
(2002) 10 MP CK 0024
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1774 of 2002

Jain Brothers

APPELLANT

Vs

Bharat Petroleum Corporation Ltd. and Another

RESPONDENT

Date of Decision : 17-10-2002

Acts Referred:

Citation : (2003) 1 JLJ 208

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : S.K. Gangele, for the Appellant; V.R. Rao, for the Respondent

Judgement

A.K. Mishra, J.—Petitioner is assailing the action of Respondent No. 2 of cancelling the dealership of the Petitioner with respect to the petrol pump located at Hoshangabad Road, Bhopal.

2. Petitioner was granted dealership in the year 1978. A sample was taken from the petrol pump of the Petitioner on 24.11.2001. Though the seal was found intact, however, the Collector as per order (P-4) dated 5.2.2002 held that Petitioner as well as the Junior Supply Officer, both are responsible for the sample not adhering to the standard. Supply of the Petitioner was directed to be withheld for a period of 45 days and one increment of Junior Supply Officer was also ordered to be withheld. Petitioner preferred a civil suit. The suit has been withdrawn with liberty to file afresh. A show cause notice (P-2) was issued to the Petitioner on 13.12.2001 for termination of the dealership agreement. In notice (P-2), only one fact is mentioned that from retail outlet of the Petitioner, a sample was collected by the District Authority on 24.11.2001 and sent to Indian Oil Corporation, Nishadpur Laboratory for testing. As per the Laboratory report dated 29.11.2001, the MS sample has failed in distillation test, therefore, Petitioner was required to give written explanation within 7 days from the date of letter, failing which the Respondents shall be forced to take disciplinary action against the Petitioner. No further notice was issued to the Petitioner and the impugned order P-7 has been passed on various grounds.

3. Petitioner submits that order (P-7) passed on 18.2.2002 is bad in law for several grounds. One of the grounds mentioned is that in the order (P-7) it has been mentioned that in April, 1994 the Food Inspector had taken the sample and the said sample failed to meet the test. Petitioner has relied on the letter (P-9) of the Respondents indicating that on laboratory test the sample of April, 1994 was found not deficient in standard. The penalty imposed is against the guidelines and no adequate opportunity has been granted. The grounds which have been mentioned in the impugned order were not intimated/mentioned in the show cause notice (P-2). Thus, the Respondents have travelled beyond the scope of the show cause notice. The order (P-7) passed on 18.2.2002 by Respondent No. 2 is, thus, liable to be quashed.

4. A return has been filed by Respondent No. 1 pointing out that the writ petition is not maintainable. It is a case of commercial contract, Civil suit was filed and interim injunction was not granted. Petition is not maintainable as per Clause 7(a) of the dealership agreement. Under Clause 7(a) Dealer shall be responsible to see that full and proper measure is delivered from Dispensing Pumps. In case any defect or shortage is noticed Dealer will stop operation of said Pump until the defect is rectified. As per Clause 10(g) the Dealer has covenanted not to adulterate the Petroleum Products supplied by the Company and for ensuring such product is kept free from water, dirt and other impurities. As per Clause 12 either party can terminate the Dealership Agreement without assigning any reason with due notice to other party. As per Clause 13 notwithstanding the above the Company shall have right to terminate the Agreement forthwith if Dealer is found guilty of breach of any of the terms or covenants on their part contained in the Agreement. In April, 1994 when the product at the Retail Outlet was found adulterated. In November, 1999 when Pumps were found to be delivering short i.e. the consumers were paying for the full quantity but they were getting less quantity. On 24.11.2001 when the sample taken from the Retail Outlet was found adulterated.

5. Shri S.K. Gangele, learned Counsel for the Petitioner, submits that order is bad in law as the authority has travelled beyond the scope of show cause notice. The order passed is in violation of the principles of natural justice. The mention that in sample of April, 1994 was found to be adulterated is contrary to the record and the communication (P-9) of the Respondents. While imposing the penalty past conduct has been considered which is factually incorrect as one of the grounds employed is that the sample of April, 1994 was found to be adulterated.

6. Shri V.R. Rao, learned Counsel for the Respondents, placed reliance on Clause 10 and Clause 13 of the agreement and contended that at any time the dealership could be terminated. Petitioner has been found guilty by the Collector, District Bhopal, as per order (P-4) the finding has been given against the Petitioner as well as against the Junior Supply Officer, much cannot be made out from the fact that seal was found intact, The order (P-7) passed is proper and no interference is called for.

7. In the matter of termination of dealership, principles of natural justice are clearly attracted. When show cause notice (P-2) was issued to the Petitioner, only one ground was mentioned and Petitioner was not informed that Petitioner's agency is going to be terminated; only, Petitioner was informed of the proposal to initiate disciplinary action. No grounds were mentioned in show cause notice (P-2) dated 13.12.2001 except the sample collected on 24.11.2001. A perusal of the order (P-7) indicates that one of the grounds employed in order to terminate the agency of the Petitioner is that sample collected in April, 1994 was found adulterated. The Food Inspector has taken the sample and the said sample had failed in distillation test but this fact is contradicted from the letter (P-9) of Respondent. In communication (P-9) dated 27.6.1994, it is mentioned that "we have now been advised by our Technical Department in Bombay that the sample passes the laboratory test and meeting the requirements of physico-chemical characteristics". In the circumstances, non-mention of the above fact of sample of April, 1994 in the show cause notice assumes significance as Petitioner could have satisfied about factual situation. The requirement of principles of natural justice stands violated. One of the grounds adopted is inexistent.

8. The other ground is taken of making the short delivery which was also not intimated to the Petitioner. In *Tarlochan Dev Sharma Vs. State of Punjab and Others*,], the Apex Court laid down in the context of removal of President from post, principles of natural justice should be observed. The grounds in show cause notice must be the very ones which are relied on to remove the incumbent. There must also be due application of mind to the allegations made and explanation offered, even though such a course is not expressly stipulated in the Section. The impugned order of removal was in violation of principles of natural justice as it was based on grounds at variance from the ones in the show cause notice. Thus, in the instant case, explanation of the Petitioner ought to have been taken by the Respondents before terminating the dealership. In the instant case, interest of justice would not fail if the Petitioner is given an opportunity to file a detailed representation.

9. Resultantly, the impugned order (P-7) is quashed. However, Petitioner shall not be allowed to operate the Pump till the decision is taken. In the circumstances, learned Counsel for Respondent submits that Respondent may be allowed to serve an amended show cause notice. Let a show cause notice be served upon the Petitioner within 15 days. Petitioner shall file representation within next 15 days. Let the decision be taken by Respondents within four weeks thereafter. Writ petition is disposed of with the aforesaid direction. Costs on parties.