HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.27451 OF 2018

ORDER :

The case of the petitioner is that it is the Retail Outlet (RO) for the respondent Corporation, situated at Singarayakonda, Prakasam District, established on 05.07.1968; that the petitioner RO has three Dispensing Units (DU); that the dealership agreement between the petitioner and respondent Corporation is being renewed from time to time; that the latest renewal is dated 09.10.2015 which is valid for a period of 15 years from 26.09.2015 till 2030; that the petitioner's RO has an unblemished track record without a single complaint of whatsoever nature since 1968 to 2017; that as per clause 8(a) of the Dealership Agreement dated 09.10.2015, the respondent Corporation is fully responsible for maintenance of their installed machinery which includes the Dispensing Units; that as per Clause 8(i), the dealer was restricted to only inform the respondent corporation, but prohibited from calling any service engineer for maintenance. Therefore, whenever there is a malfunction noticed in any DUs, it is immediately informed to the respondent Corporation through e-complaint tracking system (e-CTS) using the serial numbers of the DUs for identification of the retail outlet. While so, in the year 2016, the DUs developed problem of jumping meter readings and also control card and sensor card failure. Accordingly, petitioner raised complaint with the respondent Corporation through e-CTS and in total the petitioner has raised 15 complaints from 22.06.2016 to

10.08.2017 and 8 complaints are still pending. The card failure complaints given on 22.06.2016, 06.07.2016, 09.03.2017, 28.06.2017 are unattended by the respondent Corporation even as on today. All the DUs continued to run with unattended problems. During 3 months period from May to August 2017, there were 7 complaints given through E-CTS (e-complaint tracking system) as it was noticed that the totalizer meter reading was abnormally jumping, though the dispensation of quantity of consumer was in right measurements. While so, on 29.06.2017, the Service Engineer of M/s.GVR, the Original Equipment Manufacturer of the DUs has also given his report stating about the faulty DUs and recommended for replacing the faulty Control Card and Sensor Card of the DUs. However, the said manufacturer also wrote another report on the same day, indicating everything in an ambiguous manner, due to which petitioner's complaints remained unattended. It is stated that on 02.08.2017, the Electronic Petrol DU nozzle A.2 jumped from 482554 to 490525 ltrs. showing a jump of 7971 ltrs. And the totalizer meter reading in the Electronic Diesel DU jumped from 240057 to 248090 ltrs. showing a variation of 8033 ltrs. The sales through the faulty DUs were immediately suspended and entry in DSR was also stopped at same point of 490525. On 09-08-2017, after returning to the R.O., petitioner made a complaint through e-CTS bearing No.ECS.699862 for the faulty DUs. On 10.08.2017, another complaint through ECS.700419, for the faulty mechanical DU as it was dispensing more quantity. Therefore, as on 10.08.2017, all the DUs had stopped working.

On 10.08.2017, instead of rectifying/replacing or repairing the faulty DUs in response to the e-CTS complaint, the Respondent Corporation sent an AAC (Anti Adulteration Committee) team. The AAC team instead of taking into consideration the real facts, blindly recorded the totalizer readings and came to a conclusion that there was an excess stock of 42905 ltrs. of XP MS (Petrol) and 7862 ltrs. of HSD (Diesel), and ordered suspension of sales and supplies, though the sales was already stopped by the Petitioner R.O due to faulty DUs. The AAC also took samples and sent the products for lab testing. The Lab reports dated 24.08.2017 and 31.08.2017 were negative and in favour of the petitioner outlet.

Thereafter, though there is no fault on the part of the petitioner, the respondent Corporation basing on the faulty totalizer readings, accused the petitioner retail outlet of positive stock variation vide letter dated 05.09.2017 of the 4th respondent in Ref:VJA DO/LVSR/AAC, calling upon the petitioner to submit its explanation. In pursuance of the same, petitioner submitted explanation on 20.09.2017 to 4th respondent stating the above facts. On 27.02.2018, the respondent officials came to the petitioner's RO for inspection to verify the stocks. Thereafter petitioner visited the respondent Corporation requesting restoration of sales and supplies, they have furnished the petitioner a copies of the departmental communication dated 06.04.2018 and 02.04.2018, wherein petitioner's case was recommended for restoration of sales and supplies by the State Office at Hyderabad. The said recommendation clearly reveals that the Corporation has considered petitioner's explanation dated 20.09.2017 and the complaints raised by the petitioner regarding the faulty DUs, Control Card and Sensor Card failure etc. and came to a conclusion that the positive stock variation has arisen due to the faulty DUs and there is no fault on the part of petitioner and that orders of restoration of sales and supplies will be issued shortly. While things stood thus, without passing any orders on the explanation of the petitioner, though recommended for restoration of supplies, once again conducted inspection of the petitioner's RO on 14.06.2018 in the absence of petitioner without any notice to petitioner. Thereafter petitioner submitted representation dated 18.06.2018 to the respondent Corporation regarding pendency of complaints with regard to DUs and also seeking resumption of supplies to the RO, immediately. Thereafter, again the 4th respondent issued letter dated 10.07.2018 stating that they have received a complaint that despite suspension of supplies, petitioner is procuring some products from unauthorized source and started selling them to general public without any authorization from the respondent Corporation. In pursuance of the said letter to investigate the said complaint the respondent officials visited the petitioner outlet on 14.06.2018 and submitted a report. The action of the officials of the respondent Corporation in conducting such a second inspection without attending to petitioner complaint and without rectifying the defects of DUs, conducted second inspection on 14.06.2018 behind the back, which is illegal and arbitrary. That when the RO itself is closed since 10.08.2017, the question of procuring products from unauthorized source and selling through the RO does not arise, as it is not possible to procure the products in such a way. Subsequently, the petitioner also submitted explanation dated 18.07.2018 explaining the aforesaid facts. The petitioner also submitted an additional reply dated 26.07.2018 to the 4th respondent's letter dated 10.07.2018 bringing certain facts to their notice and requested them to consider the additional reply along with the earlier reply and restore the supplies and sales to the petitioner's RO by rectifying the faulty DUs. Aggrieved by the action of respondents 2 to 4 in not revoking the suspension order and not permitting the sales and supplies to the petitioner retail outlet pursuant to the recommendations vide letters dated 06.04.2018 and 02.04.2018, for restoration of supplies and seeking a direction to set aside the inspection report dated 10.08.2017 and letter dated 10.07.2018 of the respondent No.4, present writ petition is filed.

The respondents 2 to 4 filed counter and vacate petition stating that in the inspection carried out by the Anti Adulteration Cell of IOCL on 10.08.2017 at the petitioner's Retail Outlet, certain irregularities were found and that the Service Report dated 29.06.2017 specifically states that the Dispenser Units were checked and no complaints were found, therefore it is very clear that while there was no problem at all with the Dispensing Units and that only to cover up the positive stock variation, the petitioner is making false complaints of meter jumping to cover up his excess sales beyond what was supplied to him by IOCL; that the IOCL has information that the petitioner was obtaining fuel from another source and selling it through this Retail Outlet. Since the above stock variation is a major irregularity under clause 8.3 of the Marketing Discipline Guidelines, from 10.08.2017 onwards all supplies of fuel to the petitioner's retail outlet was suspended pending enquiry and investigation and a notice dated 05.09.2017 was issued by IOCL asking the petitioner to explain this major irregularity. As such, the petitioner could not make any sales beyond 10.08.2017 from his retail outlet. Thereafter, IOCL has received a complaint dated 06.06.2018 from a third party that for the last five months, the petitioner was selling HPCL fuel from the IOCL retail outlet. Immediately, upon receipt of the complaint, the officials of IOCL had conducted inspection at the petitioner's site on 14.06.2018 and found several irregularities including tampered and broken metering unit seals. It is also observed in the said inspection that one dispensing unit was dispensing fuel inspite of the Weights and Measurements Department Calibration Certificate having expired on 02.06.2018 and another dispensing unit for which the Calibration certificate was not produced but fuel was being dispensed inspite of sales and supplies being suspended. It is also stated that earlier when the inspection was conducted on 10.08.2017, major irregularities were found and on 14.06.2018 as unauthorised sales taken place critical irregularity was found, for which action is being taken for termination of the agreement. It is also stated that in pursuance to the notice dated 05.09.2017, petitioner submitted reply on 20.09.2017. As per Clause No.8.3(iv) of MDG, Stock variation beyond permissible limits but sample passing quality tests falls under major irregularities; that as per clause No.8.8 (ii) of MDG, in respect of major irregularities, the approving authority would be an authorized officer not below the rank of Deputy General Manager at State/Region/Zonal level; that the approving authority has the full authority to accept or reject any recommendations forwarded by the lower offices for consideration. It is also stated that based on the reply dated 20.09.2017, some internal papers dated 06.04.2018 were sent to the Chief General Manager (Retail Sales), TAPSO, for his perusal. It is stated that the sales and supplies cannot be revoked until and unless the same is approved by the Approving Authority, hence sought for dismissal of writ petition.

Heard learned counsel for the petitioner and Sri D.Narender Naik, learned Standing Counsel for the respondents 2 to 4.

In this case, it is to be seen that alleging irregularities against the petitioner's RO, notice dated 05.09.2017 was issued by the respondent Corporation to the petitioner for which the petitioner also submitted explanation on 20.09.2017 and the authorities after making some recommendations placed the matter before the Approving Authority and the same is pending. Even according to Marketing Discipline Guidelines for major irregularities, termination is not the punishment. Though the petitioner submitted explanation dated 20.09.2017, as on today, no action has been taken by the said competent authority.

In view of the same, the Approving Authority/Competent Authority is directed to consider the explanation of the petitioner and take action as per the Marketing Discipline Guidelines within a period of two weeks from the date of receipt of a copy of this order. As far as irregularities found in the inspection conducted on 14.06.2018 are concerned, since the petitioner submitted reply dated 18.07.2018 and also supplementary reply dated 26.07.2018 to the notice dated 10.07.2018 issued by the respondent authorities, respondent authorities are directed to consider the same and pass appropriate orders, in accordance with law after giving opportunity of hearing to the petitioner. It is needless to say that the competent authority should also take into consideration the explanation of the petitioner dated 20.09.2017 in pursuance to the notice dated 05.09.2017. Till passing of the orders on the explanation of the petitioner by the competent authority, the interim order granted by this Court on 03.08.2018 shall operate.

With the above direction, the writ petition is disposed of. No order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

07.09.2018
Note: Issue CC in three days.
B/o. t k.

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.27451 OF 2018

Date: 07.09.2018

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