IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14321 of 2022

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M/s Sridhika Indane a Proprietorship Firm, having its place of Business at Plot No. 1914, Khata No. 133, Thana- 353, Village Bishwanathpur, Dumra, District Sitamarhi through its Proprietor Rajesh Kumar, Male, Aged about 46 years, Son of Laxmi Narayan Sahu, Resident of Mohalla Bhathiyari Sarai, Gangasagar, Ward No. 17, P.S. Darbhanga, District Darbhanga.

... ... Petitioner/s

Versus

1. The Indian Oil Corporation Ltd. through its Managing Director, Registered Office at G-9 Ali Yawar Jung, Bandra (East), Mumbai.
2. The Managing Director, Indian Oil Corporation Ltd., G-9 Ali Yawar Jung, Bandra (East), Mumbai.
3. The General Manager (LPG) Bihar State Office, Indane Oil Corporation, Lok Nayak Bhavan, Dak Bunglow Chowk, Patna.
4. The Deputy General Manager (LPG-S) Indane Area Office, Patna, First Floor, Exhibition Road, Patna.
5. The Area Manager Indane Oil Corporation Ltd, (Marketing Division) 1st. Floor, Shahi Bhawan, Exhibition Road, Patna.
6. The Assistant Manager (LPG-S), Muzaffarpur Indane Divisional Office, Sherpur, P.O. MIC Bela, Muzaffarpur.
7. The Divisional LPG Head, Muzaffarpur Indane Divisional Office, Sherpur, P.O. MIC Bela, Muzaffarpur.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate
		Mrs. Priya Gupta, Advocate
		Mr. Lokesh Kumar, Advocate
		Mr. Anand Kumar, Advocate
		Mr. Rahul Kumar, Advocate
For the Respondent/s	:	Mr. Sanat Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 10-01-2023

Heard Mr. S.D. Sanjay for the petitioner and Mr. Sanat Kumar Mishra for the State.

The petitioner/LPG Dealer is aggrieved by the decision of respondent no. 7/the Divisional LPG Head, Muzaffarpur, Indane

Divisional Office, IOC, whereby, in a disciplinary action against the petitioner under the MDG (Marketing Discipline Guidelines), 2022, he has been saddled with a fine of Rs.3,72,659.86/- as also the appellate order dated 24.08.2022, affirming the same, which was communicated to the petitioner through E-mail dated 05.09.2022.

The appellate order but has been brought on record by the respondent/Indian Oil Corporation.

The methodology for calculating the quantum of fine is 20% of the yearly commissionage plus the quantum of irregularity. 79 numbers of 14.2 Kgs. cylinders were found to be missing in the inspection, the price of which was calculated at Rs.1,81,700/-. Rest of the amount as noted above is by way of 20% of the commissionage. Be it noted that the commission earned by the petitioner is Rs.8,046,806.32/-.

There is no dispute with respect to the calculation of the fine.

What the petitioner contests is that the authority passing the first order did not assign any reason to reject the explanation offered by the petitioner. One of the mandates in the MDG (Marketing Discipline Guidelines), 2022 is that the concerned Divisional LPG Head/Territory Manager/Regional Manager, shall, after reviewing the charges levelled in the show cause notice to a dealer and the reply received from him, shall pass a speaking order within a period of 45 days from the date of receipt of the reply.

The petitioner has assailed the aforesaid order on the ground that the concerned authority, reviewing the allegation against the petitioner, has only disclosed that the explanation offered by the petitioner is not satisfactory and then he has gone on to calculate the quantum of fine for the shortage in the stock position.

In the first order, referred to above, the petitioner was made known that he could appeal against the aforesaid order within thirty days from the receipt of the order, failing which the order shall become final.

The petitioner had appealed against the aforesaid order with all his explanation but the same stood rejected, as noted above, vide order dated 24.08.2022. Though some reason has been assigned in the appellate order for rejecting the reply of the petitioner viz. that the explanation offered by the petitioner was not acceptable as 79 numbers of 14.2 Kgs. domestic cylinders were found missing at the time of inspection and the claim of the dealers/petitioner of confirmation of the stock of previous day’s sale to be taken on its face value and not on physical inspection, was not accepted to be the correct explanation for the missing cylinder.

Mr. S.D. Sanjay while assailing both the orders has submitted that the first order is non-speaking whereas the second/appellate order discloses wrong reasoning. He has submitted that in the first instance, the petitioner had informed the inspecting authority that few cylinders were given to two of the vendors, early in the morning, before the inspection began, because it was the summer month of May. During the course of the day those cylinders were returned by the vendor, which fact though was orally acknowledged by the inspecting team but the same entered in the report. It was for this reason that the representative of the petitioner refused to append his signature on such report.

The learned counsel for the petitioner submits that this too, (non-signing of the report of inspection) was considered as an act of intransigence and was made a ground for imposing fine on the petitioner. The explanation voiced in the memo of appeal was never advert to.

We find that the petitioner is not coming up with such explanation for the first time in this writ petition but it was his consistent stand right from the time when the inspection was made.

We do acknowledge that if at all the report was not worth signing by the representative of the petitioner, such protest ought to have been registered on the report itself which would have shown the bona fides of the petitioner. Nonetheless, we find that another decision is required to be taken by the original authority, taking into account such explanation. The original authority shall have it ascertained whether the accusation of the petitioner is correct, and shall advert to the reply filed by the petitioner and only thereafter shall take a decision in that regard.

We say so for another reason that even though few reasonings have been given in the appellate order, the defect of the original order being non-speaking cannot be cured/restituted in appeal.

For the afore-noted reasons in the preceding paragraphs, we set aside the order passed by the original authority as also the appellate authority and remit the matter to the original authority to advert to the reasons given by the petitioner, ascertain the facts afresh and pass an objective order with reasons within a period of four weeks from the date of receipt/production of a copy of this order.

The authority shall also consider the feasibility of giving personal hearing to the petitioner.

The application is disposed of with the afore-noted direction.

(Ashutosh Kumar, J)

(Satyavrat Verma, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.01.2023
Transmission Date	