(2008) 11 AHC CK 0083

In the Allahabad High Court

Case No : Writ Petition No. 1050 of 2007 (M/S)

Harbans Motor Works & Ors. APPELLANT

Vs

Bharat Petroleum Corpn.Ltd.& Ors. RESPONDENT

Date of Decision : 07-11-2008

Acts Referred:

Constitution of India, 1950 — Article 14
Essential Commodities Act, 1955 — Section 3

Citation : (2008) 11 AHC CK 0083

Hon'ble Judges : Prafulla C.Pant, J

Final Decision : Dismissed

Judgement

1. By means of this writ petition, the petitioner has sought writ in the nature of certiorari quashing the impugned order dated 2372005 (copy annexure1 to the writ petition), passed by (respondent No. 2). A further mandamus has been sought commanding the respondent Corporation to restore the possession of the retail outlet to the petitioners.

2. Heard learned counsel for the parties and perused the affidavit, counteraffidavit and rejoinder affidavit, filed on their behalf.

3. Brief facts as narrated in the writ petition are that petitioner No. 1M/s. Harbans Motor Works is a partnership firm with a dealership retail outlet of petrol and diesel of respondent corporation. Petitioner No. 2 and petitioner No. 3 are partners in said firm. A license/agreement was executed between the respondent No. 1 and petitioner No. 1 in the year 1999, before the retirement of one of the partners Ishwar Singh Chaddha (father of petitioner No. 2) in whose place petitioner No. 3, wife of petitioner No. 2 has become a partner. Copy of agreement between respondent No. 1 and petitioner No. 1 is annexed as annexure2 to the writ petition. It is stated in the writ petition that the petitioners are supplying petrol and diesel through their outlet since long without any complaint. On 962005, a surprise inspection was made by the officers of the respondent and as stated in para 10 of the writ petition, following observations

were made in the inspection note:

1. R.O. was dry in MS since the time we started inspection at around 1130 hours.

2. MS DU SI. No. FYLST 0929W & M seal of totalizer unit was found tampered.

3. HSD DU SI. No. CTL & T4870W & M seal of totalizer unit was found tampered.

4. Numbered seals of company were not found being used for sealing at various points of dispensing units.

Copy of the inspection note is annexed as annexure5 to the writ petition. It is alleged by the writ petitioner that the inspection was made without the presence of officers of Weight and Measurement/Supply department. In the surprise inspection, the officers of the respondent Corporation observed on both the dispensing unit of HSD there was 70 ml. short supply in each 5 litre as against the permissible limit of 15 ml. According to the writ petitioner dispensing unit of HSD are ten years old and they were sealed by the company staff of the respondent and the Weights and Measurement Department. Since the seal of the dispensing unit were intact as such, the petitioner cannot be held responsible for short supply found in the dispensing unit. Respondent No. 2 vide order dated 972005, issued a show cause notice (copy annexure7 to the writ petition) to the petitioners directing them to reply to the inspection note dated 962005. A reply was given by the petitioners on 1172005 (copy of which is annexure8 to the writ petition). The petitioners earlier filed writ petition No. 736 (M/B) of 2005, M/s. Harbans Motor Works v. Bharat Petroleum Corporation Ltd., which was disposed of by this Court vide order dated 1972005, directing the petitioners to take a decision on the reply submitted by the petitioners. In response to the said order, the respondent No. 3 passed the impugned order dated 2372005, awarding extreme punishment to the petitioners by terminating the dealership of the petitioner firm. It is stated that as per the guidelines relating to the Discipline on Major Irregularities circulated in the year 2001, punishment for the first time short supply is only fine of Rs. 5,000/ and suspension of sale for 15 days. In the second time for similar irregularity, fine of Rs. 10,000/ could have been imposed and suspension of sale for further 30 days could have been directed. For the third time, punishment, as per the guidelines, the respondent could have imposed fine of Rs. 25,000/ and suspension of sale could have been directed for 45 days. It is alleged by me writ petitioners that instead of awarding punishment in the aforesaid manner, the petitioners have awarded the extreme penalty by terminating the dealership license. It is stated that the petitioners had no fault on their part in the short supply in the tank. In other words, had there been short supply of 70 ml. per litre in the dispensing unit, the stock in the tank should have been in excess and not in short. The tampering said to have been found in the seal of the totalizer unit, has nothing to do with the short delivery found in the dispensing unit. With these averments, this writ petition is filed.

4. Counteraffidavit has been filed on behalf of respondent respondents in which it has been stated that in respect of commercial agreement entered between the

parties relating to commercial transactions, the writ petition is not maintainable questioning the correctness or reasons mentioned in the impugned order, passed in connection with such transactions. It is further stated that there has not been any infringement of rights of the petitioners. As such, the writ petition under Article 226 of Constitution of India, is not maintainable. It is pleaded by the deponent of the counteraffidavit filed on behalf of the respondents that the order dated 2372005, terminating dealership of the petitioner was passed for various violation committed by the petitioner, which came to light in the inspection made by the team of the officers of the respondent company on 962005. The interest of customers is allegedly injured by cheating the public at large, and to prevent further damage to the public, the impugned order was passed against the petitioners. It is further pleaded that the writ Court cannot go into the factual dispute raised by the petitioners. However, it is admitted that the lease agreement was executed on 2332001 between the father of petitioner No. 2 and the respondent company. In para 17 of the counteraffidavit, it has been stated that had the petitioners been allowed to continue short supply of HSD, apart from the breach of contract by the petitioners, it would have affected the goodwill of respondent No. 1. It was the duty of the petitioner under the terms of the agreement to check the measure everyday and to stop using the dispensing unit forth with after the same is found to be defective till it is rectified. It is further stated that on 962005 though the seals of Weights and Measure department were found in the dispensing unit as intact but totalizer seal was found tampered. The negative stock of 137 litre found in the storage tank even after short delivery of 70 ml. per 5 ltr. was due to the fact that the petitioners have tampered the totalizer seal and thereby altered the total quantity of the product sold to the customers. In para 24 of the counteraffidavit it is has been stated that it was the discretion of the respondent company to take punitive action against the erring dealer including the termination of the license. The petitioners by tampering the dispensing unit with nonstandard gear of 20:39 instead of 20:38 have delivered lesser quantity of HSD (High Speed Diesel) thereby the petitioner had charged higher price for the measure delivered to the customers. The petitioners miserably failed in maintaining stock of MS (Motor Spirit) and the retail outlet was dry of MS during inspection. Respondent has lost faith in the petitioner for the omissions, as mentioned above. As to the guidelines, pleaded by the writ petitioners in para 22 of the writ petition, it is stated in the counteraffidavit that as against the guidelines, the terms and conditions of the agreement executed between the parties is more binding and enforceable. And the respondents have committed no illegality in terminating the dealership of the petitioners. In para 35 of the counteraffidavit it has been stated that guidelines also leave it open to the company to take punitive action against the erring dealers including the termination of license.

5. In the rejoinderaffidavit the petitioner have reiterated the averments made in the writ petition.

6. Before further discussions, this Court thinks it just and proper to mention the

irregularities found by the inspection team in the retail outlet run by the petitioners on 962005, which are mentioned in the impugned order dated 2372005 (copy annexure1 to the writ petition). Following irregularities were observed in the operation of subject dealership.

"1. Both dispensing units of HSD were found delivering short by 70 ml. each in every five litres measure which is beyond the permissible limit of 15 ml. per 5 litres measure.

2. A nonstandard gear having ratio 20:39 was found fitted in place of standard gear 20:38. The said gear found fitted with a clandestine arrangements with ordinary nail instead of standard pin.

3. Weights & Measurement seals of following DUs were found tampered.

(a) MS DU No. FY L&T 0929

(b) HSD DU No. CT L & T 4870

4. Average sale of MS was 39.75 per month during 200405. At the time of checking on 962005 at 11:30 a.m. your dealership was dry of MS and only dead stocks of 244 litres were there in the tank. Thus you are not keeping adequate stocks of MS at your dealership for the reasons best known to you."

7. It is also mentioned in the para 5 of the impugned order that at the time of inspection on 962005, Shri Kawaljit Chaddha (petitioner No. 2) one of the signatory to DPSL agreement wherein the delivery of HSD was checked four times continuously and found that HSD was short delivered by 70 ml. per 5 ltr. measures. The inspection report and seizure memo were countersigned by shri Chaddha. accepting without protest of all irregularities, including short delivery.

8. On behalf of the petitioners, Shri Alok Singh, Sr. Advocate, drew attention of this Court to Marketing Discipline Guidelines (MDG) 2001 (copy of which is annexure10 to the writ petition), and it is argued that as per the guidelines for short delivery of the products for first default, fine of Rs. 5,000/ could have been imposed and suspension of sale could have been directed for a period of 15 days. On the second fault, fine of Rs. 10,000/ could have been imposed and suspension of sale could have been directed for 30 days. And for the third default and short supply, fine of Rs. 25,000/ could have been imposed and suspension of sale and supplies could have been directed for 45 days. I have gone through the guidelines and found that the guidelines further mentioned that in extreme cases where; it is proved that the dealer has tampered with the seals and delivery system dealership could also be terminated. Learned counsel for the petitioner submitted that said step could have been taken by the petitioners only at fourth instant.

9. As against this, on behalf of the respondents, Shri L. P. Naithani, Sr. Advocate, drew attention of this Court to agreement executed between the parties (copy of which is annexure1 to the counteraffidavit) and it is pointed out that the

petitioners have violated condition mentioned in para 7 of the agreement as mentioned in para 11 of the agreement. Under Clause (a)(Vii) of para 13. company is at liberty to terminate the agreement if the licensee is found guilty of breach of any of the covenants and stipulations.

10. Shri Alok Singh, learned counsel for the petitioners argued that 90 days notice for termination of the license is required under para 12 of the agreement. I have scrutinized and gone through the entire para 12 of the agreement entered between the parties and found that under Clause (a) of para 13, license can be terminated at any time for conditions mentioned in Clause (i) to (ix), which includes condition No. (vii) i.e. where the licensee is found guilty of a breach of any covenants or stipulations on his part. Clause (a) of para 13 starts with the expression "notwithstanding anythingcontrary". This expression clearly shows that the preceding para (i.e. para 12). which requires 90 days notice before termination, has no application to Clause (a) of para 13. Therefore, this Court agrees with the contention of learned counsel for the respondents that the impugned order suffers from no illegality, as it is clear from the inspection report copy of which is annexure5 to the writ petition and seizure memo, copy of which is annexure6 to the writ petition that the petitioner has not only committed irregularity but also tampered the totalizer seal and indulged in supplying short delivery of HSD and thereby cheated the public by charging full payment for the short supplies. Therefore, termination order cannot be said to be violative of any right of the petitioner, as the same is in consonance to the terms of agreement between the parties.

11. For the reasons as discussed, this writ petition is liable to be dismissed. The same is dismissed. Interim order dated 2372005, passed by this Court is hereby vacated.

