

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY. RAMAMOHANA RAO
and
THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.A.Nos.188 & 143 of 2017
and C.M.P.Nos.2922 & 2433 of 2017

W.A.No.188 of 2017
T.Rajasekar

... Appellant

Vs.

1.S.Vijayakumar

Proprietor of V.M.Shami Agency,
No.6, Pappu Chetty Street,
Tennur, Trichy.

2.Bharat Petroleum Corporation Ltd.,

rep by its Territory Manager (Retail),
No.35, Vaidhyanathan Street,
Tondiarpet,
Chennai - 600 081.

3.Senior Manager I/C (Vigilance) South,

Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Garden,
Anna Nagar, Chennai - 600 040.

... Respondents

W.A.No.143 of 2017

1.Bharat Petroleum Corporation Ltd.,

rep by its Territory Manager (Retail),
No.35, Vaidhyanathan Street,
Tondiarpet, Chennai - 600 081.

2.Senior Manager I/C (Vigilance) South,

Bharat Petroleu, Corporation Ltd.,
No.1, Ranganathan Garden,
Anna Nagar, Chennai - 600 040.

... Appellants

Vs.

1.S.Vijayakumar

Proprietor of V.M.Shami Agency,
No.6, Pappu Chetty Street,
Tennur, Trichy.

Writ Appeals filed under Clause 15 of the Letters Patent against the order dated 11.01.2017 made in W.P.No.451 of 2017. W.A.No.188 of 2017. Petition filed under Article 226 of the constitution of India for the issuance of a writ of certoprarified Mandamus to call for the observation of the inspection carried out at V.M.Shami Agency Gummidipoondi Thiruvallur District on 27.12.2016 of the 2nd respondent and quash the same in so far as it relates to the sealing of the nozzles and consequently permit the petitioner to run the retail outlet business.

For Appellant : Mr.S.Ramesh
For Respondents : Mr.M.Venkatachalapathy,
Senior Counsel
for Mr.M.Sriram (R1)
Mr.M.Vijayan,
for M/s.King and Partridge
(R2 & R3)

W.A.No.143 of 2017

For Appellants : Mr.M.Vijayan,
for M/s.King and Partridge
For Respondents: Mr.M.Venkatachalapathy,
Senior Counsel
for Mr.M.Sriram (R1)
Mr.S.Ramesh, (R2)

C O M M O N J U D G M E N T

(Judgment of the Court was made by NOOTY.RAMAMOHANA RAO,J.)

Heard Mr.S.Ramesh, learned counsel for the appellant in W.A.No.188 of 2017, who is 2nd respondent in W.A.No.143 of 2017, Mr.M.Vijayan, learned counsel for the appellants in W.A.No.143 of 2017, who are respondents 2 & 3 in W.A.No.188 of 2017, Mr.M.Venkatachalapathy, learned Senior Counsel for the 1st respondent in both the Writ Appeals.

2.The controversies lay in a narrow campus. The writ petitioner was a licensee of Bharat Petroleum Corporation to vend its products at the licensed premises. On 27.12.2016, a team of officers of Bharat Petroleum Corporation have undertaken a check on the licensed premise and they have noticed variations in the density of the products supplied by the Corporation, laying in the underground Tanks in the premises. Because of the variations in the density of the

products, the dispensing nozzles, through which the retail sales will be undertaken, have been sealed, so as to prevent sale of such products. It is against the inspection report, copy of which is made available to the writ petitioner on the very same day by the inspecting officials, the writ petition came to be instituted.

3.The learned Single Judge has disposed of the writ petition, leaving it open to the writ petitioner to properly respond to the show cause notice of the Corporation and after affording an opportunity of hearing, if desired, authorities shall pass appropriate orders in the matter at the earliest. However, the learned Single Judge added that the sale of the products from the two other underground tanks may be allowed. It is this later part of the order of the learned Single Judge that gave rise to these two Writ Appeals.

4.When once a licensee is suspected to have indulged in adulteration of the products supplied by a Public Sector Petroleum Corporation, the Oil Company concerned cannot permit the sale to be carried out by such a licensee of its products. This apart, the notes of inspection clearly brought out variations of density of the products laying in the remaining three tanks also. When once variations of density are noticed by the Inspecting Team, it is for the Team to work out as to whether the variations noticed by them is firstly caused by factors other than adulteration and secondly, such variations noticed are within the tolerance limits. Unless and until, such an exercise is carried out, the question of allowing the sale of such products should not arise.

5.There is also an element of larger public interest involved. The products are licensed to be sold by the Oil Company concerned. The Oil Company manufactures its products to a particular specified standard. It expects its licensee to pass on the same standard products to customers and those consumers are mostly motor vehicle owners or those who use the products for other combustion process such as running of oil engines or power generating equipment or maintenance equipments, etc., they expect the product which they use and consume to be of the same standard as the Oil Company manufacturer and certified it to be so. Therefore, when once variation is noticed in the density of the product, such product, till it is certified that the variation was the result of factors other than contamination or adulteration, such products cannot be allowed to be used by consumers at large. When any substandard product is added to some machines for consumption, it would leave more pollutants into the environment than are reasonably expected to emanate from stabilised and standardised products. For these reasons, we are of the opinion that the learned Single Judge ought not have allowed and permitted the sale to take place from the remaining underground tanks.

6.Mercifully, for us, in the mean time, the license of the writ petitioner has been terminated in connection with some other issue. The cause for which such license is terminated is not the scope or subject matter of the present inquiry by us. Hence, we are not required to pronounce any opinion thereon. We have noticed the said fact only for the reason that the writ petitioner's license itself is not subsisting presently and consequently, there is no way the directions of the learned Single Judge can be carried out either.

7.For the aforesaid reasons, the Writ Appeals stand allowed. It is needless for us to observe that no part of this order will be viewed as an expression of our final opinion on the merits or for that matter, lack of it, in the claims of the writ petitioner, vis-a-vis, the Oil Company in any proceedings or in any manner. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

va
To

- 1.The Territory Manager (Retail),
Bharat Petroleum Corporation Ltd.,
No.35, Vaidhyathan Street,
Tondiarpet,
Chennai - 600 081.
- 2.The Senior Manager I/C (Vigilance) South,
Bharat Petroleum Corporation Ltd.,
No.1, Ranganathan Garden,
Anna Nagar, Chennai - 600 040.

+ 1 cc to MR.S.Ramesh, Advocate SR.10985
+ 2 ccs to M/s. King & Partridge, Advocate SR.10675, 10674
+ 2 ccs to Mr.M. Sriram, Advocate Sr.10706

W.A.Nos.188 & 143 of 2017
and C.M.P.Nos.2922 & 2433 of 2017

SSI(CO)
Eu 09.03.17