Form J(2) **IN THE HIGH COURT AT CALCUTTA**

Constitutional Writ Jurisdiction

Appellate Side

Present :

The Hon'ble Justice Bibek Chaudhuri

IA No.:CAN/1/2014(Old No.:CAN/4932/2014), CAN/2/2017(Old No.:CAN/9573/2017)

in

WPA No. 5942 of 2014

Biswanath Das

Vs.

Bharat Petroleum Corporation Limited & Ors.

For the petitioner	**:**	**Mr. Debabrata Saha Roy,** **Mr. Subhankar Das**
For the respondents	**:**	**Mr. Sanjib Kumar Mal,** **Mr. Bimalendu Das,** **Ms. Shomrita Das,** **Mr. Shomrik Das**
Judgement on	**:**	**19.06.2023.**

<u>Bibek Chaudhuri, J.</u>

Indisputably, by a Memorandum of agreement dated 22nd May, 2002 the respondent nos. 1 and 2 granted Liquefied Petroleum Gas (LPG) distributorship to the petitioner on certain terms and conditions clearly stipulated in the memorandum of agreement. Subsequent to the grant of such distributorship within few years, according to the contesting opposite parties, above-named series of anomalies were found in running the business of distributorship of LPG by the present petitioner. As many as three numbers of show cause notices were issued to the petitioner alleging violation of Marketing Discipline Guidelines (MDG) and finally by an order dated 8th November, 2013 the said distributorship of the petitioner was terminated.

The petitioner has approached this Court by filing the instant writ petition on the following grounds :-

(i) The order of termination of distributorship was passed by the contesting respondents without affording any opportunity of hearing to the petitioner which is violative of the basic principle of natural justice;

(ii) Clause 29 of the agreement specifically states that before termination of distributorship 30 days notice is mandatorily to be served upon the distributor but in the instant case such provision was blatantly violated by the respondent nos. 1 and 2 and accordingly the notice being not in accordance with Clause 29 of the agreement, no termination can be made by virtue of such termination notice;

(iii) On the basis of complaint lodged by some members of public and some unscrupulous customers a criminal case was initiated against the present petitioner and his staff members for black-marketing the LPG cylinders and a case under Section 7(1)(a)(ii)/8 of the Essential Commodities Act, 1955 was registered against them before the jurisdictional Magistrate and the petitioner and other staff members were acquitted of the charge under the Essential Commodities Act on the ground that the prosecution failed to produce any witness in support of the charge levelled against the accused persons;

(iv) In any of the show cause notices the respondents did not make any allegation that they suffered pecuniary loss for the alleged illegal act made by the petitioner.

In view of such circumstances, it is submitted by the learned Advocate for the petitioner that the order of termination dated 8th November, 2013 was illegal and *mala fide*. It was passed without giving any opportunity of hearing to the petitioner and accordingly the same is liable to be dismissed.

Learned Advocate for the respondent nos. 1 and 2, on the other hand, submits that admittedly three numbers of show cause notices for violating Marketing Discipline Guidelines were issued to the petitioner. In all the show cause notices the petitioner was directed to submit his written explanation. Such written explanation was considered favourably for initial two occasions. Subsequently on the three occasions the respondent authorities were not agreeable to accept the reply to the show cause notice given by the petitioner and terminated his distributorship.

It is submitted by the learned Advocate for the respondents that first show cause notice was served on 9th July, 2012 which was replied by the petitioner on 1st August, 2012. In the said reply the petitioner stated:-

"I further assure that every care shall be taken in future for proper customer care and management as per laid down terms of the company and irregularities are most inadvertent and may be excused. Action taken:-

Distributorship Management

i) Rate/stock has been displayed;

ii) Customer service cell poster has been displayed;

iii) Complied;

iv) Complied;

v) Home delivery norms being practiced;

vi) Consumer complain register is kept;

vii) Refills bills being made computer;

viii) Sales officers mobile number being updated;

ix) Refill is being delivered as per priority booking.

Godown Management

i) Explosive & Weight & measurement licence has been displayed;

ii) Ventilation has been repaired;

iii) Sand bucket has been installed;

iv) DCP will be refilled on or before 10th August, 2012;

v) Godown premises have been cleaned;

vi) SQC register has been made available."

It is pointed out by the learned Advocate for the respondents that these are the clear admissions of fault by the distributor. Subsequently, he paid Rs.13,52,000/- for shortage of 671 numbers of LPG cylinders. The letter dated 18th October, 2012 issued by the respondents to the petitioner elaborately referred the clauses which was violated by the petitioner. Some of the violations are absolutely serious in nature, viz., the petitioner issued unauthorized connections to some persons without the Corporation's receipt/subscription, voucher or otherwise. The petitioner sold out the Corporation's product at prices higher than those fixed by the Corporation. In three occasions 671 numbers of LPG cylinders, 269 numbers of LPG cylinders and 41 numbers of LPG cylinders were found missing from the stock register. Stock register was not properly maintained by the petitioner. It is the clear dictum of the agreement that refilling voucher shall be issued through computer. However, in many cases refilling voucher has been issued manually and in some cases there was no voucher at all. The respondents were flooded with complaints against the petitioner. Therefore, the respondents decided to invoke Clause 28 of the agreement which states: -

"Notwithstanding anything to the contrary herein contained, the Corporation shall be at liberty at its entire discretion to terminate this agreement forthwith upon or at any time after happening of any of the following events……

The events for which the respondents could terminate the distributorship of the petitioner were stipulated in the said clause and most of such clauses were violated by him".

On the allegation made by the petitioner that the petitioner was not given opportunity of hearing, this Court is inclined to record that on each and every occasion the petitioner was directed to give reply to the show cause notice. The reply of the show cause notice were considered and finally as per the Government Notification dated 12th April, 2001 issued by the Ministry of Petroleum and Natural Gas it clearly appears that unauthorized release of connection, unauthorized out of turn release of new connections, shortage of Corporation's equipment entrusted with the distributor, deliberate manipulation of mandatory records, deliberate non-attendance of complaints of delay in refill supply/leakage of cylinders, not giving rebate on non-home delivery excluding C & C supplies within the area of distributor made on specific request of customer, if committed by a distributor thrice mandatory panel action would be termination.

In view of such circumstances and repeated irregularities made by the petitioners in respect of the lapses stated in the penultimate paragraph and also considering the fact that the petitioner was given adequate opportunity to submit his case in writing this Court is of the view that basic cannons of natural justice have not been violated.

For the reasons stated above, I do not find any merit in the instant writ petition. Accordingly, the instant writ petition is dismissed. With the dismissal of the writ petition, connected applications are also disposed of.

There shall, however, be no order as to costs.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 65.