IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

101+210 CWP-11676-2023 (O&M)
Date of Decision : 31.07.2023

M/s Shahid Rajender Parshad Filing Station and another

.... Petitioners

Versus

Union of India and others .... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Amit Jhanji, Sr. Advocate with
Ms.Zaheen Kaur, Advocate
for the petitioner.

Mr. Ankur Sharma, Advocate
for the respondent-UOI.

Mr. Ashish Kapoor, Advocate
for respondents No.2 to 5.

Mr. Raman Sharma, Advocate
for respondent No.6-DFSC

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JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 03.05.2023 (Annexure P/16) whereby Appellate Authority has upheld termination order dated 16.12.2022 (Annexure P/13) passed by respondent-Indian Oil Corporation Ltd.

2. The brief facts which are necessary for adjudication of the present case are that the petitioner on 10.03.2008 entered into a dealership agreement for a period of 15 years with respondent-Indian Oil Corporation

(for short 'IOC'). On 11.02.2018, the Chief Minister Flying Squad conducted raid on the premises of the petitioner. During raid one tanker bearing No.HR-39B-2575 having oil was found lying parked at the petrol pump. The raiding party drew samples. An FIR No.0094 dated 11.02.2018 came to be registered. Two employees of the petitioners came to be arrested. The officials of the respondent-Corporation also inspected retail outlet on the very same day and drew samples. The officials of IOC carried out its inspection in the presence of officials of DFSC, Bhiwani and Original Equipment Manufacturer (OEM). The respondents found that HSD nozzle of MIDCO DU Sr. No.1332164V was non-functional. It was rectified by OEM Engineer and thereafter nozzle samples were drawn in the presence of all the officials. The samples were sent to Panipat Laboratory of the respondents. As per test report dated 15.02.2018 (Annexure P/3), the oil stored in the tanks of the petitioner was adulterated. The respondents on the basis of its preliminary investigation, issued letter dated 20.03.2018 (Annexure P/5) calling upon the petitioners to furnish their comments within 10 days. The aforesaid communication was followed by show cause notice dated 21.07.2018 whereby petitioners were called upon to show cause as to why dealership agreement should not be terminated on account of violation of terms and conditions of the agreement. The petitioners filed reply to show cause notice. The respondents did not agree with the submissions of the petitioners and passed impugned order dated 16.12.2022 whereby dealership agreement was terminated. The petitioner preferred an appeal before Appellate Authority which came to be dismissed vide order dated 03.05.2023.

3. Mr. Jhanji, Senior Advocate submits that test report furnished

by Government Laboratory at Madhuban is indicating that there was no adulteration, however, respondent is relying upon its own report. The respondents were supposed to draw three samples and supply its one copy to the petitioners, however, no copy of sample was supplied to the petitioners. The termination of dealership agreement is a harsh punishment.

4. Per contra, Mr. Ashish Kapoor, Advocate, submits that Corporation is not relying upon police investigation and test reports received by them. The respondents its own had drawn samples from nozzle and one set was sent for testing. Proper procedure was followed. The samples were drawn in the presence of officials of DFSC and Engineers of OEM. The petitioner was not available and she did not come on the spot despite telephonic call. The samples were drawn in the presence of employees and one copy was supplied to an employee of the petitioners. The petitioners did not ask for copy of the sample even in the reply to show cause notice, thus, the petitioners cannot be permitted to claim that one copy of sample was not supplied.

5. I have heard the arguments of learned counsel for the parties and with their able assistance perused the record.

6. From the perusal of record, it comes out that respondent-Corporation apart from samples drawn by police had independently drawn samples from nozzle. One set of samples was sent to laboratory and as per report of laboratory, stock was adulterated. The petitioners neither asked for copy of sample at the time of drawing samples or in the reply to show cause notice, thus, it seems to be afterthought that copy of sample was not supplied to the petitioners. As per respondents, one set of sample was handed over to an employee of the petitioners. Thus, it is a disputed

question that whether sample was supplied to the petitioners or not. In any case, the petitioners did not raise objection qua outcome of the test report. The petitioners were always at liberty to raise objection qua authenticity of the test report and they could ask for retesting of samples or testing of second sample which was available with the respondent-Corporation. The petitioners neither asked for re-testing of sample nor testing of second sample which amounts to acquiescence on the part of the petitioners and they cannot be permitted to challenge veracity of test report at this stage. As per report, the stock was found adulterated and as per policy of the Corporation, adulteration of stock amounts to critical irregularity inviting termination. There are allegations of variation in stock. The variation of stock warrants punishment other than termination, however, it has become irrelevant to consider question of shortage/excess of stock because the petitioners are liable to punishment of termination on account of alteration of stock.

7. In view of aforesaid facts and findings, this Court finds no substance in the contention of learned counsel for the petitioners. The present petition being devoid of merit deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

31.07.2023
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Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*