



हिन्दुस्तान पेट्रोलियम कॉर्पोरेशन लिमिटेड

(भारत सरकार उपक्रम) रजिस्टर्ड ऑफिस : 17, जमशेदजी टाटा रोड, मुंबई - 400 020.

HINDUSTAN PETROLEUM CORPORATION LIMITED

(A GOVERNMENT OF INDIA ENTERPRISE) REGISTERED OFFICE : 17, JAMSHEDJI TATA ROAD, MUMBAI - 400 020.

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BEFORE EXECUTIVE DIRECTOR – RETAIL & APPELLATE AUTHORITY, HPCL, MDG APPEAL

BETWEEN

Smt Manju Srivastava
Wife of Shri Alok Srivastava
Terminated M/s. Mateshwari Filling Centre
Mohalla Ismailpur
Dist. Sitapur
UTTAR PRADESH

..... APPELLANT

Head-Zone,
North Central Zone
Hindustan Petroleum Corporation Limited
Plot No.1, Nehru Enclave
Gomti Nagar
Lucknow-UP – 226 010

..... RESPONDENT

ORDER

1. This is an Appeal filed by Smt Manju Srivastava vide her letter dated 26.02.2014 against termination of her Retail Outlet M/s Mateshwari Filling Centre, on Sitapur-Sahajahanpur Road, Ismailpur, Dist., Sitapur, UP vide letter Ref.NCZ/SR-SB/RET dated 14.02.2014 of Head-Zone, North Central Zone, Lucknow, UP, under the provisions of Chapter 6 Sub Clause 6.3.5 under the heading Notes Clause IV of Marketing Discipline Guidelines for Retail Outlet Dealerships of Public Sector Oil Marketing Companies which came into effect from 1.8.2005, whereby Retail Outlet of the appellant has been terminated by respondent.

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2. Appellant was a Retail Outlet (R.O.) Dealer of Respondent on Sitapur-Sahajahanpur Road, Ismailpur, Dist., Sitapur, UP and is aggrieved by letter dated 14-02-2014 sent by Respondent terminating her R.O Dealership.
3. On 05.02.2011, an inspection was carried out and nozzle samples of MS and HSD were drawn at the Appellant's outlet by a team of officials of the Respondent Corporation and IOC under Special Joint Industry Inspection/Sampling drive. The samples were tested at QC-LAB, Amousi and as per Lab report dated 26.03.2011 read along with test report dated 21.02.2011 for corresponding supply location sample, the MS nozzle sample was found to be not meeting specifications as per IS 2796-2008(4th Revision) in Existent Gum Content test.

Based on the Lab Test Report indicating failure of sample, Show Cause Notice was issued to the appellant on 20.04.2011 by Lucknow Retail Region of the Respondent and sales were suspended on 22.04.2011. As the reply dated 28.04.2011 received to the Show Cause Notice was not found to be satisfactory, the dealership agreement was terminated on 16.11.2012 by Lucknow Retail Region after necessary approval from Head-North Central Zone. The said termination was challenged by appellant in High Court and order dated 14.08.2013 was passed by Hon'ble High Court of Judicature at Allahabad, Lucknow Bench, Lucknow setting aside the termination order dated 16.11.2012. Consequently, SLP was filed by the Respondent Corporation in the Hon'ble Supreme Court of India. Basis order in SLP No. 36482/2013 of Hon'ble Supreme Court of India and after perusal of documents /records available in the said case, a Show Cause Notice was issued vide letter NCZ/SR-SB/RET dated 17.01.2014 by DGM, NCZ, Lucknow of the Respondent Corporation.

4. Show Cause Notice dated 17.01.2014 was issued to the dealer by Respondent Corporation on the following points :

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- i) Retail outlet nozzle sample of MS drawn on 05.2.2011 during inspection by Joint Industry team failed as it did not meet specifications as per IS 2796-2008(4th Revision) in Existent Gum Content test.
 - ii) TT retention sample was rejected at the Laboratory as the seal of wooden box containing aluminum sample container was found open and hence the samples were not maintained as required under relevant policy guidelines.
5. The Appellant was advised to show cause within 7 days from the date of receipt of the notice as to why action as deemed fit in the matter including termination of the Dealership Agreement should not be taken as per terms and conditions of Dealership Agreement dated 05.08.2006. Reply to the show cause notice dated 17.01.2014 was submitted by the Appellant vide letter dated 22.01.2014.
6. As the respondent did not find any merit in the reply dated 21.01.2014 to show cause notice the dealership agreement was terminated vide letter Ref: NCZ/SR-SB/RET dated 14.02.2014.
7. In her Appeal dated 26.02.2014, Appellant has highlighted following points in her defense.
- a) This action of termination is certainly a violation of the principles of natural justice, as the allegation is made against the petitioner that she committed adulteration in petroleum products on the basis of a particular test which does not form part of either the dealership agreement, or the Statutory Order.
 - b) As per MDG 2005 the basic objective of this 3 tier sampling procedure is to ensure that MS and HSD sold by Retail Outlets is the same product which has been supplied to them by their respective Oil companies. The implementation of this sampling procedure also helps in establishing whether the malpractice / adulteration, if any, has taken place at the Retail Outlet, during transportation or at supply locations. She was deprived of

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natural justice as the TT retention sample was not tested at the Laboratory for none of her fault. Justice has not been done by not checking the TT retention sample. Even Lab test report dated 26.03.2011 is defective and incomplete as it does not contain the test results of supply location sample. In fact, there is a mention that supply location sample not available for testing as the sample not submitted. Thus there has been a violation to the 3 tier sampling procedure implementation. In fact, inspecting officials, concerned officials of Amousi Depot and Lab have been negligent.

- c) As per the Lab Report dated 26.3.2011 against TT Retention sample it is mentioned that "not available for testing" (rejected as the seals of wooden box containing aluminium container was open). In fact the TT retention sample was made available to the inspecting team in OK condition. It may be noted that seal on the wooden container is not something which is not visible that cannot be checked. The appellant further contended that:
- i) In the Joint Inspection report dated 05.02.2011, the inspecting officials have clearly mentioned that the tank lorry retention sample seals were OK. The wooden box as well as the aluminium container of the TT retention samples had everything in order and the Tank Lorry retention samples were handed over with seals intact to the inspecting officials. In case seal of the wooden container was not intact the same should have been brought out at the time of collecting sample and sample should not have been collected as the seals on the wooden box were clearly visible.
 - ii) Amousi Lab officials and inspecting official have erred as TT retention sample was collected in OK condition.
 - iii) 3 tier sampling procedure has not been followed as the TT retention sample and supply location reference sample were not tested. The test report no. SMD-573 is not valid as conclusions have been drawn without test results of TT retention and supply location reference samples.

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- iv) Ignoring analysis of relevant samples retained by transporter and the supply location is highly questionable as by considering the test results only it can be confirmed as to who is responsible dealer or transporter or supply location.
- d) As regards to interpretation of Results under MDS 2005 ,
"Samples are deemed to have failed if the test results of sample under scrutiny and the reference sample do not fall under the reproducibility / permissible limit of test method". Hence the results cannot be interpreted as there is no reference sample and the non - availability of reference sample is solely due to the fault of the Company Officials. Even for the tank lorry retention sample not being tested the fault lies entirely with the inspecting officials or Amousi Lab Officials as the same was handed over in perfect condition as acknowledged by the Joint Inspecting team. As per MDG 2005 it is clearly mentioned that wherever TT sample is not retained / made available by the dealer to the inspecting officials at the time of drawal of sample from the RO, the result of the RO sample would be compared with the supply point sample. As both are not applicable in this case as neither the TT nor the supply location retention samples were tested. Hence, the test report no SMD 573 dated 26.3.2011 is not as per laid down guidelines and hence is to be rejected.
- e) The MS sample has passed in all parameters except in Gum Content Test and the reasons for failure are as follows :
- i. Receipt of dirty product: Product received on 19.1.2011 (i.e. 2nd last supply prior to inspection date- 12 KL MS was received) was looking dirty and it seemed that it has been filled from a tank with low stock. Even the difference in the time for the supply on 19.01.2011 between filling and release is 2 hrs 9 minutes whereas on 03.02.2011 time taken is only 29 minutes. The fact can be verified from the depot record and probably there was some problem with product on that day which caused the delay.
 - ii. Co-mingling of products: The stock prior to receipt of MS load of 3 KL on 3.2.2011 was 2048 Litres and thus the effect of

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comingled product was there in the sample collected by the inspecting team.

iii. MS mixed with 5% ethanol: As per clarification received from IOCL, gum content is not something which can be mixed separately and hence any adulteration at dealer's end is ruled out. In case Ethanol mixing is manual there is enough scope for error. Terminating authority is just mentioning that ethanol mixing has no effect on IS specification without indicating the gum content of Ethanol so that an analysis can be made.

The gum content reading is high because TT would have been filled from a low stock depot tank and also due to MS being mixed with 5% Ethanol.

- f) Co-mingling of product changes the parameters is a well known fact and various replies from Retail Outlet have been accepted on this ground with no action being taken. With respect to specifications the gum content supplied by the company was high and the TT sample was also deliberately not checked by giving a vague reason. Thus, without any proper reasoning and information given by the terminating authority on the stock in the depot tank as well as what can result in gum content getting increased the decision pronounced on termination is devoid of any principles of natural justice.
- g) Terminating authority has alleged that value of gum content changes if the product is adulterated. However, it has not been mentioned that by adding which product the gum content increases and also if the other parameters like Recovery, Final Boiling Point, sulphur content and RON would still pass when the product is adulterated. Hence terminating authority has taken decision based on incomplete facts
- h) The lab report bearing serial no. SMD 432, 433 dated 21.2.2011 of M/s Jain Motor Company is a manipulated report. Had it been a genuine report then the result of the sample would have been mentioned in the original report dated 26.3.2011 prepared by the lab. The terminating authority all through has mentioned that the product being dirty was not brought out earlier and

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when it comes to the document of the depot the same analogy is not being made.

- i) The terminating authority is only going by one sided view that no error can be committed by Amousi Quality Control Lab and the Inspecting officials. Terminating authority is only favouring its officials and putting all the onus on the dealer thereby violating principles of natural justice.
8. On the points raised by the Appellant, the Respondent has offered detailed comments. The gist of clarifications given and the issues raised by Respondent is as given below:
- a) On reviewing the whole facts, it is nowhere observed that principle of natural justice has been violated by Corporation. In fact every opportunity has been provided to the appellant to present and justify her case.
 - b) As per documents on record all the three relevant samples i.e. Supply location sample, TT retention sample and Retail Outlet nozzle sample were sent to Lab for testing. The Lab tested the supply location sample and Retail Outlet nozzle sample, while TT retention sample was rejected as the same was not maintained properly i.e. seal on the wooden box was found open. Accordingly, it is wrong to allege that Corporation has not followed the 3 tier sampling procedure. Being the Dealer of Corporation it was the responsibility of the appellant to maintain the TT retention sample as per requirement. Since appellant erred in maintaining the sample as per requirement, the 3 tier sampling procedure could not be completed as per the Marketing Discipline Guidelines (MDG).
 - c) Reasons given by appellant are found to be not sufficient enough to justify non-maintenance of TT samples as per procedure. Appellants' contention that TT samples were properly maintained is negated by the Lab report itself wherein it is clearly mentioned that TT retention sample was rejected on the ground that seal of

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wooden box containing aluminum sample container was open. The TT retention sample is always maintained by the dealer after being properly labelled and it is dealer's responsibility to ensure that the seals of the wooden box are not tampered with and the dealer is absolutely responsible for the same.

It is relevant to note that Amousi Quality Control Lab is Central Government authorized Lab and follows very strict standard of procedures for testing of samples. Before a sample is tested by the Lab, it is ensured by lab that the sample has not been tampered with and therefore its seal on the wooden box containing the aluminum container is checked. In the present case since the seals on the wooden box containing the aluminum container were found open, the lab has rejected the sample.

Further at the time of collecting the TT retention samples from Retail Outlet, the Inspecting Officer collects the sample on "as is where is basis" and they do not examine or open the seals of wooden box. The sample is examined by Lab officials when the sample reaches the Lab. In the present case since the seal of wooden box though appeared to be in "ok" condition at the Retail Outlet however in the laboratory the sample was rejected as the seal of wooden box was found to be open. Thus, the allegation that company official has deliberately spoiled the TT retention sample is baseless and without any merit.

- d) Further appellant's contention that supply location sample and TT retention sample were not tested as per MDG is baseless. In this regard, it may be noted that at supply locations one depot sample is kept for supplies from one tank during the day. Hence, testing of depot sample is done with first outlet sample only and the results of tests conducted with the first sampling are referred in subsequent cases. In the present case also, the supply location sample was already tested along with the sample of M/s Jain Motor Company and from the report dated 21.02.2011 it is established that the supply location sample met the IS specifications. Also the Retail Outlet nozzle sample was tested vide report dated 26.03.2011 whereby it was found that Retail Outlet nozzle sample has failed to meet the IS specifications, which invariably confirms that though the product that was

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supplied to appellant was as per the IS specifications, however she has caused adulteration of the product supplied to her.

- e) The reasons mentioned by appellant towards failure of Retail Outlet nozzle sample in IS specification are found not to be sufficient enough to justify failure of sample.

There is absolutely negative possibility that any sub-standard or below standard product was supplied to appellant. Also, it is relevant to note that no such issue was brought to the knowledge of Corporation when the product was received by the appellant on 19.01.2011 or till issuance of first Show Cause Notice on 20.04.2011.

Respondent further has contended that co-mingling of products can never lead to failure of sample in IS specifications as all the products which are being supplied by Corporation are in strict compliance with IS specifications. So even if different supplies are mixed it would never cause the sample to fail in IS specifications. Also irrespective of the fact that product was supplied from a tank with low stock or high stock the same will always conform with IS specifications. So there is no merit in appellant's contention that sample has failed for the reason that the supply, which was given to the appellant's dealership on 19.01.2011, was from a tank with low stock.

Further, MS being mixed with 5% ethanol is a standard procedure and has no negative effect on the product and in no way would lead to product not meeting IS specifications. The ethanol blending program, which is done on the directions of Union of India, is uniformly adopted by the Corporation all across the Regions and there is no such complaint whatsoever.

- f) Respondent has clarified that co-mingling of products can never lead to failure of sample in IS specifications as all the products which are being supplied by Corporation are in strict compliance with IS specifications. So even if different supplies are mixed it would never cause the sample to fail in IS specifications. So there is no merit in appellants' contention that that co-mingling of products has caused failure of the sample as test results indicate that retail outlet nozzle sample fails to meet the specification as per IS-2796-2008 (4th revision).

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- g) Further appellant is contending that Gum Content is not something which can be mixed separately and hence any adulteration is ruled out. Appellant has also enclosed a reply received under RTI from Indian Oil Corporation Limited, UP State Office, Lucknow. However, no reliance can be placed on reply to a specific question to a different Organization, that too when the question has been framed for misleading the Corporation. Moreover, on perusal of said RTI reply enclosed it is noted that the reply has been misquoted and it has no relevance in the present matter since it does not rule out the possibility of adulteration. The reply is clear that Gum Content is a parameter and the presence of Gum Content is checked at the time of testing of fuel samples. It is pertinent to note that the value of Existent Gum Content changes if the product is adulterated.
- h) For appellant's allegation that lab report bearing serial no SMD-432, 433 dated 21.02.2011 pertaining to M/s Jain Motor Company is a manipulated report is absolutely false and baseless and respondent has clarified as under:

In this regard it may be noted that at supply locations one depot sample is kept for supplies from one tank during the day. Hence, testing of depot sample is done with first outlet sample only and the results of tests conducted with the first sampling are referred in subsequent cases. In the present case also, the supply location sample was already tested along with the sample of M/s Jain Motor Company and from the report dated 21.02.2011 it is established that the supply location sample met the IS specification. Also the retail outlet nozzle samples was tested vide report dated 26.03.2011 whereby it was found that retail outlet nozzle sample has failed to meet the IS specifications, which invariably confirms that though the product that was supplied to appellant was as per the IS specifications, however she has caused adulteration of the product supplied to her.

- i) On reviewing the whole facts, it is observed that principle of natural justice has not been violated by Corporation. In fact every opportunity has been provided to the appellant to present her case.

Marju Sivasdara



9. Personal hearing was held at Lucknow on 25.03.2014. It was attended by the appellant Smt. Manju Srivastava.

10. Opportunity was extended to the Appellant to explain their contentions and also give written submission on any other matter not covered by them earlier in their appeal.

11. The Appellant only mentioned what has been stated in her appeal and no additional documents (or) details were/has been provided.

12. Review of rival contentions and conclusion:

I have carefully gone through the documents filed before me and also heard the arguments of the Appellant. In the above paragraph, I have already narrated the contentions of both the parties. For the sake of brevity I do not propose to repeat it. Therefore, I would only deal with the issues raised by the Appellant and offer my comments/observations on the same:

a) The Appellant has contended that she was deprived of natural justice as the TT retention sample and supply location sample of MS was not tested at the Laboratory for none of her fault and reason which is not verifiable. Justice has not been done by not checking the TT retention & reference sample i.e., supply location sample as by virtue of this parameter only one can confirm whether the dealer or the transporter or the Depot is responsible for the failure of sample. Thus, there has been a violation to the 3 tier sampling procedure.

The respondent in their reply have stated that the TT retention sample of MS was rejected by the Amousi lab on the ground that seal of the wooden box containing sample was found open. As the seal of the wooden box was found open it tantamount to tampering with the sample and hence cannot be relied upon and tested by the lab, which is as per prescribed norms. Hence, the Lab officials have acted as per prescribed norms and no fault can be attributed to Lab or its officials. In this case the TT retention sample has been rejected as the seal of the wooden box containing the sample was found open. The rejection is very much in line with the MDG sample acceptance criteria issued to all the labs by QC-HQO. Further respondent has clarified that corresponding supply location sample was tested along with the

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sample of M/s Jain Motor Company as evident from the report dated 21.02.2011 and the same was found to be meeting IS specifications.

However, it is observed that as TT retention sample could not be tested it cannot be said conclusively that adulteration of the product was caused by the dealer. Further, there has been a lapse at the laboratory as in the test report it was mentioned that 'Supply location (reference) sample not available for testing as the same not submitted though sample was tested earlier and test results were available. Even inspecting officials have erred by not checking the seal of the wooden box before collecting the TT retention sample box from the dealership.

b) The appellant has contended that the failure of MS sample may be due to following reasons:

- i. Product received on 19.1.2011 was looking dirty and had been filled with low stock.
- ii. Co-mingling of products.
- iii. MS being mixed with 5% ethanol.

Respondent has pointed out that there is absolutely negative possibility that any sub-standard or below standard product was supplied to appellant. Respondent has further clarified that co-mingling of products does not lead to failure of sample in IS specifications as all the products which are being supplied by Corporation are in strict compliance with IS specifications irrespective of the fact that product was supplied from a tank with low stock or high stock. Even if different supplies are mixed it never causes the sample to fail in IS specifications. Hence, there is no merit in appellant's contention that sample has failed for the reason that the supply was from a tank with low stock.

Further, MS being mixed with 5% ethanol is a standard procedure and has no negative effect on the product and in no way it would lead to product not meeting IS specifications.

Further, as the TT retention sample was maintained by the appellant and same was handed over to the inspecting officials in OK condition, dealer cannot be held accountable for the condition of seal found open at Lab.

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The Lab report not referring the comparison of Retail outlet Nozzle with the Reference Sample, Remark that the Reference Sample are not available and rejection of the TT sample are some of the grounds which are in violation of the 3 Tier Sample procedure.

Other contentions as made out by the Appellant and not covered above, have been reviewed by the undersigned and found to be without any basis and merit.

Under the above circumstances, it cannot be concluded that adulteration of product was caused by the dealer as there was a lapse in complying with 3 tier sampling procedure. Hence, I find merit in the appeal against the action of termination of Dealership by the Respondent vide their letter Ref. NCZ/SR-SB/RET dated 14.02.2014. So, a lenient view has been taken by me and decided to set aside the termination order dated 14.2.2014 and restore the dealership.

DATE: July 10, 2014
PLACE: MUMBAI


M.S. DAMLE
EXECUTIVE DIRECTOR - RETAIL
& APPELLATE AUTHORITY

Manju Shrinivas Javga