IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15415 of 2021

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1. Gupteshwar Mishra Son of Shivdip Mishra @ Shiwdeep Mishra Resident of Village- Durga Dih, Police Station- Bikramganj, District- Rohtas
2. Raj Enterprises, duly represented by its partner Gupteshwar Mishra, Aged about 58 years, Gender- Male, Son of Shivdip Mishra @ Shiwdeep Mishra, Resident of Village- Durga Dih, Police Station- Bikramganj, District- Rohtas

... ... Petitioners

Versus

1. The Indian Oil Corporation Limited through its General Manager, Jay Prakash Bhavan Dak Bungalow, Patna, Bihar
2. The General Manager, Indian Oil Corporation Limited, Jay Prakash Bhavan Dak Bungalow, Patna, Bihar Principal Secretary, Department of Health, Government of Bihar
3. The Chief Area Manager, Indian Oil Corporation Limited, Jay Prakash Bhavan Dak Bungalow, Patna, Bihar Principal Secretary, Department of Health, Government of Bihar
4. Sheo Kumar Mochi Son of Moti Mochi Resident of Village and Post- Bhadsara, P.S. Kako, District- Jehanabad

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Kamal Nayan Chaubey, Sr. Adv.
		Mr. Prashant Kumar, Adv.
For the Respondent-IOCL	:	Mr. K.D. Chatterjee, Sr. Adv.
		Mr. Ankit Katriar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 08-08-2022

In the present application the petitioners have sought for the following reliefs:-

> "(i) For issuance of appropriate writ, order or direction in the nature of certiiorari for quashing and setting aside the letter having Reference No. PAO/Raj Enterprises dated 4.3.2016 (Annexure-6)

issued by the Chief Area Manager, Indian Oil Corporation Limited whereby the customers of the petitioners have been attached with another distributorship on account of locking up of its premises by the district administration.

(ii) For issuance of appropriate writ, order or direction in the nature of Mandamus consequently directing the Respondents to reactivate the distributorship of the petitioners by restoring its customers and supply of LPG cylinders to the distributorship.

(iii) For issuance of an appropriate order or direction interdicting the Respondents from interfering into the business operations being carried out by the petitioner no. 1 in the name of the petitioner no. 2.

(iv) For grant of such other order or direction for which the petitioners are found entitled to in the facts and circumstances of the case."

2. The admitted facts pertaining to the Indiane LPG distributorship in question are that in the year 1992-1993 an advertisement for appointment of an Indiane LPG distributor for the location Bikramganj in Rohtas district was published by the respondent-Indian Oil Corporation Limited (for short "IOCL"). As per the advertisement, the same was limited to candidates belonging to the Scheduled Caste category only. The private respondent no. 4 Sheo Kumar Mochi applied for the said

distributorship under the Scheduled Caste category vide his application dated 03.01.1993. Subsequently, upon completion of the selection formalities, he was issued a letter of intent dated 18.09.1995. Thereafter, vide order dated 26.3.1997, he was appointed as the LPG distributor for Bikramganj location. The said distributorship was commissioned on 31.03.1997 in the name and style of "M/s Raj Enterprises" for which an agreement as proprietor firm under the Scheduled Caste category was executed between him and the IOCL on 22.8.2002.

3. The contentions advanced by Mr. K.N. Chaubey, learned Senior Counsel for the petitioners are that since inception, the respondent no. 4 was unable to run the said business. He had incurred liability of Rs. 10,40,850/- for which IOCL had issued notice to him and threatened to cancel the distributorship in case the dues would not be cleared. On the request of respondent no. 4, the petitioner no.1 agreed to form a partnership agreement dated 23.8.2004 for which the petitioner no. 1 had met the IOCL officials and, in pursuance thereof, deposited bank drafts dated 28.2.2002 for Rs. 2,50,000/- and Rs. 38,950/-. Subsequently, he deposited Rs. 45,000/-, Rs. 26,747/-, Rs.15,700/-, Rs. 72,000/- Rs. 45,000/- and Rs. 20,000/- to the respondent-IOCL on different dates through bank drafts. Upon

express acceptance and acquiescence of respondent-IOCL about partnership of the petitioner, the petitioner no. 1 had cleared dues of more than Rs.10 lacs. He had also invested several lacs rupees including purchase of hundred of cylinders in order to smoothly run the said business. Besides, the other liabilities of M/s Raj Enterprises were also cleared by the petitioner no. 1. All the investment business including its infrastructure of the office and the godown etc. were being maintained by the petitioner no. 1 and the respondent no. 4 had no stake in running the distributorship as he was not capable of making any investment.

4. It has further been contended that vide memo no. 312 dated 31.3.2009 as well as memo no. 315 dated 01.04.2009, the Sub Divisional Officer, Bikramganj directed the Officer-in-Charge Bikramganj police station to make an inventory of the godown and for handing over the same to the respondent no. 4. The Sub Divisional Officer, Bikramganj and the Officer-in-Charge had also locked the premises in question on 21.3.2009. Since the aforesaid actions of the Sub Divisional Officer, Bikramganj and the SHO of Bikramganj police station caused immense loss to the petitioner no. 1, he approached this Court by filing a writ application vide CWJC No. 4791 of 2009

seeking quashing of the aforesaid Memo Nos. 312 dated 31.3.2009 as well as 315 dated 01.04.2009 respectively passed by Sub Divisional Officer, Bikramganj and for commanding the respondents to restore back the status quo ante prevailing before 21.03.2009 and for further holding that respondent-Sub Divisional Officer, Bikramganj and the SHO, Bikramganj had no authority to lock the premises in question. He contended that the learned single Judge after hearing the parties did not allow the reliefs prayed for in the writ petition and disposed of the same by issuing certain observations and directions for enquiry. Being aggrieved by the order of the learned single Judge, the petitioner no. 1 preferred intracourt appeal before this Court vide LPA No. 24 of 2010. The Division Bench disposed of the aforesaid LPA vide order dated 24.02.2011 notwithstanding the disputed question of facts as discussed by the learned single Judge in the order passed in the writ application and directed the respondent authorities to remove the locks immediately from the premises in question and ordered for restoration of status quo ante. He contended that respondent-IOCL being a party to all such proceedings and orders having been passed by this Court chose to remain oblivious. However, in order to defeat the order of this court, the customers of the said distributorship were arbitrarily attached with another distributorship on 04.03.2016 without issuing any show cause notice on a *non est* ground of it having been sealed by the district administration while the administration had de-sealed the premises in favour of the petitioner no. 1 vide order dated 28.2.2016.

5. The respondent IOCL has filed its counter affidavit wherein it has been pleaded that after commissioning, the respondent no. 4 was successfully running the distributorship to the satisfaction of all concerned. The IOCL recognizes him and none else as its distributor, as the contractual agreement for the distributorship was entered between them only. The petitioner no. 1 is a third party and does not have any semblance of a relationship, jural or contractual with IOCL. As such, he is precluded from asserting any rights against the respondent-IOCL. Bereft of any locus having accrued to the petitioner no. 1, he is wrongly masquerading as a partner of Raj Enterprises and the name of petitioner no. 2 needs to be struck off from the array of parties.

6. It is further contended in the counter affidavit that respondent no. 4 had appointed one Anil Kumar Mishra, the younger brother of the petitioner no. 1 act as a Manager in the LPG distributorship on 21.02.2022 and taking advantage of his

brother's proximity to the sole proprietor, the petitioner no. 1 had started creating problems in the running of the distributorship. He purportedly manufactured forged partnership documents also which wrongly suggested that he and respondent no. 4 were jointly running the said distributorship as a partnership concern.

7. It has further been pleaded in the counter affidavit that recently on 21.06.2021 an in-principle approval has been accorded by the respondent-IOCL to the reconstitution proposal of existing sole proprietor (Sheo Kumar Mochi) to reconstitute the distributorship into a partnership firm by inducting a minority partner, namely, Sumant Singh with 25 per cent partnership stake in the distributorship as per the applicable reconstitution norms.

8. Mr. K.D. Chatterjee, learned Senior Counsel appearing for the respondent-IOCL submitted that by no stretch of imagination, the petitioner no. 1 can be treated to be a distributor in the present case as the distributorship belong to Scheduled Caste category. He has referred to original advertisement under which the distributorship was given in favour of the respondent no. 4 which has been marked as Annexure-R1/1 to the counter affidavit in order to show that the

distributorship was advertised only for candidates belonging to the Scheduled Caste category. Since the petitioner no. 1 does not belong to Scheduled Caste category, he was not even eligible to apply for the distributorship. He has also drawn our attention to R1/2 to the counter affidavit in order to show the letter of appointment in favour of respondent no. 4. He has referred to the guidelines for reconstitution of distributorship which would suggest that induction of a minority partner(s) from outside category in SC/ST category distributorship, the holding of persons belonging to the SC/ST category under which the distributorship was allotted should be at least 75%. He contended that at no point of time, the petitioner no. 1 approached the respondent-IOCL for reconstitution of the distributorship. He contended that even if there was any agreement between the petitioner no. 1 and respondent no. 4, the IOCL has no concern with that.

9. Mr. Chatterjee, learned Senior Counsel further contended that neither in the writ petition nor in the Letters Patent Appeal earlier filed by the petitioners before this Court, petitioner no. 1 was legally authorized to operate, manage and run the distributorship rather the order of learned single Judge and the Division Bench would make it clear that this Court

observed that the respondent no. 4 was the only person authorized by the IOCL to operate, manage and run the distributorship. He contended that the writ petition was against the action of the authorities of the State who had forcibly locked the premises and that was held to be bad by the Division Bench. By no stretch of imagination, the order passed in the LPA would confer any right upon the petitioner no. 1 to claim the proprietorship over the distributorship in question. The order passed by the Court was for restoration of status quo ante and not for status quo ante in the favour of petitioner no. 1.

10. Mr. Chatterjee, learned Senior Counsel further contended that though the impugned Annexure-6 was issued by the Chief Area Manager of the Indian Oil Corporation on 04.03.2016, the petitioner no. 1 did not challenge the same for over five years and he filed the present writ application as late as on 28.08.2021. He contended that no explanation has been given by the petitioner for the undue delay in challenging the order impugned. He submitted that since the distributorship had been locked by the district administration and the keys were never handed over to the actual proprietor, it was not possible to make any supply to such a locked distributorship. Therefore, in greater public interest vide impugned letter dated 04.03.2016,

the IOCL was constrained to attach the non-operating distributorship to a distributorship which was operational nearby.

11. We have heard learned Senior Counsel for the parties and carefully perused the records.

12. It is not in dispute that the advertisement for appointment of the Indiane LPG distributorship for the location Bikramganj was published by the respondent-Corporation, which was limited to the candidates belonging to the Scheduled Caste category only. The respondent no. 4 in his individual capacity under the Scheduled Caste category was appointed as the LPG distributor for the said location. The distributorship was commissioned in the name and style of M/S Raj Enterprises for which an agreement as proprietorship firm under the Scheduled Caste category was executed between the private respondent no. 4 and the IOCL on 28.02.2002. The petitioner no. 1 never applied for reconstitution of the commissioned distributorship in the prescribed format before the IOCL. Moreover, in terms of the guidelines of the IOCL, in case of reconstitution, from a sole proprietorship to partnership of any distributorship operating under the Scheduled Caste category, the share of an incoming non SC partner would be limited by

the extent policy to 25 per cent only. In the present case, the petitioner no. 1 is claiming his right over the distributorship as his contention is that all the investments have been made by him and thus he is legally authorized to operate, manage and run the distributorship.

13. In our considered opinion, the prayer made by the petitioner no. 1 cannot be allowed for the simple reason that he has no locus in the present matter. He is an alien so far the distributorship is concerned in the eyes of the IOCL. Whether the partnership documents annexed by the petitioner no. 1 in the present application are genuine or manufactured and forged are disputed questions of fact, which can be determined by a civil court of competent jurisdiction in a properly instituted suit, but on the basis, he cannot claim his right to operate the distributorship.

14. Till date, the petitioner no. 1 has not made any application before the IOCL for reconstitution of the LPG distributorship. The IOCL recognizes the distributorship to be a sole proprietorship firm and recently an in-principle it has approved the reconstitution proposal of the sole proprietor Sheo Kumar Mochi (respondent no.4) to reconstitute a distributorship into a partnership firm by inducting a minority partner, namely,

Sumant Singh with 25 per cent partnership stake. Any purported private agreement entered into in contravention of a distributorship agreement, which has its genesis in the State's Public Policy, would fall foul of the stipulations in Section 23 of the Indian Contract Act, 1872.

15. Mr. Chatterjee, learned Senior Counsel rightly contended that in the order of the learned single Judge passed in CWJC No. 4791 of 2009 as well as in the order passed by the Division Bench in the LPA No. 24 of 2010, it has been specifically accepted the fact that private respondent no. 4 was the only person authorized by the IOCL to operate, manage and run distributorship. He has also rightly submitted that the relief granted by the Division Bench in the Letters Patent Appeal by ordering restoration of status quo ante cannot be treated to be a right having been conferred upon the petitioner no. 1 to operate, manage and run the distributorship. The said order was passed by the Court because of the illegal and arbitrary exercise of powers by the administrative authorities of the State Government in locking the premises without initiating any proceeding either under Section 144 or Section 145 of the Code of Criminal Procedure.

16. We are also of the opinion that the writ application

is also fit to be dismissed on the ground of an inordinate delay of over five years in challenging the impugned Annexure-6 to the writ application. The petitioner no. 1 has not offered any explanation as to what preempted him from seeking judicial review after the impugned letter dated 04.03.2016 (Annexure-6) was issued by the IOCL for over five years.

17. For the reasons stated above, the writ application is dismissed.

18. However, before parting with the order, we make it clear that though in the cause title of the writ application 'Raj Enterprises' duly represented by its partner Gupteshwar Mishra has been made petitioner no.2, we have not adjudicated upon the right of the respondent no. 4, who is the sole proprietor of the 'Raj Enterprises' to challenge the impugned Annexure-6 to the present application.

(Ashwani Kumar Singh, J)

(Shailendra Singh, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12-08-2022
Transmission Date	NA