

(2014) 07 CAL CK 0092
In the Calcutta High Court
Case No : W.P. No. 29986(W) of 2013

Snehasish Paul

APPELLANT

Vs

Bharat Petroleum Corpn. Ltd.

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Citation : (2014) 3 CALLT 375

Hon'ble Judges : Asim Kumar Roy, J

Bench : Single Bench

Advocate : P.S. Deb Barman, Sajal Kanti Bhattacharya and M. Nazar Chowdhury, Advocate for the Appellant; S.K. Mal and Bimalendu Das, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Roy, J.—The writ petitioner is the sole proprietor of M/s. Vishal Gramin Fuels and his said concern is a retail outlet of Bharat Petroleum Corporation Ltd., an undertaking of Government of India. The respondent authority by Annexure "P- 15" terminated his dealership. Such order of termination is the subject matter of challenge in this writ application. The learned counsel appearing on behalf of the writ petitioner contended before me that the initiation of the proceeding by itself is bad in law and absolutely vindictive and mala fide. He then drew my attention to Annexure "P-1" and submitted that sale and supply through his petrol pump was stopped by the respondent No. 4 not only without any authority but also without disclosing any reason thereof. He contended that although his dealership has been terminated on the allegation of adulteration and for not maintaining the machineries and equipments in accordance with rule but those allegations are not correct. He further submitted that the remaining allegation of shortage of stock is against the records and actually stock was in excess.

2. The learned counsel for the respondent authority first contended that this writ petition is not maintainable because his dealership has not only been terminated

according to the Marketing Discipline Guidelines for petrol and diesel outlet framed to meet the growing customers' expectation, ensuring quality of product and service, enforcing stricter discipline amongst the dealership network and preventing mal-practice in the sale of petroleum products, but there is specific provision for appeal against any order of termination of dealership and the same is also the part of the dealership agreement. He further added that in the instant case the issuance of stop sale notice, show cause and the termination of dealership upon adjudication of rival claims was done in accordance of these guidelines and enforceability of the same was never challenged. He further submitted that in the dealership agreement also it has been clearly stipulated that the entire business transactions between the parties shall be governed by the Marketing Discipline Guidelines and it is the specific case of the petitioner that termination of dealership was not in accordance with the Marketing Discipline Guidelines.

3. In reply the learned counsel for the petitioner submitted that the question of alternative remedy will not operate as a bar in the instant case because the provisions of such alternative remedy is not provided under any statute and that was only a guideline prescribed by the concerned Ministry.

4. Now going through the impugned order, I find that the dealership was terminated on the alleged irregularities committed by the writ petitioner and those irregularities as have been noted in the aforesaid order and are as follows:

"Failed to promote the sale of the Company's product to the satisfaction of the Company and achieve sale targets: Retail Petroleum Outlet (RPO) has been found dry of products on many occasions for which letters dated 01.09.2011, 28.11.2011 and 16.02.2012 were issued & thus there was failure to maintain uninterrupted supply of petroleum products to the motoring public in breach of dealership agreement;

Irregularities observed during inspection carried out on 23.06.2012;

- (i) Density register and sales register were not available at the RPO;
- (ii) Free air service was not available at the RPO;
- (iii) Hydrometer, thermometer and water paste were not available at the RPO;
- (iv) Filter paper for checking the quality of Motor Spirit was not available;
- (v) 5 ltrs. Measure can duly calibrated by W & M not available at the RPO;
- (vi) Motor Spirit (Petrol) was dry at the RPO; and
- (vii) Tank-lorry retention sample of last load of Motor Spirit was not available.

Irregularities observed during inspection carried out on 24.6.2012:

- (i) Lab Test Report dated 27.06.2012 of High Speed Diesel BSIII shows that the HSD samples drawn from the RPO during inspection on 24.06.2012 failed to

meet the requirement of High Speed Diesel (BSIII) w.r.t. kinematic viscosity, CST at 40 degree C and total sulphur in mg/kg for the tests carried out RO sample is bluish yellow in colour whereas Supply Location (SI.) sample is yellow in colour. Copy of such test report dated 27.06.2012 & inspection report dated 24.06.2012 was annexed to the show cause notice dated 14.07.2012;

(ii) Not co-operated with the inspecting team during inspection and did not allow the team to complete the necessary procedures;

(iii) Refused to sign the inspection report dated 24.06.2012;

(iv) Did not hand over the last load of Tank-Lorry sample of HSD which was supplied to the retail outlet on 16.06.2012 to the inspecting team."

I further find that the respondent authority on the following conclusions terminated the dealership of the petitioner,

"(a) Non-cooperation during inspection on 23.06.2012 & 24.06.2012;

(b) Non-production of essential documents & instruments during inspection on 23.06.2012 & 24.06.2012;

(c) Selling of HSD from the DU whose stamping had expired;

(d) The HSD sample drawn from the RPO on 24.06.2012 failed to meet the requirements of HSD (BSIII) norms and this shows that you were selling adulterated HSD to motoring public;

(e) On many instances keeping the retail outlet dry out of petroleum products for period more than 24 hours;

(f) Failed to promote the sales of the Company's product and achieve the sales target."

5. Thus, from perusal of the impugned order, I find that entire dispute relates to pure question of facts and the respondent authorities after a fact findings enquiry reach to its conclusion. Nothing has been pointed out to this court that such decision was either perverse or without attending the case of the writ petitioner, except the allegations that certain procedures have not been followed, which has been disputed from the side of the respondents.

6. In my opinion, the dispute involves being entirely relates to question of facts cannot be adjudicated in this writ petition.

7. This application has no merit and stands dismissed. I make it clear that I have not entered into the merits of the allegation and it would be open to the writ petitioner to agitate the same for consideration before the appropriate forum in accordance with law.

Urgent photostat certified copy of the order, if applied for, be supplied to the learned advocates for both the sides within a week from the date of making such

application.