

**HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER**

WRIT APPEAL No.1399 OF 2004

JUDGMENT: *(Per Hon'ble Dr. Justice Shameem Akther)*

This Appeal is preferred against the order dated 10.12.2003 passed by the learned Single Judge allowing Writ Petition No.7004 of 2003.

2. The parties hereinafter are referred to as arrayed in the Writ Petition.

3. The Writ Petition was filed seeking to declare the proceedings No.CHE/376/2002(A), dated 21.03.2003, issued by respondent No.1-Forensic Science Laboratory, represented by its Director, Red Hills, Hyderabad, as illegal, arbitrary and violative of the provisions of the Motor Spirit and High Speed Diesel (Prevention of Malpractice in Supply and Distribution) Order, 1998 (for short, 'the Control Order').

4. The writ petitioner is a partnership concern, which runs a petroleum retail outlet of Bharat Petroleum Corporation at Chodavaram, Guntur District. On the intervening night of 23/24.08.2002, respondent No.2-the Deputy Superintendent of Police, Vigilance and Enforcement Department, Guntur District inspected the outlet and found that the petitioner was indulging in adulteration of diesel in the outlet, initiated proceedings and seized the outlet on 24.08.2002. Samples drawn by respondent No.2 were analyzed by respondent No.1-Forensic Science Laboratory, Hyderabad, through Gas Chromatography Technique and the report dated 2.09.2002 discloses that the product was adulterated. Licence issued to the petitioner under the Control Order was suspended by respondent No.4-Joint Collector, Guntur District on 07.10.2002. The petitioner preferred an appeal to the Commissioner of Civil Supplies and the same was allowed on the ground that the licensing authority did not comply with Clause 28(1) of the

Control Order. The petitioner filed W.P. No.21752 of 2002 challenging the proceedings initiated by respondent No.2 as regards drawl of fresh samples. The said writ petition was disposed of on 15.11.2002 directing that fresh samples be drawn. The respondent No.2 refused to draw fresh samples on the ground that the seals on the tank and the outlet were found to have been removed. Thereupon, the petitioner filed a Contempt Case No.1415 of 2002. In view of the dispute as to the very existence of seals, the learned single Judge called for a finding from the District Judge, Guntur. The matter was entrusted to the Principal Senior Civil Judge, Guntur, who in turn, submitted a report on 07.02.2003 to the effect that no seals were put on the tank and the outlet. C.C. No.1415 of 2002 was closed on 17.02.2003, directing drawl of fresh samples. Fresh samples of the product were drawn on 06.03.2003 under a panchanama and were sent for analysis to respondent No.1. The respondent No.1 submitted a report on 21.03.2003 stating that it has examined the samples by using Gas Chromatography technique and that the product was found to have been mixed with kerosene. Challenging the said report, the present writ petition was filed.

5. During the pendency of the writ petition, respondent No.4-Joint Collector, Guntur, passed an order dated 12.06.2003 cancelling the licence of the petitioner on the basis of the report submitted by respondent No.1. The petitioner filed an application seeking permission to amend the prayer in the writ petition to include the challenge to the order dated 12.06.2003 and the same was ordered by the learned single Judge on 30.07.2003.

6. The petitioner stated that respondent No.2 had conducted the alleged raid with a malafide intention and had fabricated false reports; the respondent No.2 initiated proceedings against M/s. Dhanumjaya Oil Enterprises, alleging that it diverted kerosene to the outlet of the petitioner for the purpose of mixing it with the diesels and that respondent No.4 through his order dated 20.12.2003, recorded a finding that the allegations against M/s. Dhanumjaya Oil

Enterprises were incorrect; the Ministry of Petroleum and Natural Gases had issued "The Motor Spirit and High Speed Diesel (Prevention of Malpractice in Supply and Distribution) Order 1998 (for short, 'the Motor Spirit Order') in exercise of its power under Section 3 of the Essential Commodities Act, 1955, and that a specific and detailed procedure is prescribed for the purpose of drawl and testing of the samples; such tests are indicated in Clause 4(2) of the Motor Spirit Order read with Table No.1 and it is only through those prescribed, a finding can be recorded as to whether the product of the outlet is adulterated or not upto standard; respondent No.1 did not conduct such a test and that the report is based on a test which is not prescribed under the Motor Spirit Order; and the report dated 21.09.2002 cannot constitute any basis and the consequential order passed by respondent No.4 is liable to be set aside.

7. Respondent No.1-The Forensic Science Laboratory filed a counter affidavit stating that the samples drawn from the tank and outlet of the petitioner were tested through Gas Chromatographic technique; such an exercise is sought to be justified on the ground that the technique is specifically applied for volatile compounds like petroleum products; the manual published by the Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, has prescribed the same as one of the methods to analyse the samples of petroleum products; the authenticity of such a test is also sought to be supported on the basis of certain research papers published in various magazines and approval of the same by the then Indian Standard Institute; and ultimately, the Gas Chromatographic test revealed that the samples drawn from the outlet in question were found to have been mixed up with kerosene.

8. Respondent No.4-Joint Collector also filed counter affidavit justifying the various steps taken against the petitioner.

9. The learned single Judge, after hearing both sides, allowed the writ petition setting aside the report of respondent No.1-Forensic Science Laboratory dated 21.03.2003 and the consequential order dated 12.06.2003 passed by respondent No.4-Joint Collector.

10. Heard both the learned counsel for the appellants (respondent Nos.3 and 4 in the writ petition) and the learned counsel for respondent No.1 herein (writ petitioner).

11. Learned counsel for the appellants, who are respondent Nos.3 and 4 in the writ petition, would submit that the samples drawn from the outlet of the writ petitioner, tested through Gas Chromatography Technique, such technique is permissible, applied for volatile components like, petroleum products; the manual published by the Bureau of Police Research and Development, Ministry of Home Affairs, Government of India, has prescribed the same as one of the methods to analyze the samples of petroleum products; the Gas Chromatographic test revealed the samples drawn from the outlet in question were found to have been mixed up with kerosene; and the respondent No.4-Joint Collector had justified in canceling the licence of the writ petitioner on the basis of the Gas Chromatography test report.

12. Learned counsel for respondent No.1-writ petitioner would submit that the learned single Judge analyzed the entire material available on record and rightly allowed the writ petition setting aside the report of respondent No.1 dated 21.03.2003 and the consequential order dated 12.06.2003 passed by respondent No.4; and finally, prayed to dismiss the writ appeal.

13. It is evident from the record that the writ petitioner is a partnership concern running petroleum outlet of Bharat Petroleum Corporation at Chodavaram, Guntur District and when respondent No.2-Deputy Superintendent of Police inspected the outlet of the writ petitioner, and alleged that the writ

petitioner was indulging in adulteration of diesel in his outlet and after following due procedure, licence of the writ petitioner was suspended by respondent No.4-Joint Collector, Guntur on 07.10.2002. Thereafter, the petitioner preferred an appeal to the Commissioner of Civil Supplies and the same was allowed on the ground that the licensing authority did not comply with Clause 28(1) of the Control Order. The petitioner also filed W.P. No.21752 of 2002 challenging the proceedings initiated by respondent No.2 as regards drawl of fresh samples and the said writ petition was disposed of on 15.11.2002 directing that fresh samples be drawn and when the respondent No.2 refused to draw fresh samples on the ground that the seals on the tank and the outlet were found to have removed, the petitioner filed a Contempt Case No.1415 of 2002. It is also evident from the record that in view of the dispute as to the very existence of seals, the learned single Judge called for a finding from the District Judge, Guntur, and the same was entrusted to the Principal Senior Civil Judge, Guntur, who, in turn, submitted a report on 07.02.2003 to the effect that no seals were put on the tank and the outlet. C.C. No.1415 of 2002 was closed on 17.02.2003, directing drawl of fresh samples. Thereafter, fresh samples of the product were drawn on 06.03.2003 under a panchanama and were sent for analysis to respondent No.1, who submitted a report on 21.03.2003 stating that it has examined the samples by using Gas Chromatography technique and that the product was found to have been mixed with kerosene. The contention putforth on behalf of the writ petitioner is that the Ministry of Petroleum and Natural Gases issued the Motor Spirit Order in exercise of powers under Section 3 of the Essential Commodities Act and that a specific and detailed procedure is prescribed for the purpose of drawl and testing of the samples and though testes are indicated in Clause 4(2) of the Motor Spirit Order read with Table No.1 and it is only through those prescribed tests that finding can be recorded as to whether the product of the outlet is adulterated or upto standard. As per the entire material on record, the

samples are not analysed through any of the prescribed test standard in the Motor Spirit Order. Admittedly, the said test conducted by respondent No.1 in this case is not finding place in the Motor Spirit Order. There is a specific procedure with regard to drawl of samples of petroleum products and analysis of the same as specifically provided under the Motor Spirit Order. The examination of the sample through Gas Chromatography Technique has not been specified in the Motor Spirit Order. The order of cancellation of licence is based on the outcome of the test conducted through examination of sample by Gas Chromatography Technique and this test is authenticated as per the submissions made on behalf of the respondents.

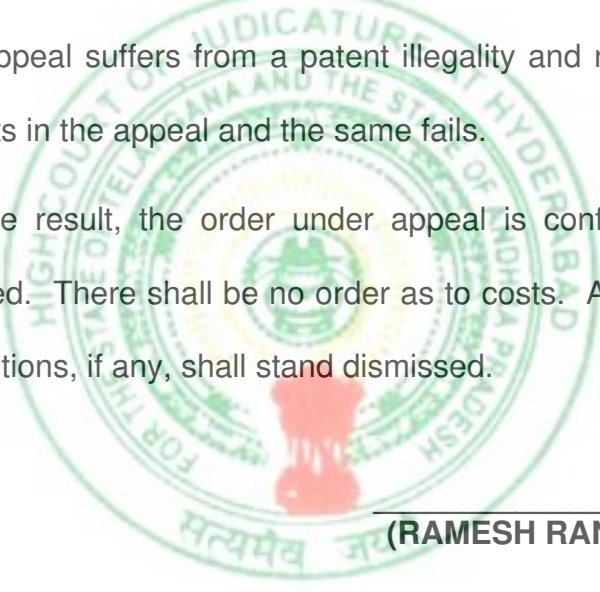
14. As seen from the record, the test prescribed under statutory provisions is not adopted to hold the sample adulterated and the sample drawn is a subject to a different test. It is also relevant to state that a settled principle of law is that where law requires a thing to be done in a particular manner, it shall be done in that manner only or not at all, howsoever, the meritorious or ingenuous alternative method may be. The learned Single Judge by relying on the decisions in **Gujarat Electricity Board v. Giradharlal**¹ and **Nazir Ahmed v. King Emperor**², held that “the report in question dated 21.03.2003 did not disclose the conduct of the test as per the prescribed procedure envisaged under the Motor Spirit Order”. The Motor Spirit Order is applicable to the facts and circumstances of the case on hand. So, the contentions putforth on behalf of the respondents that the writ petitioner indulged in adulteration of product of the petroleum products by mixing diesel is of no help to the respondents. The other contentions raised by the respondents that research papers as well as the manual of Bureau of Police Research and Development, Ministry of Home, Government of India, justifies the conduct of analysis adopting Gas

¹ AIR 1969 SC 267

² AIR 1963 PRIVY COUNCIL 253

Chromatography Technique is of no way helpful to the respondents. It is also relevant to state that howsoever, authenticated the said test may be, as long as it does not find place in the Motor Spirit Order, the report dated 21.03.2003 is not helpful. The learned single Judge, on examining the record, found that the report of respondent No.1 is unsustainable and the very basis for the order of cancellation ceases to exist and allowed the writ petition setting aside the report of respondent No.1 dated 21.03.2003 and the consequential order of respondent No.4 dated 12.06.2003. The said findings are based on material available on record and there is no error committed by the learned single Judge. In an intra-Court Appeal, under Clause 15 of the Letter Patent, interference is justified only if the order under appeal suffers from a patent illegality and no infirmity is found. There are no merits in the appeal and the same fails.

15. In the result, the order under appeal is confirmed and the Writ Appeal is dismissed. There shall be no order as to costs. As a sequel, pending miscellaneous petitions, if any, shall stand dismissed.



(RAMESH RANGANATHAN, ACJ)

(Dr. SHAMEEM AKTHER, J.)

Date: 10-03-2017

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