

IN THE HIGH COURT OF JUDICATURE AT PATNA
REQUEST CASE No.69 of 2024

M/s Jay Shree Tea and Industry Limited proprietor of Majhaulia Sugar Industries, having its registered office and head office at Industry House, 15th Floor, 10 Chemic street Calcutta - 700017 and the Mill is situated in the District of West Champaran, Bihar - 845454 represented through its Deputy General Manager (Commercial), namely Upendra Nath Rai, Gender- Male, aged about 61 years S/o Late Chandrika Rai, R/o New Bajrang Nagar, Ratanpura Ojha Toli, Chapra, Saran, Bihar-843101.

... .. Petitioner/s

Versus

1. The Indian Oil Corporation Limited, G-9, Ali Yavar Jung Marg, Bandra (East), Mumbai- 400 051 represented through its Chairman cum Managing Director.
2. The Chief General Manager (Operations), Indian Oil Corporation Limited, Bihar State Office, Lok Nayak Jaiprakash Bhawan, 5th Floor, Dakbunglow Road, Patna- 800001.
3. The Depot Manager, Indian Oil Corporation Limited, Sipara, Patna-800002.
4. The Depot Manager, Indian Oil Corporation Limited, Barauni-851210.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ramesh Kumar Agrawal, Advocate
For the Respondent/s	:	Mr. Sanat Kumar Mishra, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date : 02-08-2024

The petitioner is seeking arbitration to decide the claim of waiver of penalty, on the ground of flood in the reserve area from which raw material was procured.

2. The learned Counsel for the respondent clearly points out from the agreement, where there is Standard Operating Procedure for waiver of penalty, to be followed by



Oil Marketing Companies (OMC's). We specifically refer to serial no. 8, which is extracted hereunder:-

8	Flood/Cyclone/Heavy rain.	Penalty not to be levied for shortage quantity for 90 days/periodicity based on the certification from the concerned distillery/excise authority, whichever is earlier (from the date of issuance of floods/heavy rains/cyclone notification by state authorities / Notarized affidavit & the unit being in the affected area declared in notification), the periodicity for existence of flood is considered based on the state govt. notifications/certifications from the local distillery/excise officers, whichever is earlier, however the total period of flood/Cyclone/Heavy rain not to exceed 90 days.	I. Notarized affidavit stating floods/heavy rain/cyclone as reason for non-operation with period. II. Certification from the concerned Unit Excise distillery officer- stating non-period of operation due to floods/heavy rain/cyclone. III. Reports from local authorities/ Letter from local authorities stating floods/heavy rain/cyclone during the period of non-operation.
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3. The learned Counsel for the respondent further submits that if the three certificates are produced they would definitely consider the waiver. In such circumstances, this Court is of the opinion that at this point there is no need for appointing an Arbitrator. The petitioner would be entitled to produce the certificates, which are following:-

I. Notarized affidavit stating floods/heavy rain/cyclone as reason for non-operation with period.

II. Certification from the concerned Unit Excise distillery officer- stating non-period of operation due to floods/heavy rain/cyclone.



III. Reports from local authorities /Letter from local authorities stating floods/heavy rain/cyclone during the period of non-operation.

4. The learned Counsel for the petitioner submits that already there was an order by Annexure-11, which specifically looked at the requirements to be complied with as spoken by the learned Counsel for the respondent and a certificate to be produced before the Authority.

5. Annexure-13 is the order passed based on the aforesaid directions in Annexure-11. The required certificates were not produced.

6. This Court does not find any certificate as required under the extract above referred produced before this Court also. In such circumstances, the petitioner would be entitled to produce the above certificates before the Authority and claim waiver. If, despite the certificates, the waiver is not granted, the petitioner could even seek for arbitration.

7. The petitioner also has a case that the flooding did not affect his factory but the reserves from which the raw materials were sourced. Hence, the certificates for such flooding of reserves ought to be produced, which also would fall within the ambit of waiver, even according to the



respondent.

8. The request case stands closed.

(K. Vinod Chandran, CJ)

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CAV DATE	
Uploading Date	05.08.2024.
Transmission Date	

