

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20292 of 2021

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M/s Baijnath Prasad & Sons, Indian Oil Retail Outlet at Jasoiya P.O.-
Aurangabad, District- Aurangabad through its Partner Anil Kumar Khemka,
aged about 61 years (Male), Son of Late Baijnath Prasad Khemka, Resident of
New Area, Mahrajganj Road, P.O.- Aurangabad, P.S.- Aurangabad, District-
Aurangabad (Bihar)

... .. Petitioner/s

Versus

1. Indian Oil Corporation Limited through its Executive Director, Bihar State Office having its Office at 5th Floor, Loknayak Jay Prakash Bhavan, Dal Bungalow Chowk, Patna.
2. The Executive Director, IOCL Bihar State Office having its Office at 5th Floor, Loknayak Jay Prakash Bhavan, Dal Bungalow Chowk, Patna.
3. The General Manger (Retail Sales G.M I/C.R.S.) Indian Oil Corporation Ltd., Bihar State Office having its Office at 5th Floor, Loknayak Jay Prakash Bhavan, Dal Bungalow Chowk, Patna.
4. The Deputy General Manager/ Divisional Retail Sales Head, Retail Sales, Indian Oil Corporation Ltd., Marketing Division, Patna Divisional Office, Patna.
5. The Senior Divisional Retail Sales Manager, Patna Divisional Office, Indian Oil Corporation Limited, Patna.
6. The Field Officer, Indian Oil Corporation Limited, Aurangabad.
7. Gilbarco Veeder Root India Pvt. Ltd., having its Corporate Office at- Art Guild House, B Wing, 1st Floor Pheonix Marketcity, L.B.S. Road, Kurla West, P.S.- Kurla,Mumbai, State- Maharashtra, through its Managing Director.
8. Ajay Garg, son of not known to the petitioner, presently posted as General Manager (Retail Sales G.M I/C.R.S), Indian Oil Corporation Ltd., Bihar State Office having its office at 5th Floor, Loknayak Jay Prakash Bhavan, Dal Bungalow Chowk, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Brisketu Sharan Pandey, Advocate
Mr. Madan Kumar, Advocate
Mr. Abhishek Kumar, Advocate



For the Respondent/s : Mr. Sanat Kumar Mishra, Advocate

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR**

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 03-02-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“(i) For issuing writ/writs, order/orders including the writ of mandamus directing the Respondent Corporation through Respondent No. 3 to unseal the Dispensing Unit having S.R. No. 201605001186 of the petitioner Retail Outlet (RO), which has been sealed by the Respondents since 26.05.2021 even when there is no adverse report of adulteration and all the fuel samples drawn from the petitioner Retail Outlet have been found to be correct within prescribed specification upon the Lab Test/Clinical Test conducted by the Respondent Corporation.

(ii) For issuing writ of mandamus directing thereby the Respondent Oil Corporation to allow the petitioner Retail Outlet usual resumption of business by selling MS/HSD/Branded Fuels from the respective Dispensing Unit as it used to do prior to sealing of the Dispensing Unit having S.R. No. 201605001186 of the petitioner Retail Outlet (RO) on 26.05.2021.

(iii) For issuing writ of mandamus directing the Respondent No. 3 to 6 not to take out mother board and pulsar of the petitioner Retail Outlet unless additional



wiring/external fitting is observed as taking out such mother board/pulsar kit would again result in rendering the Dispensing Unit non-functional moreover such taking out of mother board/pulsar kit is not permissible under any provisions of MDG.

(iv) For holding that it is arbitrary on the part of the Respondent No. 3/Respondent No. 8 to have allowed unsealing of Dispensing Unit (DU) of other similarly situated Retail Outlets viz. Aurangabad Service Station and Maa Saraswati Fuels, from the same District having same error in the Dispensing Unit whereas Retail Outlet of the petitioner despite being similarly placed is being treated differently as hostile discrimination by restraining the unsealing of the Dispensing Unit of the petitioner for no justifiable reasons.

(v) For holding that the Respondent No. 8 for his personal grievances against the petitioner Retail Outlet and with vindictive attitude towards the petitioner has willfully deprived the petitioner from getting its Dispensing Unit unsealed whereas in same District of the petitioner the other Retail Outlets viz. Aurangabad Service Station, Maa Saraswati Fuels having same cause and which were subjected to sealing of Dispensing Unit have been allowed unsealing of their Dispensing Unit whereas out of sheer arbitrariness with smacks of bias the Dispensing Unit of the petitioner has yet not been unsealed by Respondent No. 3/Respondent No. 8.

(vi) For any other relief or reliefs for which the petitioner is found entitled in the facts and circumstances of the case.”

After the matter was heard for some time, finding the Bench not to be agreeable with the submissions made by learned counsel for the petitioner, learned counsel for



the petitioner, under instructions, seeks permission to withdraw the present petition reserving liberty to approach the Respondent No. 4 namely, The Deputy General Manager/ Divisional Retail Sales Head, Retail Sales, Indian Oil Corporation Ltd., Marketing Division, Patna Divisional Office, Patna.

Learned counsel for the respondents states that if such a representation is filed by the petitioner, the authority concerned shall consider and dispose it of expeditiously and preferably within a period of four months from the date of its filing along with a copy of this order.

Statement accepted and taken on record.

The Hon'ble Supreme Court in ***D. N. Jeevaraj Vs. Chief Secretary, Government of Karnataka & Ors, (2016) 2 SCC 653***, paragraphs 34 to 38 observed as under:-

“34. The learned counsel for the parties addressed us on the question of the bona fides of Nagalaxmi Bai in filing a public interest litigation. We leave this question open and do not express any opinion on the correctness or otherwise of the decision of the High Court in this regard.

35. However, we note that generally speaking, procedural technicalities ought to take a back seat in public interest litigation. This Court held in *Rural Litigation and Entitlement Kendra v. State of U.P.* [*Rural Litigation and Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504] to this effect as follows: (SCC p. 515, para 16)

“16. The writ petitions before us are not



inter parties disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court.”

36. A considerable amount has been said about public interest litigation in *R&M Trust* [*R&M Trust v. Koramangala Residents Vigilance Group*, (2005) 3 SCC 91] and it is not necessary for us to dwell any further on this except to say that in issues pertaining to good governance, the courts ought to be somewhat more liberal in entertaining public interest litigation. However, in matters that may not be of moment or a litigation essentially directed against one organisation or individual (such as the present litigation which was directed only against Sadananda Gowda and later Jeevaraj was impleaded) ought not to be entertained or should be rarely entertained. Other remedies are also available to public spirited litigants and they should be encouraged to avail of such remedies.

37. In such cases, that might not strictly fall in the category of public interest litigation and for which other remedies are available, insofar as the issuance of a writ of mandamus is concerned, this Court held in *Union of India v. S.B. Vohra* [*Union of India v. S.B. Vohra*, (2004) 2 SCC 150: 2004 SCC (L&S) 363] that: (SCC p. 160, paras 12-13)

“12. Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.

13. A writ of mandamus is issued in favour of a person who establishes a legal



right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.”

38. A salutary principle or a well-recognised rule that needs to be kept in mind before issuing a writ of mandamus was stated in *Saraswati Industrial Syndicate Ltd. v. Union of India* [*Saraswati Industrial Syndicate Ltd. v. Union of India*, (1974) 2 SCC 630] in the following words: (SCC pp. 641-42, paras 24-25)

“24. ... The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well-recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in *Halsbury's Laws of England* (3rd Edn.), Vol. 11, p. 106:

‘198. *Demand for performance must precede application.*—As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal.’



25. In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution.”

As such, petition stands disposed of on the following terms:-

- (a) Petitioner shall approach the authority concerned i.e. Respondent No. 4 namely, The Deputy General Manager/ Divisional Retail Sales Head, Retail Sales, Indian Oil Corporation Ltd., Marketing Division, Patna Divisional Office, Patna, within a period of four weeks from today by filing a representation for redressal of the grievance(s);
- (b) The authority concerned shall consider and dispose it of expeditiously by a reasoned and speaking order preferably within a period of four months from the date of its filing along with a copy of this order;
- (c) The order assigning reasons shall be communicated to the petitioner;
- (d) Needless to add, while considering such representation, principles of natural justice shall



be followed and due opportunity of hearing afforded to the parties;

- (e) Also, opportunity to place on record all relevant materials/documents shall be granted to the parties;
- (f) Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;
- (g) We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;
- (h) Liberty reserved to the petitioner to approach the appropriate forum/Court, should the need so arise subsequently on the same and subsequent cause of action;
- (i) We have not expressed any opinion on merits. All issues are left open;
- (j) The proceedings, during the time of current Pandemic- Covid-19 shall be conducted through digital mode, unless the parties otherwise



mutually agree to meet in person i.e. physical mode;

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sujit/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.02.2022
Transmission Date	

