



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 Poonam Verma
Wife of Shri Vimal Kishore
Terminated M/s.Raj Kaushal Filling Station
Mohalla Beniganj
Dist. Hardoi
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 Poonam Verma vide her letter dated 25.02.2014 against termination of her Retail Outlet M/s Raj Kaushal Filling Station, Village Beniganj, Near Pratapnagar Chauraha, Taluk Sandila, Dist., Hardoi 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.

पूनाम वर्मा



2. Appellant was a Retail Outlet (R.O.) Dealer of Respondent at Village Beniganj, Near Pratapnagar Chauraha, Taluk Sandila, Dist., Hardoi UP and is aggrieved by letter dated 14.02.2014 sent by Respondent terminating her R.O Dealership.

3. On 10.02.2011, 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 the MS nozzle sample was found to be not meeting specifications as per IS 2796-2008(4th Revision) in Existent Gum Content test. Further, the test results are found to be outside reproducibility/permissible limits with respect to Supply Location sample in following parameters

- i) Recovery at 70 Degree Centigrade
- ii) Existent Gum Content
- iii) RON

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 quashing 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 Respondent Corporation.

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

- i) Retail outlet nozzle sample of MS drawn on 10.2.2011 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. Also, the test results are outside reproducibility/permissible limits with respect to reference (Supply Location) sample in following parameters:

- a) Recovery at 70 Degree Centigrade
- b) Existent Gum Content
- c) RON

- ii) TT retention sample was rejected at the Laboratory with the remark : "Not available for testing (rejected as the label on Aluminum container containing sample was not pasted)", 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 10.08.2010. 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 22.01.2014 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 Nil received on 25.02.2014, 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 will also help in establishing whether the malpractice /



adulteration, if any, has taken place at the Retail Outlet, during transportation or any supply locations. She was deprived of natural justice as the TT retention sample 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 sample. By virtue of this parameter only one can confirm whether the dealer is responsible or the transporter is responsible. Thus there has been a violation to the 3 tier sampling procedure implementation.

- c) As per the Lab Report dated 26.3.2011 against TT Retention sample it is mentioned that "not available for testing". In fact, the TT retention sample was made available to the inspecting team. It may be noted that dealer does not gain anything by not pasting the label on the aluminium container. The appellant contended that:
- i) 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 and labels properly pasted on the wooden box as well as aluminium container to the inspecting officials.
 - ii) Amousi Lab officials and inspecting official have erred as TT retention sample was collected in OK condition.
 - iii) The fact that the label on the aluminium container containing sample if not pasted should have been shown to them or a photograph to that effect should have been kept. There is no proof that the sample label was not available. This was not done so that transporter could be saved.
 - iv) The report does not mention if the label was plain on the back or there was indication that it was pasted and it had fallen off the aluminium container.
 - v) The terminating authority is only going by one sided view that no error can be committed by Amousi Quality Control Lab. Moreover, not pasting label does not tantamount to alleged tampering of sample. In fact if any tampering has been done it has been done at Amousi Lab and not at dealer's end.

प्रतिभा



- vi) In case of rejection due to label not being pasted on the aluminium container, the dealer should have been called or else a photograph of the aluminium sample container along with label put aside should have been taken, if it was not pasted.
- d) As per MDS 2005, wherever TT sample is not retained / made available by the dealer to the inspecting officials at the time of drawal of sample from the R.O, the result of the RO sample would be compared with the supply point sample. Both are not applicable in this case as the inspecting official had taken TT retention sample in OK condition after giving due acknowledgement. Hence, the test report no SMD-570,571 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 18.1.2011 (i.e. 2nd last supply prior to inspection date- 6 KL MS was received) was looking dirty it seemed that it has been filled from a tank with low stock. The fact can be verified from the depot record. 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.
 - ii. Co-mingling of products: The stock prior to receipt of MS load of 6 KL dated 30.1.2011 was 3765 Litres and thus the effect of comingled product was there in the sample collected by the inspecting team.
 - iii. MS mixed with 5% ethanol: In case Ethanol mixing is manual there is enough scope of 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) A time limit of ten days has been fixed for testing of samples as the strength/frictions of petrol and diesel change after 10 days. But the samples were drawn on 10.02.2011 and test report is of date 26.03.2011.

h) 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 and analysis as IOCL UP Office has confirmed that Gum Content is not something which can be added separately.

i) The terminating authority feels that whatever their officers have done is all right and whatever reasons we are giving are without merit. With this approach even the most convincing reason would go unnoticed as already mind has been made to reject any contention.

8. On the point raised by the Appellant, the Respondent has offered detailed comments and 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. 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) As 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 (which was always in appellant's custody) was rejected on the ground that label on aluminum container containing sample was not pasted. The TT retention sample is always maintained by the dealer after being properly labelled and it is dealer's responsibility to ensure that the same is not tampered with and the labels pasted thereon are not removed during the period of its storage. If the labels are found not to be pasted on the container, the dealer is absolutely responsible for the same as it tantamount to tampering with the sample and hence cannot be relied upon and tested by the lab.

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 seals are checked and labels on wooden box and aluminum containers are cross-checked with the invoices as these labels provide the details of the product which is contained in these box. In case the labels are not pasted the details of the product cannot be crosschecked and therefore lab does not test such sample and reject it. In the present case also since the label was not pasted on the aluminum container therefore lab has



rejected the sample. Since the Lab officials have acted as per prescribed norms no fault can be attributed to Lab or its officials.

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 open the seals of wooden box to check the inside contents of wooden box. The sample is examined by Lab officials when the sample reaches the Lab. Thus the allegation that inspecting official has erred is not correct as the officer could not have, by any means, ascertained the inside contents of wooden box.

Amousi Lab receives significant number of samples every day for testing of quality and number of samples are rejected on various grounds if they are not maintained properly. In such a situation it is not feasible that each and every affected party be called to lab for witnessing the testing of samples or to check whether the label was pasted on the container or not. The Lab is a very sensitive place and cannot be thrown open to public as it can result into chaos and a total collapse in working of Lab. Moreover nowhere across the country any lab has ever entertained a practice to the effect of calling the affected party and showing them irregularity observed with the samples. Accordingly, appellants' contention that if label was not pasted on aluminum container then the same should have been shown to her is highly impractical. Further, appellant's contention that report does not mention if the label was plain on the back or there was indication that it was pasted and it had fallen off the aluminum container is without any merit as it in no way explains any reason as to why the sample was not maintained by appellant as per prescribed procedure.

- d) In the present case since the label was not pasted on the aluminum container of the TT Retention sample, Amousi lab has rejected the sample and not tested the same which is as per guidelines.
- e) The reasons mentioned by appellant towards failure of Retail Outlet nozzle sample in IS specification and reproducibility limit 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 appellant on 18.01.2011 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 Smt. Poonam Verma on 18.01.2011, 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) It is further contended by the appellant that in the case of some other Retail Outlet M/s New Diamond Filling Centre only penalty of Rs.50,000/- was imposed. Appellant is trying to mislead Corporation by providing wrong facts. Every case is viewed basis its merits and full facts related to the matter and case of New Diamond Filling Station and Raj Kaushal Filling Station are not the same as the sample of M/s New Diamond Filling Station was found to be meeting the specification as per IS-2796-2008 (4th revision) and it failed only in reproducibility limits whereas appellant's sample has failed in IS specification and reproducibility limit.



- g) The sample testing time frame quoted by the appellant to negate the results is only suggestive and preferred. The delay in testing does not change the product in any way.
- h) 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 Organisation, 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.
- 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.

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

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 Appellants 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 of MS was not tested at the Laboratory for no fault of her and reason which is not verifiable. Justice has not been done by not checking the TT retention sample as by virtue of this parameter only one can confirm whether the dealer is responsible or the transporter is responsible for the failure of sample. It indicates that Respondent has not complied with 3 tier sampling procedure. 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 label on aluminum container containing sample was not pasted. As the labels are found not to be pasted on the container of the retention sample, 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 no fault can be attributed to Lab or its officials. In this case the TT sample was rejected as the aluminum container had no label. The rejection is very much in line with the MDG sample acceptance criteria issued to all the labs by QC-HQO.

However, as TT retention sample could not be tested it cannot be said conclusively that adulteration of the product was caused by the dealer.

- b) The appellant has contended that the failure of MS sample may be due to following reasons:
- i. Product received on 18.1.2011 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, respondent states that 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.

View above, it cannot be concluded beyond doubt that adulteration was caused by the dealer and appellant cannot be denied the benefit of doubt.

C) Appellant has contended that 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 has been taken against them. For example in case of M/s New Diamond Filling Station only Rs. 50,000/- penalty was imposed where sample failed in Reproducibility/permissible limits.

Respondent has clarified that every case is viewed basis its merits and full facts related to the matter and in case of New Diamond Filling Station and Raj Kaushal Filling Station are not the same as the sample of M/s New Diamond Filling Station was found to be meeting the specification as per IS-2796-2008 (4th revision) and it failed only in reproducibility limits whereas Raj Kaushal Filling Station's sample has failed in IS specification and reproducibility limit. Hence the contention of the appellant that in the case of some other Retail Outlet M/s New Diamond Filling Centre only penalty of Rs.50,000/- was imposed and no action taken is not tenable.

As the TT retention sample was maintained by the appellant and same was handed over to the inspecting officials in OK condition, but the sample was found not as per MDG guidelines as Appellant has failed to affix sample tag on aluminium container, a penalty of Rs.50,000/- can be imposed for the same.



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, the action of termination of Dealership by the Respondent vide their letter Ref. NCZ/SR-SB/RET dated 14.02.2014 apparently is the result of non-compliance to 3 tier sampling procedure, as dealer has not affixed sample tag on the aluminium container. However, as the T/T sample was not tested it cannot be concluded beyond doubt that adulteration was caused by the dealer.

Hence, I find merit in the appeal that the tank truck sample as stated above was not tested and hence lenient view has been taken by me and decided to set aside the termination order dated 14.2.2014, restore the dealership and impose a penalty of Rs. 50,000/- on the Appellant for not maintaining sample as per MDG guidelines 2005 and issue suitable warning letter.

DATE: July 10, 2014
PLACE: MUMBAI


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