

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

LPA No. 13 of 2015. [O&M]
Date of Decision: 21st April, 2015.

Bharat Petroleum Corporation Limited & Anr.
Appellants through
Mr. Raman Sharma, Advocate

Versus

M/s Pal Filling Station & Ors. Respondents through
Mr. Anil Malhotra, Advocate.

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporters or not?**
- 3. Whether the judgment should be reported in the Digest?**

SURYA KANT, J. [ORAL]

The first respondent is a Retail Outlet of petroleum products and it became operational on 25th March, 1987. As per the averments made in Para No. 8 of the writ petition and reply filed thereto by the appellant Corporation, there was never ever any complaint of any irregularity alleging adulteration, pilferage, tampering of any seal or any other type of malpractice against the first respondent. In fact, pursuant to the order dated 17th March, 2015, the appellants were directed to produce the records of inspections carried out by them before 09th July, 2013. It is the conceded position that no offending report was ever submitted against the first respondent at any point of time.

[2]. On 09th July, 2013, Deputy Manager [Engineering] of the appellant Corporation inspected the Outlet of the first respondent and submitted his report, *inter-alia*, alleging that [i] the totaliser seal on

the MS Unit had been found broken; and [ii] diesel [HSD] assembly seals were very loose and they have to be redone. The second report was also prepared on the same day, i.e., 09th July, 2013 recording as follows:-

“[1] W&M Z line MS [Sr. No.KRLNT2986] totalizer seal found broken.

[2] HSD units assembly seals [W&M] very loose”.

[3]. Pursuant to these reports, a show cause notice was issued on 25th July, 2013, to which the first respondent submitted its reply. The explanation was found unsatisfactory and consequently, dealership of the first respondent was terminated and its licence was cancelled holding manipulation of dispensing units and breaking of seal.

[4]. Aggrieved, the respondent approached this Court and we are informed that *ad-interim* stay was granted in its favour. The Retail Outlet, thus, remained operational.

[5]. Learned Single Judge vide the judgment under appeal dated 04th December, 2014 has finally allowed the writ petition, giving rise to this appeal.

[6]. The short question that arose for consideration of learned Single Judge was whether or not the irregularities alleged against the first respondent were to be classified 'critical irregularities' within the ambit of Para 8.2 of the Marketing Discipline Guidelines [P-1], warranting an action like termination of dealership?

[7]. Para 8.2 defining 'Critical Irregularities' reads as follows:-

“8.2 Critical irregularities: The following irregularities are classified as critical irregularities:

[i] Adulteration of MS/HSD [5.1.1]

- [ii] seals of the metering unit found tampered in the dispensing pumps [5.1.2[b].*
 - [iii] Totalizer seal of dispensing unit tampered or deliberately making the totalizer non-functional or not reporting to the company if totaliser is not working [5.1.3 read with 5.1.2]*
 - [iv] Additional/unauthorised fittings and gears inside the dispensing units/tampering with dispensing units [5.1.4].*
 - [v] Unauthorised storage facilities [5.1.5]*
 - [vi] Unauthorised purchase/sales of products [5.1.6]*
 - [vii] Tank lorry carrying unauthorised product found under decantation at the RO [5.1.7]*
- Action: Termination at the FIRST instance will be imposed for the above irregularities”.*

[8]. It may be seen from the above reproduced classification that if the seals of the metering unit are “**found tampered in the dispensing pumps**” it shall amount to critical irregularity for which an action like termination of licence can be initiated.

[9]. It is on consideration of the above reproduced Clause that learned Single Judge has held and rightly so that Clause 8.2 contemplates a deliberate human intervention and not merely a corrosion or rusting by natural causes. The expression 'tampering' has rightly been understood to mean a deliberate action or inaction attributable to human intervention.

[10]. It would be apt at this stage to take stock of the explanation rendered by the first respondent in its reply dated 30th July, 2013 [P-16], wherein it averred as follows:-

“[1]. As on 09.07.2013 when Mr. Sanjeev Daukia inspected the site and found the wire of totalizer seal of MS machine with the serial no. KR L&T 2986 was broken. It is submitted that we had not committed this mistake intentionally and it has occurred only because of negligence of our part at the time of stamping the

machine. At the time of last stamping in July, 2012 of this machine, I was not present at the RO and the stamping was done in presence of my manager. The W&M inspector does not change the wire of totalizer and re-stamp the same. We do not have any canopy/shed on machines at our RO, due to that the wire got rusted and the totalizer wire was broken. We don't have any kind of idea when the wire was broken".

[11]. The first respondent relied upon the report dated 28.10.2013 from the Assistant Controller, Legal Metrology, Ambala, i.e., the Department of Weights and Measures [P-22] to substantiate its above taken plea, which reads as follows:-

"Subject:- Inspection of M/s Pal Filling Station, BPCL Dealer, Pehowa [Kurukshetra].

As per the inspection of your Petrol Pump M/s Pal Filling Station, BPCL Dealer, Pehowa [Kurukshetra] conducted by the undersigned on 10.09.2013 and after receiving the reply of Shri Sanjiv Daukia, Executive Sales [Retail] [MT], BPCL Ltd., Shri Achint Bhavsar, Engineer BPCL Ltd. And M/s Pal Filling Station, BPCL Dealer, Pehowa [Kurukshetra], it is found that no one has deliberately broken the sealing wire of the W&M seal affixed at the totalizing counter of M.S. D/U No. KRL&T 2986. Further, it was found that the sealing wire of the above said unit was corroded as no cover like canopy etc. was being used for the protection of the Dispensing Pump Units.

So the above mentioned Dispensing Pump Unit may be re-verified and re-stamped".

[12]. The appellant Corporation, however, turned down the explanation and passed the order of termination of dealership dated 13th March, 2014 in which reliance was also p[la]ced on the terms and

conditions of the agreement dated 25th March, 2002 [R2/1] earlier executed between the parties.

[13]. It is also undeniable that during the pendency of the writ petition too nothing incriminating has been reported against the first respondent.

[14]. We have heard learned counsel for the parties and gone through the record. Learned Single Judge appears to be justified in accepting the explanation given by the first respondent and which is duly supported by the opinion of Expert Agency of the Government that the HSD Unit seals were loose and/or were found broken not on account of any human intervention which could amount to tampering with the seals. Keeping the pre-July, 2013 or subsequent consistent record maintained by the first respondent in view, more so when hundreds of inspections have been carried out by the appellants, it appears to us that the decision to terminate the dealership was too harsh and highly disproportionate to the detected irregularity. It has been, thus, rightly intervened by the learned Single Judge.

[15]. The appellant Corporation being a Public Sector Organization is expected to act in a fair, judicious and reasonable manner. It can not simply thrive upon the terms and conditions of the agreement like private parties to a contract. The appellants' plea on the question of maintainability and the dealership license agreement being a contract which is determinable and at best would attract the Specific Relief Act, is wholly misconceived. **IOC Vs. Amritsar Gas Service, [1991] 1 SCC 533** was a case where the permissible relief could be awarded under the Arbitration Act, 1940, when an arbitration

award had been rendered after a dispute between an LPG Distributor and IOC. The Apex Court held that no restoration of dealership in arbitration proceedings was possible by an Arbitrator under the Act. Respondent no.1 in the instant case has neither invoked any arbitration proceedings nor any clause to this effect appears to be in the MDG [Annexure P-1] under which the impugned order [Annexure P-27] had been passed.

[16]. Further, Respondent no.1 had unsuccessfully challenged the constitutional validity and vires of the MDG [Annexure P-1] as being violative of Articles 14 and 19 (1) (g) of the Constitution as also the impugned order being arbitrary, discriminatory, imposing pre-determined punishments mechanically against all principles of natural justice. Such like issues could be adjudicated only in a petition under Articles 226/227 of the Constitution and could not be limited by a contract or Section 14 (1) (c) of the Specific Relief Act, 1963.

[17]. It is well settled that the High Court can exercise its writ jurisdiction in atleast three contingencies: (a) where the writ petition seeks enforcement of any of the fundamental rights; (b) where there is failure of principles of natural justice; or (c) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. [Ref.: Harbaslal Sahnia & Anr. Vs. Indian Oil Corpn. Ltd. [2003] 2 SCC 107].

[18]. In HPCL vs Super Highway Services [2010] 3 SCC, 321, the Supreme Court while dealing with a case of termination of an agreement between a dealer and an oil company, has held that

the cancellation of dealership agreement of a party is a serious business and cannot be taken lightly. The argument that the contract was determinable which ordinarily the writ court would not be entitled to go into and that only if a question of public law character was involved, a writ would lie, was duly considered and rejected in that case, holding that, *“in order to justify the action taken to terminate such an agreement, the concerned authority has to act fairly and in complete adherence to the rules/guidelines framed for the said purpose”* and that *“the termination of the dealership agreement of the respondent was arbitrary, illegal and in violation of principles of natural justice”*.

[19]. In **Allied Motors Limited vs. BPCL [2012] 2 SCC, 1**, the Apex Court has held that the haste in which 30 years old dealership was terminated without giving opportunity of hearing on nonexistent, irrelevant and on wholly extraneous considerations, shows there was violation of the provisions of law and the principles of natural justice.

[20]. In **Mahabir Auto Stores vs. IOC AIR 1990 SC 1031**, it has been held that transactions which are administrative decisions may be contractual or statutory, but in a situation of transactions between parties for nearly two decades such procedure should be followed which must be reasonable fair and just.

[21]. Respondent no.1 has never been penalised for any serious irregularity for 26 years. Thus, the punishment of terminating his license for petrol and diesel, even though no fault was found in the diesel Dispensing Units, and, when no adulteration, short measuring or variation of stocks was found, clearly demonstrates that

the penalty is grossly disproportionate and satisfies the tests laid down by the Apex Court in **M/s Siemens Vs. DMRC, [2014] 11 SCC 288.**

[22]. Suffice it to observe that the order of learned Single Judge does not absolve the first respondent from its future responsibilities to maintain the seals intact and to ensure that the agreed terms and conditions are meticulously complied, without any chance to the authorities to doubt its credentials or conduct. In the event of further repetition, nothing precludes the appellants to proceed against the respondent, in accordance with law. As of now, we see no justification for the sustenance of the impugned action.

[23]. Consequently, the appeal is dismissed. No order as to costs.

[24]. Dasti.

(SURYA KANT)
JUDGE

April 21, 2015.
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(P.B.BAJANTHRI)
JUDGE