

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.2794 of 2006

ORDER:

This writ petition is filed seeking to issue a writ of mandamus, declaring the order passed by the respondent in Ref.VJR/NE/15, dated 08.02.2006, directing the petitioner to pay a penalty of Rs.1,00,000/- and to suspend the sales of all products from the outlet of the petitioner for 30 days, as illegal, arbitrary and contrary to the Marketing Discipline Guidelines, 2005 and consequently to set aside the same.

Heard Sri V.Sudhakar Reddy, learned counsel for the petitioner and Sri Thoom Srinivas, learned Standing Counsel for the respondent.

It has been contended by the petitioner that he is the dealer of the respondent corporation and he has been carrying on business without any complaints. But, however, the respondent had conducted inspection and collected samples from the outlet of the petitioner and sent the same for testing. Thereafter, the respondent has issued show cause notice, dated 21.12.2005, stating that the samples drawn from the outlet of the petitioner on 23.11.2005 has failed in Flash point and Kinematics Viscosity Tests conducted at the laboratory, and as per provisions of MDG 2005, they prepared to impose fine and suspension of sales and supplies for the offence "established case of selling off spec lubricants", for which, the petitioner has submitted his explanation on 24.12.2005. Being dissatisfied with the explanation of the petitioner, the respondent has issued the impugned proceedings on 08.02.2006, which is under challenge.

While the writ petition came up for admission, this court, vide orders, dated 14.02.2006, granted interim suspension of the impugned

proceedings and by virtue of the said interlocutory orders, the petitioner was allowed to continue as a dealer. During pendency of the writ petition, the petitioner died and his son was impleaded as his legal representative. It has been further contended by the petitioner that after demise of the petitioner, his legal representative, who came on record, has entered into a new agreement with the respondent and consequent upon which, he has been running the dealership of the petitioner firm in the same name and style.

Sri Thoom Srinivas, learned standing counsel for the respondent has contended that as the dealership was passed on to the son of the original petitioner, he is bound to indemnify whatever loss is caused to the original petitioner, and hence the legal heir of the original petitioner is liable to pay fine amount of Rs.1,00,000/-.

This court, having considered the rival submissions of both the parties, feels that any vicarious liability of the earlier original petitioner can be passed on to his legal representative who came on record as petitioner.

In view of the above, without expressing any opinion on the merits of the case, the writ petition is disposed of, directing the petitioner/legal representative to make a representation to the respondent, seeking to recall the impugned order since the original petitioner/proprietor died, within a period of three weeks from the date of receipt of a copy of this order and on receiving such representation, the respondent shall consider the same and pass appropriate orders thereon, in accordance with law, within a period of 8 (eight) weeks therefrom. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

ABHINAND KUMAR SHAVILI,J

Date: 18.04.2018
Dsr

