

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

**Hon'ble Justice Chitta Ranjan Dash
AND
Hon'ble Justice Partha Sarathi Sen**

**F.M.A. 98 of 2019
M/s Sanjay Auto Care & Anr
Vs.
Union of India & Ors.**

For the appellants:	Mr. Debabrata Saha Roy, Adv., Mr. Biswanath Chakrabarti, Adv., Mr. Krishnendu Bera , Adv., Ms. Debolina Chakraborty, Adv.
For the IOCL:	Mr. M. S. Yadav, Adv., Mrs. Saswati Chatterjee, Adv., Mrs. Satabdi Naskar (Kundu) , Adv.

Last Heard on: : 23.03.2023

Judgment on. : 20.04.2023

PARTHA SARATHI SEN, J. : –

1. In this intra court appeal the order dated January 02, 2019 as passed in WPA no.26296(W) of 2016 by the Hon'ble Single Bench of this Hon'ble Court has been assailed. By the impugned order the Hon'ble Single Bench refused to interfere with the letter of termination dated October 27,2016 as issued by the Indian Oil Corporation Ltd. (hereinafter

referred to as the 'Oil Company' in short) in favour of the writ petitioners and thus dismissed the said writ petition. The writ petitioners felt aggrieved and thus preferred the instant appeal.

2. In support of the instant appeal Mr. Saha Roy, learned advocate for the writ petitioners/ appellants at the very outset draws attention of this Court to the certified copy of the impugned order as well as to the copy of the letter of termination dated October 27, 2016 as issued by the Oil Company/respondent no.2 herein. It is contended by Mr. Saha Roy that though before the Hon'ble Single Bench a plea was taken that Shri. Aninda Chattopadhyay, Assistant Manager Retail Sales of the Oil Company did not qualify to be an officer of the Oil Company not below the rank of sales officer in terms of Clause 7 of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order 2005 (hereinafter referred to as the 'said Order of 2005') the Hon'ble Single Bench in the impugned judgement probably overlooked the same and expressed its view that there is no pleading in the writ petition to that effect and further held that since the impugned order remains uncontroverted by the writ petitioners even on affidavit evidence, there is no material before him to arrive at a finding that the search and seizure was not done by an officer of the Oil Company not below the rank of the Sales Officer. Drawing attention to Clause 7 of the said Order of 2005 it has been contended further that the Hon'ble Single Bench in his impugned order also failed to visualize that the alleged search and seizure was not done in accordance with Section 100 of the

Code of Criminal Procedure, 1973 which is mandatorily to be followed in view of Clause 7 (iii) of the Order of 2005.

3. With regard to the testing of samples, it is argued by Mr. Saha Roy that in the process of testing also the provisions of Clause 2.5 of the Marketing Discipline Guidelines have not been followed by the Oil Company and thus the Hon'ble Single Bench ought to have held that the process of termination of the licence of the present appellants by the Oil Company is faulty. It is further argued by Mr. Saha Roy that the Hon'ble Single Bench while disposing of the said petition did not consider the photocopies of the documents which have been annexed with the said writ petition in its proper perspective. It is further argued by him that from the documents as relied upon by the writ petitioners before the Hon'ble Single Bench it would reveal that irregularity, if there be any, as wrongly pointed out by the Oil Company during inspection and seizure occurred on account of an unprecedented cyclonic storm on 14.09.2015 at the place where the petrol pump of the present appellants is situated and for which the appellants could not reach her retail outlet as well as on account of her illness for a couple of days. Mr. Saha Roy thus submits that it is a fit case for allowing the instant appeal by setting aside the impugned order. In support of his contention, Mr. Saha Roy learned advocate for the appellants placed his reliance upon the following decisions:-

- i) Civil Appeal 11200 of 2011(Allied Motors Ltd. VS Bharat Petroleum)**

ii) *Harbans Lal Sahani Vs IOC, AIR 2003 SC 2120.*

4. Per contra, Mr. Yadav, learned advocate for the Oil Company at the very outset draws attention of this Court to page nos. 161 to 164 of the paper book being Annexure P1 of the writ petition. It is argued by Mr. Yadav that from the said annexure it would reveal that several irregularities have been noticed at the retail outlet of the appellants in course of a joint inspection on 19.09.2015 in presence of IOCL officials and local police authority which according to Mr. Yadav are serious in nature and even after issuance of letter dated 11.01.2016 being Annexure P8 to the writ petition (at page no.179 of the paper book) and the show cause notice (annexure P9 at page 180 of the paper book) the present appellants have miserably failed to explain and justify his action. It is further argued by Mr. Yadav as per request of the present appellants an opportunity of personal hearing was given to the present appellants on 16.09.2016 and even in such personal hearing the present appellants had failed to explain those irregularities /illegalities. It is argued on behalf of the Oil Company that the Hon'ble Single Bench in the impugned order duly observed the chronological events as mentioned above and thus has been pleased to dismiss the present writ petition. Drawing attention to the various clauses especially Clause 2.5 of the Marketing Discipline Guidelines, it is argued that while testing the samples as collected from the retail pump of the appellants, mandates of the said guidelines have been duly followed and in such test, adulteration of motor spirit was found established beyond shred of doubt and as such the Oil Company is

very much justified in issuing the letter of termination dated 27.10.2016 vide Annexure P4 of the writ petition at page no.202 of the paper book. Learned advocate for the Oil Company also placed his reliance upon the following reported decisions namely:-

i) (1978) 3 SCC 366; Nand Kishore Prasad Vs. State of Bihar and others;

ii) 1992 Supp (2) SCC 312 ; H.B Gandhi , Excise and Taxation Officer-Cum-Assessing Authority, Karnal and others vs. M/S Gopi Nath & Sons and others;

iii) (2019) 18 SCC 39 ; West Bengal Central School Service Commission and others Vs. Abdul Halim and others;

iv) (2021) 2 SCC 612; Deputy General Manager (Appellate Authority) and others Vs. Ajai Kumar Srivastava.

5. We have meticulously perused the entire materials as placed before us. We have minutely gone through the impugned order as passed by the Hon'ble Single Bench. We have given our due consideration over the submissions of the learned advocates for the contending parties.

6. On perusal of the entire materials as placed before us it reveals that it is the case of the Oil Company that on 19.09.2015 in course of sudden inspection at the retail outlet of the appellants-retailer/writ petitioners some serious deviations have been noticed and those are as under:-

- i) Stock variation in Motor Spirit –positive (+915 Lt.) and beyond permissible limit (548 Lt).*
- ii) Stock variation in HSD –negative (6996 Lt.) and beyond permissible limit(-3654 Lt.)*
- iii) DSR & Density Register were not updated since 14-09-2015. Last recorded on 13-09-2015.*
- iv) Supply/Trade Licenses which was available at the Retail out-let was of 2014-15. Latest License was not found at the time of inspection.*
- v) TT Retention samples of both Motor Spirit and High Speed Diesel were not available at the time of inspection.*
- vi) Delivery Challan of HSD dated 17.09.2015 was not available at the time of inspection.*
- vii) There was an alleged complaint regarding the adulteration of product at the RO. Contai P.S GDE No.741 and 754 dated 17.09.2015 is referred to.*

7. We are in agreement with the Hon'ble Single Bench that a Writ Court is not an Appellate Forum and thus it is not supposed to reappraise the evidence as an appellate authority and substantiate its wisdom with that arrived at by the decision making authority. On close scrutiny of the letters as exchanged by and between the appellants-retailer/writ petitioners and the Oil Company (the respondent no.2 herein) it would reveal to us that the appellants-retailer/writ petitioners were unable to furnish a plausible explanation even in course of their personal hearing

to the Oil Company with regard to the deviation as mentioned in the preceeding paragraph and therefore it cannot be said that principles of natural justice have not been followed by the Oil Company prior to the issuance of notice of termination dated 27.10.2016. With regard to the allegation of the appellants regarding improper testing of samples we find that general procedure for drawal of samples as mentioned in Clause 2.5 of the Marketing Discipline Guidelines have been duly followed on behalf of the Oil Company.

8. From the materials as placed before us it appears that the samples which were collected from the retail outlet on 19.09.2015 failed to meet BIS Specifications as per the test report dated 01.10.2015. It reveals further that thereafter as per request of the present appellants-retailer/writ petitioners, arrangement was made for retesting of dealer retention samples as well as Divisional office retention samples. However, such retesting could not be conducted because while retesting, the loops of the seals of both the samples were found broken and for both the samples the seal was found wrapped around the seals and both Aluminium seals and wooden box seals could be taken out without cutting the wire as evident from page no. 92 of the paper book. As rightly pointed out by Mr. Yadav that even thereafter the appellants-retailer/writ petitioners could have availed the provisions of Clause E of 2.5 of Marketing Discipline Guidelines by making a request for testing his retained sample along with the counter sample retained with the Oil

Company at any PSU laboratory but at that time the appellants –writ petitioners/retailer under cover of her letter dated 16.10.2015 alleged that such retention samples were forcibly taken by some unruly persons who allegedly ransacked the office of the writ petitioners but to substantiate the same no police complaints have been lodged at the instance of the retailer. It has also been rightly pointed out by Mr. Yadav that on 19.09.2015 at the time of inspection also such TT Retention samples were not available. In view of such we also find no irregularity in the 3-tire testing of samples on the part of the Oil Company.

9. The argument of Mr. Saha Roy, learned advocate for the retailer/appellants /writ petitioners that the Assistant Manager Retail Sales, Shri. Aninda Chattopadhyay cannot be said to be an ‘appropriate authorized person’ for search and seizure does not appear to be convincing in absence of any material that the rank of the said Assistant Manager (Retail Sales), is below the rank of sales officer. As also rightly pointed out by the Hon’ble Single Bench that a Writ Court being not an Appellate Court is not supposed to reappraise the evidence as an appellate authority and therefore in our considered view the Hon’ble Single Bench is perfectly justified in not entering into the nitty gritty of search and seizure in absence of any concrete material to establish that such search and seizure has been done in violation of Section 100 of the Code of Criminal Procedure.

10. In view of the discussion made hereinabove we thus find no merit in the instant appeal and accordingly the instant appeal is dismissed but without costs.

11. Consequently the impugned order dated January 02, 2019 as passed in WPA no.26296(W) of 2016 by the Hon'ble Single Bench of this Hon'ble Court is hereby upheld.

12. Urgent Photostat certified copy of this judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)