IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12854 of 2019

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M/s Nutan Gas Service A Partnership Firm through its partner Narendra Kumar Sharma (male) aged about 63 years son of Late Kapildeo Kuer, resident of Mohalla K.N. Path, Lal Bazar, Bettiah, Police Station- Bettiah Town, District- West Champaran.

... ... Petitioner

Versus

1. The Indian Oil Corporation Ltd. through its Managing Director, Registered Office at G-9 Ali Yawar Jung, Bandra (East), Mumbai- 400051.
2. The General Manager (LPG) Bihar State Office, Indane Oil Corporation, Lok Nayak Bhavan, Dak Bunglow Chowk, Patna.
3. The Deputy General Manager (LPG-S) Indane Area Office, Patna, First Floor, Exhibition Road, Patna- 800001.
4. The Area Manager Indane Oil Corporation Ltd, (Marketing Division) 1st. Floor, Shahi Bhawan, Exhibition Road, Patna.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Sanjeev Ranjan, Advocate
For the Respondents	:	Mr. K.D.Chatterjee, Senior Advocate
		Mr. Ankit Katriar, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date : 20-09-2021

The petitioner in this writ application is a partnership firm and is aggrieved by an order issued vide Reference PAO/Nutan Gas Service dated 23.04.2019 under the signature of the Deputy General Manager (LPG-S), Indane Area Office, Patna, of Indian Oil Corporation (hereinafter referred to as 'the Corporation'), whereby the petitioner's distributorship has been terminated. A show cause notice dated 29.11.2017 issued by the General Manager, Bihar State Office of the Corporation, has also been put to challenge, whereby charge against the petitioner of releasing five LPG connections in favour of ineligible persons have been held to be proved. The petitioner is seeking a consequential relief after quashing of the impugned order by way of direction to the respondent Corporation to restore the petitioner’s LPG distributorship, which is located at Bettiah in West Champaran, Bihar.

2. It would be relevant at this juncture to elucidate certain basic facts of the case to appreciate the true controversy, required to be addressed by this Court. Narendra Kumar Sharma, who is a partner of the firm and through whom the present writ application has been filed, was an LPG distributor and was running M/s Nutan Gas Service as sole proprietor firm, which was reconstituted into a partnership firm. A fresh agreement was executed between the Corporation and the partnership firm for running the LPG distributorship.

3. The LPG distributorships are appointed by Public Sector Oil Marketing Companies (OMCs) and are governed by the terms and conditions of the agreement entered into between the OMCs and the distributorships. On perusal of the contents of Revised Marketing Discipline Guidelines, 2015 (RMDG 2015) for LPG Distributorship (Annexure-9), it appears that in order to ensure that the distributors follow operating policies, Marketing Discipline Guidelines (MDGs) are issued. The MDGs form part and parcel of the instructions as issued from time to time under relevant clause of 'faithful performance' of the distributorship/dealership agreements. The Revised Marketing Discipline Guidelines 2015 for LPG Distributorship came into force with effect from 14.08.2015, as is clear from Annexure-9 of the writ application. Chapter 1 of the RMDG 2015 lays down the procedure for handling of LPG Cylinders by distributors, whereas Chapter-2 categorizes irregularities by LPG distributorships. Chapter-3 of the RMDG 2015 prescribes the actions which can be taken action against the distributorships under it. Chapter-4 deals with the delivery control, whereas Chapter-5 lays down the general guidelines. Various terms used in the guidelines have been defined in Chapter-6 of the RMDG 2015.

4. For the present adjudication, Chapter-2 and 3 of RMDG 2015 are relevant. In Chapter-2, irregularities by the distributorships have been classified in three major heads, namely, critical irregularities, major irregularities and minor irregularities. Chapter-3 of the RMDG 2015 provides for the action, which can be taken depending upon the nature of irregularity at the first instance of the irregularity, second instance of irregularity and third instance of irregularity. For example, third instance of critical irregularity committed by an LPG distributorship shall lead to termination of the distributorship, whereas fourth instance of major irregularity will have the consequence of termination of distributorship. Clause 3.5 of RMDG 2015 mentions that the cycle for calculating instances of irregularities shall be two years from the date of report of inspection/investigation. Meaning thereby, that if an irregularity is established and recorded in an inspection report, based on the date of the said inspection report, the records of the preceding two years period from the said date would be seen to determine whether the said irregularity is the first, second, third or fourth instance of that category of irregularity, namely, critical, major or minor. Instances of irregularities for each category during inspection/investigation are to be counted separately. If the instances of irregularity are only of one category, it is to be counted as the first instance of the said category provided that there is no established irregularity of the said irregularity in the preceding two years. The guidelines prescribe different punishments, which can be imposed by way of action in case of different categories of irregularities depending upon the instances of such irregularities.

5. The present case relates to allegation against the petitioner of fourth instance of major irregularity, which is the basis for the impugned action of termination of the distributorship.

6. This is not in dispute that before issuance of a notice dated 27.06.2017, consequent upon an inspection carried out by the Field Officer of the Corporation on 12.04.2017 and by the DNO on 15.04.2017, three penalties were imposed for three major irregularities against the petitioner. Details of which are as under :

Instance no.	**Date of inspection**	**Date of show cause issuance**	**Date of action taken under RMDG**	**Nature of established irregularities under RMDG**	**Penalty amount**
1	16.01.2016	03.02.2016	24.02.2016	Major irregularity 1st instance	89,218/-
2	02.02.2016	03.02.2016	24.02.2016	Major irregularity 2nd instance	1,08,880/-
3	06.07.2016	28.07.2016	01.09.2016	Major irregularity 3rd instance	3,82,707/-

7. It appears that subsequently, based on a complaint received from one Savitri Devi regarding irregularities in release of Pradhan Mantri Ujjwala Yojna (PMUY) connections in favour of women belonging to Below Poverty Line (BPL) category, two inspections were conducted on 12.04.2017 and 15.04.2017, during which it was found that AHL_TIN No.37100101300060000001900090004 against which Ujjwala connection had been released to the complainant Savitri Devi, wife of Kanhaiya Raut which did not belong to her rather the same belonged to Smt. Savitri Devi, wife of Ram Chandra Yadav, correct AHL_TIN No. 171001013000400000001600075003. Similar irregularities had been observed in respect of four cases mentioned by the complainant in her complaint.

8. A show cause notice was issued to the petitioner on 27.06.2017 asking the petitioner to explain within 15 days as to why action as per extended provision like RMDG 2015 and distributorship agreement should not be initiated against the petitioner's distributorship for the said irregularities. The petitioner submitted his explanation on 13.07.2017 asserting that the inspection was not conducted in his presence nor any report of inspection was ever made available. The petitioner further asserted that under the RMDG 2015, only when more than 50 and up to 100 cases were detected of incorrect recording of Aadhar number or bank account number against consumer number resulting in advance subsidy amount being transferred to wrong person's bank account, such irregularity can be treated to be a major irregularity under clause 2.2.1/2.2.15 of RMDG 2015. The petitioner further asserted in his reply to the show cause notice that all the beneficiaries were eligible persons under PMUY scheme to receive connections as they were from BPL families.

9. Be that as it may, the Deputy General Manager, LPG, Bihar State Office of the Corporation, on analysis of the petitioner's response, formed an opinion that the irregularity detected during the inspection held on 12.04.2017 and 15.04.2017 was major in nature and, therefore, the same being fourth major irregularity detected during the inspection, within a period of two years, action in the form of termination of distributorship under RMDG 2015 was attracted. Accordingly, through a show cause notice dated 29.11.2017, issued under the signature of General Manager, LPG Bihar State Office, the petitioner was asked to explain within 15 days of receipt of the said notice as to why the distributorship should not be terminated under clause 27(1) of the distributorship agreement executed on 06.01.2015 between the petitioner's firm and the Corporation. The petitioner was given an opportunity of personal hearing also to the said notice.

10. It is the petitioner's case, as asserted in the writ application in respect of three penalties earlier imposed on the ground of certain irregularities, which had, admittedly, been treated to be major irregularities, that none of them are sustainable, the same having been imposed without giving the petitioner adequate opportunity to show cause and without supply of relevant documents based on which the said penalties were imposed. I am not inclined to entertain any challenge made by the petitioner to such previously imposed penalties long back, which he chose to accept, in respect of the irregularities earlier detected by the Corporation, which have been treated to be major in nature. The sole question, which needs determination in the present writ application, is as to whether the fourth instance of irregularity, as alleged against the petitioner, can be treated to be an irregularity committed by the petitioner and whether such irregularity would fall under clause 2.2.3 of the RMDG 2015.

11. It is the petitioner's case with reference to the show cause notice dated 29.11.2017 that the same wrongly mentions that as per the guidelines/protocols to be followed for release of PMUY connections, it is the duty of the distributorship to match the application submitted by the beneficiaries against SECC-2011 database and after ascertaining correctness of the name and address of BPL status, enter the Know Your Customer (KYC) details in the OMC website portal through login password. The petitioner is placing heavy reliance on the scheme for release of free LPG connections to the BPL women under PMUY, Clause 6 of which casts obligation on the LPG Field Officials and not on the distributorships to match such applications against SECC-2011 database. It is the petitioner's case that the burden of matching of applications against SECC-2011 database and ascertainment of correctness of name, address and BPL status, which is on LPG Field Officers, is being unreasonably shifted to the distributorship for the sole purpose of taking action of termination of distributorship. Consequently, it is the petitioner's case that in any case, the fourth instance of irregularity alleged against the petitioner cannot be treated to be an irregularity under clause 2.2.3, rather such irregularity may fall under clause 2.2.15, only if more than 50 and up to 100 cases are detected of incorrect recording of Aadhar number and bank account number. It is accordingly the case of the petitioner that termination of distributorship by way of action of termination of distributorship stipulated under clause 3.2(iv) of the RMDG 2015 is illegal and requires this Court's interference. With the same reasoning, the petitioner has questioned the sustainability of a show cause notice dated 29.11.2017.

12. In the counter affidavit filed on behalf of the Corporation, it has been asserted that the petitioner has alternative remedy/forum of arbitration under clause 37(a) of the distributorship agreement dated 16.01.2015, which the petitioner ought to have invoked. Details have been given in the counter affidavit of the nature of irregularities detected by the Corporation leading to imposition of three major penalties on the petitioner in past. In respect of fourth major penalty, which is at the centre of the issue in the present case, it has been asserted that the distributor has wrongly mentioned that the irregularity comes under RMDG clause 2.2.15 (more than 50 and up to 100 cases detected of incorrect recording of Aadhar number and bank account number). It is the case of the Corporation that the irregularity comes under RMDG clause No. 2.2.3 (subsidized/non/subsidized domestic connections up to 10 numbers detected to have been released to ineligible persons/consumers/house-hold during the inspection or on the date of inspection).

13. A supplementary counter affidavit and second supplementary counter affidavit have been filed on behalf of the Corporation. It has been asserted in the supplementary counter affidavit that a PMUY protocol/circular was signed by the representatives of OMCs issued on 15.03.2017. It has also been asserted that by *e-mail* dated 01.09.2016, all relevant personnel in the State offices were informed that prospective customers are getting locked based on Aadhar and AHL_TIN at the time of KYC. An installation guideline and user manual for using the *off-line* KYC application was also attached to the aforesaid *e-mail*.

Subsequently, an *e-mail* was sent on 12.09.2017 to all Executive Directors of the respondent Corporation highlighting that it has come to the knowledge of the Ministry that *on-line* forms available on the official *website* of PMUY were not being accepted by some distributors. It is also stated that the said *e-mail* was forwarded to nutangasservice@gmail.com on 14.09.2016 and even by *e-mail* dated 17.02.2017, the petitioner's distributorship was informed that Ujjwala scheme was to be started soon and, therefore, it should be prepared by completing the KYC of the beneficiaries in advance.

14. Mr. Sanjeev Ranjan, learned counsel appearing on behalf of the petitioner, has submitted that there is nothing on record to substantiate that any guideline containing requirements different from the requirement laid under the scheme for release of free LPG connections to BPL women under PMUY, as communicated through letter dated 13.03.2016 issued by the Ministry of Petroleum and Natural Gas, Government of India, (Annexure-A), was ever issued and placed either in public domain or duly communicated to the distributors/the petitioner. He has submitted that if any guideline was subsequently issued, the same cannot have retrospective effect. He has further submitted that any guideline or order, unless duly issued and circulated, cannot become effective only because such decision was taken.

15. It has been argued on behalf of the Corporation that the petitioner is taking a hyper-technical point of non-circulation of the decision of the Corporation, whereby the distributors and not the Field Officers of the Corporation were charged with the duty to match the application submitted by the beneficiaries against SECC-2011 database and ascertain correctness of name, address and BPL status and enter KYC details in the OMCs *webportal* through login/password. It has also been submitted that from the very beginning the distributors were discharging such functions and it was practically impossible for the Field Officers of the Corporation to discharge such function. It has been submitted that subsequently it was formalised in the form of decision about which the distributorships were knowing. He has referred to frequently asked questions (FAQs) with regard to Pradhan PMUY as well as a consequent circular/guidelines/protocol to be followed in PMUY. Annexure-R/8A is captioned '*circulars/guidelines/ protocol to be followed to release of LPG connections under PMUY*'. In response to a query, as to when was the said circular issued, as Annexure-R/8 did not bear any date, the Court was tentatively informed that it was issued on 16.07.2017. However, on a request made on behalf of the Corporation, adjournment was granted to inform this Court about date of issuance of the said revised circular/guideline thereafter.

16. Having heard learned counsel for the petitioner and for the Corporation and having perused the pleadings on record, in my opinion, it would be apt to quote relevant portion of the show cause notice dated 29.11.2017, which is the basis for action against the petitioner : -

> *"It is pertinent to mention that as per Guidelines/ protocols to be followed for release of PMUY connections, the distributorship has to match the application submitted by beneficiary against SECC-2011 database and after ascertaining correctness of name, address and Below Poverty Line (BPL) status enter the Know Your Customer (KYC) details in the Oil Marketing Company (OMC) web portal thru login/password and subsequently release the connection only when de-duplication exercise is completed by the system. However, during inspection it was found that the guidelines/protocol have not been followed."*

17. Having noticed the said part of the show cause notice dated 29.11.2017, this Court needs to notice, in quick succession, relevant portion of PMUY scheme guidelines issued on 31.03.2016, which came into force since 01.04.2016 :

> *"The LPG Field officials will match the application against SECC-2011 database and, after ascertaining their BPL status, enter the details (name, address etc) into a dedicated OMC Web portal through a login/password given by the OMCs."*

18. Comparing the two quotes above, it is easy to discern that in place of 'Field Officials', 'Distributorship' has been mentioned in the show cause notice, though no circular/guideline has been shown to this Court to establish that the function, which was to be discharged by the OMCs' Field Officials under PMUY scheme guidelines, issued by the Government of India, was subsequently modified/altered by the Corporation with due intimation to the distributorship and other stakeholders.

19. Mr. Sanjeev Ranjan has rightly placed reliance on a Supreme Court's decision, in case of ***Union of India v. Kartick Chandra Mondal***, reported in **(2010) 2 SCC 422**, that unless duly issued and published, decision of the State or its instrumentalities cannot take effect much less from a retrospective date.

20. Noticing apparent discrepancies in the notice dated 29.11.2017, in my opinion, a case is made out for interference by this Court in a proceeding under Article 226 of the Constitution of India.

21. It is also for the reason that the said notice, though refers to non-adherence to guidelines/protocols by the distributorship, it does not disclose as to which guideline or general protocol was not followed by the distributorship, which was within its knowledge. The impugned notice dated 29.11.2017 is accordingly set aside. Consequently, the order dated 23.04.2019 passed by Deputy General Manager (LPG-S), Indane Area Office, Patna (respondent No.2) is also set aside.

22. The respondent Corporation shall, however, be at liberty to issue to the petitioner a fresh show cause notice incorporating therein, in clear terms, the circulars/guidelines, which were in vogue at the relevant point of time, which, according to the Corporation, was violated or breached by the petitioner warranting any action under RMDG 2015. If the Corporation intends to proceed in this direction, the same must be done within one month from today, failing which the petitioner's distributorship shall be required to be restored.

23. This application is allowed with the aforesaid observations and directions.

24. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.09.2021
Transmission Date	N/A