

**\*IN THE HIGH COURT OF DELHI AT NEW DELHI**

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**Date of decision: 14<sup>th</sup> August, 2014**

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**LPA No.405/2014**

**U.P. PETROLEUM TRADERS ASSOCIATION ..... Appellant**

Through: Mr. A. Maitri, Adv.

Versus

**UNION OF INDIA & ORS. .... Respondents**

Through: Mr. Bhagvan Swarup Shukla with Mr.  
Jasmeet Singh & Mr. Roshan Lal  
Goel, Advs. for UOI.  
Mr. M.M. Kalra, Adv. for IOCL.  
Mr. Anuj Puri, Adv. for HPCL.

**AND**

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**LPA No.406/2014**

**ALL HARYANA PETROLEUM  
DEALERS ASSOCIATION**

**..... Appellant**

Through: Mr. A. Maitri, Adv.

Versus

**UNION OF INDIA & ORS. .... Respondents**

Through: Mr. Vikram Jetly, Adv. for R-1/UOI.  
Mr. M.M. Kalra, Adv. for IOCL.  
Mr. Anuj Puri, Adv. for HPCL.

**CORAM :-**

**HON'BLE THE CHIEF JUSTICE**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**RAJIV SAHAI ENDLAW, J.**

1. These intra-court appeals impugn the identical but separate orders, both dated 16<sup>th</sup> April, 2014 of dismissal of W.P.(C) No.2021/2014 and

W.P.(C) No.1976/2014 preferred by the appellants respectively. Both the appellants claim to be an association of petroleum traders of the State of Uttar Pradesh and Haryana respectively, affiliated to the Consortium of Indian Petroleum Dealers. They filed the writ petitions from which these appeals arise, averring:

- (i) that gross injustice was being caused to the members of the appellants by the oil companies i.e. Indian Oil Corporation Ltd. (IOCL), Hindustan Petroleum Corporation Ltd. (HPCL) and Bharat Petroleum Corporation Ltd. (BPCL) impleaded as respondents, on account of non compliance of mandatory provisions of the Legal Metrology Act, 2009 by the said respondents. Ministry of Petroleum & Natural Gas stated to be having superintending control over the respondent oil companies was also impleaded as a respondent;
- (ii) that the respondent oil companies were selling / supplying petroleum and diesel by measuring petroleum and diesel in litres when the Legal Metrology Act prohibits measure of “mass” in any other unit than in kilogram;

- (iii) that “mass” is not equivalent to volume; only 830 grams in weight / mass constitutes one litre;
- (iv) that thus the price paid for one litre is for 830 grams only and not 1000 grams which is one kilogram;
- (v) that the respondent oil companies are however continuing to sell petrol and diesel in volume instead of on mass, taking advantage of expansion and shrinkage in volume on account of rise and fall in temperature;
- (vi) that there will be no such variation if petrol / diesel is sold by weight;
- (vii) that the respondent oil companies and their officers by continuing to sell petrol / diesel in litres instead of by weight are siphoning off / misappropriating Rs.40 to 45 crores per day;
- (viii) that owing to the respondent oil companies failing to adopt the measures as prescribed in the Legal Metrology Act, the members of the appellants suffer as the volume of petrol / diesel transported in lorries, exposed to heat, is much larger than the

volume sold by the members of the appellants who store such petrol / diesel supplied by the respondent oil companies to them in underground tanks where the temperature is lower, resulting in the volume shrinking;

- (ix) that the appellants had earlier filed a complaint before the Monopolies and Restrictive Trade Practice Commission [substituted by the Competition Appellate Tribunal (CompAT)] vide enquiry No.75/1992 which was dismissed; Civil Appeal No.10229/2013 preferred thereagainst to the Supreme Court was also dismissed on 18<sup>th</sup> November, 2013 granting liberty to the appellants to agitate their grievances before appropriate forum;

Accordingly, in the writ petitions, direction was sought to the respondent oil companies to supply petrol / diesel to the members of the appellants on weight basis and alternatively to give temperature adjustment at the time of preparing invoice of the dealers and seeking a direction to the Ministry of Petroleum and Natural Gas to ensure compliance by the respondent oil companies of the provisions of the Legal Metrology Act.

2. The learned Single Judge dismissed the writ petitions accepting the preliminary contention of the counsel for the respondent oil companies that the dispute and difference if any which the members of the appellants had with the respondent oil companies in this regard was to be resolved by arbitration provided for in the agreement entered into by each of the said members of the appellants with the respective oil companies and holding the writ petitions to be not maintainable on this ground; liberty was however given to agitate the grievance in accordance with the dispute resolution mechanism provided for in the agreement between the members of the appellants and the respective oil companies. It was further observed that the liberty given by the Supreme Court while dismissing the appeal preferred against the order of the CompAT, was to raise the dispute before the appropriate forum and which was of arbitration and not under Article 226 of the Constitution of India.

3. The appellants in the memorandums of appeal, rather than addressing the reasoning given by the learned Single Judge for holding the writ petitions to be not maintainable, have parrot like repeated the averments in the writ petitions. The counsel for the appellants also, inspite of our repeated asking as to whether not a direction to the respondent oil companies

as sought to supply petrol / diesel to the members of the appellants by weight i.e. in kilograms instead of by volume i.e. in litres, would amount to changing the agreement entered into between the members of the appellants and the respective oil companies and whether it is permissible and appropriate in exercise of powers under Article 226 of the Constitution of India to so change the agreement and as to what would be the consequences of the same on the other terms of the agreement, did not choose to reply. In fact, inspite of our prodding on the earlier date in this regard, no copy of the agreements so entered into have even been produced and along with the memorandums of appeal, only the extract of the arbitration clause in the agreement has been annexed. We are thus unable to know as to what are the terms of the said agreement.

4. The counsel for the appellants however invited attention to *Harbanslal Sahnia Vs. Indian Oil Corporation Ltd.* AIR 2003 SC 2120 laying down that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion.

5. Per contra, the counsel for the respondent HPCL has invited attention to the order supra of the Supreme Court in appeal preferred against the order of the CompAT.

6. We have perused the order of the CompAT as well as the order of the Supreme Court in appeal preferred thereagainst. The complainant in the proceeding before the CompAT is the appellant in LPA No.405/2014. Though the complaint was on the same grounds as before us, but the CompAT *inter alia* by referring to the clauses of the agreement between the members of the appellants and the respective oil companies held that no case of the respondent oil companies having indulged in any unfair trade practice was made out. The Supreme Court, while dismissing the appeals held, “the right of the appellant association obviously is guided by the terms and conditions of the agreement entered into between the members of the association and the respondents and therefore this Court finds no reason to entertain the grievance raised by the appellant.” In the face of the said reasoning of the CompAT and the Supreme Court as well as the learned Single Judge of this Court in dismissing the writ petitions from which these appeals arise, it was incumbent upon the appellants to demonstrate to us that the relief claimed in the writ petitions and in these appeals would not

tantamount to changing the agreement and / or will have no impact on the agreement. Till the appellants succeed in doing so, they cannot, relying on *Harbanslal Sahnia* (supra), urge that inspite of the contractual remedy, they are entitled to invoke Article 226. The Supreme Court, in *The Rajasthan State Industrial Development and Investment Corporation Vs. Diamond and Gem Development Corporation Ltd.* (2013) 5 SCC 470 reiterated the settled legal proposition that matters/disputes relating to contract cannot be agitated nor terms of contract can be enforced through writ jurisdiction under Article 226 of the Constitution.

7. We are conscious that the appellants have based their case in these proceedings on the provisions of the Legal Metrology Act. However we are not satisfied that the contract of the members of the appellants with the respondent oil companies would remain unaffected from the reliefs claimed in these proceedings. In fact, at one point of time when the counsel for the appellants argued that the contract to sell and purchase petrol / diesel in litres is contrary to the Legal Metrology Act, we had enquired whether not the same would have the effect of making the contract void / voidable. We reiterate that we in these proceedings, cannot issue a direction to the respondent oil companies to, under their contract, supply diesel / petrol to

the members of the appellants by weight without being satisfied that the same will not affect the other terms and conditions of the said contract and which the appellants have chosen not to place before us.

8. We may note that it is also the contention of the counsel for the respondent HPCL that this Court also does not have the territorial jurisdiction to entertain the writ petitions as the appellant in LPA No.405/2014 is an association of the petroleum traders of the State of Uttar Pradesh and the appellant in LPA No.406/2014 is an association of petroleum traders of the State of Haryana and whose retail outlets are in the States of Uttar Pradesh and Haryana. Reliance in this regard is placed on *Kusum Ingots & Alloys Ltd. Vs. Union of India* (2004) 6 SCC 254, *Oil and Natural Gas Commission Vs. Utpal Kumar Basu* (1994) 4 SCC 711 and *Sterling Agro Industries Ltd. Vs. Union of India* AIR 2011 Delhi 174.

9. Though the aforesaid two reasons are sufficient to dismiss these appeals but we find that the appellants even under the Legal Metrology Act have failed to make out any case. Their entire case is based on:

- (i) that vide Section 4, every unit of weight or measure has to be in accordance with the metric system based on international system of units;
- (ii) that the base unit of mass, as per Section 5, is kilogram;
- (iii) that Sections 11 & 12 prohibit use of any other unit than the standard units of weight and measure;
- (iv) that litre is not the base unit of mass;
- (v) that weight/mass can never be equivalent to volume, which changes with temperature;
- (vi) that the respondent oil companies are using dip rod method for measuring petrol and diesel and which is not an approved method under the Act for measurement of mass;
- (vii) that the respondent oil companies are contravening the mandatory provisions of the Act.

10. However, though Section 4 of the Act provides that every unit of weight or measure shall be in accordance with the metric system based on the international system of units but the appellants have not explained the basis of their presumption that the unit of litre as a measure of volume is not

in accordance with the metric system or is not based on the international system of units. The Act and the Legal Metrology (General) Rules, 2011 framed thereunder are not found to define, what is the “metric system” or what is the “international system of units”. The appellants also have not bothered to pay any attention thereto. The “Metric System” is defined in the Black’s Law Dictionary Eighth Edition as “a decimal system for measuring length, weight, area or volume based on the meter as a unit length and the kilogram as a unit mass”. We have wondered as to why, ‘litre’ cannot be said to be a part of the decimal system of measurement inasmuch as it satisfies the requirement of being based on meter as a unit i.e. 1 litre is equal to  $10^{-3}\text{m}^3$ . Similarly, neither the Act nor the Legal Metrology (General) Rules define the International System of Units. We however find that the Legal Metrology (National Standards) Rules, 2011 also framed under the Legal Metrology Act in Rule 3 thereof read with Rules 2 (d), (e) and (h) thereof refer to the International System of Units (SI) evolved by the Bureau International des Poids et Mesures (International Bureau of Weights & Measures) (BIPM) set up by the Metre Convention signed in Paris on 20<sup>th</sup> May, 1875 to ensure worldwide unification of measurements. The BIPM publishes a document known as the “SI Brochure” which defines and

presents the International System of Units. Clause 2 of the 8<sup>th</sup> Edition, 2006 (updated in 2014) of the said Brochure reports that there are Seven units upon which the most accurate and reproducible measurements can be made and which are known as Base Units. The said seven Base Units are (i) metre as a unit of length; (ii) kilogram as a unit of mass; (iii) second as a unit of time; (iv) ampere as a unit of electricity; (v) kelvin as a unit of thermodynamic temperature; (vi) candela as a unit of luminous intensity; and (vii) mole as a unit of amount of substance. However, the said Brochure besides the said Base Units, also refers to Derived Units (which are products of powers of Base Units) and Clause 4 of the said Brochure refers to " units outside the SI" as some of the Non-SI units which still appear in the scientific, technical and commercial literature and will continue to be used for years owing to their historic importance. It further lists the non-SI units which are accepted for use with the international system because they are widely used with the SI in matters of everyday life and because their use is expected to continue indefinitely and yet further because they have an exact definition in terms of an SI Unit. The said list includes the unit of litre as a measure of volume and gives the value of a litre in SI units as:

$$“1 \text{ L} = 1 \text{ l} = 1 \text{ dm}^3 = 10 \text{ cm}^3 = 10^{-3} \text{ m}^3”$$

Infact, the said Brochure also refers to the 12<sup>th</sup> General Conference on Weights and Measures of the year 1964 (also see Rule 3 read with Rule 2(d) of the Legal Metrology (National Standards) Rules, 2011) which declared that the word 'litre' maybe employed as a special name for the cubic decimetre (dm<sup>3</sup>).

It thus follows that litre though not an SI unit has been accepted by the BIPM for use with the SI Units under the International System of Units. It would further follow that litre is a unit of measure in accordance with the Metric System based on the International System of Units, within the meaning of section 4 of the Legal Metrology Act.

11. Section 5(1) of the Act lists the same Base Units as under the SI and in which as aforesaid litre is not included. However, Section 5(2) provides that “the specifications of the base units mentioned in sub-section (1), derived units and other units shall be such as may be prescribed.” Again, though the Act and the Legal Metrology (General) Rules are not found to explain as to what are “derived units and other units” within the meaning of Section 5(2), but the Legal Metrology (National Standards) Rules supra,

- (i) in Rule 2(c) define derived units on the same lines as under the SI Brochure aforesaid;
- (ii) Rule 2(h) further explains that SI is divided into three classes of units i.e. Base Units, Derived Units and Supplementary Units; and,
- (iii) Rule 2(i) defines “permitted units” as units which though not part of SI are recognized and permitted by the CGPM/International System of Units for use along with SI units.

It thus follows that the Legal Metrology Act has expressly admitted to use of litre as a measure of volume. Rather the Fourth Schedule to the said Rules listing “Units permitted to be used to with base, supplementary or derived units” specifies that the permitted unit of volume shall be litre and that “1 L = 1 l = 1 dm<sup>3</sup> = 10 cm<sup>3</sup> = 10<sup>-3</sup> m<sup>3</sup>”.

12. The argument of the appellants, of petrol/diesel being measurable only in mass, the unit of which is kilogram is also incomprehensible. Mass again is not defined, neither in the Act nor in the Rules. Mass is defined in the Concise Oxford English Dictionary, Tenth Edition as “the quantity of matter which a body contains”. However, Rule 13 of the Legal Metrology (General) Rules provide that every measuring instrument shall conform to

the details specified in the Eighth Schedule thereof. Part IV of the Eighth Schedule titled “Measuring System for Liquids Other Than Water” provides for measurement of liquids other than water, by volume. The same thus runs counter to the argument of the appellants that the measure of liquids has to be by mass only. Again, while providing the extent of error in measurement of such liquids, measurements are given in litres which is also indicative of the measurement in litres being within the domain of the legal metrology system.

13. Reference may also be made to Rule 12 of the Legal Metrology (Packaged Commodities) Rules, 2011 which in Clause (2)(a) provides that except in the cases of commodities specified in the Fourth Schedule of the Rules, the declaration of the quantity shall be in terms of the unit of mass if the commodity is solid, semi-solid, viscous or a mixture of solid and liquid and which is again indicative of the reference to measurement in units of mass in the Act being to solids, semi-solids, viscous or mixture of solid and liquid. Rule 12(2)(d) categorically provides that the declaration of the quantity shall be in terms of the unit of volume, if the commodity is liquid or is sold by cubic measure. The Fourth Schedule to the said Rules provides that Industrial Diesel Fuel is to be measured in terms of volume, though again it does not refer to

petrol and diesel or so with which we are concerned but is again indicative of the measurement in volume in litres being very much in the domain of standard units with which the legal metrology system is concerned.

14. The purport of our above discussion is not to categorically hold either way inasmuch as we have had no assistance as aforesaid, from either of the counsels in the said respect. The purport of this discussion is only to show that if at all the grievance of the appellants is genuine, the proper forum if not arbitration as above suggested, would be the authorities under the Legal Metrology Act itself. Chapter V of the Act deals with offences and penalties and if at all the respondent oil companies are violating the provisions of the Act, the remedy of the appellants would be to file a complaint thereof within the ambit of the Act before the authorities constituted under the Act and who being adept in every aspect of the subject, would be better equipped to deal therewith.

15. As far as the grievance of the appellants of use by the respondent oil companies of the dip-rod method is concerned, we find that Rule 14 of the Legal Metrology (General) Rules provides that the procedure for carrying out calibration of vehicle tanks etc. as may be specified in the Ninth Schedule

thereto. The Ninth Schedule itself, while referring to maximum permissible error, refers to the capacity of vehicle tanks in litre; not only so, it also provides the detailed procedure for measurement by dip-rod method. We have wondered that when the Rules framed under the Act themselves are providing for measurement of vehicle tanks in litres, how can it be said that the unit of litre being used by the respondent oil companies is in contravention of the Act.

16. We therefore do not find any merit in these appeals. The appeals are accordingly dismissed.

**RAJIV SAHAI ENDLAW, J.**

**CHIEF JUSTICE**

**AUGUST 14<sup>th</sup> 2014**  
'gsr/bs'