

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
DATED THIS THE 12TH DAY OF DECEMBER, 2008,

BEFORE

THE HON'BLE MR. JUSTICE N.K.PATIL

WRIT PETITION No.5140 OF 2008 (GM-EC)

BETWEEN:

M/S MAHESHWARI GAS AGENCY
NO 703, BAPUJI NAGAR
CHIKKABALLAPUR TOWN AND TALUK
AND DISTRICT REP BY ITS PROP
SRI M SHIVANAND

... PETITIONER

(By Sri : H C SHIVARAMU , ADVOCATE

AND :

- 1 THE DEPUTY COMMISSIONER
CHIKKABALLAPUR DISTRICT
CHIKKABALLAPUR.
- 2 THE ASSISTANT COMMISSIONER
AND IN-CHARGE DEPUTY DIRECTOR
OF FOOD AND CIVIL SUPPLIES
CHIKKABALLAPUR DISTRICT
CHIKKABALLAPUR.
- 3 M/S BHARATH PETROLEUM
CORPORATION LIMITED
7TH FLOOR, DUE PARK TRINITY
M.G. ROAD, BANGALORE
REP BY ITS TERRITORY MANAGER.

... RESPONDENTS

(By Sri : H.T. NARENDRA PRASAD, HCGP FOR R1 & R2;
SRI.M.S. NARAYAN , ADVOCATE FOR R3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE ORDER DT. 15.3.2008 PASSED BY R1 VIDE ANNEX.C.

THIS WRIT PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE FOLLOWING:

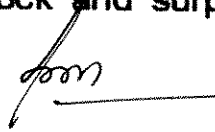
O R D E R

Petitioner in this petition has sought for quashing the order dated 15th March 2008 passed by first respondent vide Annexure C.

2. The brief facts of the case are that, the petitioner is an authorized Distributor of liquefied petroleum products for domestic and commercial purposes as per the petroleum agreement entered into between the petitioner and third respondent valid from 31st December 1984 for a period of five years and thereafter, the said agreement for distribution of domestic and commercial liquefied petroleum gas has been renewed from time to time and the present agreement is valid till 31st December 2009. It is the further case of the petitioner



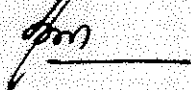
that, since then, petitioner has been performing and discharging his part of obligations sincerely and honestly as per the terms and conditions of the agreement executed between the petitioner and third respondent. When things stood thus, on the basis of the complaint given by second respondent, due to some rivalry between the petitioner and the complainant, the competent authority has made the inspection of the premises on 13th March 2008 on which date, the respondents 1 and 2 nor their official were able to find out any irregularities and thereafter, again on 14th March 2008, they continued the inspection and appears to have found some irregularities which are mentioned in the impugned order and the same are not based on records and that too, the said inspection was made not during the business timings, as its from 8 A.M. to 8 P.M, without affording opportunity to the petitioner to meet the said allegations. To the shock and surprise, petitioner was



issued with a cause notice and petitioner has submitted his detailed reply. Without considering his reply to the show cause notice and without affording reasonable opportunity of hearing as envisaged under the relevant provisions of the Petroleum Products (Maintenance of Production, Storages and Supply) Order, 1999 has proceeded and passed the order impugned without assigning any valid and cogent reasons. In short, it is not a speaking order. Therefore, the petitioner is constrained to redress his grievance by presenting the instant writ petition seeking appropriate reliefs, as stated supra.

3. I have heard learned counsel for petitioner and learned counsel appearing for respondents.

4. After careful perusal of the material available on record, including the relevant provisions of the Petroleum Products (Maintenance of Production Storages and Supply) Order, 1999, it can be seen that, sub-clause (1) of Clause 7 deals with "Take over of retail outlets and

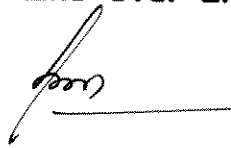


other business premises of dealers". The said sub-clause reads thus:

"7(1) Take over of retail outlets and other business premises of dealers:

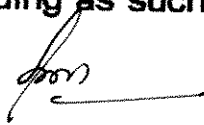
If, with a view to ensuring adequate supplies of petroleum products and their equitable distribution, the central Government, after giving opportunity of hearing to the dealer or dealers, is of the opinion that it is necessary in the public interest so to do, it may, by an order in writing, direct all or any oil marketing companies or any officer to the Central Government or State Government not below the rank of District Supply Officer as may be specified, to take over or cause to take over and operate, either by themselves or any other person appointed by them, any retail outlet and or business premises like showroom, godown, office, storage premises tanks and dispensing equipment of dealers for sale of any petroleum products for such period as specified in the order subject to such conditions and directions as may be considered necessary ad expedient."
(emphasis supplied)

Therefore, as per the aforesaid clause, the competent authority can take over all retail outlets and



other business premises of the dealers only after giving opportunity of hearing to the dealer or dealers concerned.

5. After careful perusal of the order impugned, with reference to sub clause (1) of Clause 7 of the aforesaid Order, 1999, it is manifest on the face of the order impugned that, the first respondent has erred in proceeding to pass the order impugned without recording any valid and cogent reasons nor the said authority has whispered a word regarding affording of opportunity to petitioner before passing the order impugned excepting referring the show cause notice issued to petitioner. Without considering the detailed reply filed by petitioner, the said authority has straightaway proceeded and concluded the proceedings by referring in the order from Sl.Nos. 1 to 6 that, he is proceeding on the basis of the reports of the Tahsildar and Commissioner for Food and Civil Supplies. The order impugned does not contain any discussion, reasoning, finding as such for arriving at such

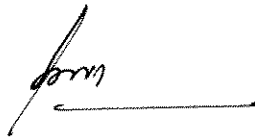


a conclusion. Therefore, the said order cannot be called a speaking order. Hence, in view of not passing a speaking order and in total violation of the principles of natural justice and for non compliance of the mandatory requirement as envisaged under clause 7(1) of the aforesaid Order,1999, the order impugned cannot be sustained and hence, it is liable to be set aside.

6. In the light of the facts and circumstance of the case, the writ petition filed by petitioner is disposed of as follows:

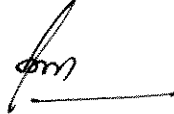
I] The writ petition filed by petitioner is allowed in part;

II] The order impugned dated 15th March 2008 bearing No.CSD/CR-12/2007-08 vide Annexure C on the file of the first respondent is hereby set aside ;



III] Matter stands remitted back to first respondent for reconsideration afresh and to take appropriate decision in accordance with law and strictly in consonance with the relevant provisions of the Petroleum Products (Maintenance of Production, Storages and Supply) Order, 1999, which is applicable to the facts and circumstances of the case, after affording reasonable opportunity of hearing to petitioner, and dispose of the same, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this order;

IV] Petitioner herein is hereby directed to appear and be present before the first respondent on Monday, the 29th December 2008 along with his written submission coupled with all the necessary authenticated



documents to substantiate his stand against the alleged irregularity pointed out in the reports of the Tahsildar dated 27th December 2006 and 24th February 2007 and the report of the Commissioner for Food and Civil Supplies dated 4th January 2007;

V] The first respondent is hereby directed to receive the written submission that may be filed by petitioner and give any further dates and proceed further in compliance of the directions issued by this Court, as stated supra.

Sd/
Judge

BMV*