
(2008) 09 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9934 of 2001

Premodaya rep. by its Managing Partner

APPELLANT

Vs

Bharat Petroleum Corporation Limited

RESPONDENT

Date of Decision : 18-09-2008

Acts Referred:

Citation : (2008) 6 ALD 670 : (2008) 6 ALT 550

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : P. Kamlakar, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

V.V.S. Rao, J.—The petitioner is a firm having Dealership Agreement - cum - Dispensing Pump and Selling Licence (DPSL), dated 08.08.1998, with the respondent, namely, Bharat Petroleum Corporation Limited (BPCL). The firm filed the writ petition assailing the order of the Territory Manager (Retail), BPCL, suspending the sales and supplies of all petroleum products at petitioner's retail outlet for a period of 30 days and imposing a fine of Rs. 20,000/-. The petitioner seeks a writ of mandamus declaring the impugned order as illegal and void.

2. The firm is running a retail outlet in the name and style of M/s. Premodaya at Buchireddypalem, Nellore District. It obtained Form - B licence from the Joint Collector, Nellore, under the provisions of the Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 (State Control Order, for brevity). On 19.01.2000 the Senior Sales Officer (Retail), Nellore, of the respondent company visited the petitioner's outlet. He took samples of Motor Spirit (MS) (petrol) from the dispensing unit and handed over a copy of the inspection report to an employee of the petitioner. The petitioner alleged that no contravention of the State Control Order was noticed. It also contends that it did not contravene any other provisions of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order,

1990 (Control Order, for brevity), which deals with specifications of MS and procedure for such seizure and sampling of products for testing. On 21.03.2001 the Territory Manager addressed a letter to the petitioner informing that as per the Test Report after clinical analysis of the sample the same does not meet the specifications of Research Octane Number (RON). There was no notice, however, proposing any action in terms of Clauses 13(a)(vii)(viii) of DPSL. But, on 03.05.2001 the impugned order was passed imposing penalty.

3. The Territory Manager (Retail), Cherlapalli, BPCL, has filed a counter affidavit on behalf of the respondent opposing the writ petition. It is alleged that sampling and clinical analysis for testing was done in accordance with the Control Order and that the action taken is not arbitrary.

4. Learned Senior Counsel for the petitioner raised the following contentions. The Territory Manager has no authority or power to take action under Clause 13(a) of DPSL. As per Clause 3 of the Control Order the dealer is required to maintain record of densities as indicated in Schedule I and there is no requirement of recording RON or other specifications. The entire action leading to passing of the impugned order is in contravention of Clause 5 of the Control Order. It is specifically pointed out that as per Clause 5(2) of the Control Order the Inspecting Officer has to take six samples, but only three samples were taken.

5. Further, as per Clause 5(5) of the Control Order the sample is required to be sent to the designated laboratory within ten days from the date of taking sample. But, it was received beyond ten days at the laboratory leading to distortions in the testing. Lastly, it is submitted that the impugned order issued without notice calling upon explanation is bad in law. Reliance is placed on *S. Chinnasamy and R. Soundararajan Vs. Seed Inspector, Coimbatore and Another*, .

6. Learned Standing Counsel for BPCL submits that Clause 13(a)(viii) of DPSL has no application to the case and there is a delegation of power to Territory Manager to initiate action under Clause 13(a)(vii) of DPSL.

7. Nextly, he contends that when the petitioner is the agent of the marketing company, even if there are lapses in drawing the sample for testing, the same does not invalidate the penalty order. He also contends that the sample taken at petitioner's outlet was sent within ten days to the laboratory, but it was taken up for testing after expiry of ten days, and the same does not vitiate the impugned order.

8. The Control Order is intended to maintain standards in the petroleum products offered for sale through retail outlets. To ensure that petroleum products sold through retail outlets conform to the standards contained in Schedule I, proper vigilance is mandated by Clauses 4 and 5 of the Control Order. In addition to this, under DPSL dated 08.08.1998 between the petitioner and the respondent, the licensee covenanted, inter alia, not to adulterate petroleum products supplied by the Company and at all times to take reasonable precautions to ensure that MS or High Speed Diesel (HSD) is kept free from water, dirt and other impurities

and serve from such pumps in such conditions. The term "adulteration" is defined in Clause 2(a) of the Control Order as under.

2(a). "adulteration" means the introduction of any foreign substance into motor spirit/high speed diesel illegally or unauthorisedly with the result that the product does not conform to the requirements and specification of the product indicated in Schedule I.

9. There is no clause warranting an inference that whenever the requirements/specifications failed to conform to the standards of petroleum products in Schedule I, that product is adulterated. A petroleum product can be said to be adulterated only when there is introduction of any foreign substance into petroleum product, which again results in the product not conforming to the requirements and specifications in Schedule I. The definition contains the word "means". The definition has to be interpreted strictly and it is not possible to expand the purport or scope of the definition. It is not the case of the petroleum company that the petitioner by introducing foreign substance offered petrol for sale, which does not conform to the requirements and specifications. It is only inferentially based on the value of RON (when the specification is 88, RON was found 71.7) that the Territory Manager came to the conclusion that MS is adulterated. In that view of the matter the sampling and testing assume great importance.

10. Clause 5 of the Control Order contains safeguards for the dealer or DPSL licensee. The safeguards contained therein, in the considered opinion of the Court, are mandatory because as per DPSL any breach of covenants by the licensee would entail in the cancellation of licence itself. Clause 5(2) of the Control Order requires six samples of one litre each to be taken either in clean glass or aluminum containers. This is understandable because even by common sense one understands that petroleum products have sensitive chemical properties, which tend to change on coming into contact with any other material than glass or aluminum. Next, out of six sample bottles two samples are to be given to dealer or transporter under an acknowledgement, two samples would be kept by the concerned oil company, and the remaining two samples would be used for laboratory analysis. The Inspection Report mentions that two samples out of three samples drawn were not handed over to the dealer for safe custody. This is a very serious lapse because if the dealer challenges the values of the test report he can always seek a further test. If the sample bottles are not given to the dealer such an opportunity would not be available. Admittedly, only three sample bottles were taken, and this is certainly contravention of Clause 5(2) of the Control Order. Furthermore, the test report of QC laboratory, Tondiarpet, shows that when the sample was taken on 19.01.2001 at 5.00 pm, the same was received at the laboratory on 01.02.2001. As per Clause 5(5) of the Control Order, the Authorized Officer shall send the sample of the product within ten days to any of the laboratories mentioned in Schedule III. In their wisdom, rule making authority thought it fit that proper values can be obtained if the sample

is tested within ten days. Therefore, sending the sample within ten days is mandatory, which is flouted in this case.

11. After receiving the test report dated 03.02.2001, the Territory Manager addressed a communication, dated 21.03.2001, to the petitioner informing the variation in RON as per the Test Report. Thereafter, there was no show cause notice issued to the petitioner proposing either to stop supplies or impose penalty. This is certainly a serious violation, as any such penalty would result in civil consequences. Even DPSL does not prohibit issue of notice before taking penal action under Clause 13 of DPSL.

12. Table 1 in Schedule I of the Control Order gives requirements for Petrol. There are twelve characteristics of petroleum products, which are standard. Density at 15 degrees centigrade, Kg/m³ is one such characteristic in Table 1 of Schedule I of the Control Order. Clause 3 of the Control Order does not require licensee/dealer to maintain record of these. Clause 3(iii)(b) of the Control Order requires the dealer to maintain record of density alone. This leads to an inference that essentially it is the duty of the oil marketing company to supply the petroleum products conforming to 12 characteristics in Schedule I. If any foreign substance is introduced, and it is proved that such foreign substance is responsible for adulteration, the petroleum company might be considered to have been relieved of the duty to maintain standards in the petroleum products supplied.

13. This observation is being made that in every case where there are variations or values in the characteristics in the Test Report it cannot readily be inferred that there is adulteration. As noticed supra, there is no allegation of adulteration, except the allegation that there is a deviation in the value of RON. In that view of the matter the action of the respondent company is arbitrary and unreasonable. Having regard to the language employed in Clause 13(a)(viii) of DPSL this Court is not able to countenance the submission of the learned Senior Counsel that Territory Manager has no power or jurisdiction. Clause 13(a)(viii) of DPSL operates altogether in a different context and when there is a case of proven adulteration it is not necessarily the Marketing Manager, and any person nominated for the purpose can take action.

14. In the result, for the above reasons, the Writ Petition is allowed, and the impugned order is set aside. No costs.