
(2003) 04 AHC CK 0060
In the Allahabad High Court
Case No : C.M.W.P. No. 49737 of 2002

Prabhakar Highway Service Station	Vs	APPELLANT
General Manager, Indian Oil Corporation Ltd. and Others		RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 5 AWC 4045

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : W.H. Khan and J.H. Khan, for the Appellant; P. Padia and S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties.
2. The Petitioner has challenged the impugned order dated 14.10.2002 Annexure-1 to the petition and has claimed refund of the fine of Rs. 20,000.
3. The Petitioner was a retail outlet dealer of petroleum and H.S.D. appointed by the Indian Oil Corporation by letter dated 21.9.2002 vide Annexure-4 to the writ petition. He was asked to show cause relating to certain alleged major serious malpractice committed by him, which is alleged to be the third instance in a short span of two years. The Petitioner submitted his explanation on 30.9.2002 as stated in paragraph 6 of the petition vide Annexure-7 to the writ petition. It is alleged that on 9.9.2002, the Respondent No. 3 had come to the Petitioner's Petrol Pump and he took three samples each from the first and second tanks.
4. It is alleged in paragraph 4 of the petition that while taking sample of the first tank the Respondent No. 3 noted the correct density and, therefore, the Petitioner signed the inspection note, however, while taking the sample from the second tank the Respondent No. 3 did not note down the correct density and hence the Petitioner did not sign it. True copies of the Inspection Notes are

Annexures-2 and 3 to the writ petition.

5. In paragraph 6 of the petition it is alleged that the correctness of the test report of the sample taken from the second tank was denied by the Petitioner. The Petitioner wanted to sent the sample retained by him to the Government Laboratory approved by the Central Government, for which he was ready to deposit the requisite fee. It is alleged that unless the Government Laboratory examines the test the Respondents cannot rely on their own test reports.

6. The Petitioner has alleged that under the Marketing Discipline Guidelines 2001, in the event of request by the dealer the same may be considered on merits by the Regional General Manager and the sample of H.S.D. should be retested. It is alleged that in the past reliance on the tests of the Kanpur Laboratory of the Indian Oil Corporation were found to be incorrect. The relevant guidelines in this connection are Annexure-10 to the writ petition. The Petitioner has alleged that various irregularities, e.g., the taking of samples by the Respondent No. 3 on 9.9.2002 was illegal since Respondent No. 3 did not note the correct density of the H.S.D. It is also alleged that the tests of the Kanpur Laboratory of the Corporation have been found to be incorrect in the past and cannot be relied upon it. The Respondents have illegally not sent the sample retained by the Petitioner for testing to the Government Laboratory. It is further alleged that the Respondents have acted illegally in directing the H.S.D., lying in the second tank to be sent to the Mathura Refinery vide Annexure-9 to the writ petition. The Petitioner has challenged the impugned order dated 14.10.2002 passed by the Respondent No. 2 stopping the sale and supply of all petroleum products for thirty days w.e.f. 21.9.2002 to 20.10.2002 and imposing a fine of Rs. 20,000.

7. The period of thirty days expired on 20.10.2002 and hence the writ petition has become infructuous in that connection.

8. The Respondent Nos. 1 and 2 has filed a counter-affidavit and we have perused the same. In paragraphs 4 and 5 of the same it is stated that highly disputed questions of facts are involved in this case and hence the Petitioner should be relegated to his alternative remedy by way of a civil suit or arbitrator. It is alleged in paragraph 6 of the counter-affidavit that this is the third instance of malpractice on behalf of the Petitioner and a total contaminated H.S.D. 19838 litres were found with the Petitioner. In paragraph 7 of the same it is stated that the action was taken against the Petitioner as per the guidelines and sample testing was done in accordance with the rules and regulations. It is alleged that the Petitioner again claimed testing should be done only by the Government Chemical Laboratory. In paragraph 10 it is denied that while taking sample from the second tank the correct density was not noted. The Petitioner tried to prevent Respondent No. 3 from taking sample by every means and he refused to sign the documents as well as the sample label. In paragraph 11 of the same it is stated that the Petitioner had earlier committed malpractices on 8.12.2000, 6.4.2002 and now on 9.9.2002, hence he is not entitled to any indulgence. In

paragraph 17 of the same it is stated that density as per the report and density at the time of inspection were noted down in the inspection report and the sample label by Respondent No. 3. The Petitioner did not co-operate during the inspection and refused to sign the documents and sample labels in which deviations were observed. In paragraph 18 of the same it is stated that full opportunity of hearing was given to the Petitioner. In paragraph 19 of the same it is stated that the sample failed in the test. In paragraph 25 of the same it is stated that there is a dealership agreement under which there is an arbitration clause whereby disputes can be referred to arbitration.

9. In our opinion, since there are highly disputed questions of facts in this case, it will be appropriate if the Petitioner avails his alternative remedy either by way of arbitration or by filing a civil suit. A writ is not an appropriate remedy in this case where highly disputed questions of fact are involved.

10. The petition is, therefore, dismissed on the ground of an alternative remedy. However, if Petitioner applies to the arbitrator or files a civil suit, his case will be decided very expeditiously.