

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 27566 of 2007

ORDER:

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Heard Sri P.Bhaskar, learned counsel appearing for the petitioner and Sri O.Manohar Reddy, learned Standing Counsel appearing for the respondents.

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the third respondent in searching and taking the samples from the retail outlet of the petitioner on 12.11.2007 and the consequential orders dated 13.11.2007 and 13.12.2007, as illegal and void.

The facts in issue are as under:

The petitioner is a retail outlet dealer of the respondents Corporation. On 12.11.2007 at about 4.00 p.m. some persons claiming to be the representatives of the third respondent, entered and searched the retail outlet of the petitioner. In spite of the protest made by the staff of the petitioner outlet, the said persons unauthorisedly drew the samples from MS Tank and HSD Tank and served a copy of the report dated 12.11.2007. It is stated that on 13.11.2007 the Deputy Manager (Sales and Eng.), Nellore visited the retail outlet, carried out the inspection and furnished inspection report. The report reveals that there was variation in stock and the density was not within the permissible limit. Basing on the report, dated 12.11.2007, the sale of all the petroleum products were suspended with immediate effect. On 13.12.2007 the Territory Manager (Retail), Nellore, issued a notice to the petitioner to explain as to why his dealership should not be terminated as the Joint Market Test conducted on 10.12.2007 revealed that the test result for MS was negative, while the result for HSD was positive. It is also stated that without giving reasonable opportunity to hear the petitioner, the second respondent suspended the sales of all the petroleum products with immediate effect. Challenging the same the present writ petition came to be filed.

On 12.07.2011 this Court while hearing the vacate stay petition held as under:

“The petitioner is a retail outlet dealer of respondent No.1, Bharat

Petroleum Corporation Limited. The petitioner's outlet was inspected on 12.11.2007 by respondent No.3 on behalf of respondent No.1. On the allegation that the test result of the MS and HSD nozzle samples revealed that they were negative and positive respectively, the petitioner was called upon by the impugned proceedings, dated 13.12.2007, to explain why action should not be taken against it. Calling in question these proceedings, the present writ petition is filed.

In my opinion, the proceedings, impugned in the writ petition, are in the nature of a show cause notice. If the petitioner has any legally sustainable objections, it can submit its explanation and only in the event of an order, adverse to its interest is passed, the petitioner can avail its remedy in accordance with law. Therefore, I do not find the elements of balance of convenience and irreparable injury for continuing interim order, dated 27.12.2007. Accordingly, interim order, dated 27.12.2007 is vacated. The petitioner is permitted to submit its explanation, if not already done, to show cause notice, dated 13.12.2007, within a period of three weeks. The respondent shall thereafter, pass appropriate orders in accordance with law."

Pursuant thereto, on 12.08.2011 the petitioner herein submitted an explanation to the show cause notice dated 13.12.2007.

In view of the interim order passed by this Court and having regard to the explanation submitted by the petitioner, nothing survives for adjudication in this writ petition. However, if the respondents have passed any order on the explanation given to the showcause notice, dated 13.12.2007, the petitioner can question the same. If no orders are passed pursuant to the explanation given to the show cause notice, the respondents shall consider the explanation and pass orders, at the earliest, preferably within a period of twelve (12) weeks from the date of receipt of a copy of the order.

With the above direction, the writ petition is disposed of. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

21.12.2015

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