

CWP No.104 of 2013

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

**CWP No.104 of 2013
Date of decision:20.07.2016**

Baljinder Singh ...Petitioner

Versus

Union of India and others ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Atul Lakhanpal, Senior Advocate, with
Mr. R.S.Chahal, Advocate, for the petitioner.

Mr. Ashish Kapoor, Advocate,
for respondents No.2 and 3.

Rakesh Kumar Jain, J.

This petition is filed to challenge the order dated 13.02.2012 (Annexure P-8), order dated 21.09.2012 (Annexure P-10) and to declare the Marketing Discipline Guidelines, 2005 (Annexure P-11) as illegal and unconstitutional.

In short, the petitioner was appointed as 'B' Site Retail Outlet Dealer at NH 73, Ambala Jagadhri Road, village Chappar (Yamuna Nagar) for the sale and distribution of MS/HSD and other products as per the terms and conditions contained in the dealership agreement dated 31.03.2009, which was executed between M/s Baljinder Singh and Indian Oil Corporation Ltd. (hereinafter referred to as the "Corporation") to operate the dealership under the name and style of M/s Shri Hemkunth Service Station.

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An inspection of the retail outlet was carried out by the mobile lab on 21.09.2011 and it was found as per the inspection report, the sample of MS BS III failed in Final Boiling Point (FBP) i.e. 241 degree Celsius against specification of maximum 210 degree Celsius. The Lab Officer drawn the sample from RO Ms Nozzle as per procedure and also collected Tank Lorry Retention samples from retail outlet on 21.09.2011 and submitted it to the Panipat Lab for further investigations. The petitioner was given a letter dated 23.09.2011, affording an opportunity to explain and show cause as to why action be not taken against him for the adulteration. The petitioner requested for re-testing vide his letter dated 05.10.2011. The sample drawn by the Lab Officer, TT retention sample as well as the TLF samples were re-tested on 14.10.2011 in the presence of the petitioner as well as in the presence of the transporter and representative of the Corporation. As per the report dated 14.10.2011, TT samples and TLF samples were meeting the specification in all parameters including FBP, however, RO sample and mobile lab sample failed in the FBP. The petitioner then wrote a letter dated 21.10.2011, in which he has admitted that the product being sold from the retail outlet was adulterated. However, it was tried to be explained that it happened due to the fact that on 04.09.2011, supply of mix load was received and the pump attendants decanted some quantities of HSD into MS tanks. This explanation given by the petitioner was not found satisfactory and untenable as it was proved that the retail outlet continued sale of adulterated MS to the customers till the time of inspection done on 21.09.2011 and the incident of mixing of product as claimed by the

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petitioner was not reported to the Corporation.

Thus, in view of the agreement between the parties and the admission of adulteration having been committed by the petitioner, the impugned order (Annexure P-8) was passed asking the petitioner to hand over all the equipments belonging to the Corporation immediately and settle the accounts.

Aggrieved against this order, the petitioner preferred the appeal which was dismissed by the Appellate Authority by order Annexure P-10. The petitioner has, thus, challenged the aforesaid orders and also the Marketing Discipline Guidelines, 2005 in this writ petition in which, at the time of issuance of notice, the following order was passed by this Court:-

“One of the issue raised in this writ petition is challenge to the vires of the Marketing Discipline Guidelines, 2005 (Annexure P-11) which is subject matter of consideration in CWP No.9208 of 2012.

Notice of motion for 21.02.2013.

Notice re: stay as well.

To be heard alongwith CWP No.9208 of 2012.

Mr. D.S.Bishnoi, Central Government Standing Counsel, accepts notice on behalf of the Union of India.

Let two copies of the writ petition be supplied to learned counsel for UOI during the course of day failing which the writ petition shall stand dismissed for non-prosecution.

Counter reply, if any, be filed before the date fixed with an advance copy to the opposite counsel.

Meanwhile, *status-quo* as existed today, shall be maintained.”

On 14.08.2013, the following order was passed by the Division Bench:-

“An adjournment slip has been circulated by learned

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counsel for the respondents with no objection of learned counsel for the petitioner.

We also find that no provision of any Act or statutory rules has been assailed but only the Marketing Discipline Guidelines, 2005 of the oil companies has been assailed. This matter is to be listed before the learned single Judge as per roster.

List before the appropriate Bench on 10.09.2013.”

On 10.09.2014, the following order was passed by the Single Bench:-

“To be heard alongwith CWP No.9208 of 2013, on 08.11.2013.”

Since this writ petition was repeatedly ordered to be heard by the Division Bench and the Single Bench of this Court alongwith CWP No.9208 of 2013, the status of that writ petition was sought and it has been found that the said writ petition had already been rendered infructuous on 10.02.2014, in which the following order was passed:-

“The petitioner is seeking directions for declaring the Marketing Discipline Guidelines, 2005 (Annexure P-1) as unconstitutional, illegal and null and void.

Learned counsel for respondent No.1 has informed the Court that the impugned guidelines have been substituted by Marketing Discipline Guidelines, 2013 (Annexure R4/1), which are applicable with effect from 08.01.2013.

In view of the said fact, this petition has become infructuous.

Dismissed as having been rendered infructuous. However, the petitioner shall be at liberty to challenge the Marketing Discipline Guidelines, 2013 (Annexure R-4/1), if need be.”

Insofar as the challenge to the Marketing Discipline Guidelines, 2005 (Annexure P-11) is concerned, the same has become infructuous in terms of the order dated 10.02.2014 passed in CWP No.9208 of 2013 and insofar as the decision of the present petition on merits is concerned, since

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there is an admission on the part of the petitioner of adulteration and the finding has been recorded that the adulterated petrol was sold by retail outlet without giving any information to the Corporation of the alleged inadvertent omission, the order passed by the authorities concerned for termination of the retail outlet is in accordance with law as it has been mentioned by the counsel for the Corporation that the penal action in case of adulteration of MS/HSD is only termination.

Thus, keeping in view the aforesaid facts and circumstances, there is hardly any reason for this Court to interfere in the present petition.

Dismissed.

July 20, 2016
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(Rakesh Kumar Jain)
Judge