



2026:AHC-LKO:15707

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

WRIT - C No. - 33 of 2020

Anurag Agarwal

.....Petitioner(s)

Versus

Indian Oil Corporation Ltd. And Ors.

.....Respondent(s)

Counsel for Petitioner(s)	: Subhash Vidyarthi, Anshuman Singh, Ashok Kumar Singh, Geetika Yadav, Prabhat
Counsel for Respondent(s)	: Manish Jauhari

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Ms. Geetika Yadav, learned counsel for the petitioner in presence of Mr. Prashant Chandra, learned Senior Advocate and Mr. Manish Johari, learned counsel for the respondent-Corporation.
2. By means of the present writ petition, the petitioner is challenging the order dated 30.1.2018, passed by respondent No.2 (Annexure-1 to the writ petition), terminating the petitioner's retail outlet dealership agreement dated 6.12.1996 and order dated 23.5.2019, passed by the Dispute Resolution Panel of Oil Industry (respondent No.3), dismissing the Appeal No.DRP/ IOC/ RET/0014/2018 filed by the petitioner against the termination order dated 30.1.2018.
3. Factual matrix of the case is that the respondent No.1 entered into a petrol/ HSD pump dealer agreement (Annexure-3 to the writ petition), appointing the petitioner as its dealer for retail sale of petrol/ high speed diesel/ motor oil/ grease and other petroleum products. On 28.6.2016, the corporation conducted a random inspection, in which it was found that the weights and measures seals and the totaliser seals of all the 16 nozzles put on all the four dispensing units installed at the petitioner's retail outlet were intact and all the 16 nozzles were delivering correct quantities of the product.
4. On 7.12.2017, the Legal Metrology Department verified the seals and

quantity of products being delivered from the dispensing units after charging a fee of Rs.16,000/- from the petitioner. On 1.5.2017, an inspection was carried out by a joint team, which had no representative of respondent No.1-corporation. During the inspection, the weights and measurement seals were found to be OK and the team found no irregularity in the quantity of the product being delivered. After the report had been signed by all the persons, it was inserted at the bottom of the report that a tampered pulsar having a resistance was taken from the Dresser Wayne dispensing unit and the pulsar of Midco contained an additional wire.

5. On 1.5.2017, the Regional Food Inspector, who was a member of inspection team, submitted an inspection report (Annexure-7) to the District Supply Officer, stating that upon stock verification, it was found that the stock of petrol was less by 2016 litres and the stock of high speed diesel was less by 1280 litres.

6. On 23.5.2017, the Senior Divisional Retail Sales Manager of the Corporation sent a fact finding letter (Annexure-8), asking the petitioner to submit reply on the following points :-

- (i) Additional/ unauthorised fittings/ gears found in dispensing unit/ tampering with dispensing unit (violation of clause 5.1.4 of MDG 2012)
- (ii) Stock variation of MS/ HSD (beyond permissible limits) fuels (violation of clause 5.1.11)

7. The petitioner sent a reply on 1.6.2017 that no extra chip/ fitting was found affixed to any of the machines installed at its outlet during the inspection. The Weights and Measurements Department seals put on all the machines were found intact at the time of inspection, indicating that no manipulation had been done by the petitioner. The petitioner is responsible for delivery and Weights and Measurements Department seals and both were found OK. Since the delivery and seals were found to be correct, no allegation of manipulation/ tempering of the machines can be imposed upon him. Regarding stock reconciliation, the petitioner stated that it was not done as per the norms and specifications of MDG 2012.

8. On 7.7.2017, the Chief Divisional Retail Sales Manager of the respondent-Corporation sent a show cause notice to the petitioner alleging that at its retail outlet, tampering/ unexpected wires were found in pulsar. A copy of the inspection report was enclosed with the show cause notice but copies of the testing report of the Original Equipment Manufacturers were not provided to the petitioner. The allegation of stock variation, which was there in the fact finding letter, had been dropped from the show cause notice.

9. On 20.7.2017, the petitioner sent a reply to the show cause notice stating that maintenance and repairing of the dispensing units was the responsibility of the respondent No.1 as per the dealership agreement as also as per the Marketing Discipline Guidelines and the allegation of tampering or the presence of an extra wire in pulsar card cannot be imputed on the petitioner when the weights and measurement seals were found intact/ perfect at the time of inspection and there was no allegation of short delivery.

10. On 30.1.2018, the respondent No.2 passed an order (Annexure-1) that the competent authority has decided to terminate the petitioner's RO agreement and accordingly, the dealership of the petitioner is terminated with immediate effect and the security amount is forfeited. A copy of the undated test report issued by Midco was enclosed with the aforesaid order alongwith a covering letter dated 25.9.2017 and a perusal of the report indicates that it was prepared merely on a visual inspection of the pulsar without providing power to the received material under test. Although the test report was prepared on or before 25.9.2017, its copy was not provided to the petitioner prior to passing of the termination order. The analysis report of the other OEM i.e. Dresser Wayne was provided to the petitioner only on 24.4.2019 i.e. long after passing of the termination order, during the pendency of the appeal before the Dispute Resolution Panel.

11. On 27.2.2018, the petitioner filed an appeal before the Executive Director, Retail Sales of the respondent No.1- corporation. On 1.6.2018, the Deputy Director, Forensic Science Laboratory, U.P. at Lucknow has written a letter clarifying the procedure for testing of pulsar of petrol pumps, which was not followed for testing of the pulsar.

12. On 16.1.2018, the Deputy Controller, Legal Metrology, Haryana has informed that the fuel dispensers should be checked physically and in operational mode and parts are to be checked on power and the visual checking report is not final as per the Legal Metrology (General) Rules, 2011.

13. A new dispensing unit was being installed at another retail outlet in which extra fittings (a wire and a diode) were found on the motherboard that was fitted in the new machine. When additional fittings have been found in new unused machine, the petitioner cannot be held guilty of any alleged additional fitting found in a properly sealed machine.

14. Submission of learned counsel for the petitioner is that when additional fitting has been found in new unused machine, the petitioner cannot be held guilty of any alleged additional fitting found in a properly sealed machine. She next submitted that the officers of the respondent No.1- corporation made e-mail correspondence with the Original Equipment Manufacturer Company regarding the additional wire found on the motherboard of a new machine and the representative of the OEM admitted having installed an additional wire.

15. Learned counsel for the petitioner submitted that the petitioner has been acquitted in a complaint case under Sections 12/30 and 26 of the Legal Metrology Act on the same allegations as are contained in the inspection note dated 1.5.2017. On the same allegations as are mentioned in the inspection report dated 1.5.2017, a First Information Report was registered in Police Station PGI, Lucknow under Sections 265, 267, 420, 120-B and 34 IPC and Sections 12 and 30 of the Legal Metrology Act, which was registered as Case Crime No.401/2017. After investigation, the police has filed the final report in the court of First Additional Chief Judicial Magistrate, Court No.25, Lucknow and the Supply Inspector also filed an application requesting that the final report be accepted. On 24.7.2019, the final report was accepted.

16. It is also submitted by petitioner's counsel that upon inspection at the petitioner's outlet, the weights and measurement seals were found OK and the inspection team found no irregularity in the quantity of the product

being delivered. Without tampering with the seals put by Legal Metrology Department, the petitioner did not have access to any part inside the unit and he was not liable for any alleged tampering found inside the sealed unit. Further submission is that while issuing show cause notice to the petitioner, no OEM report was made available to the petitioner, therefore, the petitioner could not reply properly in regard to the allegations levelled. It is next submitted that on the date of making inspection, the testing reports were not supplied to the petitioner. Her submission is that due to not supplying the OEM report, the principles of natural justice have been violated, therefore, the impugned orders were liable to be set aside. It has also been submitted that the appellate court has also not considered this aspect of the matter that report of OEM was not made available to the petitioner while issuing the show cause notice.

17. In support of the submissions advanced, learned counsel for the petitioner placed reliance upon the following judgments :-

(i) Indian Oil Corporation Limited Vs. Pullareddy Service Center [2021 SCC OnLine AP 2909]. Relevant paragraphs 16, 18 to 27 are being quoted below :-

"16. The whole controversy centers around the crucial observation in the inspection report dated 05.02.2015 about the presence of additional/double gear, which is not in dispute. While it is the contention of the appellants that since the dispensing unit and other equipment are in the care and custody of the petitioner/dealer, the responsibility lies with it and the benefit by virtue of such additional gear coupled with variations in stock would enure to the dealer, the same is opposed by the petitioner contending that it is well-nigh impossible to meddle with the dispensing unit when there is no allegation of tampering of seals, which in fact, undisputedly are intact, as per the inspection report. Further, the dealer cannot be held responsible for the presence of additional equipment as it is the authorities alone who have access to the dispensing unit.

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 canons 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 acknowledgment 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."

(ii) M/s Prakash Automobiles Indian Oil Dealer Vs. Indian Oil Corporation Ltd. Lucknow [Writ-C No.558 of 2020]. Relevant paragraphs 12, 14 to 24, 25, 26, 27, 29 are being quoted below :-

"12. The facts in between the parties is not much in dispute. It is not disputed that on 17.04.2017 a maintenance report was generated by the OEM, a copy of which is on record as Annexure no. 5 which did not find anything suspicious addition or party or fitting in the DUs nor there was any material to indicate that any of the DUs were making short delivery.

14. It is also not disputed that during the inspection on 04.05.2017, the seals placed by the Department of Weights and Measures were found to be intact.

15. It is also not disputed that the petitioner was issued with a show cause notice on 13.06.2017, a copy of which is on record as Annexure 8 WRIT C No. - 558 of 2020 no. 10 and apart from the copy of the inspection report, no other document was annexed with the show cause notice nor any other report was provided to the petitioner which was sought to be relied upon by the respondents while taking a decision.

16. It is also not disputed that the petitioner submitted his reply on 30.06.2017 and it was only in context with the points raised in the show cause notice and by that given time it was only the inspection dated 04.05.2017 which had been provided to the petitioner to respond.

17. Later, the petitioner was required to be present at the Lab of the OEM where the pulsar cards were to be examined and in this regard it was stated that the petitioner was present but in his presence no such inspection was done and on 30.01.2018, the termination order was passed along with which the report dated 26.07.2017 issued by Gilbarco Veeder Root (GVR) was provided to the petitioner. Admittedly, the said report was never provided to the petitioner prior to the passing of the order.

18. It is also not disputed that the petitioner filed an appeal where these issues were raised regarding not providing of the copy of the report which was relied upon by the Authorities while passing the termination order yet it did not find favour with the appellant.

19. Now, in the aforesaid background, the copy of the analysis report dated 26.07.2017 issued by the OEM GVR, a copy of which has been placed on record at running page 204 to 205 of the paper-book, at the outset, would indicate that on visual inspection, it appeared that a replaced micro controller had been placed on the pulsar which could lead to variation in delivery. It also concluded that the said micro controller was not part of the OEM and the same can lead to variation in the delivery.

20. In so far as the other report of the OEM dated 24.11.2017 which is at running page 206 to 212 is concerned, it would reveal that though it observed that there was an alternation/addition in the pulsar card, however, it was further observed that there were some technical aspects i.e. to say an 8 pin SMD IC has been mounted (glued) on the PCB and jumper wires from that IC were connected to pulsar sensors. This was found in two pulsars and for the remaining three pulsars, there was no malfunctions or abnormality detected.

21. It also noticed that all operational pulsar units were checked for accuracy test and it was found to be in permissible limits and finally it concluded that it could not be said whether any abnormality could affect the delivery.

22. In the given fact scenario, what this Court finds that admittedly the seals of the Weights and Measures Department were found to be intact. There was no material to suggest that the petitioner had tampered with the seal or could have tampered with the pulsar cards.

23. In order for the Corporation to have terminated the dealership of the petitioner on the aforesaid ground, it was necessary to have established that the petitioner had tampered with the seals and was responsible for incorporating any additional part which is not part of the OEM in the pulsar cards, coupled with the fact that such anomaly could have affected

the delivery.

24. It is also relevant to notice that the only basis for passing the impugned orders is the report by the OEM and as noticed above, the report of the OEM is also inconclusive for the reason the OEM also could not state with certainty that the said alien part as detected in the pulsar card was responsible for any short delivery. The report merely draws a conclusion but it does not indicate how and what tests were done to arrive at such a conclusion, apart from the fact that the said report of the OEM was not even put or given to the petitioner before passing of the impugned order of termination.

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 submission of the learned counsel for the IOC regarding the involvement of the petitioner in manipulation without any cogent material.

29. Similarly, another coordinate Bench of this Court in R.S. Filling Station Indian Oil Corporation Ltd. Vs. Indian Oil Corporation; 2025:AHC-LKO:19838, after taking note of the relevant clauses of the MDG and taking note of a decision of Andhra Pradesh High Court in Indian Oil Corporation Vs. Pullareddy Service Centre (2021) SCC Online AP 2909 and more specifically paragraphs 18 to 27 and then concluded in paragraph 60 as under:-

"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.""

(iii) **R.S. Filling Station Indian Oil Corporation Ltd. Kheri Vs. ICOL and others [Writ-C No.4944 of 2023]**. Relevant paragraphs 47, 48, 54, 60 are being quoted below :-

"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.

54. The next judgment cited is in the case of Hindustan Petroleum Corporation Limited v. Super Highway Services, (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.”

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.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."

(iv) Chaudhary Filling Point Vs. State of U.P. [2019 SCC OnLine All 3620]. Relevant paragraphs 13 to 19 are being quoted below :-

"13. It has also been averred in the writ petition that after termination of the dealership, a First Information Report was also lodged on 25.6.2017 bearing case Crime No. 232 of 2017 under Section 419/420/409 IPC read with Section 3 and 7 of the Legal Metrology Act against the petitioner.

14. Counsel for the petitioner has vehemently argued that the impugned order of termination has been passed in blatant disregard of the principles of natural justice and statutory procedure as laid down in the MDG-2012. The entire exercise of termination was a sham transaction as the OEM report dated 10.2.2018 and 30.4.2018 came into existence much after the passing of the order of termination. Moreover, the constitution of Inspection Team for inspecting the RO was not in accordance with the provision of Government Order dated 5.8.2008 read with the Government Order dated 2.5.2017 and as such it has been asserted that the alleged Inspection and the consequential action for cancellation of the applicant's dealership is patently in breach of the aforesaid Government Orders.

15. Pointing out the defect in the termination order, it has been urged that in sheer violation of clause 5.1.4 of MDG, no independent opinion of OEM regarding the alleged extra wire and extra soldering marks in the pulsar card of the Midco and Gilbaro was obtained prior to taking punitive action against the petitioner. Moreover, the allegation of tampering of seal as levelled by the Weight and Measurement Department was not found correct by the competent court as the charges under Section 26 and 44 of the Legal Metrology Act were not found proved and the complaint filed by the Department was rejected by the competent court vide order dated 16.8.2018. The defects/irregularities which have been pointed out by the Counsel for the petitioner can be summarized as under:

1. The allegation of tampering of W & M seal was not made in accordance with Clause 5.1.2(b) of MDG inasmuch as the allegation in the show cause notice did not specifically provide as to under which of the three types of tampering of seal as provided in clause 5.1.2(b) is applicable on the petitioner.
2. Prior to issuance of the termination order of the petitioner's RO independent opinion of the W & M authorities was not taken by IOCL, which is clear violation of clause 5.1.2(B) of the MDG.
3. Similarly, prior to issuance of the termination order of the petitioner's retail out, independent opinion of the OEM as provided in clause 5.1.4 of

the MDG was not obtained by the IOCL and the dealership was terminated solely on the basis of the joint inspection report itself.

4. In Clause 8.5.2 of the MDG, it has been provided that “all cases of irregularities need to be established before any action is taken against a dealer”, however prior to terminating the petitioner's RO no steps were taken by the IOCL for establishing any irregularity and merely on the basis of the inspection report dated 2.6.2017, the exercise of termination was undertaken.

5. The IOCL authorities, did not provide any “pre decisional hearing” to the petitioner, which is mandated in clause 8.6 of the MDG and stipulates that in case of critical irregularities leading to termination, like that of seal tampering, the Head of the State Office/Regional Office/Zonal Office of the concerned OMC or their nominee before recommending/approving the termination of Dealership will provide a personal hearing to the signatories of the dealership or their nominees.

16. Thus, it is crystal clear that the IOCL authorities have disregarded and blatantly violated the mandatory procedure prescribed in the MDG and the appellate authority before whom all these pleas were raised has also rejected the appeal in a cursory manner without appreciating all these aspects of the matter in its correct prospective, has not applied its independent mind and upheld the order of termination in a cursory manner.

17. Refuting the assertion of the petitioner, learned Counsel for the Indian Oil Corporation submitted that on 2.6.2017 when the inspection team checked the retail outlet of the petitioner, several irregularities were found for which a fact finding letter dated 3.6.2017 was issued to the petitioner together with the Inspection note to which no reply was tendered and as such a show cause notice dated 20.6.2017 was issued to show cause why his retail outlet dealership may not be terminated. The petitioner responded to the said show cause notice by tendering reply on 3.7.2017 which was duly considered by the competent authority, who did not find the reply submitted by the petitioner to be satisfactory with regard to breaking/tamper of W & M seal of meter assembly, which is a

serious irregularity. Thus, the petitioner/retailer committed breach of clause 5.1.2(b) and clause 15, 16, 19 & 44 read with clause 58 of dealership agreement and as the reply was not found satisfactory, the impugned order of termination was passed.

18. It has been urged that the pleas which have been raised by the petitioner have been considered by the appellate authority, who after considering the evidences has come to the conclusion that the termination of the dealership is in accordance with the provisions of MDG-2012 and clauses of dealership agreement. It has also been added that the appeal was decided after giving opportunity of hearing. Therefore, there is no illegality or irregularity in the impugned orders and the writ petition is liable to be dismissed.

19. First of all, we would like to mention that the very purpose of enacting Marketing Discipline Guidelines was to maintain discipline in the operation of retail network and provide high customer service standards. For the First time, the Marketing Discipline Guidelines (MDG) were formulated in the 1981-82. Recently, when the Government as well as Industry felt the need to review the MDG in view of the changing circumstances and market scenario, Marketing Discipline Guidelines-2012 were introduced."

(v) M/s M.K. Fuel Centre Vs. IOCL and others [Writ-C No.31629 of 2021]. Relevant paragraphs 23 to 29, 31, 33 and 35 are being quoted below :-

"23. The order of termination has also been attacked with vehemence on the ground of not affording opportunity of oral hearing before passing the said order. There is no denial of the said fact by the IOCL. It is settled principle of law that any order, which entails civil consequences, must be in conformity with the principles of natural justice. The Hon'ble Supreme Court in D.K. Yadav v. J.M.A. Industries Ltd.¹¹ has held that an order involving civil consequences must be made consistently with the rules of natural justice. Clause 8.6 of the MDG-2012 provides in clear words that in case of critical irregularities leading to termination, like that of seal tampering, the Head of the State Office/Regional Office/Zonal Office of

the Oil Manufacturing Company concerned or their nominee before recommending/approving the termination of dealership will provide personal hearing to the signatories of dealership or their nominee. Principles of natural justice require that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by such a decision.

24. Thus, there is clear non-compliance of Clause 8.6 of the MDG by the respondent Authorities. Moreover, the respondents have failed to show any rule or regulation to demonstrate that when the dealership is terminated as per terms and conditions of the agreement, provisions of the MDG would not be applicable. The MDG has been enacted for such dealership agreements as the one involved in the instant case and therefore, we are of the view that these guidelines need to be strictly construed by both the parties. Further, any dealership agreement cancelled by the respondent Corporation cannot be effected on the basis of dealership agreement itself as the MDG have to be followed while taking recourse to such action. The respondent Corporation cannot act arbitrarily at its own sweet will like a private individual and deal with any person it pleases, but rather its action must be in conformity with standards or norms, which are not irrational or irrelevant. Therefore, respondents cannot be exempted from the application of MDG merely by following the dealership agreement.

25. It may be observed here that the respondent Corporation has departed from the standard norms laid down in the Marketing Discipline Guidelines and the standard norms of natural justice and fair play and such departure was clearly unreasonable and discriminatory. It may be noted that the manufacturer of the unit calibrates the equipment ensuring proper delivery of the product and the relevant part of the machinery is sealed by the Department concerned after verification of the accuracy. The very purpose of sealing of the equipment by the department is to ensure that the dealer does not tamper with the same. As seen from the reading of the impugned order, the only reason assigned for being not satisfied with the explanation offered by the petitioner was that there was manipulation in the software of the dispensing unit at the RO with an intention to manipulate the delivery of the fuel. However, what was not

considered by the competent authority was that at what point of time this unauthorised tampering/soldering was done in the dispensing unit and how the dealer is manipulating the distribution of fuel. No material, much less credible one has been brought on record by the respondents to disclose the unauthorised access to the equipment by the petitioner.

26. It was specific stand of the petitioner that periodically the Weights and Measurements Department officials inspected the seals and they were found to be intact. Further more, what is the impact of tampering/manipulating the software of the dispensing unit is not disclosed by the respondent. How the dealer can manipulate delivery of fuel by inserting such unit is also not explained. The only objective of a dealer to tamper with dispensing unit is to manipulate delivery of fuel. In this case, the delivery of fuel was found to be accurate prior to checking of unit and after the checking. Merely on assumptions, that the tampering/manipulating the software of the dispensing unit was found, the petitioner dealer cannot be visited with severe consequence of termination of dealership. Thus, the action of the respondent Corporation, in the facts of this case, in terminating the dealership of the petitioner on the sole ground that manipulation of the software was found in the dispensing unit is illegal, unreasonable and excessive.

27. Another point, which has been canvassed by the petitioner, is that a perusal of the show-cause notice dated 4-1-2021 would indicate that the basis for the entire proceedings initiated against the petitioner is the inspection note dated 16-7-2020 and there was no other material before the competent authority to proceed against the petitioner. He had submitted that the inspection report dated 16-7-2020 has been made a sole basis of passing the impugned termination order, which was in fact no “actionable evidence”, since the allegations contained therein were mere suspicions raised by the authorities and has not been verified by the experts before the impugned termination order was passed.

28. A perusal of the show-cause notice would indicate that the petitioner was asked to reply to the allegations regarding the tampering with the dispensing unit for manipulating the delivery. The inspection report itself could not be taken as to make any short selling of fuel by the petitioner.

The inspection report could not have been made a basis for initiating proceedings against the petitioner, inasmuch as from the said report it could not have been concluded that the petitioner was involved in any action, which could be said to be infringement of the guidelines with regard to the tampering of the machines and short selling of the fuel.

29. Identical issue came up for consideration before High Court of Chhattisgarh in case of Mahamaya Service Centre v. Indian Oil Corpn. Ltd.¹², wherein Chhattisgarh High Court held that provisions of Clause 8 of the Order, 2005 read with MDG, 2005 have not been complied with, thus, the respondents cannot claim any sanctity in law and the court is well within its jurisdiction to declare such an act illegal and invalid. Chhattisgarh High Court also observed as under:

“26. It is a duty cast on the authorities of the State and the instrumentalities of the State that they should follow the proper procedure prescribed in the rules and regulations. The contravention of the same cannot be permitted. It is uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way or not at all.”

31. Hon'ble Supreme Court in Hindustan Petroleum Corpn. Ltd. v. Super Highway Services⁹, has considered the similar issue of termination of dealership in the similar set of facts and circumstances, wherein the Supreme Court has held as under : (SCC pp. 328-329, paras 28-36)

“16. Having carefully considered the submissions made on behalf of the respective parties and also having considered the various decisions referred to by learned counsel, we are of the view that the case made out on behalf of Respondent 1 is more probable. Although, the transporter's representative was present at the terminal at the stipulated time on 29-5-2008, that by itself cannot give rise to a presumption that service had been effected also on Respondent 1, in the absence of any proof in that regard. Except for the endorsement on the handwritten notice said to have been given by Mr Dash, there is nothing else on record to even suggest that notice had been sent to Respondent 1 and that the same had been refused. It is also rather difficult to accept that in respect of a test to be

conducted on 29-5-2008, at 3.00 p.m., an attempt was made to serve the said notice on the representative of Respondent 1 on the date of the proposed test itself. Although, the notice is dated 28-5-2008, the endorsement alleged to have been made by the representative of Respondent 1 is dated 29-5-2008, and we would be justified in assuming that Respondent 1 could not have arranged for being represented at the laboratory in the Barauni Terminal of the petitioner Corporation on such short notice. Nothing has been shown by the petitioner to disprove the allegation made on behalf of Respondent 1 that the notice alleged to have been tendered to the representative of Respondent 1 was not in the manner and the form in which such notice is required to be given to a dealer. It is obvious that the same had been made out in haste to indicate that service had been attempted on Respondent 1.

17. 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 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.

18. 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 the 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. 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. In the present case, there is no admissible evidence to prove service of notice on the respondent or refusal of notice by the respondent. Further, the notice dated 28-5-2008 which was allegedly refused by respondent, did not give him adequate time to arrange for the presence of himself or his representative during the test to be conducted at 3.00 p.m. on 29-5-2008. It is also to be noted that the endorsement regarding the alleged refusal is dated 29-5-2008 itself. Thus, the termination of the dealership agreement of the respondent was arbitrary, illegal and in violation of the principles of natural justice.

19. Although, Clause 68 of the Dealership Agreement refers to arbitration, it is unfortunate that the said question was not raised before the High Court. It is now too late in the day for the petitioner Corporation to contend that in view of Clause 68 of the Dealership Agreement, Respondent 1 was not entitled to seek its remedy before the writ court. In any event, by filing appeal against the order of the learned Single Judge, the petitioner herein also submitted to the jurisdiction of the writ court, without objecting to the same.

20. In the aforesaid circumstances, we are not inclined to admit the special leave petition, which is, accordingly, dismissed, without, however, any order as to costs.”
(emphasis supplied)

33. The Hon'ble Supreme Court in Allied Motors Ltd. v. Bharat Petroleum Corpn. Ltd.⁵ while dealing with a similar matter, wherein the Marketing Discipline Guidelines were not followed and termination was held to be

illegal, held as under :

"In the instant case, samples were taken on 15-5-2000. On the very next day i.e. on 16-5-2000, without even giving a show-cause notice and/or giving an opportunity of hearing, the respondent Corporation terminated the dealership of the appellant. The appellant had been operating the petrol pump for the respondent for the last 30 years and was given 10 awards declaring its dealership as the best petrol pump in the entire State of NCT of Delhi. During this period, on a number of occasions, samples were tested by the respondent and were found to be as per specifications.

In the instant case, the haste in which 30 years old dealership was terminated even without giving show-cause notice and/or giving an opportunity of hearing clearly indicates that the entire exercise was carried out by the respondent Corporation non-existent, irrelevant and on extraneous considerations. There has been a total violation of the provisions of law and the principles of natural justice. Samples were collected in complete violation of the procedural laws and in non-adherence of the guidelines of the respondent Corporation.

On consideration of the totality of the facts and circumstances of this case, it becomes imperative in the interest of justice to quash and set aside the termination order of the dealership. We, accordingly, quash the same. Consequently, we direct the respondent Corporation to handover the possession of the petrol pump and restore the dealership of petrol pump to the appellant within three months from the date of this judgment.

The appeal is consequently allowed with costs which is quantified at Rs 1,00,000 (Rupees one lakh only) to be paid by the respondent-Corporation to the appellant within four weeks from today."

35. In Chaudhary Filling Point case⁶ it has been held by this Court as under:

"As regard the arbitration, it has rightly been asserted that the arbitrator has no power to restore the distributorship, in the event the termination is found unlawful. The Supreme Court in Indian Oil Corpn. Ltd. v. Amritsar Gas Service¹⁷; E. Venkatakrishna v. Indian Oil Corpn. Ltd.¹⁸ and

*Sanjana M. Wig v. Hinsustan Petroleum Corpn. Ltd.*¹⁹ has held in explicit words that an arbitration forum does not have the jurisdiction for the restoration of dealership, which was earlier terminated. All that the arbitrator could do, if he found that the termination of the distributorship was unlawful, was to award damages, as any civil court would have done in a suit. In *Navin Filling Station v. Indian Oil Corpn. Ltd.*²⁰, this Court observed as under:

‘The presence of the arbitration clause, is not to drive away a genuine grievance arising out of disproportionate action of the corporation, to the Arbitral Tribunal which in any case will not have the authority to give an award to restore the dealership. In the present case the Indian Oil Corporation terminated the agreement relying upon the clauses, which were not attracted and on the Marketing Discipline Guidelines framed for facilitating the marketing of the petroleum products on the principles of good governance and excellent customary service. The preamble to the guidelines itself provide that the guidelines need to be constantly updated to meet the customer satisfaction and to the discipline dealership network and for preventing malpractices in the sale of petroleum products.’

In these circumstances, we find force in the arguments advanced by the learned counsel for the petitioner that arbitration between the parties is not an efficacious and proper remedy in such cases"

18. On the other hand, learned counsel for the respondents submits that the impugned orders are just and valid and they do not require interference by this Court, thus, he submits that the writ petition may be dismissed. He placed reliance upon the following judgments :-

(i) Indian Oil Corporation Ltd. & another Vs. T. Natarajan [Civil Appeal No.6748 of 2018]. Relevant paragraph(s) is/ are being quoted below :-

"In our opinion, the writ court (Single Judge) was, therefore, justified in dismissing the respondent's writ petition and upholding the rejection on the ground that the High Court cannot interfere in the administrative decision of IOC and nor can it substitute its decision by acting as an appellate court over such decision in exercise of writ jurisdiction. It is

more so when such decision is based on reasons involving no arbitrariness of any nature therein which may call for any interference by the High Court."

(ii) M/s Maharashi Filling Station (Indian Oil Dealer) Vs. Indian Oil Corporation Ltd and another [Writ-C No.20271 of 2018]. Relevant paragraph(s) is/ are being quoted below :-

"19. The competent authority of the Indian Oil Corporation considered the reply of the show cause notice submitted by the petitioner and passed the impugned order dated 29.7.2017 wherein finding has been recorded that Midco Engineer was present at the time of inspection on 6.5.2017 and he has submitted his report that additional fitting was found in the dispensing unit at the retail outlet dealership of the petitioner therefore, there is no need for any subsequent report. Since any additional fitting inside the dispensing unit is in violation of the provisions made in the Marketing Discipline Guidelines, 2012 and also is in violation of the provisions of the dealership agreement accordingly, petitioner's retail outlet dealership and dealership agreement have been terminated."

(iii) M/s Kisan Sewa Kendra Vs. Union of India and others [Writ-C No.32973 of 2018]. Relevant paragraph(s) is/ are being quoted below :-

"20. In view of the aforesaid test report, it is evident that the pulsar assemblies that were obtained from the dealership from the four dispensing units, were reflected as tampered with in the test reports by the OEM, which, as per clause 5.1.4 of the Guidelines would be deemed as tampering of the dispensing unit, and thus the same would be covered under the definition 'malpractices' as defined in the Order, 2005. The aspect of tampering of pulsar assemblies would definitely be violation of directive of the respondent Oil Corporation as provided in its guideline and, therefore, it would come within the ambit of 'unauthorized sale' as defined in the Order, 2005."

(iv) M/s Shree Rajendra Agro Service Centre Vs. Indian Oil Corporation Ltd. and others [High Court of Judicature for Rajasthan at Jodhpur (Writ No.456/2023)]. Relevant paragraph(s) is/ are being quoted below :-

"18. Having regard to Clause 5.1.4 of the Guidelines of 2012, this Court is of the opinion that the term mentioned in the aforesaid Clause i.e. manipulation in the tempering Dispensing Unit is wide enough and action on the part of the dealer of disconnecting the original E-Cal connector of the Dispensing Unit very well comes within the definition of tempering with the Dispensing Unit."

(v) State of U.P. and others Vs. Rajit Singh [Civil Appeal Nos.2049-2050 of 2022]. Relevant paragraph(s) is/ are being quoted below :-

"It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice inasmuch as the documents mentioned in the charge-sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the enquiry officer/disciplinary authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge-sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of Chairman, Life Insurance Corporation of India Vs. A. Masilamani (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in para 16 as under :

"16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [ECIL v. B. Karunakar, (1993) 4 SCC 727 : 1993 SCC (L&S) 1184] , Hiran Mayee Bhattacharyya v. S.M. School for Girls [Hiran Mayee Bhattacharyya v. S.M. School for Girls, (2002) 10 SCC 293 : 2003 SCC (L&S) 1033] , U.P. State Spg. Co. Ltd. v. R.S. Pandey [U.P. State Spg. Co. Ltd. v. R.S. Pandey, (2005) 8 SCC 264 : 2006 SCC (L&S) 78]

and Union of India v. Y.S. Sadhu [Union of India v. Y.S. Sadhu, (2008) 12 SCC 30])”

9. From the impugned judgment and order passed by the High Court, it appears that when the aforesaid submission and the aforesaid decision was pressed into service, the High Court has not considered the same on the ground that the other officers involved in respect of the same incident are exonerated and/or no action is taken against them. Applying the law laid down in A. Masilamani [LIC v. A. Masilamani, (2013) 6 SCC 530 : (2013) 2 SCC (L&S) 608] to the facts of the case on hand, we are of the opinion that the Tribunal as well as the High Court ought to have remanded the matter to the disciplinary authority to conduct the enquiry from the stage it stood vitiated. Therefore, the order passed by the High Court in not allowing further proceedings from the stage it stood vitiated i.e. after the issuance of the charge-sheet, is unsustainable."

19. After having heard the rival submission of learned counsel for the parties, I perused the material on record as well as the judgments relied upon by the parties.

20. From the pleadings on record, the primary allegation against the petitioner relates to the alleged presence of an additional wire and tampered pulsar in the dispensing units at the petitioner's retail outlet, which according to the respondent–Corporation amounted to violation of Clause 5.1.4 of the Marketing Discipline Guidelines, 2012 (MDG-2012). It is not in dispute that during the inspection carried out on 1.5.2017, the seals of the Weights and Measures Department on the dispensing units were found intact and the inspection team did not find any discrepancy in the quantity of petroleum products being delivered through the nozzles. The controversy thus essentially revolves around whether the presence of the alleged additional fitting inside the dispensing unit, in absence of any evidence of tampering of seals or short delivery of fuel, could justify the extreme penalty of termination of the dealership.

21. Another aspect which assumes significance in the present case is that the termination order dated 30.1.2018 was passed primarily relying upon the reports of the Original Equipment Manufacturers (OEM), namely

Midco and Dresser Wayne. The material on record indicates that the report of Midco was enclosed along with the termination order and the report of Dresser Wayne was supplied to the petitioner only during the pendency of the appeal before the Dispute Resolution Panel in the year 2019. Admittedly, these reports were not supplied to the petitioner prior to the issuance of the show cause notice or before passing of the termination order.

22. Learned counsel for the petitioner has vehemently contended that non-supply of the OEM reports prior to passing of the termination order has resulted in denial of adequate opportunity to the petitioner to rebut the allegations levelled against him. In this regard, reliance has been placed upon the judgments in *Indian Oil Corporation Limited vs. Pullareddy Service Centre* (2021 SCC OnLine AP 2909), *M/s Prakash Automobiles Indian Oil Dealer vs. Indian Oil Corporation Ltd.*, and *R.S. Filling Station vs. IOCL*, wherein it has been held that where the termination of dealership is based upon technical reports or materials which were not supplied to the dealer at the stage of show cause notice, such action is violative of the principles of natural justice.

23. In *M/s Prakash Automobiles* (supra), this Court observed that where the OEM report forms the sole basis of termination and the said report was never supplied to the dealer prior to passing of the termination order, the action of the Corporation would suffer from violation of principles of natural justice. The Court further held that when the seals of the Weights and Measures Department are found intact and no material is brought on record to demonstrate how the dealer could have accessed the internal mechanism of the dispensing unit, the inference that the dealer himself introduced the additional fitting cannot be sustained.

24. Similarly, in *Indian Oil Corporation Ltd. vs. Pullareddy Service Centre* (supra), the Andhra Pradesh High Court held that merely because an additional gear or fitting is found in the dispensing unit, it cannot automatically lead to the conclusion that the dealer is responsible for the same, particularly when the seals of the unit are intact and there is no evidence that the dealer had access to the internal mechanism of the machine.

25. The same principle has also been reiterated by this Court in R.S. Filling Station vs. IOCL, wherein it was held that any material sought to be relied upon against the dealer must be made part of the show cause notice so that the dealer may effectively defend himself. Supplying such material at the appellate stage cannot cure the defect as it deprives the dealer of an opportunity to rebut the evidence at the appropriate stage.

26. In the present case, it is evident from the record that the show cause notice dated 7.7.2017 was issued only on the basis of the inspection report dated 1.5.2017. The reports of the OEMs, which subsequently formed the foundation of the termination order, were neither referred to in the show cause notice nor supplied to the petitioner before passing of the order dated 30.1.2018. Therefore, the petitioner had no opportunity to contest the conclusions drawn in those reports.

27. Another circumstance which cannot be ignored is that during inspection the seals of the Weights and Measures Department were found intact and there was no allegation of short delivery of fuel. In the absence of any material to establish that the petitioner had access to the internal mechanism of the dispensing unit or had tampered with the seals, the mere presence of an additional wire inside the pulsar card cannot automatically lead to the conclusion that the petitioner was responsible for the alleged manipulation.

28. The submission of the petitioner that the testing of the pulsar was not carried out in accordance with the procedure prescribed under the Legal Metrology (General) Rules, 2011 also finds support from the letter issued by the Deputy Controller, Legal Metrology, Haryana and the communication from the Forensic Science Laboratory, which indicate that such components are required to be tested in operational mode with power supply. In the present case, the report of Midco indicates that the examination was carried out merely through visual inspection without providing power to the device.

29. Learned counsel for the respondents has relied upon the judgment of the Supreme Court in Indian Oil Corporation Ltd. vs. T. Natarajan to contend that the writ court should not interfere with administrative

decisions of the Corporation unless the same are arbitrary or perverse. There can be no dispute regarding the said proposition of law. However, the said judgment is distinguishable on facts as in the present case the termination order is found to be based upon materials which were not supplied to the petitioner prior to the passing of the order and thus the decision-making process itself stands vitiated.

30. The reliance placed by the respondents upon the judgment in *M/s Kisan Sewa Kendra vs. Union of India* is also of no assistance to them in the present case. In that case, the OEM reports had clearly established tampering with the pulsar assemblies and the same had been made part of the proceedings. In contrast, in the present case the reports relied upon by the respondents were neither supplied to the petitioner prior to the passing of the termination order nor do they conclusively establish that the alleged additional fitting had resulted in manipulation of delivery.

31. It is well settled that termination of a petroleum dealership has serious civil and financial consequences. The Supreme Court in *Hindustan Petroleum Corporation Ltd. vs. Super Highway Services* has emphasized that such action must strictly comply with the procedure prescribed in the applicable guidelines and the principles of natural justice.

32. In the present case, the material on record clearly indicates that the termination order has been passed in breach of the procedural safeguards contained in the Marketing Discipline Guidelines, 2012 as well as the principles of natural justice, inasmuch as the petitioner was not supplied with the OEM reports forming the basis of the impugned action prior to passing of the termination order.

33. Consequently, the appellate authority, while dismissing the petitioner's appeal by order dated 23.5.2019, also failed to consider the aforesaid procedural infirmities and merely affirmed the decision of the original authority without independently examining whether the allegations against the petitioner had been established in accordance with law.

34. In view of the aforesaid discussion, this Court is of the considered opinion that the impugned orders dated 30.1.2018 passed by respondent

No.2 and 23.5.2019 passed by the Dispute Resolution Panel cannot be sustained in the eyes of law. Accordingly, the writ petition deserves to be allowed.

35. The impugned order dated 30.1.2018 terminating the petitioner's retail outlet dealership agreement as well as the appellate order dated 23.5.2019 passed by the Dispute Resolution Panel are hereby quashed. The respondents are directed to permit the petitioner to continue to operate the retail outlet in accordance with law and strictly in terms of the dealership agreement, subject to compliance of all applicable conditions.

36. However, it is left open to the competent authority of the respondent-Corporation to proceed afresh from the stage of issuance of show cause notice, after supplying to the petitioner all documents proposed to be relied upon, including the reports of the Original Equipment Manufacturers. In case show cause notice is issued in accordance with law, necessary order in accordance with law shall be passed after affording fullest opportunity of hearing to the petitioner.

37. The aforesaid exercise shall be completed expeditiously, preferably within a period of four months from the date a certified copy of this order is produced before the concerned authority.

38. The writ petition is accordingly **allowed**. No order as to costs.

(Irshad Ali,J.)

February 25, 2026

Gautam