



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS.6509-6510 OF 2024
(Arising out of SLP(C)Nos.16671-16672 of 2015)

M/S. HINDUSTAN PETROLEUM
CORPORATION LIMITED & ORS. ... APPELLANT(S)

VERSUS

DHARAMNATH SINGH & ORS. ... RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

Leave granted.

2. These appeals by special leave impugn judgment and order dated 05th May 2015, passed in FMA 653 with 654 of 2012 which upheld the order of the Learned Single Judge in W.P.No.22993(W) of 2007 whereby the action of the instant appellant(s) in terminating the license of the instant respondent, was quashed and set aside.

Background facts

3. A brief review of facts is necessary to adjudicate the present controversy.

3.1 The respondent was appointed a dealer for petrol/diesel/motor oil/grease and other such products of the appellant(s) by way Dealership Agreement¹ dated 1st February 1997.

3.2 On 18th August 2007, certain officials of one SGS India² claiming to be an agency appointed by the appellant(s) arrived at the respondent's petrol pump and took samples of High Speed Diesel (HSD) and Motor Spirit (MS).

3.3 The appellant issued show cause notice against the respondent dated 20th August, 2007, wherein the respondent was asked to submit a response to the alleged irregularities within a period of 7 days.

3.4 On the basis of the Preliminary Test Report, the Senior Sales Officer, Durgapur Sales Area informed the respondent of the suspension of supply with immediate effect.

3.5 The authorities of the appellant(s) conducted Joint Marker Test and the sample failed on such re-test as well. This is evident from the Analysis Report³.

¹ 'Agreement'

² 'Agency'

³ At page 164 of the paper book

3.6 The authority of the Agency to conduct such collection of samples was questioned by the respondent at the Regional Office of the appellant(s). However, it is alleged that without considering the same Marker Test was conducted on such samples.

3.7 Being aggrieved by the order of suspension of supply, the writ petition which eventually gave rise to the present proceedings was filed.

4. In allowing the writ petition filed on behalf of the present respondent, the Learned Single Judge observed as under:-

“...it appears that there are specific provisions under Clause 7 of the aforesaid order of 2005 wherein the Gazetted Officer of both the Central Government and the State Government and also the police officer not below the rank of Deputy Superintendent of Police or the authorized officer of the Company itself duly authorized, can take sample and get it tested. But it appears that in the instant case that was not done by the respondent authorities. The aforesaid officers only have the competence to collect the sample and get the same tested. Since the respondents did not follow the aforesaid procedure there is clear violation of the rules and regulation applicable in the cases.

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In my view, the entire action on the part of the respondent authorities in suspending the supply as well as cancellation of the dealership of the writ petitioner is contrary to law, arbitrary and violative of principle of natural justice...”

5. On appeal, the learned Division Bench relied on the judgment of this Court in *Allied Motors Limited v. Bharat Petroleum Corporation Ltd*⁴. It was held that the Agency had “*absolutely no authority to take samples or to make any seizure of any product*” in violation of Clause 7 of the Control Order as also Section 100 of the Code of Criminal Procedure. Therefore, it was held that while the appellant(s) had the power to appoint agents for the purposes of administrative convenience, such agents cannot be allowed to flout the provisions of law, which they had in the present case. As such, no reason was found to interfere with the order of the Learned Single Judge and the same was upheld.

6. Hence, the present appeals.

7. We have heard Mr. N. Venkataraman, learned Additional Solicitor General for the appellants, and Mr. Rana Mukherjee, learned senior counsel for the respondent. The submissions made, are recorded briefly as under:-

A. Appellant

- (i) It was submitted that Clause 4 of the Agreement provides that a license was terminable immediately on *(a)* the termination of the Agreement; *(b)* breach of any of the terms thereof which are described in Clause 58;

⁴ (2012) 2 SCC 1

- (ii) The tests conducted by the Agency as also the officials of the appellant(s) found the respondent to be in breach of Clause 58(h), (i), (m);
- (iii) The appellant(s) found the respondent to have violated in total, five clauses of the Agreement – Clauses 26, 27, 44, 58(i) and (m) and as such the same was terminated;
- (iv) It was contended that the Agency had the authority to conduct the tests in question as Clause 2.2.2.3 of Marketing Discipline Guidelines⁵ dated 1st August 2005 issued by the Government of India, provides that apart from oil company officials, mobile labs and ‘agencies authorized by oil companies’ were permitted to draw samples.
- (v) It was in furtherance of such guidelines that *vide* Circular dated 3rd November 2006 the Agency was appointed to carry out audits and Market Tests.
- (vi) The provisions of the Control Order do not apply to the present case as the respondent is not prosecuted for its violation and instead, the Agreement stands terminated for breach of the terms and conditions of the Agreement.

⁵ MDG

(vii) It is also submitted that Clause 8 of the Control Order makes clear that there is no bar to appoint an outside agency to conduct the Marker Test.

(viii) Reliance is placed on *Indian Oil Corporation Ltd. v. R.M. Service Centre*⁶, and more specifically para 14 thereof.

B. Respondent

(i) The MDG are issued under Section 3 of the Essential Commodities Act, 1955 and therefore possess statutory force. The suspension of supply to the respondent was in terms of the aforesaid. It cannot choose to follow only those portions of the law that suit its position. The termination of the Agreement could not be carried out without adhering to the inspection guidelines as per the Control Order.

(ii) Clause 39 of the Agreement uses the term “*duly authorized representative*” which is not defined in the Agreement. The Control Order under Clause 2(b) defines an “*authorized officer*” and it states that only such a person shall have power of search and seizure as per Clause 7.

(iii) As per the quality control measures in Clause 27 of the Agreement, the opinion of the Chief General Manager on the

⁶ (2019) 19 SCC 662

contamination of products is slated to be final, however, termination of the respondent's license was issued by the Senior Regional Manager.

- (iv) The agreement does not prescribe any procedure for collection of samples, testing or any other procedure of alleged adulteration of products. The Control Order (2005) was preceded by a similar order of 1998 and both would be binding on an oil manufacturing company. As such the procedure mentioned in Clause 7 of the Control Order would be required to be followed.
- (v) The process of drawing the sample by the agency was improper. The sample collected was in the absence of an authorized officer of the appellant. The blank space for the signatures of 'OMC Field Officer' was left blank.
- (vi) Due to non-compliance with the provisions of the Control Order, the drawing of samples is without basis.
- (vii) ***R.M. Service Centre*** (supra) does not support the case of the appellant. The action sought to be taken by the appellant is penal in nature and therefore, there cannot be two procedures prescribed for the action. A third party cannot be permitted to collect samples in violation of the control order by stating that prosecution has not been launched thereunder and instead prosecuting the dealer for violation of MDG.

(viii) No power has been conferred upon the oil manufacturing company to bypass the procedure of drawing of samples. Section 100 Cr.P.C. was made applicable to ensure the sanctity of the investigation as the outcome thereof could result in penal consequences. Grant of such powers to a third party (agency) would be illegal.

(ix) The said judgment does not lay down the correct position in law and non-adherence to the control order would vitiate the entire process.

(x) In furtherance of the above submissions, the learned senior counsel for the respondent further relies on *Harbanslal Sahnia v. Indian Oil Corporation Ltd.*⁷; *Hindustan Petroleum Corporation & Ors. v. Super Highway Services & Anr.*⁸; *Allied Motors Ltd. v. Bharat Petroleum Corporation*⁹; and *Nazir Ahmad v. The King Emperor*¹⁰, and certain other decisions.

8. It is necessary to refer to certain Rules, Regulations/provisions of documents for being part of the record to examine the issue in the present *lis*. For ease of reference, they are extracted hereunder :

Provisions of the Agreement and other relevant documents

⁷ (2003) 2 SCC 107

⁸ (2010) 3 SCC 321

⁹ (2012) 2 SCC 1

¹⁰ 1936 SCC OnLine PC 41

unauthorisedly with the result that the product does not conform to the requirements of the Bureau of Indian Standards specifications number IS 2796 and IS 1460 for motor spirit and high speed diesel respectively or any other requirement notified by the Central Government from time to time;

(b) "authorized officer" means an officer authorized under the provisions of clause 7;"

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“7. **Power of search and seizure** - (1) any Gazette Officer of the Central Government or a State Government or any Police Officer not below the rank of Deputy Superintendent of Police duly authorized, by general or special order of the Central Government or a State Government, as the case may be, or any officer of the oil company, not below the rank of sales officer, may, with a view to securing compliance with the provisions of this Order, or for the purpose of satisfying himself that this Order or any order made thereunder has been complied with or there is reason to believe that all or any of the provisions of this Order have been and are being or are about to be contravened, -

- (a) enter and search any place or premises of a dealer, transporter, consumer or any other person who is an employee or agent of such dealer or transporter or consumer;
- (b) stop and search any person or vehicle or receptacle used or intended to be used for movement of the product;
- (c) take samples of the product and seize any of the stocks of the product and the vehicle or receptacle or any other conveyance used or suspected to be used for carrying such stocks and thereafter take or authorize the taking all measures necessary for securing the production of stocks or items so seized before the Collector or District Magistrate having jurisdiction under the provisions of the Essential Commodities Act, 1955 and for their safe custody pending such production;
- (d) inspect, seize and remove with, such aid or assistance as may be necessary, books, registers, any other records or documents of the dealer, transporter, consumer or any other person suspected to be an employee or agent of the dealer, transporter or consumer;

(2) While exercising the power of seizure provided under sub-clauses (c) and (d) above, the authorized officer shall record in writing the reasons for doing so and a copy of such recording shall

Samples are to be drawn from nozzle (s) of the dispensing units from all tanks of both MS and HSD by the persons/agencies as referred above.

All the inspecting officials shall bring their own aluminum containers for drawing samples. They will pay the cost of samples collected by them and obtain cash memo for the same.”

Consideration and Conclusion

9. As we have referred to earlier, the appellant(s) have placed strong reliance on the judgment of this Court in *R.M. Service Centre* (supra).

The relevant extracts are as under:-

“14. The first issue required to be examined is whether the appellants were required to follow the procedure under the Control Order read with Section 100 of the Code. The Control Order has been issued under Section 3 of the Act. Such Act has been enacted for control of the production, supply and distribution and trade and commerce, of certain commodities. In respect of high speed diesel and motor spirit, the Control Order is issued for regulation of supply and distribution and prevention of the malpractices. Section 6-A of the Act provides for confiscation of the essential commodity whereas, Section 7 of the Act makes any person who contravenes any order made under Section 3 liable for criminal prosecution. Therefore, we find that the effect of issuance of the Control Order is that in the event of violation of such Control Order, any person who contravenes any order made under Section 3 of the Act i.e. the Control Order, he is liable to be punished by a court. Therefore, the violation of the Control Order has penal consequences leading to conviction. The provisions of search and seizure contained in Clause 7 read with Section 100 of the Code will come into play only in the event a person is sought to be prosecuted for violation of the provisions of the Control Order. Admittedly, in the present case, the dealer is not sought to be prosecuted for the violation of the Guidelines, therefore, the procedure for drawing of samples which is a necessary precondition under the Control Order for prosecuting an offender does not arise for consideration.

15. The dealer has entered into an agreement on 20-12-1995. It is not disputed that the dealer is bound by the Guidelines issued by the Public Sector Oil Marketing Companies. Clause 2.4.4 of the Guidelines provides for procedure for drawing of samples. Note (2)

provides that the samples drawn should reach the laboratory for testing “preferably within ten days of the collection of the samples”. Similarly, sub-clause (A) of Clause 2.5 of the Guidelines provides that all samples should be suitably coded before sending them to the laboratory for testing “preferably” within ten days of drawing the samples. Sub-clause (I) of Clause 2.5 of the Guidelines is that the purpose of mentioning time-frame for various activities such as sending samples to the laboratory preferably within ten days is to streamline the system and is in no way related to quality/result of the product. In view of the language of the Guidelines, the findings recorded by the High Court that the timeline is to be strictly adhered to cannot be sustained.

16. The Guidelines as mentioned in sub-clause (I) of Clause 2.5 of the Guidelines is to streamline the functioning i.e. the oil companies should not arbitrarily or without any justification send the sample for testing at their sweet will.”

10. What falls from the extract quoted above is that any person who contravenes the Control Order is liable to be punished by the Court. Therefore, for a person to be prosecuted for violating the provisions relating to search and seizure contained in Clause (7) thereof, such a person will have to be brought to the book, particularly, for having violated the said Control Order.

11. In contrast, as has been submitted by the learned counsel for the appellants, the respondent was sought to be prosecuted only for the violation of the terms of the agreement *inter se* the parties and not for any other alleged violation, if any.¹¹

12. Keeping in view the aforesaid, the submission of the respondents that ***R.M. Service Centre*** (supra) does not aid the case of the appellants,

¹¹ Page 2 of written submission of the appellants

14. The crux of the above decision is that when a dealership agreement is to be cancelled, it has to be so done strictly in consonance with Rules/Guidelines framed in that regard. When a sampling test is being conducted a dealer is to be given prior notice so as to ensure his or his representative's presence can be secured. In the present facts, the respondents have taken issue with the process of collection of samples, being aggrieved by the fact that a third party, namely, SGS India was appointed to take samples and not with the lack of service of notice or any other such non-compliance of the principles of natural justice as discussed in the said judgment.

15. We have also perused the decision in *Harbanslal Sahnia & Anr. v. Indian Oil Corporation & Ors.*¹³. This judgment deals with the correctness of writ proceedings in respect of contractual matters. It was observed the petitioner's dealership which was their "bread & butter" came to be terminated for an irrelevant and non-existent cause. As such, a writ petition would be maintainable. The maintainability is not an issue before us. Therefore, this judgment is not applicable to the present case.

16. That apart, the observations in *National Insurance Company Ltd. v. Pranay Sethi*,¹⁴ tell us that in deference to judicial discipline and decorum, the judgments/orders passed by a coordinate Bench are to be

¹³ (2003) 2 SCC 107

¹⁴ (2017) 16 SCC 680

respected by another Bench of co-equal strength. As such, we follow the holding in *R.M. Service Centre* (supra).

17. It stands clarified that we have taken note of and considered all contentions raised across the Bar, however, in view of the above discussions, no other point survives for consideration. Consequentially, the appeals are allowed keeping in view that the termination of the agreement *inter se* the parties was only based on the contravention of the terms of the dealership agreement.

Pending application(s), if any, shall stand disposed of.

18. No costs.

..... J.
[J.K. MAHESHWARI]

..... J.
[SANJAY KAROL]

New Delhi;
May 17, 2024.