

Court No. - 7

Case :- WRIT - C No. - 24199 of 2020

Petitioner :- M/S/ Mishra Automobiles Thru Prop. Jagdish Mishra

Respondent :- U.O.I. Thru Secy. Ministry Of Petroleum And Natural Gas And Ors.

Counsel for Petitioner :- Akhilesh Kumar Kalra, Shreya Chaudhary

Counsel for Respondent :- A.S.G., Manish Jauhari

Hon'ble Alok Mathur, J.

1. Heard Ms. Aadya Antya, learned counsel for the petitioner and Shri Manish Jauhari, learned counsel on behalf of respondents no.3 to 5.

2. The petitioner is an authorized dealer of the Indian Oil Corporation Ltd. since 1990 and has been operating a retail outlet. He is licensed dealer of Indian Oil Corporation Ltd. and selling Petroleum products from the retail outlet at Sector - G, Aliganj, Lucknow. It has further been stated that the retail outlet has four dispensing units, two of which have been installed by Gilbarco and Tatsno and the third Dispensing Unit has been installed by M/s Midco and fourth unit has been installed by L&T Company. It has been submitted by counsel for the petitioner that on 29.04.2017 around 7:00 PM, an inspection team had inspected the applicant's retail outlet after taking permission from Weights & Measures Department and the delivery of petrol was found to be proper and further inspection was carried out after breaking the seal installed by the Weights & Measures Department and two pulsar cards were removed from the dispensing units and were taken by the inspecting team and sent to the Original Equipment Manufacturer (hereinafter referred to as "**OEM**") for seeking the report. It is stated that the OEM, namely, M/s Midco submitted the report on 11.05.2017, which is as under: :-

(1) Foreign components were found on the pulsar cards.

These foreign components do not belong to Midco standard

components.

(2) Three points (JP1, JP2 and JP3) in the pulsar cards PCBs are shortened by using additional wire.

3. On receiving the said information that the pulsar cards had foreign components, the matter was duly considered by the respondents Oil Company and the petitioner was subjected to a show cause notice on 20.05.2017. A copy of the report submitted by M/s Midco was annexed along with the show cause notice. Apart from the said report, the respondent Oil Company had also sought a clarification from OEM as to whether mere finding of foreign components of the pulsar card would tantamount to manipulation in the delivery. It is only in response to the query of the respondent Oil company that on 15.05.2017 the OEM stated that "any tampering/additional fitting in pulsar will tantamount to manipulation of delivery.

4. The petitioner duly replied to the show cause notice denying the allegations made against him and stated that the delivery of petrol dispensed from the retail outlet were checked during the inspection and was found to be correct and no irregularities or tampering were found in the dispensing unit. It was further stated that the dispensing unit which was inspected had seal intact and accordingly submitted that there was no evidence of tampering of the dispensing unit by the licensee and also that the quantity of petrol dispensed from units was also not short which finding is also mentioned in the inspection report, accordingly, denied the said allegations.

5. Considering the response of the petitioner, by means of order dated 21.06.2017, the Chief Divisional Retails Sales Manager, Lucknow Division Office rejected the response of the petitioner and cancelled his retail license.

6. It was stated that as per report of the OEM, Foreign component was

found in the pulsar cards and the additional fittings tantamount to manipulation of delivery and consequently, order for cancellation was passed. The petitioner being aggrieved by the order of cancellation dated 21.06.2017, had preferred an appeal before the Dispute Resolution Panel which also did not find favour and dismissed the appeal of the petitioner.

7. The present writ petition has been preferred by the petitioner assailing the order of the Dispute Resolution Panel dated 10.02.2020 as well as the order of cancellation dated 21.06.2017.

8. Counsel for the petitioner has submitted that the impugned orders passed by the respondents are illegal and arbitrary inasmuch as the petrol outlet of the petitioner is running since 1990 without any complaint. He has further submitted that on the date of the inspection, the seals of the dispensing units were found to be intact and the dispensing units had been dispensing the exact quantity of the petroleum products, but merely because the pulsar cards which were attached inside the dispensing unit were reported to have certain foreign objects attached to it and consequently, merely on account of the report of the OEM, it has been held that the petitioner has violated Clause 5.1.4 of the Marketing Dealership Guideline, 2012 (hereinafter referred to as "**MDG**") and merely on the basis of said assumption the license of the petitioner has been cancelled. He had submitted that there was no material available with the respondents to have come to a conclusion that there was firstly tampering with the dispensing unit by the petitioner nor is there any evidence of short supply of the diesel or petrol from the dispensing units and consequently, the proceedings initiated by the respondents as well as subsequent cancellation and rejection of his appeal are illegal and arbitrary and without any application of mind and consequently, deserves interference by this Court in exercise of power under Article 226 of the Constitution of India.

9. Counsel for the respondent, on the other hand, has vehemently opposed the writ petition. He has not disputed the facts of the case but submits that merely because the report of the OEM indicates that foreign body was found in the pulsar cards is sufficient in itself to invite proceedings for cancellation of the retail license of the petitioner in exercise of power under Clause 5.1.4 of the MDG. He further submits that due opportunity of hearing was given to the petitioner inasmuch as all the offending materials as well as opportunity of hearing was given to the petitioner prior to cancellation and also that he had exercised his right of filing an appeal where all the contentions raised by the petitioner was duly considered and consequently, submits that there is no reason for this Court to interfere in the present case where the licensee has been found to have manipulated the pulsar cards which in ordinary course of nature would tantamount to interfering with the supply of the dispensing unit.

10. I have heard the counsel for the parties and perused the record.

11. The facts as narrated above are not in dispute inasmuch as the dispensing unit of the petitioner were duly inspected by the joint team, including officials of the respondent Oil Company on 29.04.2017. It is not in dispute that the seals affixed by the Weights & Measures Department were found to be intact and also that according to the petitioner, the supply from the dispensing unit was also found to be normal. The pulsar cards were subsequently sent to the OEM for the report inasmuch as the pulsar cards are installed by the OEM and second hand pulsar cards are installed in the machines, which have been removed from early dispensing units installed in other retail outlets. They are rectified and all the rectifications and soldering marks on the pulsar cards are supposed to be duly monitored and profiled by OEM and the photographs are kept by them. Whenever subsequently, a pulsar card is sent for inspection, they compare the last photograph taken from the pulsar card from which they determine

as to whether any fresh soldering marks or any foreign component has been attached to the pulsar cards. The Oil Company on its behalf relies totally on the report of the OEM to determine whether there has been manipulation in the pulsar cards and also that whether such a manipulation would result in short supply of the oil.

12. In the present case, the OEM submitted the report on 11.05.2017 and only stated that the foreign component was found in the pulsar cards and these foreign components do not belong to the OEM. There was no findings return as to the nature of the foreign components or as to whether the foreign components could have resulted in short supply of the petroleum products. It is in these circumstances, it seems that the respondent Oil Company itself was not satisfied with the OEM report and sought a clarification especially in this regard as to whether the foreign components attached to the pulsar cards would result in short supply of petroleum products dispensed from the said unit and whether the said manipulation could result in short delivery. It is on seeking of the said clarifications, the OEM had reported that any tampering / additional fitting in the pulsar cards will tantamount to manipulation of delivery.

13. From the aforesaid, it is clear that the OEM had merely reported the finding of a foreign object on the pulsar cards. Even in the previous report dated 11.05.2017 their finding was limited only to the findings of foreign component in the pulsar card and even when subsequent clarification was sought by the respondent Oil Company, they merely stated that such an additional component would tantamount to manipulation of delivery. To consider as to whether the findings of the OEM, as stated above, would amount to violation of Clause 5.1.4 of the MDG Guidelines, it is necessary to quote the said rule itself which reads as under:

***"5.1.4 ADDITIONAL / UNAUTHORIZED FITTINGS /
GEARS FOUND IN DISPENSING UNITS /***

TAMPERING WITH DISPENSING UNIT

Any mechanism / fittings / gear found fitted in the dispensing unit with the intention of manipulating the delivery.

Removal, replacement / manipulation of any part of the Dispensing Unit including microprocessor chip / electronic parts / OEM software will be deemed as tampering of the dispensing unit.

In case of this irregularity sales from the concerned dispensing unit to be suspended, DU sealed. Samples to be drawn of all the products and send to lab for testing."

14. From the aforesaid provision, it is clear that when any mechanisms, fitting, gear found fitted in dispensing unit with the intention of manipulation of delivery would amount to invite proceedings under the said sections and lead to cancellation of the license. Therefore, from a bare reading of Clause 5.1.4 of the MDG Guidelines, it is clear that any mechanism or fitting in the dispensing unit should result in manipulation of delivery or such additional fitting should at least be capable of manipulating the delivery. There is no dispute with regard to the fact that the foreign component was in fact found on the pulsar cards but the dispute in the present case is only with regard to the fact that as to whether discovery of a foreign component on the pulsar card would automatically lead to the conclusion that same has been installed with an intention of manipulation of delivery. In the present case, the peculiar facts are that seals of the dispensing units were intact at the time inspection. The foreign component found in the pulsar card has been reported by the OEM. There is no clear finding that such foreign component would lead to the short supply of diesel in its original report dated 11.05.2017 or in subsequent clarification issued on 17.05.2017.

15. To return a finding with regard to the intention of manipulating the delivery, the basic fact which has to be established that the installation of the foreign component had in fact led to manipulating the delivery meaning thereby that on installation of foreign component on the pulsar cards, the dispensing unit had dispensed lesser quantity of fuel than it was supposed to dispense.

16. We do not agree with the submission of the counsel for the respondent that mere finding of the foreign component of the pulsar cards is sufficient in itself to come to a conclusion that the same has been done with an intention to manipulate the delivery. In case there is manipulation in delivery meaning thereby short supply of the fuel dispensed from the dispensing unit is a question of fact and can not be assumed. Only when it is established that the dispensing unit had in fact dispensed lesser quantity of fuel, coupled with the fact that foreign component was found in the pulsar card, can a person be held responsible for violating provisions of 5.1.4 of the MDG Guidelines and consequential cancellation of his license can be done. Apart from finding a foreign component on the Pulsar Cards there should have been categorical finding with regard to the intention to manipulate the delivery.

17. On perusal of the relevant provision i.e. 5.1.4 of MDG Guidelines, it is found to be substantially penal in nature and its essential ingredients, prima facie, consist of:

(1) The finding of the foreign objects in the dispensing unit, which is only a ground for inquiry and inspection.

(2) Intention of manipulating the delivery.

Mere presence of foreign elements does not ipso facto show intention unless there is evidence to show that the foreign components are capable of or in fact affecting the fair dispensation of fuel.

In the present case, there is no evidence with regard to the second necessary ingredient, which is 'intention of manipulating the delivery' and also the inquiry fell short of returning any finding as to show any such manipulation. Therefore, the petitioner cannot be said to have violated 5.1.4 of the MDG Guidelines.

18. In the aforesaid circumstances, firstly, it is not the case of the respondent Oil Company that there was any shortfall of the delivery, coupled with the fact that even the OEM has never reported, the result of the foreign body attached to the pulsar card and secondly, the benefit of doubt of the seal being intact during the time of inspection has to be given to the petitioner as the foreign component cannot be inserted without breaking the seal of the dispensing unit. Counsel for the respondent also could not confirm as to whether the foreign component can be inserted on pulsar card without breaking the seals. Therefore, reading the inspection report dated 05.05.2017 wherein in paragraph 2, it has clearly been found that the delivery was found to be correct, coupled with the fact that in paragraph-5, it has been stated that seals were broken in presence of the inspecting team leads to have irrebuttable conclusion that the seals were intact and there was no short supply of the fuel and consequently, in the aforesaid circumstances, it cannot be concluded that there was intention to manipulate the delivery, and hence any violation of Clause 5.4.1. of the MDG Guidelines.

19. In light of the above, this Court impugned orders of cancellation as well as the appeal are arbitrary and accordingly set aside. The writ petition stands **allowed**.

20. Consequences to follow.

Order Date :- 5.8.2024
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(Alok Mathur,J.)