D/L. 250.
November 8, 2023.
MNS/MB.

MAT 2242 of 2023
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CAN 1 of 2023

Indian Oil Corporation Limited
Vs.
Suvadip Nandy and others

Mr. Saptangsu Basu,
Mr. Amit Kumar Nag,
Mr. Partha Banerjee

… for the appellant.

Mr. Shyamal Sarkar,
Mr. Ramesh Dhara,
Ms. Mousumi Choudhury

…for the respondents/writ petitioners.

Mr. Tapan Kumar Mukherjee,
Mr. Santanu Mitra,
Mr. Sabyasachi Bhattacharjee

…for the State.

Mr. Dhiraj Trivedi,
Mr. Tirthapati Acharyya

…for the respondent nos. 5 and 7.

1. The subject matter of challenge in this appeal is an order dated 13th October, 2023 passed in WPA 24540 of 2023.
2. Although, the appellant did not appear on the day when the impugned order was passed, but it is an admitted position that the Indian Oil

Corporation (in short "IOCL") was served with the copy of the writ petition.

3. In a previous writ petition, being WPA 9735 of 2022, where the present writ petitioners/respondent nos. 1 to 4 were not the parties, an order was passed on 12th September, 2023. By the said order, the Central Government was, *inter alia*, directed to frame a policy to fix the price for kerosene oil to be sold through Public Distribution System (in short "PDS") at a subsidized rate.

4. It is the case of the writ petitioners/respondent nos. 1 to 4 that despite there being such an order, the IOCL/appellant enhanced the price of Superior Kerosene Oil (in short "SKO") with effect from 1st October, 2023 by a Memorandum dated 3rd October, 2023. Under Clause 2(c) of the Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993 (hereinafter referred to as the "1993 Control Order") IOCL according to the writ petitioners can sale kerosene oil through PDS at the maximum selling price declared by the Central Government. It cannot fix the price.

5. The State Government by a Memorandum dated 3rd October, 2023 has fixed the final price of PDS SKO with effect from 1st October, 2023 at all the supply locations of SKO in West Bengal consequent upon revision of ex-depot base price. The base price is, however, suggested by IOCL. The said Memorandum is annexed at page 614 of the stay application.
6. The learned single Judge has restrained the respondent no. 1, being the appellant herein from determining the price of kerosene oil more than that what was fixed in the month of September, 2023 till the disposal of the writ petition. While passing the said order, the learned single Judge relied upon a portion of his order dated 12th September, 2023 passed in WPA 9735 of 2022. This restraint order is being assailed at the interim stage of the instant appeal.
7. It is correct that the price of SKO under the PDS is determined by the Central Government while other applicable charges are determined by the State Government. The revision of such price therefor has to be through the Central Government. This,

however, does not preclude the Oil Companies in the instant case IOCL, from arriving at a base price for the consideration of the same for revision thereof by the Central Government at the instance of an Oil Company like IOCL in the instant case.

8. The sale and distribution of SKO under PDS is through the State instrumentality. The Oil Company will at all material times receive the price, which is fixed by the Central Government with which adorns fixed by the State Government. Even if the Oil Company like IOCL fixes an independent price for PDS, it will not receive the same for the quantity sold and distributed through PDS unless the Government declares the same to be the price.

9. In the order impugned, there is no discussion in this respect. The learned single Judge has in an omnibus manner restrained the IOCL from enhancing the price over and above that which was prevalent in September, 2023. The price of SKO is dependent on the market rate. It, therefore, fluctuates depending upon the price in the international market, refining costs, currency exchange rates as also the

taxes. The Oil Company, therefore, cannot be restrained from fixing the base price of kerosene. Whether the Oil Company will get such price for the quantity sold through PDS is dependent on the declared price of the Central Government with the add ons decided by the State Government. So, it is inconsequential whether the Oil Company, in the instant case IOCL, enhances its price as at the end of the day for sale through PDS with which we are concerned, the price declared by the Central Government will be the receivable price along with the add ons as fixed by the State Government.

10. We, therefore, dispose of the application, being CAN 1 of 2023, by modifying the order dated 13th October, 2023 to the extent that the appellant, being the respondent no. 1 in the writ petition, being WPA 24540 of 2023, shall be free to decide on its base price but will receive only the declared price of the Central Government along with the add ons fixed by the State Government as may be fixed from time to time.

11. It is expected that the Central Government as directed by the order dated 12th September,

2023 shall, as expeditiously as possible, fix the declared price under Clause 2(d) of the 1993 Control Order.

12. Since nothing further remains to be decided in the appeal, the appeal, being MAT 2242 of 2023, is treated as on the day's list by consent of the parties and is accordingly disposed of.

13. There will be no order as to costs.

14. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Biswaroop Chowdhury, J.)   (Arindam Mukherjee, J.)