

31. 26.11.2024
Court No.13.
(Pritam)

FMA 240 of 2024
Maharaj Murmu.
-Vs.-
Bharat Petroleum Corporation & Ors.

Mr. Pingal Bhattacharyya,
Mr. Sankha Biswas

....for the Appellant.

Mr. Sanjib Kr. Mal,
Mr. Bimalendu Das,
Ms. Showmita Das

.....for the respondents (BPCL).

1. The instant appeal is directed against a judgment and order dated 7th July, 2023 passed by a single Bench of this Court in WPA 22976 of 2018. By the said judgment, the writ petition was dismissed.
2. The facts relevant to the case are that the writ petitioner / appellant was running a petrol and diesel outlet in Manguria, Purulia, West Bengal. The said retail outlet was being run under the BPCL whose products were being sold through the outlet.
3. Sometime in September 2008, the writ petitioner was asked to replace the supply of diesel from his outlet with that of high-speed diesel.
4. The Dispensing Unit (DU) of the retail outlet was changed. The replaced unit was second-hand and was replaced in the presence of the petitioner.

5. The company decided to conduct an inspection of the three underground tanks Dispensing Units (DUs) before the introduction of the high-speed diesel outlets from the petitioner's outlet. Prior thereto after replacement of the DU, the same was duly calibrated to ensure an appropriate meter reading.
6. After calibration, about 60 litres of diesel was pumped out of the DU and poured back into tank no.1 of the appellant's outlet to the underground tanks.
7. Upon inspection of the pumped diesel from the nozzle of the DU on 16th September, 2008, it was found that more than 1% of kerosene was found in the diesel coming out of the nozzle. At the relevant point of time, no additional diesel was added into the tank no.1 of the petitioner's outlet. The Oil company found, therefore, that there was adulterated diesel in the petitioner's outlet, particularly in tank no.1.
8. In those circumstances, by a notice dated 17th September, 2008, the petitioner's retail outlet license was suspended by the oil company. On 18th September, 2008, the petitioner made a representation to the respondents against the order of suspension. The representation was not considered and this order of suspension continued.
9. The petitioner was issued notice, by the oil company, on 18th November, 2008 to show-cause as to why his

license dated 24th January, 2008, should not be revoked.

10. The petitioner duly replied to the same vide his letter dated 24th November, 2008. The oil company conducted personal hearing of the petitioner 12th March, 2009. The petitioner was heard by a panel of 4 persons.
11. It is interesting to note that in reply to the request to present his case, the petitioner / appellant has admitted that on 16th September, 2008, the the agents of the Oil Company had conducted a marker test of the diesel from tank no.1 of the petitioner's outlet, and adulteration was found as the colour of diesel of no.1 turned pink upon being mixed with the testing substance.
12. The respondents remained silent thereafter. No final order was passed after the hearing was conducted. The petitioner / appellant made representations to the respondents on 30th March, 2009, 26th March, 2011, 13th May, 2011, 26th October, 2015, 9th November, 2015, 26th November, 2015, 26th October, 2015, 12th January, 2016 and 20th January, 2016. The petitioner's retail outlet remained suspended throughout.
13. Due to the passage of a long time since the first hearing in 2009, a fresh hearing was conducted by the oil company as regard to the termination of the appellant's dealership on 10th July, 2017.

14. For the inordinate delay on the part of the oil company to pass final orders on the petitioners / appellant's dealership, the writ petitioner / appellant had chosen not to approach Court or seek judicial remedies. It must, therefore, be presumed that the appellant acquiesced to and accepted the delay on the part of the oil company in passing the final orders with regard to his retail license.
15. By an order dated 10th July, 2017, a one-man Committee heard the petitioner afresh in great detail. It was found that after calibration, 60 litres of fuel was dispensed from the DU on the 12th September, 2008. The said 60 litre was poured back into tank no.1. Adulteration was found by the BPCL in the said diesel dispensed out of the DU. The marker test found more than one per cent of kerosene in the fuel.
16. By a 9-page order dt. 10th July, 2017, the First Authority terminated the petitioner's dealership with immediate effect.
17. The appellant thereafter preferred the appeal before the Appellate Authority on 31st July, 2017.
18. For inaction on the part of the oil company to deal with petitioner's appeal, the writ petitioner for the first time in 9 years approached this Court by way of WP11153(W) of 2018.
19. By an order dated 19th July, 2018, a single Bench of this Court ordered that a Director nominated by the

Chairman of the company should dispose of the petitioner/appellant's appeal within four weeks of receipt of the Memo of Appeal after affording due opportunity of hearing to the petitioner. The petitioner was allowed to present further and every material in support of his appeal.

20. The petitioner was heard on 20th August, 2018 by the Appellate Authority. Written submissions, copies of judgments of this court and several other documents were presented by the appellant before the appellate authority, in a detailed representation.
21. The appellate authority on 7th September, 2018, passed the final orders, contained in as much as 23 pages dealing with each and every contention raised by the petitioner.
22. The order of the appellate authority and the first authority of the findings of the inspection report came to be challenged by the appellant by filing a writ petition before the Single Bench in the year 2018, which was dismissed by the impugned judgment.
23. Learned counsel for the appellant would argue before this court on merits that the replaced Dispensing Unit (DU) was a re-conditioned one. It is dipped in kerosene for the purpose of cleaning and oiling. It is that very kerosene that must have come out of the nozzle of the Dispensing Unit (DU) which indicated the adulteration. There was in fact no adulteration,

according to the petitioner detected in the fuel contained in tank no.1 of the appellant's retail outlet.

24. This court is of the view that there is sufficient evidence on record to indicate that the finding of adulteration. The finding of oil company is supported by some evidence. It is difficult for this Court to believe that residual kerosene from cleaning of the DU can be more than 1% of the total quantity of the fuel tested. A writ court under Article 226 of the Constitution of India does not sit in appeal over the finding of the fact of an administrative authority.

25. There are instances where the merits of the findings of an administrative authority can be entered into under Article 226 of the Constitution. Such situations are, *inter alia*, when the findings are wholly perverse, and de hors the evidence on record. Interference is also called for when extraneous material is relied upon by an administrative authority in coming to its conclusion.

26. However, in the case at hand court does not find that the merits of the findings of fact need to be gone into by a writ court. This is a case where there is some evidence to support the findings of the oil company against the petitioner. It is not a case of no evidence at all. The findings of the oil company against the petitioner are supported by the evidence on record.

27. This court is therefore of the clear and unequivocal view that there is substance in the finding of fact the oil company against the petitioner and the same does not call for any interference under Art 226 of the Constitution.

28. This court also finds that the writ petitioner/appellant was duly heard and was given a fair and complete opportunity to present his case both orally or by documents. Therefore, no violation of principles of natural justice was either demonstrated by the petitioner or evident to this court in the facts of the case.

29. Learned counsel for the petitioner / appellant, Mr. Pingal Bhattacharyya has canvassed three points on the procedure and method adopted by the respondents in dealing with the petitioner's suspension and termination. He submits, firstly, that the first authority that heard the petitioner on 12th March, 2009 comprised of four members.

30. The said first authority after giving detailed hearing to the petitioner did not pass any orders whatsoever. It was only 8 years thereafter that the proceedings on the termination of the writ petitioner's / appellant's licence was taken up and disposed of.

31. He, therefore, submits that firstly the authority which heard him was different from the authority which passed the final order of termination of the petitioner's

dealership. He submits that the first authority in its order dated 10th July, 2017 used the expression “We” although it is only one person who passed such order. Mr. Bhattacharyya therefore submits that the first authority was relying upon the hearing conducted by the four persons in the hearing 8 years prior to 2017. The argument cannot be accepted. The reason is evident from the order dated 11th July, 2017. It comprises in 9 pages, dealing each and every submission of the appellant.

32. The expression “We” if at all used by the first authority in its order dated 10th July, 2017, must either mean the BPCL as a whole or could be a casual typographical error. Paragraph 31 of the decision of the Supreme Court in the case of ***Gullapalli Nageswara Rao & Ors vs. Andhra Pradesh State Road Transport Corporation Sastri; reported in AIR 1959 SC 308*** cited by Mr. Bhattacharyya, is not applicable in this facts of the case. The first authority which passed orders dated 17th July, 2017 did not refer to the hearing conducted in the year 2009 by a four-man Committee. On the contrary, he recorded submissions of the petitioners in detail and gave his findings on each ground in a comprehensive manner.

33. In so far as the delay of 8 years, taken by the first authority of the oil company to pass the order dated 10th July, 2017, this court finds that the petitioner kept

on making representations and himself chose not to approach this Court.

34. It is for a citizen to approach Courts and seek judicial remedies at the earliest against an administrative authority. While the delay on the part of the oil company appears to be unjustified, by reason of not challenging such delay, the writ petitioner must be deemed to have accepted and acquiescence to the same. He is, therefore, now estopped from questioning the oil company for the delay in passing final orders.

35. The order of the appellate authority was passed within two months of the order dated 19th July passed by a single Bench on 19th July, 2009. While it is true that the order ought to have been passed within four weeks, the delay of 7 days beyond four weeks in passing of the order of the appellant authority company cannot be considered serious delay. The appellate authority also given detailed and cogent reasons and has passed a reasoned and speaking order.

36. The other decisions relied upon by Mr. Bhattacharyya on the question of delay by the oil company, namely, **Anil Rai vs. State of Bihar; reported in (2001) 7 SCC 218**, in the case of the **Joint Commissioner of Income Tax, Surat vs. Saheli Leasing and Industries Limited; reported in (2010) 6 SCC 384**, in the case of **M.V. Bijlani vs. Union of India & Ors; reported in (2006) 5 SCC 88** and in the

decision ***Indu Bhusan Jana vs. Union of India & Ors.; AIR 2009 Cal 24***, are all concerned with the delay in delivery of judgments by courts. The said decision would have no manner of application to administrative authorities in passing quasi-judicial order.

37. Notwithstanding the above, this court has already stated above that the delay on the part of the BPCL of 8 years in passing of the order of termination of the petitioners dealership is wholly undesirable. However, in the facts of the instant case as already stated hereinabove, the writ petitioner chose not to challenge the delay of 8 years. Apart from the waiver and acquiescence, this court's mind is not free from doubt that the petitioner possibly in acceptance his own impropriety may have chosen not to challenge delay. The petitioner may have hoped that with the passage of time the impropriety committed by him would be glossed over and or forgotten by the oil company.

38. In facts and circumstances of the aforesaid, this court is of the view that concurrent finding of facts by the first appellate authority calls for absolutely no interference whatsoever. This court cannot, therefore, find fault with the impugned judgment dated 7th July, 2023, passed by the single Bench.

39. Accordingly, FMA 240 of 2024 stands dismissed.

40. There will be no order as to cost.

41. Urgent Photostat certified copy of this order may be supplied to the parties upon all formalities, if applied for.

In fine, we have sincere appreciation for the efforts of learned counsel appearing for the appellant Mr. Pingal Bhattacharyya.

(Rajasekhar Mantha, J.)

(Ajay Kumar Gupta, J.)