

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15741 of 2017

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M/s Prabhakar Petroleum Services, a Proprietorship firm through its Proprietor Sadhna Singh, Wife of Diwakar Prasad Singh, Resident of Gamharia Bazar, P.O.+P.S.- Gamharia, District- Madhepura, Bihar.

... .. Petitioner/s

Versus

1. The Indian Oil Corporation Limited, a company registered under the Companies Act, 1956, having its Registered Office at G-9, Ali Yavar Jung Road, Bandra (East), Mumbai-400051 through its Chairman
2. The Chief Divisional Retail Sales Manager, Indian Oil Corporation Limited (Marketing Division), Begusarai Division, PO-Barauni Oil Refinery, District-Begusarai.
3. The General Manager, Indian Oil Corporation Limited, Loknayak Bhawan, Dak Bungalow Chowk, Patna.
4. The Sales Executive Officer, Indian Oil Corporation Limited, Madhepura.
5. The District Magistrate, Madhepura.
6. The Assistant Controller, Weights and Measure, Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Mrigank Mauli, Adv. Mr. Sanket, Adv. Mr. Prince Kumar Mishra, Adv. Mr. Venkatesh Kirti, Adv.
For the Respondent/s	:	None

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 06-11-2019 Heard learned counsel for the petitioner. No one appears on behalf of the Indian Oil Corporation Limited and its authorities.

Petitioner in the present case is seeking the following reliefs:-

“(i) For issuance of writ in the nature of Mandamus directing the Respondent Authorities to resume the supply of Motor Spirit (Petrol) and High Speed Diesel to the retail outlet of the petitioner firm which has been stopped from 1st of



July – in light of the recommendation made by the District Magistrate, Madhepura vide letter no.709 dated 06.09.2017 which inter-alia is based upon the recommendation of the Superintendent of Police and the Investigating Officer of the Gamhariya P.S. Case No.71/2017.

(ii) For issuance of writ in the nature of mandamus directing the respondent authorities to recalibrate the Dispensing Units of the Petitioner – which has already been inspected on 16.05.2017 and 23.09.2017 and Calibration seals have been found to be intact.

(iii) Any other relief or reliefs which the petitioners may be found entitled to in the facts and circumstances of the case.”

Learned counsel for the petitioner has taken this Court through the pleadings available on the record. It is submitted that on 08.05.2017 on the instruction of the District Magistrate, Madhepura an inspection was carried out in the premises of the petrol pump of the petitioner jointly by the District Procurement Officer, Madhepura, Block Procurement Officer, Gamhariya and Weights and Measure Inspector. The petitioner states that in course of inspection when it was observed that the dispensing units of the petitioner was delivering 80-100 ML short for every measure of 5 liters which was beyond the permissible level of variation, the dispensing units were sealed by the inspecting team and a report to that effect was prepared and sent to the District Magistrate, Madhepura. A copy of the enquiry report is available at Annexure-P/1 series to the writ application. Learned counsel submits that subsequently another inspection was



carried out by the Inspector, Weights and Measure, Madhepura in presence of District Procurement Officer, Madhepura on 16.05.2017 for purpose of verifying the calibration seal of the dispensing units. The seal was found intact and a report in this regard was submitted vide Annexure-P/2 to this writ application.

Learned counsel submits that as regards the offences alleged under the Legal Metrology Act 2009 read with Bihar Legal Metrology (Enforcement) Rules, 2014 since those were compoundable in nature the petitioner paid the compounding fee of Rs.12,000/- and those offences were compounded. It is further submitted that the District Magistrate had directed for institution of an FIR against the owner of the petrol pump and the Inspector, Weights and Measure alleging that they were in collusion with each other and had reduced the calibration. Learned counsel submits that the FIR bearing Gamhariya P.S. Case No.71 of 2017 dated 24.05.2017 was registered under Section 419, 420 and 34 of the Indian Penal Code , but the same has already been quashed and a statement in this regard has been made in paragraph '8' of the rejoinder filed on behalf of the petitioner. Learned counsel submits that the retail outlet of the petitioner was sealed on 08.05.2017, but thereafter during the inspection on 16.05.2017 the calibration seal was



not found to have been tempered and in that view of the matter only the petitioner was given option to compound the penal provision which was accepted by the petitioner and compounding was allowed. It is submitted that despite compounding of the offence alleged and quashing of the FIR, till date the respondent Indian Oil Corporation Ltd. has not reconsidered its action and the supplies have not been restored to the petitioner. The petitioner has thus prayed for recalibration of the dispensing unit of the petitioner and resumption of supplies.

In the counter affidavit filed on behalf of the Indian Oil Corporation Ltd. a statement has been made that the sales and supply have not been suspended on the recommendations of the District Magistrate, Madhepura but sales and supply have been suspended in line with the provisions of the Marketing Discipline Guideline as the dealer was found selling the petroleum products unauthorizedly. It has been stated that unauthorized sale of petroleum products from unstamped/non-calibrated DUO DU comes under critical irregularity under the Marketing Discipline Guideline. It has further been stated that the sales and supply were suspended due to the dealer's deliberate attempt to continue the sales even after the District



Administration's inspection team found that all two existing nozzles were delivering short and so the sales should have been resumed from those nozzles only after recalibration/re-stamping and regarding the newly installed electronic DUO DU the fact remains that the same was not stamped/calibrated and, therefore, sale of petroleum products from the said DUO DU would amount to unauthorized sale which would come under critical irregularity under the Marketing Discipline Guideline.

Counter affidavit has been though responded by the petitioner, it is not in dispute that in terms of the Marketing Discipline Guidelines under Chapter 5 and 8 certain penalties have been indicated for commission of an act and omission in the nature provided thereunder. In this regard learned counsel for the petitioner has drawn the attention of this Court towards Clause 5.1.16 which is part of Annexure-P/14 to the writ application.

From the materials available on the record and the submissions of learned counsel for the petitioner it appears that till date the respondent Indian Oil Corporation has not taken a final decision under the Marketing Discipline Guidelines 2012.

Learned counsel for the petitioner submits that the competent authority of the Corporation being the Chief



Divisional Retail Sales Manager, Indian Oil Corporation Limited (Marketing Division), Begusarai Division may be directed to look into the submissions of the petitioner and take a final decision at the earliest opportunity.

In the given facts and circumstances of the case since the materials available on the record indicate that the Indian Oil Corporation Ltd. has though suspended the supplies of the petitioner, no final decision has been taken with regard to the ultimate outcome of the alleged act and omission on the part of the petitioner, the competent authority i.e. the respondent no.2 is directed to look into the entire facts and circumstances of the case and take a final decision within a period of 90 days from the date of receipt/production of a copy of this order in accordance with the Marketing Discipline Guidelines. Such decision be communicated to the petitioner immediately within the prescribed period.

This writ application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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