



GAHC010004202020

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

Case No. : WP(C)/149/2020

SUMAN AHMED
R/O KHUDIMARI PART II, P.O. KHUDIMARI, P.S. GAURIPUR, DIST. DHUBRI,
ASSAM

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP .BY THE SECRETARY TO THE MINISTRY OF PETROLEUM, SHASTRI
BHAWAN, DR. RAJENDRA PRASAD ROAD, NEW DELHI-110001

2:THE INDIAN OIL CORPORATION LTD.
A PUBLIC SECTOR COMPANY REGISTERED UNDER THE COMPANIES ACT
AND HAVING ITS REGISTERED OFFICE AT G-8
ALI YAVAR JANG MARG
BANDRA (EAST)
MUMBAI
REP. BY HEREIN BY ITS EXECUTIVE DIRECTOR

3:THE CHIEF DIVISIONAL RETAIL SELES MANAGER
INDIAN OIL CORPORATION LTD. GUWAHATI DIVISIONAL OFFICE
EAST POINT TOWER
BAMUNIMAIDAM
GUWAHATI
ASSAM 781021

4:THE SENIOR DIVISIONAL RETAIL MANAGER
INDIAN OIL CORPORATION LTD. GUWAHATI INTEGRATED DIVISIONAL
OFFICE
NOONMATI
GUWAHATI



ASSAM-781020

5:THE CHIEF GENERAL MANAGER
INDIAN OIL CORPORATION LTD. GUWAHATI DIVISIONAL OFFICE
EAST POINT TOWER
BAMUNIMAIDAM
GUWAHATI
ASSAM 781021

6:THE DY. GENERAL MANAGER
INDIAN OIL CORPORATION LTD. GUWAHATI DIVISIONAL OFFICE
EAST POINT TOWER
BAMUNIMAIDAM
GUWAHATI
ASSAM 78102

Advocate for the Petitioner : MR. S BARTHAKUR

Advocate for the Respondent : SC, I O C

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri S. Borthakur

Advocates for the respondents : Shri DK Sarmah, SC, IOCL

Date of hearing : **24.11.2022**

Date of Judgment : **13.12.2022**

JUDGMENT & ORDER

The writ jurisdiction of this Court conferred by Article 226 of the Constitution of India has been sought to be invoked by this present petition. The petitioner is aggrieved by a communication dated 25.11.2019 by which his dealership of an oil

station was terminated. The petitioner contends that such termination is in gross violation of the principles of natural justice and is otherwise unsustainable in law.

2. Before going into the issues involved, the brief facts of the case are narrated hereinbelow.

3. The petitioner is the dealer of oil pump station in the name and style M/s Dulal Sales & Service Station, Ruposhi in the district of Dhubri. The petitioner had opened the said dealership of IOCL in the year 2008 and claims to be operating the retail outlet to the full satisfaction of all concerned and without any complaint. On 29.03.2018, an inspection was carried out by a team of IOCL official belonging to the Anti Adulteration Cell (AAC). On such inspection, some additional unauthorized fitting like "Double Metallic Gear" in MIDCO mechanical dispensing unit was allegedly found, which the petitioner had denied.

4. Thereafter, on 24.04.2018, the IOCL authority sought for explanation from the petitioner which the petitioner had replied on 17.05.2018. It is the case of the petitioner that after a long period of time, on 14.02.2019, a joint inspection was carried on and thereafter a minutes of meeting of the same date was prepared. Based upon the said minutes, on 10.06.2019, the Deputy General Manager of the Corporation issued Show-Cause Notice to the petitioner for violation of the Marketing Discipline Guidelines - 2013 to which the petitioner replied on 24.06.2019. The petitioner has admitted that a personal hearing was afforded on 17.10.2019, on which date, apart from the personal hearing, the petitioner had submitted a written note. However, vide the impugned order dated 25.11.2019, the dealership was terminated. The petitioner contends that the impugned order was passed without furnishing the documents relied upon and thereby the petitioner was deprived of a fair and reasonable opportunity to defend his case.

5. The Corporation has filed an affidavit-in-opposition on 11.05.2020 denying the

case of the petitioner by stating that the allegation was grave in nature and the termination was done after affording all procedural safeguards.

6. I have heard Shri S. Borthakur, learned counsel for the petitioner. I have also heard Shri DK Sharma, learned Standing Counsel for the Indian Oil Corporation Limited. The learned Standing Counsel has also placed before this Court the records of the case.

7. Shri Borthakur, learned counsel for the petitioner has submitted that in the inspection held on 29.03.2018, a "Double Metallic Gear" was found attached to the pumping machine and accordingly, the fuel station was sealed. Thereafter, on 14.02.2019, another inspection was made and without granting a reasonable opportunity, the dealership was terminated vide the impugned order dated 25.11.2019.

8. Shri Borthakur, learned counsel for the petitioner has submitted that as an owner, there is absolutely no scope to install a "Double Metallic Gear" in the device. By drawing the attention of this Court to the inspection report dated 29.03.2018, he submits that it would be evident that the previous inspection was done on 21.03.2018 and in this period of eight days, attaching a device of the present nature is not possible. The learned counsel further submits that the petitioner, who is the dealer, was not personally present at the time of the inspection on 29.03.2018 and it was only one of his representatives who did not know much about the system was present. He has further submitted that in the second inspection which was carried out on 14.02.2019, it was found, amongst others, that positions of some of the holographic seals had changed from the original position and conditions of the some of the holographic seals were deformed.

9. The learned counsel for the petitioner strenuously argued that after the first inspection on 29.03.2018 when admittedly the authorities had sealed the machine and

had put holographic seal, there is no scope for the petitioner to remove such holographic seals as those are within the exclusive access of the Corporation.

10. Shri Borthakur, learned counsel for the petitioner has submitted that no scope was given to him to put forward his explanation and other documents before the termination letter dated 25.11.2019 was issued.

11. Shri Borthakur, learned counsel for the petitioner has placed reliance upon the following case laws-

i. (2018) 5 GLR 104 [Nibedita Roy Vs. Union of India and Ors.]

ii. (2022) 8 SCC 162 [T. Takano Vs. Securities and Exchange Board of India and Anr.]

12. In the case of ***Nibedita Roy (supra)***, the Hon'ble Court had interfered with a similar matter wherein a petrol pump was sealed after being detected that there was malpractice.

13. The case of ***T. Takano (supra)*** has been cited to bring home the fact that when any action, adverse to a party is contemplated, adequate opportunity is required to be given.

14. On the other hand, Shri Sharma, learned counsel representing the respondents - Corporation has submitted that the inspection in which the "Double Metallic Gear" has been detected was done on 29.03.2018 and only about a week before, another inspection was done on which no such anomalies were detected. The Corporations' Counsel has explained that by installing the "Double Metallic Gear", the flow of fuel by the pipe slows down which gives direct benefit to the pump owner and in the instant case, the same was detected in the presence of the representative of the petitioner whose signature was taken and therefore there is no scope to submit that such

detection was done behind the back of the petitioner. He further submits that on such detection, the petrol pump was sealed and holographic seals were put. However, when the second inspection was carried out on 14.02.2019, it was found that even the holographic seals were tampered. Though the petitioner has denied any role in such tampering, it is submitted that the attending facts and circumstances would lead a reasonable mind to conclude that it is the beneficiary who would indulge in such activities.

15. The rival submissions of the learned counsel for the parties have been duly considered and the materials before this Court including the records have been carefully examined.

16. A Writ Court exercising powers under Article 226 of the Constitution of India can examine the process by which a decision has been arrived at and the decision as such may not *per se* be the subject matter of challenge. The Hon'ble Supreme Court in the landmark case of ***Tata Cellular Vs. Union of India*** reported in **(1994) 6 SCC 651** has laid down as follows:

"74. Judicial review is concerned with reviewing not the merits of the decision in support of which the application of judicial review is made, but the decision making process itself.

75. In Chief Constable of the North Wales Police v. Evans, (1982) 3 All ER 141 at 154 Lord Brightman said :

"Judicial review, as the words imply, is not an appeal from a decision, but review of the manner in which the decision was made.

Judicial Review is concerned, not with the decision, but with the decision making process. Unless that restriction on the power of the Court is observed, the Court will, in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

In the same case Lord Hailsham Commented on the purpose of the remedy by way of judicial review under RSC Ord 53 in the following terms :

This remedy, vastly increased in the extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities judicial, quasi-judicial, and, as would originally have been thought when I first practised at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law to substitute the Courts as the bodies making the decisions. It is intended to see that the relevant authorities are their powers in a proper manner. (p. 1160)

R v. Panel on Take-overs and mergers, ex p Datafin plc. Sir John Donaldson MR commented :

'an application for judicial review is not an appeal'.

In Lonrho plc v. Secretary of State for Trade and Industry. Lord Keith said :

'Judicial review is a protection and not a weapon'. It is thus different from an appeal. When hearing an appeal the Court concerned with the merits of the decision under appeal. In Re Amin Lord Fraser observed that :

"Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made Judicial review is entirely different from an ordinary appeal. It is made effective by the Court quashing an administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer."

17. Having the aforesaid settled law in mind, let us proceed to examine the present case. It is an admitted fact that in the inspection done on 29.03.2018, a "Double Metallic Gear", which is alien to the device for pumping oil was found installed and accordingly, the pump was sealed. The Corporation had given an opportunity to explain vide letter dated 24.04.2018 which was replied to. As the replied was unconvincing, another inspection was done on 14.02.2019 on which date, again anomalies were noticed to the effect that the holographic seals which were put on the device on the earlier date of inspection i.e. 29.03.2018 was found to be tampered and accordingly another Show-Cause Notice was issued to the petitioner, which was replied to on 24.06.2019 whereafter, admittedly a personal hearing was also afforded on 17.10.2019 and only after the same, the impugned order has been passed.

18. This Court finds force in the argument made on behalf of the Corporation that after the petrol pump was sealed on account of detection of a Double Metallic Gear, further tampering with holographic seal will only benefit the dealer. Further, the explanation as to how a Double Metallic Gear came to be installed in the machine is wholly unconvincing and it is an admitted fact that by installation such a device, the flow of fuel slows down than the running meter whereby the customers are duped and illegal gain is made by the dealer which, in the instant case, is the petitioner.

19. Indulging in mal practices by a dealer of petroleum products would have widespread ramification as vehicles of numerous customers would be affected. The allegation, which is a proof by itself is almost covered by the doctrine of *res ipsa loquitur* wherein the Double Metallic Gear was found installed to the pump by the inspection team in presence of the representative of the petitioner. No allegation has been made that such installation was done by the Corporation or any other third party to defame the petitioner and in absence of such allegation coupled with the fact that such installation benefits only the petitioner, there is hardly any scope to come to the conclusion that the petitioner was not indulging in the said mal practices. The

misconduct is a grave one and in the considered opinion of this Court, the penalty of termination is proportionate and justified, which does not call for any interference.

20. The case laws relied upon by the petitioner, more particularly the case of **Nivedita Roy (supra)** will not have much application inasmuch as, in the said case, the allegation was based on hypothesis and there were inconsistencies in the stand of the Corporation and therefore, the Court had interfered in the case.

21. The Hon'ble Supreme Court in the case of **T. Takano (supra)** has reiterated the requirement of the principle of adherence to the principles of natural justice which in the instant case have been apparently followed. As noted above, apart from the Show-Cause Notice, opportunity of personal hearing was also afforded before the impugned order dated 25.11.2019 was passed.

22. The principles of natural justice are a means to balance the scale of fairness. However, any situation that is a menace to the society and puts the interest of the public at stake cannot follow the principles of natural justice. Such caution is required to be taken by the Courts of law to avoid causing harm while delivering justice is quite acceptable. In fact, in support of the aforementioned proposition, there is a series of decisions having nexus with these principles, including a decision of **Aligarh Muslim University and Others v. Mansoor Ali Khan** reported in **(2000) 7 SCC 529**. Wherein the Hon'ble Supreme Court has laid down the following –

“There can be certain situations in which an order passed in violation of principles natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. ”

23. Further, reference was made to the earlier case of **S.L. Kapoor v. Jagmohan** reported in **(1980) 4 SCC 379**, the following observation was made-

“ The useless formality theory is an exception. Apart from the class of cases of



*admitted or indisputable facts leading only to one conclusion as discussed in **S.L. Kapoor v. Jagmohan**, there has been considerate debate on the application of that theory in other cases. In the ultimate analysis the applicability of the theory would depend on the facts of a particular case."*

24. In view of the above, this Court does not find any merits in the writ petition and accordingly, the same stands disposed of.

25. No order as to cost.

JUDGE

Comparing Assistant