(2007) 10 RAJ CK 0072

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4591 of 2007

Shyam Diesel — APPELLANT

Vs

Bharat Petroleum Corporation India Ltd. and Another — RESPONDENT

Date of Decision : 03-10-2007

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Citation : (2008) 1 WLN 380

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Judgement

Govind Mathur, J.—The petitioner, a partnership firm having a petrol pump at Jasnagar in District Nagaur, has preferred this petition for writ assailing validity of the order dt. 19.07.2007 passed by the Deputy Manager (Sales), Bharat Petroleum Corporation Ltd., Jodhpur, suspending supply of all petroleum products till further orders. The suspension of supply was made by the respondent Corporation as per a report dt. 18.7.2007 given by Shri Vijay Kumar, a representative of SGS India Private Limited.

2. While giving challenge to the order aforesaid the argument of counsel for the petitioner is that the SGS India Private Limited is not an oil company as defined u/s 2(g) of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005 (hereinafter referred to as "the Order of 2005"). It is asserted that the SGS India Private Limited is not engaged in marketing of sale of motor spirit and high speed diesel directly to consumers or dealers in accordance with the stipulation laid down by the Central Government from time to time, thus, it is not a company duly authorised by the Central Government to make inspection of the petrol/diesel outlet of the company.

3. Beside above, it is also urged by counsel for the petitioner that the inspection made by the representative of the SGS India Private Limited was not made as per the procedure prescribed under the marketing discipline guidelines.

4. In reply to the writ petition the contention of counsel for the respondents is that the Order of 2005 is having no application in the present controversy as inspection of retail outlet under the control of the petitioner was made as per agreement with the respondent corporation which empowers agents of the Corporation to inspect and test accuracy and general working of outfit. Learned Counsel for the Corporation has pointed out certain conditions relating to covenant an agreement by the petitioner with the respondent Corporation, according to those, at all times and from time to time during currency of the licence to give adequate facilities to the company, its officers, agents and servants to inspect and test the accuracy and general working of the outfit and to investigate the conduct and management by the licensees of the outfit and to provide to the company, its officers, agents and servants all proper and necessary assistance and facilities for conducting such inspection and investigation and maintenance of the outfit shall be provided.

5. Heard counsel for the parties.

6. In exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 the Central Government made the Order of 2005 that defines the term "authorised officer". The SGS India Private Limited is not an authorised officer under the Order of 2005, however, under the agreement executed between the petitioner company and the respondent Corporation, an agent of Corporation is having power to make necessary inspection of the outfit under the control of the licencee. The power of inspection available to the SGS India Private Limited, therefore, is in addition to the power given to authorised officers under the Order of 2005. Such additional power is not at all in contravention of the Order of 2005. In view of it, I do not find any illegality in making of inspection by the SGS India Private Limited in the capacity of an agent of the petitioner Corporation. Relevant to note here that the SGS India Private Limited is a well known company involved in authentication of petroleum products and is operating as an agent of various petroleum companies in the country.

7. The other argument of counsel for the petitioner is that the supply of petroleum products was suspended by the respondent Corporation without verifying that no proper inspection was made by the representative of the SGS India Private Limited. It is pertinent to note that yet the licence of the petitioner has not been cancelled by the petroleum company and only as an interim measure supply of petroleum product is suspended. The issue as to whether the procedure prescribed to make necessary inspection was adhered or not is a question of fact that requires thorough examination of facts. I do not find this Court adequately equipped to make such inquiry at this stage. The appropriate course available to the petitioner is to make a representation to the Territory Manager of the respondent Corporation agitating all his grievances regarding alleged non-compliance of procedure while making inspection.

8. In result, haur.

9. No order to costs.

