
(2011) 09 AHC CK 0295

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 56182 of 2007

Rama Nandsharma

APPELLANT

Vs

Commissioner, Bareilly Division, Barielly and others

RESPONDENT

Date of Decision : 21-09-2011

Acts Referred:

Citation : (2011) 09 AHC CK 0295

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Disposed Of

Judgement

Sudhir Agarwal, J.—Heard Sri Ramendra Asthana for the petitioner and learned Standing Counsel for the respondents.

2. Petitioner is dealer of High Speed Diesel Oil. A checking was made and sample was collected at his premises on 9.8.2004 and testing report was submitted on 15.2.2005, i.e. after more than six months, reporting deficiency therein. District magistrate issued an order of suspension on 10.7.2005 and after receiving reply of the petitioner dated 29.7.2005, petitioner's licence was cancelled by order dated 19.9.2005 by District Supply Officer which was affirmed in appeal by order dated 13.8.2007.

3. Sri Asthana, learned counsel for petitioner submitted that the Government Order dated 6.6.2000 refers and reiterates the earlier Government Order No. 1459/29797731 PP dated 25.4.1997 providing that the sample collected at the dealer's premises should be tested within ten days since delay therein may effect testing results adversely. The Government Order required all the District Magistrates for strict compliance of the said time frame. In the case in hand the sample was collected on 9.8.2004 and was sent to Director, Forensic Laboratory, Agra by District Magistrate, Budaun on 25.8.2004. The testing report was issued on 15.2.2005 showing adulteration in the sample.

4. Referring to a similar kind of Government Order, this Court in Rinku Oil Company (M/s.) Vs. State of U.P. & another 2003 (1) FLR 304 observed as under:

"8. Further, both the authorities i.e. the District Supply Officer, Aligarh and the Commissioner, Agra Division, Agra have mentioned in the impugned orders that the Government Order dated 4.1.1988 was not applicable as same was only in reference to the dealers of the oil company and not in contest to petty diesel dealers. It is true that aforementioned Government Order deals with the dealer of the oil company, but the guideline, which has been provided therein, can also be made applicable to petty diesel dealers who are also dealing with the sale of diesel under the Uttar Pradesh High Speed Diesel Oil and Light Diesel Oil (Maintenance of Supplies) and Distribution Order, 1981. Once in the Government Order it has been mentioned that report should be obtained within the specified time so that quality of material is not effected, then the effect of delay in analysing the sample ought to have been considered.

9. Adulteration is a social crime and the same has to be dealt with firmly. The underlying object of the G.O. Dated 4.1.1998 is to deal with adulteration cases on priority basis. It has also been provided therein that in case there is any slaggness on the part of officials/employees, suitable action be taken against them. The purpose of the G.O. dated 4.1.1988 has been sought to be defeated in the present case. No plausible reason has been given by the state for not extending the provisions of this Government Order on petty diesel dealers. Adulteration, irrespective of the fact, who has done it whether he is Agent of Oil Company, Dealers of the Oil Company, block Distributors, Petty Diesel Dealers has to be tested on the same scales.

11. The view which has been taken by the authorities concerned is very narrow and hyper technical view and does not advance cause of justice and in fact, the provisions of the aforementioned Government Order ought to have been applied as far as petty diesel dealers are concerned. The relevant question which was raised and to dealt with and to be adjudicated by the authorities concerned, was as to whether the delay in analysing the sample in any way has affected the quality of the sample or not. This exercise in the present case undisputedly has not been done."

5. Similarly, the Apex Court has also considered the proviso contained in the Government Order dated 25.4.1997 in Harbansial Sahnia Vs. Indian Oil Corporation Ltd. 2003 (1) FLR 389 and in para 5 thereof the Court said as under:

"5. It is submitted by Shri P.P. Malhotra, the learned Senior Counsel for the appellants that the dealership has been terminated on irrelevant and nonexistent grounds and, therefore, the order of termination is liable to be set aside. The Government of Uttar Pradesh have issued directions to all the District Magistrates of the State in the matter of taking of samples and carrying out tests. There are two Government Orders issued namely No. 1459/29797731PP dated 25.4.1997 and No. 2722/29.7.2000PP/2000. The orders state inter alia that the strength/frictions of petrol and diesel change after ten days and therefore, time limit of ten days is fixed for testing of such products. It is also emphasized that in the interest of natural justice, the inspecting officials should test the sample for

quality and density at the retail outlet itself in the presence of the dealer with necessary equipments such as filter paper, hydrometer, thermometer, jar and the conversion table which are available at the retail outlets and record density thereat only in the presence of the dealer. These Government Orders were violated in respect of the sample taken on 11.2.2000. Firstly, the test was not carried out at the retail outlet itself and, secondly the time gap between the sample taken and lab test carried out is of about a month which is capable of causing marginal variation as detected. The learned Senior Counsel for the appellants invited attention of the Court to an order dated 24.10.2000 passed by the Commissioner, Nainital in an appeal preferred against the suspension of petitioners' licence which too was founded on the test report of the sample taken on 11.2.2000. Impressed by noncompliance with the instructions contained in the Government Orders and the delay in carrying out the lab tests also keeping in view the previous performance of the petitioners the learned Commissioner has allowed the appeal and set aside the suspension as also the fine imposed on the petitioners. The learned Counsel is right in submitting that in view of the abovesaid facts, the failure of the sample taken from the appellant's outlet on 11.2.2000 becomes an irrelevant and nonexistent fact which could not have been relied on by the respondent Corporation for cancelling the appellants' licence. "

6. In the present case, admittedly the sample itself was sent for testing on 25.8.2004 i.e. after more than ten days. Neither any reason has been assigned for such delay nor any report has been obtained from Forensic Laboratory, Agra as to delay in sending the sample for testing has actually affected the quality of sample or not.

7. In view of above, the impugned order cannot sustain. However, following the dictum laid down by this Court in Rinku Oil Company (supra), I allow the writ petition with the following directions:

(a) The orders dated 19.9.2005 passed by District Supply Officer, Budaun and dated 13.8.2007 passed by Commissioner, Bareilly Division, Bareilly (Annexures 9 and 12 respectively to the writ petition) are hereby quashed.

(b) Matter is remanded to District Magistrate, Budaun, who will call for a supplementary report/opinion from the Director, Forensic Laboratory, Agra only on the point as to whether delay in sending the sample for testing has actually affected the quality of sample or not and after obtaining such report, he shall give an opportunity supplying copy thereof to the petitioner and, thereafter pass a fresh order in accordance with law.

(c) The exercise, as directed above, shall be completed within three months from the date of production of certified copy of this order.