65 27.09.2022
NB Ct. 39

WPA 8594 of 2021
CAN 1 of 2022

Bholanath Das
Vs.
Indian Oil Corporation Ltd. & Ors.

Mr. Rachit Lakhmani,
Mr. Vikash Singh,
Mr. Ratindranath Bandyopadhyay,
Ms. Arunima Mukhopadhyay.
…for the petitioner.

Mr. Subhendu Halder,
Ms. Shreya Nandi.
…for the IOC.

This is an application under Article 226 of the Constitution of India praying for direction upon the respondent authorities to forbear themselves from giving any effect and/or further effect to the letter of termination being reference No.HDO/RSS/01 dated 28th February, 2021 issued by the Deputy General Manager (RS), Haldia, Divisional Office, Indian Oil Corporation Limited and also the show cause notice dated 26th July, 2018.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner was a dealer of a petrol pump. He was doing such business in his own land. A third party having animus against the petitioner made certain allegations against him. On the basis of such allegations, an enquiry was conducted by the respondent company and finally the license of the petitioner was terminated. Surprisingly, a hearing was given by the CGM (RS) and in such hearing the DGM (RS) represented the case of the Oil Company (IOCL). In spite of this, the DGM (RS), being the respondent no.5, himself passed a purportedly reasoned order cancelling the license of the present petitioner. This is absolutely bad in law and is quite unheard of. This amounts to the petitioner who is having a direct interest in the matter deciding the matter himself.

Learned counsel appearing on behalf of the Oil Company submits as follows. The order which has been referred to by the petitioner as the impugned order is only a communication of the order of cancellation done by the DGM (RS). The Oil Company would like to rely on an internal communication indicating actually how the order and by whom the order was passed.

Learned counsel for the petitioner objects to the respondent’s efforts to rely on a private document at this belated stage, even after an opposition had been filed.

From a copy of the Minutes of the personal hearing dated 29.01.2021 at the Office of the CGM (RS), it is evident that the DGM (RS), WBSO along with others had taken up the case of the Oil Company (IOCL). In spite of this, by an order dated 28.02.2021, the same DGM (RS) seems to have passed an order of cancellation of the dealership of the petitionr. It is an order where it refers to the earlier hearing and then discusses each of the issues one after the other and thereafter, comes to a purportedly reasoned finding that there was no alternative but to terminate the dealership agreement with immediate effect. The mere fact that it is has been mentioned at the fag end of the order that the corporation was of the view that the petitioner had contravened the dealership agreement, does not militate against the propostiion that order was being passed by the DGM (RS).

The matter has to be heard at length. But, the petitioner has made out a good case for passing any interim order in this matter.

Accordingly, the respondent authorities are directed not to give further effect to the termination order. This interim order shall remain operative till 23rd November, 2022.

However, the issue whether the respondent Oil Company would be allowed to rely on a private document would be decided after hearing all the parties on this point.

The respondent shall be at liberty to file an application praying for filing an affidavit incorporating a private document. In the event, such an application is filed, the petitioner shall be at liberty to file an exception to the same.

Let this matter come up for hearing in the list on 9th November, 2022.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)