IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

WRIT PETITION No.39423 of 2016

Between:

M/s.Taruni Service Station

....Petitioner

and

Bharat Petroleum Corporation Limited
(A Government of India Enterprise), Southern Region,
Rep.by Head (Retail), South Ranganathan Gardens, 11th Main Road,
Anna Nagar, Chennai.

....Respondent

JUDGMENT PRONOUNCED ON : 31.03.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1.	Whether Reporters of Local newspapers may be allowed to see the Judgments?	:	Yes
2.	Whether the copies of judgment may be Marked to Law Reporters/Journals?	:	No
3.	Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment?	:	No

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.39423 of 2016

ORDER:

Heard learned Senior Counsel, Sri Vedula Venkataramana for the petitioner and the learned Senior Counsel, Sri R.Raghunandan Rao for the respondent.

The petitioner is represented by its Proprietor. She claims that she is the dealer of the respondent Corporation and set up a retail outlet at Thorrur Village and Mandal for which purpose an agreement was entered on 09.09.2014 which is valid up to 31.07.2029. While so an inspection was conducted by the Vigilance wing of the Regional Office on 10.01.2016 and certain irregularities were noticed, including the alleged irregularity of HSD stock being beyond limits by 3513 litres. A show cause notice was issued on 24.03.2016 stating that the said violation amounts to critical irregularity. The petitioner submitted explanation stating that the excess stock in the underground tank of the retail outlet was the result of delivery of 4 KL HSD by the lorry tanker of the Corporation only and there was no critical irregularity. However, when the dealership of the petitioner was terminated by an order dated 12.11.2016 on the ground that the said variation in the stock amounted to "unauthorized purchase/sale of products", which is a critical irregularity as per clause 8.2 of the Marketing Discipline Guidelines, the present Writ Petition is filed.

A counter affidavit is filed stating that there is a provision for appeal against the order of termination and without exhausting the remedy of appeal, the present Writ Petition is not maintainable. The appointment of the petitioner as the dealer was admitted. As per clause 8.2 of the Marketing Discipline Guidelines, any unauthorized purchase/sale of petroleum products will invite termination at first instance, since it is an irregularity of critical nature. It is further stated that on receipt of notice of HSD stock variation of 3513 litres, the sales and supplies at the retail outlet were suspended immediately and the HSD tank samples were taken by the officers of the respondent Corporation for sending it to laboratory at Cherlapally for testing on 11.01.2016 as per Clause 5.1.11 of the Marketing Discipline Guidelines 2013. The test report dated 19.01.2016 did not disclose any impurity. However, with regard to the positive stock variation, a notice was issued on 14.01.2016 followed by a show cause noticed on 24.03.2016. It was stated that the said action amounts to violation of Clause 5.1.6 and Clause 8.2 (vi) of the Marketing Discipline Guidelines and also violation of DPSL Agreement dated 09.09.2014 wherein Clauses 10(i) and 10(k) were contravened. In the reply dated 21.01.2016, the dealer assured that none of the irregularities observed during inspection would be repeated in future. With respect to the positive stock variation, a separate explanation was given. It was stated that 4 KL HSD intended for delivery to M/s.Bhavani Service Station by the tanker lorry of the Corporation was unloaded at the petitioner's service station due to urgency at that time. Since the said explanation was not found satisfactory as the dealer did not inform with regard to the said delivery and there was no invoice, the explanation was not accepted. It was also stated that the facts observed during inspection made the explanation untenable.

Learned Counsel for the petitioner submitted that since the delivery was through the tanker lorry of the Corporation there was no question of unauthorized purchase/sale of products as contained in Clause 5.1.6 of the Marketing Discipline Guidelines. He further submitted that even assuming that there was an irregularity, it is only a minor irregularity which does not attract the drastic action of termination of the dealership.

Learned Counsel for the respondent submitted that the action of the petitioner receiving the HSD meant for another service station and not intimating the same to the respondent Corporation violated the Marketing Discipline Guidelines and the termination of dealership is perfectly valid.

In the light of the above averments it has to be seen whether the termination of the dealership of the petitioner is valid in terms of the Marketing Discipline Guidelines and the agreement entered on 09.09.2014.

The facts in this case are not in dispute. The petitioner entered into an agreement on 09.09.2014 called "Dispensing Pump & Selling Licence Agreement". The dealership stood in the name of M/s.Taruni Service Station and M/s. Bharat Petroleum Corporation Limited. The agreement was valid for a period of fifteen years from 01.08.2014 till 31.07.2029. The said agreement is subject to the Marketing Discipline Guidelines. While so, an inspection was conducted on 10.01.2016 and certain irregularities were noticed. Among the said irregularities, the positive stock variation of 3513 litres of HSD in the HSD Tank was considered as the critical irregularity under the Company Guidelines. Immediately, the sales and supplies at the Retail Outlet were suspended and the HSD Tank samples were taken. After the laboratory analysis of the samples, test report revealed that samples met the requirements of MS & HSD. In those circumstances, what remained was only the explanation for positive variation. A show cause notice was issued on 14.01.2016 followed by another notice dated 24.03.2016 stating that the action of the petitioner amounted to violation of Clause 5.1.6 and Clause 8.2 (vi) of the Marketing Discipline Guidelines and also violation under the Agreement dated 09.09.2014. In the explanation submitted by the petitioner on 21.01.2016 the petitioner assured not to repeat the irregularities in future. In respect of the positive stock variation, the explanation was given in a separate letter. It was stated that tank lorry having 4 KL MS and 4 KL HSD meant for the petitioner and M/s.Bhavani Service Station, Rayaparthy, respectively left Warangal Depot at 20.30 hours on 31.12.2015. When the lorry reached Rayaparthy, it was 22.00 hours and the contractors/company officials were not available at the NRO except the dealer. The soil condition also did not permit unloading of the HSD and in those circumstances, it was decided to unload the 4 KL HSD meant for M/s.Bhavani Service Station the next morning. Then the tank lorry was taken to the petitioner service station for unloading the load intended for it. The load was unloaded and the sales register was updated. The tank lorry waited at Thorrur and parked on the road nearby. In view of the new year celebrations, the crowd in the surrounding areas burst crackers and in those circumstances it was decided to unload 4 KL HSD meant for M/s.Bhavani Service Station, Rayaparthy, at the petitioner's service station and to inform the company officials in the morning. But, the depot was closed on 01.01.2016 and it was decided to visit the depot along with the dealer of other service station later. But, he became sick and could not come to report the matter. Meanwhile, the Vigilance Officials came for inspection and observed the stock variation on 10.01.2016. Thus, the unloading of 4 KL HSD was not intentional and since they were not aware of seriousness of such issue, they unloaded the stock. It was found that the said explanation was not satisfactory. It was stated that if the unloading was with good intention, the stock register could have been updated with the load of 4 KL HSD. Thus, the stock variation of 3513 litres was found to have been established. It was treated as "unauthorized purchase/sale of products" under Clause 5.1.6 of the Marketing Discipline Guidelines, 2013. Accordingly, after giving a personal hearing on 13.07.2016 at Southern Regional Office, an order of termination of dealership was passed. Thus, the act of unloading 4 KL HSD meant for another service station, not recording the same in the purchase books and not intimating the same to the concerned authorities promptly was proved.

Then it has to be seen whether such an action comes under Clause 5.1.6 of the Marketing Discipline Guidelines which deals with unauthorized purchase/sale of products by the dealer. The relevant clause reads as follows:

> "**5.1.6 UNAUTHORISED PURCHASES/SALES OF MS/HSD OR ANY OTHER PRODUCT WHICH COULD BE USED AS A SUBSTITUTE FOR THESE PRODUCTS**
>
> Dealers should purchase only those petroleum products authorised by the principal Oil Company for sale from the Retail Outlet. Purchase of the products from sources other than those authorised by the oil company would be treated as unauthorized purchase.
>
> Any sales of MS/HSD other than through the dispensing units of that RO would be treated as unauthorized sales."

The said act was also treated as violation of Dispensing Pump & Selling Licence Agreement dated 09.09.2014 as per the following Clause:

> "**Clause 13(a)** – Notwithstanding anything to the contrary herein contained, the Company shall be at liberty to terminate this agreement forthwith upon or any time on the happening of any event of following:

> (vii) If the Licensees shall be guilty of a breach of any of the covenants and stipulations on their part contained in this agreement.
>
> (viii) If the licensees shall commit or suffer to be committed any act which is in the opinion of the Marketing Director of the Company for the time being in Mumbai or any other person nominated for this purpose by the Company is prejudicial to the interest of the good name of the company or its products. The decision of such officer or person shall be final and binding on the licensees."

The type of irregularities at retail outlets (MS/HSD) and SKO/LDO dealerships are contained in Chapter 5 of the Marketing Discipline Guidelines. The unauthorized purchases/sales of MS/HSD or any other product which could be used as substitute for these products is contained in Clause 5.1.6 and the relevant clause is extracted as above. A reading of the above clause makes it clear that no purchase was involved, but only the load meant for another retail outlet of the same company was unloaded in the outlet of the petitioner. The unloading was not accounted and the improper unloading was not reported. With regard to the stock variation, Clause 5.1.11 deals with the same and in case of positive stock variation, it was provided that samples should be sent to laboratory for test. In the instant case such samples were sent for testing and no variation in quality was found. The non-maintenance of specified records is contained in Clause 5.1.12 and at the most the act of the petitioner comes under the said clause. The irregularities mentioned in Chapter 5 are classified into three categories i.e., critical, major and minor. Now the fact of unloading was treated as a critical irregularity coming under

Clause 5.1.6 and if it is a case of non-maintenance of records, it would come under Clause 5.1.12 under major irregularities. In such a case the suspension of sales and supplies for fifteen days for the first irregularity, thirty days for the second irregularity should have been imposed and the third offence alone should have lead to termination of the dealership.

In view of the above, this Court considers the irregularity committed by the petitioner as one of the major irregularities for which the required action is suspension of sales and supplies for a period of fifteen days for the first irregularity. Though the learned Counsel for the respondent pointed out that there is a provision for appeal in case of critical irregularity, since this Court came to the conclusion that it is a not a critical irregularity, but a major irregularity, no appeal is warranted in the facts of the case.

Since the supplies to the petitioner was already suspended for more than the prescribed period, the impugned order dated 12.11.2016 is set aside, and the Writ Petition is allowed. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

31.03.2017
vs