

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14137 of 2022

1. M/s Gauri Petroleum Retail Outlet of Indian Oil Corporation Ltd, through its proprietor Dr. Nitesh Kamal, At Lalshpur, NH- 57, District- Darbhanga, Bihar.
2. Dr. Nitesh Kamal, son of Late Kamla Prasad Singh, residing at Mohalla-Anawarganj, Hospital Road, Laheriasarai, Police Station- Laheriasarai, District- Darbhanga.

... .. Petitioner/s

Versus

1. The Indian Oil Corporation Limited through its Chairman, G-9, Ali Yavar Jang Marg, Bandra (East) Mumbai.
2. The Executive Director and State Head cum Appellate Authority, BHSO, Indian Oil Corporation Ltd.
3. The Chief Divisional Retails Sales Manager (CDRSM), Indian Oil Corporation Ltd.
4. The Chief Manager (Vigilance), Eastern Region, Indian Oil Corporation Ltd.
5. Sujit Ray, Chief Manager (Vigilance), Eastern Region, Indian Oil Corporation Ltd.
6. The Assistant Manager (Retail Sales), Darbhanga, Indian Oil Corporation Ltd.
7. Brajesh Kumar, Assistant Manager (Retail Sales), Darbhanga, Indian Oil Corporation Ltd.
8. The Manager (Engg.), Divisional Officer, Muzaffarpur, Indian Oil Corporation Ltd.
9. Nishant Raj, Manager (Engg.), Divisional Office Muzaffarpur, Indian Oil Corporation Ltd.
10. Balmiki Kumar (Technician), attached to Indian Oil Corporation Ltd.
11. Pankaj Kumar (Technician) attached to Indian Oil Corporation Ltd. All through the Chief Divisional Retail Sales Manager, Indian Oil Corporation Ltd., Muzaffarpur Divisional Officer, Krishna Complex, Akharaghat Road, Muzaffarpur.
12. The Union of India through the Ministry of Oil and Natural Gas, Government of India, Shastri Bhawan, New Delhi- 110001.
13. The Ministry of Oil and Natural Gas, through its Secretary, Government of India, Shastri Bhawan, New Delhi- 110001.
14. The Secretary, Ministry of Oil and Natural Gas, Government of India, Shastri Bhawan, New Delhi- 110001.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Y. V. Giri, Sr. Advocate



For the Respondent/s : Mr. Ratnesh Kumar Singh, Advocate
Dr. K. N. Singh, A.S.G.
Mr. Sanat Kumar Mishra, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

4 01-12-2022 The petitioner has prayed for the following relief (s) :-

“(i) Quashing of the appellate order dated 17.05.2022 (Annexure- 26) passed by Sri Vijyan Kumar, Executive Director, (Retail Sales) cum Appellate Authority, Indian Oil Corporation Ltd passed pursuant to the order dated 13.01.2022 in CWJC No.6353/2021, whereby the Learned Appellate Authority has dismissed the Petitioners' appeal and upheld the order dated 09.07.2020 (Annexure-20) terminating the dealership agreement dated 23.08.2013 (Annexure-1) of the Petitioners without any inquiry, in violation of principle of natural justice and Marketing Discipline Guidelines for RO/SKO Dealerships of Public Sector Marketing Companies, 2013 as well as without jurisdiction as the precondition for initiating proceeding for alleged tampering of seal was without jurisdiction in absence of opinion of Weight and Measurement Department mandated under the Clause-5.1.2 (b) of the Marketing Discipline Guidelines for RO/SKO Dealerships of Public Sector Marketing Companies, 2013 (hereafter referred as "the MDG, 2013") (Annexure-2).

(ii) Quashing of the order of Termination dated 09.07.2020 (Annexure-20) issued under the signature of the Chief Divisional Retail Sales Manager, Muzaffarpur vide Letter No. MDO/R/Gauri Petroleum dated 09.07.2020, whereby the "Dealership Agreement" executed between the Petitioner and respondent Indian Oil Corporation Ltd. (herein after referred to as Corporation) dated 23.08.2013, stands terminated with immediate effect



on allegations of irregularities so committed in breach of the MDG, 2013 and in breach of the Terms and Conditions of Dealership Agreement dated 23.08.2013 as impugned termination order dated 09.07.2020 has been issued on the show cause reply, without inquiry and absence of jurisdiction facts.

(iii) Quashing of the impugned show cause notice dated 10.12.2019 (Annexure-17) issued under the signature of the Chief Divisional Retail Sales Manager, Muzaffarpur vide Letter No. MDO/R/Gauri Petroleum dated 10.12.2019 without existence of jurisdictional facts, statements of allegations, list of documents and witnesses at belated stage as well as the opinion of the Weight and Measurement Department as per the Clause -5.1.2 (b) of the MDG, 2013 rendering entire/all subsequent proceedings to be illegal bad, and void abintio.

(iv) declaring the clause-8.2 Chapter-8 regarding punishment for critical irregularities, Clause-8.5.1 to 8.5.8 & 8.6 to 8.8 regarding the procedure enumerated for violations and Clause-8.9 - Appellate Authority of impugned Marketing Discipline Guidelines (Annexure-2) are arbitrary, unreasonable, unjust illegal bad, void abintio and violative of Clause -5.1.2 (b) of the MDG, 2013 & Article - 14, 19 & 21 of the Constitution of India.

(v) Awarding compensation for arbitrary, unreasonable, unjust illegal bad, void abintio and violative of Clause -5.1.2 (b) of the MDG, 2013 & Article -14, 19 & 21 of the Constitution of India.

(vi) directing the respondents to lift the 2875 Liters of MS/Petrol for Rs.2,54,741/- and 8691 liters of HSD/Diesel for Rs.7,08,751/- lying in their tanks immediately and to pay/credit the amount of the said Petrol and Diesel along with wrongly withhold amount of Rs.14,55,501/- toward Petrol and Diesel and commission along with market interest.

(vii) grant consequential relief upon setting aside of aforesaid impugned orders, the Dealership Agreement be restored and the business of the Retail Outlet be resituated.”



Having perused learned counsel for the parties, we are of the considered view that the impugned order dated 09.07.2020, passed by respondent No.2, namely, the Chief Divisional Retails Sales Manager (CDRSM), Indian Oil Corporation Limited, Muzaffarpur Divisional Office, Muzaffarpur (Annexure-20, Page-233) as also that of the appellate authority dated 17.05.2022, titled as M/s Gauri Petroleum Lalsahpur, District- Darbhanga, Bihar Vs. Indian Oil Corporation Limited, Muzaffarpur DO, Bihar (Annexure-26, Page-286) needs to be quashed with liberty to the respondent to pass a fresh order, in accordance with law.

As per the minutes of personal hearing dated 10th June, 2020 (Annexure-19, Page-229), petitioner was afforded personal hearing and the matter was heard by an officer of the level of Executive Director and State Head, namely, Vibhash Kumar. However, the order was passed not by him but by one Shri Subir Das who is Chief Divisional Retails Sales Manager, Muzaffarpur Divisional Office, Muzaffarpur, an officer below the rank of Executive Director and State Head. If the Executive Director had heard the petitioner, it was he who ought to have passed the order. The principles of natural justice thus stood violated.



However, it is argued that the order was actually passed by the Executive Director and State Head but communicated by the Chief Divisional Retails Sales Manager, Muzaffarpur Divisional Office.

Well, reading of the order does not substantiate such fact nor is it averred in the counter affidavit filed thus far.

We also notice that the order termed to have been passed by an appellate authority is of an officer of the rank of Executive Director (Retail Sales). Now, if the Executive Director and State Head had actually heard the petitioner in the original proceedings then obviously an officer below /similar of his rank could not have been the appellate authority.

In our considered view principles of natural justice stands violated. Passing of the impugned order entails both civil and penal consequences.

We may only remind the respondent that the petitioner has not, in any manner, delayed the proceedings, inasmuch as, he had preferred the appeal before the authority, whom he was asked to do so, and it was only as a result of intervention of this Court in CWJC No. 6353 of 2021, titled as M/s Gauri Petroleum Retail Outlet of Indian Oil Corporation Ltd and Anr. Vs. the Indian Oil Corporation Limited and Ors. (Annexure-24, Page-



281) that the appeal was expedited and heard.

Under these circumstances, we quash and set aside the impugned order dated 09.07.2020, passed by respondent No.2, namely, the Chief Divisional Retails Sales Manager (CDRSM), Indian Oil Corporation Limited, Muzaffarpur Divisional Office, Muzaffarpur (Annexure-20, Page-233) with further directions :-

(a) The petitioner shall be afforded opportunity of fresh personal hearing;

(b) As stated by Mr. Sanat Kumar Mishra, learned counsel for the respondent/s, petitioner is required to make himself available in the office of Chief Divisional Retails Sales Manager (CDRSM), Indian Oil Corporation Limited, Muzaffarpur Divisional Office, Muzaffarpur **on 15.12.2022 at 10.30 am.** Ordered accordingly. On such date, a fresh date shall be fixed enabling the petitioner to place on record additional material, if any, and the date on which the petitioner shall be afforded hearing;

(c) Petitioner through learned counsel undertakes to fully cooperate in such proceedings and not take unnecessary adjournment;

(d) The proceedings shall positively be concluded within a period of two months from the date of appearance



of the petitioner;

(e) The authority concerned shall pass a speaking order, assigning reasons, copy whereof shall be supplied to the parties; and

(f) Liberty reserved to the parties to take recourse to such remedies, should the need so arise subsequently;

The petition stands disposed of in the aforesaid terms.

Interlocutory application, if any, stands disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

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