

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

WPC No. 2060 of 2019

Mrs. Ratnakashyap W/o Shri Gyaneshwar Kashyap Aged About 46 Years R/o Village Unkari, Post Charbhatha (Charama), Tahsil Charama, District Kanker Chhattisgarh,
--- **Petitioner**

Versus

1. Bharat Petroleum Corporation Limited Through Head Retailer (West) Western Regional Office, Plot No. 06, Sector 2, Kharghar, Navi Mumbai 410210 District : Mumbai, Maharashtra
2. Territory Manager (Retail Raipur) Bharat Petroleum Corporation Limited, 4 And 6 Shahid Veer Narayan Singh Bhawan, Nagar Gandhi Chowk, Raipur 492001, District : Raipur, Chhattisgarh
--- **Respondents**

25.06.2019	Mr. Anand Shukla, counsel for the petitioner. Mr. Tarkeshwar Nande, counsel for the respondent. Heard. The undisputed facts of the case are that the petitioner was a distributor of respondents' Company. It is contended that on 26.12.2016 weights and measurement department had inspected the dispensing units and have put the stamp of correctness on weights. It is further contended that since there was certain shortcomings due to fluctuations of the electricity, the petitioner herself has informed to the respective authorities that there are some short-comings in distribution of petrol, diesel etc. Thereafter a joint inspection was made on 01.12.2017 and out of 8 units, 3 were found to be shortcoming in distribution of fuel and in respect of 4 distribution units, K-Factor was changed. It is further submitted that the hardware and software was sent for analysis which was found to be not tampered and it would show the petitioner has not committed any anomalies as the shortcomings were brought to the notice of the respondents well in time and stand corrected. Learned counsel for the petitioner submits that thereafter the Distribution was suspended from 01.02.2017 and finally the dealership agreement has been cancelled. He submits that though the distribution agreement contains the arbitration clause but the arbitrator would not be entitled to order for restoration of the petrol pump and such orders can

only be issued by this Court. He submits that since some other distributor has been appointed, the respondents may be restrained from disturbing the possession of the petitioner.

Per contra, learned counsel for the respondents submits that distribution agreement having been terminated, this petition would not lie before this Court as the remedy to invoke the arbitration clause before the Arbitrator is available to the petitioner. He placed reliance in **(2018) 9 SCC 235 – Indian Oil Corporation Ltd. v. T.Natarajan.**

It is not in dispute that the distribution agreement contains arbitration clause. The supply of fuel was suspended since 01.2.2017. Primarily, there is no document on record to show that the arbitration clause was invoked by the petitioner. It appears that at the fag end, the distribution agreement was terminated. Therefore, by way of interim measure, the order for restoration cannot be issued by this Court as it would amount to grant of final relief. The distribution agreement having been terminated, the petitioner shall be at liberty to avail appropriate remedy as per the terms of the agreement by invoking the arbitration clause.

Under the facts and circumstances of the case, I am not inclined to admit the petition especially in view of the fact that the agreement is the genesis of dispute which contains an arbitration clause and the petitioner may invoke the same. Any adjudication by this Court would amount to usurping the jurisdiction of the arbitration and multiplying the terms of agreement.

The petition is dismissed with the aforesaid liberty.

Sd/-
(Goutam Bhaduri)
Judge

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