SUPREME COURT OF INDIA

Bharat Petroleum Corporation Ltd.

Vs.

Jagannath Co.

C.A.Nos.3838-3839 of 2013

(P.Sathasivam and M.Y.Eqbal JJ.)

12.04.2013

JUDGMENT

P. SATHASIVAM, J.

1. Leave granted.

2. These appeals have been filed against the final judgment and order dated 09.10.2009 passed by the High Court of Judicature at Allahabad in C.M.W.P. No. 26181 of 2006 and order dated 06.11.2009 in Civil Misc. Review Petition No. 286203 of 2009. By judgment dated 09.10.2009, the High Court allowed the writ petition filed by the contesting respondents herein and quashed the order dated 18.01.2006 passed by the Territory Manager (Retail), Meerut, BPCL terminating the dealership licence of the outlet of respondent No.1-Firm and directed restoration of their dealership. Review petition filed by the appellant herein against the said order was also dismissed on 06.11.2009 by the High Court.

3. Brief facts:

a) The appellant – Bharat Petroleum Corporation Ltd. (in short "BPCL") is a Government of India Undertaking under the administrative control of the Ministry of Petroleum Natural Gas and is engaged in refining, distributing and selling petroleum products such as Motor Spirit (MS/Petrol), High Speed Diesel (HSD), Kerosene, Liquified Petroleum Gas (LPG) etc., all over the country. Respondent No.1-Firm is a licensed dealer of the BPCL, selling petroleum products from its Retail Outlet (RO) at Court Road, Saharanpur,

U.P. Originally, the Dealership Licence was granted, vide agreement dated 24.07.1975.

b) It is the case of the BPCL that on 22.08.2005, a routine inspection of the said RO was conducted by a team consisting of Territory Manager, Senior Sales Officer and Senior Engineering Officer, Meerut in the presence of one of the signatories to the said Dealership Licence viz., Shri Alok Kumar Gupta-Respondent No. 3 herein. During the inspection, certain irregularities/variations were found for which samples of MS/ULP, SPEED and HSD were taken and the sale for all the products was suspended and the dispensing units and tanks were sealed after taking meter readings. Thereafter, on 23.08.2005, the seized samples were sent to the Quality Control Laboratory at Shakurbasti, Delhi for testing. Vide test reports dated 24.08.2005, the Laboratory confirmed that the samples failed to meet the required specifications.

c) Being aggrieved, the respondents instituted a suit being O.S. No. 695 of 2005 before the Civil Judge (Sr. Division), Saharanpur for resumption of supply of petroleum products and for restraining the BPCL from interfering with the sales and supplies of petroleum products from their RO along with an application for temporary injunction.

d) On 02.09.2005, BPCL filed a report with regard to the samples taken from the outlet. Against the said report, the respondent-Firm moved an application raising objection that the test reports are not based on the samples taken from the outlet and prayed for redrawal of the samples in the presence of independent witnesses.

e) On 07.09.2005, BPCL issued a show cause notice to the respondents as to why action should not be taken against them including termination of the dealership. The respondents put forth their stand by way of a reply dated 21.09.2005. By order dated 03.10.2005, learned Civil Judge dismissed the application for issuing of temporary injunction. Vide order dated 18.01.2006, the Territory Manager (Retail), Meerut, terminated the dealership agreement/licence of the respondents with immediate effect. Since the dealership licence of the respondents got terminated and the possession of the outlet was handed over to M/s Om Filling Station (Respondent No. 8 herein), they filed an application for withdrawal of the suit and by order dated 22.02.2006, the said suit was withdrawn.

f) Thereafter, the respondent-Firm filed a writ petition being C.M.W.P. No. 26181 of 2006 before the High Court for quashing the termination order dated 18.01.2006. By impugned judgment dated 09.10.2009, the High Court allowed the petition and quashed the termination order and directed the BPCL to restore the dealership.

g) Aggrieved by the said order, the BPCL filed a Review Petition being No. 286203 of 2009 before the High Court. The High Court, by order dated 06.11.2009, dismissed the said review petition.

h) Being aggrieved by the judgment dated 09.10.2009 for restoring the dealership and order dated 06.11.2009 dismissing the review petition, the appellant-BPCL has filed these appeals by way of special leave.

4. Heard Mr. Sudhir Chandra, learned senior counsel for the BPCL, Mr. Shanti Bhushan, learned senior counsel for Respondent No-1, Mr. R.P. Gupta, learned counsel for Respondent No. 3 and Mr. Harish Chandra, learned senior counsel for the Union of India.

5. Before going into the contentions, learned counsel for the contesting respondents highlighted the background of the case as a long and chequered history in order to consider the stand put forth by them. As per the information furnished, it is seen that 37 years back, vide agreement dated 24.07.1975, M/s Burmah Shell Oil Storage Distributing Company (now BPCL) has entered into a dealership agreement with the respondent-firm. Since its beginning in the year 1975, not even a single deficiency has been reported in the matter of measurement or purity either by the parent company – M/s Burmah Shell or by the BPCL during the course of regular inspection carried out every month. It is also pointed out that only once a notice was issued on 09.03.1995 for lesser sales. It is also pointed out that on 22.08.2005, one Amit Garg, impleaded as respondent No.4 in the High Court (respondent No.6 herein), who was holding the post of Territory Manager (Retail), Meerut and against whom allegations of mala fide had been made in paragraph Nos. 11 12 of the writ petition, has conducted regular inspection and found no deficiency in the measurement. However, he took into custody Sales and Density Registers and collected 8 samples – two samples of ULP from ULP 20KL Tank, two samples of ULP from 10KL Tank, two samples of Speed from Speed Tank, one sample of HSD from HSD Tank and one sample from barrel. After collecting the samples, he sealed all the five pumps, viz., two of ULP, two of Speed and one of HSD. It is pointed out that although, in total, eight samples were collected but respondent No.6 herein has filed photocopies of only seven sealed covers of

wooden containers duly signed by the dealer but the photocopy of one of the two samples of ULP collected from 10KL Tank has not been filed.

6. Mr. Sudhir Chandra, learned senior counsel for BPCL, after taking us through the impugned order of the High Court, submitted that in view of the perversity in the conclusion, the same has to be interfered with. On the other hand, Mr. Shanti Bhushan, learned senior counsel for respondent No.1- Firm, submitted that inasmuch as the BPCL failed to follow the principles of natural justice contrary to Section 20 of the Petroleum Act, 1934 and Marketing Discipline Guidelines, 2005 (in short, "the Guidelines"), the High Court was fully justified in setting aside the order of termination and no interference is warranted exercising jurisdiction under Article 136 of the Constitution of India.

7. In view of the above, it is important to consider the relevant provisions of the Guidelines. As per clause (c) of para 2.4.5 of the Guidelines, the samples so collected would be sealed and labeled and the labels so pasted over the containers must have the product name, name of the retail outlet, package type, sample source, quantity of sample, sampling date, batch number etc., and should be jointly signed by the dealer or his representative(s) and the Inspecting Officer. As per clause (a) of para 2.4.5, the Inspecting Officer has to draw three samples from one tank– one for the dealer, second for the Company and the third will be sent to the Laboratory for testing. In order to ensure that all the three containers are containing samples from the same tank, all the three containers must have the same batch numbers duly signed by the dealer and the Inspecting Officer, otherwise it would be difficult to know as to whether the container left with the dealer was containing sample from the same tank as has been sent for testing to the laboratory. It is the complaint of the contesting respondents that the said officer, however, allotted three different numbers to the containers containing samples from the same tank. Moreover, the BPCL has filed photocopies of the labels pasted over 7 sealed containers duly signed by the dealer, each containing aluminium container Nos. 008997, 008950, 008923, 008976, 008949, 008916 and 008952 along with wooden container Nos. 008960, 008957, 008923, 008976, 008949, 008916 and 008952 in which aluminium containers have been placed. It is further pointed out by the contesting respondents that these numbers do not co-relate with the container numbers purported to have been sent by the Inspecting Officer to the Laboratory because all the three containers containing sample from the same tanker had been differently numbered.

8. It is also demonstrated by the contesting respondents that out of 8 samples so collected, only 5 samples were tested by the Company Laboratory. Also, no

explanation was given about the other three samples. It is the claim of the contesting respondents that the BPCL has filed report in respect of only 5 samples and report of 3 samples has either been suppressed or has not been sent to the Laboratory and only a forwarding letter has been filed. It is also highlighted that the Laboratory has also not indicated the numbers of the containers so tested in its report. In such circumstances, as rightly pointed out, it is impossible to know which sample has been tested by the Laboratory. It has also not been mentioned in the report that the Laboratory has received the samples in sealed covers and the seals were opened by them as is the practice in every report received from forensic laboratory. It is further highlighted that the absence of container numbers in the report raises a doubt as to whether the laboratory has tested the same samples as had been sealed and counter signed by the dealer or some other contaminated samples. These important questions were raised before the writ Court alleging that the samples tested were not of those collected from the respondent-Firm.

9. In order to ensure fairness in testing the samples, it has been provided in clause (D) of para 2.5 of the Guidelines that in case of sample failure, in the event of request for testing by the dealer, the same shall be tested at Company's Laboratory in the presence of representative(s) of the dealer. The relevant extract of clause (D) of para 2.5 reads as under: "In case of sample failure, in the event of request for testing by the dealer, the same to be considered on merits by the State Office/Regional/Zonal General Manager of the concerned Oil Company. If approved by GM, the sample of retail outlet retained by the dealer alongwith the counter sample retained with the Field Officer/Oil Company are to be tested as per the guidelines, preferably in presence of the Field Officer, RO dealer/representative and representative of QC department of the Oil Company after due verification of samples."

10. It is rightly pointed out that the samples were not tested in any government laboratory and these tests were conducted in the company's laboratory itself. Therefore, in order to satisfy the conscience of the dealer about the authenticity of the tests so conducted, it has been contemplated in the Guidelines that on the request of the dealer, the test(s) could be conducted in his presence. In Hindustan Petroleum Corporation Ltd. Ors. vs. M/s Super Highway Services Anr., (2010) 3 SCC 321, this Court held that the Guidelines being followed by the Corporation require that the dealer should be given prior notice regarding the test so that he or his representative also can be present when the test is conducted. The said requirement is in accordance with the principles of natural justice and the need for fairness in the matter of terminating the dealership agreement and it cannot be made an empty formality. Notice should be served on the dealer sufficiently early

so as to give him adequate time and opportunity to arrange for his presence during the test and there should be admissible evidence for such service of notice on the dealer. Strict adherence to the above requirement is essential, in view of the possibility of manipulation in the conduct of the test, if it is conducted behind the back of the dealer. It was further held that the cancellation of dealership agreement of a party is a serious business and cannot be taken lightly. As pointed out in the said decision, in order to justify the action taken to terminate such an agreement, the authority concerned has to act fairly and in complete adherence to the rules/guidelines framed for the said purpose.

11. It is further seen that after sealing of the petrol pump in the night of 22.08.2005 by respondent No.6 herein, the respondent-dealer waited for the result but no copy of the same was given to them. Since the dealer suspected some foul game on the part of the said officer, they filed Civil Suit being O.S. No. 695 of 2005 before the Civil Judge (Senior Division), Saharanpur seeking injunction against the interference with the sale and supply of petroleum products. It is brought to our notice that immediately upon filing of the said suit, on 31.08.2005, the BPCL supplied one copy of the report alleging it to be of the samples collected from the RO. The respondent-Firm did not believe the said report and requested for fresh sampling of products and examination by some independent laboratory. As the respondent-Firm did not get any response, they filed an application in the pending suit seeking collection of fresh samples from the sealed tanks in the presence of Court Commissioner and its examination by an independent agency.

12. In this regard, it is relevant to refer Section 20 of the Petroleum Act, 1934 which reads as under:

> "20. Right to require re-test –
>
> (1) The owner of any petroleum, or his agent, who is dissatisfied with the result of the test of the petroleum may, within seven days from the date on which he received intimation of the result of the test, apply to the officer empowered under Section 14 to have fresh samples of the petroleum taken and tested.
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> (2) On such application and on payment of the prescribed fee, fresh samples of the petroleum shall be taken in the presence of such owner or agent or person deputed by him, and shall be tested in the presence of such owner or agent or person deputed by him.

(3) If on such re-test, it appears that the original test was erroneous the testing officer shall cancel the original certificate granted under Section 19, shall make out a fresh certificate, and shall furnish the owner of the petroleum, or his agent, with a certified copy thereof, free of charge."

13. Though the appellant-BPCL protested the said application contending that the said provision in the Petroleum Act,1934 is not applicable and the very same objection was raised by learned senior counsel for the appellant before us, it is relevant to quote clause 10(k) of the Dealership Agreement with which the parties are bound is as under:

"10(k) - To abide by the Petroleum Act, 1934 and the rules framed hereunder for the time being in force as also in other laws, rules or regulations either of the Government or any local body as may be in force."

In view of the Dealership Agreement, particularly, clause 10(k) referred above, the contention of learned senior counsel for the BPCL is liable to be rejected. In terms of Section 20 of the Petroleum Act, 1934 the contesting respondents had a right to have fresh samples drawn and get the same re-tested within seven days of intimation of the test results. It is the assertion of the contesting respondents that the test reports were intimated to them only upon filing of a suit before the trial Court. After getting the above reports, on 02.09.2005, the contesting respondents moved an application before the trial Court in the said suit for fresh sampling/retest of the products. Though an objection was raised for filing counter statement in the said application, it is brought to our notice that in spite of several opportunities given by the Court, no such objection was ever filed. It was further pointed out by learned counsel for the contesting respondents that they timely exercised their right available in law. In view of the application filed by the contesting respondents on 02.09.2005 and in the light of Section 20 of the Petroleum Act,1934 as well as the terms of Dealership Agreement, the objection raised by learned senior counsel for the BPCL is liable to be rejected.

14. It is also pointed out that it was respondent No.6 herein who made the inspection, collected the samples, issued show cause notice and passed an order of cancellation of the Dealership Agreement/Licence. By impleading him as one of the respondents - respondent No.4 in the High Court – specific allegations were made against him that he acted mala fidely in cancelling the same and those assertions cannot be lightly ignored.

15. The High Court, after considering all the above specific claims of the contesting respondents, rightly interfered with the order of termination of the dealership agreement/licence dated 18.01.2006 and quashed the same. We are in entire agreement with the said conclusion. In view of the same, the appellants are directed to implement the directions given by the High Court in the impugned judgment dated 09.10.2009 within a period of four weeks from the date of receipt of this judgment.

16. In the light of the above discussion, the civil appeals are dismissed with no order as to costs.