

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.49 of 2021
In
Civil Writ Jurisdiction Case No.330 of 2019

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Poonam Devi Wife of Late Anil Sharma, resident of Ramjee Chak, Digha Middle School Road, P.O. Bataganj, Police Station- Digha, District -Patna, Bihar, Proprietor of M/S Om Sai Bharat Gas, Opp. Bata Factory, Gandhi Road, Bataganj, Digha, District - Patna.

... .. Appellant/s

Versus

1. Bharat Petroleum Corporation Ltd. through its Chairman-cum-Managing Director, Bharat Bhavan, 4 and 6 Currimbhoy Road, Ballard Estate, Mumbai - 400001.
2. The State Head (LPG) Bihar, Bharat Petroleum Corporation Ltd, Patna LPG Territory and Bottling Plant, Fatuha Industrial Area, Mouza-Raipura, P.O. and P.S. Fatuha, District - Patna, Bihar - 803201.
3. The Territory Manager (LPG), Patna, Bharat Petroleum Corporation Ltd, Patna LPG Territory and Bottling Plant, Fatuha Industrial Area, Mouza-Raipura, P.O. and P.S. Fatuha, District - Patna, Bihar - 803201.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sanjeev Ranjan, Advocate Ms. Astha Ananya, Advocate
For the Respondent/s	:	Mr. Siddhartha Prasad, Advocate Mr. Om Prakash Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE HARISH KUMAR
CAV JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 02-05-2024

The appellant is aggrieved with the termination of a Liquefied Petroleum Gas (LPG) Distributorship (Domestic and Commercial) granted to her by agreement dated 15.03.2013. The contentions raised before the learned Single Judge were two fold. One, that there was violation of principles of natural justice insofar as the inspection reports relied on having not been



supplied. The next contention was that the respondent-Corporation by imposing a penalty and directing compensation as also payment of the outstanding dues and not terminating the distributorship, as threatened in the first two show-cause notices, could not have then proceeded for such termination by the 3rd show-cause notice. The contention urged was that the respondent-Corporation had waived the right to visit the appellant with the consequence of termination of distributorship.

2. The learned Single Judge found on facts that there was no violation of principles of natural justice, since even if the inspection reports were not supplied, the allegations in the said reports were verbatim reproduced in the show-cause notices. It was also found that the appellant had never sought for supply of the inspection reports and not even made an averment to that effect in the writ petition; which non-supply even if established, there was no prejudice caused to the appellant. Insofar as the contention of waiver, it was found from the penalty order issued that the other consequences and the right to proceed further were reserved specifically in the order of penalty. The learned Single Judge dismissed the writ petition leaving liberty to approach the remedy of arbitration; which the agreement provided, in which event the contentions were left open.

3. Learned Counsel for the appellant Sri Sanjeev



Ranjan vehemently pointed out that the allegations arose from the implementation of a scheme brought out by the Central Government termed as Pradhan Mantri Ujjawala Yojna (for brevity, PMUY) for supply of LPG connections to the marginalized sections, especially the BPL families, who suffer from at least one deprivation under the Socio-Economic and Caste Census of 2011 (Rural data base). The distributors had only the responsibility to furnish the applications to the Oil Marketing Companies (for brevity, OMCs) who have to carry out the verification and the de-duplication exercise; for due diligence in providing a new LPG connection. Allegations were raised on the implementation of the scheme and the supply of LPG connections to undeserving persons; which deserts were not supposed to be verified by the distributors. For the failure of the OMC to properly verify the credentials of the applicants, the appellant was witch-hunted.

4. Proceedings were taken by two separate show-cause notices based on two separate inspections, one carried out by a team of officers from the Ministry of Petroleum and Natural Gases and another by a Ujjwala Coordinator and the Sales Officer of the OMC. The reports of such inspections were never supplied to the appellant. The appellant replied to the show-cause notices, but without considering the objections raised, was



imposed with a penalty. Later to that, a 3rd show-cause notice was issued threatening termination; which amounts to double jeopardy as argued by the learned counsel. It is pointed out that at the earlier point itself the show-cause notices threatened termination but did not impose such a penalty. Having once considered the objections and decided not to terminate the distributorship, a further proceeding could not have been taken. It is also vehemently argued that the non-supply of the inspection reports prejudiced the appellant. The finding of the learned Single Judge that the principle of waiver would not apply to the respondent-Corporation cannot be sustained. The appellant seeks setting aside of the order of termination.

5. Learned Counsel appearing for the respondent-Corporation, Sri Siddharth Prasad, sought to uphold the order impugned in the appeal. It is pointed out that both the show-cause notices issued clearly reproduced the allegations in the inspection reports. The allegations raised were not of proper verification having not been carried out; which obviously is the responsibility of the OMC. The allegation was with respect to the identified applicants not having been given the connections which were diverted to other persons; clearly an act of fraud engaged in by the appellant. The order imposing penalty reserved liberty for further proceedings to be taken. It is pointed out that



the Marketing Discipline Guidelines (for brevity, MDG) specifically spoke of critical, non-critical and cautionary misconducts, the penalty of which would depend upon the gravity of the offence. In the present case, there was huge loss caused to the public exchequer and hence, the termination effected. The appellant had admitted to the defalcations alleged against her by the two inspection teams. The 3rd show-cause notice was specifically on the reservation made in the order of penalty. There is no ground to upset the judgment of the learned Single Judge argues the learned Counsel.

6. Annexure-2 and 3 are the schemes introduced by the Central Government termed the PMUY. As is evident from the scheme, the target population were the Below Poverty Line (for brevity, BPL) persons or households suffering at least one deprivation under the SCCE 2011 (Rural data base). The implementation of the modalities of the scheme as seen from Annexure-2 required the applications to be forwarded to the OMC by the LPG distributor upon which the LPG field officials will match the applications against the SCCE 2011 (Rural data base) and after asserting their BPL status enter the details in the OMC web portal after which; electronically the de-duplication exercise would also be carried out. It is the OMCs who release the connection to the women of BPL families after the modalities



are complied with, the institution of which is the responsibility of the distributor through whom the application was submitted. Annexure-P/3 is also a similar scheme and the guidelines are also identical. Admittedly, two inspections were carried out in the premises of the appellant's distributorship. One by the personnel of the Ministry of Petroleum and Natural Gas and another by a team comprising of the Ujjwala Coordinator and the Sales Officer of the OMC.

7. The 1st show-cause notice was issued at Annexure-9 which is dated 09.11.2017. After quoting the clauses of the agreement, in paragraph no. 3 the inspection carried out by the Sales Officer of the OMC along with Ujjwala Coordinator and other officers of the Corporation between 24.10.2017 to 01.11.2017 was referred to. The allegations were stated as (a), (b) and (c). A reading of the allegations leveled indicate that out of total 20263 PMUY connections released, 8183 connections were installed in contravention of the PUMY guidelines and it was not installed to the person to whom the connections had to be released under the scheme. The specific allegation was the connections having been installed fraudulently to 3rd parties. The list of such connections were attached to the notice as Annexure-1. The 2nd allegation leveled as clause-(b) was that photographs of the installation done by the trained mechanic/distributor staff



was not available in most of the cases resulting in violation of PMUY protocol and guidelines. Clause-(c) referred to the allegation of documentation having not been done as required in several cases, which had to be done at the time of the release of new connections. None of these are touching upon the verification of credentials of the targeted people; which the OMC admits was their task.

8. A reply was given to the show-cause notice as per Annexure-11. In the reply filed despite the list of connections, diverted to 3rd parties having been furnished to the appellant, the appellant made only evasive replies with respect to the 8183 cases. As to photographs being absent it was urged that the poor illiterate women refused to provide their photographs. On documentation also the defect was admitted as pointed out by the learned counsel for the respondent-Corporation. Substantial admission is made of the various defalcations.

9. A further show-cause notice was issued as per Annexure-13 dated 16.01.2018, which referred to the earlier show-cause notice; wherein also the various terms of the agreement were specifically referred to. The allegations of the two-member committee from the Ministry of Petroleum and Natural Gas, Government of India were stated verbatim in paragraph no. 3. In addition to alleging gross irregularities in



releasing PMUY connections, by reason of non-ascertainment of genuineness of beneficiaries, the Committee also observed opening and operation of extension counters in the name of Grahak Seva Kendra in various locations; outside the area of operation of the appellant's distributorship. There was also allegation of charging of extra amounts from the PMUY beneficiaries and installing connections outside the distribution area of the appellant.

10. A reply filed to Annexure-13 though not produced along with the writ petition was later produced as Annexure-23 along with the supplementary affidavit. In the reply furnished as Annexure-23, the appellant attempted to shift the responsibility of connections given to third parties other than the identified real beneficiaries, to the shoulders of the OMC. It was alleged that a software was provided for searching the name of the prospective customer from the SCCE list which created the entire problems. It was alleged that there were defalcations occasioned by reason only of the defects in the software. Substantially, the allegations were admitted but however, sought to be explained away by shifting the blame on the OMC. It is to be noticed that verification of the applications was done by the OMC and assertion regarding a software supplied by the OMC cannot at all be countenanced. We have to emphasize that the



allegation is not of wrong identification of the targeted beneficiaries but the release of connections being made to persons other than those beneficiaries approved by the OMC. The appellant does not have any explanation to the allegations raised. As we noticed from the 1st show-cause notice a list of such connections were furnished to the appellant, along with the show-cause notice as Annexure-1; which is not even referred to or the specific instances pointed out from the list controverted.

11. The two show-cause notices led to the order of penalty at Annexure-15. Annexure-15 considered the reply made by the appellant to the two show-cause notices issued. We would not labour much on the remarks made to each of the replies, since we are not in appeal. We would only notice the submission of the appellant in one of the replies that she had organized various programmes outside the area of her distributorship; which is in clear violation of the distributorship agreement which confines the activity of the distributor to be within the jurisdictional area of the assigned distributorship. By Annexure-15 the distributor, the appellant herein was directed to make a deposit of Rs. 2,10,879/- pay compensation to the customers as applicable to each established cases of irregularity and clear the outstanding of Rs. 2,56,23,780/-. The assertion of the learned counsel for the appellant is that all of such penalties were paid up



and still there is a further show-cause notice issued for termination which right to proceed against has been waived by the OMC.

12. We specifically extract the last paragraph of Annexure-15 order:-

(E) That this letter is being issued without prejudice to any other right this Corporation has against you under the said distributorship agreement. You are again advised to manage the distributorship as per the distributorship agreement clauses and guidelines of the corporation. Recurrence of such or any other irregularity may attract more stringent action under the provisions of Distributorship Agreement and clauses of MDG, 2017.

Hence, there was a specific reservation of further proceedings based on which Annexure-18 show-cause notice dated 26.09.2018 was issued. At this juncture, we have to notice that the appellant has not challenged Annexure-15 in the writ petition. Hence, the appellant cannot wriggle out of the consequences of the order passed as Annexure-15 which found serious allegations of defalcations, diversion of connections and huge loss caused to the public exchequer. The appellant accepted the punishment without demur and the order of punishment specifically reserved further action on the basis of the allegations; based on which Annexure-18 was issued. Annexure-18 specifically noticed the order of punishment issued and the allegations based on which



penalty was imposed were also listed out in paragraph no. 8 which are quite serious in nature. We would not quote the same, since, it is already quoted in the impugned judgment. It is based on the very serious allegations that the distributorship agreement was terminated. We find absolutely no reason to interfere with the termination and the impugned order.

13. We agree with the learned Single Judge that there is no valid ground of violation of principles of natural justice arising in the instant case. The appellant was issued with show-cause notices which clearly contained the allegations coming out in the inspections which were specifically levelled in the show-cause notices. We have already noticed there was a list furnished to the appellant through the 1st show-cause notice as Annexure-1, which contained the specific defalcations and diversions noticed by the inspection team. In the 2nd show-cause notice also the allegations coming out from the inspection were specifically put to the appellant. The replies submitted to the show-cause notices admitted the defalcations but attempted to explain away the same and shift the blame to the OMC; without any rhyme or reason. The allegation of violation of principles of natural justice was never raised by a request for supply of the inspection reports either in the replies to the show-cause notices or even in the writ petition filed.



14. The OMC had proceeded against the appellant, its distributor, based on specific allegations put to the distributor by the two show-cause notice. The replies were considered and penalties were imposed by Annexure-15 order which also reserved further proceedings in accordance with the terms of the distribution agreement. The said order was never challenged by the appellant-distributor. Finding the defalcations to be very serious in nature and the gravity being gross; for reason of the huge loss caused to the public exchequer, the OMC thought it fit to terminate the distributorship.

15. We find absolutely no reason to interfere with the termination order. The allegations of double jeopardy insofar as two punishments for the same offence cannot at all be countenanced. The penalties were levied on the basis of the specific terms of the agreement for non-supply of LPG connections in accordance with the scheme floated, which also resulted in compensation being directed to be paid to those beneficiaries, who were denied such connections. Insofar as the direction to deposit more than Rs. 2 crores it was only the outstanding amounts due to the Corporation and not in the nature of a penalty. The penalty imposed does not absolve the distributor from the consequence of termination, especially, considering the gravity of the defalcations committed and the



huge loss caused to the public exchequer. There is no ground of waiver which can be validly raised against the OMC; since specific reservation of further proceedings were made in the penalty order.

16. The appeal stands dismissed leaving the parties to suffer their respective costs.

(K. Vinod Chandran, CJ)

Harish Kumar, J: I agree

(Harish Kumar, J)

Aditya Ranjan/-

AFR/NAFR	
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