

Item no.22
15.06.2023
Saswata

**Calcutta High Court
In the Circuit Bench at Jalpaiguri
Appellate Jurisdiction**

**MAT 21 of 2023
with
IA no. CAN 1 of 2023**

**Nabanita Malakar
-versus
Indian Oil Corporation Limited & Ors.**

Mr. Debasish Kundu, Sr. Adv.
Mr. Milindo Paul
Mr. Nabankur Paul
Ms Bedashruti Bose
Mr. Subham Das
Mr. Subham Chanda

...For the appellant

Mr. Bikramaditya Ghosh

...For the State

1. Mr. Kundu, learned Senior Counsel representing the appellant has submitted that the dealership of the petrol pump was terminated based on some manipulations being done by the erstwhile dealer, calling the decision to be ex facie perverse. The decision of terminating the dealership did not take into consideration the aforesaid aspect and is vitiated by arbitrariness.
2. Learned Counsel for the IOCL submits that the manipulation is being established to which the appellant cannot deny her responsibility and she is not entitled to any relief. Moreover, the maintainability of the writ petition has been raised on behalf of the IOCL in view of insistence of the arbitration clause.
3. The Learned Single Judge in the impugned order has refused to pass any interim order.

4. Prima facie, it appears that the dealership of the appellant was terminated for manipulation of the electronic parts showing excess reading of consumption when the dealership was allotted to Smt. Runu Sarkar, the erstwhile dealer. Accordingly, the subsequent dealer cannot be penalized for any manipulation of data by the erstwhile dealer.
5. Accordingly, we are of the view that the appellant has been able to make out a prima facie case which needs to be decided upon exchange of affidavits.
6. In spite of direction being passed on 10th February 2022, the IOCL has not filed any affidavit.
7. In view thereof, let affidavit-in-opposition to the writ petition be filed within two weeks from date. Reply, if any, be filed two weeks thereafter.
8. Liberty to mention for early hearing of the writ petition.
9. Since, we have not called for any affidavits, the allegations are deemed not to have been admitted.
10. We make it clear that our observations shall not influence the final outcome of the writ petition.
11. Since, larger public interest is involved and public inconvenience should be caused in the event the petrol pump is not allowed to be operated by the appellant, we permit the appellant to run the petrol pump for a period of four months from date or till disposal of the writ petition, whichever is earlier and it is needless to mention that it shall be under the strict supervision of the Divisional Retail Sales Head-F, IOCL.

12.The interim order passed hereinabove shall continue for a period of four months or till disposal of the writ petition, whichever is earlier.

13.We make it clear that the operation of the petrol pump for the aforesaid period shall not create equity in favour of the appellant.

14.The appeal and connected application are accordingly **disposed of.**

15.There shall be no order as to costs.

16.Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis upon completion of requisite formalities.

(Soumen Sen, J.)

(Raja Basu Chowdhury, J.)