(2013) 04 KAR CK 0089

In the Karnataka High Court

Case No : Writ Petition No. 2659 of 2008 (GM-RES) C/W Writ Petition No. 2660 of 2008

Mr. Sudhindran, Mr. Chikkopp and Mr. G. Ramesh — APPELLANT

Vs

The Assistant Controller of Legal Metrology Flying Squad-3
 Mr. P.R. Chikkop Vs Inspector of Legal Metrology Flying Squad-3 — RESPONDENT

Date of Decision : 03-04-2013

Acts Referred:

Standards of Weights and Measures Enforcement Act, 1985 — Section 39, 39(2), 39(2)(i), 63

Citation : (2013) 04 KAR CK 0089

Hon'ble Judges : L. Narayana Swamy, J

Bench : Single Bench

Advocate : J.S. Shetty, for the Appellant; K.S. Patil, HCGP, for the Respondent

Judgement

L. Narayana Swamy, J.—Petitioners are the officials of the Indian Oil Corporation Limited. The respondents submitted the complaint u/s 63 of the Standards of Weights and Measures (Enforcement) Act, 1985 (hereinafter referred to as "the Act" for short). In the complaint it is stated that by virtue of the order passed by the Government of Karnataka in No. CLM. ACT. CR-06:90-91 dated 6th August 1990, power has been delegated to the complainant to institute the complaint for violation of provisions of the Act. The complaint has been made against the officials of the Northwest Karnataka Road Transport Corporation (hereinafter referred to as "NWKRTC" for short), Hubli Division and officials of the Indian Oil Corporation. The petitioners in these petitions are the officials of the Indian Oil Corporation. In the complaint submitted to the JMFC at Hubli in Case No. ACLM: WM-26:2007-08 dated 12th July 2007, it is alleged that G. Ramesh-the accused No. 8, is the Senior Divisional Retail Sales Manager of the Indian Oil Corporation Depot, Khanapur Road, Belgaum; Sudhindran-the first petitioner who is accused No. 7, is the Sales Officer of Indian Oil Corporation (the third and first petitioners respectively in Writ Petition No. 2659 of 2008) who are responsible for maintaining the standard weight and measures in the premises of the consumer; and Chikkopp (the second petitioner in Writ Petition No. 2659 of 2008) is the Senior Foreman of the Indian Oil Corporation, Dharwad, have committed offence in not maintaining the weights and measures kept in the petrol bunk, which belongs to the Indian Oil Corporation within the premises of NWKRTC. It is further complained that the pump (Z-line) Model No./Sl.No. GS 72324 and Pump Model/Sl.No. 04 AC 1327V (Midco make) was inspected and found that the measures were found resulting in short beyond limit. Hence, after noticing the error more than the permissible MPE and short delivery of fuel, case has been registered u/s 39(2)(i) of the Act. This institution of case against the petitioners has been challenged in these petitions and a prayer has been made to quash the proceedings in criminal case No. 2194 of 2007 as per Annexure-C and also to quash the process issued to the petitioners as per Annexure-D and E. In the connected Writ Petition No. 2660 of 2008, a similar prayer has been made to quash the proceedings in criminal case No. 2915 of 2007 and the process issued as per Annexure-D. The grounds urged by the learned counsel for the petitioners that the fuel pump which was inspected by the complainant, are within the premises of NWKRTC and is manned by their employees and weights and measures maintained belongs to NWKRTC and also the fuel in the pump is not for sale and for in-house consumption of NWKRTC. Hence, he submits that the allegations made in the complaint do not survive for consideration. Even the weights and measures, which were duly stamped for the year 2003 and 2007, were not properly inspected by the inspecting squad. At no stretch of imagination, complaint lies against the officials of the Indian Oil Corporation since the petitioners are working in various capacities at different places. It is also submitted that the criminal case should not have been registered and process also should not have been issued without there being any examination as to whether the petitioners have committed the offence and whether allegations made, attract any criminal act on the part of the petitioners. The Court below should have been declined to issue process to the petitioners since they have not committed any offence. The learned counsel further submits that the initiation of case is only to take vengeance against the officials for not fulfilling the respondents illegal demands.

2. Per contra, the learned counsel for the respondent-prosecution submits that the pump, though situate within the premises of NWKRTC, it belongs to Indian Oil Corporation and though the NWKRTC is the sole consumer, still it is the sale for the purpose of consumption, tax, CST and KST, etc. Unless the weights and measures are stamped and sealed, the levying of tax may lead to improper calculation. The petitioners have obtained the seal and stamp on the weighing measures for the first part of 2007 and have not obtained the seal and stamp on measures for the second part of the same year. Similar is the case for the year 2003, i.e. for the second part of the said year the seal and stamp has not be obtained. The merits of the case and the veracity of allegations and complaint made, cannot be gone into by this Court since no materials could be marked and

evidence could be recorded. Heard both the learned counsel appearing for the parties. It is undisputed fact that he fuel pump belongs to the Indian Oil Corporation. Merely because the situating point of the pump is in the premises of the NWKRTC, it does not decide the ownership over the same. The Indian Oil Corporation sells the fuel to NWKRTC and the sale point depends upon the measures and the measures will have to be certified under the provisions of the Act. Section 9 of Chapter-III of the Act prohibits use of weights and measures other than the standard weights and measures. Chapter-V of the Act contemplates that persons using weights or measures for transaction or industrial production or for protection, to get themselves registered. It is the duty of the Indian Oil Corporation that while selling the commodity to the consumer, the selling should depend upon the quantity of weights and measures. The verification and stamping of weights and measures are to be displayed with certificate of verification and the weights and measures are to be duly stamped. In case of violation or of not maintaining the seal and stamp on the weights and measures, is subjected to be classified as an offence. The complainant, is competent person to inspect, and while inspecting it is found that the measures are not duly stamped as is required under the Act. In the complaint it is stated that Flying Squad-3, at the time of inspection, found that five-litre brass conical measure was not duly stamped. It was bearing the stamp of "2003-A". In the complaint itself it has been stated in the ''result'' column that MPE is beyond limit. When such being the case, the delivery of fuel found short u/s 39(2) of the Act. Under Chapter-IX of the Act, it is an offence to keep and use non-standard weights or measures and Section 39 of the Act further prescribes penalty for keeping non-standard weights or measures for use and for other contravention. When it is specifically alleged that these petitioners are responsible for contravening the provisions of the Act, it is to be held that the petitioners have not made out the case to interfere with for the purpose of quashing the proceedings. Under these circumstances, I am not inclined to appreciate the case of the petitioners. Accordingly the petitions are dismissed. However, if the petitioners so desire and if they are so advised liberty is reserved to them to move an application for discharge about their involvement in contravening the provisions of the Act, and it is for the Court to consider the same and pass appropriate orders in accordance with law during the trial. The observations made in these petitions shall not influence the learned Judge while considering and passing orders in accordance with law.