

HON'BLE SRI JUSTICE P. KESHA RAO

WRIT PETITION No.24482 of 2006

ORDER:

Heard counsel for the petitioner as well as the respondents.

In the present writ petition, the petitioner questioned the proceedings issued by the 2nd respondent in VR 628, dated 03.11.2006, confirming the proceedings of the 1st respondent in VR 628, dated 21.08.2006, terminating his dealership.

The facts of the case are that the petitioner is a dealer of Indian Oil Corporation from 31.05.2004. The dealership is under an agreement, dated 31.05.2004, between the petitioner and the Corporation. In terms of the dealership agreement, the petitioner has established a retail outlet for sale of petrol and diesel at Gollaprolu Village and Mandal, East Godavari District. On 22.06.2006, the Field Officer of the respondent company took samples of MS and HSD at the retail outlet for the purpose of verification of the quality. Thereafter, by letter, dated 04.07.2006, the 1st respondent issued a show cause notice stating that the MS sample taken from the petitioner's outlet on 22.06.2006 failed with respect to ROM and Final Boiling Point. The notice indicated that the petitioner has to show cause within 7 days as to why action should not be taken for the lapses as per the guidelines of the dealership agreement. Along with the said letter, the test

report was also enclosed, wherein it is indicated that the sample does not meet the specification in respect of final boiling point. In response to the said show cause notice, the petitioner gave a detailed explanation stating that on 17.06.2006 he received 4 KI MS and 8 KI HSD through T.T.No.613320521 and the said T.T. is having combined manifold. Instead of MS valve HSD valve was opened by TT and the staff of the petitioner at the outlet and after noticing the same, immediately closed the valve, by which time 500 to 600 liters of HSD was decanted into MS tank. This is due to mistake done by the TT and the staff at the outlet. However, the respondents have terminated the dealership vide proceedings VR 628, dated 21.08.2006. Aggrieved by the same, the petitioner filed an appeal before the appellate authority. However, after hearing, the appeal was rejected confirming the order of the Senior Divisional Retail Sales Manager, vide proceedings VR 628, dated 03.11.2006. Aggrieved by the same, the present writ petition is filed.

A perusal of the contents of the affidavit filed in support of the writ petition as well as the averments in the counter affidavit filed on behalf of the respondents would indicate that there are disputed questions of fact as to mixing of HSD with MS tank, the negligence of the TT and the staff of the outlet and etc . These aspects cannot be gone into a writ petition under Article 226 of the Constitution of India.

Be that as it may, during the course of hearing, it is brought to the notice of the Court that clause 62 of the dealership agreement contemplates arbitration. Further, as per clause 62(a), the Director (Marketing) of the Indian Oil Corporation is the Arbitrator or nominate some other officer of the Corporation to act as an Arbitrator. Section 62(h) also contemplates that the Arbitrator shall have all summary powers and may take such evidence oral and documentary as the Arbitrator in his absolute discretion think fit and shall be entitled to exercise all powers under the Arbitration Act, 1940 including admission of any affidavit as evidence concerning the matter in difference i.e., dispute before him.

This Court, on 19.04.2007, after hearing both the counsel, observed that it is an undisputed fact that there was adulteration. Whether the said adulteration was due to mistake or not and without having any intention is a matter to be decided in the writ petition and therefore the main writ petition itself was posted for hearing. However, the counsel for the respondents fairly conceded that since there are disputed questions of fact, more particularly, with regard to mixing of the HSD in MS, the same cannot be decided in a writ petition under Article 226 of the Constitution of India.

Having considered the submissions of both the counsel, the writ petition is disposed of with a direction to the petitioner to avail the remedy of arbitration by invoking clause 62 of the dealership agreement before the Arbitrator

i.e., Director (Marketing) or any other officer as nominated by him. Upon such invocation of arbitration proceedings, the Arbitrator is directed to dispose of the same by considering all the objections raised by the petitioner. This entire exercise has to be completed within a period of six months from the date of receipt of a copy of this order. However, it is made clear that till the arbitration proceedings are concluded, the respondents are directed not to make any permanent arrangement for functioning of the retail outlet dealership of the petitioner by appointing any permanent dealer. No costs.

Miscellaneous petitions, if any, shall also stand disposed of.

Date: 27.11.2017.
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