AFR **Neutral Citation No. - 2025:AHC-LKO:19838**
Reserved
Case :- WRIT - C No. - 4944 of 2023

Petitioner :- R.S. Filling Station Indian Oil Corporation Ltd. Kheri Thru. Proprietor Amit Singh And Anr
Respondent :- Indian Oil Corporation Ltd. Mumbai Thru. Executive Director And Others
Counsel for Petitioner :- Abhinav Trivedi, Anshuman Singh, Ashok Kumar Singh, Geetika Yadav, Radhika Singh
Counsel for Respondent :- Manish Jauhari

Hon'ble Pankaj Bhatia, J.

1. Heard Ms. Geetika Yadav, learned counsel for the petitioners and Dr L.P. Mishra & Shri Manish Jauhri, learned counsel for the respondents.

2. The present petition has been filed by the petitioner challenging the order dated 12.01.2023 whereby the license of the petitioner for retail outlet dealer of Indian Oil Corporation was terminated as well as the order dated 15.05.2023 by which the appeal preferred against the said order was rejected.

3. The facts, in brief, are that the petitioner was appointed as a retail outlet dealer by Indian Oil Corporation (for short ‘corporation’) by means of an appointment letter dated 02.12.2005 for running a retail outlet at Bariha Taranpur, District Lakhimpur Kheri, which was being run by the petitioner in the name and style of M/S R.S. Filling Station. An agreement was executed in between the parties on 01.04.2006. It is also common ground that the dealership granted to the petitioner is governed by the agreement executed in between the parties and the Marketing Discipline Guidelines (hereinafter referred as “MDG”) issued from time to time.

4. In the month of April, 2017 in pursuance to the directions given by the State Government, inspections were carried out by the authorities as specified in the Government Order across various

petrol and diesel outlets and an inspection was also carried out on the petitioner's outlet on 31.05.2017 by a team of three persons. An inspection report was prepared, which is on record. It is also relevant to note that detailed instructions were issued by the Chief Secretary, State of U.P. vide communication dated 15.06.2017 constituting a team of 5 persons for carrying out the inspections. In the inspection report as prepared, it was recorded that an inspection was carried out and the machines were checked. At the time of inspection, four dispensing units (8 nozzles) were found, out of which 6 nozzles were found in working conditions. From each nozzle, 15 ltrs. each of petrol and diesel were taken out and after inspection, the same were found to be showing proper delivery. 2 nozzles were found to be not in the working conditions. On inspection of pulsar cards of the nozzles, 2 pulsar cards appeared to be suspicious, which were seized and taken into custody and a plastic seal was affixed thereon.

5. Based upon the inspection report dated 31.05.2017, the respondent – corporation issued a letter dated 31.05.2017 calling for the response from the petitioner. The said letter, was termed as "fact finding letter". It was mentioned that during the inspection following observations were made and the petitioner was called upon to submit his explanation within a period of 15 days as to why action should not be taken as per the MDG/dealership agreement to protect the marketing interest of the corporation:

> *"2 Pulsar card were found with impression of tempering, due to which 3 Nozzles (2 MS AND 1 HSD) were affected by these 2 Pulsar card."*

6. The petitioner submitted a reply on 15.06.2017 denying the allegations and submitted that no extra chips were found in the machines, the seals of machines were found intact, measurements checked were found in order and the calibration of the machines

was done by the Weights and Measurement Officer and a certificate was issued by them, thus, no fault could be attributed to the petitioner.

7. Subsequently, a show – cause notice was issued to the petitioner on 30.08.2018. In the said show – cause notice, first charge alleged was that during the inspection, following irregularities were found at the retail outlet:

> *"2 Pulsar card were found with impression of tempering, due to which 3 Nozzles (2 MS AND 1 HSD) were affected by these 2 Pulsar card."*

A copy of the inspection report was attached with the show – cause notice. It was also mentioned that the fact finding letter was issued to which the petitioner had replied. It was also noticed that in the reply of the petitioner he had requested not to take any action till the time test report of the pulsar card is received. It was also noticed that the District Supply Officer had suspended the diesel selling license of the petitioner. It was indicated in the said show – cause notice that MIDCO Company had released/sent a test report vide its letter dated 15.06.2018 with the following remarks:

> *"(I) R1 resistor is found missing on pulsar PCB.*
>
> *(II) Additional Solder marks are observed on C8 capacitor-lead.*
>
> *(III) Additional solder marks are observed on L4 location of pulsar PCB."*

A copy of the report was attached alongwith the show – cause notice. It was further recorded that after going through the reply dated 15.06.2017, the same appeared to the respondent to be not satisfactory/convincing and the attention of the petitioner was drawn to the Clause Nos. 16, 44, 58(m) and Clause No.5.1.4 of MDG2012 as amended, which attracts penal action under Clause 8.2 IV – Critical Irregularities: Termination of the first

instance. Extract of the report submitted by the MIDCO is as under:

TEST REPORT

Received	**Item No.1 – Midco Sure Fill Pulsar card for nozzle No.1**

PCB Design Reference Number	Item No.1 - MID03323B201003

Tests/Paramete	**Result**	**Remarks**
Visual Inspection Note: Visual inspection has been done without providing Power to the received materials under test.	NOT OK (Refer Remarks)	**Item No.1** (I) R1 resistor is found missing on pulsar PCB. (II) Additional Solder marks are observed on C8 capacitor lead. (III) Additional Solder marks are observed on L4 location of pulsar PCB.
Delivery Test:	NOT TESTED (Refer Remark)	Not tested due to non conformance to Midco design.

Result:	**Pulsar card is not found in conformance with Midco standard design as per visual inspection test.**

Note:	Tests have been carried out as per Midco norms only.

The second charge was that the irregularity has also been widely reported in the print and electronic media, which has caused prejudice in the mind of the general public and the customers and as such has tarnished the good image and reputation of the corporation and the same was against the marketing interest of the corporation.

8. The petitioner was called upon to file his reply within a period of 15 days. It is stated that the petitioner submitted a detailed reply to the said show – cause notice on 05.10.2018, which is on record. It is also on record that in the intervening period, the license of the petitioner, which was cancelled by the State, was restored on 31.09.2017. It is on record that the 2 pulsar cards, which were taken into custody by the inspecting team on 31.05.2017 were

handed over to the District Supply Officer, however, subsequently, the same were taken by the corporation from the District Supply Officer and one of the pulsar cards was handed over to the Original Equipment Manufacturer (OEM) MIDCO for testing on 15.12.2017 and the other card was handed over to the other OEM Dreser Wayne on 08.12.2017 for testing at NOIDA. The said two reports given by the two OEMs are on record.

9. The report of MIDCO has already been reproduced hereinabove. In the report of the other OEM Dreser Wayne, no signs of damage were found. The said report also observed that although soldiering signs impression have been observed in the pulsar PCB circuitry, however, during testing all operations were found normal.

10. The petitioner in his defense and to discredit the report of OEM-MIDCO relied upon the report of the Dreser Wayne also to impress that merely by eye estimation, it cannot be presumed that anything wrong was done, which stood confirmed by the other Dreser Wayne (OEM) while recording that although impressions of soldiering were found on the pulsar PCB, however, during testing all operations were found normal. The report of the other OEM Dreser Wayne was submitted by the petitioner along with supplementary reply dated 27.11.2018.

11. It is on record that after the inspection, an FIR was also lodged against the petitioner under Section 3/7 of Essential Commodities Act, however, subsequently, a final report was submitted by the Investigating Officer on 26.12.2018, which was also accepted by the trial Court. It is on record that subsequent to the FIR coming to an end and the supply license being restored by the District Supply Officer on 13.09.2017, the sale of petrol etc., was supplied by the respondents and the operation continued from 01.07.2017 uninterrupted and the supply of HSD was resumed w.e.f

13.09.2017.

12. On 14.03.2019 the respondent – corporation passed an order terminating the retail outlet dealership of the petitioner. A copy of the said termination order is on record.

13. Aggrieved against the termination order dated 14.03.2019, the petitioner preferred a writ petition being Writ Petition No.9062 (MB) of 2019 (R.S. Filling Station v. Indian Oil Corporation & Ors.) before this Court wherein this Court granted an interim indulgence by staying the implementation of the termination order till the disposal of the application for interim relief by the appellate forum and the petitioner was relegated for filing an appeal before the Disputes Resolution Panel.

14. The petitioner preferred an appeal challenging the termination order dated 14.03.2019. The said appeal was disposed off vide order dated 15.10.2019 whereby the appellate authority noticing the contention of the petitioner remanded the matter solely on the ground that the petitioner was denied an opportunity of hearing before passing of the order dated 14.03.2019 with a direction to proceed with the matter from the stage of granting of personal hearing as provided under Clause 8.6 of MDG. The order dated 14.03.2019 was set aside.

15. The said order of the appellate Court was challenged by the petitioner by filing a writ petition being Writ - C No.21992 of 2020, however, during the course of pendency of the said writ petition, a personal hearing letter was issued to the petitioner by respondent no.4 fixing 02.01.2020 for grant of personal hearing in terms of the remand order dated 15.10.2019. The petitioner vide his letter dated 27.12.2019 requested for an adjournment in view of the fact that petitioner could not contact his legal adviser on account of

winter vacations, however, an order came to be passed on 19.10.2020 once again cancelling the dealership agreement of the petitioner. The said termination order was made subject to the final outcome of Writ Petition No.1262 (MS) of 2020, which was pending.

16. As the order was passed during the pendency of the writ petition, an amendment application was filed which was allowed permitting the petitioner to amend the writ petition and it is also noticed that earlier Writ – C No.21992 of 2020 was withdrawn by the petitioner in view of the subsequent developments.

17. The order of cancellation was also challenged by the petitioner in Writ-C No.1262 of 2020. This court, heard the matter and vide judgment dated 31.05.2022 allowed the writ petition. The said judgment dated 31.05.2022 was challenged by the Corporation by preferring a Special Appeal No.307 of 2022 before the Division Bench of this Court. The said Special Appeal was disposed off vide judgment dated 07.09.2022 wherein the Division Bench held that they were upholding the decision of the Single Judge and on the basis of the observations made above, directed the authority concerned to decide the matter afresh in the following terms :

> *"28. For the reasons aforesaid, we are not inclined to interfere in the judgment and order dated 31.05.2022 passed by the learned Single Judge. We accordingly affirm the same.*
>
> *29. However, before parting with the case, we also find it appropriate to direct the appellant-Corporation to reconsider the entire matter in the light of the observations made herein above considering all relevant material, including the second report dated 12.10.2018 and take decision afresh.*
>
> *30. The competent authority of the respondent-corporation, thus, shall decide the matter afresh as*

observed above within two months from the date a certified copy of this order is submitted by the respondent no.1-petitioner before it.

31. We are issuing the direction to the appellant-Corporation for reconsideration of the entire matter afresh for the reason that the exact purport of the second report dated 12.10.2018 can be analyzed and effect of the said report can be considered only by the experts of the area for the reason that the report is technical in nature which lies in the exclusive realm of the technical experts.

32. The Special Appeal is, thus, disposed of in the aforesaid terms."

18. That the corporation aggrieved against the said judgment preferred a Special Leave Petition No.17686 of 2022 which was disposed off with the following observations :

"Since the impugned order only directs reconsideration on remand, we are not inclined to interfere with the same. The special leave petition is dismissed accordingly.

However, we clarify that the respondents shall cooperate in the expeditious disposal of the enquiry on remand and shall remain present, as and when called upon to do so.

Needless to state that while conducting the enquiry, the competent authority shall consider the effect of both the reports.

We further clarify that the competent authority shall proceed without being influenced by any observation made in the impugned judgment of learned single Judge or the Division Bench."

19. That in terms of the liberty given by the Division Bench of this Court as well as the observations made by the Hon'ble Supreme Court, a fresh order came to be passed on 12.01.2023 terminating the dealership of the petitioner. The petitioner challenged the said order dated 12.01.2023 by preferring an appeal, which was decided by the appellate authority vide judgment dated 15.05.2023 whereby the appeal was dismissed. The impugned orders dated 12.01.2023

and 15.05.2023 are subject matter of the present writ petition.

20. The counsel for the petitioner argues that the order dated 04.11.2022 passed by the Hon'ble Supreme Court were to be complied with, however the report of the two OEMs were not placed before the technical experts for their opinion and findings have been recorded without there being any material alleged to that effect in the show cause notice or there being any material to corroborate. She argues that it has been recorded that the petitioner must have been involved in manipulation of the delivery, which was neither reported by the OEMs nor was any show cause notice served to that effect. She further argues that the reports of the OEMs were not submitted for any examination of technical experts as was directed by the Division Bench as well as the Supreme Court. She further argues that in both the orders, it has been wrongly recorded that as there was no direction by the Supreme Court to consider the fresh submissions made by the petitioner, no consideration was accorded to the same. She further argues that the sole report against the petitioner was submitted by the OEM, MIDCO, which itself is based upon visual inspection without there being any technical examination, whereas the report of other OEM Dresser and Wayne is based upon a technical examination and after conducting the lab tests on the seized pulsar cards. She further argues that MIDCO is not a government approved testing agency. It is further argued that the respondent Corporation has tried to supplant the joint inspection report as well the report by the Dresser and Wayne by alleging that as it was reported that a chip has been removed, as such, when the testing was done by the Dresser and Wayne, all operations were found to be normal.

21. The counsel for the petitioner further argues that the said finding is

without any basis and without any material and thus perverse to that extent. She further argues that even the directions of the Supreme Court for consideration of both the reports has not been complied with. It is further argued that reliance on the clarificatory e-mail dated 20.06.2018, sent by MIDCO to the respondent corporation, was never served upon the petitioner nor was it made a subject matter of relied upon documents in the show cause notice. She further argues that the said e-mail by MIDCO (relied upon in the impugned orders) is a procured document as the same is not in consonance with the report of the MIDCO. She further argues that the said email is in the teeth of the joint inspection report. She further argues that the Supreme Court in its judgment directed that while conducting the enquiry, the authority shall consider the effect of the both the reports and it was further held that the competent authority shall proceed without being influenced by any observations made in the judgment of the learned Single Judge or the Division Bench. Thus, it was incumbent upon the authority to consider the effect of both the reports afresh, whereas in the present case, order has been passed on the considerations of reports other than the two reports as well as on the personal view expressed in the orders.

22. It is further argued that the same appellate authority, who has passed the order impugned, took a different view in another case while deciding the similar matter as an appellate authority in the case of **Firozabad Fuels and Services Versus Indian Oil Corporation Limited Agra** and thus, the two orders passed by the Appellate Authority are contradictory to each other insofar as the effect of the report of OEM is concerned. It is further argued that in terms of the Clause 8.5.6 of the MDG, it is incumbent that a show cause notice be issued within a period of thirty days, whereas the

show cause notice was issued after about more than two and a half months, which itself makes the entire proceedings void ab-initio.

23. She further argues that the joint inspection committee having been constituted in pursuance of the Government Order dated 02.05.2017 and not under the provisions of MDG, mandates procedure under clause 8.7 of the MDG to be followed before taking any action against the petitioner. Clause 8.7 provides that in cases where inspection has been conducted by authorities other than the Oil Companies, action against erring Retail Outlets will only be taken when malpractice or irregularity is "established by such authorities" and any action taken would be "on receipt of advice from such authority". However, in the case of the petitioner, despite a Final Report having been submitted by the Investigating Officer and accepted by the learned Magistrate, for some unfathomable reason, the Respondent Corporation in a hurry to assume the charge of the investigation has taken punitive action against the petitioner in blatant violation of clause 8.7 of the MDG.

24. The counsel for the petitioner specifically draws the attention of this court to Clause 5.1.4 of the MDG to argue that in terms of the said provision, the 'addition', 'removal', 'replacement' or 'manipulation' alleged should be in *conjunction* with the 'liklihood of manipulating delivery in order to gain undue benefit', whereas in the case of the petitioner, admittedly there was no short selling ,manipulation of delivery nor were the same alleged also, and thus reliance on clause 5.1.4 is misplaced. It is also argued by the petitioner that the pre-deposit of 50% made for preferring the appeal is also liable to be refunded to the petitioner.

25. The petitioner has placed reliance on the judgment of the Supreme Court in the case of **State of Punjab vs. Davinder Pal Singh Bhullar; 2011 (14) SCC 770,** in support of her arguments that

when the foundation falls, the entire superstructure falls. She argues that when the initial inspection was *de-hors* the Government Order dated 02.05.2017, no further proceedings could be maintained on the basis of the said inspection. She further argues that as the seals on the retail outlet were put by the Weights and Measurement Department, there being no allegation of tempering with the said seals, no wrong on that ground could have been attributed to the petitioner as the petitioner could never gain access to the machinery without tampering the seals in that regard. Reliance is placed upon the judgment in the case of **Indian Oil Corporation Limited vs. Pullareddy Service Center; 2021 SCC Online AP 2909 and M/s Chaudhary Filling Point and State of U.P. [Misc. Bench No.2703 of 2018] and IOCL vs. M/s Modern Service Station [Special Appeal No.456 of 2023].**

26. She further agues that the test carried out is contrary to the provisions contained in Legal Metrology Act, 2009 and the Essential Commodities Act, 1955. She lastly argues that the manner in which the dealership has been terminated is contrary to the law and affects the livelihood of the petitioner thus, the same requires strict interpretation as held in the case of **Hindustan Petroleum Corporation Limited vs. Super Highway Services (2010) 3 SCC 321.** In the light of the said, it is argued that the writ petition deserves to be allowed.

27. The counsel for the respondents Corporation Dr. L.P. Mishra assisted by Sri Manish Jauhari argues that in the light of the directions given by this Court in Public Interest Litigation (Civil) No.10652 of 2017, State wide drive inspections were carried out including at the dealership of the petitioner. It is argued that in the joint inspection, in two Dispensing Units, prima-facie, tampering was found in the Pulsar Cards as was indicated in the show cause

notice. It is further argued that two Pulsar Cards, which were found to be suspicious, were taken for testing and a fact finding letter was also served upon the petitioner. It is submitted that the reports were obtained by the OEM MIDCO who had recorded its finding, as have been also relied upon by the counsel for the petitioner.

28. The other arguments with regard to the filing of the Writ Petition, Special Appeal as well as Special Leave Petition are reiterated by the counsel for the respondents. It is argued that in compliance of the Supreme Court judgement, the order dated 12.01.2023, adequately considered the affect of both the reports in details as are evident from the impugned orders. It is further argued that the argument that no opinion was taken from the expert, was an observation made by the High Court in its order passed in Special Appeal whereas the Supreme Court had specifically held, that the Corporation will not be influenced by any observations made by the learned Single Judge or the Division Bench.

29. As regards the submission that the same appellate authority has taken two contradictory view in two appeals decided by him, it is argued that the same was in different facts. It is further argued that in any case, the petitioner cannot plead negative equality with the other order passed by the same appellate forum. He further argues that even in the report of Dresser and Wayne, it is crystal clear that the said OEM has made specific observation that there was tampering in the Pulsar Unit and it was not the same product which has been original installed by the Company. He further argues that the clarificatory e-mail issued by the MIDCO was communicated to the petitioner while they were contesting the matter before the appellate authority in the year 2019 and proper opportunity was given to the petitioner to reply to the contents of the clarification e-

mail but the petitioner did not respond.

30. The counsel for the respondents have placed reliance on the following judgments :

    i. Civil Appeal No.6748 of 2018 arising out of SLP (C) No.33100 of 2015 (Indian Oil Corporation Ltd. and another vs. T. Natrajan).

    ii. 2017 SCC Online All 2912; (2018) 127 ALR 692; ECI SPIC SMO MCML (JV) vs. Central Organization for Railway Electrification and Another.

    iii. Writ C No.20271 of 2018; M/s Maharashi Filling Station (Indian Oil Dealer) vs. Indian Oil Corporation Ltd. UP State Officer and Another.

    iv. Writ-C No. 32973 of 2018; M/s Kisan Sewa Kendra, Sarai Dubaulia vs. Union of India and 3 others.

    v. High Court of Judicature for Rajasthan at Jodhpur; DB Special Appeal Writ No.456 of 2023 (M/s Shree Rajendra Agro Service Centre through its Proprietor vs. Indian Oil Corporation Ltd. through its Chief Manager and 02 others.

    vi. Special Appeal No.215 of 2024 (Executive Director Retail And Sales Indian Oil Co. Ltd. and 2 others vs. M/s Mishra Auto-mobiles through Jagdish Mishra and 2 others.

    vii. Writ-C No.29859 of 2017 (Savitri Devi and others vs. Union of India and four others).

    viii. Writ-C No.16611 of 2021; (S.J. Lal Filling Station Indian Oil Retail Outlet and Another vs. Indian Oil Corporation Ltd. and another).

31. In the light of the said submissions, it is argued that the writ petition is bound to be dismissed and should be accordingly dismissed.

32. Before adverting to the arguments raised at the bar, it is essential to notice that the contract in between the parties was executed which provided for applicability of the provisions of Marketing Discipline Guidelines (MDG) affected w.e.f. 08.01.2013 as amended on 03.08.2018, the same are also relied upon by the petitioner and has been filed as Annexure no.4. In the counter affidavit, there is no pleading that the said MDG dated 08.01.2013 amended on

03.08.2018 is not applicable. Specific assertions to that effect is made by the petitioner in para 10 of the writ petition and in para 30 of the counter affidavit, it has been recorded that the said paragraph needs no reply.

33. Para 5.1.4 of the Marketing Discipline Guidelines is being quoted herein as under :

> *5.1.4 ADDITIONAL / UNAUTHORISED FITTINGS / GEARS FOUND IN DISPENSING UNITS /TAMPERING WITH DISPENSING UNIT -*
>
> *Any mechanism / fittings / gear found fitted in the dispensing unit which is likely to manipulate the delivery.*
>
> *Addition, Removal, replacement or manipulation of any part of the Dispensing Unit including any mechanism, gear, microprocessor chip/electronic parts/ OEM software will be deemed as tampering of the dispensing unit.*
>
> *In such cases, views and independent opinion of the original equipment manufacturer would be obtained and suitable decision taken.*
>
> *In case of this irregularity sales from the concerned dispensing unit to be suspended, DU sealed. Samples to be drawn of all the products and send to lab for testing."*

34. It is also essential to notice that in terms of the Marketing Discipline Guidelines, which are admittedly applicable to the agreement executed in between the parties and is the foundation for taking the decision. It is also essential to notice the provisions of para 8.7 of the MDG which are as under :

> *"Under existing laws, Control Orders etc., various authorities, Acts/Rules of Central Government/State Government in addition to Oil Company Officers are empowered to carry out checks of the dealership for determining and securing compliance with such laws/Control Order. If any "malpractice or irregularity" is established by such authorities after checking, the*

> *same would also be taken as a "malpractice or irregularity" under these guidelines and prescribed action would be taken by the Oil Company, on receipt of advice from such authority."*

35. In terms of MDG Corporation is authorised to take action, which is triggered in two manners, the first being the action taken by the State Government when they notice malpractice or irregularity, based upon the receipt of the advice from such authority in terms of the prescription under the MDG action can be taken. The other manner in which the proceedings can be initiated, is by the Corporation itself, when malpractice or irregularity are brought to its notice.

36. In the present case, although the State Government had conducted the first proceedings and had noticed the malpractice or irregularity, however the action in the present case against the petitioner has been taken by the Corporation, based upon the materials available with them in terms of the provisions contained in para 5.1.4 of the MDG, thus to that extent the first submission of the counsel for the petitioner that the constitution of the Committee, which had done the inspection at the first instance, was not properly constituted as prescribed under the Government Order, merits rejection and is accordingly rejected.

37. The second issue which arises for consideration is the mandate of the Supreme Court while remanding the matter. On perusal of the three orders passed in the earlier round of litigation, what transpires is that by means of a judgment dated 31.05.2022, the writ petition was allowed. In the judgment of the Special Appeal dated 07.09.2022, the Special Appeal Court had noticed and had affirmed the judgment of the learned Single Judge, however, a liberty was given to the Corporation to reconsider the entire matter in the light

of the observations made and after considering the all materials including the second report dated 21.10.2018 was at liberty to take a decision afresh.

38. The Supreme Court in its judgment dated 04.11.2022, as recorded in paragraph above, makes it clear that in addition to the direction given by the Special Appellate Court, it was clarified that the authority shall consider the effect of both the reports and shall not be influenced by any observations made in the impugned judgment.

39. The net effect of the judgment passed by the Hon'ble Supreme Court is that while the Supreme Court had expressed that it had no inclination to interfere with the Special Appeal judgment, however, by way of clarification, it was directed that on remand, the appropriate authority would be competent to consider the effect of both the reports and would not be influenced by any of the observations of Writ Court or Special Appeal Court.

40. In terms of the said clarification as well as the directions given by the Special Appellate Court, it was open for the corporation to pass fresh orders.

41. The order passed by the licensing authority at the first instance records the entire materials that had led to passing of the order of the Special Appeal Court as well as the Supreme Court and while considering the additional written submissions that were filed by the petitioner, although it was observed that although the assessing authority was not bound to consider the additional written arguments, however for the sake of avoiding any multiplicity, the same were being reconsidered. The order also held that in the show cause notice that was issued to the petitioner at the first instance, the same was based upon the report of the MIDCO and the Corporation did not take any action against the petitioner on the

basis of the second report although it was legally entitled to do so. The order further records that the action was being taken on the basis of the report given by the MIDCO as well as the further clarification given by the OEM MIDCO through its clarificatory e-mail.

42. The contention of the petitioner, placing reliance on the report of the NIT Karnataka was rejected. The report of the OEM MIDCO was analysed and held that the perusal of the remarks/comments/conclusion of the Test Report dated 15.06.2018 and the clarificatory e-mail dated 20.06.2018 makes it clear that there was a definite tampering in the MIDCO make Pulsar Card. The report of the other OEM was also considered, although the same was not the basis for passing the cancellation order. The OEM report of M/s Dresser Wayne was considered and it was observed as under :

> *"Further, as regards the observations made by the OEM - Dresser Wayne (i.e. GEMS) that 'during testing all operations were found normal, it is noteworthy that the electronic chips had gained popularity amongst defaulting or errant dealers for precisely the same reason that unless the dealer used the remote in his possession to make short delivery, the delivery and function of the pulsar card was normal. The dealers used to control the functions with the help of the remote, which was discovered in the raids made by STF. However, when the said raids were widely publicized in media, the errant dealers removed the electronic chips which left soldering marks/ signs, as found on the Pulsar Cards in the present case. Therefore, when the Dresser Wayne Pulsar card was tested in the lab without there being a spurious electronic chip over it, all the operations were found normal. Simply because the testing was found normal, it would not mean that no tampering with the Pulsar Card had taken place. It is reiterated that the OEM - Dresser Wayne had opined (only after seeing the test results of the pulsar card) that the soldering signs on the pulsar card indicate that an external wiring was soldered and*

removed from its pulsar card. Thus, making it clear that the Dresser Wayne Pulsar Card was tampered with and the appropriate action (i.e. termination) may be taken against your dealership under the MDG & Dealership Agreement.

In view of the aforementioned two separate test reports given by two different OEMs as regards their own equipments (ie. Pulsar Card), it is clear that:

(a) Both the said reports are completely distinct and independent of each other and there cannot be any overlapping between them.

(b) Both the OEMs have independently carried out their testing/inspection of the two separate Pulsar cards supplied to them, after which both the OEMs have opined/concluded that there has been some manipulation/ tampering with the Pulsar Cards.

(c) Each of the said reports clearly indicate that there has been tampering in the pulsar cards of both the said units and soldering marks/signs were found in the pulsar cards of both the said units thereby clearly indicating that a chip had been removed from the Pulsar Cards and the place from where the said chip was removed / replaced had thereafter been soldered.

(d) Each report constitutes a separate and independent cause of action in itself, for which the action (i.e. termination) under Clause 5.1.4 & 8.2 iv. of the MDG read with Clause 15, 16, 44, 58 (i) & (m) may be taken separately and/or cumulatively."

It was further observed that in terms of the test report of MIDCO and the clarificatory e-mail received on 20.06.2018, the first show cause notice could be issued by the Corporation on 30.08.2018. It was also observed that the tampering of an electronic component of the DU would be *deemed as tampering* under clause 5.1.4 of MDG, as such, fresh order came to be passed on 12.01.2023 terminating the dealership. The report of MIDCO and the clarificatory email are essentially the foundation for passing the order of cancellation.

43. The appellate order records the submission and was decided by Sri Vigyan Kumar, the Executive Director of the Corporation as an Appellate Authority while rejecting the appeal for the following reasons:

> A. *From the above discussions, it is clear that the instant case pertains to the irregularities mentioned in Cl. 5.1.4 of the MDG and that the said irregularities stand established by the OEMs as reflected in their reports. No new fact pertaining to the two reports of the two OEMs has been produced by the Appellant-Dealer. No doubt an RO dealer is the custodian of equipments including DUs provided by the Corporation and any tampering found in DU is RO dealers' responsibility and no one other than the dealer is benefited with the tampering of the same. Infact, the general public stands to loose and is cheated because of the said tampering, leading to loss of goodwill of the Respondent Corporation. Tampering with DU is à critical irregularity defined in MDG 2012. If any kind of tampering is observed in any DU then action needs to be taken as per dealership agreement as well MDG 2012 irrespective of the make and model of the DU.*
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> *B. The dealer has to operate the retail outlet in accordance with the terms of the dealership agreement executed between the parties. As per the dealership agreement, it is the responsibility of the dealer to take care of the outfits of the dispensing unit. No repair of the outfits shall be done by the dealer without prior permission/authorization by the Corporation in writing. The dealer cannot interfere with or attempt to adjust the outfit or any part of the dispensing unit.*
>
> *C. Admittedly on the date of inspection, the irregularities with respect to tampering in the components of both the dispensing units were observed and the same was recorded in the joint inspection report. These irregularities were also established through OEM reports.*
>
> *D. The seals of the Weights & Measure Dept. being found intact and there being no allegation of short supply, are not relevant in view of the amended provisions of Marketing Discipline Guidelines, 2012.*
>
> *E. The contention that there is no allegation of short*

supply and any unlawful gain by the Appellant cannot be accepted merely because the seals were found intact or delivery from the dispensing unit was found correct at that time. It is to be noted that the same has no bearing on the fact of irregularities being detected during the inspection and established in the OEM report in light of Clause 5.1.4 of MDG.2012.

F. The contention regarding the R1 Resistor has already been clarified by the OEM that since there were additional/abnormal solder marks on the pulsar PCB/card which is not as per OEM's standard design, the same clearly points towards the manipulation/ tampering of the said Pulsar unit.

G. The petitioner was the custodian of the dispensing units as per the dealership agreement moreover the retail outlet premises were also under his control. No tampering with the Control card or any fittings on the same could have been made without the knowledge/involvement of the appellant-dealer. Hence, his responsibility of the acts done in the retail outlet, premises cannot be shifted to any other person.

43. In the light of the findings recorded, one of the submission of the counsel for the petitioner that the show cause notice was issued after a gap of thirty days, which is contrary to the regulations and thus, make the entire proceedings bad in law, is further liable to be rejected as the same cannot be held to be mandatory as no consequence of not issuing a show cause notice within thirty days, is prescribed under the guidelines, as such, the same is clearly directory in nature and merely because there was some delay in issuing the show cause notice, the contention of the petitioner that the entire proceedings become bad in law is liable to be rejected and is accordingly rejected.

44. The contention of the counsel for the petitioner that the appellate authority has taken two different views while acting as an appellate authority based upon a report which is similar in respect of two retail outlets, is to be considered. The same appellate authority

namely Sri Vigyan Kumar while deciding the appeal filed by one **Firozabad Fuels and Services**, considered the report of the OEM even in respect of that retail outlet noticed and recorded the report of the OEM as under :

> *"In the meantime, the pulsar card of the DU i.e. 1204135 (A1) and 13020600503 (A2) which was taken out from the DU and sent for lab testing. OEM report stated that tampering could have been done in the pulsar Cards. OEM vide its reporter ref: 18001 dated 28.03.2018 has stated as under:-*
>
> > *"The Pulsar Card A1 and Pulsar Card A2 not working. The U3IC pins are not properly soldered and pads are damaged. This is not a standard practice followed by Gilbarco. This could be an attempt to tamper the cards to alter the delivery."*

Interpreting the effect of the said report, as quoted above in the context of para 5.1.4 of the MDG, recorded its findings as under :

> *"OEM report ref: 18001 dated: 28.03.2018 states that "The Pulsar Card A1 and Pulsar Card A2 not working. The U3 IC pins are not properly soldered and pads are damaged. This is not a standard practice followed by Gilbarco. This could be an attempt to tamper the cards to alter the delivery".*
>
> ***The observation of OEM is not conclusive. It may be noted that the DU and pulsar cards were in working condition at the time of removal / seizure and hence the reason for the pulsars not working cannot be attributed to the dealership nor is the dealership liable for the same.***

45. Thus, the submission of the counsel for the petitioner and the defense has to be considered in the light of parity as claimed by the petitioner. The two reports in respect of there being manipulation on the electronic part of the dispensing unit are similar; both the reports of the OEM records that the soldering marks were found not the standard practice followed by the OEM. In fact, the report in the case of Firozabad Fuels further records the opinion of the OEM that this could be an attempt to tamper the cards to alter the delivery, which is absent in the report submitted by the MIDCO in

the case of the petitioner. While drawing the deeming inference under para 5.1.4 of the MDG, the appellate authority has rejected the appeal filed by the petitioner. The said observations has not been made and the deeming inference has not been recorded in the appeal decided in the case of Firozabad Fuels.

46. It is also clear that the judgment of the same appellate authority dated 30.08.2022 has been accepted by the Corporation and has not been challenged. Thus, what emerges is that for drawing a 'deeming inference' under 5.1.4 of MDG in respect of there being manipulations/errors in the electronic chips, two different views have been taken while the reports are similar in respect of discrepancies on the pulsar cards. Although, as per the counsel for the respondents, the petitioner cannot claim negative equality, is a view which is clearly well settled, however, the Corporation being a 'State' cannot take two stands in respect of two different dealers in cases of similar allegations. The two reports indicate almost similar errors and both the reports also indicate that these were not the errors which were standard in the equipment supplied by the OEMs. The Corporation which is 'State' within the meaning of Article 12, even in the contractual matters, is bound to act in fair and reasonable manner, the reasoning given by the appellate authority, in both the appeals is diametrically opposite. Once the corporation has accepted the reasoning given by the same appellate authority in its judgment dated 30.08.2022 and has not challenged the said order any further, the contrary finding recorded by the same appellate authority in the case of the petitioner, is clearly an arbitrary exercise of Appellate Powers.

47. It is also essential to notice at this stage that para 5.1.4 of the MDG, prescribes that if any unauthorised fittings etc. are found in the dispensing unit, *which are likely to manipulate the delivery*, the

material should be existent to demonstrate that the irregularities noticed in the pulsar card could have led to manipulation of delivery. To substantiate on the said allegations with regard to second part of para 5.1.4 of the MDG, the Corporation has founded the two impugned orders, based upon the clarificatory e-mail of MIDCO, referred to in the order as well the opinion expressed by the licensing authority while analysing the report of Dresser Wayne, as extracted above. The clarificatory e-mail, even as per the orders impugned, was available with the Corporation before the issuance of the first show cause notice,however, the same was not made a *'relied upon document'* or 'document proposed to be relied upon' in the show cause notice, which is evident from the perusal of the show cause notice. At no point, even after remand from the Supreme Court was any fresh show cause notice issued indicating that the respondents were intending to rely upon the said document (clarificatory e-mail) to establish the allegations levelled against the petitioner.

48. The submission of the counsel for the respondents that the clarificatory e-mail was supplied during the appellate proceedings at the first instance and thus, was available, cannot be accepted to be sufficient compliance of principals of natural justice for the sole reason that for a material to be relied upon in the show cause notice and providing the material during the course of the hearing are two different things. When the material proposed to be relied upon, is indicated in the show cause notice, the dealer is confronted and is aware of the materials proposed to be relied upon and thus, would be entitled to challenge the said material including by way of right of cross examination. Making a person aware of the material during the course of the appellate proceedings without there being anything to indicate that the said material is proposed to be relied

upon, is clearly in violation of principles of natural justice as, the person against whom the document is relied upon is never given an opportunity to defend the said evidence or to controvert it in any manner. Thus, I have no hesitation in holding that the reliance on the clarificatory e-mail which was available to the corporation even before issuance of the first show cause notice and the same not being made a part of the document relied upon in the show cause notice, has resulted in violation of the principle of natural justice.

49. It is also important to notice that while analysing the report of the second OEM Dresser Wayne, heavily relied upon by the petitioner in his support, the view has been recorded by the licensing authority based upon the materials which was neither a part of the show cause notice, nor the said view was ever confronted to the petitioner at any point of time nor is the said view supported by any material existing. The said appears to be a personal view of the licensing authority. Relying on the said personal view without there being any material to suggest that the petitioner was ever informed or confronted with any possible view of the nature referred, further makes the order bad in law and also arbitrary. The directions of the Special Appeal Court as well as the Supreme Court were to consider the expert views of the OEMs, no permission was granted to substitute a personal view as has been done in the impugned order that too without even confronting the petitioner with regard to the said view based upon any material.

50. Coming to the judgement cited by both the parties, the counsel for the petitioner has relied upon the judgment in the case of ***State of Punjab vs. Davinder Pal Singh Bhullar; (2011) 14 SCC 770*** to argue that there was a judicial bias in the decision making process. The said judgement is of no avail to the petitioner as the same arose out of adjudication of a criminal proceedings which require

stricter judicial scrutiny. Coming to the next judgment in the case of ***Indian Oil Corporation Limited vs. Pullareddy Service Centre (2021) SCC Online AP 2909,*** wherein specific reliance is placed upon paragraphs no. 18 to 27, the same was in respect of the allegation of the manipulation in the machine, the court observed as under :

> ***18.*** *In Ram Lal Agarwal's case(referred 2 supra), wherein reliance was placed on the judgment in P. Laxmikanth Rao's case (referred 1 supra) which was later upheld by the Division Bench in W.A. No. 318 of 2011, the learned Single Judge was examining more or less similar factual situation, but there is no allegation of stock variation as pointed out by the learned Senior Counsel. In the said case, the Inspecting Team observed the presence of double gear in one of the dispensing units. However, they did not find any irregularity or illegality in the functioning of the dispensing units, no differentiation was noted in dispensing of fuel nor the quantity of petroleum products was found to be deficient in any manner. It was inter alia contended on behalf of the Oil Company/respondent therein that mere existence of double gear in the dispensing unit is sufficient to hold a dealer responsible as double gear gets installed only to manipulate delivery and actual shortage of delivery is not material.*
>
> ***19.*** *The learned Single Judge while interpreting Clause 5.1.4 of MDG which is pressed into service in the present case also, opined that double gear in dispensing unit would assume critical irregularity only if deficiency is noticed in the quantity of fuel dispensed with. The said clause reads thus:*
>
> > *5.1.4 Additional/unauthorized fittings/gears found in dispensing unit/tampering with dispensing unit:*
> >
> > *Any mechanism/fittings/gear found fitted in the dispensing unit with the intention of manipulating the delivery……"*
>
> ***20.*** *At para 27 of the judgment, the learned Single Judge opined as follows:*
>
> > *"……..If the material available on record does not necessarily lead to the conclusion that the tampering and tinkering has taken place at the hands of the writ petitioner, it will be totally unjust to penalize him. It is a fundamental principle of law that no innocent person should be penalized for no fault of his. That would be contrary to cannons of*

justice. In the absence of linkage of the presence of the additional gear with 39 teeth in the equipment at the premises of the retail outlet run by the petitioner to him, it will not be safe to infer that he is guilty of tampering with the equipment. If there is no reasonable substratum to a conclusion that the petitioner is guilty of tampering with the equipment, no adverse action of termination of his dealership agreement could have been drawn against him. The petitioner therefore could not have been faulted unnecessarily."

21. *It may be trite to observe here that it is not the case of the appellants that by virtue of presence/or help of double gear, less quantity of petrol/diesel is dispensed with on testing at the time of the inspection conducted on 05.02.2015. No doubt, no satisfactory explanation is forthcoming with regard to the stock variations. However, in the absence of any evidence to the effect that additional gear was inserted by/or at the behest of the petitioner/dealer and as a result of the same, there was stock variation which reaps benefit to the petitioner, no conclusion can be arrived at for penalizing the petitioner. In this regard, it may be apt to refer to the judgment of the Division Bench cited by Mr. N. Ashwani Kumar in support of his contentions. In W.A. No. 318 of 2011, the Hon'ble Division Bench while confirming the orders of the learned Single Judge in P. Laxmikanth Rao's case (referred 1 supra) vide orders dated 21.07.2011 elaborately dealt with the similar issues. In the said case, the dealership of the petitioner therein was terminated on the allegation that a spurious gear was found to have been introduced into the unit resulting in the short supply of High Speed Diesel (HSD). It is the case of the Oil Company that the dealer committed malpractice/irregularity of short supply by tampering with the Corporation's equipment, namely, dispensing unit by using unauthorized fittings/gears and that the said act of the dealer putting additional gear to the dispensing unit resulting in short supply tantamount to tampering with the dispensing unit. It was contended before the learned Single Judge that once the seal is found to be intact, the dealer cannot be held responsible for any error or defect as to the measurement and further that the dealer has no control over the dispensing unit and the Corporation and the Maintenance Agency are in complete control over the units.*

22. *While upholding the judgment of the learned Single Judge, the Division Bench held as follows:*

"On the basis of the charge, it is appropriate that

before any conclusion as to misconduct or malpractice or tampering by the dealer is arrived at, it must be demonstrated by the appellants by the standards of preponderance of probabilities (no lesser standard known to law exists) that the dealer could access the internal mechanism of the unit and could introduce the spurious gear. Alternatively, a compelling inference as to tampering by or on behalf of the dealer could have perhaps been legitimately arrived at if the respondents could establish that proper gear was in fact installed in the unit on an earlier occasion and the dealer or his agents could have substituted the gear with a spurious one, even while the seal to the unit was intact. In the absence of officials of Weights and Measures Department and by obtaining only their telephonic approval, the seals were broken by agents of the appellants and the Metering Unit opened. It is the admitted factual scenario that the seals of the dispensing unit were intact and as observed by the learned Single Judge it is not the case of the appellants that the dealer or any other individual could gain access to the unit where the "spurious gear" was introduced even while the seal of the unit was intact. It is not the case of the appellants that the seals of the unit were tampered with or duplicate seals substituted for the seals put by officials of the Legal Metrology Department. Neither the show cause notice nor the final order impugned in the writ petition unravels the mystery of the closed unit and metaphysical entry of the spurious gear into the unit. This was a fatal error in the order of termination of the dealership, on account of which the learned Single Judge was persuaded to invalidate the order of termination of the respondent's dealership, by the appellants."

23. *Further, with regard to the presence of the spurious gear, the Hon'ble Court recorded its conclusions as follows:*

"Responding to a query from this Court as to how the appellants could explain the curious case of the spurious gear inside a locked unit, the learned senior counsel would urge that since the authorized dealer of the gears supplied by Larsen and Turbo had through a letter, dated 10.05.2010, informed the appellants that the gear found in the dealer's unit was an unauthorized gear and not manufactured and supplied by the authorized supplier, the inference is compelling that since it

was only the dealer who stood to gain from short delivery of HSD, he must have introduced the gear notwithstanding that the unit was sealed and despite absence of an explanation as to how a spurious gear could have been introduced into the sealed unit. His contention does not commend acceptance by this Court as it suffers from the logical fallacy of an undistributed middle. The letter of the supplier to the appellants, dated 10.05.2010, is not conclusive of the fact that a standard gear was in place till the inspection nor it is to be construed by any principle of law that a spurious gear was not installed.

Since the HSD vended by the dealer is clearly found to be in short supply and that is an undisputed fact, and since a spurious gear having 39 teeth instead of 38 was also found embedded inside the HSD unit, the conclusion is irresistible in a world governed by physical laws that someone or some agent introduced a non-standard gear into the HSD unit. But from this fact to take a logical leap to infer that it was introduced by the dealer, is irrational. The chain of circumstances is not complete and merely because the dealer alone would stand to benefit from the short supply, no such inference could legitimately be drawn.

It is the admitted position that the supplier of the gears is a private agent. Neither the State nor an instrumentality of the State is the accredited supplying agent of the appellants. There is nothing in the pleadings, including in the counter affidavit of the appellants herein before the learned Single Judge that establishes that the introduction or replacement of the gears is by the respondent dealer."

24. *While disposing of the writ appeal, the Division Bench opined that "the conclusion as to the dealer's malfeasance was arrived at by the appellants therein on the singular fact that there was short supply of HSD and on the opening of the seal of the unit after breaking it, the spurious gear was found." It was further observed that "the basis of these two facts found is inadequate and is flawed for the reason that the fact that a spurious gear was introduced by the dealer was not legitimately inferred and the fact of the external seals of the unit being intact was not adverted to nor explained in the order of termination."*

25.*This Court is of the considered view that the above said*

judgment of the Hon'ble Division Bench applies to the facts of the case in principle and is, therefore, not persuaded to take any different view in the facts and circumstances of the case, wherein no material/evidence was brought on record to the effect that the additional gear was inserted by the dealer with a view to manipulate the delivery of petrol/diesel. It is neither the case of the appellants that unauthorized fittings/additional gears in the dispensing units were inserted by the dealer in collusion with the authorities nor any such allegations were made to that effect. In the absence of which, nothing adverse against the petitioner/dealer can be inferred. This Court is, therefore, inclined to uphold the submissions made by the learned counsel for the respondent and reject the contentions contra of the learned Senior Counsel for the appellant No. 1/Corporation.

26. *In Indian Oil Corporation's case relied on by the learned counsel for the appellants, the Hon'ble Supreme Court looking to the facts and circumstances of the case and on perusing the material on record held that acknowledgement of inspection report by putting seal and signature cannot be allowed to be resiled on the ground that the same were signed in good faith and the officials of the Oil Company cannot take advantage of the same. The said Judgment, in the considered view of this Court, is not applicable to the facts of the present case. Signing of the inspection report acknowledging the presence of additional gear would not ipso facto amount to accepting the insertion of the same by the petitioner. The burden lies on the appellants to establish that the same was inserted to manipulate the delivery of the fuel. In the present case, respondent No. 3/the Original authority arrived at the conclusions to the effect that being custodian of the outlet/equipment, the petitioner is responsible for presence of additional/unauthorized gear without adverting to the plea that it is not possible to do so when seals are intact. Even the appellant No. 2/appellate authority based its findings on assumptions and presumptions while opining that termination of the dealership was based on established fact of unauthorized fitting alone and the issue of excess stock of MS and negative stock in HSD is of no further consequence, is not being dealt with. As pointed out by the Division Bench, no finding was recorded as to how a spurious gear can be inserted in the dispensing unit when the seals are intact. It may be pertinent to note here that Clause 8.5.2 of MDG provides as follows:*

> *"All cases of irregularities needs to be established before any action is taken against a dealer."*

> ***27.*** *Against the back ground of the above stated factual and legal position, the orders impugned in the writ petition cannot stand to legal scrutiny."*

51. The next judgment cited by the counsel for the petitioner is in the case of ***M/s Chaudhary Filling Point Kazipur through its Proprietor and another vs. State of U.P. through Principal Secretary, Food and Civil Supplies and others decided on 30.01.2019 in Misc. Bench No.27043 of 2018,*** wherein this court had considered the allegation against the Petrol Pump Dealer which was similar to the allegations against the petitioner in respect of there being manipulation in the Pulsar Card. The court noticed that the opinion of the independent OEM was not taken and thus, the order impugned was found to be not sustainable. The court also noticed that the allegation levelled with regard to manipulation in the Pulsar Card was not substantiated by any independent opinion of the OEM and was not even supported by any competent court. The said judgment would not have much applicability to the facts of the present case inasmuch as in the present case, the opinion of the OEM is present and the action against the dealer was found to be in violation of the provisions of Clause 5.1.4 of the MDG.

52. The fourth judgment cited by the petitioner's counsel is in the case of ***Indian Oil Corporation Ltd. and others vs. M/s Modern Service Station, decided on 06.03.2024 in Special Appeal No.456 of 2023.*** The contention of the parties and had noticed the defense that the manipulation found were as a result of the act of the OEM and the licensee had no hand in the said manipulation, the matter was remanded back. The said judgment also has no applicability to the facts of the present case.

53. The next judgement cited is in the case of ***M/s Laltu Filling Station vs. Union of India and others; 2016 SCC Online Cal 626*** wherein the Calcutta High Court had the occasion to consider the

effect of not taking the opinion of the experts and the court held that post the amendment of MDG 2005, the procedure required for suspending and stopping the supply has to be observed, the said case is also does not help the cause of the petitioner.

54. The next judgment cited is in the case of **Hindustan Petroleum Corporation Limited vs. Super Highway Services and another (2010) 3 SCC 321.** In the said case, the Supreme Court had noticed that the cancellation of the dealership agreement of a party is a serious business and cannot be taken lightly. Para 31 to 33 of the Supreme Court judgment is quoted herein below :

> *"31. The cancellation of dealership agreement of a party is a serious business and cannot be taken lightly. In order to justify the action taken to terminate such an agreement, the authority concerned has to act fairly and in complete adherence to the rules/guidelines framed for the said purpose. The non-service of notice to the aggrieved person before the termination of his dealership agreement also offends the well-established principle that no person should be condemned unheard. It was the duty of the petitioner to ensure that Respondent 1 was given a hearing or at least serious attempts were made to serve him with notice of the proceedings before terminating his agreement.*
>
> *32. In the instant case, we are inclined to agree with Mr Bhatt's submissions that the High Court did not commit any error in allowing the writ petition filed by Respondent 1 herein, upon holding that notice of the laboratory test to be conducted at Barauni Terminal had not been served upon Respondent 1, which has caused severe prejudice to the said respondent since its dealership agreement was terminated on the basis of the findings of such test. Admittedly the dealership agreement was terminated on the ground that the product supplied by the petitioner Corporation was contaminated by the respondent. Such contamination was sought to be proved by testing the TT retention sample in the laboratory at Barauni Terminal.*
>
> *33. The guidelines being followed by the Corporation require that the dealer should be given prior notice regarding the test so that he or his representative also can be present when the test is conducted. The said requirement is in accordance with the principles of natural*

> *justice and the need for fairness in the matter of terminating the dealership agreement and it cannot be made an empty formality. Notice should be served on the dealer sufficiently early so as to give him adequate time and opportunity to arrange for his presence during the test and there should be admissible evidence for such service of notice on the dealer. Strict adherence to the above requirement is essential, in view of the possibility of manipulation in the conduct of the test, if it is conducted behind the back of the dealer."*

The said judgment, is to the effect that the termination of dealership in terms of the MDG Guidelines has to be interpreted strictly.

55. Coming to the judgment cited by counsel for the respondents, the first judgment cited is in **Writ-C No.20271 of 2018 (M/s Maharashi Filling Station (Indian Oil Dealer) vs. Indian Oil Corporation Ltd. U.P. State Officer and another,** wherein the court noticed that the cancellation of the license by the District Supply Officer and the report of the OEM were considered and also noticed that the cancellation order by the respondents corporation was a corollary to the termination of the license of the petitioner by the government authorities. It is not understandable as to how the judgment will have applicability to the facts of the present case, as the order has been passed by the Corporation independent of the action taken by the State authorities.

56. The next judgment in the case of **M/s Kisan Sewa Kendra Sarai Dubaulia vs. Union of India and others; Writ C No.32973 of 2018,** this court had noticed the infractions alleged against the dealer and had also noticed the report submitted by the OEM, none of the issues as raised in the present writ petition were either raised or considered in the said judgment, as such, the same would not have any applicability to the facts of the present case.

57. Coming to the next judgement cited in the case of **M/s Shree**

Rajendra Agro Service Centre vs. Indian Oil Corporation Ltd.; DB Special Appeal Writ No.456 of 2023, wherein the High Court of Rajasthan had taken into consideration the 'deeming provision' contained in para 5.1.4 of the MDG to hold that the same would come within the definition of tampering. The argument raised in the present case were neither raised nor considered and thus cannot have any precedential value.

58. The next order cited is an interim order passed in **Special Appeal No.215 of 2024 (Executive Director Retail and Sales Indian Oil Corporation Ltd. and others vs. M/s Mishra Automobiles through Jagdish Mishra and others)** wherein this court while granting an interim order had noticed that the order passed by the Single Judge was on the basis of unamended MDG whereas the MDG stood amended and this aspect was not considered by the learned Single Judge. An interim order has no precedential value and even otherwise said interim order, has no bearing on facts of the present case.

59. The next judgment cited in the case of **Savitri Devi and others vs. Union of India and others; Writ C No.29859 of 2017,** wherein the Division Bench of this Court had dismissed the writ petition by observing that no infirmity could be found, none of the arguments as raised were either considered or decided by the Division Bench.

60. In the present case, as expressed above, the orders impugned cannot be sustained for the following reasons :

    (i). the clarificatory e-mail, relied upon in the two orders was never supplied to the petitioner and was never made a relied upon document in the show cause notice although the same was available prior to the issuance of the show cause notice as claimed by the respondents;

(ii). the finding recorded by the first authority while considering the report of the OEM Dreser Wayne, as noticed in para 42 above, were without any material either alleged in the show cause notice or made available during the course of the proceedings, the said view appears to be a personal view and is perverse in absence of any material to justify the said view.

(iii). the appellate authority while invoking the 'deeming provisions' in para 5.1.4 of the MDG has taken two diametric views in respect of similar reports submitted by the OEM and the second view taken by the appellate authority in the case of M/s Firozabad Fuels has been accepted by the Corporation and thus, two different views interpreting a similar provision are arbitrary; and

(iv). the Para 5.1.4 of the MDG, is divided into two parts, the first being there being an additional, removal, replacement of manipulation, however the same has to be read in conjunction with the likelihood of manipulating delivery in order to gain undue benefit, to substantiate the second part of clause 5.1.4, no material exists except the clarificatory e-mail which was never made a part of the show cause notice and was never proposed to be relied upon.

61. In the light of the said reasoning and the logic as recorded above, the writ petition deserves to be allowed and is allowed. The impugned orders dated 12.01.2023 and 15.05.2023 are quashed.

Order Date :- April 8th, 2025.
VNP/-

[Pankaj Bhatia, J.]