

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13026 of 2021

Satvahini Filling Station, Indian Oil Retail Outlet at Parswan, P.O.-Amba, District-Aurangabad through its Proprietor Sunita Sonthalia @ Sunita Devi, aged about 50 Years (Female), D/o Om Prakash Banka, Resident of Maharajganj Road, New Area, P.O.-Aurangabad, P.S.-Aurangabad, District-Aurangabad.(Bihar).

... .. Petitioner/s

Versus

1. Indian Oil Corporation Limited through its Executive Director, Bihar State Officer Having its Office at 5th Floor, Loknaya Jay Prakash Bhavan, Dak Bungalow Chowk, Patna 800001.
2. The Executive Director, I.O.C.L. Bihar State Office Having its Office at 5th Floor, Loknaya Jay Prakash Bhavan, Dak Bungalow Chowk, Patna 800001.
3. The Deputy General Manager, Retail Sales, Indian Oil Corporation Ltd., Marketing Division, Patna Divisional Office, Patna.
4. The Senior Divisional Retail Sales Manager, Patna Divisional Office, Indian Oil Corporation Limited, Patna.
5. The Field Officer, Indian Oil Corporation Limited, Aurangabad.
6. Gilbarco Veeder Root Indian Pvt Ltd., Having its Corporate Office at- Art Guild House, B Wing, 1st Floor Phoenix Marketcity, L.B.S. Road, Kurla West, P.S.-Kurla, Mumbai, State-Maharashtra, through its Managing Director,
7. Sri Rahul Dixit (Son of Not Known to the Petitioner), Presently Posted as Deputy General Manager, Retail Sales, Patna Divisional Office, Indian Oil Corporation Ltd., Maurya Lok, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Brisketu Sharan Pandey, Adv.
For Respondent Nos.1to5:	:	Mr. Anil Jha, Sr. Adv.
	:	Mr. Sanath Kumar Mishra, Adv.
For Respondent No. 6	:	Mr. Nilanjan Chatterjee, Adv.
	:	Mr. Anirban Choudhari, Adv.
	:	Mr. Ujjawal Raj, Adv.
	:	Mr. Sahil Kumar, Adv.
For the Respondent/s	:	Mr. Sanat Kumar Mishra, Adv.

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
CAV JUDGMENT

Date : 07-10-2024

Heard the learned counsel for the parties.

2. The present writ petition has been filed for the following reliefs;



“i) For issuing writ/writs, order/orders including the writ of certiorari quashing the second/revised Lab Analysis Report (Lab Analysis Report) Revision 2.0 dated 02.06.2021 (Annexure-P/1) issued by the Respondent No.6 through its Laboratory whereby and whereunder a different conclusion has been given (on analysis of the sample of machine parts of dispensing unit of petitioner retail outlet) and erroneous finding to the effect that the dispensing unit of petitioner retail outlet has been manipulated for delivery of fuel from the dispensing unit has been given by the said Laboratory of Respondent No.6.

ii) For issuing writ of certiorari and thereby quashing the letter dated 11.06.2021 bearing Reference No. PDO/MDG/SFS (Annexure- P/2) whereby and whereunder Respondent No.3/7 has issued show cause notice to the petitioner on the basis of revised Lab Analysis Report second/revised Lab Analysis Report (Lab Analysis Report) revision 2.0 dated 02.06.2021 (Annexure-P/1) and thereby has asked the petitioner to show cause as to why action should not be taken against the petitioner in terms of the dealership agreement and why her retail outlet be terminated in terms of the MDG Guidelines 2012.

iii) For holding that it was absolutely illegal and unwarranted on part of Respondent No.6 to have unilaterally revised/modified the Lab Analysis Report dated 26.12.2020 (wherein no finding or conclusion regarding manipulation on part of petitioner was recorded by the Respondent No.6) by issuing subsequent impugned analysis report dated 02.06.2021 (Annexure-P/1) without conclusively finding any alteration in the machine parts examined and without finding any addition, removal, replacement manipulation, any mechanism, fitting or gear found in the dispensing unit which is likely to manipulate the delivery in the part of dispensing unit of the petitioner examined by the Lab of Respondent No.6.

iv) For holding that the Respondents No.3/7 have issued the impugned show cause notice dated 11.06.2021 in most arbitrary manner without applying mind and without observing the fact that it was beyond the authority of Respondent No.6 to have unilaterally revise/modify the Lab Analysis Report



dated 26.12.2020 (wherein no finding or conclusion regarding manipulation on part of petitioner was recorded by the Respondent No.6) by issuing subsequent impugned analysis report dated 02.06.2021 (Annexure- P/1) without conclusively finding any alteration in the machine parts examined and without finding any addition, removal, replacement or manipulation, any mechanism, fitting or gear found in the dispensing unit which is likely to manipulate the delivery in the part of dispensing unit of the petitioner examined by the Lab of Respondent No.6.

v) For holding that the impugned show cause notice dated 11.06.2021 (Annexure-P/2) has been issued solely on the basis unilaterally revised/modified the Lab Analysis Report dated 02.06.2021 (Annexure-P/1) which was revised even without issuing a notice to the petitioner and even without allowing the petitioner to witness the process of examination/test conducted upon the machine part of the dispensing unit of the petitioner retail outlet.

vi) For holding that the impugned show cause notice dated 11.06.2021 has been issued with a view to grant post decisional hearing on the basis of a unilaterally revised/modified the Lab Analysis Report dated 02.06.2021 (Annexure-P/1) which was revised even without issuing a notice to the petitioner and even without allowing the petitioner to witness the process of examination/test conducted upon the machine part of the dispensing unit of the petitioner retail outlet.

vii) For holding that issuance of impugned show cause notice dated 11.06.2021 is bad in law since it has no independent legs to stand and it clings on a unilaterally revised/modified the Lab Analysis Report dated 02.06.2021 (Annexure-P/1) which was revised even without issuing a notice to the petitioner and even without allowing the petitioner to witness the process of examination/test conducted upon the machine part of the dispensing unit of the petitioner retail outlet.

viii) For any other relief or reliefs for which the petitioner is found entitled in the facts and circumstances of the case.”



3. Though, the counsels have argued the matter at length on merits, this Court is not inclined to pass the orders on merits, having regard to the fact that the petitioner has challenged the issuance of the show cause notice dated 11.06.2021. During the pendency of the present CWJC, the petitioner has filed her explanation to the said show cause and was given an opportunity of hearing. Further, it is stated in the supplementary counter-affidavit filed by the respondent Corporation that the authorities are ready to take a decision but for the stay granted by this Court vide order dated 08.09.2021.

4. This Court is of the opinion that the ends of justice would be best served if a direction is given to the authorities to pass the necessary orders duly taking into consideration the following observations.

(i). That the petitioner has been operating the retail outlet from the year 2002 without any complaint.

(ii). That at the time of inspection no tampering or breaching of seals or any manipulation of the DU were found.

(iii). That the quality and quantity was found to be correct and within permissible limits.

(iv). That the lab reports also support the petitioner and it was found that there is no tampering of DU

(v). That observation with regard to



(a) Controller Card: on both visual & functional inspection there is no rework, modifications or damage observed.

(b) Keypad Card: on both visual & functional inspection there is no rework, modifications or damage observed.

(c) Display Card: on both visual & functional inspection there is no rework, modifications or damage observed.

(d) E-Cal Card: on both visual & functional inspection there is no rework, modifications or damage observed.

(e) Pulsar Unit: on both visual & functional inspection there is no rework, modifications or damage observed in The 2-pulsar assemblies.

(f) Hardware Analysis & Observations Results: No traces of cuts, soldering, rework, removed components or external fittings were found which could impact the normal functioning of the Dispensing Unit.

(g) DU Error Log Analysis And Investigation: E-28 Findings:

1. The automatic error logs were analyzed for the period of “10th May, 2020 to 06th Aug 2020”.
2. E28/E09 errors were observed on “06th Jul 2020 to 31st Jul 2020”, “01st Aug 2020 to 07th Aug 2020.”
3. Without prejudice, we have observed that the sale on nozzle 2 is higher compared to nozzle 1 as evidenced by the annexure.
4. Based on line DU error history logs and our service records, no technical issues were observed for E28/ E09 for the substitutes for nozzle 2.
5. In a normal DU operating state E28 error occurrence is not standard.

(h) Investigation and Analysis Results:



1. This RO, for the said DU reported abnormal E28 errors, pointing to non-standard DU operation.

(vi). And finally the errors may be caused by the frequent power fluctuations or by operation of the pump through DG set.

5. The authority shall also take into account the judgments of the Hon’ble Andra Pradesh High Court in the case of *Indian Oil Corporation Limited Vs. Pullareddy Service Center & Ors.* reported in *2021 SCC Online AP 2909* and in the case of *M/s P. Laxmikanth Rao & Sons Vs. The Union of India and others.*

6. The present CWJC is disposed of granting liberty to the authorities to pass necessary orders duly taking into account the above made observations.

7. If any adverse orders are passed, the petitioner is free to challenge the same.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	15.05.2024.
Uploading Date	08.10.2024.
Transmission Date	NA

