IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CWP No.2394 of 2014
Date of Decision:11.03.2016

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M/s Randhawa Filling Station

. . . .Petitioner

Versus

Chairman & M.D., BPCL and others

. . . . Respondents

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

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Present: Mr.Akshay Bhan, Sr. Advocate, with
Mr.Alok Mittal, Advocate,
for the petitioner.

Mr.Raman Sharma, Advocate,
for the respondents.

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RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has challenged the order dated 24.7.2012, passed by respondent No.3, terminating its dealership and the order dated 14.8.2013, passed by respondent No.2, dismissing its appeal.

In short, the petitioner was allotted dealership of the Bharat Petroleum Corporation Limited (for short 'the Corporation') vide licence dated 17.9.2005. After the allotment of dealership, the dispensing units [for short 'DU'] and tanks were installed in the land of the petitioner by the Corporation. The petitioner started selling the petrol and diesel under the name and style of M/s Randhawa Filing Station. There was neither any allegation or complaint against the petitioner regarding any pilferage since 2005 nor any sample had ever failed and the weight and measure have also been found to be upto the mark. On 13.10.2011, respondent No.4 visited the site of the petitioner and came back again on 15.10.2011 alongwith L&T engineer, who had installed the DU make L&T (Z line) Sr. No. FY L&T

0867 model No.GS 71324. The DU was sealed on 13.10.2011 and 15.10.2011. It is alleged that the engineers of Mahalaxmi Engineers, the electronic repair vendor, found something installed in the unit. As a result thereof, the respondents served a *show cause notice* to the petitioner on 12.11.2011 for committing some irregularities to which the petitioner filed a reply. Respondent No.3, after considering the reply of the petitioner, passed the order of termination of the dealership of the petitioner on the ground of the alleged irregularities. The petitioner challenged that order of termination by way of statutory appeal before the Appellate Authority but since the appeal was not being heard and disposed of, the petitioner approached this Court by way of CWP No.18223 of 2012, which was disposed of on 14.9.2012, directing the Appellate Authority to decide the same within a period of one month. Thereafter, the appeal filed by the petitioner was decided by the Appellate Authority (respondent No.2) on 14.8.2013 against it. Hence, the present petition has been filed, in which, after notice, the respondents have filed their reply and the petitioner has filed rejoinder to the reply filed by the respondents.

Learned counsel for the petitioner has submitted that the entire action has been taken against it by the respondents on presumptions as nothing has been established against it in regard to the less dispensation of the petrol/diesel by way of some device, which is allegedly being operated through remote. In this regard, he has submitted that in the inspection dated 13.10.2011, the respondents have clearly observed that the variation is within permissible limits. However, on the same day, the unit was sealed by the sale officer of the Corporation and on 15.10.2011, the seal was broken by them for opening the DU in order to find out as to whether any attachment has been made to it which is being operated through remote. In this regard, it is submitted by learned counsel for the petitioner that in the report dated 15.10.2011, it is mentioned that *"on checking delivery, the machine was found to be delivering within permissible limits"*. It was also mentioned in that report that *"weights and measure seals and 5 point seals were found intact"*. There was another inspection on 17.10.2011 in which it is reported that the variation is not within permissible limits. However, it is submitted by learned counsel for the respondents that on 17.10.2011 the variation was found in the diesel lying in the underground tank.

Learned counsel for the petitioner has further submitted that the Appellate Authority has not applied its mind judiciously to the issue raised before it and has erred in dismissing the appeal. In this regard, he has submitted that the finding recorded by the Appellate Authority is totally presumptive as it has observed that *"mere presence of additional fitting is itself sufficient to prove irregularities. You were dealer from past seven years as claimed by you was expected to know about the working parts of the equipments and machinery installed at the RO. You being the custodian of equipments and machinery of the company were liable for any interference with the same including additional attachment. Additional fittings were shown to your available staff"*. It is also observed that *"if seals were intact as claimed by you then you had engineered to install extra fitting as additional fitting cannot comes of its own"*. It is further observed that *"if seal is not tempered or broken as claimed by you then you had engineered additional fitting in a manner that one cannot find tempering of seal by ordinary prudence"*. It is also observed that *"You being the custodian of Company's equipments were liable to see* *the repairs and ensure that installations and equipments after repair were alright in all respect. Mere presence of additional fitting itself proves that you had interfered with the working parts of dispensing unit".* It is also observed that *"it is not a suspected manipulation but proven manipulation and company had rightly terminated the dealership".*

Learned counsel for the petitioner, while referring to the aforesaid finding, has submitted that on the one hand, the Appellate Authority has observed that the seals of the DU were intact as has also been observed in the report dated 15.10.2011 but on the other hand, the Appellate Authority has observed that it is for the petitioner to prove that how this additional fitting was there in the DU. It is submitted that the petitioner cannot prove anything in negative against it because it is the case of the respondents that the additional fitting is there in DU despite the fact that the seals were intact and it is for the respondents to prove that despite the seals were intact, additional fitting can still be installed in it. It is also submitted that when the petitioner had asked for test of the additional fitting component, it has been straightway rejected by the Appellate Authority on the ground that it was more important to find out as to whether the additional fitting can reduce the dispensation of the petrol/diesel so as to allow the petitioner to play fraud with the same. In the absence of any such concrete finding, the termination of its dealership, with an allegation, is against the principle of natural justice.

Learned counsel for the respondents, however, has submitted that the dealership agreement is in the form of a licence. It is specifically provided in the agreement that if the licensee is found guilty of a breach of any of the covenants and stipulations on their part contained in the licence, then the dealership licence can be terminated. It is submitted that it is provided in the agreement that *"neither the licensees nor the licensees's servants or agents shall interfere in any way with the working of the outfits or other equipments provided by the company".* He has also relied upon a decision of the Supreme Court in the case of ***"Indian Oil Corporation Ltd.*** *Vs.* ***Amritsar Gas Service and others"*** *1991 (1) SCC 533* .

Learned counsel for the respondents has also submitted that there is no explanation given by the petitioner about the inspection carried out by the Executive Sales on 17.10.2011, who had found variations in the stock of +323 litres in HSD, which was beyond the permissible limits of 15 litres. In this regard, learned counsel for the petitioner has submitted that the stock variation was well within the permissible limits of -323 litres when the tank was full as they had not taken any supply between 13.10.2011 to 17.10.2011. It is also mentioned that the stock variation of +323 litres is purely due to tank behaviour at a very low stock i.e. 365 litres, which is negligible in a tank of 20kl.

Learned counsel for the petitioner has also submitted that there has never been any complaint against the petitioner in the past, which is also an admitted fact by the respondents.

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

The question involved in this case is *"as to whether there is sufficient material brought on record by the respondents for the* *purpose of terminating the dealership of the petitioner, on the basis of alleged irregularities"?*

It is apt to mention that in the inspection dated 13.10.2011, the respondents had found that the variation was within the permissible limits. Similarly, in the inspection dated 15.10.2011, the respondents had found that the machine was delivering the petrol/diesel in permissible limit. It was only on 17.10.2011, the respondents had reported that there was variation of diesel/petrol in the underground tank. The Court is now concerned with the DU as to whether it was manipulated by the petitioner as suggested by the respondents? The observation made by respondent No.3, when he terminated the dealership of the petitioner and also by respondent No.2, when the appeal was dismissed, suggests only presumptions having been drawn against the petitioner on the ground that it was for the petitioner to prove that how the addition was there in the DU to which the petitioner has categorically stated that since all the plastic seals have been found intact, it was for the respondents to prove that *de hors* the sealing of the machine, which has been installed none-the-less by the respondents, the alleged additional fitting can be made by the petitioner. Until and unless there is a categorical finding against the petitioner that too based upon the report of the engineers, the petitioner cannot be held liable for the alleged additional fitting. Moreover, the respondents have also to prove that the said alleged fitting results into manipulating, as alleged, as the request of the petitioner has been turned down by the Appellate Authority for the test of the alleged fitting to find out as to whether it can manipulate the DU even with the help of the remote. All these facts and circumstances shows that the respondents have not applied their judicious mind to the case set up by the petitioner, while terminating the dealership and also while dismissing the appeal.

Consequently, while allowing the present writ petition and setting aside the impugned orders, passed against the petitioner, the case is remanded back to the Appellate Authority to reconsider the entire case in the light of the observations made hereinabove and decide the same within a period of three months from the date of appearance of the parties before it.

(RAKESH KUMAR JAIN)
JUDGE

11.03.2016
Vivek