

CWP No.5836 of 2008 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP No.5836 of 2008 (O&M)
Date of decision:04.05.2016**

Rajinder Singh and another

...Petitioners

Versus

Union of India and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. A.K.Chopra, Sr. Advocate, with
Mr. Harminder Singh, Advocate, for the petitioners.

Mr. Raman Sharma, Advocate,
for the respondents.

Rakesh Kumar Jain, J.

Petitioner No.2 is the dealer of Bharat Petroleum Corporation Limited (hereinafter referred to as the "Corporation") as per agreement of Dispensing Pump & Selling License Agreement (DPSL Agreement), executed between the Corporation and petitioner on 28.08.2004, pursuant to which the retail outlet at village Daad, Ludhiana was commenced w.e.f. 30.08.2004. The petitioner (hereinafter referred to as the "Dealer") is aggrieved against the letter dated 10.08.2007 by which respondent No.3-Territory Manager (Retail), Jalandhar, of the Corporation, terminated the dealership agreement. The sample of branded product 'SPEED' was drawn on 18.10.2005 which failed to meet the requirement of MS (BSII) in respect

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of Final Boiling Point. On 23.09.2006, an inspection was carried out at the retail outlet and found variation in density by 20.4 and excess stock of Petrol (ULP) 1451 litres against permissible limit of density +/- 3.0 and 345 litres of product respectively. The sample of ULP was drawn and sent to the Scheduled Laboratory at Jalandhar for its testing, which failed to meet the requirement of MS (Gasoline) BS II with reference to RON (78), ethanol contents (2%) and its test results sample in respect of FBP 183°C and Sulphur (0.17%) were not in line with tank lorry sample.

A show cause notice was issued to the petitioners on 11.10.2006, pursuant to which the petitioner requested for re-testing of retained sample of ULP, which was got tested at Scheduled Laboratory and found that the corresponding territory retention sample was failing to meet the requirement of MS (BSII) with reference to Octane no.(77.8) and ethanol contents (2%). The Corporation sought explanation from the petitioners for the alleged irregularities, to which the petitioners filed the reply and ultimately, vide the impugned order dated 10.08.2007, the agreement of dealership was terminated by passing a detailed order.

Counsel for the petitioners has submitted that while passing the impugned order, respondent No.3 has not taken into consideration the report dated 31.05.2007 of the Government approved test house.

On the other hand, counsel for the respondents has submitted that 2 set of samples were taken at the time of sampling, out of which two samples were given to the dealer. The first sample by the dealer was got tested by the Quality Control Laboratory, Jalandhar of the Corporation in

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which the date of sampling (by client) is mentioned as 23.09.2006 and the report is dated 21.02.2007, in which the conclusion has been drawn against the petitioners. It is further submitted that the second sample retained by the dealer was also tested on 27.09.2006 in his presence and the said report was also drawn against the dealer. It is further submitted that insofar as the test report relied upon by the dealer dated 31.05.2007 is concerned, it is not of the sample retained by the dealer, which was taken at the time of inspection, rather it is of some other sample, the authenticity of which cannot be established, from the government approved test house and as such, the said report dated 31.05.2007, relied upon by the petitioners, has been kept out of consideration while passing the impugned order.

I have heard learned counsel for the parties and perused the available record with their able assistance.

Before I proceed further, it may be relevant to mention that this petition was initially disposed of on 17.12.2008 affording liberty to the dealer/petitioners to seek alternate remedy as may be available to him in view of the judgments rendered by this Court in the case of **Munish Gupta vs. Union of India and others**, (CWP No.14572 of 2007 decided on 12.09.2008), in which it was held that the writ petition is not maintainable as the dealer has an alternative remedy. However, the said order was set aside in Civil Appeal No.9859 of 2013 arising out of SLP(C) No.7168 of 2009 and the case has been remanded back for fresh decision.

There are three test reports on the record of this case i.e. dated 21.02.2007 (Annexure P-7), 31.05.2007 (Annexure P-10) and 27.09.2006

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(Annexure R-2/3). The primary issue raised by the dealer is that the report dated 31.05.2007 (Annexure P-10) has not been considered by respondent No.3 while passing the impugned order (Annexure P-11) and has thus erred in appreciating the controversy between the parties, whereas the positive case of the Corporation is that the report Annexure P-10 has deliberately not been considered as it was a procured one because it was not based upon the retained sample but on the basis of some sample, authenticity of which is not established.

In order to appreciate the respective arguments, it would be relevant to refer to all the three reports, which are reproduced as under:-

“Report dated 21.02.2007

BHARAT PETROLEUM CORPN. LTD.

(A Govt. of India Undertaking)

**QUALITY CONTROL LABORATORY
JALANDHAR (PUNJAB)**

TEST REPORT

MOTOR GASOLINE (BS-II) MS-88

Date: 21.02.07

Date of sampling (by client): 23.09.06

Sample received on: 21.02.2007

Sample Analyzed on: 21.02.07

Issued to	:	TM(RETAIL) JALANDHAR
Test Report No.	:	JAL/MDG(F)/07-442
Source of Sample	:	TANK NO.1, NOZZLE NO.1 M/S C.B. FILLING STATION DAAD, LUDHIANA
Type of Sample	:	MDG
Territory	:	JALANDHAR
Letter Ref. & Dt.	:	NIL/21/02.07

Sr. NO .	Characteristic	Test method (P:) of IS: 1447	Requirements as per IS- 2796-2000 (latest version)	Test Results		
				RO @	Territory Retention	Dealer Retention
1	Appearance	VISUAL	#	Clear	Clear	Clear
2	Colour Visual	VISUAL	Orange	Orange	Orange	Orange
3	Density, 16C, Kg/M3	P: 16	710.77			
	a. Observed at Laboratory			729.9	729.6	753
	b. Observed by Inspecting officer			730.8	730.8	730.8
	c. Recorded at RO (Morning Density)					
	d. Recorded at RO (after last receipt)			761.2	761.2	761.2
	e. Recorded at RO (before last receipt)			748.1	748.1	748.1
	f. TL receipt density (observed at RO)					
	g. Invoice			753.2	753.2	753.2
	h. Recorded at Supply Location					
4	Distillation	P:18				
	a. IBP C		#	41	44	45
	b. Recovery upto 70c (E70), % by Vol.		10 to 45	29	27	26
	c. Recovery upto 100C (E100), % by vol.		40 to 70	68	68	46
	d. Recovery upto 180C (E180), % by vol. Min		90	96	98	97
	e. Final boiling point (FBP), C Max		215	183	186	216
	f. Residue % by vol. Max		2	1	1	1
5	Ethanol Content, % by Vol.	IS 2790: 2000	4.5-5.0	2	2	4.6
6	Research Octane number (RON), Min	P:27	88	77.9	77.8	90.5
7	Lead content (as Pb), g/I Max	ASTM D-6069	0.013			
8	Total Sulphur, % by Mass, Max	ISO 20847	0.05	.017	.017	0.023
9	Existent gum, g/m Max	P:29	40	11	10	12
10	Furfural Test	#	#	Absent	Absent	absent

@ The RO sample was tested on 26.09.06 and test result of laboratory report No.JAL/MDG(F)/06-191 is reproduced in this report.

REMARKS:

Corresponding Territory retention sample is falling to meet the

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requirements of MS (BSII) w.r.t. Octane Number (77.8) and Ethanol content (2%). The test values are comparable with the original RO sample tested by the lab. On 26.9.2006.

S. The dealer retention sample provided for joint testing is marginally meeting the requirements of MS (BSII) w.r.t. FBP (215°C) and its values are neither tallying with original RO sample/TMs retention samples (w.r.t. RBP, Octane number, sulphur content, ethanol content, recovery upto 100°C, density etc.) nor with supply location (S/L) or T/L retention sample (FBP and sulphur content)

Therefore, treat the dealer retention sample as not representative and deemed to have failed.

End of the Report

Sd/-
S. MITRA
Authorized Signatory”

“Report dated 31.05.2007

A Government Approved Test House

**CHANDIGARH POLLUTION
TESTING LABORATORY**

(EFFLUENTS WATER & AIR)

AN ISO 9001: 2000 CERTIFIED

POLLUTION CONTROL BOARD HARYANA STATE
POLLUTION CONTROL BOARD & HIMACHAL
PRADESH POLLUTION CONTROL BOARD
APPROVED TEST HOUSE

H.O. # 372, Sector 15-A, Chandigarh-160015, Ph. 0172-5053312
Lab: E-179, Phase VII, Industrial Area, Mohali, 160055, Ph. 0172-5090870, 5090312,
5542790, Fax: 5090312

REPORT No. TM/05/01

DATE: 31.05.2007

To

M/s C.B. FILLING STATION
DAAD, LUDHIANA.

Sir,

Reference Report No. JAL/MDG(f) 07-442 dated 21/2/07 (Photocopy of same enclosed herewith). Our opinion with reference to the Chemical Test done on Motor Gasoline sample (Dealer Retention Sample) collected on 21/2/07 and analyzed on 21/2/07 by BPCL Quality Control Lab Jalandhar is as under:-

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<i>Sr. No.</i>	<i>Characteristics</i>	<i>Required value</i>	<i>Test value</i>	<i>Our opinion</i>
1	Appearance	Clear	Clear	Meeting the specification
2	Density at 15C Kg/M ³	710-770	753	Meeting the specification
3	Recovery upto 70C (E70), % by Vol.	10-45	26% v/v	Meeting the specification
4	Recovery up to 100C (E100) % by vol.	40-70	45%v/v	Meeting the specification
5	Recovery up to 180C (E180), % by vol. Min	90	97% v/v	Meeting the specification
6	Final boiling point (FBP) C Max	215	215C	Meeting the specification
7	Residue, % by vol. Max	2.00%	1.00%	Meeting the specification
8	Ethanol Content % by Vol.	4.5-5.0	4.5% v/v	Meeting the specification
9	Octane number, Min.	8.00%	90.5	Meeting the specification
10	Lead content (as Pb.) g/I, max	0.013%	Not done	Not done
11	Total sulphus % by mass, Max	0.05%	0.02	Meeting the spefication
12	Existent Gum, g/m3, Max	40	12	Meeting the specification

OPINION: It is observed from the result sheet that the Dealer retention Sample of Motor Gassoline is meeting the requirement of MS (BSII) specification.

Sd/-
T.C. Sharma (Chemist Incharge)
(Formerly Dy. Chief Chemist, NFL, HFC)”

“Report dated 27.09.2006

BHARAT PETROLEUM CORPN. LTD.
(A Govt. of India Undertaking)
QUALITY CONTROL LABORATORY
JALANDHAR (PUNJAB)

TEST REPORT
MOTOR GASOLINE (BS-II)-MS 88

Issued to :	TM (RETAIL), JALANDHAR	Date : 27.09.06
Test Report No.	JAL/MDG(F)/06-191	Date of Sampling (by client): 23.09.06
Source of Sample:	TANK NO: 1: NOZZLE NO.1	Sample Received on : 26.09.06
	M/s C.B. FILLING STN.	Sample Analysed on : 26.09.06
	DAAD, LUDHIANA	
Type of Sample:	MDG	
Territory:	JALANDHAR	
Letter Ref. & Dt.	NIL/23.09.06	

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Sr. No.	Chracteristics	TEST METHOD [P:] OF IS: 1448	Requirements as per I-2796:2000 (latest Version)	Test Results		
				SL Name: SANGRUR TOP/Tank No.:5 & Date of Sampling: 18.09.06	TL No.: PB10BM 4261 & Date of Sampling: 18.09.06	RO
1	Appearance	VISUAL	#	Clear	Clear	Clear
2	Colour, visual	VISUAL	Orange	Orange	Orange	Orange
3	Density, 15 C, Kg/m3	P: 16	710-770			
	a. Observed at Laboratory			752.2	753.1	729.9
	b. Observed by inspecting Officer					730.8
	c. Recorded at RO (Morning Density)					
	d. Recorded at RO (before Last Receipt)					751.2
	e. Recorded at RO (before Last Receipt)					748.1
	f. TL receipt density (observed at RO)				753.7	
	g. Invoice					753.2
	h. Recorded at Supply Location			752.3		
4	Distillation:	P:18				
	a. IBP C			43	46	41
	b. Recovery upto 70 C (E70 % by vol		40 to 45	26	24	29
	c. Recovery upto 100 C (E100) % by vol.		40 to 70	47	46	48
	d. Recovery upto 180 C (E180) % by vol Min		90	95	95	96
	e. Final Boiling Point (FBP), C. Max		215	200	203	183
	f. Residue, % by vol. Max		2	1	1	1
5	Ethanol Content % by vol.	IS 2796:2000	4.5-5.0	5	5	3
6	Research Octane Number (RON), Min	P:27	88	91	91	78
7	Lead Content (as Pb) g/l., Max	ASTM D- 5059	0.013			
8	Total Sulphur, % by mass, Max	ISO 20847	0.05	0.035	0.034	0.017
9	Existent gum, g/m3, Max**	P:29	40	42	14	11
10	Furfural Test	#	#	Absent	Absent	Absent

REMARKS:

- Corresponding Supply Location (SL) Sample meets the requirement of MS (BS II) w.r.t. the tests carried out.
- Corresponding Tank lorry Retained (TL) Sample also meets the requirement of MS (BS II) w.r.t. the tests carried out. The test results of TL sample are in line with the test results of SL sample.
- Product, as represented by Retail Outlet (RO) Sample falls the requirement of MS (BS II) w.r.t. RON (78), ethanol content (2%) and there is a large variation (21.3 kg/m3) is noticed between the density of product sample observed at the laboratory and the density of the product recorded after receipt at the RO. Also the FBP (183 C), sulphur (0.017%) and other test results are not in line

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with TL sample.

Prima-facie, it appears that the product represented by RO sample is contaminated with some lower ends and as it is falling badly, it can not be used as such for fueling the motor vehicles.

..... End of Test Report.....

S. MITRA
Authorized Signatory”

It is submitted that the test results are of the Retail Outlet Sample, Territory Retention Sample and the Dealer Retention Sample. It is further submitted that the samples were drawn from the Supply Location from where the gasoline is loaded in the tank lorry, then the sample is drawn from the tank lorry and thereafter from the retail outlet after decantation of the tank lorry. Variation of +/- 3.0% is permissible but there is a huge variation in the density between the Supply Location Sample (752.2) and Tank Lorry Sample (753.1) with the Retail Outlet Sample (729.9).

It is the case of the respondent-Corporation that once the testing has been done in the laboratory in the presence of the dealer, he does not have any right to agitate the matter thereafter and to rely upon the test report dated 31.05.2007 (Annexure P-10) which he has procured in the absence of the Corporation.

Respondent No.3, while terminating the agreement vide the impugned order (Annexure P-11) has given detailed reasons and the following observations have been made:-

5.2 However, after considering observations referred to in para 5.1 above, both dealer and territory retention samples were tested at said scheduled laboratory on 21.2.2007 in your presence. After analyzing the test result of samples, the following observations were made by the laboratory in test report dated 21.2.2007:

1. Corresponding territory retention sample is failing to meet the requirement of MS (BSII) w.r.t. Octane number (77.8) and Ethanol Content (2%). The test values are comparable with the original RG sample tested by the lab on 26.9.2006.
2. The dealer retention sample provided for joint testing is marginally meeting the requirements of MS (BSII) w.r.t. FBP (215% C) and its values are neither tallying with original RO sample/TMs retention samples (w.r.t. FBP Octane number Sulphur content, ethanol content, recovery up to 100C, density etc.) nor with supply location (S/L) or T/L retention sample (FBP and Sulphur content). The variation in the values is beyond the reproducibility limits as compared to supply location or tank lorry retention samples.

Therefore, treat the dealer retention sample as not representative and deemed to have failed. Copy of test report dated 21.2.2007 duly witnessed by you and remarks given by the laboratory has already been provided to you.

6. It can be observed from above sample test that the results of dealer retention sample are not comparable with territory retention sample. Further, the test results of product supplied by the company is not comparable with the test results at RO sample tested on 26.9.2006 and dealer's & territory retention sample tested on 21.2.2007. Thus, the retail outlet samples are failing in its respective specifications as stated hereinabove.

7. As you are aware that show cause notices dated 11.10.2006 and 23.4.2007 were issued to you seeking your explanation/submissions for irregularities and breaches committed by you as stated therein. You had replied to such notices vide your both letters dated nil received on 4.11.2006 and 1.5.2007 respectively. We have considered both the said replies submitted by you and found that the contents of such replies are incorrect, wrong as stated and unsatisfactory for the following reasons:

- ii) The inspection was carried out and concluded at the RO on 23.9.2006 in your presence and you had also signed the inspection report dated 23.9.2006 in token of your witness and acceptance of the contents stated in such inspection

report, hence the allegations made in your reply is after thought and concocted story.

- (iii) As per inspection report dated 23.9.2006, the density at 15°C, Kg/m³ of supply location (SL)--752.2, tank Lorry (TL)-753.1, Retail outlet (RO) 729.9 which was duly witnessed and acknowledged by you. By reading said density, it is clear that the RO density is not in line with both SL and TL. Similarly, the test results dated 27.9.2006 of RO sample also not in line with TL sample whereas both SL and TL samples meet the requirement of MS (BSII) with reference to the test carried out. Thus, the RO sample fails in its specifications and is contaminated.
- iv) Considering the variation in density of ULP product and positive stock variation in ULP and speed products, the sales and supply of petroleum products were stopped w.e.f 23.9.2006 and the same was recorded in said inspection report dated 23.9.2006 and the same was recorded in said inspection report dated 23.9.2006. Hence, the explanation given in your reply stating that officials informed you about closure of retail outlet only while leaving the RO and no other details were provided to you are false and incorrect.
- v) As you are aware that the vacant possession of land situated at village Daad, Ludhiana was taken over at mutually agreed terms and conditions between company and landlords, and installed petrol pump by constructing sales room, drive way and provided facilities such as underground storage tanks, dispensing pumps, canopy etc. thereafter by spending company's huge amount. After completion of construction of petrol pump, dealership was awarded to you vide said DPSL agreement which was duly executed between the company and yourself for selling of petroleum products in terms of said agreement. Accordingly you had commenced selling of your petroleum products from the RO site w.e.f. 30.8.2004 and at no point of time you had denied and disputed the aforesaid agreement. Further, a show cause notice dated 15.1.2006 was issued to you referring said DPSL agreement and

seeking your explanation for irregularities found during the inspection carried out on 18.10.2005 for the reasons stated therein. You had also replied vide letter dated 24.1.2006 to said show cause notice without denying and demanding the agreement executed between the company and yourself thereby accepted the existence of said DPSL agreement and its all terms and conditions.

- vi) On your request for re-testing of retention sample, examined both territory and RO (dealer) retention sample and observed discrepancies at scheduled laboratory situated at Jalandhar on 21.2.2007 which were recorded in your presence and such statement was duly signed by you in token of your witness. The said retention samples were tested at the said laboratory on 21.2.2007 in your presence and after analyzing the test results of such samples, it was found that territory retention sample failed to meet the requirement of MS (BSII) with reference to Octane number (77.8) and ethanol content (2%). The RO (dealer) retention sample test values are neither tallying with original RO sample/territory's retention sample (w.r.f. FBP, Octane number, sulphur content, ethanol content, recovery upto 100C, density etc.) nor with supply location (SL) or T/L retention sample (FBP and sulphur content). The variation in the values is beyond the reproducibility limit as compared to SL or TL or territory retention samples, hence the RO (dealer) retention sample is not representative and failing in its respective specification. The copy of test reports dated 21.2.2007 was already provided to you as stated in said show cause notice dated 23.4.2007.

It is evident from above that you have failed in maintaining the quality of product in line with the supplied product by the company and you have indulged in selling adulterated product to our esteemed customers. Hence, your reply stating that the product is maintained at the retail outlet in same condition as received from the depot, is false, incorrect and wrong.

8. In view of the facts and circumstances stated hereinabove,

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you have failed in the performance of your obligation under the aforesaid DPSL agreement entered between ourselves, thereby causing inter alia a breach of trust by selling adulterated product to our esteemed customers.

As such, in exercise of rights vested in the BPCL under the DPSL agreement governing inter se relations between the dealership and the BPCL and you have failed to furnish any convincing reply to the show cause notice for the reasons stated hereinabove, we find no option but to terminate the aforesaid dealership agreement with immediate effect and we are not willing to carry on our business with you any more.”

Thus, after considering all the facts and circumstances discussed here-in-above, there is hardly any scope for this Court to interfere in the impugned order and hence, the present petition is hereby dismissed being denuded of any merit.

May 04, 2016
vinod*

(Rakesh Kumar Jain)
Judge