

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.404 of 2023

Mrs. Mithilesh Singh, Aged about 55 years (Female), W/o Sri Jai Prakash Narayan Singh, Resident of Village- Bahardurpur, P.O. Rajendra Nagar, P.S. Bahadurpur, District- Patna, Bihar - 800016, Proprietor of M/s Maa Devi HP Gas Agency, North of High School, Ishmela, Sitalpur, District- Saran, Bihar- 841221.

... .. Petitioner/s

Versus

1. M/s Hindustan Petroleum Corporation Limited, through its Chairman-cum-Managing Director, 17, Jamshedji Tata Road, Mumbai- 400020.
2. The Chairman-cum-Managing Director, Hindustan Petroleum Corporation Limited, 17, Jamshedji Tata Road, Mumbai- 400020.
3. The Deputy General Manager, Hindustan Petroleum Corporation Limited, North Central Zone, LPG Division, Plot No. 1, Nehru Enclave, Gomti Nagar, Lucknow, (U.P.)-226010.
4. The Chief Regional Manager, Patna L.P.G. Regional Office, Hindustan Petroleum Corporation Limited, 6th Floor, Lok Nayak Jai Prakash Bhawan, Dak Bunglow Chowk, Patna- 800001.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Kumar Kaushik, Adv.

For the Respondent/s : Mr. Sanjay Kumar Mishra, Adv.

CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL JUDGMENT

Date : 05-02-2025

Heard the learned counsel for the parties.

The present writ petition has been filed for the following reliefs:-

“i. For issuance of an order, direction or a writ of mandamus for directing the respondent Corporation to restore the dealership awarded by the respondents in favour of 'Maa Devi H.P. Gas Agency', Ishmela in the District of Saran through dealership agreement dated 30.11.2019 executed between the petitioner (Proprietor of Maa Devi H.P.



Gas Agency' Ishmela in the District of Saran) and the respondents in view of the fact that the Learned Arbitral Tribunal in Arbitration Case No. 01/2021 (arising out of order dated 07.07.2021 passed in Request Case No.57 of 2020) has been pleased to declare the order of termination of dealership agreement dated 21.07.2020 to be illegal null and void being arbitrary and unjustified but has not been pleased to restore the dealership for want of jurisdiction in view of the law laid down by the Hon'ble Supreme Court in the case of Indian Oil Corporation Ltd. versus Amritsar Gas Service (1991) 1 SCC 533 in which it has been held that Arbitrator has no power to restore the dealership agreement where the contract between the parties is determinable under the provisions of Specific Relief Act.

ii. For issuance of an order, direction or a writ of mandamus for directing the respondent Corporation to continue the LPG distributorship agreement dated 30.11.2019 in favour of the petitioner with resumption of supply and distribution of LPG Cylinder.”

3. It is the case of the petitioner that pursuant to the advertisement given by the respondent-HPCL, the petitioner had applied for LPG Dealership and, thereafter, the petitioner was running the unit without any complaint. That prior to the application made to the respondent-HPCL, the petitioner was working as a teacher in Kendriya Vidyalaya, Kankarbagh, Patna and she submitted her resignation to the said post on 14.08.2004. The said resignation was forwarded by the Principal of the Kendriya Vidyalaya to the Assistant Commissioner, Patna Region on 16.08.2004. Thereafter, the resignation of the petitioner was



accepted by the Kendriya Vidyalaya Sangathan on 10.02.2005 with effect from 30.11.2004. The petitioner was granted the LPG dealership in the year 2004. That in the interregnum, the petitioner has lost her son aged 17 years and she went into depression and suffered various medical ailments. The petitioner was diagnosed with Major Depression Disorder and the Doctors have suggested for her re-engagement with children to enable her to get back her life and move forward. That during the bereavement, the Assistant Commissioner Kendriya Vidyalaya Sangathan had visited her home and taking into consideration the advise given by the Doctors offered to reconsider the re-employment of the petitioner to cope up with the parental grief. Thereafter, the petitioner sought the written consent of the Senior Regional Manager, Patna HPCL duly informing them about the unfortunate circumstances of the death of her child, the advise given by the Doctors and also seeking necessary permission for re-employment in the Kendriya Vidyalaya vide letter dated 12.07.2005. Thereafter, the petitioner was re-employed by the Kendriya Vidyalaya No. 2, Patna on 01.08.2005. However, the petitioner in order to see that no problem would arise in future has again written a letter to the respondent-HPCL seeking their permission. The petitioner was under impression that her request for re-employment was accepted



by the respondent-HPCL as she did not get any rejection order dissuading her from joining Kendriya Vidyalaya. The petitioner was trying to get grip of her life and was able to cope up with the grief by engaging herself in both the teaching profession and also running the dealership successfully. The respondent-Corporation vide letter dated 15.12.2013 i.e., after a gap of more than eight years from the date of re-joining Kendriya Vidyalaya issued her a show cause notice as to why the action should not be taken against her for wrong declaration made by the petitioner in her application as well as in her affidavit. The petitioner has given a suitable reply to the show cause notice. Thereafter, the respondent-Corporation invoked the arbitration clause vide letter dated 21.08.2013 and appointed a retired officer of the Corporation as a sole arbitrator for adjudicating the dispute between the parties. The petitioner has objected for appointment of an officer of the Corporation vide letter dated 30.09.2013. The authority without taking into consideration the objection filed by the petitioner has appointed a former officer of the Corporation namely Sri R. Laxminarayan as a sole arbitrator. The petitioner aggrieved by the appointment of the above named person as an arbitrator has approached this Hon'ble Court vide CWJC No. 9747 of 2014. In the meanwhile, as the term of the dealership agreement dated 30.11.2004 was coming to an



end on 29.11.2014, the Corporation has extended the lease for a further period of five years. Thereafter, the petitioner has also filed a Request Case No. 14 of 2015 before this Hon'ble Court assailing an appointment of an officer of the Corporation as a sole arbitrator. That both the CWJC and the Request Case filed by the petitioner were heard together and the same was dismissed by the Hon'ble Single Judge vide Judgment dated 05.05.2016, the petitioner aggrieved by said Judgment has filed LPAs being LPA No. 1161 of 2016 & LPA No. 1162 of 2016. A Division Bench of this Court vide Judgment dated 05.12.2017 have allowed the LPAs holding that the appointment of an officer of Corporation as a sole arbitrator was a misplaced exercise. Thereafter, the respondent authorities have issued a reminder show cause notice dated 12.08.2019 wherein, the earlier allegations made against the petitioner was reiterated. The petitioner in the meanwhile has decided to take voluntarily retirement from service and requested the Kendriya Vidyalaya vide letter dated 15.09.2019 to allow her to take voluntarily retirement and the same was accepted by the Kendriya Vidyalaya Sangathan vide order dated 29.11.2019 with effect from 15.12.2019. As the extension period of five years granted to the petitioner was coming to an end on 29.11.2019, the respondent-Corporation has entered into fresh dealership for a



further period of five years on 30.11.2019. The respondent-Corporation thereafter has issued a letter dated 21.07.2020 terminating the LPG distributorship on the ground of violation of the Clause 24(c)(ii) of the LPG Distributorship Agreement and also the subsequent agreements. The said termination order was challenged by the petitioner before this Hon'ble Court by way of CWJC No. 7994 of 2020. However, the said CWJC was dismissed by this Hon'ble Court vide judgment 26.03.2021 and the Request Case No. 57 of 2020 was disposed of on 07.07.2021 appointing Hon'ble Mr. Justice Hemant Kumar Srivastava as the sole Arbitrator. The said arbitration case was numbered as 01 of 2021 and the Hon'ble Arbitrator framed some issues and the final award was passed on 21.10.2022 in favour of the petitioner holding that the petitioner has not violated any of the terms and conditions of the LPG Distributorship agreement. Further, holding that the termination order dated 21.07.2020 is illegal, null and void and the petitioner is entitled for the restoration of LPG Distributorship. However, duly taking into account the judgment of the Hon'ble Supreme Court in the case of *Indian Oil Corporation Ltd. versus Amritsar Gas Service* reported in (1991) 1 SCC 533 wherein, it was held that the arbitrator cannot pass an award for restoring the dealership has not granted the said relief, though it was held by the



arbitrator that the petitioner was entitled for the restoration of the LPG Distributorship. The petitioner has thereafter, filed the present writ petition seeking the above relief.

4. Learned counsel for the petitioner has stated that the respondent authority having suffered the award dated 21.10.2022 passed by the Arbitrator, wherein it has been clearly held that the petitioner was not at fault and that she has not violated any of the terms and conditions of the agreement entered between the parties and that she was entitled to the restoration of the distributorship. Learned counsel has stated that the relief sought for by the petitioner could not be granted by the arbitrator on the basis of the judgment passed by the Hon'ble Supreme Court in the case of *Indian Oil Corporation Ltd. versus Amritsar Gas Service* reported in (1991) 1 SCC 533. Learned counsel has further stated that the award passed by the arbitrator in Arbitration Case No. 01 of 2021 has become final and, therefore, the prayer sought for in the present writ petition has to be necessarily granted and the CWJC allowed. Learned counsel has relied on the following judgments of the Hon'ble Supreme Court in the case of *Hindustan Petroleum Corpn. Ltd. v. Super Highway Services* reported in (2010) 3 SCC 321 and in the case of *Indian Oil Corpn. Ltd. v.*



Nilofer Siddiqui reported in *(2015) 16 SCC 125* to buttress his case.

5. *Per contra*, the learned counsel for the respondent-Corporation has vehemently opposed the very maintainability of the present writ petition and stated that the award passed by the arbitrator has not become final as the said award was challenged by the Corporation before the competent civil court under Section 34 of the Arbitration & Conciliation Act. Though the above stand was taken on the earlier occasion subsequently, it is brought to the notice of this Court that the application made by the respondent-Corporation before the competent civil court under Section 34 of the Act was dismissed confirming the award of the arbitrator. Though the counsel for the respondent-Corporation has stated that the authority in all likelihood are going to file an appeal against the order of the civil court, the fact remains that as on date, the authority has not yet filed an appeal and this Court cannot wait forever for the authority to file an appeal against the judgment and order dated 11.09.2024 passed by the civil court in Misc. Arbitration Case No. 56 of 2023.

6. In order to appreciate the issue involved in the present writ petition, it is necessary to extract the relief portion granted by the arbitrator, which has held as under;



“(I) The claimant has not violated any terms and conditions of the dealership agreement executed between her and the respondents Corporation on 30.11.2019.

(II) The termination order dated 21.7.2020 is illegal, null and void being arbitrary and unjustified.

(III) The claimant is not entitled of her LPG distributorship along with restoration of all its function, operation, supply, distribution etc.

(IV) The dealership agreement dated 30.11.2019 cannot be restored and cannot be remained operative until expiry of its terms.

(V) The respondents Corporation shall pay amount of Rs. 12,41,285/24 to claimant with simple interest of 6% per annum there on from the date of termination order dated 21.7.2020 till its realisation.

(VI) The respondents Corporation shall pay the amount of commission of one month to claimant within three months from the date of this Award failing which the Corporation shall pay simple interest of 6 % per annum there on. The amount of one month commission will be the same which was paid to claimant in preceding month of passing termination order dated 21.7.2020.

(VII) In the facts and circumstances of the case both the parties shall bear their litigation cost.”

7. A perusal of the same reveals that the petitioner is not at fault and has not violated the terms and conditions of the agreement, the arbitrator has clearly held that the petitioner has not misled the authorities at any point of time or during the grant of the dealership. Further, the arbitrator has held that the termination of the dealership is contrary to the agreement and the same is totally illegal, null and void. The petitioner under the impression that the respondent authority are going to drop all proceedings



against her has taken voluntarily retirement from her service and as on the date the order of termination was passed, she had no other means of livelihood except the LPG dealership. The authority ought to have taken a pragmatic view of the entire situation duly taking into account the fact that the petitioner had lost a son aged 17 years and her re-employment in the Kendriya Vidyalaya was only on the advice of the Doctors to re-engage herself with children and to overcome the grief and emotional distress that she was suffering. The authority seems to have lost sight of the above fact and have passed the impugned order without verification in a mechanical manner. The order passed by the authority is in complete violation of principles of natural justice and equity and, therefore, this Court is constrained to order the restoration of the dealership immediately.

8. Having regard to the above, the impugned order of termination dated 21.07.2020 is set aside and the prayer sought for by the petitioner for restoration of her dealership is allowed, the authority is directed to restore the dealership of the petitioner as expeditiously as possible preferably within a period of four weeks from the date of receipt of a copy of this order. However, it is made clear that in case the respondent-Corporation files any appeal against the judgment of the civil court passed in Misc.



Arbitration Case No. 56 of 2023, the restoration of the dealership shall be subject to the final outcome of the said appeal.

9. With the above direction, the present writ petition stands allowed.

(A. Abhishek Reddy, J)

Ayush/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.02.2025.
Transmission Date	NA

