

(2014) 08 JH CK 0066

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 5037 of 2013

Kamal Kumar Singh

APPELLANT

Vs

Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 30-08-2014

Acts Referred:

Citation : (2015) 1 JLJR 547

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Mahesh Tewari, Advocate for the Appellant; M.K. Roy, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.—Assailing communication dated 7.11.2012 and 12.11.2012 as well as the report dated 31.12.2012, the petitioner has approached this Court by filing the present writ petition. A further prayer for resuming the supply of petroleum products by M/s. BPCL to the Petrol Pump of the petitioner has also been made.

2. The learned counsel for the petitioner stated that in the year, 1995 the dealership from M/s. BPCL was awarded and the petitioner started the business in the name and style of M/s. Hirak Point. On 12.10.2012, the outlet of the petitioner was inspected by the officials of M/s. BPCL - respondent No. 1 company and collected sample of the petroleum products. By order dated 07.11.2012, the petitioner was communicated that serious lapses have been found during the inspection and therefore, the supply of all products to the retail outlet was suspended immediately. Vide letter dated 31.12.2012, the sample retained by the petitioner as well as in the territorial office of M/s. BPCL was not tested.

3. It is submitted that at the time when sample is taken for Quality Assurance Test at the laboratory, three samples are prepared; one sample is sent to the laboratory, another sample is retained by the client and the third sample is

retained by the territorial office of M/s. BPCL.

4. The learned counsel appearing for the petitioner referring to the sample test report dated 05.11.2012 submitted that it is apparent from a perusal of the said report that the sample which was tested for which the RO examination was carried out, was taken on 09.05.2011 whereas, as a matter of fact sample from the retail outlet of the petitioner was taken on 12.10.2012. The test report dated 05.11.2012 was with respect to the first sample which was sent for laboratory testing. It is further submitted that Marketing Discipline Guidelines of 2012 provides that in the event the laboratory test is found negative, the other two samples are sent for laboratory examination at the request of the dealer on payment of requisite fee. Referring to report dated 31.12.2012, the learned counsel for the petitioner has submitted that in the sample retained at territorial office of M/s. BPCL since the "continuous plastic thread of seal (linkage between seal insert and seal body)" was found broken in wooden box No. 2, the said sample was not tested at laboratory and this has caused great prejudice to the petitioner. It is submitted that the laboratory test of the sample retained at the territorial office of M/s. BPCL is necessary for deciding the controversy in issue that is, whether the petroleum products sold from the retail outlet of the petitioner carried any adulteration or not.

5. The learned counsel appearing for the respondent-BPCL submitted that in terms of Clause 2.5 (E) of the Marketing Discipline Guidelines of 2012 in the event the RO sample fails the laboratory testing, the other two samples are to be tested together and since in the present case the sample retained by the client that is, the petitioner was found tampered, the sample retained at the territorial office of M/s. BPCL was also not tested. It is further submitted that pursuant to representation made by the petitioner final hearing in the matter has been concluded in the month of May, 2013.

6. The learned counsel appearing for the petitioner has submitted that the action on the part of respondent No. 1 - M/s. BPCL is evidently unfair and it has caused great injustice to the petitioner.

7. I have considered the argument of the counsel appearing for the parties and perused the documents on record.

8. The report dated 31.12.2012 from the Quality Assurance Laboratory, BPCL, Budge Budge, Kolkata discloses that the sample retained by the territorial office of M/s. BPCL was not tested because it was found tampered. The nature of tampering is stated as "the plastic thread of seal (linkage between seal insert and seal body) was found broken". Since an action is contemplated against the petitioner for alleged adulteration in the petroleum products sold from his retail outlet, I am of the considered opinion that the sample retained at the territorial office of M/s. BPCL should have been tested at Quality Assurance Laboratory. The nature of tampering in the sample retained at territorial office of M/s. BPCL appears to be inconsequential. The other observations relating to sample

retained by M/s. BPCL indicate that the sample was not tampered at all. The learned counsel for the respondent No. 1 has contended that as per Marketing Discipline Guidelines, 2012 both the samples that is, the sample retained by the petitioner as well as the sample retained at the territorial office of M/s. BPCL have to be tested together and since the sample retained by the petitioner was found tampered the other sample was not tested. I do not find any logic in not sending the sample retained by M/s. BPCL. I am of the opinion that to unearth the truth, it is necessary that the sample retained at the territorial office of M/s. BPCL should be tested. Accordingly, a liberty is given to the petitioner to deposit the requisite fee once again within a period of one week and if such a request is made by the petitioner, the sample retained at the territorial office of M/s. BPCL would be sent for laboratory testing provided, it is still retained by M/s. BPCL or by the laboratory. A final decision would be pronounced by authorities after receiving the testing report. The learned counsel for the respondent No. 1 has submitted that the hearing has been concluded. It is made clear that only the laboratory test report with respect to the sample retained at the territorial office of M/s. BPCL would be considered by the authority in addition to the materials already brought on record. Let a final decision be taken by the authorities two weeks after receipt of laboratory test report.

9. With these directions, this writ petition is disposed of.