
(2011) 09 AHC CK 0445

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 7847 of 2011

M/s. Bansal Auto Mobiles

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-09-2011

Acts Referred:

Citation : (2011) 9 ADJ 337

Hon'ble Judges : Ashok Srivastava, J; Amitava Lala, J

Bench : Division Bench

Judgement

Hon'ble Amitava Lala, J.—By means of this writ petition, the petitioner seeks relief for quashing of the impugned order dated 27th January, 2011 passed by the respondent No. 3, whereby dealership of the petitioner has been terminated, and also seeks a direction upon the respondents to restore the supply of petitioner's retail outlet forthwith.

2. Briefly stated facts are that the petitioner is running a retail outlet of Bharat Petroleum Corporation Limited (in short called as the "Corporation") at Chandpur, District Bijnor, Uttar Pradesh since the year 1971 after obtaining requisite licence from the Corporation. Petitioner was running the retail outlet with the help of mechanical machines. However, the respondent Corporation decided to replace the old mechanical machines with new electronic machines. Such electronic machine is named and styled as "AVERY & L/T Machine". In any event, though mechanical machines of the petitioner were replaced by electronic machines but such electronic machines were also used and old, to which when objection was raised by the petitioner, supply of petroleum products to the petitioner's retail outlet was temporarily stopped by the Corporation for three days. In such circumstances, the petitioner was compelled to accept installation of such old and used machines and it is only thereafter that supply was restored. This fact was informed by the petitioner to the higher authorities of the Corporation. Thereafter, an inspection was made on 26th June, 2008 and it was found that supply from the machines was not proper, with regard to which show-cause

notice was issued to the petitioner on 19th August, 2008. The petitioner submitted its reply dated 1st September, 2008. Surprisingly, the dealership of the petitioner was terminated by the impugned order dated 27th January, 2011 after a period of two and half years of submitting the objection with regard to installation of old and used electrical machines for the purpose of supply of petroleum products.

3. On the other hand, Learned Counsel appearing for the respondents-Corporation has contended before this Court that there is no scope of judicial review in such circumstances. Specific case of the Corporation is that dealership was awarded to the petitioner on its assurance that it would operate the dealership as per the terms and conditions of the agreement. In the event of breach of any of the conditions, the dealership would be terminated. The petitioner ensured that it would deliver full and proper measures of petroleum products to the customers and would not interfere with the working part of the outfit i.e. dispensing units. But despite having agreed to said conditions, it was found to have delivered short by 190 ml. per 5 litres to the customers and had installed additional fitting viz. pulsar cable near the control card, which was joined with insulation tape with micro chips in it and the wire was going from the joint to battery switch. This additional fitting was further found to be used for manipulating the deliveries as in on position it would give short delivery and in off position it would give correct delivery. After considering the explanation dated 1st September, 2008 tendered by the petitioner to the show-cause issued on 19th August, 2008 and finding the same not to be satisfactory for the reasons stated in the letter dated 27th January, 2011, the dealership was terminated.

4. Learned Counsel appearing for the petitioner has contended that an inspection was carried out on 20th May, 2008 and shortage of delivery was found, therefore, supply was stopped till calibration is done. After calibration again the machine started working. Again the inspection was made on 26th June, 2008 and shortage of delivery of 190 ml. per 5 litres was found when the battery switch was kept in four positions. However, when the position of battery switch was changed, it was found delivering correct quantity. Thereafter so many allegations were made with regard to manipulation etc. and show-cause notice was issued to the petitioner, to which reply was also given. But before terminating the dealership on 27th January, 2011 why the selfsame facts have been reiterated even allowing the petitioner to continue for a period of two and half years, is unknown to him. Had it been fault on the part of the petitioner, it would have been resolved in the year 2008 itself but when the Corporation has allowed the operation of unit for a period of two and half years and found that there was no problem with regard to delivery of the petroleum products, on what ground petitioner's supply has been terminated, is totally unknown. Therefore, action on the part of the respondents cannot be said to be outcome of fair play and free from arbitrariness.

5. Against this background, though there is an alternative and efficacious remedy

available under the Marketing Discipling Guidelines (hereinafter in short called as the "Guidelines") effective from 01st August, 2005, but the Learned Counsel appearing for the parties have brought our attention to Clause 6.1.3 (a) of the Guidelines, which prescribes for weights and measures seals intact etc. under the heading "Short Delivery of Products". We find from the Guidelines that Clauses 6.1.3, 6.1.4 and 6.1.5 are relevant for the purpose, therefore, the same are quoted hereunder:

6.1.3 SHORT DELIVERY OF PRODUCTS

(a) With Weights & Measures Seals intact

Sales through the concerned dispensing unit to be suspended forthwith, in case the explanation offered is satisfactory, recalibration/re-stamping to be done in the presence of an Oil Company officer before recommencement of sales. In case the explanation is found satisfactory, the offence will be treated as if this is a case of seal tampering and action taken accordingly.

(b) With Weights & Measures Seals tampered

If it is established that the W & M seal is tampered, Penal action as given in Appendix-1 to be taken, even if the delivery is found to be corrector excess.

6.1.4 TOTALISER SEALS FOUND TAMPERED WITH

If intended tampering of the Totaliser seals are established leading to manipulation of Totaliser reading, with Weights & Measures seals intact, Penal action as given in Appendix-1 to be taken.

6.1.5 ADDITIONAL/UNAUTHORISED FITTINGS/GEARS FOUND IN DISPENSING UNITS

Any mechanism/fittings/gear found fitted in the dispensing unit with the intention of manipulating the delivery, Penal action to be taken as given in Appendix-1."

6. Appendix-I, as mentioned in the aforesaid clauses, which prescribes for penal action, speaks that in case of irregularity in the nature of short delivery of products (W&M seals intact), sales and supplies should be suspended from the dispensing unit till re-calibration is carried out by W&M department in the presence of an officer of the oil company. So far as alternative and efficacious remedy is concerned, we find from the relevant Notes under Chapter 6 of the Guidelines, as follows:

NOTES

(i) The above are general guidelines and the penal actions prescribed in Appendix-1 are minimum. The competent Authority of the concerned Oil Company can however take appropriate higher punitive action against the erring dealer, if deemed necessary including termination in the first or any instance.

(ii) All cases of irregularity needs to be established before any penal action is

taken against a dealer.

(iii) Every penal action would be taken only after a show-cause notice is issued and giving the dealer a minimum time of 7 days to submit his explanation. If the dealer's reply is not received within the time stipulated in the show-cause notice, or if the reply received is found to be unsatisfactory, penal action as given in Appendix-1 to be taken. No penal action to be taken if the dealer's explanation is found to be satisfactory.

(iv) The decision taken on action against the dealer based on the reply received from him for the show-cause notice has to be communicated to the dealer in writing and this should be a speaking order. In the event of termination, the dealer, within 30 days of the Order, will have the right to appeal before the appropriate authority who will be empowered to decide in the matter. The appeal must be disposed of within 90 days from the date of the appeal. The appropriate authority to hear the appeals shall be by an officer not below the rank of Executive Director.

7. According to us, it is true to say that there is no dearth of power for termination of dealership in case of necessity, though Appendix-I says to be minimum in nature. But the instant case is not a case of non-delivery of products but short delivery of the products, as found by the respondent Corporation in the year 2008. In spite of the same, no action was taken for a period of two and half years which ultimately led to termination in the place and instead of suspension with a further show-cause notice and enquiry in connection thereto till re-calibration is carried out by the authorities of Weights and Measures Department. Having so, we cannot approve the action as taken by the respondent Corporation after a period of two and half years of the cause with regard to show-cause even when no order of suspension has been issued. Moreover, we are fully aware that power of judicial review is very limited but in the instant case the element of judicial review is available in view of the penal action taken by terminating the dealership after a period of two and half years of the show-cause and reply allowing the petitioner to continue with the business, therefore, it is definitely a fit case for judicial review.

8. Thus, in disposing of the writ petition we direct the concerned authority of the respondent-Corporation to issue a fresh show-cause notice to the petitioner as expeditiously as possible within a period of seven days from the date of communication of this order, to which reply will be given by the petitioner within a period of one week thereafter. Immediately thereafter upon verification of facts and carrying out inspection in the nature of re-calibration by the authorities of Weights and Measures Department, final decision will be taken by the authority concerned within a period of fifteen days thereafter upon giving fullest opportunity of hearing and by passing a reasoned order. This will be done without fail as the aforesaid period is mandatorily fixed. However, in case the authority feels aggrieved by such order, it will proceed before the appropriate higher authority challenging the order. In case an order of termination is made or

reiterated, the petitioner will be at liberty to prefer appeal before the appropriate authority within a period of thirty days from the date of communication of the order to be passed by the authority. Since we are conscious that a post decisional consideration is required to be made in view of the aforesaid circumstances and in the manner as prescribed above, we are of the view that no effect or further effect of the termination of dealership will be given till one week after the communication of the order to be passed by the authority concerned to the petitioner. However, not to give effect of the order impugned will not be construed as automatic resumption of supply of petroleum products to the petitioner but it will be subject to the decision to be taken by the authority.

9. The writ petition is accordingly disposed of, however, without any order as to costs.

Hon"ble Ashok Srivastava, J.

10. I agree.