THE HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT AT JABALPUR

Writ Petition No.17553/2020

K.K. Tiwari

Versus

Bharat Petroleum Corporation Limited & others

Jabalpur, dated19.11.2020

Mr. Sanjay K. Agrawal, Advocate with Mr. Achyut Govindam Tiwari, Advocate for the petitioner.

Mr. Rohit Jain, Advocate for the respondents.

Heard on the question of admission as well as on interim relief.

2. By the instant petition filed under Article 226 of the Constitution of India, the petitioner is questioning the validity, propriety and legality of the order dated 15.10.2020 (Annexure-P/1) whereby a penalty of Rs.1,60,307/- has been imposed upon the petitioner.

3. Learned counsel for the petitioner submits that the impugned order is a non-speaking and unreasoned order for the reason that it does not disclose as to what is the quota fixed by the respondents for supplying the refilled cylinders to a customer in a year. He further contends that in absence of any such quota fixed, the petitioner cannot be held guilty for supplying the unaccounted refilled Liquid Petroleum Gas (LPG) cylinders to the customer. He further submits that the petitioner has been held guilty for supplying the unaccounted refilled cylinders of LPG to one Mrs. Urmila Sahu more than the quota prescribed, therefore, as per Clause-2.2.5 of the Marketing Discipline Guidelines, 2018 (in short the 'Guidelines, 2018') the same comes within the purview of

major irregularities and, therefore, fine has been imposed upon the petitioner. He also submits that in absence of any limit or quota fixed for supplying the refilled cylinders to the customer, the petitioner cannot be held guilty for such charge in the circumstance when the customer Mrs. Urmila Sahu has accepted the refilled cylinder and the document in this regard is also available showing that those cylinders have been supplied to the said customer.

4. On the other hand, learned counsel for the respondents has raised an objection regarding maintainability of this petition mainly on the ground that the petitioner has an efficacious alternative remedy of appeal as per the Guidelines, 2018 applicable to the petitioner providing him a remedy of appeal under Clause-3.11 against the order passed taking action against the distributors towards major irregularity committed by it, therefore, the petitioner should avail the remedy of appeal. He also submits that in an identical petition, the coordinate Bench of this Court in **W.P. No.17554/2017 [M/s Neel Gas Agency, Jabalpur Vs. Indian Oil Corporation Limited, Jabalpur]** dismissed the said petition directing the petitioner therein to avail the alternative remedy of appeal. He submits that similar guidelines are also applicable upon to all the agencies relating to the business of LPG marketing activities. He further submits that in an agreement executed between the petitioner and the respondents, the petitioner was authorized to supply a particular quantity of refilled cylinders to its customers within a particular period, therefore, the petitioner should firstly avail the remedy of appeal if there is no disputed question involved and prays for dismissal of the petition.

5. Considering the rival contentions raised by learned

counsel for the parties and also taking note of the order passed by the coordinate Bench of this Court in the case of **M/s Neel Gas Agency, Jabalpur** (supra) in which this Court considering the fact that major penalty was imposed upon the petitioner therein, has observed that without availing the remedy of appeal available under Clause 3.11 of the Guidelines, 2018, the petition is not maintainable. I am also not satisfied with the contention raised by learned counsel for the petitioner that the impugned order is non-speaking and has been passed on the ground which is not existing because there is no quota prescribed for supplying the refilled cylinders to its customer. Learned counsel for the petitioner has failed to substantiate as to why, he could not raise the said point before the Appellate Authority and if the situation is so, the writ petition cannot be entertained without availing the efficacious remedy of appeal available with the petitioner.

6. Resultantly, I am not inclined to entertain this petition; therefore, the same is **dismissed** directing the petitioner to first avail the remedy of appeal available to him under the Guidelines, 2018.

(SANJAY DWIVEDI)
J U D G E

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