
(2012) 09 JH CK 0229

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2068 of 2009

Paresh Ghoshal

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd. and Others

RESPONDENT

Date of Decision : 06-09-2012

Acts Referred:

Citation : (2013) 1 AJR 481 : (2012) 4 JLJR 480

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Ananda Sen, Rajeev Ranjan Tiwari and Prashant Kr. Singh, for the Appellant; Delip Jerath, for the Respondent

Final Decision : Allowed

Judgement

N.N. Tiwari, J.—The writ petition was initially filed praying for quashing the order dated 10.2.2009 issued by the respondent No. 2, whereby the retail outlet of the petitioner namely M/s. Barkatha Service Station, HP Petrol Pump at NH-2, District-Hazaribagh was put under suspension on the allegation that as per the laboratory test results MS sample failed in RON and final boiling Point test. By the said order the petitioner was called upon to file his explanation for the above deficiency in MS sample within a week.

2. During pendency of this writ petition, the petitioner's dealership was terminated. The petitioner brought the said order on record by way of amendment and prayer has been made for quashing the said order dated 3.7.2009 issued by the Senior Regional Manager and duly constituted attorney, Hindustan Petroleum Corporation Ltd.

3. The fact germane to this case, inter alia, is that the petitioner has got authorised retail dealership of products of the Hindustan Petroleum Corporation Ltd. He has been running the retail outlet in the name and style of M/s. Barkatha Service Station, HP Petrol Pump, NH-2, District-Hazaribagh. The outlet was set up in 2005 and since then the same has been running without any interruption.

4. An inspection was made of the said outlet on 31.12.2008 by the respondent No. 3. During inspection sample was taken from the retail outlet, which according to the respondents, was sent for laboratory testing. The result of the test, as communicated by the respondents, alleged that the sample failed in RON and final boiling point test.

5. On the basis of the said report, the respondent No. 2 by letter dated 10.2.2009 suspended the petitioner's retail outlet and issued a notice to show-cause asking the petitioner to explain the reason of the deficiency in the M.S. Sample.

6. The petitioner filed reply stating, inter alia, that the alleged inspection said to have been made on 31.12.2008 is in violation of Marketing Discipline Guideline, 2005 (for short "MDG, 2005"). No intimation, as required, was given to the petitioner at the time of collecting the alleged sample. No memo was given to any staff of the retail outlet, which violates the provision of Articles 2.4 and 2.4.1 of MDG, 2005. The respondent No. 3 did not follow the mandatory norms. The entire process is arbitrary. The show-cause notice even did not contain the description of the test report nor the test report was served on the petitioner. The petitioner denied all the allegations and requested the respondents to vacate suspension order. But no order was passed by the respondents.

7. As aforesaid, during pendency of the writ petition, the respondents by order dated 3.7.2009 terminated the petitioner's dealership mainly on the ground that the petitioner failed to file his reply within the prescribed time and even in the reply filed belatedly, no satisfactory reason of failure of sample in FBP and RON test of M.S. on 7.2.2009 by the Quality Control Laboratory, Ramnagar has been assigned by the petitioner.

8. According to the respondents, the reply was evasive and was filed for informing that writ petition was filed in the meantime and the matter is subjudice.

9. The respondents, in the said impugned letter of termination, held that there was violation of Clause Nos. 25, 26, 42, 55(I) and (K) of the Dealership Agreement dated 28.2.2006.

10. According to the petitioner, the respondents' allegation is wholly false and baseless. There is no violation of any clause of the agreement. The impugned order is wholly malicious and vitiated.

11. Mr. Ananda Sen, learned counsel appearing on behalf of the petitioner submitted that the sample was taken from the retail outlet on 31.12.2008 and it was received on 19.1.2009. The MDG, 2005 prescribes specific guidelines and procedure to be followed for collecting samples for the purpose of testing in laboratory and the procedure for testing the sample collected for that purpose. Clause-2.3 prescribes for withdrawal of sample by dealer or his representative and Clause-2.4.1 prescribes that all the samples should reach the laboratory for testing preferably within ten days from the collection of the samples. Clause-2.10

provides for testing of sample preferably within the next 20 days from the collection of the sample and communicating the result to the dealer within next five days from receipt of test report.

12. Learned counsel emphatically submitted that the guidelines should be strictly followed and the time frame, as stipulated above, should be adhered to. But in the instant case after the alleged collection of sample on 31.12.2008, there was inordinate delay in presenting the same in the laboratory. He submitted that sample was collected on 31.12.2008 and the same reached the laboratory on 19.1.2009, after about 19 days instead of 10 days. The sample was tested on 7.2.2009 i.e. after more than 35 days instead of 20 days. There is no explanation whatsoever for the delay and violation of the said guidelines which says that the provisions are to be strictly adhered to.

13. Learned counsel contended that the respondents have tested the product taken from a different lorry, which will be evident from the laboratory test report of Motor Spirit. The sample was taken from tank lorry No. JH10A 7461 as would be evident from the sample label brought by the respondents as Annexure-R/B to their counter affidavit, whereas the laboratory test report (Annexure-R/C) filed by the respondent specifically shows that the sample tested was drawn from vehicle having registration no. JH10A 7404. In the said sample label plastic seals nos. of aluminium container was 293145 and plastic seals nos. of wooden box was 293176. But in the test report (Annexure-R/C) there is no plastic seal No. on the wooden box. The column is shown blank and there is another plastic seal No. of aluminium container i.e. 119380.

14. Learned counsel submitted that the report itself reveals that the respondents have tested sample which was taken from another tank lorry and on the basis thereof, they have initiated the proceeding against the petitioner and ultimately penalized by terminating the dealership of the petitioner.

15. He further submitted that not only the provisions of guidelines have been violated by the respondents in the alleged testing of the sample, the sample tested was taken from a different tank lorry. The order is, thus, wholly arbitrary, malicious and illegal and is liable to be quashed.

16. The respondents have contested the writ petition stating, inter alia, that there has been no violation of any provisions of the guidelines. The testing has been done in accordance with the prescribed procedure in the Quality Control Laboratory, Ramnagar, which is one of the authorised laboratories under Schedule-III of the Control Order. During the testing, though the sample of HSD (Diesel) was found to be passed in specification, but the sample of the Motor Spirit (Petrol) i.e. M.S. (petrol) both failed in RON (Research Octane Number) and final boiling point test. The respondents, thereafter, issued a fact finding letter informing that the sample has failed and on that basis the petitioner's retail outlet was suspended with immediate effect. Show-cause notice was issued and the petitioner was directed to file his reply. The petitioner initially did not file

any reply, but belatedly filed the reply without explaining about the failure of M.S. (petrol sample) in respect of RON and final boiling point. Ultimately, the petitioner's dealership was terminated for violating the terms of the dealership agreement, particularly Clauses-25, 26, 42, 55(I) and (K) and the aforesaid irregularity was found.

17. Learned counsel for the respondents submitted that the samples were taken and tested in accordance with the guidelines and there was no illegality or irregularity. The petitioner's sample of Motor Spirit failed in RON and final boiling point. The petitioner has filed this writ petition at the initial stage even without filing effective show-cause reply. The writ petition is not at all maintainable and there is no ground for interference with the impugned order.

18. Mr. Delip Jerath, appearing on behalf of the respondents submitted that so far as the discrepancy in the lorry number and the reports are concerned, those are mere mistakes and the same do not vitiate the report. The petitioner cannot derive any advantage on that ground. He further submitted that though there was some delay in submitting the sample to the laboratory and also in testing the sample the delay was not inordinate and that also does not nullify the testing report. The petitioner has not brought anything on record to show that any prejudice has been caused to him by that delay.

19. I have heard learned counsel for the parties and considered the facts and materials on record. I also perused the retail outlet inspection report, guidelines and other documents available on record.

20. In the instant case, though the parties are at variance on the other points, there is no dispute even by the respondents that the tank lorry number mentioned in the sample label drawn from the retail outlet of the petitioner and that mentioned in the laboratory test report, are different. In the sample label the tank lorry number is specifically mentioned as JH10A 7461, whereas in the test report the sample drawn from the lorry is mentioned as JH10A 7404. It is also not in dispute that even the plastic seal numbers of wooden box are also different.

21. Learned counsel for the petitioner submitted that the said discrepancy alone vitiates the test report. Order of termination of dealership of the petitioner is liable to be quashed.

22. I find much substance in the submission of learned counsel for the petitioner.

23. Further it is also not in dispute that there was delay in delivery of the sample to the test laboratory and also in the testing of the sample in view of the clear guidelines prescribed in Clause 2.10 of MDG, 2005.

24. Learned counsel for the respondents has tried to explain the point of delay by submitting that there is nothing on record to show that it has caused any prejudice to the petitioner and that it is not a strict provision. It provides that it should be preferably done within the said prescribed period.

25. However, on examining Clause 2.10 of MDG, 2005 I find that the said procedure has to be followed strictly and the time frame, as stipulated, has to be adhered to.

26. In view of the said admitted position and without entering into any other controversy between the parties, this Court finds that the impugned order is not credible. The same is based on the testing report, which is not reliable for the reasons that the tank lorry number, from which the sample was taken, does not tally with lorry number mentioned in the testing report. Even plastic seal numbers of aluminium container and wooden container do not tally as has been noticed above.

27. The respondents never said at any time earlier that there was mistake in mentioning the lorry number. That version and explanation has come at the time of hearing. The respondents were all along aware about the number of tank lorry from which the sample was taken and the tank lorry number appearing in the testing report. The said admitted vital discrepancies in the report vitiates the conclusion, as also the impugned order of suspension and subsequently the order of termination of the petitioner's dealership.

28. For the reasons aforesaid, this writ petition is allowed. The order of suspension dated 10.2.2009, contained in Annexure-1 and the order dated 3.7.2009, contained in Annexure-7, are quashed.

29. The respondents, accordingly, are directed to restore the previous position of the retail outlet of the petitioner within two weeks from the date of receipt/production of a copy of this order. There is no order as to cost.