
2010 eGLR_HC 10005809,2011 (1) GCD 221 ,2011 (26) GHJ 210

Before the Hon'ble MR AKIL KURESHI, JUSTICE

**INDIAN PETROCHEMICALS CORP. LTD. Vs. ASSISTANT CONTROLLER OF LEGAL METROLOGY
AND 2 RESPONDENT(S)**

SPECIAL CIVIL APPLICATION No: 6864 of 2003 , Decided On: 18/11/2010

Anand Sharma, Nanavati Associates, Vasavdatta Bhatt

MR.JUSTICE AKIL KURESHI

1. These petitions raise similar question of facts and law. They are, therefore, being disposed of by this common order.

2. Facts, as emerging in Special Civil Application No.6864 of 2003, may be noticed:

The petitioner IPCL has challenged validity of Rule 14 of Gujarat Standards of Weights and Measures(Enforcement) Rules, 1990 as ultra vires the Constitution. The petitioners have also challenged an order dated 9.1.2003 passed by respondent No.1. The petitioners are involved in manufacturing activities for which petitioners are required to store certain chemicals in its storage tanks, which are used for the manufacturing activities.

It is the case of the petitioners that through qualified agencies, calibration of such storage tanks is being undertaken regularly, the respondents, insist that recalibration of such storage tanks be undertaken in exercise of powers under Section 24 of the Standards of Weights and Measures(Enforcement) Act, 1985 (hereinafter referred to as "the Act of 1985"). Since the petitioners did not submit to such requirement of the respondents, notices have been issued by the respondents, which are impugned in this petition.

3. It is the case of the petitioners that under Section 24 of the Act of 1985, the State Authorities under the said Act and the Rule made thereunder, cannot insist on recalibration of the storage tanks. On the other hand, the stand of the State is that such recalibration is necessary and permitted.

4. On 12.8.2004 while admitting the petition, learned Single Judge modified interim relief previously granted on 21.5.2003 which is provided as under:

" Leave to add Director, Department of Consumer Affairs, Government of India, New Delhi as party respondent No.3. Rule returnable on 9th September 2004.

The interim order granted by this Court on 21st May 2003 is modified to the extent that the petitioners shall carry out necessary implementation of the rules for 32 Storage Tanks as per the list annexed with the Undertaking and the petitioners shall also check the meters as referred to in the Annexure.

If the matter is not finally heard on 9th September 2004, it will be open for the respondents to apply for necessary modification."

5. Similarly, in Special Civil Application No. 12355 of 2008 filed by Godrej Industries Limited raising similar contentions, on 8.10.2008, learned Single Judge passed following order:

"1. Heard Shri K.S.Nanavati, learned senior counsel for the petitioners with learned advocate Shri Prabhav Mehta.

2. Shri K.S.Nanavati, learned senior counsel for the petitioners has referred to the object and reasons of The Standards of Weights and Measures Act, 1976 (in short "the Act") and applicability of the Act in the facts and circumstances of the case on hand and also referred to Rule 14 of the Gujarat Standards of Weights and Measures (Enforcement) Rules, 1990. Learned counsel further submits that even otherwise 30 storage tanks were calibrated as verified by the authority in the year 2007. The usage of the tank is for storage and as process vessels. Learned counsel further relies on the order passed by learned Single Judge dated 21.5.2003 in Special Civil Application No.6864/2003 and submits that identical matter is already admitted by this Court.

2.1. Considering the above aspect, case for interim relief as stated may be considered.

3. Learned AGP appearing for the respondent seeks time.

4. Considering all the above aspects, Issue Notice returnable on 14th October, 2008.

5. Meanwhile, ad interim relief in terms of para 21 (D) (iii).

6. Direct service is permitted."

6. Ad interim relief granted on 8.10.2008 was later on confirmed by an order dated 3.12.2008 on the following terms:

"In spite of opportunity given, no affidavit in reply is filed. Rule. Interim Relief granted earlier to continue till final disposal."

7. It can, thus, be seen that under interim orders passed by this Court, petitioners have been protected partially against orders for recalibration issued by the State authorities under the Act of 1985. Counsel for the petitioners brought to my notice that Legislature has framed new Act called the Legal Metrology Act, 2009 (hereinafter referred to as "the Act of 2009") repealing the earlier Act of 1985 as well as the Standards of Weights and Measures Act, 1976. He submitted that though similar provisions for verification and stamping of weight and measure is also made in Section 24 of the Act of 2009, there are certain significant differences between two statutory provisions. Section 24(1) of the Act of 1985 which is relevant for our purpose read as under:

"24. Verification and stamping of weight or measure (1) Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or is likely to be, used by him in any transaction or for protection, shall, before putting such weight or measure into such use, have such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf, on payment of such fees as may be prescribed."

8. SubSection (1) of Section 24 of the Act of 2009, reads as under: "24. Verification and stamping of weights or measures(1) Every person having any weight or measure in his possession, custody or control in circumstances indicating that such weight or measure is being, or is intended or likely to be, used by him in any transaction or for industrial production or for protection, shall, before putting such weight or measure into such use, have such weight or measure verified at such place and during such hours as the Controller may, by general or special order, specify in this behalf (hereinafter referred to as the specified place or specified time), on payment of such fees as may be prescribed."

9. It can, thus, be seen that one of the grounds on which under previous provisions of the Act of 1985 recalibration could be insisted upon by the authorities, was that such weight or measure was being, intended, or likely to be used for industrial production. In the Act of 2009, however, this part is deleted. Be that as it may. The situation that now evolves in this petition is that under protection of this Court, respondents were permitted to carry out recalibration of the storage tanks of the petitioners to a limited extent. Such protection continued through out the pendency of the petitions. By the time the petitions are taken up for final disposal, the Act of 1985 itself has been repealed.

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10. If the respondents wish to verify the measurement of the storage tanks of the petitioners under the Act of 2009, fresh process shall have to be initiated. It is neither necessary nor appropriate on my part to hazard any guess as to what would be the situation in such a case and whether under SubSection (1) of Section 24 of the Act of 2009, case of the petitioners would be covered or not. In short, I am of the opinion that by virtue of interim protection granted by this Court to the petitioners and by virtue of subsequent repeal of the Act of 1985, it is not necessary to examine the legal contentions raised by the petitioners or the validity of the stand of the respondents.

11. It is clarified that while making interim orders absolute, liberty is left to the respondents to take appropriate steps in accordance with law if so permitted under the Act of 2009 with respect of which, I express no opinion. Since the respondents were prevented by interim orders any access to measure the storage tanks of the petitioners, it is clarified that under such interim orders of the Court act of not permitting respondents to carry out verification or re-verification of the same under Section 24 of the Act of 1985, would not come within the mischief of Section 47 of the said Act, which provides for penalty for contravention of Section 24.

12. With the above observations and directions both the petitions are disposed of.

Appeal dismissed

