

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.8643 of 2012

ORDER:

Heard Sri V.V.N.Narayana Rao, learned counsel for the petitioner and Sri K.V.Simhadri, learned counsel for the respondent No.1.

2. Petitioner has questioned proceedings in VRO/MGH/RET dt.02-03-2012 of 1st respondent terminating petitioner's dealership agreement dt.02-02-2010 and seeks a direction to 1st respondent to permit the petitioner to run the petroleum outlet situated in P.L.Puram village, Payakaraopeta Mandal, Visakhapatnam District in terms of the said agreement.

3. Brief facts of the case are that the petitioner was granted dealership by 1st respondent to run a petroleum outlet at P.L.Puram village, Payakaraopeta Mandal, Visakhapatnam District under an agreement dt.02-02-2010.

4. On 05-11-2010, the Assistant Sub Inspector of Police, according to the petitioner, while conducting patrol duty at night, noticed adulteration of Motor Spirit and High Speed Diesel (MS & HSD) with kerosene, that he informed the same to 5th respondent and the 5th respondent then submitted a report to 4th respondent to take action against the petitioner under the provisions of

the Essential Commodities Act, 1955.

5. Proceedings under Section 6-A of the said Act were initiated against the petitioner and samples of MS & HSD were collected. Thereafter, 4th respondent submitted a report to 3rd respondent. The samples collected were sent to 2nd respondent for analysis and on 23-12-2010, 2nd respondent gave analysis report that the MS & HSD samples taken from the petitioner's petroleum outlet did not match the specifications.

6. The 3rd respondent issued a show cause notice dt.08-01-2011 asking the petitioner to show cause why action should not be taken against him.

7. Petitioner submitted his explanation and denied the allegations.

8. On 10-09-2011, the 3rd respondent ordered interim suspension of the Form-B Licence issued under the provisions of Clause 29 (2) of the AP Petroleum Products (L & RS) Order, 1980.

9. Challenging the same, the petitioner filed an appeal before the Commissioner of Civil Supplies, Andhra Pradesh, Hyderabad which was dismissed on 18-02-2012.

10. The 3rd respondent had also addressed a

letter dt.22.2.2010 to 1st respondent to initiate action against petitioner and asked the 1st respondent to take delivery of the seized quantity of MS and HSD from the underground tank in the petroleum outlet of the petitioner.

11. Basing on this, a show cause notice dt.09-08-2011 was issued to the petitioner by 1st respondent to show cause as to why action in terms of the dealership agreement should not be taken against him for violating clause No.19 (a) (b) (c) and 20 read with 31 (l) and 31 (n) of the dealership agreement dt.02-02-2010.

12. In the said show cause notice, the facts relating to the inspection of the retail outlet on 05-11-2010 by 4th respondent, noticing of the storage of 200 liters of PDS kerosene, filing of the case under Section 6-A of the Essential Commodities Act, 1955, taking of samples, sending the same to the laboratory for testing, and the fact that the samples of the MS and HSD drawn from the underground tanks of the petitioner outlets did not meet the specifications for both the products, were mentioned and copies of the test reports enclosed to the letter dt.22-02-2011 from the Collector (Civil Supplies), Visakhapatnam were also given to the petitioner.

13. Petitioner submitted explanation on 12-11-2011 contending that she suffered from ill health for the previous two months and therefore she did not submit her

reply to the 1st respondent within the stipulated time and prayed to condone the delay in submitting the reply to the show cause notice in the interest of justice. She denied all the allegations.

14. On 02-03-2012 vide impugned order, the Senior Regional Manager of 1st respondent terminated the petitioner's dealership agreement on the ground that the petitioner committed breach of under clause No.19 (a) (b) (c) and 20 read with 31 (l) and 31 (n) of the dealership agreement. He observed that the conduct of business of the petitioner is prejudicial to the interest and good name of 1st respondent and its products and so the dealership agreement is terminated. It was also indicated that the petitioner has an option to invoke the clause 40 of the dealership agreement and seek to raise all the disputes and differences for adjudication through Arbitration by the Chairman and Managing Director of the 1st respondent or by some officer of the Corporation who may be nominated under the Arbitration of Adjudication and Conciliation Act, 1996.

15. Assailing the same, the present Writ Petition is filed.

16. Sri V.V.N.Narayana Rao, learned counsel for the petitioner, contended that the termination of the dealership of the petitioner is not valid primarily on the ground that the provisions of the MS and HSD (Regulation

of Supply, Distribution and Prevention of Malpractices) Order 2005 (for short '2005 Order') were violated. According to him, only a Gazetted Officer of the Central Government or a State Government or any Police Officer not below the rank of Deputy Superintendent of Police duly authorized by General or Special Order of the Central Government or a State Government as the case may be or any office of the Oil Company, not below the rank of Sales Officer is empowered to enter, search and take samples from any petroleum outlet. He contended that authorized officer has to draw the sample from the tank, nozzle, vehicle or receptacle, as the case may be, in clean aluminium containers, to check density or other parameters of the product and see whether they conform to the requirements of Bureau of Indian Standard specifications number IS 2796 and IS 1460 for MS and HSD respectively; one sample should also be allowed to retain by the dealer; the collected sample should be sent to designated laboratories; and on the basis of the report of those designated laboratories only, further action should be taken. He contended that the Sub Inspector of Police, Payakaraopeta was not competent to search and seize the petroleum outlet under the above 2005 Order as he has not been designated as the authorized officer under Clause 7 of the 2005 Order to draw the samples of the petroleum unit, and any action taken by 1st respondent basing on such seizure of samples and report

is not valid. He therefore contended that the entire process of decision making culminating in the termination of the dealership agreement of the petitioner stood vitiated and therefore the same should be set aside.

17. Counter affidavit was filed by 1st respondent firstly contending that the petitioner had an effective alternative remedy of Arbitration provided in clause 40 of the dealership agreement and therefore he could not have been invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. It is further contended that the disputed questions of fact cannot be gone into in this Writ Petition.

18. The respondents contended that the samples seized on 07-11-2010 by the Tahsildar, Payakaraopeta, who inspected the petitioner's retail outlet, were found adulterated since the sample sent to the laboratory by the inspecting authority did not match with the specifications. It was further stated that 1st respondent also conducted a random inspection of the petitioner's retail outlet on 17-11-2010 and the petitioner was advised to submit the facts on the irregularity observed by the Tahsildar, Payakaraopeta. It is stated that the petitioner did not respond in spite of several reminders.

On 22-02-2011, the District Authority enclosed the lab reports of the samples collected by the inspecting authority of the MS and HSD from the petitioner's

petroleum outlet and advised 1st respondent that the sample did not comply with the specifications. Basing on these test reports, show cause notice was issued on 09-08-2011. It is also stated that a case under Section 6-A of the Essential Commodities Act, 1955 had also been filed against the petitioner and that action was initiated against the petitioner as per the terms and conditions of the dealership agreement based on the lab test report enclosed to the letter dt.22-02-2011.

19. A reply affidavit is filed by the petitioner refuting the above allegations and reiterating the stand taken in the affidavit filed in support of the Writ Petition. She admitted in the reply affidavit that the Joint Collector, Visakhapatnam passed orders on 16-04-2011 in C.C.No.130/2010/CSRS confiscating the seized stock to the extent of 75%, but the appeal against the same CrI.A.No.47 of 2012 was allowed by the Principal Sessions Judge, Visakhapatnam on 17-09-2014.

20. The consideration of the pleadings of both parties reveals that during an inspection by the Tahsildar, Payakaraopeta, on 05-11-2010 of the petitioner's petroleum outlet, it was detected that 200 liters of PDS Kerosene was stored in the petitioner's outlet. Thereafter, proceedings under the Essential Commodities Act, 1955 were initiated against

the petitioner after samples collected by the Tahsildar, Payakaraopeta, were referred to a laboratory for testing and the results indicated that the samples of MS and HSD did not conform the standard specifications and appeared to be adulterated.

21. No doubt the proceedings under the Essential Commodities Act, 1955 with regard to seizure of stocks appear to have been set aside in appeal by the Principal Sessions Judge, Visakhapatnam in CrI.A.No.47 of 2012 on 17-09-2014. However, the said fact has no bearing on the present Writ Petition inasmuch as the burden of proof in the Criminal Case is much higher (beyond reasonable doubt) than while considering the issue of termination of dealership agreement which is akin to a civil proceeding.

22. Except merely denying the allegations in the show cause notice in the reply notice dt.12-11-2012 nowhere did the petitioner raise the contention that the samples were irregularly drawn by an authority who was not competent to draw them under the 2005 Order. When the petitioner has not raised any plea of violation of the 2005 Order in his reply to the show cause notice, he is deemed to have waived any rights thereunder.

23. Random inspection was done by the Area Sales Manager of 1st respondent in the Visakhapatnam Sales Area of the petitioner's retail outlet on 17-11-2010 and petitioner was advised by letters dt.30-11-2010 and

14-02-2011 to submit the facts on the irregularities observed by the Tahsildar, Payakaraopeta. Admittedly, the petitioner did not respond to any of these letters.

24. The petitioner was already furnished copies of the lab reports enclosed to the letter dt.22-02-2011 of the Collector (Civil Supplies), Visakhapatnam.

25. Petitioner having kept quiet about the finding of 200 liters of PDS kerosene at the outlet and without specifically disputing the contents of the lab reports enclosed to the letter dt.22-02-2011 of the Collector (Civil Supplies), Visakhapatnam, which were also supplied to him, cannot be allowed to agitate in this Writ Petition the technical plea of non-compliance with the 2005 Order, which point he had not canvassed at any point of time earlier.

26. It is settled law that when there is an Arbitration Clause in a contract between the parties, normally the High Court under Article 226 of the Constitution of India will not exercise its jurisdiction (**Empire Jute Co. Ltd v. Jute Corporation of India Ltd**^[1]).

27. Also after cancellation of the dealership agreement dt.2.2.2010 by order dt.02-03-2012, the subject petroleum outlet is admittedly now being run by a third party for more than four years.

28. Therefore, for these reasons, this Court is not inclined to accept the contention of the petitioner and accordingly, the Writ Petition is dismissed. No costs.

29. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-07-2016

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