

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11307 of 2022

Vishwanath Baitha S/o Chandeshwar Bitha Resident of Village- Usarhia,
P.O.- Sankhi, P.S.- Riga, District- Sitamarhi, proprietor M/s. Hamara pump
Parihar, HP Petrol Pump/Sahargama P.S. and P.O.- Parihar, District-
Sitamarhi.

... .. Petitioner/s

Versus

1. M/s Hindustan Petroleum Corporation Ltd. through its Chairman and Managing Director having its registered office at 11 Jamshed Jee Tata Road, Mumbai- 400020.
2. The Director Finance, Hindustan Petroleum Corporation Ltd. 11 Jamshed Jee Tata Road, Mumbai- 400020.
3. The Zonal Manager, Hindustan Petroleum Corporation Ltd., Lucknow.
4. The Deputy General Manager (Retail), Hindustan Petroleum Corporation Ltd., Begusarai Retail Regional Office, 2nd Floor, Raghunath Place, Har Har Mahadeo Chowk, NH- 31, Begusarai- 851101 (Bihar).

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Alok Ranjan, Adv.
For the Respondent/s : Mr. Rabindra Nath Kanth, Adv.

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

Date : 03-05-2024

Heard the learned counsel for the parties.

The present writ petition has been filed for the following

reliefs:-

“(I) For quashing order dated 22.June 2022 issued under the signature of Appellate Authority i.e. Director Finance HPCL (respondent No. 2) whereby and whereunder the appeal filed on behalf of the petitioner has been rejected by a cryptic order without adverting and considering the grounds raised by the petitioner.

(II). For quashing and setting aside the Order dated 17/01/2022 passed by the respondent No. 3 the Deputy General Manager (Retail) Begusarai Retail Regional Office where under and whereby the Dealership Agreement dated 30/09/2018 entered into by the Petitioner and the Respondents for establishing



and running the Retail Outlet has been terminated and the petitioner have been directed to remove all the goods, property and effect belonging to the dealer (petitioner) within three days and hand over to the Corporation vacant and peaceful possession of the Corporation's property with all the facilities provided by the Corporation thereat and restraining the petitioner from entering into the premises of the Retail Outlet mentioning that after three days the Corporation may remove the belongings/properties of the Dealer/petitioner all the risk of the petitioner and further directed that the petitioner would be liable for payment of damages as determined by the Corporation for not vacating the premises/occupation of the premises and that the Corporation would take possession under the Public Premises (Eviction of Unauthorized Occupants Act 1971)

(III) For setting aside all illegal orders passed in consequence to the order dated 17/01/2022 where under and whereby the respondents have taken possession of Retail Outlet (RO) and handed over the same to another dealer/person to run the RO in complete denial, defiance and disrespect to the Appeal filed by the petitioner against the order of Termination dated 17/01/2022 under the Provision of appeal as enshrined in the Marketing Discipline Guideline 2012,

(IV) For directing and commanding the respondent authorities to restore the license (dealership) and supply of Retail Outlet of the petitioner.

(V) For any other writ(s)/direction(s)/Orders(s) as your Lordships may deem fit in the facts and circumstances stated hereinafter."

3. Learned counsel for the petitioner has stated that the petitioner was initially granted a retail outlet for sale of petrol and HSD. But the same was terminated vide order dated 17.01.2022 and the appeal filed by the petitioner assailing the termination order has also being dismissed in a mechanical manner. Learned



counsel for the petitioner has assailed the order of termination on the following grounds;

(i) that the same is passed by a person who does not have any jurisdiction.

(ii) that as per the guidelines issued by the respondent-Corporation.

In case any action for termination is sought to be taken the Chief General Manager/Retail who is the competent person for passing the order. However in this particular case though, the personal hearing was conducted by the Chief General Manager Retail along with General Manager, the order of termination was passed by the Deputy General Manager Retail and duly constituted attorney. That the order of termination passed by the Deputy Chief Manager Retail is without jurisdiction and opposed to the principles of natural justice and equity. Though, the petitioner has filed an appeal, the Appellate Authority without adverting to the grounds raised by the petitioner has dismissed the appeal in a mechanical manner. Learned counsel has relied on the judgment of this Court CWJC No. 14137 of 2022 dated 01.12.2022. Learned counsel has therefore, prayed this Hon'ble Court to allow the present writ petition and remand the matter back to the competent authority for passing orders afresh.



4. *Per contra*, learned counsel appearing on behalf of the respondents has stated that the matter has already become infructuous, stating that after the order of cancellation, the retail outlet has already been allotted to the third party. Further, it is stated that the order which has been impugned in the present writ petition is a well reasoned order and the same is consonance with the guidelines issued by the authority concerned. Further, that as per the procedure, the retail outlet being under the SC category, the note file was approved by the competent authority and then only the order of termination has been passed. Learned counsel has stated that the petitioner has been given a personal hearing by the Chief General Manager (Retail) along with the General Manager (Retail) and the DGM of Begusarai was also present through virtual mode. That there are no violations of principles of natural justice and equity, as the petitioner has been given a personal hearing as contemplated under the guidelines. That the order of appellate authority is a well reasoned order which does not suffer any infirmity and the same does not warrant any interference of this Court.. Further, it is stated that the petitioner himself has accepted the lapses committed by his Manager, therefore, the order of termination is perfectly in consonance with the guidelines



issued by the authority therefore, prayed this Hon'ble Court to dismiss the present writ petition.

5. A perusal of the impugned order of termination passed by the Deputy General Manager (Retail) dated 17.01.2022 and duly constituted attorney has passed the order of termination and the same reads as under;

“Therefore, the competent authority of the Corporation is of the considered opinion that you had breached/violated clauses as mentioned hereinabove and also failed in performing of obligations and have tarnished the good name and the image of the Corporation and thereby a decision has been taken to terminate the Dealership Agreement dated 30.09.2018 so entered between HPCL and yourself with immediate effect on account of aforesaid irregularities and violations. Accordingly, the Dealership agreement dated 30.09.2018 entered into between HPCL and yourself is hereby terminated with immediate effect.”

6. Admittedly, in the present case in so far as dealership which were given under the SC category are concerned, the competent authority for passing the order is the Chief General Manager (Retail). Though, in the counter-affidavit as well as seen from a reading of Annexure-A/9, it reveals that the personal hearing was granted to the petitioner on 26.11.2021 by the Chief General Manager (Retail) along with the General Manager-Retail, NCZ and an order is purported to have been passed on 26.11.2021. The conclusion of the said Chief General Manager reads as under;

“Dealer was not able to provide any plausible explanation for the irregularities observed at the outlet during the personal hearing. Begusarai Region is advised to take



necessary action against the dealer as per MDG and dealership agreement.”

7. It is pertinent to note that in the order of termination dated 17.01.2022, there is no reference to the above order dated 26.11.2021 passed by the Chief General Manager (Retail). Moreover, a reading of the conclusion reached by the competent authority does not reveal that the said authority has taken a decision to terminate the license of the petitioner, it only advises that necessary action to be taken by the Begusarai region but does not direct them to terminate the license of the petitioner. In the counter-affidavit, the authorities have taken a stand that the note file has been circulated to the head office for taking necessary approval for the termination of license however, the same has not been placed on record.

8. This Hon’ble Court in CWJC No. 14137 of 2022 dated 01.12.2022 has held as under;

“As per the minutes of personal hearing dated 10th June, 2020 (Annexure-19, Page-229), the petitioner was afforded personal hearing and the matter was heard by an officer of the level of Executive Director and State Head, namely, Vibhash Kumar. However, the order was passed not by him but by one Shri Subir Das who is Chief Divisional Retails Sales Manager, Muzaffarpur Divisional Office, Muzaffarpur, an officer below the rank of Executive Director and State Head. If the Executive Director had heard the petitioner, it was he who ought to have passed the order. The principles of natural justice thus stood violated.”



9. It is well settled that when a statute, rule, guideline prescribes a particular thing to be done in a particular manner, the same has to be adhered to, but in this particular case, the same has not being done. Having regard to the above, the impugned order of termination as well as the order passed by the appellate authority are both set aside. The matter is remanded back to the competent authority for passing orders afresh.

10. It is needless to mention that before passing any order, the petitioner shall be given an opportunity of hearing. Any order passed shall be communicated to the parties. The entire exercise shall be completed as expeditiously as possible preferably within a period of 12 weeks from the date of receipt of a copy of this order. It is made clear that this Court has not gone into the merits of the case and is leaving all issues open to the authority to decide.

11. With the above direction, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.05.2024.
Transmission Date	NA

