

Daljit Singh Vs. State and ors.

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Court : Jammu and Kashmir

Decided On : Oct-15-2004

Reported in : 2005(3)JKJ250

Judge : S.K. Gupta, J.

Acts : Constitution of Jammu and Kashmir - Section 103; ;[Constitution of India](#) - Article 226

Appeal No. : OWP No. 393/2003

Appellant : Daljit Singh

Respondent : State and ors.

Advocate for Def. : B.S. Salathia, AAG for Respondent 1, 3 and 4 and; M.P. Kapoor, Adv. for Respondent 2

Advocate for Pet/Ap. : Rakesh Sharma and; Sudershan Sharma, Advs.

Disposition : Petition allowed

Judgement :

S.K. Gupta, J.

Objections have been filed.

Petition is admitted to be heard.

1. Learned counsel for the respondents submit that objections already filed be treated as counter. On the consensus of learned Counsel appearing for the parties, the petition is taken up for final disposal.

2. Petitioner was appointed as dealer by respondent No. 2, Bharat Petroleum Corporation Limited for running an outlet under the name and style of Bharat Motors and Cycle Company, Below Gumat, Jammu. It appears that the officers of Consumer Affairs and Public Distribution Department visited the retail outlet of the petitioner on 20.2.2003 and lifted Motor Spirit and High Speed Diesel samples. Respondent No. 1 got the samples tested on 19.4.2003 from Directorate of Forensic Science Laboratory, Jammu. Accordingly report No. 284/FSL dated 19.4.2003 was prepared which discovered that Exhibit No. K-112/2003 was identified as an admixture of Diesel and Kerosene oil. Based on this report, respondent No. 1 shot of an communication dated 1.5.2003 to respondent No. 2, thereby requesting him to take action against the petitioner. Further submission of the petitioner is that, since the report prepared by respondent No. 3 was on the face of it in contravention to the Marketing Discipline Guide Lines, 2001 and also not as per the testing norms, respondent No. 2 on receiving the aforesaid communication from respondent No. 1 addressed a communication dated 2.5.2003 to Deputy Director (Admn), Food and Supplies Department, exhibiting serious concern with regard to the test report of FSL being silent about the method of testing and on what parameter the sample has failed, and being not satisfied, made a request for providing complete test report. Respondent No. 3, however, till date has not furnished the detailed report of testing the sample as demanded by respondent No. 2, and instead, the petitioner has been asked to explain the reason for failure of sample of High Speed Diesel sample and also show cause as to why action be not taken against him. Aggrieved of the aforesaid communication, the petitioner has approached this Court for issuance of writ of mandamus directing the respondents not to take any action against the petitioner based on the incomplete and illegal report prepared by respondent No. 3 and further directing the respondent No. 2 to continue making regular supply of Motor Spirit and High Speed Diesel to the petitioner, in exercise of its jurisdiction under Article

226 of the [Constitution of India](#) read with Section 103 of the Constitution of J&K; State.

3. In their reply respondent Nos. 1 and 3 submitted that the Marketing Discipline Guide Lines, 2001, are meant only for Oil Marketing Companies and are not binding upon the respondents. The report received from respondent No. 3, with regard to analysis of sample of petrol and diesel, lifted from the retail out let of the petitioner, is self explanatory and clearly indicates that it was an admixture of diesel and kerosene oil. It is further contended that the officers of respondent No. 1, on a surprise visit to the retail out let of the petitioner, had taken samples of Motor Spirit and High Speed Diesel for laboratory testing and the petitioner having indulged in adulteration of petrol and diesel is unscrupulous dealer and deserves to be awarded exemplary punishment.

4. Whereas, respondent No. 2 in its reply to the writ petition contended that though the report, with regard to the sample lifted from the retail out let of the petitioner and tested on 19.4.2003, was received from respondent No. 1, but same does not explain as to whether the marketing guide lines have been applied before giving the full test report. Respondent No. 2, however, admitted that report alongwith communication No. DCA&PD;/EC/2003/DA/49-51 dated 1.5.2003 was received from respondent No. 1, requesting to take action under rules. Request was, however, made to respondent No. 1 to provide the complete test report of the samples taken from the retail out let of the petitioner, so as to enable it to take action against the petitioner under rules governing the field. Further plea of respondent No. 2 is that the team of Officers of respondent No. 1 should have collected samples from each tank and out of which one sample should have been retained by the dealer, besides other samples being sent to marketing laboratory and to the Division/Territory/Regional Office of the Oil Company. The parameters to be adopted while taking samples have been indicated in para (e) of the reply. Respondent No. 2 further stated that, after receiving the test report, explanation has been sought from the petitioner with regard to the failure of the sample so as to envisage action under rules and regulations. It is further contended that in case of adulteration in petrol and diesel, found in the out let of a dealer, penal action to the extent of stopping the supply or even cancellation of his dealership/licence is

warranted. Respondent No. 2 also stated that despite written request made to respondent No. 1, the complete test report, as per the guidelines, has not been furnished nor any explanation of the petitioner has been received in response to the show cause with regard to failure of his sample, so as to reach a positive and tangible conclusion in the matter. The penal action is warranted against a dealer in case the seized sample is proved to be adulterated, after applying the test within the parameters of guidelines. Lastly, it was contended that petitioner instead of replying the show cause notice, with regard to failure of the sample, has sought relief from this Court by filing the present writ petition.

5. It is not in dispute that sample from any retail out let can be lifted by the Competent officers. Sample of Motor Spirit and High Speed Diesel has been taken from the retail out let of the petitioner, however, no officer from the Bharat Petroleum Corporation Limited was associated at the time of collecting the sample. For testing a sample, taken from the out let, certain guidelines and parameters have been laid down by respondent No. 2. The guide lines and parameters to be adopted are enumerated as under:

1. Appearance
2. Colour (visual)
3. Density at 15 degree.c.kg/m³.
4. ASTM Distillation.
5. Flash point.
6. Kinematic Viscosity at 40 deg.
7. Total sulphur.
8. Furfural test.

As regards the sample testing and the results, the Marketing Discipline Guide Lines, provides as under:

'SAMPLE TESTING AND RESULTS:

The tests to be carried out for MS/HSD samples drawn from Dealers' premises are given in ANNEXURE-S.4.

All samples should reach the Labs within 10 days from the date of drawal and the labs should test the samples within the next 10 days. Results are to be communicated to the dealer by the concerned Oil Company within the next 10 days (of the testing of the sample). While in general above procedure be strictly followed and the time frame as stipulated above to be adhered to, however, during special drives, in view of the large number of samples, the labs may accept the samples upto 15 days after drawal and the testing should be completed within 30 days of the receipt of sample.

All tests to be signed by Authorized Officers only.

Interpretation of results: -- Samples are deemed to have failed if the test results of samples under scrutiny and the reference sample do not fall under the reproducibility/ permissible limit of test method.'

6. Admittedly, these guide lines, provided by respondent No. 2, have not been followed by the Officers of respondent No. 1 while lifting the samples from the out let of petitioner. It is also admitted that samples were lifted from the out let of the petitioner on 20.2.2003 and got tested on 19.4.2003. It is further revealed from the report that respondent No. 3 has not explained in its report with regard to the observing of the guidelines for testing having been applied before giving the full test report. Despite request having been made by respondent No. 2 to provide complete test report of the sample, so as to enable it to take action against the petitioner, complete test report has not been furnished. This request appears to have been made on 2.5.2003 as per documents placed on record. It is also admitted by respondent No. 2 that, without the complete test report, as per the guidelines, no concrete conclusion can be reached in the matter with regard to the failure of the sample of the petitioner. The guide lines of 2001 clearly provides that, all the samples should reach the laboratory within ten days from the date of drawal and said samples should be tested in the labs within next ten days. This period of

testing of samples has been fixed with a purpose inter alia that the strength/frictions of petrol and diesel change after ten days.

7. Learned counsel for the petitioner, vehemently argued that the sample was lifted on 20.2.2003 and was subjected to test on 19.4.2003, beyond the stipulated period and, thus, the result of the sample also having been tested in infraction of guide lines of 2001, cannot be accepted to reach to a conclusion with regard to failure of sample on account of adulteration. Further submission of learned Counsel for the petitioner is that, report prepared by respondent No. 3, in such circumstances, is vague and contrary to the testing norms provided by the Marketing Discipline Guidelines, 2001. I find substance in the submission of learned Counsel for the petitioner that the sample has been tested and report has been prepared in contravention to the guidelines. This is so when the report itself does not disclose with regard to the parameters followed in the Laboratory, while analyzing the sample of diesel and petrol, lifted from the retail outlet of the petitioner. An identical matter came up for consideration before the Apex Court in case titled Harbanslal Sahnia and anr v. Indian Oil Corporation Ltd. And Ors, reported as 2003 (1) Supreme 446, and it was observed as under:

'It is submitted by Shri P.P. Malhotra, the learned senior counsel for the appellants that the dealership has been terminated on irrelevant and non-existent grounds and, therefore, the order of termination is liable to be set aside. The Government of Uttar Pradesh have issued directions to all the District Magistrates of the State in the matter of taking of samples and carrying out tests. There are two Government orders issued namely No. 1459/29-7-97-731-PP dated 25.4.1997 and No. 2722/29-7-2000-PP/2000. The orders state inter alia that the strength/frictions of petrol and diesel change after ten days and therefore time limit of ten days is fixed for testing of such products. It is also emphasized that in the interest of natural justice, the inspecting officials should test the sample for quality and density at the retail outlet itself in the presence of dealer with necessary equipments such as filter paper, hydrometer, thermometer, jar and the conversion table which are available at the retail outlets and record density thereof only in presence of the dealer. These government orders were violated in respect of the sample taken on 11.2.2000. Firstly, the test was not carried out at the retail outlet

itself and, secondly, the time gap between the sample taken and lab test carried out is of about a month which is capable of causing marginal variation as detected. The learned senior counsel for the appellants invited attention of the Court to an order dated 24.10.2002 passed by the Commissioner, Nainital in an appeal preferred against the suspension of petitioners' licence which too was founded on the test report of the sample taken on 11.2.2000. Impressed by non-compliance with the instructions contained in the government orders and the delay in carrying out the lab tests, also keeping in view the previous performance of the petitioners, the learned Commissioner has allowed the appeal and set aside the suspension as also the fine imposed on the petitioners. The learned Counsel is right in submitting that in view of the abovesaid facts, the failure of the sample taken from the appellants' outlet on 11.2.2000 comes an irrelevant and non-existent fact which could not have been relied on by the respondent-Corporation for canceling the appellants' licence.'

8. Relying on the ratio of aforesaid judgment and in view of the fact that sample taken from the outlet of the petitioner was tested in contravention of the guidelines of 2001, besides the delay in carrying out the lab test (sample taken on 20.2.2003 and tested on 19.4.2003), is capable of causing variations as detected. Withholding of complete test report, as per the testing parameters, from respondent No. 2, despite request made by him, so as to enable him to take action against the petitioner for failure of sample, further provides a cogent and positive circumstance that the sample taken and test carried out is impressed by non-compliance of the guidelines and the parameters for testing provided in the guidelines.

9. For what has been stated above, I allow the writ petition, quash the report impugned and direct the respondents not to take any consequential action against the petitioner, based on such report.

No order as to costs.