

(2008) 02 PAT CK 0066
In the Patna High Court
Case No : CWJC No. 4821 of 2007

Chirag Keshaw Service Station

APPELLANT

Vs

The Bharat Petroleum Corpn. Ltd.

RESPONDENT

Date of Decision : 04-02-2008

Acts Referred:

Citation : (2008) 56 BLJR 1114 : (2008) 2 PLJR 667

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Mrigank Mauli, Ashwani Kumar Singh, Vinay Mistry and Alok Singh, for the Appellant; Sanjay Singh and W. Rahman, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—The petitioner was a retail dealer of Bhart Petroleum Corporation for the petroleum product manufactured and supplied by the said oil company. The dealership has been cancelled, which action has been challenged before this Court.

2. Mr. Sanjay Singh, learned Counsel appears on behalf of the Corporation and a counter affidavit has been filed.

3. Heard learned Counsel for the parties and with their consent this application is being disposed of at the stage of admission itself.

4. The sole ground on which action has been taken purporting to be in public interest is the allegation of adulteration pursuant to test carried out by the Corporation in relation to the sample of petroleum product (motor spirit-petrol) from the petitioner's retail outlet.

5. In order to lay down the procedure and standard, inter alia, with regard to testing for adulteration, Marketing Discipline Guidelines have been issued by the Ministry of Petroleum, Govt. of India in consultation with four oil companies. This, inter alia, provides that the moment petroleum products are ready to be

delivered from the Corporation's depot, the depot sample has to be taken and preserved. From the depot, deliveries are made in tank lorry to the retailers. When the tank lorry reaches outlet, the retail dealer is to take three samples of the petrol oil from the tank lorry before it is decanted and preserve the same. Then once the contents of the tank lorry is decanted in the underground tank of the retail dealer, then from dispensing nosel before commencing sale of the new stock, three samples are to be taken and preserved in the manner prescribed. Thus, for any particular supply three contemporaneous samples at three stages are maintained. First at the depot. second tank lorry sample and third retailer's sample. The latter two are three apiece. When checking is done, the three contemporaneous samples of the three stages are sent, as in the present case for testing Apart from other one chemical analysis is Research Octane Number (RON). This is molecular configuration of the hydro carbon in the petroleum oil product. The standard, as prescribed, is 88 Octane Number. Thus, a standard sample of motor spirit must have RON 88 as a number. It appears that the contemporaneous sample, as collected by the petitioner in respect of tank lorry and the dealer sample were taken by the respondent- Corporation and sent to their Budgebudge Laboratory, Calcutta of the respondent-Corporation. The test report is annexed as Annexure 3 to the writ petition. The test report clearly shows that they were contemporaneous samples, they were sent for testing and were tested almost one month after the samples were taken. The test report (Annexure 3) clearly stipulates that the standard requirement as to RON is 88. The test result shows that depot sample had RON 90 i.e. two above, the standard. The tank lorry sample of the same sample reported RON 88 and the dealer samples show 85. Thus, it would be seen that the same sample collected at three different places reported three different RONs being 90, 88 and 85 respectively. Petitioner immediately on being asked to show cause protested and demanded retesting. Respondent-Corporation accepted the same and the second set of samples were sent for retesting. This time, the report that was received is Annexure 7. This report again states that the standard prescribed in respect of RON is 88, the depot sample is 90, the tank lorry sample is 88 and the retail outlet sample this time is 87 as against 85 earlier. Again as it was one RON less than standard, action has been taken treating the samples as reported adulterated for cancellation of dealership.

6. On behalf of the petitioner, it is submitted that this test being the sole basis of the allegation of adulteration is not conclusive in any manner. It is submitted that firstly the very fact that RON falls in respect of the same product from 90 (depot sample) to 88, the tank lorry sample shows that RON is either unstable or the test is not correct because if there is no interference at the first stage RON ought not to change. Then coming to the last stage, two tests of the same sample have reported two different RONs. It is thus submitted that fall in RON from the depot to tank lorry and from tank lorry to retail dealer cannot be said that the petitioner was undisputedly guilty of any adulteration. RON is depleting with passage of time, which should not be there as the chemical constituent does not

change and this cannot form basis for such a drastic action of termination of dealership.

7. To the contrary, learned Counsel for the Corporation submits that the moment RON at dealership point is found to be below 88 it cannot but be a case of adulteration. He submits that the reason for RON falling from 90 to 88 in the tank lorry is that tank lorry each time it is loaded, is not cleaned before fresh load is put, but as to the difference between the retail RON, as found in the two reports he submits that both were retail samples and he could have managed while sending for resampling to interfere with them. Mr. Sanjay Singh, learned Counsel for the Corporation further says that the moment RON falls below 88, the prescribed standard without anything more, the Corporation is obliged to treat the sample as adulterated. In my view, the submission is noted only to be rejected, for if the samples are correct and genuine then there cannot be any depletion. If there is depletion then merely because RON falls below standard 88, it cannot ipso facto lead to the conclusion of the adulteration.

8. In my view, the stand of the Corporation cannot be accepted. If the Corporation is understood to be submitting that as a consequence of not cleaning the tank lorry before fresh load is given RON depletion occurs, so would be the case at the retail point, for no retail dealer can be or is expected in fact or by law to empty out and clean the underground tank before he takes fresh supply. What is sauce for the goose is sauce for the grandeur. If there is depletion at the first stage the same would apply for retail dealer also and I see no reason to reject this contention of the petitioner. I may point out that so far tank lorry is concerned, after they are decanted at retail dealer outlet they are empty and travel back empty to the company depot and it is only an empty tank lorry that is refilled. It is not the case that the dealers receive stock in the tank which are absolutely empty rather they have old stock in varying quantity is still there. In such a situation to say that there is justifiability in falling of RON as between depot and tank lorry and no justifiability when the conditions are the same as between the tank lorry and the retail dealer cannot be accepted. Secondly the law gave the retail dealer right to get the second sample retested. He exercised his option, which was fairly accepted by the Corporation. The second test result shows a variance from the first. If second test report is referred to then as between the depot of the Corporation and the tank lorry RON falls by two points short as between the tank lorry and the retail dealer itself only by one point. Here again all three readings are different. This remain unexplained by the respondent.

9. In my view, it must be kept in mind that if the law contemplates drastic action leading to cancellation of dealership, then to invoke that the law and the procedure prescribed has to be scrupulously followed and there should be no scope for doubt or dispute. In the present case, as two reports themselves demonstrate that RON changes rapidly, in the view of this Court, this cannot be a safe method for taking such a punitive action. The case would be different if RON

of the depot sample remains the same as to tank lorry sample but detonates at the dealer point. Unfortunately that is not the case. The contemporaneous samples were tested at three different locations has given three different readings. In my view, that cannot be a ground of drastic punitive action leading to cancellation of dealership. These test results cannot be conclusive of adulteration.

10. In that view of the matter, I am constrained to hold that cancellation of dealership is on non est ground and is arbitrary. The order of cancellation of dealership is thus set aside. In the result, this writ petition is allowed.