

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2018

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.8967 of 2008

and

MP.Nos.1 & 2 of 2008

M/s.Venkateswara Agencies,
Rep.by its Proprietor G.Venkatesan,
S/o C.R.Gopal Nainar,
C.C.Road, Santhavasal - 606 905.
Tiruvannamalai District. Petitioner

Versus

Hindustan Petroleum Corporation Ltd.,
Rep.its Chief Regional Manager,
Retail Regional Office,
No.8 Gandhi Irwin Road,
Egmore, Chennai - 18. Respondent

Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of Certiorarified Mandamus, to call for the records in SS/RET dated 04.04.2008 on the file of the respondent and quash the same as illegal and direct the respondent to restore the sales and supply of this petroleum products.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.S.Swaminathan,
for M/s. Span Associates.

O R D E R

The prayer in the present writ petition is to issue a writ of certiorarified mandamus to call for the records in SS/RET dated 04.04.2008 on the file of the respondent and quash the same as illegal and direct the respondent to restore the sales and supply of their petroleum products.

2. The petitioner was appointed as dealer by the respondent Corporation for sale of petroleum products. During the course of such business the respondent caused an inspection of the

business premises on 12.02.2008 and drawn samples on various products sold by the petitioner. The samples so collected were sent to Laboratory and after receipt of the laboratory report, the Corporation issued a show cause notice dated 12.03.2008 calling upon the petitioner to submit their explanation.

3. The petitioner also submitted their explanation on 21.03.2008. Not satisfied with the explanation offered by the petitioner, the respondent imposed a total Penalty of Rs.1,25,000/-, besides directing the petitioner to stop supplying petroleum products for a period of 45 days as a measure of punishment.

4. The learned counsel for the petitioner would contend that the respondent did not follow the guidelines issued by the Corporation from time to time while passing the impugned order. The laboratory report received on 18.02.2008 was communicated to the petitioner only on 12.03.2008. As per the guidelines, such report ought to have been communicated within a period of 5 days, but it was not done so. The allegation against the petitioner was made with a malafide intention. The penalty was imposed by the respondent without giving an opportunity of hearing to the petitioner, but merely on receipt of explanation from the petitioner. The impugned order has been passed by the respondent in violation of principles of natural justice. Therefore, the learned counsel for the petitioner prayed for setting aside the impugned order.

5. The learned counsel for the respondent- Corporation submitted that before passing the impugned order, a show cause notice was sent to the petitioner duly enclosing the laboratory report. The laboratory report clearly states that the samples drawn from the business of the petitioner do not premises confirm to the specification laid down in respect of three process i.e., (i) Colour, (ii) Calcium content and (iii) Zinc content. The petitioner has also replied to the show cause notice. Having found that the explanation offered by the petitioner is not satisfactory, the Corporation initiated action in accordance with clause (27) of the dealership agreement. While so, it cannot be stated that the penalty imposed by the Corporation is arbitrary or with a malafide intention. When there is a violation committed by the petitioner, by contravening the provisions of the dealership agreement, it is well open to the respondent to pass the impugned order. Therefore, the learned counsel for the respondent prayed for dismissal of the writ petition.

6. Heard both sides and perused the materials placed on record.

7. Admittedly, during the course of the dealership business of the petitioner, an inspection was conducted by the respondent on 12.02.2008. At that time, samples of Racer 2 oil were taken from the business premises of the petitioner. The samples so drawn were sent to the laboratory. On receipt of the laboratory report, it was sent to the petitioner and the respondent sought the explanation to the show cause notice dated 12.03.2008. The petitioner has also replied to the show cause notice as early as, on 21.03.2008. Not satisfied with the explanation offered, the respondent invoked clause (27) of the terms and conditions of the dealership agreement and imposed the penalty. Thus, before passing the impugned order, an opportunity was given to the petitioner, which was also availed by the petitioner and a reply was also sent. In that reply, the petitioner did not seek for any further opportunity to be given to them. In such circumstances the respondent is wholly justified in passing the impugned order and it does not call for any interference of this Court.

8. Accordingly, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(VI)

//True Copy//

Sub Assistant Registrar

klr
To

The Chief Regional Manager,
Hindustan Petroleum Corporation Ltd.,
Retail Regional Office,
No.8 Gandhi Irwin Road,
Egmore, Chennai - 18.

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CNR(CO)
GSP(13/12/2018)

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