumar Mishra, Advocate on record for Indian Oil Corporation, Mr. Neeraj Kumar Gupta, learned Counsel appearing for Hindustan Petroleum Corporation and Mr. Sanjay Singh, learned counsel appearing for Bharat Petroleum Corporation.

The petitioner by filing this writ petition prays for the following reliefs:

> "(i) Issuance of a writ in the nature of Mandamus, directing the respondents grant necessary permission to the petitioner for manufacture of "Ethanol" (Denatured Anhydrous Ethanol) from damaged and surplus food grain, for exclusive supply for the Oil Marketing Companies (OMC's), for blending with petrol, as has been permitted and directed by the Government of India by the national Policy on Biofuel, 2018;
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> Alternatively,

(ii) Declare Section 2(40)(iv) of the Bihar Prohibition and Excise Act, 2016, as ultra vires the Constitution and legislative competence of the State Legislature and its executive by which 'Ethanol' which is industrial alcohol having a strength of 99.5% v/v of alcohol, has been included within the definition of "intoxicant", and the State Government hs appropriated itself the uncanalized and unfettered power to refuse grant/renewal or withdraw license, for any intoxicant which includes license to manufacture and sell 'Ethanol';

(iii) To hold and declare that it is not within the legislative competence of the State Legislature to prohibit/refuse permission for manufacture and sale of Industrial Alcohol viz. 'Ethanol' and other denatured spirits and its power is limited to regulate its misuse and prevent its diversion for unlawful purposes;

(iv) To direct the respondent State of Bihar and its officers not to interfere in any manner in the manufacture and sale/supply of Ethanol, but the petitioner as it is beyond its legislative competence and falls with the exclusive domain of the Central Government and entire control over the product, including licensing and regulation of the manufacture, storage, possession, consumption, use, transportation, trade and commerce, supply, distribution and its inter and intra state movement is under the exclusive control of the Government of India;

And

(v) Issuance of a writ of mandamus, restraining the respondents no. 6 to 11 from invoking price reduction clause and levying penalty on failure of the petitioner to supply ethanol as per the purchase order, in as much as the petitioner had been unable to supply ethanol due to Government action and to direct the concerned respondents to re-schedule the purchase orders as contained in Annexure-23 series, to be effective from a month after the date when the petitioner is enabled to manufacture Ethanol from damaged food grains;

(vi) To pass such other order(s), direction(s) as your Lordships may deem fit and proper in the facts and circumstances of the case."

We shall not be entering into the merits as regarding the competency and jurisdiction of the State Government to deal with the issue in hand in view of the legal position already settled by the Full Bench of this Court in the judgment since reported in **2017(2) PLJR 818 (Bihar Distillers and Bottlers Pvt. Ltd. Vs The State of Bihar & Ors.)**.

The petitioner is a company incorporated under the Companies Act, 1956 having its registered office at New Delhi and its distilleries in different parts of the country with one of them situated at Village- Dhandhua, Janadaha, Andrabar Chowk, District- Vaishali, in the State of Bihar. The distillery of the petitioner produces Extra Neutral Alcohol from food grains by using broken rice as the basic raw material. The issue in hand relates to supply of Ethanol to the oil manufacturing marketing companies for its blending with petrol as permitted under the Government of India Policy on Biofuel under the National Policy on Biofuel, 2018. According to the petitioner, initially when such policy was announced by the Government of India, although the manufacture of Ethanol from molasses was permitted but the Government of India did not permit manufacture of Ethanol from foodgrains as a raw material and it is only under the policy announced on 04.06.2018 published in the Gazette of India on 08.06.2018 that, such permission was allowed for manufacture of Ethanol from broken rice as a raw material, for blending with petrol. A copy of the Government of India Policy issued by the Ministry of Petroleum and Natural Gas is enclosed at Annexure-14 to the writ petition.

It is the case of the petitioner that it is acting under the permission so allowed by the Government of India, that an application was filed before the Principal Secretary, Department of Registration, Excise and Prohibition Department. Government of Bihar seeking permission to manufacture Ethanol from damaged and surplus foodgrains on 22.06.2018. While such permission prayed by the petitioner was pending consideration before the

State Government in its Registration, Excise and Prohibition Department that a tender notice was floated by the Oil Marketing Company inviting tenders from distilleries for manufacturing Indigenous Anhydrous Denatured Ethanol for its supply to the oil companies for blending with petrol. A copy of the tender is placed on record vide Annexure-18 to the writ petition and Clause 1 of the said tender invites even such of the distilleries who showed intent to set up distilleries for producing Anhydrous Denatured Ethanol. The petitioner having already applied for permission before the State Government of Bihar in its Registration, Excise and Prohibition Department for manufacturing Ethanol, participated in the tender and was also issued a work order, a copy of which is at Annexure-18/1 of the writ petition and is dated 24.11.2018. The work order dated 24.11.2018 required the petitioner to effect supplies of ethanol from the quarter beginning March, 2019 and for the subsequent quarter.

Obviously since the petitioner was yet to obtain permission from the State Government in its Excise Department for manufacture of Ethanol that after representing before the State Government to expedite the process, the petitioner represented to the Oil Marketing Company for rescheduling the supply order in the extraordinary circumstances. Representations in this regard have been enclosed at Annexure- 24 series.

The delay happening at the level of the State Government in issuing permission for manufacture and supply of Ethanol with the threat of being rendered a defaulter, looming on account of non-supply of Ethanol in absence of such permission that the petitioner rushed to this Court through the present writ petition on 16.04.2019 with the reliefs set out hereinabove.

The matter was considered by this Court on 17.04.2019 and on subsequent dates but since the counter affidavit was not coming from the Excise Department that this Court posted the matter 'For Orders' with a view to dispose of the writ petition on the basis of material on records in absence of any contest thereto. It is at this stage that learned Advocate General appeared on 02.05.2019 to inform this Court that the matter is pending consideration before the competent authority and would be disposed of effectively within the reasonable time. When the matter next came up for consideration, the Court was informed that a decision had been taken at the level of the Department and the matter was pending before the Cabinet. The decision of the Cabinet has been placed on record through the fourth supplementary counter affidavit and vide resolution bearing Memo

No. 2373 dated 03.07.2019 the cabinet has resolved to grant permission to the distilleries for producing molasses based Ethanol as well as distilleries producing grain based Ethanol, to the extent of 100% of their manufacturing capacity.

In other words, the distilleries who intended to produce Ethanol for its supply to the oil marketing companies, were granted permission to do so with a rider that they would not be using foodgrains fit for human consumption. Although according to Mr. Bharti, the decision of the Cabinet as reflected in the resolution dated 03.07.2019 is in deviation of the policy decision taken by the Government of India but we would reserve our opinion on this aspect for so long as the distilleries have been permitted to use the broken foodgrains which were not held fit for human consumption, for manufacture of Ethanol, the other issues can await suitable adjudication, if the occasion would so arise. The stage at which the dispute as it stands today is, that the State Government has resolved to grant permission to distilleries producing grain based Ethanol and the ball is now in the court of the Excise Department to act in furtherance of such resolution by issuing permission/no objection orders allowing the distilleries like the petitioner to supply Ethanol to Oil Marketing Company like the respondents herein.

In our opinion, once the Government of Bihar in its Excise Department has taken a decision to permit the distilleries producing grain based Ethanol for its supply to the Oil Marketing Companies, the consequential permission/no objection certificate should have been issued by the Excise Commissioner, Bihar, within two weeks of such resolution and if not done as of now, then it should be done expeditiously and let there be no default in this because any default in compliance would run counter to the decision as well as national interest.

The problem for the petitioner does not stop here for Mr. Bharti invites the attention of this Court to the stand taken by the Oil Marketing Companies in their respective counter affidavit in treating this non-supply by the petitioner, as a default of the purchase order so issued in the meanwhile. Mr. Bharti, learned counsel appearing for the petitioner has invited the attention of this Court to the position explained by the petitioner before the Oil Marketing Companies as regarding the delay in supply as well as to the request for rescheduling of the supply order to submit, that the agreement, a copy of which has been enclosed with the counter affidavit of the Indian Oil Corporation, itself conceives at Clause 16, of the situations, which are beyond the control of a distillery, like the one faced by the petitioner, in effecting timely supply of

Ethanol on account of pending permission before the State Government. It is argued that in the situation of the present kind where the petitioner has been running after the State Government in its Excise Department for grant of permission which is yet not forthcoming despite the resolution of the State Government dated 03.07.2019, the petitioner certainly cannot be held as a defaulter.

We would reserve our comments on this issue because even if the counter affidavit refers to the intent of the Oil Marketing Company on the proposed action on the failure of the petitioner to effect timely supplies pursuant to the supply orders so issued, unless it is translated into adverse action, such proposed intents is not sufficient to invite judicial decision by this Court. The circumstances in which the petitioner has not been able to discharge his obligation under the supply orders have already been explained in the writ petition, which we have also noted above and which obviously would have to be borne in mind by the Oil Marketing Company before they propose any action against the petitioner. In fact the oil marketing companies having invited tenders from distilleries who had yet to set up their plants for supply of Ethanol ought to have been prepared for situation of the present kind where the laches are of the State Government in its Excise Department in disposing the application of the petitioner, for Ethanol supply, expeditiously and it is the failure of the State Government in issuing appropriate orders to the petitioner to effect such supplies, which has led to such a situation. We would speak no further and leave it open for the petitioner to return, if the occasion would so arise.

Vide order dated 17.04.2019 we had stayed any proposed action against the petitioner by the Oil Marketing Companies and the reason was because until permission was coming from the State Government in its Excise Department allowing the petitioner to effect supplies, the petitioner could not be saddled with charge of any default for non-supply. We hereby confirm the interim order.

Since the petitioner has already represented before the Oil marketing Companies for rescheduling the supply order, the request may be disposed of within a fortnight of receipt/production of a copy of this order bearing in mind, the situation discussed above.

We alongside issue direction to the Excise Commissioner, Bihar to act in accordance with the Government resolution to grant permission to the petitioner to effect supplies of Ethanol within a fortnight of receipt/production of this order.

The writ petition is allowed with observations/directions above.

(Jyoti Saran, J)

(Partha Sarthy, J)

Anjula/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	02-08-2019
Transmission Date	NA