

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 99 of 2017**

M/s. Agrawal General Trading Co. a registered partnership firm, suing through its Partner Shri Vijay Agrawal S/o Late Shri Ram Jeevan Lal Agrawal, aged about 61 R/o Jai Stambh Chowk, Dharamjaigarh, District Raigarh, (Chhattisgarh)

---- Appellant**Versus**

1. General Manager, Indian Oil Corporation Limited, 16 Jail Road, Arera Hills, Bhopal, Madhya Pradesh.
2. Indian Oil Corp. Ltd. Divisional Office at VIP Road, Behind, Batra Hotel, Ravigram, Telibandha, Raipur, Chhattisgarh.
3. Deputy Manager (Retail) Indian Oil Corporation Limited and District Coordinator, Bilaspur, Chhattisgarh.
4. M/s. Raigarh Gas Service, Mandir Chowk, Raigarh, District Raigarh, Chhattisgarh.

---- Respondents

For Appellant	: Shri Prateek Sharma, Advocate
For Respondent No. 1 to 3	: Shri Parag Kotecha, Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice
Hon'ble Shri Pritinker Diwaker, J.

Judgment on Board**Per Thottathil B. Radhakrishnan, Chief Justice****23/03/2017**

1. The application for condonation of delay supported by an affidavit which discloses the cause, is sufficient enough to condone the delay of 18 days.
The application for condonation of delay is accordingly allowed.

2. We have heard learned counsel for the Appellant quite in extensio.
3. The writ petitioner is the Appellant. It is a dealer under the 2nd Respondent-Petroleum Company. The dealership agreement was terminated. That was the subject matter of the writ petition. The Company challenged the maintainability of the writ petition. The learned Single Judge found against the plea of the Company in that regard.
4. On merits, the learned Single Judge held that the plea of the Appellant that the samples taken from the outlet of the Appellant were not appropriately sealed, is not sustainable. It is further held that even on the basis of the materials, it has to be held that there is clear document available on record to the effect that the samples were sealed properly, duly numbered and foster samples received by the Appellant.
5. The further plea of the Appellant before the learned Single Judge and reiterated before us in this appeal is that, the Appellant was entitled to a notice before the material was put to testing in the Nishatpura Laboratory of Indian Oil Company Ltd. (hereinafter referred to as 'the IOCL'). We are unable to accept this plea for the simple reason that when the samples were taken with due notice, and in the presence of the dealer, under necessary documents and by following due procedure, it is neither necessary nor possible to give a further notice to a person from whom sample is taken regarding the retesting. No requirement to carry out the testing only with notice to, or, in the presence of, the dealer can be insisted on. Further, the credibility of the institution which conducted the testing is not under challenge. For this reason, the challenge against the sampling and testing of the articles taken from the outlet of the Appellant fails.

6. The question thereafter was as to the correctness or otherwise of the test report. The learned Single Judge noticed that earlier a suit was filed which led to an appeal on the injunction application which was also ultimately withdrawn by the Appellant.
7. The dealership agreement was granted in 1982. The Appellant continued as a dealer till 2002. The dealership agreement was not filed by the Appellant before the learned Single Judge on the premise that it was not delivered to it. The Company also did not produce the dealership agreement on the premise that the dealership agreement is not traceable. We think that the Company which is in the public sector should stand well advised to ensure that such documents are preserved appropriately since appropriate maintenance of its contract documents is something which adds to the credibility of such institution. Be that as it may, the Appellant cannot plead feel ignorance of the terms of the agreement or the grant of dealership because from 1982 it has been operating the dealership. Hence it makes no difference whether the dealership agreement was actually produced before the learned Single Judge.
8. The learned Single Judge, on facts, found that the materials on record clearly show that the sample of Motor Spirit was examined in the Nishatpura Laboratory of IOCL and that the sample failed in Research Octane Number test and a show cause notice was thereupon issued. The learned Single Judge was also justified in holding that even applying the principles of *res judicata*, it was not open to the writ petitioner to challenge the inspection report dated 08.01.2002.
9. For the aforesaid reason, we do not find any ground to interfere with the findings and conclusions arrived at by the learned Single Judge insofar as against the Appellant is concerned.

10. However, we are of the view that since both the sides did not have in their possession the dealership agreement, the imposition of costs as done by the learned Single Judge is apparently excessive. Ends of justice would be satisfied if it is trimmed down to Rs. 10,000/-.
11. In the result, while we affirm the decision of the learned Single Judge on merits, on all issues of facts and law, the order of cost imposed by the learned Single Judge is reduced to Rs.10,000/-, to be paid to the High Court Legal Services Committee by the Appellant within a period of three weeks from today.
12. The writ appeal is ordered accordingly.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE

Sd/-

(Pritinker Diwaker)
JUDGE