

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 2370 OF 2015

M/s. Autopet and Anr.	}	Petitioners
versus		
The State of Maharashtra and Ors.	}	Respondents

Mr. P. A. Pol with Mr. Rajesh M. Darvesh
i/b.M/s. Pol Legal Juris for the Petitioners.

Ms. Uma Palsuledesai-AGP for Respondents.

**CORAM :- S. C. DHARMADHIKARI &
B. P. COLABAWALLA, JJ.**

DATED :- AUGUST 21, 2015

PC :-

Petitioner No. 1 is a partnership firm and the second Petitioner is its partner. The first Respondent to this Writ Petition, namely, the State, through its Secretary and the second and third Respondents are all being sued because they exercised the powers under the Legal Metrology Act, 2009 (for short “the LM Act”).

2) It is the case of the Petitioners that Bharat Petroleum Corporation Limited, a company incorporated under the Companies Act, 1956 (BPCL) undertakes distribution, marketing and supply of motor spirit and high speed diesel. As a part of its business activities, it establishes outlets and to be managed and administered by dealers for

supply and distribution of motor spirit and high speed diesel to motor vehicles. The Petitioners are one of such dealers and outlets. The claim of the Petitioners is that the dealership is awarded by the BPCL. To the satisfaction of the principal, namely, BPCL, the business has been conducted. There were no complaints, according to the Petitioners, against them, by any customers.

3) However, on 1st August, 2015, the third Respondent visited this outlet of the Petitioners and seized the same. The complaint of the Petitioners is that there was a sealing of three dispensing units. After this action was concluded, a panchanama was drawn, copy of which is at Annexure 'A' to the Writ Petition. According to this panchanama, it is stated that this petrol pump was visited and there are A1-Petrol, A-2-Diesel, A3-Diesel, A1-Diesel and on the other side there are B1-Petrol, B2-Petrol, B3-Diesel and B4-Diesel units. In other words, there are 8 nozzles. When the site was inspected, they found that the cabin, where the electrical mains were installed, was not locked. Thereafter, after identifying themselves, they found that the petrol and diesel was being delivered from the units meant for dispensing. The panchanama records that a direction was given to stop delivery from these units. Thereafter, it was found that the emergency switch was switched off. Inquiries were made as to why this switch came to be switched off. Thereafter, the standards were found to be altered. In other words, by

switching off this switch, the records were interfered with, those were sought to be changed and altered. That is how section 26 of the LM Act was stated to be applicable and Rules framed under the LM Act does not permit any such alteration.

4) It is therefore clear from this panchanama, according to the Petitioners, that in the garb of carrying out inspection on vague allegations, the working and functioning of the petrol pump/retail outlet was disrupted and disturbed. This is wholly impermissible in law. Our attention has been invited to the two provisions, namely sections 15 and 26 of the LM Act in that regard.

5) Thus, the prayer in the Writ Petition is that in the garb of exercising powers under section 15 of the LM Act, Respondent Nos. 2 and 3 could not have sealed the dispensing units and restrained the Petitioners from dispensing motor spirit and high speed diesel from the outlet. These activities have been stopped completely after 1st August, 2015. This action is termed as illegal and arbitrary and violative of the constitutional mandate enshrined in Articles 14 and 19(1)(g) of the Constitution of India.

6) This Writ Petition was filed on 7th August, 2015 and when it was mentioned yesterday before us, we placed it today on the Supplementary List to be taken urgently.

7) The affidavit in reply has been filed by Mr. Sudhir Sukhdev Wagh, Deputy Controller of Legal Metrology, Mumbai Region. In this affidavit, it is stated that the action taken is in accordance with law. Attention of this Court is invited to section 15 and it is then stated that the second Respondent had reason to believe that the Petitioners were short supplying the petrol and diesel to its consumers by tampering and altering the dispensing units. That is how he directed the third Respondent to carry out inspection of the pump of the Petitioners and report as to whether there is any tampering with the units occurring by fixing unauthorised fittings to the dispensing units. That is how the pump of the Petitioners was visited and inspected. The two panchas, in whose presence the inspection was carried out and completed, are signatories to the panchanama. Some irregularities were noticed by the Inspector, which he has recorded in the panchanama. After inspection carried out under section 15 of the LM Act, penalty proceedings for violation of section 26 of the ML Act are initiated. It is stated in paragraph 8 that the Legal Metrology Officer seized and detained Gilbargo make three dispensing petrol/diesel pumps and this is in tune with section 15 of the LM Act. The officers have seized only those units which have been altered by the Petitioners. This is with a view to protect and safeguard the evidence. Thus, it is urged that what has been noticed by the third Respondent and reported after the inspection

is an act punishable in terms of section 26 of the LM Act. When it is so punishable, it would be necessary for the authorities to establish and prove that there was indeed an alteration and tampering. That is why and as a piece of evidence, it is necessary to seal and seize these dispensing units. In these circumstances, there is no reason to interfere in the Writ Jurisdiction. Further, there are enough remedies and under the Act. Today, the Petitioners cannot approach this Court and complain that the authorities have interfered with the business being carried out and unlawfully. It is in these circumstances and relying upon rules 13 and 14 of the Maharashtra Legal Metrology (Enforcement) Rules, 2011 that the action is supported.

8) The parties have addressed us on the basis of these materials. We have heard Mr. Pol appearing for the Petitioners and Ms.Palsuledesai for the Respondents. We have perused the Writ Petition and the affidavit in reply and annexures which have been taken on record.

9) On the own showing of the Respondents, an inspection was carried out and panchanama was drawn. It was noted that one of the workers of the Petitioner, namely, Devendra Kumar Kashinath Singh switched off the Red coloured emergency button of the dispensing unit, which action amounted to obstruction while discharging official duty

and criminal proceedings have been initiated against him. Santacruz Police Station was approached and a complaint was registered. That alleged offence punishable under section 353 read with section 34 of the Indian Penal Code. Thus, an attempt was made to obstruct the inspection, so that the authority is not in a position to check the delivery of the said units. This was an intentional act. Further, there was unauthorised additional system fitted in the dispensing unit with an intent to alter the delivery. The deponent of the affidavit in paras 14 and 15 says that it is significant to note the operation of the dispensing unit, which is a retail outlet through which the Petitioners deliver motor spirit and diesel to its consumers. The working of unauthorised additional fittings is such that when the power supply is on, the electronic circuit runs in activated mode and runs faster than normal speed showing more delivery, when in fact consumers get less supply of motor spirit and diesel. This action of the worker in switching off the emergency switch of the unit resulted in deactivating the unauthorised additional fitting and the reading/display showed normal delivery. That is how the officer was of the opinion that it is necessary to take action under section 15 of the LM Act.

10) Further, in para 15 of the affidavit in reply, it is stated that the inspection by the technical experts was carried out with the help of

M/s. Gilbargo Veeder Root, who is the manufacturer of the said pump and with a view to confirm the amount of alteration made by the Petitioners to its dispensing units by way of fitting of unauthorised additional fittings to the pumps. The team of technical experts from the said manufacturer consisted of (i) Chetan Mohan Dhodi, (ii) Nishant Kumar, (iii) Manoj Gaikwad and (iv) Nitesh Dongre, inspected the said pumps in the presence of concerned Legal Metrology Officer, representative of BPCL and representative of the Petitioners. The said team of experts did inspection by visual inspection of hardware integrity of dispensing units and after inspection of all 20 nozzels, observed that there were unauthorised additional fittings in 5 sensors card and unauthorised nozzle in 1 sensor. The team confirmed that these additional fittings were not a part of the standard equipment of dispensing units and have been placed with a view to alter the delivery.

11) It is in these circumstances, it is prayed that the Petitioners could have approached the appellate authority under section 15 of the LM Act to challenge the impugned seizure.

12) Thereafter, in para 17 of this reply affidavit, it is stated that it is mandatory for the dealers of BPCL to maintain daily sales report for each month with respect to the stock in their tanks. In the inspection carried out at site, the officers found certain irregularities and

deviations and that is why another FIR was registered for offence punishable under section 420 of the Indian Penal Code.

13) At the outset, we are not concerned with the merits of the impugned action. We are also not concerned with the charge that is leveled and all the allegations against the Petitioners, either in the inspection report or other materials including the affidavit filed in this Court. We are also not concerned with the contents of the reports and which have been prepared after the inspection was carried out. Thus, the merits of the case are not relevant and material for our purpose and at this stage. We clarify that our order passed today shall not prevent the authorities from prosecuting the Petitioners. All criminal actions permissible in law and other cases or measures initiated against the Petitioners shall proceed in accordance with law. We are only concerned with the complaint of the Petitioners that in the garb of taking action under section 15 of the LM Act, the authorities have taken away what is not permissible to be taken away or have seized and sealed something which is not permissible by the LM Act. In that regard, we reproduce sections 15 and 26 of the LM Act, which read as under:-

“15. Power of inspection, seizure, etc., -

(1) The Director, Controller or any legal metrology officer may, if he has any reason to believe, whether from any information given to him by any person and taken down in writing or from

personal knowledge or otherwise, that any weight or measure or other goods in relation to which any trade and commerce has taken place or is intended to take place and in respect of which an offence punishable under this Act appears to have been, or is likely to be, committed are either kept or concealed in any premises or are in the course of transportation, -

(a) enter at any reasonable time into any such premises and search for and inspect any weight, measure or other goods in relation to which trade and commerce has taken place, or is intended to take place and any record, register or other document relating thereto;

(b) seize any weight, measure or other goods and any record, register or other document or article which he has reason to believe may furnish evidence indicating that an offence punishable under this Act has been, or is likely to be, committed in the course of, or in relation to, any trade and commerce.

(2) The Director, Controller or any legal metrology officer may also require the production of every document or other record relating to the weight or measure referred to in sub-section (1) and the person having the custody of such weight or measure shall comply with such requisition.

(3) Where any goods seized under sub-section (1) are subject to speedy or natural decay, the Director, Controller or legal metrology officer may dispose of such goods in such manner as may be prescribed.

(4) Every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1874), relating to searches and seizures.

26. Penalty for alteration of weight and measure. - Whoever tampers with, or alters in any way, any reference standard, secondary standard or working standard or increases or decreases or alters any weight or measure with a view to deceiving any person or knowing or having reason to believe that any person is likely to be deceived thereby, except where such alteration is made for the correction of any error noticed therein on verification, shall be punished with fine which may extend to fifty thousand rupees and for the second and subsequent offence with imprisonment for a term which shall not be less than six months but which may extend to one year or with fine or with both.”

14) Section 15 of the LM Act confers a power of inspection, seizure etc. A bare perusal of sub section (1) thereof would reveal that

the Director, Controller of any Legal Metrology Officer may, if he has any reason to believe, whether from any information given to him by any person and taken down in writing or from personal knowledge or otherwise, that any weight or measure of other goods in relation to which any trade and commerce has taken place or is intended to take place and in respect of which an offence punishable under this Act appears to have been, or is likely to be, committed are either kept or concealed in any premises or are in the course of transportation, then, he may proceed to enter at any reasonable time into any such premises and search for and inspect any weight, measure or other goods in relation to which trade and commerce has taken place, or is intended to take place and any record, register or other document relating thereto. By clause (b) of sub section (1), the authority has power to seize any weight, measure or other goods and any record, register or other document or article which he has reason to believe may furnish evidence indicating that an offence punishable under the LM Act has been, or is likely to be committed in the course of, or in relation to any trade and commerce. Sub sections 2, 3 and 4 of section 15 are equally important and by the same, the Director, Controller or any legal metrology officer may also require the production of every document or other record relating to the weight or measure referred to in sub-section (1) and the person having the custody of such weight or measure shall

comply with such requisition. Sub sections (3) and (4) make provisions for disposal of the goods and what sub section (4) clarifies is that every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to search and seizure. We presume for the purpose of the present Petition, that the search and seizure complies with sections 99 to 102 of the Criminal Procedure Code. We clarify that this basis is only for the purpose of the disposal of this Petition. The Petitioners are not preventing from questioning the impugned action by alleging noncompliance with these provisions in substantive proceedings or during trial.

15) By section 26, penalty for alteration of weight and measure is provided. That is for tampering with or altering in any way, any reference standards, secondary standard of working standard or increases or decreases or alters any weight or measure with a view to deceive any person or knowing or having reason to believe that any person is likely to be deceived thereby. Therefore, what is liable for seizure is any weight, measure or other goods and any record, register or other documents or articles, which, the authority has reason to believe, may furnish evidence indicating that an offence punishable under this Act was likely to be committed in the course of or in relation

to any trade and commerce. The term “weight or measure” is defined in section 2(w) to mean a weight or measure specified by or under this Act and includes a weighing or measuring instrument.

16) It is apparent from a reading of the panchanama as also para 14 of the affidavit in reply that the switching off the emergency switch during the inspection obstructed the inspection and consequently, the authority could not check the delivery of the units. The working of unauthorised fittings has been explained and they are termed as such. That when the power supply is on, the electronic circuit runs in activated mode and runs faster than normal speed showing more delivery, when in fact consumers get less supply of motor spirit and diesel. The alteration is stated to be made by the Petitioners to their dispensing units by way of fitting unauthorised fittings. That is also reflected after inspection of 20 nozzles and it was observed that there was a unauthorised additional fitting in 5 sensors card and unauthorised nozzle in 1 sensor. These fittings were not part of the standard equipment of dispensing units and have been placed with a view to alter the delivery.

17) The Petitioner has specifically averred in the Writ Petition that after the inspection was carried out on 1st August, 2015, there was an arbitrary or illegal sealing of the motor spirit and high speed diesel

dispensing units and the Petitioners are restrained from distributing the same to the motor vehicles from their outlet. Thus, dispensing of the fuel from the outlet is completely stopped on account of the sealing of the dispensing units. We also clarify that for the purpose of this Petition, it is not necessary to decide as to what constitutes the weight or measure for weighing and measuring the dispensation of motor spirit and high speed diesel. It is presumed for our limited purpose that what is seized is such a weight and measure as is defined in the Act and that it is the weighing and measuring instrument. Its standards are also not for the present disputed. However, all such aspects are open for being considered at an appropriate stage. We keep the rival contentions open.

18) We specifically inquired from the learned AGP whether any power is conferred by the LM Act in the authority to effect a sealing of the dispensing unit. Our attention has been invited only to these two legal provisions. Our attention was more specifically invited to section 15 of the LM Act and to urge that the power conferred thereby would enable the sealing of the dispensing units. We have noted these provisions in detail only for the purpose of ascertaining whether any such power and as is claimed is conferred by these provisions. Apart there from, we have not been shown any power for such an action or step on the part of the authorities. The word “seal” and the act of

“sealing” as understood in legal parlance as noted in law lexicon by P. Ramanatha Iyer 1997 Edition, is an indication or mark or office, an engraved stamp of metal or other hard material to make an impression, to set a seal to, to stamp, set one's seal to, to fasten with a seal. This Act signifies in the facts of this case an act of fastening something on the dispensation units by which its further use is prevented or restricted or prohibited totally. It is understood by parties to be a action aimed at preventing access to the dispensing units without removing or breaking what is fastened thereto. For such an act to be performed or committed the authority must be specifically empowered by law else it is illegal is the submission.

19) If the facts and circumstances, in which the panchanama was made and after inspection, are taken into consideration, we find that the authority inspected the premises because it had reason to believe and from the sources and to be found in sub section (1) of section 15 of the LM Act that any weight or measure or other goods in relation to which any trade and commerce has taken place or is intended to take place and in respect of which an offence punishable under this Act appears to have been, or is likely to be committed are either kept or concealed in any premises or are in the course of transportation. Therefore, the power to enter upon the premises, search

for and inspect any weights and measures or other goods is conferred and thereafter seize the same. If it is some additional equipment or instrument and which is inserted with a view to interfere or tamper or alter the equipment which measures the fuel supply, then, it was permissible for the authorities to seize and take away that particular additional instrument or equipment. We do not see how in the garb of seizing the same, any seal could have been placed on the dispensing units as a whole so as to prevent the Petitioners from carrying on their business as a fuel station or a retail dealer/outlet. In the facts and circumstances, we do not see any justification for placing the seal on the dispensing units themselves. The reliance placed on these provisions and particularly clauses (a) and (b) of sub section (1) of section 15 of the LM Act would not be enough to support this drastic step or action.

20) We have therefore found that if the authority was of the opinion that these are relevant and germane items or articles and that production of every document or other record relating to the weight and measure referred to in sub section (1) of section 15 of the LM Act is necessary to be ordered, he could have later on also made an order to that effect. In other words, all the records relating to the dispensing units, equipments installed, the manner of its functioning and working, the documents in relation thereto could have been directed to be

preserved for production. Equally, if the Petitioners have been proceeded against under penal laws and under the LM Act, the competent Court can be requested to make such orders and issue such directions so that any vital piece of evidence is not destroyed or tampered with further. However, we do not see any justification and support for the act of sealing of the dispensing units. That such a sealing has been done is not disputed either on oath or during the course of submissions before us. Rather, the learned AGP tried to justify the said action by referring to the above noted legal provisions.

21) Having found that the said provisions do not authorise or empower the sealing of the dispensing units themselves in the facts and circumstances, we are of the view that the Writ Petition deserves to succeed to that extent. Accordingly, the Writ Petition succeeds. The Respondents are directed to forthwith remove the seal placed by them on the dispensing units. Needless to clarify that our order and direction does not mean that the prosecution against the Petitioners cannot proceed and in accordance with law. That it should so proceed is obvious and it will proceed uninfluenced by our direction in this Writ Petition. Similarly, our order and direction shall not be construed as expression of any opinion on the merits of the controversy and the charges against the Petitioners. Since violation of the provisions of LM

Act has to be dealt with in terms of that Act, any action or measure initiated by the Respondents under the same shall also proceed without being influenced by this order and direction. All contentions are kept open. We also clarify that our order does not preclude or prevent the oil company to initiate such legal steps, measures, proceedings including to terminate the dealership and dispensation of its products from the subject retail outlet.

22) At this stage, Mr. Pol appearing for the Petitioners states that the Petitioners shall preserve the records, documents and papers so also the equipments themselves and would not remove them or make any alteration in the same without prior permission of the competent authority or order of a competent Court. This statement of Mr. Pol is accepted as an undertaking given to this Court. In addition, it would be open for the competent authority to direct production of the same in terms of sub section (2) of section 15 of the LM Act. Our order and direction or our acceptance of any undertaking shall not in any manner prevent the competent Court from passing such orders as are permissible in law.

23) Since it is stated to be one of the first actions or first of its kind on the part of the authority under the LM Act, we refrain from imposing costs though we find that the impugned action is totally high

handed and arbitrary. The Writ Petition is thus allowed with above directions.

24) All concerned to act upon an authenticated copy of this order.

(B.P.COLABAWALLA, J.)

(S.C.DHARMADHIKARI, J.)