

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.No.29413 of 2016

and

W.M.P.Nos.25451, 25452 & 34311 of 2016

M/s.Chemmozhi Agency
Rep. by its Proprierix, M.Byeroja Begum
w/o.M.K.Mustaffa
Old No.184, New No.221, Periyar Pathai
Choolaimedu, Chennai - 600 094.

...Petitioner

vs.

1. M/s.Bharat Petroleum Corporation Ltd.,
Rep. by the Executive Director (Retail)
Appellate Authority
No.12/E & F, Maker Towers,
Cuffee Parade, Mumbai - 400 005.
2. The Deputy General Manager - Sales (Retail) South
Bharat Petroleum Corporation Ltd.,
Ranganathan Gardens
Off:11th Main Road, Anna Nagar,
Chennai - 600 040.
3. The Territory Manager (Retail)
Bharat Petroleum Corporation Ltd.,
No.35, Vaidyanathan Street,
Thondiarpet, Chennai - 600 081.
4. The Assistant Manager (Sales)
Bharat Petroleum Corporation Ltd.,
No.35, Vaidyanathan Street,
Thondiarpet, Chennai - 600 081.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 18.07.2016 of the 1st respondent herein communicated to the petitioner under letter Ref:RSHQ:TERM dated 18.07.2016 confirming the order of the 2nd respondent herein under

Ref:CHTR.41.78 dated 18.03.2014 and quash the same and direct the respondents to forthwith resume supply of Petroleum Products to the petitioner's Retail Outlet under the Dispensing Pump and Selling Licence Agreement dated 30.10.2010.

For Petitioner : Mrs.AL.Ganthimathi
For Respondents : Mr.O.S.Karthikeyan for R1 to R4

O R D E R

The challenge in the Writ Petition is to the order of the appellate Authority dismissing the appeal of the petitioner, wherein, the petitioner had challenged the termination of the dealership of the petitioner on two grounds viz., sale of excess quantity of Motor Spirit and High Speed Diesel at the retail outlet of the petitioner and on the ground that the samples taken from the petitioner's outlet had failed the quality test and it was found that there was adulteration.

2. The petitioner was appointed as a dealer of respondent Corporation under the land owner category during the year 2010. A lease was entered into in respect of the land for a nominal rent of Rs.21,802/- with a nominal increase there at for successive blocks of five years. The memorandum of agreement of dealership was entered into between the parties on 30.10.2010. There was a surprise inspection of the retail outlet on 24.06.2013 and the Corporation issued a show cause notice to the petitioner calling upon the petitioner as to why the dealership should not be cancelled for the reasons set out therein.

3. The petitioner sent a reply and in the interregnum, the samples taken from the petitioner's petroleum outlet was sent for test. The lab found that the products did not met the quality standards. Not satisfied with the reply of the petitioner on both the counts the original authority viz., the Deputy General Manager, Sales rejected the explanation offered by the petitioner and terminated the dealership of the petitioner by order dated 18.03.2014.

4. The petitioner approached this Court in W.P.No.14724 of 2014 which was dismissed with liberty to the petitioner to approach the appellate authority. Upon appeal being filed, the Appellate Authority viz., Executive Director, Retail of the respondent Corporation rejected the appeal by his order dated 18.07.2016. Challenge in this writ petition is to the above order of the Appellate Authority.

5. I have heard Mrs.A.L.Gandhimathi, learned counsel appearing for the petitioner and Mr.O.S.Karthikeyan, learned counsel appearing for the respondent Corporation.

6. Mrs.A.L.Gandhimathi, learned counsel appearing for the petitioner would vehemently contend that the claim of the Corporation that the petitioner has effected sales of more than the quantity of Motor Spirit and High Speed Diesel supplied to her outlet is not correct and it is due to the wrong entry made by her staff whom she believed. She would also point out that the samples were not taken properly and the samples were sent to the lab belatedly and hence, the report of the lab regarding the quality of the product cannot be relied upon. In the appeal grounds, a claim is made to the effect that the Sales Officer of the Corporation who made inspection on 24.06.2013 had come with a pre-conceived idea to some how terminate the dealership. Reference is also made to the offer made by the petitioner to the Corporation for outright purchase of the land in question.

7. Contending contra Mr.O.S.Karthikeyan, learned counsel appearing for the Corporation would submit that the fact that the petitioner had sold excess quantity of MS and HSD (Petrol and Diesel) has been conclusively established. The claim of the petitioner that her employee had made a wrong entry had been proved to be false with reference to the physical stock verifications done at the relevant point of time, the original Authority has pointed out that the stock of MS as on 28 February 2013 was 1365 litres and that of HSD was 1100 litres. The retail outlet of the petitioner had been supplied with 3,17,000 litres of petrol and 61,000 litres of diesel between 28.02.2013 and 24.06.2013. Therefore, the total stock of petrol that was supplied to the petitioner's retail outlet was 3,18,365 litres and total stock of diesel that was supplied was 62,100 litres. The actual stock that was available on 24.06.2013 was 7059 litres of petrol and 2810 litres of diesel.

8. From the records it is seen that the petitioner has effected sales of 3,80,555 litres of petrol and 83,947 litres of diesel. The mathematics would show that the petitioner has sold 69249 litres of petrol and 24657 litres of diesel in excess of what has been supplied to the petitioner's outlet. Admittedly this stock variation is above the permitted levels. The petitioner cannot escape the conclusion that there has been some malpractice at the outlet by pointing fingers on her servants or people employed by her. Under the agreement of dealership the dealer is responsible for the actions of persons employed by him or her. Therefore, liability is vicarious.

9. As far as the quality is concerned, the product was tested by the lab and the lab report shows that the sample is contaminated with some higher ends. The petitioner would object to the report of the lab contending that only one of the tanker lorry retention sample was used for the test. The answer is found in the lab report itself, wherein it is stated that the

petitioner has not maintained the second tanker lorry retention sample. Therefore, the petitioner cannot contend that the lab was at fault. The appointment of dealer or termination of dealership are matters of contract which are controlled by the Marketing Discipline Guidelines issued by the Corporation. It is for the Corporation to take a decision if there is violation of such guidelines. The Original Authority as well as appellate Authority have concurrently found that the petitioner is guilty of commissions and omissions with regard to the dealership.

10. The learned counsel for the petitioner despite her best efforts is unable to point out any procedural lapse in the enquiry conducted. This Court cannot substitute its own findings on facts particularly in proceedings under Article 226 of the Constitution of India. The sufficiency or otherwise of the evidence cannot be gone into. Further the Authorities who are invested with powers to take action under Marketing Discipline Guidelines are not civil Courts to test the evidence based on the provisions of the Evidence Act. They will have to go by the preponderance of probabilities and strict rule of evidence cannot be applied in such enquiry.

11. Once the Authority concludes that there has been violation and the petitioner is unable to demonstrate that such conclusion is wholly unreasonable or such conclusion could not have been reached. I do not think it is for this Court to interfere with the conclusion of the Authorities while exercising jurisdiction under Article 226 of the Constitution of India. In the case on hand, the fact that there was excess sale has been amply demonstrated by the order of the Original Authority and the same is confirmed by the appellate Authority.

12. I do not think that the materials available on record would render such conclusion wholly unjust or wholly improbable. Hence, I do not think that the orders of termination could be interfered with in the writ jurisdiction.

13. The writ petition therefore fails and it is accordingly dismissed. No costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The Executive Director (Retail),
M/s.Bharat Petroleum Corporation Ltd.,
Appellate Authority
No.12/E & F, Maker Towers,
Cuffee Parade, Mumbai - 400 005.
2. The Deputy General Manager - Sales (Retail) South
Bharat Petroleum Corporation Ltd.,
Ranganathan Gardens
Off:11th Main Road, Anna Nagar,
Chennai - 600 040.
3. The Territory Manager (Retail)
Bharat Petroleum Corporation Ltd.,
No.35, Vaidyanathan Street,
Thondiarpet, Chennai - 600 081.
4. The Assistant Manager (Sales)
Bharat Petroleum Corporation Ltd.,
No.35, Vaidyanathan Street,
Thondiarpet, Chennai - 600 081.

+1cc to Mrs.AL.Ganthimathi, Advocate,Sr.43146

W.P.No.29413 of 2016

GPL[co]
NSK/28/07/2022