
(2007) 03 PAT CK 0159

In the Patna High Court

Case No : CWJC No"s. 11210 of 2005 with 15468 of 2006

M/s. Lall Auto Trading Company

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 30-03-2007

Acts Referred:

Citation : (2007) 3 PLJR 114

Hon'ble Judges : Mridula Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Mridula Mishra, J.—Petitioners in both the writ application have prayed for quashing of the termination letter dated 13.8.2005 issued by the Territory Manager (Retail), Patna whereby dealership agreement dated 8.1.2002 executed for selling petroleum product including motor spirit (petrol) as well as the supplementary agreement dated 30th June, 2003 executed for selling High Speed Diesel at Fatuha has been terminated with effect from 13.8.2005. Further prayer of the petitioner is for restoration of the license and supply of petrol, High Speed Diesel to the retail outlets. Since the prayer of the petitioner in both the writ applications are same both the writ applications are taken up together and being disposed of by a common order,

2. Initially C.W.J.C. No. 11210 of 2005 was filed for quashing the impugned letter terminating Dispensing Pump and Selling License (D.P.S.L.) agreement of the partners of M/s Lall Auto Trading Company. Kankarbagh, Patna. Partners of M/s Lall Auto Trading Company are sons and family members of Lal Bahadur Singh who was dealer of Bharat Petroleum Corporation Limited since the year 1967. After the death of Lal Bahadur Singh the partnership firm was formed by the sons and family members of Lal Bahadur Singh and an agreement dated 8.1.2002 was executed by the partners of the firm with the Oil Company for operating their Motor Spirit (MS)/High Speed Diesel (HSD) retail outlet at Kankarbagh, Patna on the land procured by the company and facility erected by

the respondents company. Subsequently in line with the industries guidelines applicable to all the oil company the B.P.C.L. carried out a partial reassignment of HD facilities from the premises of Kankarbagh to Fatuha in the year 1997. This facility was resited on the land provided by the dealers and all other facilities were installed and erected by the respondent. Partners of M/s Lall Auto Trading Company and respondent BPCL signed a supplementary agreement supplemental to the principle agreement on 30.6.2003. Clause I of the supplemental agreement reads as follows:-

"This agreement will be treated as Supplemental Agreement to the principle Agreement dated 8.1.2002 and both the Principle Agreement dated 8th January, 2002 and this Supplemental Agreement will always be read together and will be treated as one agreement. Breach of any of the terms of the said principle agreement as modified by this supplemental agreement will be construed as a breach of the entire agreement and the corporation will be entitled to take such action as contained in the Principle Agreement as modified by this supplemental agreement."

3. A routine inspection of the retail outlet at Kankarbagh was held on 20.6.2005 by the officials of the company and following irregularities were observed:-

(i) One "Z" line DU (HZ L & T 2056) for SPEED (MS) was delivering short by 130 ml. in each 5 litres of product delivered.

(ii) A double gears system was wrongly and illegally fitted on the Z line into the system with a view to short deliver the product while the metering unit will show correct quantity in the Display Panel of the Dispensing Unit.

(iii) A negative stock variation of 506 litres was found in the MS, UG tank.

4. The company on 20.6.2005 issued letters addressed to the dealers seeking their explanation and clarification on the various irregularities found during the said inspection.

5. The case of the petitioner in C.W.J.C. No. 11210 of 2005 is that they were forced by the officers of the respondent company to sign on show cause prepared by them on this assurance that no action will be taken against them.

6. The case of the petitioner in C.W.J.C. No. 15468 of 2006 is that no notice was issued to Awadhesh Kumar Sinha who is operating and running the Fatuha retail outlet in independent capacity and has no concern at all with Kankarbagh retail outlet. Suddenly on 16.8.2005 the Sales Officer and Engineering Officer alongwith a Magistrate and police party came at Kankarbagh retail outlet which is being run by Dhaneosh Kumar Sinha sealed and locked all five dispensing unit, tanks, gates and pasted termination letter dated 12.8.2005 on the wall of petrol pump premises and similar exercise was carried out in case of H.S.D. site at Fatuha and asked to transfer the land of Fatuha retail outlet in favour of B.P.C.L. The petitioner's case in C.W.J.C. No. 15468 of 2006 is that the retail outlet at Fatuha has separate identity as it was started in the year 1997 under separate

dealership allowed by the B.P.C.L. Fatuha retail outlet has no connection with dealership with the Lall Auto Trading Company, Kankarbagh, Patna who was operating on the basis of agreement dated 8.1.2002. The agreement relating to Fatuha outlet was executed on 30.2.2003. The action for establishment of Fatuha retail outlet started in the year 1994 and finally established in the year 1997. The agreement was executed on 30.2.2003. This outlet has separate dealership agreement, separate "No objection certificate" by District Magistrate. Separate place of business at a distance of 20-25 Km. from Kankarbagh outlet. Separate license by D.T.O. for running a Diesel/petrol Retail Outlet in the name of the petitioner Awadhesh Kumar Sinha. Separate Explosive License. Separate registration/verification certificate by/under the Department of Legal Metrology (Weights & Measure) in the name of Awadhesh Kumar Sinha. Separate registration under State as well as Central Sales Tax Act and Separate registration under Value Added Tax Ordinance.

7. This has been replied by the respondents in the counter affidavit. It has been submitted by the counsel appearing for B.P.C.L that Clause-1 of the supplemental agreement is the answer to the question raised by the petitioner in C.W.J.C. No. 15468 of 2006 which states that both the agreement will always be read together and will be treated as one agreement. Breach of any of the terms of the principal agreement, by the supplemental agreement will be construed as a breach of entire agreement. The corporation will be entitled to take such action as contained in the principal agreement as modified by this supplemental agreement. Counsel for the respondents has also submitted that both the retail outlets are governed by the principal agreement. There is no separate agreement for Fatuha. So far procuring various licenses by the petitioner for the new site at Fatuha is concerned, it was statutory requirement for the company to obtain no objection certificate, explosive license and other clearance for commencing business from distance location. It is not a fact that a new dealer was appointed and a new retail outlet was commissioned. Since the status of the constitution of the dealership remained unchanged, no separate D.R.S.L. was signed. Only there is a single DPSL agreement which was executed on 8.1.2002 with all three partners namely (1) Mr. Awadhesh Kumar, (2) Mr. Dhanesh Kumar Sinha and (3) Mr. Mithilesh Kumar Sinha. Since the Fatuha HSD RO was a part and parcel of original MS/HSD retail outlet at Kankarbagh, as such termination of Kankarbagh retail outlet is also applicable to Fatuha as well.

8. On perusal of the agreement executed on 8.1.2002 and 30.6.2003 I find substance in the argument advanced on behalf of the counsel appearing for BPCL. Clause-I of the supplemental agreement makes it clear that the terms and conditions mentioned in the original agreement is fully applicable to the supplemental agreement. Both the retail outlets are subject to the agreement executed on 8.1.2002. Violation of any terms and conditions in the agreement by any of the retail outlets will amount to violation by both the retail operators. So far partners of M/s Lall Auto Trading Company is concerned, they are signatories of both the agreement. Simply because for their own convenience outlets at

Kankarbagh and Fatuha are being looked after by the partners separately, Status of their dealership licence cannot be held to be independent. The respondent company can take any action against both the outlets for violation of any terms and conditions of D.P.S.L.

9. Other points which has been raised by the petitioner relates to the penalty imposed by the respondents BPCL against the petitioner overlooking the Marketing Discipline Guidelines issued by all four oil companies including the BPCL with the approval of the Ministry of Petroleum and Natural Gas Government of India.

10. Case of the petitioner in C.W.J.C. No. 11210 of 2005 is that the retail outlet at Kankarbagh has unblemished past. M/s Lall Auto Trading Company started its business with BPCL since 1967. For the first time in the year 1994 investigating team made a complaint regarding the short delivery though weights and measures seals were found intact. The company directed for re-verification by Weights and Measures Department and till then sales and supplies were suspended. When the Weights and Measures Department re-verified and made correction again sales and supplies started. In the year 1999 also allegation of short supply was made and the sale of petroleum products were suspended. Explanation was called and considering the explanation of the petitioner on 1.12.1999 the order of suspension was withdrawn. In all these orders there has not been any serious complaint against the petitioner for violating any of the terms and conditions of the D.P.S.L. agreement or the Marketing Discipline Guidelines. Marketing Discipline Guidelines was published for the first time in the year 1998. Thereafter all four companies amended the aforesaid guidelines by Marketing Discipline Guidelines, 2001. The Marketing Discipline Guidelines also prescribes penal action for minor and major irregularities.

11. Routine inspection of the outlet at Kankarbagh was conducted on 20.6.2005. At the relevant time the Marketing Discipline Guidelines, 2001 was in operation. Deficiency/irregularities which were detected related to short delivery of product (weight and measures sales intact). According to the Marketing Discipline Guidelines, 2001 in case of such irregularities if it is found for the first time, sales and supplies should be stopped from dispensing unit till re-calibration is carried out by the Weight and Measures Department and a fine of Rs. five thousand and suspension of sales and supply of oil product for 15 days can be imposed as penalty. In case the irregularity has been found for the second time sales and supply should be stopped from the dispensing units till re-calibration is carried out by the Weight and Measures Department. Fine of Rs. ten thousand and suspension of sales and supply of product for 30 days can be imposed as penalty. In case such irregularity is found for the 3rd time the penalty prescribed is stoppage of sales and supply from the dispensing unit till re-calibration is carried out by the Weight and Measures Department, fine of rupees five thousand and suspension of sales and supplies of product for 45 days in extreme cases where it is proved that the dealer has tampered with the sales and delivery system,

termination of dealership in the 4th instance. There being no allegation that the retail outlet Kankarbagh has tampered with the sales and delivery system as well as no previous history of any irregularity committed by the retail outlet, the penalty of termination of BPCL license is in violation of the Marketing Discipline, 2001 guideline as such it needs to be quashed.

12. Counsel for the petitioner in C.W.J.C. No. 15468 of 2006 has stated that in the past there has been no irregularity at the retail outlet at Fatuha. In the present matter also the irregularity was not found at the retail outlet at Fatuha as such there was no question of termination of its dealership license.

13. Counsel appearing for the respondents BPCL has produced the Marketing Discipline Guidelines, 2005 which came into effect on 1.8.2005. It has also been submitted that the irregularities which were found that related to short delivery of the product as well as double gear system was wrongly and illegally found fitted on the Z line into the system with a view to short deliver the product while the metering unit will show correct quantity in the display panel of the dispensing unit. This related to the tampering with the system. Under the Marketing Discipline Guidelines, 2005 the penalty prescribed for short delivery of the product, weight and measures sales tampered is termination of the DPSL agreement. In 2005 Marketing Discipline Guidelines there is no provision for first, second and 3rd commission of irregularities. Even if the irregularities are found for the first time same penalty has been provided. The penalty against the petitioner has been imposed under Marketing Discipline Guidelines, 2005 as such there is no violation of any marketing guidelines.

14. Counsel appearing for the petitioner has submitted that date of inspection being prior to the date when the Marketing Discipline Guidelines, 2005 came into effect, the penalty in case of the petitioner could have been imposed under the provisions of 2001 Marketing Discipline Guidelines. Under 2001 Marketing Discipline Guidelines Marketing Discipline provisions are there for second and 3rd instance. Irregularities offence of first relating to the short delivery of product tampers with the weight and measures units, if found for the first time the penalty provided is fine of Rs. ten thousand and suspension of sales and supply of product for 15 days. Only on 3rd occasion the penalty for termination of the DPSL licence has been provided. In case of the petitioner the Marketing Discipline Guidelines, 2005 has no application as such the penalty imposed according to 2005 guidelines is disproportionate and in violation of Marketing Discipline Guidelines, 2001 as such it should be quashed.

15. I find that there is substance in the argument of the counsel for the petitioner. Any penal action could have been taken against the petitioner on the basis of the Marketing Discipline Guidelines, 2001 which was in existence on the date of inspection. All oil companies including the respondents company are the parties to such guidelines which is approved by the Ministry of Petroleum and Natural Gas, Government of India and observance of the provisions of such guidelines is mandatory for the oil companies. The penalty could have been

imposed against the petitioner on the basis of the Marketing Discipline Guidelines, 2001. Even if the contention of the counsel appearing for the respondents is accepted that it was not a simple case of short delivery of product rather with low delivery of products weight and measures units were also tampered in that case also the present irregularity being of the first instance maximum penalty which could have been imposed against the petitioner is of fine of rupees ten thousand, suspension of sales and supply of product for 15 days. Termination of D.P.S.L. agreement license could have been made only after the irregularities could have been found on 3rd occasion. It is not being the case of the respondents in the counter affidavit or in the argument advanced by its counsel. I find that the order dated 13.8.2005 issued by the Territory Manager (Retail) Patna (Annexure-8) in C.W.J.C. No. 15468 of 2006 and Annexure-10 in C.W.J.C. No. 11210 of 2005 are quashed. The respondents B.P.C.L. is directed to remove all seals and locks from petrol dispensing unit under ground energy tank and iron gates from the retail outlet of the petitioner at Kankarbagh as well as Fatuha, to restore all supplies of H.S.D. as well as other petroleum product to the retail outlets of the petitioner's company forthwith. This application is accordingly allowed.