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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&

HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)

ON THE 19th OF APRIL, 2022

WRIT PETITION No. 12708 of 2021

Between:-

INDIAN OIL CORPORATION LTD. REGISTERED
OFFICE- INDIAN OIL BHAWAN 9, ALIYAVAR JUNG
MARG, MUMBAI (MAH.) STATE OFFICE- INDIAN
OIL BHAWAN, 16, ARERA HILLS, JAIL ROAD,
BHOPAL (M.P.) INDORE DIVISIONAL OFFICE AT
INDORE THROUGH-BIPIN KUMAR S/O LATE
MAHENDRA PRASAD AGED ABOUT 43 YEARS,
OCCUPATION-SERVICE RETAIL SALES MANAGER,
ADDRESS- INDIAN OIL BHAWAN, PLOT NO.8,
SCHEME NO.159, KUSHABHAU THAKRE MARG,
M.R.-10, INDORE, M.P.

.....PETITIONER

AND

M/S GAGAN AUTOMOBILES PROPRIETOR
KAMRUDDIN S/O BARKAT ALI MUGAL, AGE 41
YEARS, OCCUPATION- BUSINESS, POST
DHOSWAS, DISTRICT RATLAM R/O HUSSAIN ALI
BUILDING, DAAT KU PUL, DISTRICT RATLAM,
MADHYA PRADESH (MADHYA PRADESH)

.....RESPONDENT

WRIT PETITION No. 22339 of 2021

Between:-

M/S GAGAN AUTOMOBILES THROUGH ITS

PROPRIETOR MR. KAMARUDDIN MUGHAL S/O
B.A. MUGHAL, AGED ABOUT 41 YEARS,
BUSINESS, ADD: HUSSAIN ALI BUILDING, DAAT
KI PUL (MADHYA PRADESH)

.....PETITIONER

AND

1. INDIAN OIL CORPORATION LTD. THROUGH
EXECUTIVE DIRECTOR (RETAIL SALES) REGD
OFFICE-INDIAN OIL BHAWAN, 9 ALYAVAR JUNG
MARG, MUMBAI (MAHARASHTRA)

2. INDIAN OIL CORPORATION LTD. STATE OFFICE
INDIAN OIL BHAWAN 16, ARRERA HILLS, JAIL
ROAD. BHOPAL (MADHYA PRADESH)

3. INDIAN OIL CORPORATION LTD. THR. RETAIL
SALES MANAGER INDORE DIVISIONAL OFFICE
ADD. INDIAN OIL BHAWAN PLOT NO. 08 SCHEME
NO. 159, KUSHABHAU THAKRE MARG. M.R. 10
INDORE (MADHYA PRADESH)

.....RESPONDENTS

JUSTICE VIVEK RUSIA passed the following:-

ORDER

Shri Yogesh Kumar Mittal learned counsel for IOC.

Shri Pushyamitra Bhargav learned counsel for the Dealer.

By this common order, both the writ petitions are being decided as both arose out order dated 29.11.2018 passed by Dispute Resolution Panel. For the sake of convenience, facts of Writ Petition No.12708/2021 filed by Indian Oil Corporation (IOC) are being taken for deciding the case.

The petitioner/ Indian Oil Corporation Ltd. (hereinafter referred to as "IOC") has filed the present petition being aggrieved by the order dated 29.11.2018 passed by Dispute Resolution Penal (in short "DRP") in case No. DRP/IOCL/RET/0003/2018 whereby

the order of termination of dealership dated 12.01.2015 has been set aside.

[2] The petitioner is a public sector undertaking of the Central Government engaged in the production & distribution of petrol, diesel & other petroleum products through its retail outlet dealership. The IOC has framed Marketing Discipline Guidelines initially in the year 1981-82 and thereafter revised/amended from time to time. All the retail outlets/ dealers selected and appointed by the IOC are bound to follow the Marketing Discipline Guidelines (hereinafter referred to as "MDG") in order to maintain the discipline and ethics in the sale of oil products. The respondent was given a license to own and run a retail outlet established at location Dhoswas, District Ratlam in the M/s Gagan Automobile and the agreement was executed on 28.11.2008.

[3] On 26.11.2013, two authorized officers of the Department of Anti Adulteration Cell, IOC (in short "AAC") visited the aforesaid retail outlet for conducting a surprise inspection. The Manager and other employees were found there at the time of inspection, after carrying out certain inspections at various places of the outlet. They checked all the three nozzles (1 of motor spirit (MS) 2 of High-Speed Diesel (HSD)) and all three nozzles were found to be within the permissible limit. ACC team has suspected an electronic chip in the pulsar cable at the motherboard end in MS DU of L&T made Z line Model;GS74624 Sr. No. GW 2877. In order to do the intensive checking of Dispensing Unit, the Field Officer of IOC was called for assistance but the staff of the dealer locked the door of the sales building to restrain them to check the Dispensing Unit. However they were permitted to inspect other documents in the office but

because of the continuous destruction and interference, the AAC decided to suspend the further inspection. According to the petitioner, the attendant and Manager of the retail outlet surrounded the team members and forcefully pushed and abused them by using foul and disrespectful language. Due to this, the officers could not continue the sampling and investigation at the retail outlet and left the location and came back to the hotel. A fact-finding letter dated 27.11.2013 was written to the higher authority. The IOC has decided to issue a show-cause notice to the dealer and accordingly same was issued, the respondent submitted a reply dated 06.12.2013 denying all such incidents. Being dissatisfied with the reply a show-cause notice for termination was issued to the respondent. The respondent again submitted a reply to the show-cause notice and vide order dated 12.01.2014, the IOC has terminated the dealership of the respondent under clauses 8.5.1 & 8.5.4 of MDG 2013 and clauses 42, 43 & 45 (K) and (o) of the Dealership Agreement.

[4] Being aggrieved by the aforesaid termination, the respondent filed an appeal before the Executive Director (Retail Sales) of the IOC. During the pendency of the aforesaid appeal, the amendment of MDG 2012 took place and the appeal was transferred to Dispute Resolution Panel (DRP) as being an appellate authority.

[5] Learned DRP has entertained the appeal and after hearing the parties, recorded the finding that the irregularity committed by the respondent is '**Major Irregularity**' and does not come under the clause of '**Critical Irregularity**'. Vide impugned order learned DRP has held that termination of the dealership was not warranted accordingly set aside the termination order and remitted the matter back to the Executive Director (Retail Sales), IOC (Marketing

Division) with direction to pass an order afresh on alleged show cause notice of IOC treating the alleged irregularity as a '**Major Irregularity**'. Hence, this petition before this Court.

[6] The petitioner has filed the present petition 19.07.2021 challenging the order of DRP dated 29.11.2018 i.e. almost after three years. During this period, the order of learned DRP dated 29.11.2018 has not been complied with. Hence, the respondent has filed Writ Petition No.22339/2021 seeking implementation of direction given by learned DRP, however, the respondent is not challenging the findings recorded by DRP and accepted it as '**Major Irregularity**'.

We have heard learned counsel for the parties and perused the record.

[7] The only controversy between the parties as to whether the DRP has rightly come to the conclusion that the irregularity committed by the respondent is a '**Major Irregularity**' or a '**Critical Irregularity**'? The DRP in its order has quoted '**Critical Irregularity**' clause 8.2 and '**Major Irregularity**'. If the seal of the metering unit is found tampered in the Dispensing Unit and any Additional/unauthorized fittings/gears/electronic components found in dispensing unit/tampering with dispensing unit same are treated to be '**Critical Irregularity**' on part of dealers. Short delivery of the product with W & M seals intact is treated to be a '**Major Irregularity**'. For '**Critical Irregularity**', the only penalty provided is the termination of the dealership whereas for '**Major Irregularity**' different penalties are prescribed for the first, second and third instances.

[8] The respondent was served with the show cause notice alleging

that the members of the AAC team misbehaved and were not permitted to check Dispensing Unit on 26.11.2013 by the manager and other staff members. If on 23.11.2013 any misbehaving or manhandling was done with the ACC team, a First Information Report (in short "FIR") ought to have been lodged to the police but in this case, no such FIR was lodged and even matter was not reported to the local police station. Admittedly, there is no recovery of the electronic chip in this case. It is also not the case of OIL that the seal put by the Weight and Measurement Department was found tampered with or broken.

[9] Shri P.M.Bhargav, learned counsel for the respondent has drawn our attention to para 2 of the report of AAC (Annexure P/4) in which it is mentioned that after reaching RO, AAC Officers carried out the delivery check of all three nozzles (1 MS and 2 HSD). The delivery was found to be within the permissible limit for all three nozzles, therefore, it is clear that there was no obstruction and members of AAC were permitted to inspect the nozzles and other records of the respondent. If the team suspected that one MS DU of L & T make, Z line Model: GS 74624 Sr. No:GW 2877 has an electronic chip in the pulser cable at the motherboard end and in order further check they were prevented to open the unit to confirm the possession of said chip then inspector of the department of W&M ought to have been called there as it is a case of '**Critical Irregularity**'. In case of short delivery of products, MDG for RO/SKO Dealership of Public Sector Marketing Companies specific provides there has to be a seal by W&M department on the Metering unit and Totalizer Unit. The seal would be deemed tampered with in cases of the Seal itself is missing or a different

seal has been put other than embossed by W&M Inspector or the sealing wire is broken and not in one piece. The report of the team is completely silent about the condition of the seal in the unit. There is no report that any seal was found tampered with or broken. It is not a case of IOC that without tampering seal and without opening the unit the chip can be inserted inside the dispensing unit.

[10] After termination of the agreement, the entire RO has been taken over by IOC and given to someone to run. There is no Panchnama to establish that after taking the outlet and dispensing unit any seal was found broken or chip was recovered., therefore, it cannot be believed that by keeping of member of AAC locked inside the office room the staff of dealer has removed the chip. At the time of the search, no Inspector of W&M was called on the spot and without tampering and without breaking the seal no chip can be inserted in the metering or dispensing unit or removed. The report is completely silent about the status of the seal put by W&M Department, therefore, DRP has rightly found that it is a case of '**Major Irregularity**' and punishment should be awarded treating alleged irregularity as '**Major Irregularity**'.

[11] Even otherwise, there is a delay of three years in filing this petition. No action has been taken on the decision taken by DRP/Appellate Authority. The respondent has suffered the loss of business because of action and delay in filing the present petition for which the respondent is free to take the remedy in accordance with the law. The IOC has given a reason for the delay that the decision was taken for filling this Writ Petition by the competent authority in March 2020 and thereafter lockdown was announced due to the Pandemic and the general case has not been filed during

the special operating procedure of the High Court. This is unsubstantiated ground. The High Court of M.P. has worked during the Pandemic period through Video Conference. The filing was permitted online, therefore, the IOC could have filed the Writ Petition online. The OIC cannot be permitted to take baseless ground to justify the delay in filing Writ Petition.

[12]. In view of the above and for the reasons stated above, the writ petition filed by the IOC is hereby dismissed with a cost of **Rs.30,000/- (Rupees Thirty Thousands Only)** for the delay in filing the writ petition and not taking the decision upon order dated 29.11.2018 passed by the learned DRP. The imposed cost is payable to the respondent.

[13]. Writ Petition No.22339/2021 is also disposed of in terms of the order passed in Writ Petition No. 12708 of 2021 with the direction to the IOC to comply with the order dated 29.11.2018 passed by the learned DRP forthwith.

Office to place the copy of this order in the file of W.P. No.22339/2021 too.

(VIVEK RUSIA)
JUDGE

(AMAR NATH (KESHARWANI))
JUDGE

praveen/-