IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No. 203

CWP-21228-2018 (O&M)
Date of decision : 27.04.2022

M/s Punjab Motor Store ..... Petitioner

VERSUS

Union of India and others ..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. G.S. Attariwala, Sr. Advocate with
Mr. O.S. Batalvi, Advocate,
Mr. Tarun Aggawal, Advocate, and
Mr. M.D. Singh, Advocate, for the petitioner.

Mr. N.K. Vashisth, Advocate, for respondent No.1.

Mr. Ashish Kapoor, Advocate, for respondents No.2 to 4.

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SUDHIR MITTAL, J.

Pursuant to agreement dated 24.08.2011 (Annexure P-1), a retail outlet in the name and style of the petitioner was established. It was inspected on 08.10.2013 and everything was found to be in order. The only observation made was in column of 'upkeep and maintenance of equipments' and the same was that one dispensing unit required replacement. This was followed by a second inspection dated 16.10.2013. On this date in the column of 'delivery check', it was recorded that seals of all dispensing units were found intact, however, it was suspected that double gear had been installed in one nozzle of M/s Midco, Sr. No. 8F751A/B because short delivery of 220 ml. in a measure of 05 liters was detected in 03 separate samples. Thus, the sale from that particular nozzle was suspended and meter reading was recorded. Sealing was done with holographic seals with No. AAC0015230 to AAC0015249 i.e. 19 seals in all. Another joint inspection was conducted on 25.10.2013 and it was found that five of these holographic seals had been tampered with and 06 of them had been replaced by holographic seals bearing Sr. Nos. AAC0015912, AAC0015913, AAC0015914, AAC0015915, AAC0015918 and AAC0015919. The weights and measures seals were found intact. To conclusively determine short delivery, the control card and pulsar assembly of that particular dispensing unit were removed for being examined in Midco lab. Without waiting for the test report, notice dated 30.10.2013 was issued seeking an explanation regarding suspected tampering in one nozzle and tampering/replacement of holographic seals. The petitioner replied vide its reply dated 14.11.2013 and stated that the holographic seals shine at night and could have been tampered with by any other person or child after closing of the retail outlet. It was also stated that all the weights and measures seals were found intact and that the representative of the petitioner was not informed when the holographic seals were affixed nor was he directed to supervise the same. Finding the reply unsatisfactory, notice dated 31.03.2014 for termination of dealership was issued. The grounds taken therein were short delivery from a particular nozzle, tampering with 05 holographic seals and replacement of 06 holographic seals. This was stated to be covered by the definition of tampering with dispensing unit as mentioned in Clause 5.1.4 of MDG-2012. Clause 34 of the same agreement stipulated that no short delivery was to be made and Clause 42 stipulated that the dealer would diligently observe all instructions given by the oil company regarding safe practices and marketing discipline. These stipulations stood violated rendering the petitioner open to action under the agreement which was proposed to be termination of the dealership. The petitioner responded vide reply dated 11.04.2014, but the same was not found satisfactory. Vide order dated 26.02.2018, the dealership was terminated on the grounds aforementioned. Appeal against this order has been dismissed on 30.07.2018.

Meanwhile, the petitioner had filed a consumer complaint before the District Consumer Disputes Redressal Forum, Ferozepur. This was decided vide order dated 31.10.2014, whereby, oil company was directed to restore the sale from the nozzle that had been sealed. The oil company appealed against this order and the same was partly accepted. Direction to restore the supply was set aside with liberty to oil company to take appropriate action on the basis of inspection report. The petitioner as well as the oil company filed revision petitions against the appellate order which were decided by common order dated 03.01.2017. The revision filed by the oil company succeeded and the impugned orders were set aside as it was found that the petitioner was not covered under the definition of 'consumer'.

It may also be noted that the Midco Laboratory prepared test report dated 10.02.2013 and concluded that the pulsar assembly and the metering unit passed the functional testing procedure of Midco standards and there was no deviation in standard. The functional test of the control card could not be done as it was not getting fitted in the test jig. The petitioner had also sought information regarding the holographic seals under the Right to Information Act, 2005. It was received vide communication dated 17.06.2016, wherein, it was mentioned that holographic seals No. AAC0015912 to AAC0015915 and AAC0015918 & AAC0015919 were issued to Sh. Hem Raj (an employee of the oil company) on 09.09.2013. This clarified that the replaced seals totaling 06 in number had been issued to an official of the oil company before the first inspection was done and the said official was a member of the joint inspection team which conducted the inspection on 25.10.2013.

The facts are not disputed. Based thereupon, learned senior counsel for the petitioner has argued that the test report dated 10.02.2014 clearly shows that there was no tampering with the nozzle which allegedly was giving short delivery. Thus, the petitioner was not guilty of tampering. The replaced seals had been issued to a member of the inspection team and it was quite possible that members of the inspecting team had themselves replaced 06 seals and tampered with 05 of them. The weights and measures seals were found intact and thus, there was no question of the petitioner having tampered with one nozzle. Affidavit dated 27.08.2019 filed by Sh. Amarendra Kumar, General Manager (Retail Sales) pursuant to order dated 10.07.2019 was patently false because, even though, it states that the said seals were stolen by an official of the petitioner, there is no proof of the same. No FIR was registered and the alleged theft was not mentioned in any of the show cause notices issued to the petitioner, even though, the theft was realized after 03 days of inspection dated 25.10.2013. Since, the petitioner has not committed any wrong, the termination of the dealership is bad in law.

Learned counsel for the oil company submits that the petitioner is guilty of tampering with holographic seals and of replacing them. He is also guilty of tampering with a dispensing unit. The test report dated 10.02.2014 did not detect any tampering as the device used for tampering had already been removed by the petitioner after the inspection on 16.10.2013 and before the parts of the dispensing unit could be retrieved. The petitioner has clearly violated the terms of the agreement and deserves no leniency.

Test report dated 10.02.2014 of the metering assembly of nozzle which was giving short supply is on the record as Annexure P-42. It is unambiguous and clear in its conclusion that the pulsar assembly and metering unit had passed the functional testing procedure and there was no deviation in standard. The control card could not be tested as it did not fit on to the test jig. It is thus, evident that there was no tampering by the petitioner with the metering assembly of that nozzle.

It is also significant that during the inspection on 08.10.2013 all seals were found in order. This was also the finding during the second inspection conducted on 16.10.2013. Even, after the third inspection dated 25.10.2013, the weights and measures seals were found intact. It is thus, evident that the metering assembly of the nozzle allegedly giving short delivery was beyond the access of the petitioner. There was thus, no question of tampering with the metering assembly.

Communication dated 17.06.2016, copy of which is Annexure P-40 on the record, is a reply to query raised by the petitioner under the Right to Information Act, 2005. Interestingly, it reveals that the replaced seals were issued to one Hem Raj (an employee of the oil company) prior to inspection dated 25.10.2013. Said Hem Raj was member of the inspecting team as is evident from report dated 25.10.2013, copy of which is Annexure P-23 on the record. Annexure R-1/A annexed with affidavit dated 27.08.2019 executed by Sh. Amarendra Kumar, GM (RS), Punjab State Office, Indian Oil Corporation Limited, is the report of holographic seals having been stolen. The aforementioned Hem Raj has submitted that report and he has alleged that the same were stolen by the dealer. The date of the report makes it abundantly clear that the oil company acquired knowledge of the theft 03 days after the inspection on 25.10.2013. Yet, no complaint was made to the police nor the petitioner was confronted therewith. Show cause notices dated 13.10.2013 as well as 31.03.2014 also do not make any mention of the alleged theft. Thus, the only inference possible is that the theft report dated 28.10.2013 had been ante-dated.

The dealership has been terminated on account of tampering with the dispensing unit as well as violation of Clauses 34 and 42 of the dealership agreement dated 24.08.2011 read in conjunction with Clause 8.2 (iv) of MDG-2012. Thus, it becomes imperative to reproduce these provisions. Clause 5.1.4 of MDG-2012 deals with tampering of dispensing unit and is as under:-

> 'Any mechanism/fittings/gear found fitted in the dispensing unit with the intention of manipulating the delivery. Removal, replacement/manipulation of any part of the Dispensing Unit including microprocessor chip/electronic parts/OEM software will be deemed as tampering of the dispensing unit.'

Clause 8.2 (iv) of MDG-2012 deals with the consequences of tampering with dispensing unit and is as follows:-

> '**8.2 Critical Irregularities:-**
>
> Critical Irregularities: The following irregularities are classified as critical irregularities:
>
> xxxxxxxxx
>
> Additional/Unauthorized fittings and gears inside the dispensing units/tampering with dispensing units. (5.1.4)
>
> **Action:** Termination at the first instance will be imposed for the above irregularities.'

Clauses 34 and 42 of the dealership agreement dated 24.08.2011 are as follows:-

> '**Clause 34:** The Dealer shall not make short deliveries to his customers. The Dealer shall scrupulously observe all rules and regulations under the Weights & Measures Act and ensure correct delivery of product by suing only duly certified measure or measuring devices and shall check delivery date of such devices at least once on a daily basis, before commencement of sales'
>
> **'Clause 42:** The dealer shall at all time faithfully, promptly and diligently observe and perform any carry out at all times all

direction, instructions guidelines and orders given or as may be given from time to time by the corporation or is representative(s) on safe practices and marketing discipline and/or for the proper carrying on the dealership of the corporation.'

A perusal of the aforementioned provisions shows that fitting of any mechanism in the dispensing unit or removal, replacement of any part of the dispensing unit including electronic parts with the intention of manipulating delivery would be deemed to be tampering with the dispensing unit. The consequence thereof is provided in Clause 8.2 (iv) which is termination at the first instance. Clause 34 of the agreement stipulates that no short delivery would be made by the dealer. Clause 42 stipulates that all guidelines and directions issued by the oil company regarding safe practices and marketing discipline would be faithfully adhered to.

The question which arises is whether, the petitioner has tampered with a dispensing unit and whether, he has violated instructions regarding safe practices and marketing discipline by making short deliveries.

I have already found that there was no tampering with the dispensing unit nor there was any attempt made to tamper therewith. Thus, the petitioner cannot be held liable for making short deliveries or for violating safe practices or marketing discipline. The termination of its dealership is patently illegal.

Regarding tampering with the holographic seals and replacement thereof, it needs to be observed that the petitioner would not derive any benefit thereby. Coupled with, this is the fact that the replaced seals had been issued to an official of the oil company who was a part of the inspecting team on 25.10.2013. It is thus, more than likely that the holographic seals had been tampered with and replaced by the inspecting team itself in order to frame the petitioner. This is only an inference and thus, it would also be appropriate to examine, whether, such an action (if done by the petitioner) would render it liable to termination of dealership. In my considered opinion, it would not as it does not amount to tampering with a dispensing unit nor does it amount to making short deliveries or violating marketing discipline. Learned counsel for the oil company has not been able to point out any other provision of the agreement between the parties which may render the petitioner liable to termination of the dealership and thus, I hold that assuming the petitioner had tampered with the holographic seals or had replaced the same, its dealership could not have been terminated.

In view of the above, the writ petition is allowed. Order dated 26.02.2018 as well as appellate order dated 30.07.2018 are quashed. The oil company is directed to restore supply within four weeks from the date of receipt of certified copy of this judgment. The petitioner would be at liberty to sue the oil company for damages.

(SUDHIR MITTAL)
JUDGE

27.04.2022
Ramandeep Singh

Whether speaking / reasoned Yes
Whether Reportable Yes