

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21940 of 2018

=====

M/s Muneshwari Automobiles Petrol Pump, through its proprietor Virendra Kumar, Son of Late Rameshwar Prasad, Resident of at and P.O.- Hilsa, Patel Nagar, near BSNL Office, P.S.- Hilsa, District- Nalanda.

... .. Petitioner.

Versus

1. The State Of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The District Magistrate, Nalanda.
3. The Sub-Divisional Officer, Hilsa, District- Nalanda.
4. The Panan Padadhikari, Nagar Parishad, Hilsa, District- Nalanda.
5. The Indian Oil Corporation Limited through the General Manager (Marketing Division), Bihar State Office, Patna.
6. Senior Divisional Retail Sales Manager, Patna Divisional Office, Indian Oil Corporation Limited, Maurya Lok Complex, Patna.
7. The Manager, Retail Sales, Rajgir Sales Area, Patna Divisional Office, IOCL, Maurya Lok Complex, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	: Mr. P.K.Shahi, Sr. Adv. Mr.Rohit Mishra, Adv.
For the State Respondent/s	: Mr.Subhash Pd. Singh- GA 3. Mr. I.P. Mandal, AC to GA 3.
For the I.O.C.L Respondent Nos.5to 7:	Mr. Anil Kumar Jha, Sr. Adv. Mr. Sanat Mishra, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 11-04-2019 Heard learned Senior Counsel representing the petitioner, learned counsel for the State as well as the learned Senior Counsel representing the Indian Oil Corporation Limited.

This writ application has been preferred for setting-aside the order dated 27.10.2018 issued under the signature of the District Magistrate, Nalanda (respondent no.2) by which the



respondent no.2 has directed for sealing of the petrol pump of the petitioner and also to lodge an F.I.R. against the proprietor of the said petrol pump.

The impugned order as contained in Annexure 'P-1' to the writ application shows that on 12.10.2017, the Marketing Officer, Nagar Parishad, Hilsa had collected sample of petrol from the nozzle of the digital machine of the petrol pump in four bottles. Those four bottles of sample were sent for examination to the Director, Forensic Science Laboratory, Patna vide Letter No.1127 dated 10.07.2017. The date of Letter No.1127 has been sought to be corrected by issuing a corrigendum. The correct date is said to be 31.10.2017. The report of the In-Charge Director, Forensic Science Laboratory, Patna was received vide Letter No.1895 dated 24.08.2018 showing that the "Petrol along with kerosene oil were detected in the light orange liquid contained in the two plastic bottles marked as 'A' and 'B' described above".

On receipt of the said report of the Forensic Science Laboratory the District Magistrate, Nalanda (respondent no.2) took a view that the petrol pump has violated the provisions of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005



(hereinafter referred to as the 'Order of 2005') which is punishable under Section 3 of the Prevention of Corruption Act. Accordingly, the respondent no.2 directed for sealing of the petrol pump and lodgment of the First Information Report under Section 7 of the Essential Commodities Act, 1955.

Learned Senior Counsel representing the petitioner has placed before this Court the relevant provisions of the Order of 1998 as contained in Annexure 'P-4'. It is submitted that in Paragraph 7 of the said Order, it is only those persons who have been named under Sub Paragraph (1) of Paragraph 7 who are empowered to conduct search and seizure in the premises. It is submitted that any Gazetted Officer of the Central Government or a State Government or any police officer not below the rank of the Deputy Superintendent of Police duly authorised, by general or special order of the Central Government or a State Government, as the case may be, or any officer of the oil company, not below the rank of sales officer, may, with a view to securing compliance with the provisions of this order, or for the purpose of satisfying himself that this order or any order made thereunder has been complied with or there is reason to believe that all or any of the provisions of this Order have been and are being or are about to be contravened, enter and search



any place or premises of a dealer, transporter, consumer or any other person who is an employee or agent of such dealer or transporter or consumer.

The submission is that the Marketing Officer of the Nagar Parishad is neither a Gazetted Officer of the State Government nor is authorised by any general or special order of the State Government to conduct search and seizure in any place or premises of a dealer.

Referring to Paragraph '8' of the Order of 2005, learned Senior Counsel further submits that Paragraph 8 provides the procedure to be followed in case of sampling of the product. The relevant Sub Paragraph have been read out to demonstrate as to how the sample are to be collected from the tank, nozzle, vehicle or receptacle in clean aluminum containers to check whether density and other parameters of the product conform to the requirements of Bureau of Indian Standard Specification Number IS 2796 and IS 1460 for motor spirit and high speed diesel respectively. The sample is to be taken and sealed in six samples of one litre each. Various other procedures have been laid down together with a stipulation in sub Paragraph 5 and sub Paragraph 6 that the laboratory shall furnish the test report to the authorized officer within twenty



days of receipt of sample at the laboratory.

It is the submission of learned Senior Counsel that the procedures as provided in Paragraph '8' of the Order of 2005 has not at all been followed, neither the samples were taken in the given manner nor the test report of the laboratory was submitted to the authorised officer of the laboratory within the prescribed period. It is submitted that in fact the impugned order itself shows that the report was submitted ten months after the submission of the sample to the laboratory.

Learned Senior Counsel has placed reliance upon the Judgment of the Hon'ble Supreme Court in the case of **Allied Motors Limited versus Bharat Petroleum Corporation Limited** reported in **(2012) 2 SCC Page 1** to submit that in the said case while considering a case of termination of dealership for alleged adulteration in petrol, the Hon'ble Supreme Court was pleased to held the termination bad in law for the reason that the same was done without issuing show cause notice and without affording an opportunity of hearing to the petitioner. It was held that the impugned order suffers from the vice of violation of principles of natural justice.

Learned Senior Counsel submits that in the present case also before passing of the impugned order as contained in



Annexure 'P-1' to the writ application, no notice to show cause or an opportunity of hearing in any manner whatsoever was given to the petitioner. Thus, it is his submission that the impugned order is liable to be held bad in law and be set-aside.

Learned counsel representing the respondent nos.1 to 4 submits that the impugned order has been passed by respondent no.2 on the basis of the Forensic Science Laboratory report. It is submitted that the Marketing Officer of Nagar Parishad had inspected the petrol pump on 12.10.2017 and after collecting the sample the same was sent to the Forensic Science Laboratory, Patna for scientific examination. It is submitted that the respondent no.2 requested the Chief General Manager of the Indian Oil Corporation Limited, Patna to cancel the licence of the petitioner. Learned counsel further submits that with reference to Annexure 'B' to the counter affidavit that the Indian Oil Corporation Limited had vide its letter dated 29.10.2018 called upon the petitioner to show cause as to why the dealership of the petrol pump be not cancelled.

Learned Senior Advocate representing respondent nos. 5 to 7 has categorically submitted before this Court that so far as these respondents are concerned, they have acted on receipt of the letter from the District Magistrate, Nalanda



(respondent no.2) and have stopped the supply to the petitioner. It is submitted that a fact finding letter dated 29.10.2018 have been served upon the petitioner seeking his explanation on the subject. Learned Senior Advocate submits that the sampling in this case was done by the State respondents which need no comment from the answering respondents. As regards submissions made in Paragraphs 15, 16 and 17 of the writ application, it is the stand of the respondent nos. 5 to 7 that the petitioner has cited and relied upon the standards of sampling procedure.

Having heard learned Senior Counsel and learned counsel for the parties and upon perusal of the records, this Court finds that so far as Annexure 'P-1' is concerned, which is impugned in the present writ application this Court will consider the prayer of the petitioner with regard to sealing of the petrol pump. It is evident that prior to issuance of the order to seal the petrol pump, no show cause notice was issued to the petitioner. It is apparent from the records that the impugned order was passed on 27.10.2018 and pursuant to the said order dated 27.10.2018 passed by the District Magistrate, Nalanda (respondent no.2), the Corporation has also stopped supplies to the petitioner with immediate effect.



This Court also finds that there is virtually no contest to the submissions of the learned Senior Counsel for the petitioner that the power to search and seizure has been vested with the authorities named in sub-Paragraph 1 of Paragraph 7 of the Order of 2005. The Marketing Officer of the Nagar Parishad, Hilsa is not the authority named in the said sub-Paragraph. It is not the case of the State respondents that the Marketing Officer of the Nagar Parishad, Hilsa was competent in terms of the Order of 2005 to conduct search and seizure. Further, the fact that the Order of 2005 provides for the sampling procedure as contained in Paragraph 8 are not in dispute. It is also not in dispute that the samples are to be collected in the manner provided thereunder only.

In the present case, it is the submission of the petitioner that the said procedure was not followed. This has not been denied by the respondents, particularly, the State respondents. It is also an admitted position that the Forensic Science Laboratory has submitted its report after about 10 months which is in direct breach of Paragraph 8 (5) and 8 (6). Thus, on all these grounds, this Court finds it a fit case to interfere with the order dated 27.10.2018 passed by the District Magistrate, Nalanda (respondent no.2) as regards sealing of the



premises. The test laid down by the Hon'ble Supreme Court in the case of **Allied Motors Limited versus Bharat Petroleum Corporation Limited** (supra) would be fully applicable in the facts of the present case as well where no opportunity of hearing has been given to the petitioner. This Court is of the opinion that the District Magistrate, Nalanda (respondent no.2) has acted in haste in the matter by directing sealing of the premises without giving any opportunity of hearing to the petitioner. The impugned order is, thus, bad in law on all these grounds which have been discussed hereinabove. The impugned order, insofar as it relates to the sealing of the petrol pump stands quashed. The premises shall be unsealed by respondent no.2 forthwith.

Pursuant to the impugned order, F.I.R. has already been lodged. Since this Court is sitting in a different roaster and jurisdiction, the Court will restrain itself from making any comment with respect to the said F.I.R as it would be a matter lying in a different jurisdiction.

This writ application is allowed to the extent indicated hereinabove.

The petitioner may now approach the Indian Oil Corporation Limited with an appropriate application to resume the supply along with a certified copy of this order. The Indian



Oil Corporation Limited shall look into the request of the petitioner and will take appropriate decision thereon within one week from the date of receipt of the application with the certified copy of this order.

(Rajeev Ranjan Prasad, J)

R.R.Ojha/-

U			
----------	--	--	--

