

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

WRIT PETITION No.7373 OF 2008

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India by the petitioner seeking a Writ of Mandamus declaring the penal order of the respondent – Corporation in letter S.D.O./R/653, dated 19.03.2008, as illegal, arbitrary and violative of principles of natural justice and to set aside the same and pass necessary orders.

2. The petitioner's case is that the petitioner was appointed as retail outlet dealer of Indian Oil Corporation Limited (for short, 'I.O.C.') at Budwel, Rajendranagar Mandal, as per the letter of intent, dated 02.08.2004, and since then, the petitioner has been discharging the duties sincerely, as per the guidelines of the respondent – Corporation. The petitioner's retail outlet is situated near Aramghar cross roads, Gaganpahad, at about 3 KM distance from International Airport. It is in a busy locality and various customers, including various trucks and transportation bulk tankers, would come for oil to the outlet of the petitioner.

3. While so, on 08.03.2008, one Mr. Ganeshan, mobile lab incharge of the respondent – Corporation, visited the retail outlet of the petitioner at about 11:45 AM and inspected the outlet and tested the samples of M.S. and H.S.D. and found the products meeting the specifications. At the time of inspection, several tanker trucks of various products were parked in the open space behind and in front of the retail outlet of the petitioner, which were accommodated by the petitioner as a goodwill gesture and also as a business strategy. The owners of those trucks were the regular customers of the petitioner. Again in the evening, at about 05:45 PM, the said Ganeshan visited the outlet of the petitioner

and picked up an oil bucket of about 2 ½ liters kept there by one of the truck operators and started blaming the petitioner by making false accusations. When the Manager of the retail outlet of the petitioner informed the said Ganeshan that the bucket and the oil therein does not belong to the retail outlet of the petitioner and it belongs to one of the truck operators, the said Ganeshan without heeding to him, abused him and warned that he would call up the Executive Director on phone and get the retail outlet agreement terminated. Saying so, Mr. Ganeshan forced the Manager to sign on the acknowledgment for collection of the bucket with some unknown oil for the purpose of analysis and left the place. Thereafter, to the utter shock and dismay of the petitioner, on 19.03.2008, Sales Officer of the respondent – Corporation came to the retail outlet of the petitioner and handed over a letter, wherein it was alleged that the petitioner was guilty of not maintaining proper quality of lubricant and that the sample of lubricant collected on 08.03.2008 by Mr. Ganeshan of mobile testing laboratory had failed in Kinematic Viscosity and Sulphated Ash content parameters and thereby, a penal action was imposed on the very first instance as follows:

- “a) fine of Rs.1,00,000/-
- b) suspension of sales of all products for 30 days.”

Accordingly, the petitioner was advised to stop the sales at the retail outlet with immediate effect from 19.03.2008 and also to submit a Demand Draft for Rs.1,00,000/- in favour of I.O.C.

4. The grievance of the petitioner is that the bucket, which contained unknown oil, does not belong to the retail outlet of the petitioner and it belongs to one of the truck owners and the fact was clearly submitted to Mr. Ganeshan on 08.03.2008 itself and in spite of the same, with a malicious intention, he took the sample from the said

bucket. The other grievance of the petitioner is that the penalty was imposed on the petitioner without issuing any show-cause notice giving opportunity to the petitioner to submit his explanation. Thus, the principles of natural justice were not accorded to the petitioner in the instant case.

5. Heard.

6. Counter is not filed by the respondent – Corporation so far.

7. No material is placed before this Court by the respondent - Corporation showing that before imposing the penalty, a show-cause notice was given to the petitioner calling for the explanation of the petitioner. Considering the fact that imposing fine of Rs.1,00,000/- and suspending the sales of all products for 30 days as grave punishment not supported by following the principles of natural justice, the impugned order is quashed.

8. In the result, the Writ Petition is allowed and the impugned order, dated 19.03.2008, is set side with a direction that the respondent authorities shall issue a show-cause notice to the petitioner giving two weeks' time to the petitioner to submit his explanation and on receiving the explanation, the respondent authorities shall pass a reasoned order on merits within four (4) weeks from the date of receipt of the explanation.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

U.DURGA PRASAD RAO, J

August 14, 2018
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