

(2016) 08 AHC CK 0090
In the Allahabad High Court
Case No : Writ C No. 29786 of 2009

M/S Shahpur Service Center

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-08-2016

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Uttar Pradesh High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supplies and Distribution) Order, 1991 — Clause 9

Citation : (2016) 5 AILLJ 654

Hon'ble Judges : Sunita Agarwal, J.

Bench : Single Bench

Advocate : Anoop Trivedi, Rakesh Kumar, S.S. Shukla, Santosh Srivastava and Smt. Karuna Srivastava, Advocates, for the Petitioner; C.S.C, P. Padia and Shikha Dixit, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Sunita Agarwal, J.— Heard Shri Santosh Srivastava and Shri Prakash Padia, learned counsel for the parties.

2. The present writ petition is directed against the order dated 20.05.2009 passed by respondent no.5, Executive Director (Retails Sales), Indian Oil Corporation Ltd., Mumbai as also the order dated 26.09.2008 passed by respondent no.4, General Manager, Indian Oil Corporation (Marketing Division), Noida .

3. It appears that an inspection of the retail outlet of the petitioner was carried out on 30.05.2007 by an officer of the Hindustan Petroleum Ltd. A marker test was conducted on the spot which had failed and the sale and supplies of the petroleum product from the retail outlet of the petitioner's firm was suspended.

4. The Senior Supply Inspector, Muzaffar Nagar had lodged a first information report on 31.05.2007. By order dated 23.07.2007, the District Supply Officer,

Muzaffarnagar had cancelled the licence of the petitioner's firm on the ground of adulteration of the petroleum product. Being aggrieved, the petitioner preferred an Appeal under Clause 9 of the U.P. High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supplies and Distribution) Order, 1991 before the Commissioner, Saharanpur Division, Saharanpur who had partly allowed the appeal vide order dated 26.09.2007. While imposing the penalty of Rs.20,000/- on the petitioner's firm, the licence was restored. The petitioner's firm deposited the penalty as contemplated in the order dated 26.9.2007 passed by the Commissioner. Consequently an order dated 08.12.2007 was passed by the District Supply Officer, Muzaffarnagar restoring the licence of the petitioner's firm. The petitioner, thereafter, applied to respondent no.2 for restoration of supply of the petroleum products. Supply was not restored and hence a writ petition no.1488 of 2008 was filed by him. In the meantime, a review petition was preferred by the respondent Oil Corporation before the Commissioner, Saharanpur Division, Saharanpur for review of the order dated 26.09.2007 for restoration of licence. The review application was rejected vide order dated 04.06.2008 passed by the Commissioner Saharanpur, Division Saharanpur.

5. The orders of the District Authorities in restoring the licence of the petitioner's retail outlet has become final as it has not been challenged further. Consequently, the petitioner again approached the Corporation for restoration of supply of the retail outlet. In response, the respondent Corporation issued a notice dated 01.07.2008 informing the petitioner that the Corporation had decided to carry out the clinical test of the sample and the petitioner was called upon to participate. The petitioner challenged the notice and in his reply he specifically stated that the test could not be conducted after more than fourteen months of collection of the sample.

6. The samples were stated to be tested on 09.07.2008 and a show cause notice dated 08.08.2008 was served upon the petitioner to show cause as to why his dealership be not terminated on account of the report of the laboratory of confirmation of adulteration of High Speed Diesel Oil.

7. The writ petition no.44575 of 2008 was preferred by the petitioner challenging the show cause notice for termination of his dealership. The said writ petition was disposed of vide judgement and order dated 28.08.2008 with the observation that the petitioner may approach the authorities concerned who may pass a reasoned order in accordance with law. The respondent no.4 vide order dated 29.09.2008 had terminated the dealership of the petitioner firm on the basis of laboratory test report. Another writ petition no.55869 of 2008 was filed challenging the order dated 29.09.2008 passed by respondent no.4. The said writ petition was disposed of on 15.11.2008 on the ground that the petitioner had an alternative remedy of filing the appeal before the Executive Director (Retail Sales). The appeal preferred by the petitioner was dismissed vide judgment and order dated 20.05.2009 passed by respondent no.5, hence this petition.

8. Challenging the orders passed by the respondent authorities, submission of learned counsel for the petitioner is that the action of the respondent Corporation is not bona fide, the sample was collected on 30.05.2007, marker test was conducted, however, no action was taken by the respondent Corporation. The sample was tested on 09.07.2008 i.e. after approximately more than one year. In the Marketing Discipline Guidelines, 2005 (herein after referred as Guidelines, 2005), complete procedure has been provided for testing the sample so collected. This procedure is mandatory and has to be strictly adhered to in all cases of collection of samples and testing thereof. The time frame provided under Clause 2.4.4 of the Guidelines, 2005 is ten days from the date of the collection of the sample for the test to be done in the laboratory. The said period has to be strictly adhered to by the authority and the sample could not have been tested after more than one year. The dealership of the petitioner's firm could not have been terminated on the basis of the report of the test laboratory dated 09.07.2008. The action of the respondent Corporation is completely misdirected rather the District Authorities namely the District Supply Officer and the Commissioner had already punished the petitioner's firm with a penalty which had been deposited by it. The respondent Corporation had not challenged the order passed by the Commissioner in rejection of its review application. The order of the District Authorities restoring the licence has not been challenged by the Corporation. It was open for the Corporation to take action in accordance with the Guidelines, 2005, however, it had slept over the matter for a period of more than one year and the first notice was served upon the petitioner's firm only on 01.07.2008 calling upon it to remain present for clinical test of the sample collected. This notice was resisted by the petitioner referring to the Guidelines, 2005. In any case, the action of the respondent corporation is highly unreasonable and arbitrary.

9. On the other hand, Sri Prakash Padia learned counsel for the respondent Corporation submits that the imposition of penalty by the District Authorities upon the petitioner would not come in the way of the Corporation to take action for termination of dealership. Due opportunity has been given to the petitioner to participate in the laboratory test. The petitioner had refused to cooperate and, therefore, after waiting for certain period the Corporation proceeded to get the test done. The laboratory test of the samples taken during inspection on 30.05.2007 had confirmed the report of the Marker test which was done on the spot in the inspection done on 30.05.2007. The fact of inspection, the testing of sample by Marker test and the factum of collection of sample by the competent authority during inspection are not disputed. The plea of delay in conducting the laboratory test raised in the present petition is not available to the petitioner for the reason that such plea was not taken in earlier petitions filed by the petitioner on two occasion before this Court.

10. Both the writ petitions were disposed of on 28.08.2008 and 15.11.2008 with direction to the concerned authority to take decision on the merits of the objection of the petitioner. At the relevant point of time, the Marker test was duly

approved, though it has been dispensed with effect from 01.01.2009. The Marker test was done on the spot and it had confirmed adulteration in the High Speed Diesel oil. Though the Marker test is not fully approved test, however, since the report of adulteration has been confirmed in the sample tested in the laboratory, the respondent authorities had no option but to terminate the dealership. The petitioner has failed to show that on account of late testing of sample, any prejudice has been caused to the petitioner. It is not the case of the petitioner that there was any variation in the quality and composition of the sample because of the late testing in the laboratory. Moreover, the delay have been caused on account of the conduct of the petitioner and the action of the District authorities in restoring the licence. The supply was not restored to the petitioner since the date of suspension i.e. 30.05.2007.

11. Even otherwise, it is a contract between the parties, the court cannot compel the reluctant contracting party to keep the contract alive. Only right of the petitioner under the contract that he be afforded opportunity of hearing before termination of the contract. The order passed by respondent Corporation does not suffer from the vice of principles of natural justice.

12. The Guidelines of 2005 are only directory in nature as have been held by this Court in the case of M/s Kishore Auto Sales and others v. Bharat Petroleum Corporation Ltd. Varanasi and others, 2010 (6) ADJ 711 and in judgement and order dated 12.09.2014 passed in writ petition no.64781 of 2009 (Gopal Auto Centre v. Executive Director (Retail Sales I.O.C. Ltd) and others.), the judgement and order dated 10.04.2013 passed in Special Appeal no.156 of 2011 (M/s Bhrigunath Filling Station, Dealer Bharat Petroleum Corporation Ltd. v. Bharat Petroleum Corp. Ltd. Trough C.M.D. & others).

13. On the issue of prejudice, reliance is based upon the judgement of Division of this Court in Vindhya Services Station, Mirzapur (M/s) and another v. Union of India and others reported in 2009 (1) EFR 87.

14. On the question of power of Court to interfere in the matter of contract, the reliance is placed upon the Division Bench judgement of the Uttarakhand High Court in Special Appeal 110 of 2013 decided on 16.12.2013.

15. It is admitted to the learned counsel for the petitioner that the proceedings conducted by the District Authorities in cancellation/restoration of licence and the proceedings undertaken by the Corporation in terminating the contract are operating at two different levels. One at the level of Oil marketing companies and the other by the State Authorities under the Essential Commodities Control Order.

16. In respect of the contract between the Oil marketing company and the dealer, the terms are governed not by the Control Order but by the terms and conditions of the agreement and the Guidelines, 2005. Both the proceedings are independent to each other. The restoration of licence by the District Authorities has no bearing on the decision taken by the respondent Corporation for the reason that the decision to continue a retail outlet is within the domain of the

Corporation. The law regarding judicial review in the matters of contract is fairly well settled. The Court would not interfere in the termination of contract where the compensation in terms of money can be given or where one contracting party has failed to discharge its obligations under the contract. The scope of judicial review is limited to the extent that whether there is any observance of the principles of natural justice or not or there is any violation of the statutory rules.

17. Learned counsel for the petitioner has confined his argument on the point that the samples taken from the retail outlet were not sent for the chemical analysis to the laboratory within the time period prescribed under Clause 2.4.4 of the Guidelines, 2005. He further submits that the Marker test was only a prima-facie proof of alleged adulteration, and much importance cannot be attached to the said test.

18. The fact of the case as narrated above reflects that on the date of inspection i.e. 30.05.2007 the sample was collected and Marker test was conducted on the spot which had failed. The Marker test was statutorily introduced test and was available on the date when the inspection was done. Even accepting the argument of the learned counsel for the petitioner that the Marker test is not a fool-proof test will not help the petitioner for the reason that the sample was found adulterated in the report of the laboratory in the test conducted on 09.07.2008. Though the delay in conducting the chemical test cannot be attributed to the petitioner, however, it appears that the delay had occurred on account of several rounds of litigation between the parties. The time limit provided for in clause 2.4.4 of the Guidelines, 2005 has not been adhered to by the Corporation while conducting the test of the sample collected from the petitioner's Outlet. However, the petitioner had failed to plead and prove that any prejudice was caused on account of the said delay. There is no pleading that there was any variation in the quality and composition of the sample which might have rendered the sample useless for ascertaining the purity of the High Speed Diesel being sold by the petitioner. The Division Bench of this Court in the case of Vindhya Service Station (supra) has observed that every departure from the procedure prescribed in the Marketing Guidelines 2005 would not operate to the benefit of the dealer using adulterated products on mere technicalities, it may not cause prejudice to the dealer. The same principle have been followed by the another Division Bench of this Court in M/s Bhrigunath Filling Station (supra). It is also settled position that the Guidelines, 2005 are only directory in nature. Every violation thereof cannot be treated as prejudice caused to the dealer. Reference Gopal Auto Centre (supra) and M/s Kishore Auto Sales and others (Supra).

19. Lastly it is noteworthy that the Guidelines, 2005 provides for two checks for adulteration at two stages, one on the spot by the marker test which prima facie confirmed the adulteration in the petroleum product. The marker test was conducted in presence of the representatives of the Authorised dealer present on the spot. The laboratory test confirmed the report of adulteration. Mere delay in

conducting the laboratory test without any thing more cannot be a ground to challenge the termination order.

20. Moreover, it appears that the petitioner had approached this Court twice earlier and filed writ petitions challenging the show cause notice and the termination order but he never raised this issue. Sufficient opportunity have been provided to the petitioner and there is no submission regarding violation of principles of natural justice.

21. In view of the above discussion, this Court does not find any merit in the submission of the learned counsel for the petitioner that the delay in getting the sample tested in the laboratory has the effect of rendering the termination of the contract by the respondent Corporation as illegal.

22. With the above observations and directions, the writ petition is dismissed.