

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

206

CWP No.27564 of 2022

Date of decision: 20.12.2022

M/s Fazilka Gas Service

....Petitioner

V/s

Indian Oil Corporation Limited and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS SURI

Present: Mr. Bhupinder Kumar Gupta, Advocate, for the petitioner.

Mr. Ashish Kapoor, Advocate, for the respondents.

VIKAS SURI, J. (Oral)

The petitioner has invoked jurisdiction of this Court through this petition preferred under Article 226/227 of the Constitution of India, by making the following substantive prayers:-

- a. Issue an appropriate writ, especially in the nature of certiorari, for setting aside order dated 18.11.2022 (Annexure P-6), passed by Id. Appellate Authority & CGM (LPG) PSO, vide which appeal preferred by the petitioner against the order dated 22.07.2022 (Annexure P-3) passed by Id. Divisional LPG Head, JIDO, has been dismissed in an illegal and arbitrary manner.
- b. Issue an appropriate writ, especially in the nature of certiorari, for setting aside order dated 22.07.2022 (Annexure P-3) passed by Id. Divisional LPG Head, JIDO, vide which fine of Rs.1,20,63,537.00 (Rupees One Crore Twenty Lacs Sixty Three Thousand Five Hundred Thirty Seven only) has been imposed on the petitioner, in an illegal and arbitrary manner.
- c. Grant ad-interim by staying operation of impugned order dated 18.11.2022 (Annexure P-6), passed by Id. Appellate Authority & CGM (LPG) PSO, as well as order dated 22.07.2022 (Annexure P-3) passed by Id. Divisional LPG Head, JIDO, during the pendency of present civil writ petition before this Hon'ble Court.

- d. Pass any other order/direction/writ, which this Hon'ble Court may deem fit and proper, keeping in view the peculiar facts and circumstances of the present case, in favour of the petitioner.
- e. Exempt petitioner from filing certified and typed copies of Annexure P-1 to P-8 and be allowed to file true photocopies of the same.

On 02.12.2022, the following order was passed:-

Learned counsel for the petitioner submits that the appellate authority has not even touched upon the specific ground of challenge raised in the Grounds of Appeal (Annexure P-4), inasmuch as it pertains to incorrect calculation of penalty for shortage of 2719 Nos. of 14.2 kg cylinder, which is also in derogation to the provisions of the Marketing Discipline Guidelines, 2022 for LPG Distributorship w.e.f. 01.05.2022 (Annexure P-8). It is further submitted that the said penalty/fine has been calculated at the rate of Rs.2650/- against each cylinder, on the basis of the current tariff revised vide communication dated 16.06.2022 (Annexure P-7), whereas it should have been reckoned only at the rate of Rs.2300/- per cylinder.

Notice of motion to the limited extent.

Mr. Ashish Kapoor, Advocate accepts notice on behalf of the respondents and submits that he has instructions to state that the irregularity committed was first detected on 02.06.2022, therefore the penalty imposed will be accordingly re-calculated at the rate of Rs.2300/- per cylinder with regard to 2719 Nos. of 14.2 kg cylinder and the revised demand/order would be supplied to the petitioner within a week.

Let an appropriate affidavit in that regard be placed on record along with the proposed revised calculations, indicating the total difference that would come about in the total fine imposed.

Learned counsel for the petitioner further submits that the penalty regarding shortage of 629 Nos. of 19 kg cylinder, has also been incorrectly calculated. However, learned counsel for the petitioner is not in a position to refer to any

material on record to demonstrate the alleged error or point out from the grounds of appeal, the specific ground impugning the said imposition. Any factual plea not raised before the authority below, cannot be permitted to be raised for the first time at this stage and particularly in exercise of extra ordinary jurisdiction.

Keeping in view the submissions on behalf of the respondents, an amount of Rs.9,51,650/- out of the fine imposed shall remain stayed till the next date of hearing.

Learned counsel for the petitioner makes an oral prayer seeking enlargement of time for depositing the balance fine. He submits that the last date for making deposit in terms of impugned order dated 18.11.2022 (Annexure P-6) is today i.e. 02.12.2022.

Learned counsel for the respondents submits that in case the petitioner makes the deposit within two working days, in that eventuality no coercive action would be taken against the petitioner.

Keeping in view the above, the time to deposit the balance fine is enlarged to 07.12.2022.

Adjourned to 14.12.2022.”

Pursuant to the aforesaid order, the respondents have filed affidavit 12.12.2022 annexing therewith two orders dated 06.12.2022 (Annexure R-1/1) and 07.12.2022 (Annexure R-1/2). It has been pleaded that vide order dated 06.12.2022 (Annexure R-1/1), the revised fine/penalty comes to Rs.1,09,40,590/-.

A perusal of the order dated 07.12.2022 (Annexure R-1/2) shows that the petitioner had preferred an intra court appeal against the order dated 02.12.2022 noticed above. In LPA-1102-2022, the following order was passed on 07.12.2022:-

“Learned counsel for the appellant has made a statement that an amount of Rs.20 lacs out of the remaining amount of Rs.99 lacs would be paid today itself to the

respondents. The remaining amount he will pay in weekly instalments by 30th December, 2022. For this, he prays for a day's accommodation to file an undertaking in Court.

Hearing of the case is deferred to 08.12.2022.

The Court will consider the request of the counsel for the appellant, in case an amount of Rs.20 lacs is paid today.”

Learned counsel for the respondents submits that the petitioner failed to deposit the amount of Rs.20 lakhs within the time stipulated in the order dated 07.12.2022. The said appeal was dismissed vide order dated 15.12.2022. The final order passed by the Letters Patent Bench reads as under:-

“LPA-1102-2022

On 07.12.2022, the following order was passed:-

“Learned counsel for the appellant has made a statement that an amount of Rs.20 lacs out of the remaining amount of Rs.99 lacs would be paid today itself to the respondents. The remaining amount he will pay in weekly instalments by 30th December, 2022. For this, he prays for a day's accommodation to file an undertaking in Court.

Hearing of the case is deferred to 08.12.2022.

The Court will consider the request of the counsel for the appellant, in case an amount of Rs.20 lacs is paid today.”

It is admitted by the counsel for the parties that the amount of Rs.20 lacs could not be paid by the appellant on the said date i.e. 07.12.2022.

To check the bona-fides of the appellant, the request of the counsel had been accepted but the appellant having failed on that, at the very threshold, we are not inclined to interfere in the present appeal.

The appeal, therefore, stands dismissed.

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In the light of the dismissal of the main appeal, these applications have been rendered infructuous and the same are disposed of as such.”

Learned counsel further points out that no undertaking was filed in Court, pursuant to the order dated 07.12.2022 (Annexure R-1/2), though the amount of Rs.20 lakhs was belatedly deposited on 14.12.2022. An amount of Rs.10 lakhs had earlier been deposited being the precondition for preferring an appeal, as per the provisions of the Marketing Discipline Guidelines, 2022. Thus, an amount of Rs.79,40,590/- (Rs.1,09,40,590-Rs.30,00,000/-) is still outstanding against the petitioner.

A perusal of the record shows that the only grievance for which notice of motion to that limited extent was issued, stands addressed on passing of the order dated 06.12.2022 (Annexure R-1/1) and as such no further orders are required to be passed in that regard.

Heard learned counsel for the parties.

Keeping in view the above noticed factual matrix and submissions, as well as the conduct of the petitioner, the present petition deserves to be rejected.

Accordingly, the writ petition is dismissed.

(VIKAS SURI)
JUDGE

December 20, 2022

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Whether speaking/reasoned:	Yes
Whether reportable:	No