
(2012) 02 MP CK 0100
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 186 of 2012

Bharat Petroleum Corporation Ltd. and others	APPELLANT
Vs	
M/s Singhai Rajaram Tulsiram	RESPONDENT

Date of Decision : 15-02-2012

Acts Referred:

Citation : (2012) 02 MP CK 0100

Hon'ble Judges : Tarun Kumar Kaushal, J;Sushil Harkauli, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon'ble T.K. Kaushal, J.—The order dated 10.01.2012 passed by learned Single Judge in W.P. No. 7774/2009 is under challenge in this appeal before us.

2. Brief of the case as emerging from the pleadings are that the respondent M/s Singhai Rajaram Tulsiram (hereinafter referred to as "Dealer") runs a retail outlet on the strength of licence agreement dated 05.06.1980 Annexure A/1 issued by Bharat Petroleum Corporation Ltd. (hereinafter referred to as "Corporation"). On 17.08.2006, a team of officers of the Corporation inspected the outlet and prepared panchnama (Annexure A/2). Having found some irregularities regarding maintenance of stock and registers etc., after giving show cause notice dated 20.08.2006 (Annexure A/3) and considering the reply dated 30.08.2006 of the dealer, vide order dated 30.07.2007 terminated the dealership. The aforesaid termination order was assailed in W.P. No. 8152/2007. Vide order of this Court dated 22.10.2008, the order of termination of dealership was set aside, and the Corporation was directed to pass a reasoned order afresh after considering the replies of dealer dated 30.08.2006 (Annexure A/4) and reply dated 11.05.2007 filed in Court. It was further directed that if the parameters of performance test of the sample drawn from the dealer's premises failed then opportunity of personal hearing to the dealer should be given.

3. In compliance of the aforesaid directions, the Corporation did not proceed, and

therefore the dealer preferred another W.P. No. 419/2009. In pursuance of some interim order passed by this Court in the said writ petition the supply was directed to be resumed to the dealer. However vide order dated 4.2.2009 passed by the Corporation the dealership was again terminated.

4. Pending hearing of a contempt petition filed by the dealer alleging non-compliance of the order dated 22.10.2008 (supra), the erring officer of the Corporation withdrew the termination order dated 4.2.2009 and the contempt proceeding was accordingly dropped.

5. In the aforesaid background, vide order dated 20.7.2009 which was served on dealer on 21.7.2009 dealership was again terminated by the Corporation. That order of termination was challenged in the writ petition out of which this appeal arises.

6. Shri V.R. Rao, learned senior counsel appearing for the appellant Corporation, supporting the order of termination of dealership, has submitted that in compliance of the order dated 22.10.2008 passed in W.P. No. 8152/2007, notice was given to the dealer by the Corporation but the dealer did not avail the opportunity of being present during the performance test. Parameters of performance test have already been disclosed by the Corporation. Otherwise also there were serious allegations of malpractices adopted by the dealer in contravention of the Marketing Discipline Guidelines also. Moreover, it was purely a contractual dispute which cannot be agitated in the writ petition. Dealership has been terminated on the basis of variation in the stock and failure of sample in the performance test.

7. Shri A.K. Jain, learned counsel appearing for the respondent dealer has supported the order of the learned Single Judge.

On the basis of inspection carried out on 17.8.2006, test report of one sample of High Speed Diesel dated 1.9.2006 and test report of second sample dated 18.3.2008 are available on record. Both the reports indicate that the performance test has "failed", but these reports do not spell out anything about the details of shortcomings due to which the sample has been held to have failed.

8. While considering the legality and propriety of the order dated 20.7.2009 passed by the Corporation again terminating the licence agreement of dealership in third round, learned Single Judge observed that the action of the officer of the Corporation is lacking fairness and bona-fides. The lack of details regarding shortcomings and negative performance test reports have not been properly appreciated by the Corporation while the repeated orders of cancellation of licence agreement were passed at different point of time.

9. Prima-facie, we are convinced that in absence of details of shortcomings, the test reports have no worth and in any case do not admit of proper and effective defence by the dealer pursuant to the show cause notice. The same could not have been made the basis of subsequent cancellation.

10. In our considered opinion, in view of above such background of the dispute, the learned Single Judge has rightly found the order of cancellation of the agreement dated 20.7.2009 unsustainable, particularly for want of fairness on the part of the appellant. There appears no good reason to interfere with the findings of the learned Single Judge.

11. The appeal being devoid of substance deserves to be and is hereby dismissed.