IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8207 of 2010

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1. Tufail Ahmad,
2. Afzal Ahmad,
3. Anwar Ahmad, All sons of late Abdul Qaiyum, all residents of Mohalla-Bakarganj, P.O. & P.S. Laheriasarai, District-Darbhanga.

.... Petitioners

Versus

1. Bharat Petroleum Corporation Limited, Bharat Bhawan-4 and 6 Currim Bhoy Road, Bullard Estate, Mumbai-400001, through its Chairman.
2. The Chairman, Bharat Petroleum Corporation Limited, Bharat Bhawan-4 and 6 Currim Bhoy Road, Bullard Estate, Mumbai-400001
3. General Manager (Retail East) Bharat Petroleum Corporation Limited, Bharat Bhawan, Plot No. 31, K.I.T. Scheme-118, Prince Ghulam Mohammad Shah Road, Kolkata 700095.
4. The Area Marketing Manager, Bharat Petroleum Corporation Limited, 3rd Floor, Ashiyana Chamber, Exhibition Road, Patna-800001.
5. The Territory Manager, Bharat Petroleum Corporation Limited, Barauni Retail Territory, P.O. Papraur, District- Begusarai - 851114.
6. The Deputy Manager, Bharat Petroleum Corporation Limited, Sales (Retail), Yown and District- Muzaffarpur.

.... Respondents

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Appearance:

For the Petitioners : Mr. Pushkar Narain Shahi, Sr. Advocate
Mr. Sanjeet Kumar Singh
Mr. Shivam
Mr. Anuraj Singh, Advocates

For Respondent-BPCL : Mr. Sanjay Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 13-07-2018

<u>I.A. No. 6735 of 2010</u>

This interlocutory application has been filed with a prayer for amendment of the writ petition by adding the prayer for quashing the appellate order dated 07.06.2010 (Annexure-A to the counter affidavit).

2. Having regard to the nature of the prayer, the interlocutory

application is allowed and the petitioners are permitted to add the said prayer in the writ petition in course of the day.

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3. The main writ petition has been filed for quashing the order as contained in letter No. REF-BNI-RO, Bihar Petrol dated 31.05.2008 issued under the signature of the Territory Manager (Retail) Barauni Territory whereby and whereunder the dealership of the petitioners in relation to M/s Bihar Petrol Agency, Laheriasarai, District Darbhanga, which was a retail outlet for sale of petrol and diesel, has been cancelled; and for connected reliefs.

4. The short facts of the case according to the petitioners, are that a marker test was conducted on 02.02.2008 at 4.00 p.m. by the representatives of S.G.S India Private Limited at the retail outlet of the petitioners. The HSD sample drawn from tank no. 1 passed the marker test whereas HSD the sample drawn from tank no. 2 turned pink and thus failed the test. The dip stock of the two tanks were shown as 39.2 cm and 33.0 cm respectively. The adverse marker test result led to issuance of the show cause notice dated 05.03.2008 (Annexure-4) in response to which the petitioners by letter dated 18.03.2008 requested for retest. The respondents however passed the impugned order of cancellation dated 31.05.2018 (Annexure-7). The petitioners by letter dated 06.06.2008 again requested for retesting. The impugned order of cancellation was taken up in appeal filed by the petitioners but the same was dismissed by order dated 07.06.2010 (Annexure-A) observing that no interference was required.

5. Mr. P.N. Shahi, learned senior counsel appears on behalf of the petitioners and submits that the impugned order of cancellation as well as the appellate order are arbitrary and suffer from perverse findings of fact. It is further submitted that within half an hour of the visit by the S.G.S. team, the Deputy Manager, Sales (Retail), BPCL, Muzaffarpur visited the retail outlet and upon inspection found that HSD tank no. 2 had a dip stock of 12.00 cm. i.e. 414 litres. This was corroborated from the stock register which showed the availability of 414 litres in tank no. 2 since 18.01.2008. It is further submitted that in principle, the credibility of the marker test itself has been considered doubtful, in view of which the same was discontinued on 31.12.2008. It is further stated that the two tanks are interconnected in such a manner that if the volume of HSD stock in tank is below 500 litres, no further HSD can be extracted from that tank and HSD is then dispensed from the other tank. It is therefore inconceivable that the sample drawn from the nozzle of tank no. 1 passed the test whereas sample drawn from the nozzle of tank no. 2 failed the same, inasmuch as the volume in tank no. 2 was below the minimum of 500 litres in order to allow extraction. In fact, the sample had been drawn from tank no. 1 itself. This aspect clearly falsifies the marker test report and vitiates the order of cancellation of the petitioners' retail outlet. The respondents were also required to conduct retest on the request of the petitioners in terms of Clause 2.5D of the Marketing Discipline Guidelines which however was not done, though requested for. Reliance has been placed on a decision of the Hon'ble Supreme Court in the case of *Hindustan Petroleum Corporation and others vs. Super Highway Services and*

another, (2010) 3 SCC 321, in para 31 whereof it has been observed that " the cancellation of dealership agreement of a party is a serious business and cannot be taken lightly. In order to justify the action taken to terminate such an agreement, the authority concerned has to act fairly and in complete adherence to the rules/guidelines framed for the said purpose".

6. Learned counsel for the respondent-Bharat Petroleum Corporation Limited, on the other hand, strongly resists the writ petition, submitting that the order of cancellation has rightly been passed against the petitioners. It is submitted that the petitioners have not raised any grievance with regard to the procedure followed by the respondents and hence the decision making process has not been questioned. He invites attention to the order of the Appellate Authority dated 07.06.2010 which reveals the conduct of the petitioners and the underlying circumstances. The petitioners have attempted to paint a picture completely different from reality. It is pointed out that in the interregnum of about half an hour between the two visits by the S.G.S. team and the Deputy Manager , BPCL respectively, while the tank dip stock reading of tank no. 1 went down from 39.2 to 31.0 cms., that of tank no. 2 fell from as much as 33.0 to only 12.0cms. On the other hand, the totalizer meter reading for nozzle no. 2 rose from 14,78,902.3 to 14,80,308.0. It is thus submitted that the doubt sought to be created by the petitioners on the ground that there was insufficient stock in tank no. 2 for extracting the sample is wholly incorrect as there was sufficient stock in excess of 500 litres in tank no. 2 at the time of the S.G.S team's visit. The sample drawn from nozzle no. 1 pertained to the stock of HSD in tank no. 1 which was quite

distinct from the sample drawn from nozzle no. 2. The difference in readings taken by the S.G.S. team and the Deputy Manager irrefutably goes to show that in between the two visits, the petitioner had extracted the stock of HSD from tank no. 2 until it fell below the minimum of 500 litres and no further HSD could be extracted therefrom in order to give an impression that from both nozzles, HSD had in fact been extracted from tank no. 1 alone as it was not possible to extract a sample from tank no. 2. Significantly, between the aforesaid two visits, the dip stock had reduced from 33.0 cms to 12.0 cms and the totalizer reading had increased from 14,78,902.3 to 14,80,308. It is further stated that the stock register relied upon by the petitioner is nothing more than a self-serving document maintained by the petitioners and is incapable of reliance. It is further submitted that a retest as requested by the petitioner was unnecessary, as the tank lorry sample available at the outlet was not sealed nor labeled and as such no fruitful purpose would have been served by drawing a fresh sample from nozzle no. 2 after the petitioner had already depleted the extractable stock from tank no. 2 soon after the visit by the S.G.S. team.

7. Having heard learned counsel for the parties and on careful consideration of materials available on record, this Court finds the writ petition to be devoid of merit. Admittedly, the petitioners have not raised any objection with regard to the decision making process. The central ground on which the petitioners have sought to urge perversity of finding, is based on the contention that the stock available in tank no. 2 was only 414 litres and as such, the sample drawn from nozzle no. 2 could only have come from tank

no. 1. It has thus been submitted that this leads to a dichotomy that nozzle no. 1 passed the test but nozzle no. 2 failed the test. The contention appears rather attractive at first blush. However, the claim that there was stock of only 414 litres in tank no. 2 does not is not worthy of acceptance. The narrative of circumstances in which the dip stock decreased from 33.0 cms to 12.0 cms and the totalizer reading increased from 14,78,902.3 to 14,80,308 within the space of half an hour between the visits by the S.G.S. team and the Deputy Manager, BPCL reveals the real story. It has been found by the authorities that there was sufficient time available before the arrival of the Sales Officer for the dealer to have sold or taken out HSD product from one tank to the point of drying it and as such the petitioners' version has been disbelieved, finding as follows —

> *"Upon perusal of the records, it is observed that while the tank dip reading of Tank No. 1 went down from 39.2 to 31.0 cms. of Tank No. 2 from 33.0 to 12.0 cms (dry), the stock quantity also went down and the totalizer meter reading went up. The difference between the dip readings of the tanks and the totalizer meter readings as recorded in the OMC RO Audit report of 02.02.2008 prepared by SGS and the same seen at the time of visit of the Sale Officer and stated in the letter dated 02.02.2008 to the dealers, clearly proves that the dealer intentionally sold HSD during the intervening period i.e. after the SGS official left and till the Sales Officer arrived at the retail outlet so that the adulterated stock is disposed off to the innocent customers and the buck is passed on to the SGS official alleging suspicion & malafide. It is observed that the dealer continue selling off-spec HSD despite telephonic advice from the Dy. Mgr. Sales, Muzaffarpur to stop sales , based on advice from*

SGS representative. In the circumstances, it cannot be concluded that the reporting of SGS was suspicious or malafidely motivated or that SGS recorded a false dip stock and manipulated the failure of sample drawn from dispensing Unit 2."

8. As regards the petitioners' contention that the retest was required to be done, the authorities have also found that tank lorry sample available at the outlet was not sealed or labeled. The following extract from paragraph 3.6 of the appellate order dated 07.08.210 (page 83) may be referred to, which is self explanatory –

"I find that as the Tank lorry sample was not sealed and labeled as per the guidelines and therefore the same was not taken for testing in the Quality Control Laboratory. By not retaining the Tank lorry sample as provided in the guidelines, it is observed that the dealers have defeated the basic objective of the 3-Tier sampling procedure which aims at establishing whether the malpractice/adulteration, if any, has taken place at the retail outlet, during transportation or at supply locations. Therefore a defaulting dealer cannot be allowed to derive the undue advantage of his own lapse & then claim innocence. Therefore, the tank lorry sample was correctly not accepted and the HSD sample collected from the RO & the Supply Location samples were tested on 06.02.2008 in the Quality Control Laboratory, Patna in the presence of dealer/partner Dr. Afzal Ahmad. During the marker test at the Laboratory, the analytical result for HSD RO sample indicated it 'P' (Marker Positive) i.e. failed in marker test and the HSD Supply Location sample indicated 'N' (Marker Negative)."

9. In view of the detailed considerations of the facts and circumstances by the authorities, I am not persuaded to interfere in the matter. The impugned order of cancellation suffers from no infirmity of

procedure, arbitrariness, content nor perversity of finding. The writ petition accordingly stands dismissed. I.A. No. 5395 of 2010 which has been filed for quashing of the advertisement published on 31.05.2008 (Annexure-14) and keeping the selection process in respect of the said location in abeyance also stands dismissed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	14.07.2018
Transmission Date	N.A.