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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-30783-2019 (O&M)

Date of Decision: 26.04.2023

M/s Chopra Filling Station and others

..... Petitioners

Versus

Indian Oil Corporation and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Sanjay Kaushal, Senior Advocate assisted by
Mr. Sudhir Sharma, Advocate &
Mr. Amit Gupta, Advocate,
for the petitioner.

Mr. Ashish Kapoor, Advocate,
for respondent Nos.1 to 5.

Mr. Anand Chhibbar, Senior Advocate assisted by
Mr. Mrigank Sharma, Advocate,
for respondent No.6.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present is a petition filed under Article 226 of the Constitution of India seeking writ in the nature of *certiorari* for setting aside the action of official respondents by initiating a *de novo* repeated enquiries by way of Show Cause Notice dated 20.06.2019 (Annexure P-34) and dated 12.09.2019 (Annexure P-38) after more than 10 years into the matter of induction of the petitioner No.2 in the Retail Outlet of M/s Chopra Filling Station, with a *mala fide* intention to cancel the same.

2. Mr. Sanjay Kaushal, learned Senior counsel assisted by Mr. Sudhir Sharma, Advocate submitted that it is a case where the petitioner No.1 was earlier a sole proprietorship firm and was allotted a Petrol Pump

by the respondent-Indian Oil Corporation in the year 1998. Thereafter, the location of the site was resited in the year 1999. There was provision in the terms and conditions and the policy of the Indian Oil Corporation by which another partner could have been inserted, subject to the condition that the share-holding of another partner could not be more than 25% and in pursuance thereof the petitioner-Company has inserted petitioner No.2, namely, Sh. Ramesh Chander Sharma as a partner to the extent of 25%. Thereafter, the partnership was accepted by the Corporation and the induction was also approved by the respondent-Corporation vide Annexure P-13. Consequent upon the re-constitution of the partnership, a fresh agreement was executed between the Indian Oil Corporation-respondent and both the new partners. He further submitted that respondent No.6 was a witness to the Partnership Deed and this entire exercise was completed in the year 2009.

3. Learned Senior counsel further submitted that after a lapse of four years i.e. in the year 2013, since a dispute had arisen between the petitioners and respondent No.6, an FIR was got lodged by respondent No.6 against the petitioners alleging various allegations against them. The police investigated the FIR and submitted a cancellation report. Thereafter, a protest petition was filed by respondent No.6 before the Court which was also dismissed. In addition to the aforesaid FIR, respondent No.6 also filed a separate complaint to the IOC with similar allegations and on those allegations, the same was forwarded by one OSD to the Chief Minister. The petitioner challenged the aforesaid action before this Court whereby the State had made a statement that they will not investigate the matter.

4. Learned Senior Counsel further submitted that vide Annexure P-34 dated 20.06.2019 a Show Cause Notice was issued to the petitioner as to why the dealership be not terminated on the ground that prior to re-constitution of the Firm, the respondent No.6 and petitioner No.2 had made *Benami* investment with the petitioner No.1-Company and in fact they were the persons who were operating and a camouflage has been created by re-constitution of Firm, and therefore, to show-cause as to why for the concealment of the material facts, the dealership could not be terminated. He also submitted that the petitioner had filed a reply to the aforesaid Show Cause Notice vide Annexure P-35 and thereafter, he had filed present petition wherein while issuing notice of motion on 23.10.2019, an interim order was also passed that in the meanwhile, the IOC shall not pass any final order pursuant to the show cause notice dated 20.06.2019 Annexure P-34, and therefore, the petitioner is continuing with the aforesaid dealership till date.

5. Learned Senior counsel further submitted that the reason as to why the petitioners have challenged the Show Cause Notice and have not waited for the final outcome on the basis of Show Cause Notice is that the entire case is based upon *mala fide* of the respondents since on the similar allegations even the FIR has been cancelled and protest petition has been dismissed, but there had been no finding against the petitioners in any of the petitions and there is an apprehension that an order of termination will be passed against the petitioner and based upon *mala fide*, the present Show Cause Notice was challenged at this stage only.

6. Learned Senior Counsel further submitted that now he has

sought specific instructions from the petitioners to state that in case the Show Cause Notice issued to the petitioner is considered and decided by any Senior Officer of the Indian Oil Corporation, who was not associated with the present process pertaining to the Show Cause Notice and he will be satisfied in case necessary directions are issued to any independent Officer of the Indian Oil Corporation to decide the Show Cause Notice within a time framework and by considering all the contentions which have been raised by the petitioners including the allegations of *mala fide*.

7. On the other hand, Mr. Ashish Kapoor, learned counsel appearing on behalf of the Indian Oil Corporation submitted that the present petition filed by the petitioners was premature because they have challenged the Show Cause Notice only and did not wait for the order. He further submitted that the General Manager, Retail Sales, Incharge, Delhi & Haryana, State Office, IOCL, New Delhi, is a Senior Officer, who was not connected with the present proceedings pertaining to the petitioners and respondent No.6, and therefore, the Show Cause Notice issued to the petitioners can be decided by him in case the petitioners do not have any objection to the same.

8. Mr. Anand Chhibbar, learned Senior Counsel assisted by Mr. Mrigank Sharma, Advocate, appearing on behalf of respondent No.6 submitted that so far as the aforesaid statement made by both the learned counsels that the aforesaid Officer General Manager, Retail Sales, Incharge, Delhi & Haryana, State Office, IOCL, New Delhi, can decide the Show Cause Notice issued to the petitioners who is a Senior Officer, he does not have any objection to that extent, but he should also be directed to consider

all the contentions on behalf of respondent No.6 as well. He further submitted that so far as the argument raised by learned Senior Counsel for the petitioners that the FIR was ordered to be cancelled is concerned, in fact the aforesaid FIR was cancelled not on merits but it was cancelled on the ground that it was essentially a civil dispute.

9. I have heard the learned counsels for the parties.

10. The petitioners have challenged the Show Cause Notice (Annexure P-34) to which they had already filed their replies vide Annexures P-35 & P-37. During the course of arguments, learned Senior Counsel for the petitioners has stated on instructions from the petitioners that the present petition can be disposed of with a direction to some Senior Officer of the Indian Oil Corporation, who is not associated with the process of the present case to decide it in accordance with law within a time framework.

11. Both the learned Senior Counsels appearing on behalf of the petitioners and respondent No.6 have also stated that they have no objection in case the aforesaid Officer which has been so pointed out as above by Mr. Ashish Kapoor, learned counsel for IOC is directed to decide the Show Cause Notice in accordance with law.

12. In view of the above, it is directed that the Show Cause Notice issued to the petitioners vide Annexure P-34 shall be considered and decided by the General Manager, Retail Sales, Incharge, Delhi & Haryana, State Office, IOCL, New Delhi within a period of three months from today, after considering all the contentions raised by the petitioners including the allegations of *mala fide* which shall also be considered by the aforesaid

officer.

13. The petitioners or their counsel shall be permitted to file written arguments along with all the supporting documents to the aforesaid Officer. Similarly, respondent No.6 shall also be entitled for filing any document or written arguments to the aforesaid Officer.

14. Needless to say that an adequate opportunity of hearing shall also be afforded to the petitioners and also to respondent No.6, either personally or through their counsel. Thereafter, the aforesaid Officer shall pass a well reasoned speaking order strictly in accordance with law and convey the same to the petitioners and respondent No.6 by way of a registered post.

15. Needless to say that nothing contained in the present order shall have any effect or influence upon the decision making fresh process which is to be undertaken by the aforesaid Officer while considering and deciding the Show Cause Notice since there is no observation on merits made by this Court in the present case and the aforesaid Officer shall exercise his independent mind and thereupon proceed to decide the Show Cause Notice.

16. In case, the aforesaid Show Cause Notice is decided against the petitioners, then the order shall be kept in abeyance for a period of six weeks with a liberty to the petitioners to challenge the same before the appropriate Court/authority in accordance with law.

17. The petition stands disposed of in above terms.

26.04.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned:	Yes/No
2. Whether reportable:	Yes/No