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A.F.R.
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HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT - C No. - 9506 of 2020

M/s Aliganj Service Station Through its Partners and Ors.
…..Petitioner(s)

Versus

Indian Oil Corporation Ltd.Through its M.D. Lucknow and Ors.
…..Respondent(s)

Counsel for Petitioner(s)	:	Subhash Vidyarthi, Prabhat, Radhika Singh, Richa Mishra
Counsel for Respondent(s)	:	Manish Jauhari,

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Mrs. Radhika Singh along with Ms. Richa Mishra, learned counsel for the petitioner and Sri Manish Jauhari, learned counsel for the respondent.

2. The present writ petition has been filed on following prayer(s):

> *"i) A Writ, Order or Direction in the nature of Certiorari may kindly be issued quashing the order dated 03-07-2017 passed by the opposite party no. 2 (A copy whereof has been filed as Annexure No. 1 to the Writ Petition) terminating the Petitioner's Retail Outlet Dealership agreement dated 31-05-2015 and the order dated 24-05-2019 (A copy whereof has been filed as Annexure No. 2 to the Writ Petition) passed by the Dispute Resolution Panel of Oil Industry (the opposite party no.3), dismissing the Appeal No. DRP/IOC/RET/0015/2018 filed by the petitioners against the termination order dated 03-07-2017.*
>
> *ii) A Writ, Order or Direction in the nature of Mandamus may kindly be issued commanding the opposite party nos. 1 and 2 to restore normal supplies to the petitioners' retail outlet.*
>
> *iii) Costs of this Writ Petition may kindly be awarded to the petitioners against the opposite parties and such other Writ, Order or direction, as may be deemed to be just*

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and proper in the facts and circumstances of the case, may also be passed in favour of the petitioners."

3. The petitioners have instituted the present writ petition under Article 226 of the Constitution of India, assailing the legality and validity of the order dated 03.07.2017 passed by the opposite party no.2, whereby the Retail Outlet Dealership Agreement dated 31.03.2015 executed between the parties was terminated with immediate effect and the security deposit of the petitioners was forfeited. The petitioners have further challenged the appellate order dated 24.05.2019 passed by the Dispute Resolution Panel of Oil Industry (opposite party no.3) in Appeal No.DRP/IOC/RET/0015/2018, whereby the appeal preferred by the petitioners against the termination order was dismissed. The petitioners have, accordingly, sought issuance of a writ of certiorari quashing both the aforesaid orders and a consequential writ of mandamus commanding the opposite party nos.1 and 2 to restore normal supplies to their retail outlet.

4. The petitioner no.1 is a partnership firm registered under the provisions of the Partnership Act, 1932, whereas the petitioner nos.2 to 4 are its partners. The dealership of the retail outlet was initially granted to petitioner no.2 by the respondent - Corporation on 27.07.1990. Since then, the retail outlet continued to operate for approximately 27 years. According to the petitioners, throughout the aforesaid period, the dealership remained free from any complaint, except the allegations which subsequently culminated in the impugned termination order dated 03.07.2017. On account of the constitution and reconstitution of the petitioner no.1 - firm from time to time, fresh dealership agreements were executed between the parties, the last of which was executed on 31.03.2015.

5. It has been pleaded that the respondent - Corporation used to conduct random inspections of the retail outlet through its representatives from time to time. During such inspections, the weights and measurement seals, totalizer seals and delivery from the dispensing nozzles were consistently found to be correct. The retail outlet was

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equipped with five dispensing units, each having four nozzles, manufactured by different original equipment manufacturers, namely Gilbarco Veeder-Root (GVR), Tokheim, MIDCO and Tatsuno. The particulars of the dispensing units installed at the retail outlet are set out in the following chart:

Chart showing particulars of dispensing units

Sl. No.	Make/Manufacturer	Model	Serial No.	No. of nozzles
1.	Gilbarco Veeder-Root (GVR)	GT2442A	JRL&T15139	4
2.	Tokheim	Q400T	D415C031	4
3.	MIDCO	MMSH	08FC0171V	4
4.	Tatsuno	EDAT2421AJN	AA092893	4
5.	Tokheim	Q400T	D-425E325	4

6. The petitioners have further pleaded that their retail outlet was a fully automated outlet operating on the principle of "No Automation No Operation" (NANO). The electronic sensors installed at the outlet communicated to the respondent - Corporation the exact quantity of petroleum products received through tankers, while every retail sale transaction was electronically transmitted to the Corporation at the time of dispensing itself. Consequently, the Corporation had access to the particulars of the product dispensed, the dispensing unit and the particular nozzle through which the sale was effected. According to the petitioners, any discrepancy between the quantity of stock received and the quantity sold would, therefore, be immediately detectable by the respondent - Corporation through its automated monitoring system.

7. It is the case of the petitioners that, prior to the inspection in question, the dispensing units had been periodically examined and maintained by the representatives of their respective original equipment

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manufacturers. In particular, the representative of Gilbarco Veeder-Root conducted preventive maintenance of dispensing unit bearing serial no.JRL&T15139 on 06.03.2017 and 08.03.2017. On both occasions, the service reports recorded that the seals and delivery were correct and that no external fitting was found. Subsequently, on 20.04.2017, the Senior Inspector, Legal Metrology, conducted annual verification and stamping of the aforesaid dispensing unit in the presence of the manufacturer's representative. The representative also certified that the machine had been checked and no additional fitting was found. The petitioners deposited a sum of Rs.7,000/- towards such verification. The relevant documents have been annexed as Annexures Nos. 5, 6 and 7 to the writ petition.

8. Similarly, the Tokheim dispensing unit bearing serial no.D-425E325 was subjected to annual verification and stamping by the Senior Inspector, Legal Metrology on 23.05.2016, in the presence of the representative of the original equipment manufacturer. A sum of Rs.7,500/- was paid towards the verification charges, and the manufacturer's representative certified that no additional fitting was found in the machine. Thereafter, preventive maintenance was carried out by the Tokheim representative on 16.02.2017 and 17.04.2017, during which no additional device, tampering of the electronic circuit or unauthorized alteration was detected. The verification certificate and maintenance reports have been brought on record as Annexures Nos. 8, 9 and 10.

9. The other Tokheim dispensing unit bearing serial no.D415C031 was also subjected to annual verification and stamping on 02.12.2016 by the Senior Inspector, Legal Metrology, in the presence of the manufacturer's representative. The petitioners deposited Rs.6,500/- towards the verification charges and the manufacturer's representative certified that no additional fitting was found. The subsequent preventive maintenance conducted on 16.02.2017 and 17.04.2017 also did not reveal any additional device or unauthorized tampering. The relevant documents have been annexed as Annexures Nos. 11 and 12.

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10. The MIDCO dispensing unit bearing serial no.08FC0171V was subjected to annual verification and stamping on 19.05.2016 by the Senior Inspector, Legal Metrology, in the presence of the manufacturer's representative. The petitioners deposited Rs.6,500/- towards the verification charges and the service report recorded that the delivery, stamping and functioning of the dispensing unit were satisfactory. During the last preventive maintenance conducted on 10.01.2017, the manufacturer's representative also certified that no additional or unauthorized fitting was found inside the dispensing unit. The relevant verification certificate and service reports have been filed as Annexures Nos. 13, 14 and 15.

11. The petitioners have also referred to Clause 1.4 of the Marketing Discipline Guidelines, which prescribes quality and quantity control measures to be observed by a dealer. Sub-clause 2(d) thereof requires the dealer to check the delivery of all dispensing nozzles daily before commencement of sales, record the quantity used for testing in the stock register and immediately notify the Weights and Measures Department as well as the concerned Oil Company in case of any variation. In compliance with the aforesaid requirement, the petitioners claim to have checked the delivery from all the nozzles before commencement of sales on 05.05.2017 and found the delivery to be correct. The quantity utilized for testing was also duly recorded in the stock register, a relevant extract whereof has been filed as Annexure No. 16.

12. However, on 05.05.2017, a joint inspection was conducted at the petitioners' retail outlet by a team comprising officers of the Special Task Force, Legal Metrology Department, Supply Department and the respondent Corporation, along with service engineers representing the original equipment manufacturers, namely Tokheim, Gilbarco Veeder-Root, MIDCO and Tatsuno. The inspection team examined all five dispensing units and recorded certain alleged irregularities concerning additional fittings on the pulsar cards of four dispensing units, apart from an alleged short delivery from one nozzle of the GVR dispensing unit.

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13. The inspection memo dated 05.05.2017 recorded the following observations in respect of the dispensing units:

Chart showing observations recorded during inspection dated 05.05.2017

Dispensing unit	Alleged irregularity recorded by inspection team	Other observations
GVR, Model GT2442A, Sl. No. JRL&T15139	Additional fittings on pulsar cards of two nozzles	One nozzle allegedly showed shortage of 150 ml in 5 litres; delivery from other nozzles was correct; W&M seal was intact; calibration switch was ON
Tokheim, Model Q400T, Sl. No. D415C031	Additional fittings on pulsar cards of two nozzles	Delivery was correct and W&M seal was intact
MIDCO, Model MMSH, Sl. No. 08FC0171V	Additional fittings on pulsar cards of all four nozzles	Delivery was correct; W&M seals were intact; calibration switch was ON
Tatsuno, Model EDAT2421AJN, Sl. No. AA092893	No additional fitting detected	Delivery was correct and W&M seal was intact
Tokheim, Model Q400T, Sl. No. D-425E325	Additional fittings on pulsar cards of three nozzles	Delivery was correct and W&M seals were intact

14. It has further been stated that the dispensing units allegedly containing additional fittings were sealed by the inspection team and the alleged additional fittings/pulsar assemblies were also sealed and taken away. A copy of the inspection memo dated 05.05.2017 has been annexed as Annexure No.17. The petitioners, however, contend that the inspection team did not examine the daily sales reports or undertake verification of the stock available at the retail outlet, which, according to

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them, would have demonstrated that there was no discrepancy in the quantity of petroleum products received and dispensed.

15. Thereafter, on 22.05.2017, the Senior Divisional Retail Sales Manager of the respondent Corporation issued a fact-finding letter to the petitioners, communicating the observations recorded during the joint inspection dated 05.05.2017. The petitioners were called upon to submit their comments with regard to the alleged additional or unauthorized fittings in the dispensing units, alleged short delivery of petroleum products despite the Weights and Measures Department seals being intact and the calibration switches allegedly having been found in the ON position. The allegations were stated to constitute violations of Clauses 5.1.4 and 5.1.2(a) of the Marketing Discipline Guidelines, 2012. A copy of the fact-finding letter dated 22.05.2017 has been filed as Annexure No. 18.

16. In response thereto, the petitioners submitted their reply on 15.06.2017, explaining that annual calibration and stamping of the dispensing units were carried out by the Weights and Measures Department in the presence of representatives of the respective original equipment manufacturers and such verification was undertaken only after the manufacturer's representative certified the fitness of the dispensing unit. It was further stated that the control cards, pulsar cards, metering units, totalizers and calibration cards were duly sealed and stamped by the Weights and Measures Department and that the seals were found intact. With regard to the alleged short delivery, the petitioners submitted that the same could have occurred on account of a mechanical error. It was also explained that the calibration switch might have been left in the ON position inadvertently by the manufacturer's representative during maintenance. The petitioners emphasized that they were non-technical persons and had no technical knowledge concerning the internal functioning of the dispensing units. A copy of the reply dated 15.06.2017 has been annexed as Annexure No.19.

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17. Subsequently, on 13.06.2017, the Chief Divisional Retail Sales Manager of the respondent Corporation issued a show-cause notice to the petitioners, alleging violation of Clauses 1, 5.1.2(a) and 5.1.4 of the Marketing Discipline Guidelines, 2012, as well as Clauses 19, 16 and 43 of the dealership agreement. It was alleged that the aforesaid violations rendered the petitioners liable for termination of their dealership under Clauses 56(a) and 56(k) of the agreement. A copy of the show-cause notice dated 13.06.2017 has been annexed as Annexure No. 20.

18. The petitioners submitted their reply to the show-cause notice on 30.06.2017, reiterating that they had been operating the retail outlet for approximately 27 years without any complaint. It was pointed out that the dispensing units installed at the retail outlet belonged to the respondent Corporation, which selected their manufacturers and retained control over their installation, maintenance and supervision, while the petitioners were merely permitted to operate them under a licence. The respondent - Corporation had been conducting periodic inspections of the retail outlet, but no irregularity had ever been detected in the earlier inspections. The petitioners specifically asserted that they had never opened or tampered with the seals of the dispensing units and that whenever the machines required maintenance, they were opened only by the representatives of the original equipment manufacturers.

19. The petitioners further contended in their reply that, at the time of inspection dated 05.05.2017, the seals of the Weights and Measures Department were found intact and the alleged checking of the dispensing units was not conducted in their presence. They denied the allegation of short delivery, stating that the delivery from all the nozzles had been checked before commencement of sales on the relevant day and was found correct. It was also submitted that, even assuming some variation in delivery from one nozzle, Clause 5.1.2 of the Marketing Discipline Guidelines contemplated suspension of sales from the particular nozzle and its subsequent recalibration and restamping, rather than termination of the entire dealership. The petitioners specifically denied having

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installed or caused installation of any additional fitting in the dispensing units.

20. The petitioners also requested that the alleged additional fittings/devices be sent to a competent laboratory for technical examination and that a copy of the laboratory test report be furnished to them so that they could submit a further explanation. They further requested that no final action be taken until such examination and consideration of their explanation. It was specifically alleged that they had not been permitted to remain present during the checking of the dispensing units, seals, delivery and pulsar cards, thereby depriving them of an effective opportunity to defend themselves. The relevant reply has been annexed as Annexure No. 21.

21. Notwithstanding the aforesaid explanation and objections raised by the petitioners, the opposite party no.2 passed the impugned order dated 03.07.2017, recording that the competent authority had decided to terminate the dealership of the petitioners for violation of Clauses 8(i), 34 and 42 read with Clause 45 of the dealership agreement dated 31.03.2015. Accordingly, the dealership was terminated with immediate effect and the security deposit of the petitioners was forfeited. The petitioners contend that the termination order was passed without granting them any personal hearing and without awaiting the result of the laboratory examination of the alleged additional fittings. A copy of the impugned termination order has been annexed as Annexure No.1.

21. The petitioners have specifically relied upon Clause 8.6 of the Marketing Discipline Guidelines, 2012, which provides that, in cases involving critical irregularities warranting termination of dealership, the Head of the State Office/Regional Office/Zonal Office of the concerned Oil Marketing Company or its nominee is required to afford a personal hearing to the signatories of the dealership before recommending or approving termination. The said provision further contemplates granting one additional opportunity in the event of non-appearance on the appointed date, whereafter the matter may be processed *ex parte* on the

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basis of the available material. According to the petitioners, no personal hearing whatsoever was afforded to them before passing the impugned termination order, in breach of the aforesaid mandatory procedure.

22. Aggrieved by the termination order, the petitioners initially preferred an appeal before the Executive Director, Retail Sales of the respondent Corporation. However, during the pendency of the matter, Clause 8.9 of the Marketing Discipline Guidelines, 2012 was amended with effect from 03.08.2018, providing for appeals before the Dispute Resolution Panel nominated by the Oil Marketing Companies. Consequently, the petitioners pursued their appellate remedy before the Dispute Resolution Panel, where their appeal was registered as Appeal No. DRP/IOC/RET/0015/2018. A copy of the memorandum of appeal has been annexed as Annexure No.22.

23. The respondents filed a pointwise reply to the memorandum of appeal, a copy whereof has been annexed as Annexure No.23. According to the petitioners, the respondents did not specifically dispute the factual assertions made in the memorandum of appeal and substantially confined their response to opposing the grounds urged therein.

24. Thereafter, the petitioners filed a replication, reiterating that the last verification and stamping of the dispensing units had been carried out in the presence of the representatives of the respective original equipment manufacturers, who had neither raised any objection nor recorded any finding regarding the presence of additional devices or unauthorized fittings. It was further submitted that the petitioners were non-technical persons and had neither the technical expertise nor access to the internal machinery of the dispensing units to install any additional fittings without disturbing the seals affixed by the Weights and Measures Department.

25. The petitioners also brought to the notice of the appellate authority that instances had occurred where additional wires and other fittings were found in new and unused dispensing units. It was pointed out that three out of the five dispensing units installed at their retail outlet were

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second-hand machines, which had been removed from other retail outlets and subsequently installed at the petitioners' outlet. In support of this contention, the petitioners relied upon the daily sales registers demonstrating the installation of such machines after their removal from other retail outlets. A copy of the replication has been annexed as Annexure No. 24.

26. The petitioners further contended before the appellate authority that they were never informed or given an opportunity to remain present when the sealed envelopes containing the allegedly tampered pulsar cards were opened and examined. The envelopes were opened and the pulsar cards were subjected to laboratory examination behind their back. During the pendency of the appeal, the laboratory reports were furnished to the petitioners, namely: (i) report dated 28.07.2017 concerning the GVR dispensing unit, filed as Annexure No. 25; (ii) report dated 24.11.2017 concerning the Tokheim dispensing units, filed as Annexure No. 26; and (iii) report dated 09.12.2017 concerning the MIDCO dispensing unit, filed as Annexure No. 27.

27. With regard to the laboratory report dated 28.07.2017 concerning the GVR dispensing unit, the petitioners pointed out that the report recorded that a sealed box containing two pulsar assemblies had been brought by an officer of the respondent Corporation on 13.07.2017, i.e., after the termination order dated 03.07.2017 had already been passed. It was contended that there was no material establishing that the pulsar assemblies examined by the laboratory were the very same assemblies allegedly removed from the dispensing unit installed at the petitioners' retail outlet. Further, the examination was confined to visual inspection, whereby additional electronic circuits were noticed, but no functional test of the pulsar assemblies was conducted.

28. In respect of the Tokheim dispensing units, the petitioners relied upon the laboratory report dated 24.11.2017, which recorded that five pulsar cards had been submitted by the respondent Corporation for examination and that the sealed envelope containing the cards had been

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opened in the absence of the petitioners. Significantly, the functional examination conducted on four of the cards did not reveal any malfunction, abnormal response or behaviour, and the test data was found to be within the permissible limits. The petitioners, therefore, contended that the said report did not establish any functional irregularity in the dispensing units.

29. Similarly, with regard to the MIDCO dispensing unit, the petitioners relied upon the laboratory report dated 09.12.2017, pointing out that the material had been submitted for examination on 13.07.2017, subsequent to the termination order dated 03.07.2017. It was contended that no material established the identity of the pulsar assemblies as those allegedly removed from the petitioners' dispensing unit. Moreover, the examination was confined to visual inspection without supplying power to the material under examination. Although the report recorded that the pulsar assemblies were not in accordance with the standard design of MIDCO and appeared visibly tampered with, no functional examination was conducted to establish that the alleged modifications had any effect upon the quantity of petroleum products dispensed.

30. Ultimately, the Dispute Resolution Panel heard the appeal and dismissed the same by order dated 24.05.2019. The petitioners have alleged that the appeal was heard by the Dispute Resolution Panel at a Five Star Hotel in New Delhi. The appellate order was communicated to petitioner no.3 only on 28.01.2020 through an email sent by the Chief Manager, Retail Sales, Lucknow Divisional Office of the respondent Corporation. The said appellate order has been annexed as Annexure No. 2 to the writ petition.

31. The petitioners have also placed reliance upon the Eighth Schedule appended to the Legal Metrology (General) Rules, 2011, framed under Section 52 of the Legal Metrology Act, 2009, particularly Part I thereof dealing with volumetric container filling machines. Entry 3 of the said Schedule prescribes the procedure for testing such machines under actual working conditions, using a suitable liquid and an

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appropriate check measure tested against a working standard capacity measure. The prescribed procedure further requires measurement of the contents dispensed and, where the capacity exceeds the permissible error, adjustment of the machine followed by repeated testing until two consecutive deliveries fall within the permissible limits. A copy of the relevant extract of the Rules has been annexed as Annexure No. 28.

32. According to the petitioners, the aforesaid prescribed testing procedure was not followed in the present case. It has been contended that the dispensing units were not subjected to the requisite functional examination before passing the termination order and that the impugned order was passed even before the pulsar cards were sent for laboratory examination. Thus, the petitioners assert that the allegations of unauthorized fittings and short delivery were treated as established without following the prescribed statutory testing procedure.

33. In support of their contention that additional fittings could exist in dispensing units without being attributable to any act of the dealer, the petitioners have referred to an incident dated 29.11.2017 concerning another retail outlet, namely Prakash Automobiles. It has been stated that, while a new dispensing unit was being installed and stamped at the said outlet, the machine developed a technical problem, whereupon its fitter decided to replace the motherboard. Upon removal of the original motherboard, an additional wire and diode were allegedly found fitted therein, although the machine was new. The maintenance report dated 29.11.2017 prepared by the representative of the original equipment manufacturer, along with a photograph of the motherboard showing the additional fittings, has been annexed as Annexure No.29.

34. The petitioners have further stated that officers of the respondent-Corporation exchanged emails with the original equipment manufacturer regarding the additional wire found on the motherboard of the aforesaid new dispensing unit, during which the representative of the manufacturer admitted having installed an additional wire. The relevant email correspondence has been filed as Annexure No.30. On the basis of the

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aforesaid incident, the petitioners contend that the mere presence of additional fittings inside a dispensing unit cannot, by itself, establish that the dealer had installed or caused installation of such fittings, particularly when the machines were supplied, maintained and technically controlled through the respondent Corporation and their original equipment manufacturers.

35. The petitioners have also brought on record the subsequent criminal proceedings arising out of the same inspection dated 05.05.2017. It has been stated that the Senior Inspector, Legal Metrology Department instituted a complaint under Sections 12/30 and 26 of the Legal Metrology Act before the Court of the First Additional Chief Judicial Magistrate, Court No.25, Lucknow, on the basis of the allegations recorded during the inspection. However, vide judgment and order dated 06.04.2019, the learned Magistrate acquitted the petitioners of the charges levelled against them. A copy of the said judgment and order has been annexed as Annexure No. 31.

36. On the basis of the aforesaid facts and circumstances, the petitioners have asserted that the inspection dated 05.05.2017 itself recorded that the Weights and Measures Department seals were intact and that alleged short delivery was noticed only in one out of the total twenty nozzles installed at the retail outlet. According to them, in the absence of disturbance of the statutory seals, they had no access to the internal components of the dispensing units and could not have been held responsible for the alleged additional fittings. The petitioners further contend that the respondent Corporation failed to establish any connection between the alleged fittings and the petitioners or to demonstrate that the alleged modifications had resulted in manipulation of the quantity of petroleum products dispensed to customers.

37. It has, accordingly, been pleaded that the dealership of the petitioners, which had continued for approximately 27 years, was terminated without affording the petitioners the personal hearing contemplated under Clause 8.6 of the Marketing Discipline Guidelines,

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2012; without permitting them to witness the opening and examination of the sealed pulsar assemblies; without conducting the requisite functional tests in accordance with the applicable legal metrology standards; and even before the laboratory reports were available. The petitioners have further alleged that their replies and explanations were not properly considered and that the termination of their dealership, followed by dismissal of their appeal, has resulted in deprivation of their livelihood in violation of the principles of natural justice.

38. Feeling aggrieved by the termination order dated 03.07.2017 passed by the opposite party no.2 and the subsequent appellate order dated 24.05.2019 passed by the Dispute Resolution Panel of Oil Industry, the petitioners have approached this Court by means of the present writ petition under Article 226 of the Constitution of India, asserting that no equally efficacious alternative remedy is available to them. They have, therefore, prayed for quashing of both the impugned orders, restoration of normal supplies to their retail outlet and grant of such other relief as this Court may deem fit and proper in the facts and circumstances of the case.

39. Submission of learned counsel for the petitioner is that the impugned termination order dated 03.07.2017 and the appellate order dated 24.05.2019 are arbitrary, illegal and unsustainable in law, having been passed in violation of the principles of natural justice and the mandatory provisions of the Marketing Discipline Guidelines, 2012. The petitioners had been operating the retail outlet since 1990 without any complaint and the respondent - Corporation failed to establish any deliberate manipulation or unauthorized tampering attributable to them.

40. It is contended that the dispensing units were owned and technically maintained under the control of the respondent Corporation through the original equipment manufacturers. The statutory seals of the Weights and Measures Department were found intact during inspection, and the alleged short delivery was noticed only in one out of twenty nozzles. The previous verification and maintenance reports had also

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certified the dispensing units to be in proper working condition. Therefore, mere detection of additional fittings could not establish the petitioners' culpability without proof of their involvement or any actual manipulation of fuel delivery.

41. Learned counsel further submits that the inspection and subsequent proceedings were conducted in violation of the principles of natural justice, as the petitioners were neither permitted to witness the examination and removal of the alleged additional fittings nor afforded an opportunity to remain present when the sealed pulsar cards were opened and tested. The petitioners were also denied the personal hearing expressly contemplated under Clause 8.6 of the Marketing Discipline Guidelines, 2012, before termination of their dealership.

42. It is argued that the termination order was passed on 03.07.2017, whereas the alleged pulsar assemblies were submitted for laboratory examination only on 13.07.2017. The subsequent laboratory reports, particularly those concerning GVR and MIDCO dispensing units, were based merely on visual examination without functional testing. The Tokheim laboratory report, on the other hand, did not disclose any malfunction or abnormal behaviour in the tested pulsar cards. Thus, the technical reports did not establish that the alleged additional fittings had affected the quantity of fuel dispensed.

43. Learned counsel submits that the respondents also failed to follow the testing procedure prescribed under Entry 3 of Part I of the Eighth Schedule to the Legal Metrology (General) Rules, 2011. In the absence of testing under actual working conditions and determination of any variation beyond the permissible limits, the allegation of manipulation or short delivery could not have been treated as established. The petitioners' explanations and requests for proper technical examination were not meaningfully considered before passing the termination order.

44. It is further contended that the presence of additional fittings, by itself, could not establish that the petitioners had installed or caused installation of such fittings. Reliance has been placed upon the incident

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dated 29.11.2017 at Prakash Automobiles, where additional fittings were allegedly found in a new dispensing unit and the manufacturer's representative admitted installation of an additional wire. The petitioners also rely upon their acquittal by the competent criminal court vide judgment dated 06.04.2019 arising out of the same inspection.

45. Learned counsel lastly submits that the appellate authority failed to independently examine the material objections concerning violation of natural justice, absence of functional testing, reliability of laboratory reports and lack of evidence connecting the petitioners with the alleged tampering. The appellate order is, therefore, also vitiated by non-application of mind. Termination of a dealership operating for approximately 27 years, coupled with forfeiture of security deposit, without establishing misconduct through reliable evidence and without following the prescribed procedure, is wholly disproportionate and arbitrary.

46. Accordingly, learned counsel for the petitioners prays that the impugned orders dated 03.07.2017 and 24.05.2019 be quashed and the respondents be directed to restore normal supplies to the petitioners' retail outlet. In support of her submissions, she placed reliance upon a judgment in the case of **M/S Prakash Automobiles Indian Oil Dealer Thru Partners Vs. Indian Oil Corporation Ltd. Lko. Thru M.D. and Ors.; 2025:AHC-LKO-66634.**

47. On the other hand, learned counsel appearing on behalf of the respondents submits that the impugned action has been taken strictly in accordance with the terms and conditions of the dealership agreement and the applicable Marketing Discipline Guidelines, 2012, on account of serious irregularities detected during the inspection dated 05.05.2017. The inspecting team found additional electronic fittings/devices installed in the pulsar cards of several dispensing units, which were capable of manipulating the electronic signals and recording a quantity of fuel higher than the actual quantity dispensed. Such manipulation constitutes a serious irregularity warranting termination of the dealership.

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48. It is contended that the earlier inspections, maintenance reports and statutory verifications relied upon by the petitioners have no bearing upon the irregularities detected on 05.05.2017. The inspection was conducted pursuant to a specific exercise undertaken across retail outlets in Uttar Pradesh to detect the use of sophisticated electronic and remotely controlled devices for manipulating fuel delivery. The fact that the dispensing units might have been found satisfactory during earlier inspections cannot confer immunity upon the petitioners against subsequent detection of serious irregularities.

49. Learned counsel further submits that the retail outlet premises and dispensing units remained in the custody and control of the dealer, who was under an obligation to maintain them in proper working condition and ensure that no unauthorized fittings or devices were installed. The additional electronic fittings could not have been installed inside the dispensing units without the knowledge and involvement of the dealer. The petitioners, being the beneficiaries of any manipulation resulting in short delivery of fuel, cannot avoid responsibility by merely alleging that the equipment was maintained by the Corporation or its original equipment manufacturers.

50. It is submitted that the inspection was conducted in the presence of officers of the Legal Metrology Department and representatives of the concerned original equipment manufacturers. The delivery was checked through duly calibrated and stamped five-litre measures and the presence of additional fittings was confirmed during the inspection. The respondents further contend that all three partners of the retail outlet were present at the time of inspection and none of them raised any objection or recorded dissent against the inspection proceedings. Their subsequent objections are, therefore, an afterthought intended to avoid the consequences of the irregularities detected.

51. Learned counsel submits that the petitioners were afforded sufficient opportunity to explain the irregularities detected during inspection, but their explanations were not found satisfactory. The

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presence of additional electronic fittings itself constituted an established irregularity under the applicable guidelines and dealership agreement. Consequently, the petitioners cannot contend that further sampling or testing of the fuel was necessary, since such exercise would not have altered the finding regarding the installation of unauthorized fittings. The respondents maintain that the established irregularity independently warranted termination of the dealership.

52. It is further contended that the original equipment manufacturers' representatives, who participated in the inspection, confirmed the presence of additional fittings in the dispensing units and the subsequent OEM reports corroborated the inspection findings. The relevant provisions of the dealership agreement violated by the petitioners were specifically identified in the termination order. Thus, the impugned action was not founded upon any vague or unsubstantiated allegation but upon the irregularities detected during inspection and the material collected thereafter.

53. With regard to the petitioners' reliance upon an alleged incident at another retail outlet, learned counsel submits that such an incident is wholly unrelated to the present controversy and cannot justify or excuse the irregularities detected at the petitioners' retail outlet. Each retail outlet is required to comply independently with the applicable guidelines and contractual obligations. An alleged occurrence elsewhere does not confer any right upon the petitioners to retain or justify unauthorized fittings in their dispensing units.

54. Learned counsel lastly submits that the petitioners have failed to establish any violation of the applicable guidelines, dealership agreement or principles of natural justice warranting interference by this Court under Article 226 of the Constitution of India. The termination order was passed after considering the inspection findings and the explanation furnished by the petitioners, while the appellate proceedings also culminated in rejection of their challenge. The impugned orders, therefore, do not suffer from any illegality or jurisdictional error calling

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for interference in exercise of writ jurisdiction. Accordingly, learned counsel for the respondents submits that the writ petition is devoid of merit and deserves to be dismissed with costs.

55. I have considered the submissions advanced by learned counsel for the parties and perused the material available on record as well as law reports cited by learned counsel for the petitioner.

56. To resolve the controversy involved in the matter, relevant portion of the judgment relied upon by learned counsel for the petitioner is being quoted below:

M/S Prakash Automobiles Indian Oil Dealer Thru Partners:

> *"25. Learned counsel for the IOC could not dispute that the show cause notice was based merely on the basis of the inspection report and at that point of time, the report of the OEM was not there and the show cause notice also did not indicate that the Corporation would be relying upon the said report and even if they proposed to do so then it was a duty of the Corporation to have provided the copy of the report to the petitioner prior to the passing of the order to enable the petitioner to meet the reasons or contest the same and having not done so it has resulted in deprivation of an opportunity of hearing especially when the proposed action was in the nature of termination which impacted the rights of the petitioner to run the dealership which was a right to do business and earn livelihood.*
>
> *26. The submission of learned counsel for the respondents-Corporation that the additional part was responsible for manipulation in the pulsar card and it was beneficial for the petitioner, hence, it should be held against him, is also misconceived for the reason that the pulsar card could not have been inserted in the DU without the presence of the officials of the OEM and the representative of the IOC as well as the officials of the Department of Weights and Measures and no such material or evidence was brought on record to indicate the complicity of the petitioner in the said act of manipulation of the pulsar cards.*
>
> *27. The seals of the Weights and Measures Department was found to be intact and once the position was so obtained then any anomaly or irregularity found in the pulsar card ought to have been explained by the respondent corporation and establish as to what material was available with them which could give rise to a clear finding with sufficient certainty that in a particular manner the dealer could have tampered with the pulsar card which had a direct impact on short delivery of the petrol and this is conspicuously absent. Thus, for the aforesaid reason, this Court is not inclined to accept the*

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> *submission of the learned counsel for the IOC regarding the involvement of the petitioner in manipulation without any cogent material.*
>
> *30. In view of the aforesaid and the reasons recorded hereinabove, this Court is of the opinion that the impugned orders dated 30.01.2018 and 14.10.2019 are arbitrary and have been passed without providing any proper opportunity of hearing and also in absence of cogent material relating to the involvement of the petitioner in the alleged manipulation of the pulsar card cannot be sustained, hence, for the aforesaid reasons the orders dated 30.01.2018 passed by the respondent no. 2 and 14.10.2019 passed by the respondent no. 3 are accordingly quashed and set aside."*

57. Having considered the rival submissions advanced by learned counsel for the parties and perused the material available on record, this Court finds that the controversy concerns the legality of termination of the petitioners' retail outlet dealership on the allegation of unauthorized electronic fittings in the dispensing units and alleged manipulation of fuel delivery.

58. It is evident from the inspection report dated 05.05.2017 that although additional fittings were allegedly detected in four dispensing units, the seals of the Weights and Measures Department were found intact and short delivery was allegedly detected only in one nozzle. The respondents have failed to establish through cogent material that the petitioners had installed or caused installation of the alleged fittings or that such fittings actually resulted in manipulation of fuel delivery.

59. The laboratory examination of the alleged pulsar assemblies was undertaken after the termination order dated 03.07.2017 had already been passed. Further, the reports concerning GVR and MIDCO were based substantially on visual examination without functional testing, whereas the Tokheim report did not disclose any malfunction in the tested cards. Thus, the technical reports do not conclusively establish the petitioners' involvement in the alleged manipulation.

60. The respondents also failed to demonstrate compliance with the testing procedure prescribed under the Legal Metrology (General) Rules, 2011. The petitioners' specific objections regarding the functioning of the dispensing units, intact statutory seals and absence of evidence

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connecting them with the alleged fittings were not adequately considered.

61. This Court further finds that Clause 8.6 of the Marketing Discipline Guidelines, 2012, specifically contemplates a personal hearing before termination of dealership in cases involving critical irregularities. Admittedly, no such personal hearing was afforded to the petitioners. Moreover, they were not associated with the subsequent opening and examination of the sealed pulsar assemblies. The proceedings, therefore, suffered from violation of the prescribed procedure and principles of natural justice.

62. The judgment in the case of ***M/s Prakash Automobiles Indian Oil Dealer through Partners (Supra)*** relied upon by learned counsel for the petitioners, squarely supports their case. The said judgment emphasizes that where statutory seals remain intact, the Corporation must establish the dealer's involvement in the alleged manipulation through cogent material and cannot impose termination merely on the basis of the presence of additional fittings. The factual circumstances of the present case are substantially similar and no distinguishing feature has been demonstrated by the respondents.

63. The appellate authority also failed to independently examine the material objections raised by the petitioners concerning the absence of functional testing, reliability of laboratory reports, violation of natural justice and lack of evidence establishing their involvement. Consequently, the appellate order dated 24.05.2019 also suffers from non-application of mind.

64. In view of the aforesaid discussion, this Court holds that the termination of a dealership operating for approximately 27 years, coupled with forfeiture of the security deposit, without establishing the petitioners' involvement through reliable evidence and without following the mandatory procedure, is arbitrary and unsustainable in law.

65. Accordingly, the writ petition succeeds and is **allowed**. The impugned termination order dated 03.07.2017 passed by opposite party

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no.2 and the appellate order dated 24.05.2019 passed by the Dispute Resolution Panel in Appeal No. DRP/IOC/RET/0015/2018 are hereby **quashed**.

66. The respondents are directed to restore the petitioners' dealership and resume normal supplies of petroleum products to their retail outlet, subject to compliance with the lawful terms and conditions of the dealership agreement. The petitioners shall also be entitled to consequential benefits in accordance with law.

67. There shall be no order as to costs.

(Irshad Ali,J.)

November 23, 2026
Adarsh K Singh