(2002) 10 AHC CK 0064

In the Allahabad High Court

Case No : C.M.W.P. No. 31628 of 2002

Raghunandan Prasad APPELLANT

Vs

Deputy Director (Investigation) and Others RESPONDENT

Date of Decision : 11-10-2002

Acts Referred:

Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 1998 — Section 4

Citation : (2002) 5 AWC 3999

Hon'ble Judges : Rakesh Tiwari, J;M. Katju, J

Bench : Division Bench

Advocate : Poonam Srivastava, for the Appellant; S.K. Mishra, Arun Tandon, S.K. Mehrotra and B.N. Singh, for the Respondent

Final Decision : Allowed

Judgement

Rakesh Tiwari, J.—Heard the learned Counsel for the parties and perused the record.

2. The Petitioner has challenged the order dated 20.6.2002, passed by Respondent No. 1 and the consequential order passed by the District Supply Officer dated 15.7.2002. As a result of the aforesaid orders, the retail sale outlet of the Petitioner was stopped on the ground of adulteration.

3. The brief facts of the case are that the Petitioner is the sole proprietor of M/s. Raghunandan Prasad and Sons and is engaged in the business of sale and supply of various petroleum products, i.e., petrol, diesel oil, mobil and other lubricants. To ensure that the dealers are selling quality products, the Ministry of Petroleum as well as the Oil Companies have given rights of inspection to certain persons u/s 4 of the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order, 1998.

4. The Petitioner''s retail outlet was inspected by the Deputy Director Anti-Adulteration Cell on 6.6.2002, without any Officer of the Oil Company. The

inspection report dated 6.6.2002, filed as Annexure-4 to the writ petition, discloses that the density test at 15 deg.C. shows N.A. (No. Abnormality) and the sample meets the requirement of H.S.D. as per B.I.S. 1460, in diesel and the petrol was found upto the mark.

5. After the inspection was carried out, the Petitioner immediately approached Respondent No. 1 by means of representation dated 8.6.2002 with a request to send the reference sample to the test lab for simultaneous comparing with the drawn sample by the authorities, so that the drawn samples can be matched with the reference sample.

6. The Petitioner also approached the District Magistrate vide representation dated 24.6.2002. He alleged that his requests were not considered.

7. All the four oil companies have framed code of conduct called Marketing Disciplinary Guidelines (M.D.G.), 2001 and the sampling procedure is to be carried out in accordance with the aforesaid guidelines issued and approved by the Ministry of Petroleum and Natural Gas vide Letter No. P-21025/4/95-Dist., dated 12.4.2001. Serial No. 5 of the M.D.G., 2001 provides drawal of samples by the senior officers and also refers to the two reference samples of the supply relating to motor spirits. The request for retesting by the dealer is also liable to be considered and samples should be sent for retesting.

8. In the counter-affidavit, the Respondent has not denied arguments advanced by the learned Counsel for the Petitioner regarding the lab testing in C also not having been done without testing and making of the reference sample, which is sent by the company, whenever H.S.D./petrol is supplied to the dealers. The procedure for matching the sample drawn with reference sample has been laid down to ensure the fairness.

9. Learned Counsel for the Petitioner further contends that there is no illegality in the act of seizure under notification dated 27.6.2002 giving retrospective effect.

10. Rebutting the contention of the Respondents, it was contended that such retrospective effect cannot be given in view of the law laid down in M/s. Kumar Brothers and Ors. v. Municipal Board, Kalpi 1982 UPLBEC 231 para 3 ; Dr.Pramod Kumar v. University of Allahabad and others 1981 UPLBEC 437 para 9 and The District Exhibitors Association, Muzaffarnagar and others Vs. Union of India and others, . It is relevant to point out here that the Hon''ble Supreme Court inM.C. Mehta v. Union of India and others JT 2002 SC 527 para 37, has held that the test conducted by the Test Laboratories is not reliable. In that decision, the Supreme Court observed:

37. This Court has shown concern about the reports relating to adulteration of petroleum products in Delhi. A report was called for from the Bhure Lal Committee. The said report confirms that adulteration is taking place. The sample failure rate in the study which has been carried out was 26 per cent. The report also indicates that the existing fuel specification standards and the tests

specified are inadequate for detecting adulteration. Two dummy samples-one with 10 per cent and the other with 20 per cent kerosene were sent to the fuel testing laboratory, N.O.I.D.A. The result of the test report of, the test laboratory showed that the produce met the specification of H.S.C.. However, a third sample with 15 per cent contamination was declared as not meeting the H.S.D. specification. This shows that reliance cannot be placed on such laboratories which puts in great doubt the entire mechanism for detection of adulteration. Considering the quantity of kerosene which is supplied to Delhi, it is not improbable that this is one of the ingredients used, along with naptha etc. for adulterating the fuel supplied to the customers. Under the circumstances, merely lowering the sulphur and the benzene content in diesel and petrol respectively will have a little effect unless and until the oil companies can guarantee that the fuel which was sold from the dispensing stations is pure and unadulterated. In fact, there is one public sector undertaking which advertises its petroleum product as "pure for sure". It guarantees that the fuel which can be obtained from its dispensing stations is unadulterated. This by itself clearly indicates acknowledgment by the petroleum industry that adulteration in a small measure is taking place and therefore, the need to advertise the purity of the products sold by the Bharat Petroleum has been alleged and there is strong basis for this, that as a result of adulteration large amounts of illegal gains and profits are being made. There are various players in this racket. It is not surprising, therefore, that there is stiff resistance to the implementation of the orders of this Court to switch-over to gas which cannot be adulterated and will undoubtedly cause financial loss to the members of the unholy alliance of adulterators.

11. The short point for determination is whether the Respondents can close down the retail outlet of the Petitioner without testing the reference sample along with the drawn sample.

12. Test Laboratories are not very reliable as noted by the Apex Court in the case of M.C. Mehta v. Union of India and Ors. (supra) and the Respondents have not followed the procedure prescribed under the law. Hence, the Petitioner''s business of retail outlet cannot be closed down on the basis of an unreliable report. In any case, the penal action for major irregularities for the first offence, i.e., imposition of fine of Rs. 20,000 and suspension of sale and supply of products for 30 days is enough. In the instant case, it is more than three and a half months since the Petitioner is without any business. Petitioner''s retail outlet has been closed down since 30.6.2002. He has challenged the analysis report and has requested that further proceedings should be dropped till the reference sample is also got tested in accordance with Marketing Disciplinary Guidelines i.e., (M.D.G.), 2001. Representation in this regard was also made in June 8, 2002, by the Petitioner, but to no avail.

13. In our opinion, the charge of malpractice/adulteration is not proved against the Petitioner, as neither any material in support of this contention has been placed by the Respondents nor any F.I.R. was registered against him.

14. In view of the failure of the Respondents to conform to the procedure in respect of testing of the reference samples with drawn samples as stated above. It is in the interest of justice that the seal and lock of Petitioner''s retail outlet be removed forthwith and he be permitted to carry on his business.

15. For the reasons stated above, the writ petition is allowed, the impugned orders dated 20.6.2002 and 15.7.2002, are quashed and the Respondents are directed to remove the seal and lock and permit the Petitioner to carry on his business without any hindrance. No order as to costs.