
(2010) 08 DEL CK 0043
In the Delhi High Court
Case No : LPA 580 of 2010

Diesel Service Centre

APPELLANT

Vs

Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Citation : (2010) 08 DEL CK 0043

Hon'ble Judges : Dipak Misra, C.J; Manmohan, J

Bench : Division Bench

Advocate : A. Maitri, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

Manmohan, J

CM 14618/2010

Allowed, subject to all just exceptions.

LPA 580/2010 & CM 14617/2010

1. Present LPA has been filed challenging the judgment dated 22nd July, 2010 passed in W.P. (C) Nos. 14824-26/2006 whereby the learned Single Judge has held that the decision of Bharat Petroleum Corporation Ltd. (for short "BPCL") terminating the Appellant's dealership on account of 14th July, 2005 incident did not suffer from any legal infirmity.

2. The facts of this case are that the Appellant-firm and the Respondent-BPCL entered into an agreement in 1978 whereby licence was granted to the Appellant to operate a retail outlet ("RO") of the BPCL for dispensing both high speed diesel (HSD) and motor spirit ("MS"). It is stated that on 14th July, 2005, a vigilance team of BPCL visited the RO for inspection. The team comprised three senior officials of the BPCL, i.e., Mr. J.P. Meena (Dy. Manager, Sales, Panipat), Mr. K.G. Ghatwai (Manager, Quality Control Cell, Northern Region) and Mr. P.S.

Bhagawa (General Manager, Quality Control Cell, Central Office). The team during the course of inspection found that the dispensers were tampered with and there was interference with the working parts of the equipments provided by BPCL. It is further stated that about 30 persons had come to the RO by the time the team finished its inspection. This group comprising persons who were "the office bearers/members of the local/state petroleum dealers association", did not allow the team to prepare a statement on the findings of the inspection. The team was gheraoed, criminally intimidated and threatened by these persons. It is also stated that a favourable inspection report was forcefully extracted before the members were allowed to leave.

3. Mr. A. Maitri, learned Counsel for the Appellant submitted that there was violation of principles of natural justice as the Appellant was denied an opportunity to present its version or to show cause before the impugned termination letter dated 11th August, 2005 was issued to the Appellant.

4. Appellant's counsel contended that the Appellant's Dealership was a dealer-owned site and the Appellant had invested huge monies over the last twenty seven years in the upkeep of the outfit installed by the Respondent-BPCL. He also submitted that the nature of business and the work carried out by the Appellant in pursuance to the Licence made it amply clear that the Licence was agreed to be in perpetuity and was, therefore, irrevocable.

5. Mr. A. Maitri lastly submitted that the learned Single Judge had not considered that one of the reasons stated in the impugned Letter of Termination was that Appellant did not rebut the newspaper reports. He stated that there was no occasion for the Appellant to rebut any newspaper report as the Appellant was under no obligation to do so. According to him, mere non-rebuttal of media reports could not be made a basis to infer that the Appellant had caused such reports to be published.

6. However, on a perusal of the file, we find that there is no violation of principles of natural justice in the present case. It is pertinent to mention that this is the second round of litigation between the Appellant and the Respondent. In the first round, the Appellant had challenged the termination letter by filing WP(C) No. 13298- 13300/2005 in this Court. This Court while quashing the decision dated 11th August, 2005 had held that the BPCL would be free to issue show cause notice to the Appellant and after granting the Appellant an opportunity of being heard, would pass a reasoned order. Pursuant to the aforesaid order, BPCL wrote a letter dated 9th January, 2006 to the Appellant asking the Appellant to treat the BPCL's letter dated 11th August, 2005 as a show cause notice and to furnish a reply thereto. The Appellant replied to the said show cause notice on 12th January, 2006. Further, an oral hearing was given to the Appellant on 3rd March, 2006. Thereafter, BPCL gave a detailed reasoned order dated 17th August, 2006 concluding that there was no reason to take a view different from what was expressed in its letter dated 11th August, 2005. In view of the aforesaid, Appellant's submission of violation of principles of natural justice is

unsustainable.

7. As far as newspaper reports are concerned, it is pertinent to mention that in the newspaper reports which appeared in Hindi newspaper Dainik Jagran, Karnal on 15th July, 2005 and on 19th July, 2005 in the Punjab Kesari, Karnal, it was alleged that the inspecting team was seeking illegal gratification from the Appellant for providing a satisfactory report of inspection. BPCL in reaching the conclusion that the newspaper reports were at the behest of the Appellant, observed the following in the letter dated 11th August, 2005 as reproduced hereinunder:

In the circumstances aforesaid, we have reason to believe that if you had not tampered with the equipments, as has been mentioned in the aforesaid report of the inspecting team of BPCL and the inspecting team of BPCL had really come to collect a bribe under the pretext of conducting inspection as hinted in the said news items, you would have, as BPCL's dealer, reported about the incident to BPCL immediately on 14.07.2005 itself and could have called upon some of the officers of BPCL to ascertain the position instead of maligning the name of BPCL in public by calling other dealers who have nothing to do with the said retail outlet and/or instigating the reports of the said newspaper to malign and prejudice the good name of BPCL.

8. In fact, with regard to the newspaper reports and the incident dated 14th July, 2005 the learned Single Judge has observed as under:

23. ...Although there is a wide divergence in the version of the Petitioners on the one hand and the BPCL on the other as to what transpired, it is plain that an unpleasant incident did take place at the RO on 14th July 2005.... Clearly, there was a confrontation. It is not difficult to visualise a scenario of the three BPCL officers being surrounded by the members of the HPDA, with journalists watching and the vigilance team being "categorically" told that the vigilance team was allegedly committing misconduct.

24. The printed pamphlets of the HPDA, which has been placed on record by the Petitioners themselves, also corroborate the fact that the members of the HPDA were indeed openly accusing the BPCL's officers and in particular the members of the vigilance team of misconduct. The pamphlet referred to the incident at Karnal, and demanded a CBI enquiry against these officers. It called for a dharna on 16th August 2005 outside the Panipat office of the BPCL. The statements made in the pamphlets issued by the HPDA, which have not been denied by the Petitioners as they have themselves placed it on record, are prima facie scandalous. However, this Court is not called upon to determine if these allegations were justified or not. What is plain from the pamphlets, however, is that the Petitioners and the members of the HPDA did not repose any faith or trust in the BPCL.

xxxx xxxx xxxx xxxx 30. This Court is conscious of the fact that there are divergent versions of what happened on 14th July 2005. Still, as noticed

hereinbefore, the fact that there was a collection of members of the HPDA and journalists on the spot and that there were unpleasant exchanges between them and the vigilance team and that even at that stage the vigilance team was accused of indulging in misconduct, clearly shows that the atmosphere was a hostile one. The calling of journalists at the RO office of the Petitioner No. 1 on 14th July 2005 and the statements made to them by the Petitioners is a further pointer to the fact that there was a breakdown of the relationship between the parties. The fact that an FIR was lodged after four days is also not denied. That the BPCL officers were unwilling to go back thereafter to make further statements to the local police as stated in the "closure" report is also not difficult to appreciate. In this scenario, if the BPCL took a decision to stand by its officers who had undertaken the inspection, such decision cannot be termed arbitrary or unreasonable. It is indeed difficult to accept, in the absence of any material in support, that the officials of the BPCL fabricated the inspection report which is Annexure P-5. This version has been reaffirmed by way of an additional affidavit filed in this Court by the BPCL describing in detail what transpired on 14th July 2005. 31. The incident of 14th July 2005 was indeed an extraordinary one. This Court is unable to accept the submissions of the learned Counsel appearing for the Petitioners that such an incident like this should be evaluated in terms of the MDG. The MDG does not envisage any such situation. It talks of particular instances of "irregularity" and misconduct like overcharging of products, tampering of seals, adulteration and so on. The response by the BPCL to such incident also, therefore, cannot be evaluated with reference to the MDG. It was in the discretion of the BPCL to decide whether in the light of the incident where its officers were gheraoed, criminally intimidated and threatened the dealership agreement should be continued. BPCL's decision to terminate the dealership cannot, in the circumstances noticed hereinbefore, be characterized as arbitrary or disproportionate.

9. Consequently, we are of the opinion that there is no reason to depart from the view taken by the BPCL that both the aforesaid news reports have been caused to be published by the Appellant.

10. We are further of opinion that there is no merit in the submission of the learned Counsel for the Appellant that the dealership was in perpetuity. In fact, the dealership agreement was for a limited period and it came to an end on 19th November 2005. Consequently, BPCL cannot be compelled to continue a dealership which, in any event, had already come to an end. Accordingly, the present appeal and application, being devoid of merit, are dismissed in limine.