

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10878 of 2021

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Kumari Archana, Wife of Sri Ajay Kumar Proprietor M/s Ravipushp Filling Station, Surheri, District- Gaya, Permanently residing at Mohalla- Janakpur, P.S.- Muffasil, District- Gaya.

... .. Petitioner/s

Versus

1. Bharat Petroleum Corporation Limited through the General Manager-cum-Head (Retail) East, Eastern Regional Office, Kolkata, West Bengal.
2. The General Manager-cum-Head (Retail) East, Bharat Petroleum Corporation Limited, Eastern Regional Office, Kolkata, West Bengal.
3. The Regional Manager-cum-State Head, Bharat Petroleum Corporation Limited, Exhibition Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nikhil Kumar Agrawal, Advocate.

For the Respondent/s : Mr. Sanjay Singh, Advocate.

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

17 06-05-2025 Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the following reliefs:-

“To issue an appropriate writ/order/direction in the nature of mandamus commanding the Respondent Corporation to restore the license of retail petroleum outlet by restoring the Agreement dated 21.05.2012 (Annexure 1) which had been wrongly terminated by the Respondent authorities, in view of the specific finding of facts by the learned Sole Arbitrator in Award dated 28.12.2020.”

3. It is the case of the petitioner that she was appointed as a Retail Outlet (RO) dealer in the Respondent-



Corporation in the year 2012 and her dealership was terminated abruptly by the Respondent-Corporation on 11.07.2017 by back dating the same on 11.07.2016. That the petitioner, thereafter, has approached the Arbitrator as per the terms and conditions of the Letter-of-Intent/Agreement. That Hon'ble Mr. Justice Jitendra Mohan Sharma (Retired Judge of the Patna High Court) was appointed as an Arbitrator. That the Arbitrator after going through the entire evidence and material on record has held that the termination of the Retail Outlet (RO) Dealership by the Respondent-Corporation is illegal has set aside the order of termination and granted compensation to the petitioner. However, the award for the restoration of the dealership could not be passed by the Arbitrator, in view of the judgment of the Hon'ble Supreme Court in the case of *Indian Oil Corporation Ltd. Vs. Amritsar Gas Services and Ors.* reported in (1991) 1 SCC 533. Learned counsel has, therefore, stated that the petitioner left with no other option has approached this Hon'ble Court by way of the present writ petition.

4. Learned counsel for the petitioner has relied on following Judgments, which are reported as under:-

- (i) 2007 (3) PLJR 114.
- (ii) 2012 (2) SCC 1.
- (iii) 2015 (16) SCC 125.



5. Per contra, the learned counsel appearing on behalf of the Respondent-Corporation has stated that as against the award of the Arbitrator, the authorities have preferred Misc. Case No. 65 of 2021 before the competent Civil Court under Section 34 of the Arbitration & Conciliation Act, 1996 and the findings given by the Arbitrator have not become final. Learned counsel has stated that the award has not become final as the Misc. Case filed by the petitioner is pending adjudication. Learned counsel has, therefore prayed for dismissing the present writ petition. Learned counsel has relied on the judgment of the Hon'ble Supreme Court in the case of ***Bhaven Construction through Authorized Signatory Premjibhai K. Shah Vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Anr.*** reported in (2022) 1 SCC 75. Learned counsel has further stated that if an order is passed by this Court at this stage, the same will prejudice the rights of the Respondent-Corporation and may have a bearing on the Misc. Case No. 65 of 2021 pending before the Civil Court.

6. Admittedly, as seen from the record, the petitioner was appointed as a Retail Outlet (RO) Dealer way back in the year 2012 and, thereafter, her dealership was terminated by the authority. The petitioner herein has approached the Arbitrator



who vide award dated 28.12.2020 has held as under:-

“51. As it has already been held above that the authorities of the respondent Corporation have not followed the provisions of the DPSL. Agreement and also the provisions and conditions of Marketing Discipline Guidelines and have breached the terms and conditions and without following the provisions passed the termination order dated 11.07.2017 but as restoration of license and agreement cannot be passed as discussed above, the claimant appears entitled for compensation. Claimant in her statement on oath in paragraph (vii) has stated that she has invested amount of rupees one crore in establishing the business of retail petroleum outlet and this has not been denied by the respondents in his statement on oath filed on behalf of the respondent Corporation. Further in the claim application the claimant has stated that this retail outlet business was and is only source of her bread and butter and this fact has also not been denied specifically by Respondent Nos. 2 to 7 and as such I think just and proper to grant compensation to the claimant.

52. It is true that the claimant in her application has not claimed compensation but for the natural justice and equity it appears proper in the facts and circumstances of the case to award compensation to the claimant to be paid by the respondent Corporation. In my considered opinion, it would be just and proper to grant compensation of Rs. 40,00,000/- (forty lacs) to the claimant to be paid by the respondent Corporation.



Further claimant will be at liberty to seek the relief of restoration of license of retail petroleum outlet by restoring the agreement and the licence granted before appropriate forum. The respondent Corporation may also take appropriate steps in this regard for restoration of agreement and license for retail petroleum outlet of the claimant and in that case the respondent Corporation will not be liable to pay the aforesaid compensation amount.

53. Further it appears also just and proper to grant relief of cost. In this arbitration proceeding the claimant has paid Rs. 8,50,000/-(eight lacs fifty thousand) towards the fee of Sole Arbitrator and Rs 68,000/-(sixty eight thousand) towards administrative/secretarial expenses. The respondent Corporation has also paid Rs. 4,56,500/- and TDS thereon out of Rs. 8,50,000/- (eight lacs fifty thousand) towards the fee of Sole Arbitrator and Rs. 18,000/- and TDS thereon out of Rs. 68,000/-(sixty eight thousand) towards administrative secretarial expenses. It has been submitted by learned counsel for the respondent Corporation that payment of final bill is under process before the authorities of the respondent Corporation.

54. The claimant appears entitled for the cost incurred upon the aforesaid heads and further appears entitled for Rs. 50,000/- (fifty thousand) towards the fee paid to his learned Advocate. Accordingly, the respondent Corporation is directed to pay the aforesaid amount i.e. Rs. 8,50,000 + Rs. 68,000/- + Rs. 50,000/- = Rs. 9,68,000/- (nine lacs sixty eight thousand) including the compensation amount of Rs. 40,00,000/-



(forty lacs) to the claimant within ninety days from today, failing which the respondents shall be liable to pay simple interest on the said amount at the rate of Rs. 9% per annum from the date of completion of the aforementioned ninety days till the payment is made as per Section 31 (7) (b) of the Act of 1996.

55. The respondents Corporation may be at liberty to either take steps for restoration of agreement and license for running the retail petroleum outlet business of the claimant or to pay the amount aforesaid granted in favour of the claimant within the period mentioned above, failing which the claimant shall be entitled to take steps for recovery of the aforesaid amount in accordance with law. The respondent Corporation shall bear its own cost.”

7. Thus, as culled out from the award of the Arbitrator, the fact remains that the dealership of the petitioner was terminated for no fault of the petitioner.

8. The Hon'ble Supreme Court in case of ***Allied Motors Limited Vs Bharat Petroleum Corporation Limited*** reported in ***(2012) 2 SCC 1*** has held as under:-

“51. In the above case, the Court came to the conclusion that the dealership was terminated on irrelevant and non-existent cause. The Court while allowing the appeal quashed and set aside the Corporation's order terminating the dealership of the appellants.

52. Reliance has been placed on the celebrated judgment of the Privy



Council in Nazir Ahmad v. King Emperor wherein the principle has been enunciated that: (IA pp. 381-82)

"... where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

59. In the instant case, the haste in which 30 years old dealership was terminated even without giving show-cause notice and/or giving an opportunity of hearing clearly indicates that the entire exercise was carried out by the respondent Corporation on non-existent, irrelevant and on extraneous considerations. There has been a total violation of the provisions of law and the principles of natural justice. Samples were collected in complete violation of the procedural laws and in non-adherence of the guidelines of the respondent Corporation.

60. On consideration of the totality of the facts and circumstances of this case, it becomes imperative in the interest of justice to quash and set aside the termination order of the dealership. We, accordingly, quash the same. Consequently, we direct the respondent Corporation to hand over the possession of the petrol pump and restore the dealership of petrol pump to the appellant within three months from the date of this judgment."

9. The Hon'ble Supreme Court in the case of **Indian Oil Corporation Limited Vs. Nilofer Siddiqui and Ors.** reported in **(2015) 16 SCC 125** has held as under:

"35. Ms Pinky Anand, the learned



Additional Solicitor General on behalf of the appellant IOCL contended that the High Court has erred in granting the relief of restoration of distributorship as the same is contrary to the provision of Section 14(1)(c) of the Specific Relief Act, 1963 (for short "the Act"). She further contended that the agreement in the instant case is determinable in nature and as per the provision of Section 14(1)(c) of the Act, the agreement which is determinable in nature cannot be specifically enforced by the court. Thus, the High Court has erroneously held that the provision of Section 14(1) (c) of the Act is not applicable to the fact situation of the case.

36. She further contended that the High Court has wrongly directed IOCL to restore the terminated distributorship as the same is bad in law. She submitted that once a distributorship, even if it is terminated in breach of the contract, cannot be restored in favour of Respondent 2 and the only remedy available is to claim damages from IOCL. She placed strong reliance upon the judgment of this Court in Indian Oil Corpn. Ltd. v. Amritsar Gas Service.

42. The facts and circumstances of this case are such that we are constrained to make observation that the appellant IOCL must be very cautious and careful while exercising its power to terminate the distributorship of this nature. For the aforesaid reasons the appeal is liable to be dismissed.

44.2. We direct the appellant IOCL to restore the LPG distributorship in favour of Respondents 1 or 2 and 3 forthwith and



submit a compliance report to this Court.”

10. This Hon'ble Court in the case of ***M/s Lall Auto Trading Company Vs. The Union of India & Ors*** reported in ***(2007) 3 PLJR 114*** while deciding the question as to whether the termination of the dealership is bad or not has held as under:-

“Any penal action could have been taken against the petitioner on the basis the Marketing Discipline Guidelines, 2001 which was in existence on the date of inspection. All oil companies including the respondents company are the parties to such guidelines which is approved by the Ministry of Petroleum and Natural Gas, Government of India and observance of the provisions of such guidelines is mandatory for the oil companies. The penalty could have been imposed against the petitioner on the basis of the Marketing Discipline Guidelines, 2001. Even if the contention of the counsel appearing for the respondents is accepted that it was not a simple case of short delivery of product rather with low delivery of products weight and measures units were also tampered in that case also the present irregularity being of the first instance maximum penalty which could have been imposed against the petitioner is of fine of rupees ten thousand, suspension of sales and supply of product for 15 days. Termination of D.P.S.L. agreement license could have been made only after the irregularities could have been found on 3rd occasion. It is not being the case of the respondents in the counter affidavit or in the



argument advanced by its counsel. I find that the order dated 13.8.2005 issued by the Territory Manager (Retail) Patna (Annexure-8) in C.W.J.C No.15468 of 2006 and Annexure-10 in C.W.J.C. No.11210 of 2005 are quashed. The respondents B.P.C.L. is directed to remove all seals and locks from petrol dispensing unit under ground energy tank and iron gates from the retail outlet of the petitioner at Kankarbagh as well as Fatuha, to restore all supplies of H.S.D. as well as other petroleum product to the retail out-forthwith”

11. Though the counsel for the Respondent-Corporation has relied on the judgment of Hon’ble Supreme Court in the case of ***Bhaven Construction through Authorised signatory Premjibhai K. Shah Vs. Executive Engineer, Sardar Sarovar Narmada Nigam Limited and Anr.*** reported in (2022) 1 SCC 75, it is to be noted that the Hon’ble Supreme Court was dealing with the issue as to whether the High Court in exercise of its power under Article 226/227 of the Constitution of India can interfere with the award passed by the Arbitrator. The said citation is not applicable to the facts of the case.

12. Having regard to the law laid down by the Hon’ble Supreme Court and this Hon’ble Court in the cases cited supra and in view of the prayer sought for by the petitioner has to be necessarily granted. The authorities are directed to restore the dealership of the petitioner and permit her to run the



Retail Outlet (RO) Dealership. The entire exercise shall be completed as expeditiously as possible preferably within a period of eight weeks from the date of the receipt of the copy of this order. However, it is made clear that the said restoration shall be subject to the final outcome of the Misc. Case No. 65 of 2021 filed by the Respondent-Corporation under Section 34 of the Arbitration & Conciliation Act, 1996 pending before the Civil Court.

13. With the above directions, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

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