

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5228 of 2020

Pappu Kumar Yadav son of Dharmanath yadav, resident of village- Mairy Sudama, P.S. Bhagwanpur Hat, District- Siwan

... .. Petitioner/s

Versus

1. The Indian Oil Corporation through its Chairman, G-9, Ali Aval Jang Mall, bandra (East), Mumbai-400051
2. The Deputy General Manager (LPG-S) Patna Area Office, Indian Oil Corporation Limited, 1st Floor, Shahi Bhavan, Exhibition Road, patna-1

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Adv.
For the Respondents : Mr. Ankit Katriar, Adv.

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
C.A.V. JUDGMENT

Date : 25-01-2021

Heard learned counsel for the petitioner and learned counsel for the respondents through video conferencing.

The petitioner has filed the instant application for the following reliefs:

“(i) For issuance of writ in the nature of certiorari for quashing of letter no. PAT/LPG /MORAKHAS dated 03-02-2020 issued by the Deputy General manager (LPG-S), Patna Area Office, Indian Oil Corporation Limited whereby the letter of intent issued in favour of the petitioner for running the Rural LPG Distributorship in Morakhas, Siwan has been withdrawn.

(ii) For necessary direction upon the



respondent authorities to restore the letter of intent in favour of the petitioner and allow the petitioner to run the Rural LPG Distributorship in Morakhas, Siwan as the petitioner has already invested huge amount and has made all the necessary preparations for running the LPG Distributorship.

(iii) For restraining the respondent authorities from allotting the Rural LPG Distributorship in Morakhas, Siwan in the OBC category to any other candidate during the pendency of this writ application.

(iv) For any other direction, which your Lordships may deem fit and proper in the facts and circumstances of the case.”

The case of the petitioner is that pursuant to the advertisement published by the Indian Oil Corporation (hereinafter referred to as ‘the I.O.C. Ltd.’) in the hindi daily newspaper ‘Hindustan’ on 18.6.2017 inviting applications for grant of rural LPG Distributorship for the location Morakhas in the District of Siwan. The petitioner applied under the OBC category. Fulfilling all the required qualifications, he submitted his online application and was selected for LPG Distributorship at the Morakhas location in District Siwan under the OBC category. The I.O.C. Ltd. issued a Letter of Intent as contained



in letter dated 27.6.2019 (Annexure-2). It is further the case of the petitioner that he was enticed by two persons from the adjoining village for running the business of LPG Distributorship in a partnership and they entered into a registered deed of partnership on 31.7.2019 (Annexure-3). Soon thereafter the two persons started creating trouble for the petitioner and thus the petitioner got a legal notice dated 9.9.2019 sent to them through his advocate stating therein that the petitioner cannot proceed with the partnership. The same was followed by a second and third notice dated 29.10.2019 and 4.1.2020. The three notices are Annexures- 4/A, 4/B and 4/C to the writ petition.

It is the case of the petitioner that in furtherance of the intended mischief the two persons who had entered into partnership with the petitioner filed a complaint before the I.O.C. Ltd. and on receipt of the said complaint a letter dated 4.12.2019 was written by the Deputy General Manager (LPG-S) of the I.O.C. Ltd. to the petitioner asking him to explain within 7 days of the receipt of the letter as to why action be not taken against the petitioner for violation of the relevant clause of the Letter of Intent dated 27.6.2019. The petitioner filed his reply to the show cause notice on 30.12.2019, also stating therein about



getting a legal notice sent on 9.9.2019 and the steps being taken by him to get the registered deed dated 31.7.2019 cancelled. He requested for sympathetic consideration and gave his undertaking that he will be more conscious and careful in following the guidelines of the I.O.C. Ltd. By order contained in letter dated 3.2.2020 (Annexure-7) issued under the signature of of the Deputy General Manager (LPG-S), Patna area office of the I.O.C. Ltd., the Letter of Intent dated 27.6.2019 for LPG Distributorship issued in favour of the petitioner was withdrawn along with forfeiture of the amount of Rs. 30,000/-. It is against this order dated 3.2.2020 of the I.O.C. Ltd. withdrawing the Letter of Intent that the instant application has been filed.

It is the submission of learned counsel for the petitioner that in view of section 41 of the Indian Partnership Act, the so called deed of partnership being illegal, never came into existence and stood dissolved at the initial stage itself. It is further submitted that even if not earlier, the partnership definitely stood dissolved pursuant to the legal notice dated 9.9.2019 sent on behalf of the petitioner. It was much thereafter on 4.12.2019 that the show cause notice was issued on behalf of I.O.C. Ltd. It is thus submitted that on the date of issuance of the show cause notice the cause/reason for the notice did not



exist, the partnership having stood dissolved on or before 9.9.2019.

Mr. Ankit Katriar, learned counsel appearing for the Indian Oil Corporation submits that Clause 5.4 of the Letter of Intent dated 27.6.2019 (Annexure-2) in clear terms states that the petitioner shall not induct any person as his partner nor make any changes in the constitution of the proposed distributorship in a manner other than what was intended at the time of application without prior approval from the Corporation. He submits that the application against advertisement was solely by the petitioner and he could not have entered into an agreement of partnership, the same being clearly in violation of clause 5.4 of the Letter of Intent dated 27.6.2019. He submits that the contention of the petitioner that he was enticed and misled in entering into agreement is in contradiction to Clause 4 of his legal notice dated 9.9.2019 (Annexure-4/A), from reading of which it would clearly be evident that there arose a dispute between the parties over a percentage of the profit that they would share. The petitioner was not misled but consciously entered into a registered agreement and thus having violated the terms of the Letter of Intent, the L.O.I. has rightly been withdrawn for violation of the condition as contained in clause



9.3 of the L.O.I. dated 27.6.2019. Learned counsel for the I.O.C. Ltd. further relies on the judgment in the case of *Indian Oil Corporation Ltd versus Raj Kumar Jha [2012 (2) PLJR 783]*, more particularly paragraph no. 8 thereof.

It is submitted that in view of the facts and circumstances of the case, after giving due opportunity to the petitioner and considering the reply filed by him, the L.O.I dated 27.6.2019 has rightly been withdrawn by order dated 3.2.2020 (Annexure-7), impugned herein.

Having heard learned counsel for parties and on going through the records of the case it transpires that the petitioner being one of the applicants for grant of L.P.G. Distributorship in the category of OBC against advertisement on 17-18.06.2017 of the I.O.C. Ltd. was selected in the draw held and was issued a Letter of Intent Ref. No.2019/IN000112/ BH./000015/2312/00009 dated 27.6.2019 regarding proposed LPG Distributorship at location Morakhas District- Siwan. A registered deed of agreement dated 31.7.2019 was entered into between the petitioner with Raju Kumar Singh and Basant Mishra. As a result of differences, legal notices dated 9.9.2019, 29.10.2019 and 4.1.2020 was sent on behalf of the petitioner to the other two partners cancelling the partnership entered into



between them. It was after two legal notices, that on 4.12.2019 a show cause notice was issued by the I.O.C. Ltd. to the petitioner and on reply filed by the petitioner, the order impugned dated 3.2.2020 withdrawing the L.O.I. dated 27.6.2019 has been issued.

From perusal of the L.O.I. dated 27.6.2019 it would transpire that it states about intention of the I.O.C. Ltd. to offer LPG Distributorship to the petitioner on the conditions mentioned therein which have been given in detail under different clauses split into six headings, the headings being :-

- (1) LPG storage godown and showroom.
- (2) Finance
- (3) Deliver infrastructure
- (4) Personal supervision
- (5) Commissioning, and,
- (9) Withdrawal of Letter of Intent.

Clause 5.4, 9.1 and 9.3 being relevant for the instant case are being quoted hereinbelow for ready reference.

“5. COMMISSIONING

.....

5.4. You are not permitted to induct any one as your partner nor make any changes in the constitution of the proposed distributorship in a manner other than what was



intended at the time of application, without prior approval from Corporation.

.....
9. *WITHDRAWAL OF LETTER OF INTENT*

9.1. *This letter is merely a **Letter of Intent** and is not to be construed as a 'firm offer' of LPG Distributorship to you. If we find that the progress being made by you towards the commissioning of the LPG Distributorship or as above is not to our satisfaction, then this letter is liable to be withdrawn along with forfeiture of 10% of security deposit amount deposited by you with the Corporation.*

9.3. *If any statement made in the application or in the documents enclosed therewith or subsequently submitted in pursuance of the application by you at any stage is found to have been suppressed/ misrepresented/incorrect or false affecting eligibility, then the LOI is liable to be withdrawn without assigning any reason along with forfeiture of amount deposited by you with the Corporation before FVC and in case you have been appointed as a distributor, the distributorship is liable to be terminated along with forfeiture of security deposit remitted by you. In such cases you shall have no claim whatsoever against the respective Oil Company."*



By clause 5.4 of the L.O.I. the petitioner/allottee has categorically been barred from inducting anyone as a partner or making any change in constitution of the proposed distributorship, by inducting a partner without prior approval from the I.O.C Ltd.. So far as the facts of the instant case are concerned, it is admitted that the petitioner entered into a registered partnership agreement with two other persons, the partnership being effective from 31.7.2019. This was in clear violation of clause 5.4 of the L.O.I dated 27.6.2019. Further from perusal of the legal notices dated 9.9.2019, 29.10.2019 and 4.1.2020, the contents thereof clearly show that the dispute between the partners had arisen as the newly inducted partners were demanding share to the extent of 75% to 80% of the profit from the petitioner, and it was for this reason that the same could not continue. The partnership was not being dissolved for reason of the same being in violation of the terms of the L.O.I.

The contents of the LOI shows that it only talks about the intent of the IOC Ltd. to offer to the petitioner the LPG distributorship. The LOI also contained a number of conditions which had to be satisfied before the issuance of Letter of Appointment. The LOI also provided that the IOC Ltd. would not be held responsible for investment which may be made by



the petitioner in construction of the godown without having a proper approach road. It also provided that the LOI may be withdrawn in case any fact in the application is found to have been suppressed, misrepresented, incorrect or false. After receipt of the LOI dated 27.6.2019, the petitioner having entered into a registered partnership agreement on 31.7.2019 without prior permission of the IOC Ltd for the purposes of running the LPG dealership, shows that the petitioner clearly violated the terms of the LOI and consequentially the action of the IOC Ltd. in withdrawing the Letter of Intent dated 27.6.2019 cannot be said to be illegal. Thus the Court finds no merit in the writ application nor any illegality in the order impugned dated 3.2.2020.

The writ application stands dismissed.

(Partha Sarthy, J)

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CAV DATE	
Uploading Date	29.01.2021
Transmission Date	

