GAHC010151312019

2026:GAU-AS:16395

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4573/2019

JISHU SUKLABAIDYA
S/O. JOGENDRA SUKLABAIDYA, VILL. IRONGMARA, P.O. AND P.S. SILCHAR, DIST. CACHAR, ASSAM, PIN-788011.

VERSUS

THE UNION OF INDIA AND 16 ORS.
REP. BY THE COMM. AND SECY. MINISTRY OF PETROLEUM AND NATURAL GAS, NEW DELHI-110001.

2:THE COMMISSIONER

BARAK VELLEY AND HILLS DIVISION
ASSAM
HOUSEFED COMPLEX
GUWAHATI-781006.

3:THE DY. COMMISSIONER

CACHAR
SILCHAR.

4:THE ADDL. DY. COMMISSIONER

I/C. FCS AND CA
CACHAR
SILCHAR.

5:THE SUPDT. OF POLICE

CACHAR
SILCHAR.

6:THE SUPDT.

FOOD
CIVIL SUPPLIES AND CONSUMER AFFAIRS
SILCHAR.

7:THE OFFICER IN CHARGE

SADAR POLICE STATION
SILCHAR.

8:THE CHIEF GENERAL MANAGER

INDIAN OIL CORPORATION LTD.
NEISO. SECTOR-3
NOONMATI
GUWAHATI-781020.

9:THE DY. GENERAL MANAGER
I/C (LPG)
IOAOD INDIAN OIL CORPORATION LTD.
NOONMATI
GUWAHATI-781020.

10:THE DY. GENERAL MANAGER

LPG-S
I.O.C. LTD.
SILCHAR AREA OFFICE
JAGANNATH APARTMENT
HOSPITAL ROAD
SILCHAR.

11:THE CHIEF MANAGER

(LPG-S) CSC
SILCHAR AREA OFFICE
IOC LTD.
SILCHAR.

12:THE CHIEF AREA MANAGER

LPG
IOC LTD.
JAGANNATH APARTMENT
SILCHAR.

13:THE SALES OFFICER

LPG-S
IOC LTD.
SILCHAR AREA OFFICE
JAGANNATH APARTMENT
HOSPITAL ROAD
SILCHAR.

14:PARIMAL SUKLABAIDYA

HONBLE MINISTER
GOVT. OF ASSAM
R/O. IRONGMARA
P.O. IRONGMARA
P.S. ASSAM UNIVERSITY
DARGACONA
DIST. CACHAR
ASSAM
PIN-788011.

15:SMT. UMA SUKLABAIDYA
W/O. SRI PARIMAL SUKLABAIDYA
R/O. IRONGMARA
P.O. IRONGMARA
P.S. ASSAM UNIVERSITY
DARGACONA
DIST. CACHAR
ASSAM
PIN-788011.

16:PRABHAT KUMAR AGARWAL

SALES OFFICER
LPG-S
IOC LTD.
JAGANNATH APARTMENT
HOSPITAL ROAD
SILCHAR.

17:NIRUPAM NATH

TOWN SUB-INSPECTOR (TSI) OF POLICE
SILCHAR SADAR
S/O. NIBARAN CH. NATH
VILL. BAGARGOOL
P.S. KARIMGANJ
DIST. KARIMGANJ

ASSAM
PIN-788701

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

Advocates for the Petitioner(s) : Mr. P Handique

Advocates for the Respondent(s) : Mr. K Gogoi, CGC
Mr. G Bokolial
Govt. Advocate, Assam
Mr. A Jahid
For Respondent Nos.8 to 13 & 16

Date on which Judgment is reserved: NA

Date of Pronouncement of Judgment : **05.11.2026**

Whether the Pronouncement is of the : Yes
Operative Part of the Judgment

Whether the Full Judgment has been : No
Pronounced

JUDGMENT & ORDER(ORAL)

Heard Mr. P Handique, the learned counsel appearing on behalf of the Petitioner. I have also heard Mr. K Gogoi, the learned CGC, who appears on behalf of Respondent No.1; Mr. G Bokolial, the learned Govt. Advocate, Assam who appears on behalf of Respondent Nos.3, 4, 5, 6 and 7; and Mr. A Jahid, the learned counsel who appears on behalf of Respondent Nos.8 to 13 and 16.

2. The present writ petition was filed by the Petitioner challenging

the order dated 22.10.2018 whereby an amount of Rs.10,77,989/- was imposed upon the Petitioner as a penalty in terms with Clause 3.1 of the *Marketing Disciplinary Guidelines*.

BRIEF FACTS OF THE CASE:

3. A surprise inspection was carried out in the LPG Godown of the Petitioner by the Field Officer of the Indian Oil Corporation Limited on 11.08.2018. During the inspection, it was found that 391 Cylinders weighing 14.2 kgs and 57 pressure regulators were missing.

The physical inventory record was prepared in presence of the Petitioner on 11.08.2018 as would be apparent from the signature of the Petitioner.

4. Subsequent thereto, a show cause notice was issued to the Petitioner on 27.08.2018 as to why a penalty of Rs.9,13,550/- along with GST @18% should not be imposed upon the Petitioner. The Petitioner was asked to submit an explanation within 7(seven) days from the receipt of the said show cause notice. The Petitioner claims to have submitted the reply dated 02.09.2018, which was duly received on 03.09.2018.

5. Subsequent thereto, on 22.10.2018, the penalty of Rs.9,13,550/- along with GST @18%, totaling to Rs.10,77,989/-, was imposed upon the Petitioner. The Petitioner was directed to deposit the said penalty

amount by 02.11.2018, else the said penalty amount would be deducted from the PAD balance.

6. The Petitioner thereupon submitted an Appeal on 31.10.2018 and the Appeal was rejected on 26.03.2019. The records further reveal that pursuant to the dismissal of the Appeal, the Petitioner submitted a communication to the DGM(I/C) LPG on 09.04.2019, thereby requesting for an opportunity to pay the compensation amount in installments. The contents of the communication dated 09.04.2019 being relevant is reproduced hereinunder:

"*Ref. No. CJ/2018-19/103*

Date: 09/04/2019

To,

The DGM I/C (LPG), IOAOD, IOCL, Guwahati

Sub:- Prayer for giving opportunity to Pay the Compensation amount in installment.

Respected Sir,

With due respect, I the undersign would like to inform you as under :-

(1) That by the letter dated 26th March'2019, Bimal Pathak, Appellate Authority under MDG & DGM I/C (LPG), IOAOD, IOCL Guwahati imposed a fine of Rs.10,77,986/- under MDG on my Gas Agency.

(2) That letter dated 26th October' 2018, D.C. Cachar put my Gas Agency under temporary suspension.

(3) That the same suspension was approved by the IOC in the letter dated 16/11/2018.

(4) That DC in his letter dated 28th March'2019 withdraw the suspension Order of the distributorship of my said gas agency. But till date IOC has not approved the withdrawn of suspension.

(5) That as my gas agency was in suspension for long time, I became very weak financially. As of now it is impossible for me to pay the amount in one go. I therefore pray before you to

give me the opportunity to repay the amount in 5000/- per month installment basis.

So, there is a kind request before your kindness to do all the needful thus I shall remain grateful to you ever and forever.

Thanking You.

Your's

Sri Jishu Suklabaidya
S/o- Jogendra Suklabaidya
Vill & P.O.- Irongmora
P.S.- Silchar, Cachar, Assam.
Prop- Chabi Indane Gramin Vetarak

Sd/- Jishu Suklabaidya
09/04/2019"

7. Subsequent thereto, the Petitioner also submitted a declaration on 21.05.2019 that he had agreed to pay the penalty amount which was imposed upon him in equal 12 numbers of installments within 1(one) year on re-opening of his Gas Agency. In addition to that, in the declaration, the Petitioner had also mentioned that the Petitioner was ready to pay the same on any terms and conditions which are imposed upon him. The contents of the said declaration being relevant is reproduced hereinunder:

"***DECLARATION***

To,

The Chief Area Manager,
LPG, Indian Oil Corporation Limited,
Jagannath Apartment, Silchar

I, Jishu Suklabaidya, S/o Jugendra Suklabaidya, resident of Vill. Irongmara, P.S.

Silchar, Dist. - Cachar, Assam, by religion - Hindu, by occupation - Businessman, by nationality - Indian, do hereby solemnly affirm on oath and declare as follows:

1. That I am residing permanently at the aforementioned address.

2. That, I am proprietor of M/S Chabi Indane Gramin Vitarak distributor under Indian Oil Corporation Ltd. situated at Vill. Irongmara, Dist. Cachar, Assam since 2016.

3. That, the DGM LPG has imposed a penalty against me of Rs. 10,77,989.00 (Rupees Ten Lakh Seventy Seven Thousand Nine Hundred Eighty Nine) under MDG in the month of 22-10-2018.

4. That, I agree to pay the penalty amount which is imposed upon me in equal 12 nos. of installment within one year to said authority on re-opening my Gas agency.

5. That, for the payment of the said penalty I am ready to pay the said at any terms and condition which are imposed upon me.

6. That this declaration is made by me in this the 21st day of May, 2019 before the Notary Public at Silchar,……."

8. The records further reveal that based upon the said declaration, the Petitioner duly paid the entire penalty amount in installments and had liquidated the same. During the pendency of the writ petition, in fact, prior to filing of the writ petition, one installment was paid. The Petitioner approached this Court by filing the present writ petition on 26.06.2026.

9. The records reveal that on 28.06.2019, this Court issued Notice. It was observed that the penalty order dated 22.10.2018 as well as the Appellate Order dated 26.03.2019 shall be subject to the outcome of the writ petition. It is, however, of relevance at this stage to note that

when the learned Coordinate Bench passed the order on 28.06.2019, the entire amount was admittedly not paid by the Petitioner and further nothing was mentioned that the payment of the amount which the petitioner in his own volition sought for to be paid in installments would be without prejudice to the Petitioner's claim in the present proceedings.

10. The records reveal that the Respondent Indian Oil Corporation Limited filed their response, wherein it was categorically indicated that the petitioner agreed to pay the penalty and it was upon the request of the Petitioner that IOCL had agreed to accept the entire penalty amount in 12 installments. It was also mentioned that in terms with the Distributorship Agreement, the Petitioner was liable to indemnify the IOCL of the loss of the cylinders and pressure Regulators. The said affidavit was filed on 10.09.2019.

11. It may not also be out of place to mention that the private Respondents Nos. 14, 15 and 17 filed their response. However, taking into consideration that today when the writ petition is taken up for final disposal no submissions were put forward against the private respondents, this Court is not inclined to deal with these affidavits in detail.

12. No Reply was filed to the affidavit filed by the Respondent IOCL.

On 02.09.2026, when the writ petition was taken up, the learned counsel for the Petitioner sought time to obtain instructions as to whether the petitioner would like to pursue the writ petition taking into account that the penalty imposed was duly paid by the petitioner during the pendency of the writ petition, this court accordingly fixed the writ petition on 11.09.2026.

13. When the writ petition was listed on 11.09.2026 for the first time, it is contended that the payment of the penalty was made under protest and the petitioner would like to file a rejoinder to the affidavit filed by IOCL. It is only thereafter that an affidavit in reply was filed on 05.10.2026 wherein it was contended that the payment of the penalty was made under protest.

SUBMISSIONS ON BEHALF OF THE PARTIES:

14. Mr. P. Handique, the learned counsel appearing on behalf of the Petitioner submitted that in the Show Cause Notice dated 27.08.2018, the Petitioner was granted an opportunity to explain the discrepancies by submitting a reply and the Petitioner had duly submitted the reply, but the said reply was not taken into consideration at the time of passing the impugned order of penalty dated 22.10.2018, which would be apparent from a perusal of the impugned order dated 22.10.2018 itself.

15. The learned counsel appearing on behalf of the Petitioner further submitted that in the Show Cause Notice there was no allegation of violation of Clause 2.1 (Critical Irregularity) which are under the *Marketing Disciplinary Guidelines*, but in the penalty order, Clause 2.1 was taken into consideration to impose the penalty. The learned counsel for the Petitioner, therefore, submitted that in the instant case, the Petitioner was not granted a reasonable opportunity, or for that matter, the Petitioner's reply was also not taken into consideration, for which, the impugned penalty so imposed is required to be interfered with.

16. Mr. A Jahid, the learned counsel who appears on behalf of the Respondent Nos.8 to 13 and 16, on the other hand, submitted that the instant writ petition is not at all maintainable, taking into account that the Petitioner, by way of waiver and *estoppel*, is barred from raising the present issues, *inasmuch as*, the Petitioner had duly requested after the dismissal of the Appeal to make payment of the entire amount in installments and had also issued a declaration to that effect.

17. The learned counsel for the Respondents further submitted that not only that the Petitioner even during the pendency of the writ petition made payment of the total consideration without any protest,

and as such, the Petitioner cannot be allowed to approbate and reprobate at the Petitioner's own sweet will.

18. The learned counsel for the Respondents, therefore, submitted that once the Petitioner has already elected to make the payment and has sought for making the payment on any terms and conditions, the Petitioner cannot be permitted to raise the said issues again or re-agitate the same issues by filing a writ petition, more particularly, by invoking the extraordinary jurisdiction of this Court.

19. Replying to the submissions made by the learned counsel for the Respondent IOCL, Mr. P Handique, the learned counsel for the Petitioner submitted that the payment of the penalty as well as submission of the declaration was under compulsion *inasmuch as* if the Petitioner failed to submit such a request, the amounts would be deducted from the security deposit in the PAD balance.

ANALYSIS AND DETERMINATION:

20. In the previous segments of the instant judgment, this Court had reproduced the communication issued by the Petitioner on 09.04.2019 as well as the declaration so submitted. From a perusal of the communication dated 09.04.2019 as well as the declaration, the Petitioner had admitted the liability and requested that the Petitioner be given the opportunity to make payment in installments. On the

basis of the Petitioner's communication dated 09.04.2019 and the declaration so submitted, the Petitioner was granted the opportunity to make payment of the penalty in installments. Accordingly the petitioner made payments in installments. Infact one of such installments was paid prior to the filing of the writ petition and the remaining were paid post filing of the writ petition. It is also seen that the Petitioner while requesting for payment to be made in installments did not mention that such payment was made under protest and/or without waiving the Petitioner's rights. Furthermore, there is nothing on record to show that the Petitioner sought leave of this Court to pay the remaining installments during the pendency of this writ petition without prejudice.

21. In the aforesaid factual premises, the question arises as to whether the Petitioner can be permitted to challenge the penalty order on the ground that his reply was not taken into consideration and Clause 2.1 of the Marketing Disciplinary guidelines were not specifically mentioned in the show cause notice.

22. In the instant case, the factual matrix would show that the Petitioner after exhausting all the remedies before the Respondent IOCL, the Petitioner requested that he may be permitted to deposit the amount of penalty in installments. The records further reveal that distributorship of the Petitioner was suspended and the Petitioner had

to deposit the said amount of penalty at one go. The Petitioner submitted the representation on 09.04.2019 as well as the declaration wherein in unequivocal terms the Petitioner represented that the Petitioner would pay the penalty as per any terms that may be set, if installments for payment of penalty was permitted. The Respondent IOCL on such representation as well as declaration permitted the Petitioner to make payment of the instalment in twelve (12) installments and the petitioner duly paid the same. On the said basis, the Petitioner was also permitted to run the distributorship. In the opinion of this Court, the conduct of the Petitioner disentitles the Petitioner to challenge the penalty on the ground that the Petitioner having taken the benefit of payment of the penalty in installments cannot challenge the penalty. In this regard, this Court finds it relevant to refer to the judgment of the Supreme Court in the case of ***Union of India & Ors. Vs. N. Murugesan & Ors*** reported in ***(2022) 2 SCC 25.*** Paragraph Nos. 26, 27, 27.1, 27.2 and 27.3 of the said judgment are reproduced herein under:

"**Approbate and reprobate**

26. *These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot*

be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally.

27. *We would like to quote the following judgments for better appreciation and understanding of the said principle:*

27.1. *Nagubai Ammal v. B. Shama Rao: (AIR pp. 601-02, para 23)*

"*23. But it is argued by Sri Krishnaswami Ayyangar that as the proceedings in OS. No. 92 of 1938-39 are relied on as barring the plea that the decree and sale in OS. No. 100 of 1919-20 are not collusive, not on the ground of res judicata or estoppel but on the principle that a person cannot both approbate and reprobate. It is immaterial that the present appellants were not parties thereto, and the decision in Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co. Ltd., and in particular, the observations of Scrutton, LJ., at p. 611 were quoted in support of this position. There, the facts were that an agent delivered goods to the customer contrary to the instructions of the principal, who thereafter filed a suit against the purchaser for price of goods and obtained a decree.*

Not having obtained satisfaction, the principal next filed a suit against the agent for damages on the ground of negligence and breach of duty. It was held that such an action was barred. The ground of the decision is that when on the same facts, a person has the right to claim one of two reliefs and with full knowledge he elects to claim one and obtains it, it is not open to him thereafter to go back on his election and claim the alternative relief. The principle was thus stated by Bankes, L.J.: (Verschures Creameries Ltd. case, KB p. 611)

'*… Having elected to treat the delivery to him as an authorised delivery they cannot treat the same act as a misdelivery. To do so would be to approbate and*

reprobate the same act.'

The observations of Scrutton, L.J. on which the appellants rely are as follows : (Verschures Creameries Ltd. case, KB pp. 611-12)

'… A plaintiff is not permitted to "approbate and reprobate". The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election — namely, that no party can accept and reject the same instrument : Ker v. Wauchope : Douglas-Menzies v. Umphelby. The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction.'

It is clear from the above observations that the maxim that a person cannot "approbate and reprobate" is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is thus stated in Halsbury's Laws of England, Vol. XIII, p. 464, para 512:

'On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded; nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it.'

27.2. *State of Punjab v. Dhanjit Singh Sandhu : (SCC pp. 153-54, paras 22-23 & 25-26)*

"22. The doctrine of "approbate and reprobate" is only a species of estoppel, it implies only to the conduct of parties. As in the case of estoppel it cannot operate against the provisions of a statute. (Vide CIT v. MR. P. Firm Muar.)

23. It is settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and derived the benefit out of it, he cannot challenge it on any ground. (Vide Maharashtra SRTC v. Balwant Regular Motor Service.) In R.N. Gosain v. Yashpal Dhir this Court has observed as under : (R.N. Gosain case, SCC pp. 687-88, para 10)

'10. Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that 'a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage'.''

25. The Supreme Court in Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd., made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience.

26. It is evident that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when he has to speak, from asserting a right which he would have otherwise had."

27.3. *Rajasthan State Industrial Development & Investment Corpn. v. Diamond & Gem Development Corpn. Ltd. (SCC pp. 480-81, paras 15-16)*

"***I. Approbate and reprobate***

15. A party cannot be permitted to "blow hot-blow cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the

binding effect of such contract, or conveyance, or order upon himself. This rule is applied to ensure equity, however, it must not be applied in such a manner so as to violate the principles of what is right and of good conscience. [Vide Nagubai Ammal v. B. Shama Rao, CIT v. V. MR. P. Firm Muar, Ramesh Chandra Sankla v. Vikram Cement, Pradeep Oil Corpn. v. MCD, Cauvery Coffee Traders v. Hornor Resources (International) Co. Ltd. and V. Chandrasekaran v. Administrative Officer.]

16. Thus, it is evident that the doctrine of election is based on the rule of estoppel —the principle that one cannot approbate and reprobate is inherent in it. The doctrine of estoppel by election is one among the species of estoppel in pais (or equitable estoppel), which is a rule of equity. By this law, a person may be precluded, by way of his actions, or conduct, or silence when it is his duty to speak, from asserting a right which he would have otherwise had."

23. Taking into account the above principles of law and the same being applied to the facts of the instant case, it is, therefore, the opinion of this Court that the petitioner is not entitled to maintain the challenge to the penalty order on account of his conduct.

24. Accordingly, the writ petition stands dismissed. No costs.

JUDGE

Shivani Gautam
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Comparing Assistant