**THE HON'BLE SRI JUSTICE T.AMARNATH GOUD**

**WRIT PETITION NO.15038 OF 2011**

**ORDER:**

This writ petition is filed challenging the order of the respondent in Ref.VJR/KR I/Mobile, dated 12.05.2011.

2. The petitioner entered into an agreement called 'Motor Spirit and HSD Dealer Agreement for Dealer Owned Site' with the respondent on 27.10.1999 for sale of petroleum products and accordingly it has been selling the petroleum products. While so, on 24.11.2010, Mobile Laboratory-ML-21 of the respondent, inspected the petitioner-petrol pump, drawn samples of Servo 2-T Lubricants. Thereafter, the respondent got the sample tested in their laboratory and as per the report of the laboratory, the sample does not meet specifications in respect of 'Kinematic Viscosity at 40'C and Sulphated Ash Content'. In pursuance of the said report, the respondent issued a show cause notice to the petitioner dated 10.12.2010, to which, the petitioner submitted its explanation dated 27.12.2010, categorically stating that while drawing the samples, the mandatory procedure laid down in Chaper-2 of the Marketing Discipline Guidelines, 2005 (for short, MDG, 2005) was not followed by the respondent. After receipt of explanation, the respondent passed the impugned order dated 12.05.2011, directing the petitioner to pay a penalty of Rs.1 lakh and suspending its sales and supplies of all the products for 30 days.

3. Sri P.Kamalakar, learned counsel for the petitioner, drawn the attention of this Court to the show cause notice, explanation,

impugned order and Chaper-2 of the MDG, 2005 and submitted that while drawing the samples, the officials of the respondent did not follow the mandatory procedure laid down in Chaper-2 of the MDG, 2005 i.e., they did not take acknowledgment from the petitioner or his representative and the sample labels were not jointly signed. He further submitted that no show cause notice was issued to the petitioner while imposing the quantum of punishment on the petitioner. He relied on the decisions of this Court in **Premodaya, BPD, Buchireddy Palem Vs. Bharat Petroleum Corporation Ltd.**[1] and **M.Satyanarayana Murthy and Co., IOC Dealer Vs. Indian Oil Corporation Limited**[2].

4. Sri Arun Shouri, learned counsel representing Sri T.Vinod Kumar Tadakamalla, learned Standing Counsel for the respondent, has vehemently opposed the submissions of the learned counsel for the petitioner and contended that the petitioner is not entitled to any relief and the writ petition has to be dismissed. He further contended that the officials of the respondent drawn the samples in the presence of one Mr.Subba Rao, representative of the petitioner, after duly obtaining his signature and that there is no violation of Chapter-2 of MDG, 2005. He further contended that the respondent already issued a show cause notice, and after having dissatisfied with the explanation of the petitioner, the respondent passed the impugned order and hence the question of issuance of second show cause notice does not arise.

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[1] 2008 (6) ALD 670
[2] 2009 (4) ALT 420

5. Admittedly, there is no whisper about the allegation of adulteration in the impugned order. The petitioner is mainly disputing the manner in which the officials of the respondent have drawn the samples. Hence, it is necessary to refer Chapter 2.4.5 (a) which deals with sampling procedure for lubes and it reads as under:

> "**2.4.5 SAMPLING PROCEDURE FOR LUBES**
>
> The Inspecting Officer shall draw the samples from the receptacle duly ensuring to avoid the possibility of contamination with any other products. It shall be ensured that the sample drawn is a true representative of the product in the receptacle. The procedure outlined hereunder shall be followed while drawing the samples.
>
> a) The Inspecting officer shall draw three samples (3 x 750 ml each) and after the labels are signed and the boxes are sealed, one sample out of these will be left with the dealer, one with the company and the third will be left with the dealer, one with the company and the third will be sent to the respective oil company laboratory for testing. For the sample kept with the dealer, proper acknowledgement will be obtained and the dealer will be instructed to preserve the sample in his safe custody till the testing/investigations are completed. For two samples/packs proper cash memo to be taken from the RO dealer after making the payment."

6. In the present case, the officials of the respondent has drawn only one sample, no cash memo has been generated and no signatures have been obtained by the authorized representative of the petitioner. In the explanation, the petitioner specifically stated that the procedure to be followed for drawal of sample of lubricant for testing is not followed by the officials of the respondent. He further stated that there was no proper acknowledgement on the sample either of the petitioner or of his representative and that Mr.K.Subba Rao is not his representative. The respondent, in the impugned order dated 12.05.2011, failed to appreciate the contents

of the explanation of the petitioner, and only by way of bald denial, rejected the case of the petitioner without looking into the material available before it, stating that the contentions of the petitioner are not true. The issues of non-adulteration and not following the procedure while drawing the samples were not specifically denied in the impugned order dated 12.05.2011. Clause 12(h) of the Dealership Agreement, which is extracted in the impugned order, deals with limited extent with regard to supply of stock by the company and accepting the same by the dealer and also with regard to quality and damages which are purely in the nature of contract. The said clause does not deal with the alleged irregularity and imposition of punishment.

7. In the impugned order, the first respondent came to the conclusion that the petitioner for the first time has failed to perform his part of obligation and has committed irregularity and accordingly directed the petitioner to stop sales immediately after receipt of the impugned order for 30 days and to arrange to pay a penalty of Rs.1 lakh by way of demand draft in favour of the respondent. The respondent, after receiving test report, issued a show cause notice 10.12.2010 to the petitioner informing not meeting the specifications of the sample. Thereafter, the respondent did not issue any notice proposing either to stop supplies or impose penalty. The said action of the respondent is in gross violation of principles of natural justice and the same is unilateral apart from the violations committed by the inspecting officials, as stated supra.

8. In **Premodaya, BPD, Buchireddy Palem**'s case (1 supra), when the respondent therein imposed punishment without issuing any notice, this Court found fault with the impugned order therein and set aside the same. The said ratio is followed in **M.Satyanarayana Murthy and Co., IOC Dealer**'s case (2 supra), wherein it has been held that imposition of penalty for the alleged adulteration without issuing show cause notice for the proposed action is in violation of fundamental principles of natural justice. Therefore, the impugned order is liable to be set aside.

9. The writ petition is accordingly allowed setting aside the order of the respondent in Ref.VJR/KR I/Mobile, dated 12.05.2011. No costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

**T.AMARNATH GOUD, J**

Date: 15-12-2018
TJMR