

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO. 5653 OF 2008

M/s N. K. Gudgilla
At post Tuppa Hyderabad Nanded
Road, Dist. Nanded
Through its Partner
Girdharilal Nathmal Gudgilla
Age : 36 Years, Occ. Business,
R/o. Kalijiki Tekadi, Old Mondha,
Nanded Tq. & Dist. Nanded.

..PETITIONER

VERSUS

- 1] The Indian Oil Corporation Ltd.,
Aurangabad Divisional Office,
Plot No. 99, Jyoti Nagar,
Aurangabad
Through its Divisional Retailer
Sales Manager
- 2] The Deputy Manager (RS),
Nanded Sales Area, Nanded
- 3] Swapnil Kamble,
Age : 30 Years, Occ. Service,
C/o. M/s. SGS India Private Ltd,
SGS House, 4B, Adi Shankaracharya Marg,
Pawai Road, Vicroli (West), Mumbai
400 083.
- 4] Umesh Dongre
Age : 30 Years, Occ. Service
As above
- 5] M/s. SGS India Private Ltd,
4-B, Adi Shankaracharya Marg,
Pawai Road, Vicroli (West),
Mumbai- 400 083

..RESPONDENTS

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Advocate for petitioner : Mr. P. S. Dighe
APP for Respondents: Mr. M.M. Nerlikar
Advocate for Respondent nos. 3 to 5 : Mr. S.S. Kulkarni

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CORAM :T.V. NALAWADE AND
SMT.VIBHA KANKANWADI,JJ.
DATE :25th OCTOBER, 2018.

JUDGMENT(Per T.V. NALWADE, J] :-

Rule. Rule made returnable forthwith. By consent heard both the sides for final disposal.

2] The petition is filed for challenging the show cause notices dated 14.03.2008 and 13.05.2008 for terminating the retail outlet dealership of the petitioner, for declaration that these two notices and letter dated 29.02.2008 are illegal, arbitrary and they are in violation of Article 14,19(1)(g) of the Constitution of India. Relief is also claimed to declare that respondent nos. 3 and 4 of the present proceeding cannot be treated as authorized officers of the respondent no.1 Indian Oil Company as per clause 2(b) of the provisions of Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005. Relief of declaration is also claimed that marker test carried out by respondents on 28.02.2008 was in contravention of clause 2(b) of the aforesaid regulations and for quashing of the said test. Direction is also claimed against the respondent Oil Company to resume the supply of outlet quota of the petitioner of petrol and Diesel.

3] Both the sides are heard.

4] Under agreement of 01.06.1999 the dealership of petrol/H.S.D pump was given by respondent no.1 Oil Company to the petitioner. On 28.02.2008 respondent nos.3 and 4 officers of respondent no.5 M/s S.G.S. India Pvt. Ltd, visited the retailer outlet of the petitioner firm for inspection of M.S. Petrol and H.S.D. (High Speed Diesel). It is contention of the petitioner that at the time of visit he was not present in the premises of outlet. On 28.02.2008 itself, the sample of petrol was collected by the officers of respondent no.5. It is contention of petitioner that when the procedure was going on, he reached that outlet and he learnt that the record of marker test was prepared and it showed that petrol was adulterated and then he requested to take samples in his presence but the officers refused to do so and they are demanded gratification from him.

5] On 29.02.2008, respondent no.2, Dy. Manager of Oil Company stopped the supply of both petrol and diesel to the outlet of the petitioner and then aforesaid show cause notice was issued viz show cause notice dated 14.03.2008. Copy of marker test report dated 11.03.2008 was supplied to the petitioner.

6] It is case of the petitioner that by the reply dated 29.03.2008, he

informed that he was in this business for more than 40 years and he had not done the act of adulteration at any time. It is contention that to the notice dated 13.05.2008, with regard to the agreement he gave reply on 26.05.2008, and he raised objection to the procedure followed by the officers for collecting samples. He has challenged the show cause notice and the aforesaid letter on the ground that proper procedure was not followed and also on the ground that officers of respondent no.5 company had no authority to collect such samples. By way of amendment, additional ground is mentioned about absence of test of TT samples and he has contended that samples were not collected and so principles of natural justice were not followed.

7] The ground with regard to the TT sample was taken by making amendment in the petition. In paragraph no.12 of the petition, petitioner had already made following contention

" The petitioner states that, it will be evident from their own show-cause notice dated 26.05.2008 wherein they have stated that the SGS India Pvt. Ltd officials have only seized one sample from the MS nozzle and they collected the TT retention sample and supplied location sample on 29.02.2008 from the Retail outlet of the petitioner which itself shows that the respondent authorities has not followed the procedure while collecting the sample for the purpose of marker test. "

8] The aforesaid contention and the laboratory test report shows that TT samples were collected by the officers though not on 28.02.2008. It is the contention of Oil Company and the officers that the invoice number and the seal appearing on TT samples were not matching with the invoice of the petrol which was tested by the officers. The particulars like seal number, seal condition etc. can be found in the laboratory report. The marker test result shows that it was pink (positive). The details of representative present for testing on retention of samples shows that the dealers representative was present on 11.03.2008, the date fixed for testing of retention sample. This record is consistent with contention made by the Oil Company and the officers of respondent no.5.

9] Though it is contention of the petitioner that he had requested for re-testing nozzle samples on 28.02.2008 itself the correspondence of petitioner dated 29.03.2008 show that the officers had kept waiting for him and in the presence of his representative who was available the samples were collected. This letter was given subsequent to 11.03.2008 by the petitioner and thus there is no support to the contention of the petitioner that on 28.02.2008 itself, he had requested the testing of other Nozzle samples. On 29.02.2008 itself due to adulteration, the supply was stopped by the Oil Company and on 14.03.2008, after the laboratory testing the show cause notice was issued. It appears that in

the show cause notice it was mentioned that the TT, samples supply location samples were found negative (no pink colour) and only Nozzle samples were found to be adulterated. Thus, even the TT samples supplied by the petitioner were considered as a special case and that can be seen from the record produced by the Oil Company.

10] The contention of petitioner that the officers of respondent no.5 cannot be treated as authorized officers cannot be accepted. There is copy of agreement which was executed for giving the dealership and cause 39 of the agreement show that duly authorize representative of the Oil company was to be treated as authorized officer. Further the submissions made show that one PIL was filed to challenge the action of Oil Company like engaging respondent no.5 as authorized officer but that PIL came to be dismissed at the principle Bench.

11] Submissions made show that the dealer himself is transporter and so from the supply point the petrol was collected by the petitioner. In view of procedure which is followed at the time of delivery, at the supply point and the precaution which outlet owner can take at the time of taking delivery as prescribed by the procedure there are sufficient safe guards to presume that the petrol was not adulterated in the the transit.

12] The learned counsel for the petitioner submitted that the

procedure given in Rules 2005 was not followed. Petrol Company is authorized to appoint authorized officers to draw samples. The other procedure need not be considered in the present matter. In respect of the specific contentions it can be said that the rules which were in force were followed.

13] There is a technical point involved against the petitioner that show cause notice is directly challenged in the present proceeding. When show cause notice is challenged the learned Senior counsel placed reliance on some observations made by the Apex Court and some High Courts in some reported cases like Allied Motors Limited Vs. Bharat Petroleum Corporation Limited(2012) 2 SCC Page 1 II] Shekhar Ghose Vs. Union of India(2007) 1 Supreme Court Cases Page 331 and the decision of Madras High Court given on 29.02.2008, in Writ Petition No. 29561 of 2007, rendered by the learned single judge of that Court in M/s D. Nagarajan and Company Vs. The Chief Regional Manager of Hindustan Petroleum Corporation Ltd. and others.

14] There is also copy of decision given by Calcutta High Court in Writ Petition No. 2754 (W) of 2007, dated 06.11.2008 (Tarunkumar and others Vs. The State of West Bengal and others) in which Calcutta High Court has considered aforesaid case of Madras High Court. It is

observed that the terms of the agreement also need to be considered.

15] In the two cases cited (supra) by the learned Senior counsel for the petitioner the necessity of compliance of principle of natural justice, procedural law and statutory order and guideline is considered. That case involved termination of the dealership and in view of the facts of that case the Apex Court held that the termination was illegal. The facts and circumstances of each and every case are always different. In the second case of *Shekhar Ghosh* the procedure which needs to be followed before taking action to see that the principle of natural justice are followed is mentioned. In the present matter the procedure followed is already quoted. There are different actions in different fields and so the procedure which is applicable and which ensures the principle of natural justice may not be the same in all cases. The rules of the present matter are considered and it can be said that the opportunity was being given, to the petitioner to have his say. Only on the basis of contents of show cause notice that in case of absence of sufficient explanation the agency can be terminated it cannot be inferred that Oil Company had already decided to terminate the agency. Thus, either there was some misconception in the mind of petitioner or the petitioner wanted to stall everything and with that intention he approached this Court. In the present matter this Court holds that the proceeding is premature and even Oil Company has suffered due to the present

proceeding. The terms and conditions of agreement show that after taking action like termination of agency, the matter needs to be taken before the Arbitrator. It can be said that the petitioner wanted to avoid everything and there is clear probability that as there was no other escape route to stall everything the petitioner filed the present proceeding. This Court holds that there are no merits in the present proceeding. In the result, the petition is dismissed.

Rule is discharged.

16] Learned Senior counsel requested for continuation of Interim relief for some time but it is refused.

[SMT.VIBHA KANKANWADI]
JUDGE

[T.V. NALAWADE]
JUDGE

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