IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.9491 of 2008
and M.P.No.2 of 2008

Nikinish Fuels,
H.P.C.Dealers,
Rep. by its proprietor,
A.Chandrasekar ... Petitioner

Vs.

1. Hindustan Petroleum Corporation Ltd.,
(A Government of India Enterprises)
rep. by the Chief Regional Manager,
Chennai Retail Regional Office,
III Floor, Thalamuthu Natarajan Building,
Egmore, Chennai - 600 008.

2. The Senior Manager (Vigilance)
South Zone,
III Floor, Thalamuthu Natarajan Building,
Egmore, Chennai - 600 008. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the record of the 1st respondent dated 04.04.2008 in reference code SS/RET imposing a penalty of Rs.1 lakh and suspension of sales and supplies of all products for a period of 30 days and quash the same as illegal.

For Petitioner : Mrs.A.Arulmozhi

For R1 : Mr.S.Swaminathan
For M/s.Span Associates

For R2 : Served
No appearance

O R D E R

The petitioner, namely, A.Chandrasekar, is the owner of Nikinish Fuels and a dealer of Hindustan Petroleum Corporation

Limited, having his office at Gudiyattam Main Road, Latheri, Vellore District, Vellore - 632 202. He prays for a Writ of Certiorari, to quash the order of the 1st respondent dated 04.04.2008 in reference code SS/RET, imposing a penalty of Rs.1 lakh and suspension of sales and supplies of all products for a period of 30 days.

2. The petitioner would contend that the respondent corporation carries on the business of refining and selling of petroleum products, more particularly, petrol and diesel. The corporation had appointed the petitioner as a dealer for retail sale or supply at Gudiyattam Main Road, Latheri in Vellore District. The agreement between the petitioner and the respondent was entered into on 04.11.2004 and the period of agreement made between the parties was 15 years from 04.11.2004.

3. The petitioner would further contend that as per the said agreement, he had been supplying the petroleum products in the place allotted to him and carrying on the business without any complaints, by strictly following the Marketing Discipline Guidelines and maintaining the quality/quantity control measures as laid down by the respondent corporation. While so, in January 2008, the Vigilance Officers of the respondent corporation visited the petitioner's retail outlet and enquired him, whether he is an officer of the said outlet or a partner of the business. Though the petitioner assured that he is the sole proprietor of the outlet Nikinish Fuels, the Vigilance Officers instructed him to execute a letter to that effect. Hence, the petitioner had given a declaration on 11.02.2008 stating that the said outlet is fully owned by him and there is no any partnership directly or indirectly. But, the vigilance officers of the respondent corporation, were not satisfied even after producing all the documents and Bank records, with another letter dated 13.02.2008 addressed to the Senior Manager (Vigilance), South Zone HPC Ltd., Chennai - 8.

4. The petitioner would also contend that he had indirect pressures to execute a letter implicating an officer of the HPC as a partner in his proprietary concern, and since he had refused to do the same, the officers of the respondent corporation had taken samples from his outlet on 24.01.2008 and 11.02.2008. Moreover, the petitioner would contend that he did not receive any report for the previous samples, which were taken on 28.08.2006, 26.07.2007, 29.11.2007 and 24.01.2008. But, surprisingly, the officers who conducted inspection on 11.02.2008, have mixed both 2T and Multi grade oil, which were inadvertently kept in the island by the pump boys. Since the petitioner was not present at the time of collecting samples on 11.02.2008, he was not aware of the said incident and he signed for the identification of sealed cans, on the bonafide faith and

belief on the officers.

5. The petitioner would further contend that on 24.03.2008, he received a show cause notice from the respondent, stating that the Racer I sample collected from his outlet was found to be "offspec" in respect of the parameters of (1) Colour (2) Calcium content and (3) Zinc content. Though the letter was dated 20.03.2008, it was served to petitioner only on 24.03.2008, and he sent his explanation on 03.04.2008. But, to his shock and surprise, he was issued with the impugned order on 04.04.2008, stating that he did not reply to the letter dated 20.03.2008, hence, penalty of Rs.1 lakh and suspension of sales and supplies of all products for a period of 30 days have been imposed on him. Moreover, the officers of the respondent corporation visited the petitioner's outlet and endorsed the impugned order in public and in the sale and stock register on 05.04.2008. Hence, the petitioner, with no other alternative, has filed this Writ Petition to quash the impugned order of the 1st respondent dated 04.04.2008.

6. Denying the above allegations of the petitioner, the 1st respondent filed a counter affidavit, wherein, it has been contended that the petitioner herein, is a dealer of Hindustan Petroleum Corporation Ltd., as per the Memorandum of Agreement executed between the petitioner and the 1st respondent on 04.11.2004, and the dealership of the petitioner is subject to the terms and conditions contained in the said agreement dated 04.11.2004. As per the agreement, if any dispute arises between the petitioner and the 1st respondent, the same shall be referred to Arbitration as provided in Clause 66 of the Dealership Agreement. But, the petitioner, without raising the dispute before the Arbitration, has approached this Court by filing this Writ Petition.

7. Moreover, the respondent would contend that the petitioner himself has admitted in his averments that 2T oil and Multi-Grade oil have been kept at the vending island, therefore, there is every possibility that Multi-Grade oil was given to the vehicles instead of 2T oil and this itself is an offence. Further, the inspection report clearly indicates that samples have been taken and labels put upon it and the same has been signed by the petitioner himself, acknowledging the inspection and samples drawn from the outlet. Hence, the petitioner cannot now allege that the samples have been mixed by the officers, who conducted the inspection.

8. The respondent would further contend that a show cause notice was issued to the petitioner on 20.03.2008, seeking explanation to the charges within a period of 7 days from the date of receipt of the said notice. But, the petitioner, even

admitting that the said notice was received by him on 24.03.2008, did not send any explanation to the charges on or before 31.03.2008, and it was sent only on 03.04.2008, which is beyond the time specified in the show cause notice. Besides, the petitioner had not even sought any extension of time for submitting his reply to the show cause notice and hence, the respondent had acted as per procedure.

9. The respondent would also contend that since there was no reply from the petitioner till 04.04.2008 to the show cause notice dated 20.03.2008, the 1st respondent had issued the letter dated 04.04.2008, which is impugned in this Writ Petition, imposing penalty of Rs.1 lakh and suspension of sales and supplies of all products for a period of 30 days and further, the officers of Hindustan Petroleum Corporation Ltd., visited the petitioner's outlet and implemented the order dated 04.04.2008, as per procedures. Moreover, the respondent would contend that as per the dealership agreement dated 04.11.2004, which has been executed by the petitioner, the respondents have been empowered to even terminate the dealership agreement of the petitioner for the said violation, but, they have taken a lenient view and have imposed only penalty and stoppage of sales and supplies for 30 days. Further, the respondent would contend that as a public sector undertaking, they are duty bound to conduct such inspection in order to ensure quality of products being sold to customers and in order to effectively curb malpractices and adulteration. Hence, the allegation of the petitioner that the inspection conducted in his outlet was only to victimise him is denied by the respondent.

10. Furthermore, the respondent would contend that as per Clause 55 (I) of the dealership agreement, if the dealer contaminates or tampers with the quality of any of the products supplied by the respondent corporation, the Corporation would be at liberty to terminate the agreement. The petitioner's case herein, is a clear case of tampering with the quality of the product supplied by the Corporation, as the samples taken from the petitioner's outlet does not conform to the norms specified, as per test report. The calcium content is required to be in the range of 0.023 to 0.028, but, the samples drawn from the petitioner's outlet were not within the range specified. Similarly, the appearance of the product as per specification is bright and clear, whereas the samples drawn were dull. The Zinc specification should not be deductible in the product, but, in the sample, it showed Zinc content as 0.0277 and therefore, the samples drawn from the product kept for sale at the petitioner's outlet, do not meet the specifications and is a clear case of adulteration in the product. Hence, petitioner's contention that there was only a slight variation in the test results is totally unacceptable, as adulteration has been proved in the hands of the petitioner.

11. In addition to the above, the respondent would contend that the petitioner had not chosen to reply to the show cause notice dated 20.03.2008 within the period of 7 days as specified in the notice, and therefore, the 1st respondent, with no other option, had passed the impugned order dated 04.04.2008, imposing penalty of Rs.1 lakh and suspension of sales and supplies of all products for a period of 30 days, as per procedure.

12. Heard the learned counsel for the petitioner and the learned counsel for the respondents, and perused the materials available on record.

13. On perusal of the Marketing Discipline Guidelines Appendix-II, it could be seen that if any malpractices or irregularities have been found in any of the retail outlets for the first time, in respect of selling off-spec lubes, a fine of Rs.1 lakh & suspension of sales and supplies of all products for 30 days, would be imposed on them. In case, if the same has been found for the 2nd time, an order of termination from the contract would be issued. In the present case, the Racer 2 sample, which had been collected from the petitioner's outlet was found to be "offspec" in respect of the parameters of (1) Colour (2) Calcium content and (3) Zinc content and therefore, the petitioner has been imposed with the penalty of Rs.1 lakh and suspension of sales and supplies of all products for a period of 30 days, by the respondent as per the Marketing Discipline Guidelines.

14. It is seen from the show cause notice dated 20.03.2007 that the petitioner was requested to give his explanation for the alleged charges within a period of 7 days from the date of receipt of the said notice. But, since the said notice dated 20.03.2007 was served to the petitioner only on 24.03.2008, he was not able to give his reply within the time specified. After he sent his explanation on 03.04.2008, very next day, he was issued with the impugned order dated 04.04.2008, stating that he has been imposed with a penalty of Rs.1 lakh and suspension of sales and supplies of all products for a period of 30 days. Therefore, on 05.04.2008, the petitioner sent a representation to the 1st respondent, explaining the situation of him, but, it was not considered by the respondent.

15. As per Clause 66 of the Dealership Agreement, the respondent ought to have appointed a Sole Arbitrator and given an opportunity to the petitioner for considering the issues raised by him. But, it was not done by the respondent. Hence, this Court is inclined to direct the respondent corporation to appoint a Sole Arbitrator for considering the issues, as per the agreement.

16. Accordingly, the respondent corporation is directed to appoint a Sole Arbitrator for considering the issues raised by

the petitioner, within a period of one month from the date of receipt of a copy of this order. The petitioner is directed to file a petition before the Arbitrator within a period of three weeks from the date of appointment of the said Arbitrator. After completion of the pleadings, the Arbitrator should conduct the proceedings and pass an award within a period of four months thereof. Until then, the respondent corporation is directed to supply the materials to the petitioner without any interruption.

17. Though the learned counsel for the petitioner and the respondents argued on merits, this Court is not inclined to go into the merits of the case, since the petitioner and the respondents are directed to initiate Arbitration proceedings as per the agreement. Hence, it is open to the parties to raise all their objections before the Arbitrator, who will be appointed by the respondent corporation.

18. In view of the above, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

raja

To

1. The Chief Regional Manager,
   Hindustan Petroleum Corporation Ltd.,
   (A Government of India Enterprises)
   Chennai Retail Regional Office,
   III Floor, Thalamuthu Natarajan Building,
   Egmore, Chennai - 600 008.

2. The Senior Manager (Vigilance)
   South Zone,
   III Floor, Thalamuthu Natarajan Building,
   Egmore, Chennai - 600 008

+1cc to Mr.A.Arul mozhi, Advocate, S.R.No. 89185
+1cc to M/s.Span Associates, Advocate, S.R.No. 89074

W.P.No.9491 of 2008
and
M.P.No.2 of 2008

GMR(CO)
GN(22/02/2019)