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

+ **W.P.(C) 4052/2017**

**ALL INDIA PETROLEUM DEALERS ASSOCIATION
AND ORS**

..... Petitioners

Through: Mr Rajesh Mahale, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr Vivek Goyal, CGSC with
Mr Pawan Pathak, Advocates
for UOI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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11.01.2019

VIBHU BAKHRU, J

1. The petitioners have filed the present petition, *inter alia*, impugning a Circular dated 04.04.2014 (hereafter “the impugned circular”) issued by respondent No.2 (hereafter “IOCL”). The petitioner No.1 is an Association of dealers appointed by IOCL for sale of petroleum products and its members are aggrieved by the impugned circular, inasmuch as, it provides for payment of interest for any shortfall in payments for supply Compressed Natural Gas (CNG) as specified therein. The petitioners contend that the payment terms for CNG supplies is arbitrary and unreasonable, inasmuch as, it provides for payment of interest on shortfall of daily payment even though, the same are received by IOCL in advance.

2. It is stated that Indraprashtha Gas Ltd. (hereafter IGL) raises invoices on IOCL every 15 days for the supplies already made. However, in terms of the impugned circular, the members of petitioner no.1 are required to make daily payments, and are also liable to pay penal interest if the payment falls short of such amounts as determined on the basis of average sales. According to the petitioners, IOCL cannot recover interest for such payments.

3. In terms of the Standard Dealership Agreement entered into between the members of the petitioner and IOCL, the dealers are required to confine themselves to selling the products of IOCL only at the premises. They are proscribed from carrying on any business from the retail outlets, other than that of sale of products of IOCL.

4. It is stated that pursuant to the directions issued by the Ministry of Petroleum and Natural Gas, Government of India, it was decided by IOCL to permit sale of CNG from the retail outlets. Accordingly, IOCL has entered into an agreement with respondent no. 3 (IGL) for arranging supply of CNG for sale through retail outlets of IOCL.

5. IOCL and IGL have installed apparatus in select outlets for the sale of CNG. It is stated that CNG is delivered through pipelines of IGL to the outlets, and the same is sold by the dealers to retail consumers. It is stated that IGL raises invoice for the supply of CNG on IOCL every fifteen days. The petitioners state that the arrangement prior to the issuance of the impugned circular was that IGL would inspect the outlet once every fifteen days, and raise invoice within a period of three days thereafter. The dealers would make the payment

within five days of the invoice being raised. However, the impugned circular has changed the terms of payment to provide for daily payment to IOCL on every working day based on average sales in the previous year. The retailers are now required to make such daily payment and make good the shortfall, if any, as determined on the basis of invoice raised by IGL on IOCL (which, as stated earlier, is every fifteen days).

6. At this stage, it would be relevant to refer to the impugned circular, which is set out below:

“INDIAN OIL CORPORATION LTD

(MARKETING DIVISION)

RETAIL SALES DEPARTMENT HO

RS/31/CNG

04.04.2014

SUB.: IMPLEMENTING OF REVISED PAYMENT
TERMS AGAINST CNG SUPPLIES

It has been decided to introduce revised payment terms on an industry basis against CNG Supplies being made to the retail Outlets. Accordingly, State Offices/Division Offices wherever CNG is being marketed are advised to implement the following procedure with regards to collection of payments from the Retail Outlet dealers.

i) Based on actual monthly supplies during last financial year (eg. 2013-14), DO to arrive at per day average sale for each RO and advise the same to concerned RO dealer to make daily RTGS payments to IOC on every working day based on the above quantity. The payments are to be made against CCA 003 and alphabetical code k.

ii) On Sunday and Public Holidays, dealer should make payments on next working day.

iii) On receipt of final invoice from CGD Co. State Office/DO shall raise the invoice through SAP on concerned RO dealers as being done presently, within three working days. The dealer should make up balance shortfall (if any, along with his next- daily payment)

iv) In case dealer fails to make payment to IOC as per his daily schedule or fails to pay the differential on final invoicing, the penalty or delayed payment as mentioned in credit policy for MS/HSD will be recovered from the dealer.

(v) The overall responsibility for collection of payments will be with the Divisional Head, who would set up a monitoring system in the DO through FPR for ensuing timely collection against CNG sales.

vi) Divisional Head shall advise all CNG RO dealers on the above revised payment system in writing.

Vii) At SO level, the Retail Head & Finance Head can review the new system for smooth implementation, to avoid any unauthorized outstanding from any dealer.

The above CNG payment procedure for dealers may be implemented with immediate effect.

Sd/-

(M. Srinivas)
Kasturi

GM(Retail Sales

Sd/-

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7. It is clear from the above that IOCL has worked out a system of payment terms whereby, the dealers are required to make payment commensurate with the quantum of CNG sold by them on a daily basis. Since it is not feasible to inspect the quantum of CNG sold each day, IOCL has devised a method to receive payments based on average sales made in the previous year. Such payments are reconciled every fifteen days with the actual sales.

8. This Court is unable to accept that this arrangement is arbitrary or unreasonable in any manner. More importantly, the payment terms are matter of commercial arrangement and no interference by this Court would be warranted in the commercial terms between IOCL and

its dealers. The contention that the imposition of interest on shortfall of such daily payments is arbitrary and unreasonable since IOCL is not required to pay any interest to IGL, is also unmerited. The terms of supply between IGL and IOCL are a matter strictly between the two entities and IOCL's dealers are not concerned with the same. Insofar as the dealers of IOCL are concerned, they are required to comply with the contractual obligations which, *inter alia*, include an obligation to pay for the CNG sold on the terms as applicable between IOCL and the respective dealers. There is no obligation on the part of IOCL to ensure that the exact amount collected from its dealers is remitted to IGL.

9. This court finds the stipulation to pay interest on shortfall in making payments neither arbitrary, nor unreasonable.

10. The present petition is unmerited and is accordingly dismissed.

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VIBHU BAKHRU, J

JANUARY 11, 2019

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