

IN THE HIGH COURT OF MADHYA PRADESH

AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

WRIT PETITION No. 22645 of 2022

BETWEEN:-

M/S KANHAIYALAL AND COMPANY THROUGH ITS PROPRIETOR SMT. KIRAN MUNDRA W/O SHRI ANAND SWAROOP MUNDRA, AGED ABOUT 59 YEARS, OCCUPATION: BUSINESS ADDRESS AKODIA ROAD SHUJALPUR MANDI SHUJALPUR DIST. SHAJAPUR AND R/O 153, SAKET NAGAR DIST INDORE (MADHYA PRADESH)

.....PETITIONER

(SHRI PIYUSH MATHUR, LEARNED SENIOR ADVOCATE WITH SHRI MADHUSUDAN DWIVEDI, ADVOCATE FOR THE PETITIONER.)

AND

**INDIAN OIL CORPORATION LIMITED THROUGH ITS MANAGING
1. DIRECTOR INDIAN OIL BHAWAN G-9 ALI YAVAR JUNG MARG
BANDRA EAST MUMBAI (MAHARASHTRA)**

**DIVISIONAL RETAIL HEAD INDORE DIVISIONAL OFFICE
2. (INDORE DO) INDIAN OIL CORPROATION LIMITED INDIAN OIL
BHAWAN PLOT NO. 8, SCHEME NO. 159, MR. 10 ROAD. INDORE
(MADHYA PRADESH)**

.....RESPONDENTS

(SHRI AMIT S. AGRAWAL SENIOR ADVOCATE WITH SHRI YOGESH KUMAR MITTAL, ADVOCATE FOR THE RESPONDENTS.)

Reserved on : 19.09.2023

Pronounced on : 27.10.2023

This petition having been heard and reserved for order, coming up for pronouncement this day, this Court pronounced the following :

ORDER

1. The petitioner, being a proprietorship firm represented through its proprietor Smt. Kiran Mundra, has filed the present petition being aggrieved by the order dated 20.9.2022 (Annexure P/19) whereby the Retail Dealership has been terminated on the ground of critical irregularities committed under Marketing Discipline Guidelines (hereinafter referred to as “the guidelines” for sort).

2. *Facts of the case.*

2.1 The petitioner who is a proprietorship firm in the name of M/s. Kanhaiyalal & Co. established a retail outlet of Indian Oil Corporation Ltd. (hereinafter referred to as “IOCL” for sort) for the retail sale and supply of petroleum products i.e. Motor Spirit (petrol), High-Speed Diesel (HSD), etc. on land admeasuring 0.107 Hect., situated at Ward No.11, Akodia Naka, Patwari Halka No. 18, Shujalpur, District Shajapur. (hereinafter referred to as the Retail Outlet). A registered lease deed dated 10.3.1999 was executed for the period of 30 years between the petitioner and IOCL. The last dealership agreement was executed on 1.7.2019 between them for a period of 15 years i.e. up to 30.6.2034.

2.2 On 11.4.2022, Shri Nitesh Choudhary, Assistant Manager (Retail Sales), Dewas Sales Area, IOCL and Shri Sukendra, Assistant Manager (Retail Sales, Shajapur Sales Area, IOCL visited the retail outlet and inspected daily sales record, stock verification from totalizer reading, physical stock, safety measures, price display and the charged, inspection of washroom, payment wages, other facilities and pump delivery, quality check of MS and HSD, mobile lab, stock

reconciliation, etc. and prepared and submitted the detailed inspection report and submitted to the head office. Before that, the team of IOCL visited the retail outlet on 1.2.2022. So far as the Dispensing Unit (DU) Sr. No. 201302001387 (in short “DU 1387”) (GVR DU India Make) is concerned, all the seals were found intact, delivery was found correct and the remark OK was given; so far as DU Sr. No. 201308000035 (in short “DU 0035”) (GILBARCO Make) but Weights & Measure (W&M) Display Seal was not found intact and the unit totalizer reading jumped; so far as Nozzle Nos. 12, 13 are concerned, the W&M seals were not found available and No.13, the totalizer reading was found jumped as per the remark.

2.3 These irregularities were treated as **critical irregularities** in the retail out by the petitioner, therefore, a show-cause notice dated 18.5.2022 was issued to the petitioner calling upon them to submit a reply to the fact-finding inquiry. This SCN was issued by the Divisional Retail Head, Indore DO. In the aforesaid show-cause notice the respondents relied on the report of the Technology Audit and Compliance Cell (TACC) for Gilbarco Veeder Root India Pvt. Ltd. (GVR) (OEM) with respect to the Sealed Electronic Card of two dispensing units i.e. DU 1387 and DU 0035. As per the report, soldering rework was observed near JTAG connector on the back side of CPU card and FRAM and EEPROM IC 7th pin on the back side of the CPU card, which is termed as a manipulated dispensing operation. It was further alleged that Legal Metrology (W&M) seals were not found on the display card of DU 0035, which is also a critical irregularity. The show-cause notice was issued under the provisions of

the Dealership Agreement and the Marketing Guidelines effective from 8.1.2013 (MDG) for several minor, major and critical irregularities reported by the two members team (supra).

2.4 The petitioner submitted the detailed reply on 21.6.2022 to the aforesaid show-cause notice. Since the reply was not found satisfactory thereafter the petitioner was served with the IInd show cause notice dated 28.7.2022 proposing the termination of the retail outlet. The petitioner filed a detailed and exhaustive reply to the second show-cause notice in defence by submitting that no ground for terminating the retail out is made out. Along with the reply, the petitioner filed an affidavit of Mr. Inderjeet Singh Rai, an Engineer of GVR stating on oath that the soldering work was done by him at the relevant point of time. Therefore, no tempering was done by the petitioner after the installation of DUs in the retail outlet. After receipt of the reply, the petitioner was provided with an opportunity for a personal hearing on 6.9.2022. The petitioner appeared and explained its working to the authority and specifically denied the violation of any provisions of any Act, Rules, Terms & Conditions of Dealership and MDG. On 6.9.2022, the hearing was held in the office of Executive Director and State Head, MPSQ in which Dipak Kumar Basu, ED & SH, MPSO; T.N. Sunder Rajan, GM(RS), MPSO; S.K. Nair, Manager (Law), MPSO, Anoop Kushwah, DGM (Retail Sales), MPSO; and Anant Mundra son and authorized representative of Mrs. Kiran Mundra, Proprietor of the petitioner were present. The minutes were recorded and the hearing was declared as concluded. Thereafter, vide *impugned detailed order dated 20.9.2022*, the dealership/retail outlet of the petitioner was

terminated forthwith under Clause 5.1.2/5.1.3/5.1.4/5.1.16 (a)/(b)/(c)/8.2 (iii)/8.3 (viii)/8.5.1/8.5.3/8.5.4 of the MDG and Clause 7/(i)/45(a)/45(k)/45(o) etc. of the Dealership Agreement. The petitioner was requested to hand over the possession of the retail outlet to the authorized representative of the IOCL. The petitioner was also informed about the right to appeal under Clause 8.9 of MDG-2012 within 30 days before the appellate Authority (Executive Director (Retail Sales) (South West), Head Office, Mumbai or any Executive Director level officer at the Head Office nominated by the IOCL. Hence, the petitioner filed the present petition before this Court.

3. The respondents appeared and raised an objection about the maintainability of the writ petition for want of alternative remedy of appeal. Vide order dated 13.10.2022, the writ petition was dismissed with liberty to the petitioner to avail the remedy of appeal. The petitioner challenged the aforesaid order of Writ Court by way of Writ Appeal No. 1326/2022. The Division Bench of this Court set aside the order of Writ Court and remanded the matter back to the Writ Court to decide the same on merit on the ground that the officer recommending the termination of the dealership as well as the appellate authority are of the same rank, therefore, filing of appeal cannot be said to be an efficacious remedy. The IOCL challenged the aforesaid order of the Division Bench before the Apex Court by way of an SLP and the same has been dismissed. Thereafter, the respondents filed a detailed para wise reply on merit. The petitioner filed the rejoinder to the reply. Respondents have not filed any additional reply.

4. ***Grounds and submissions of the petitioner :***

(i) That the petitioner has been in the business of a retail outlet for the last 50 years with sincerity and devotion and no action has ever been taken against it by the IOCL. During an inspection on 11.4.2022, delivery from DU 0035 was found correct, but W&M Display Seal was not found available and the unit totalizer reading was found jumped. But, since there was no shortage in the delivery of fuel, therefore, there was no loss to the customers.

(ii) After the inspection the DU 1387 and DU 0035 were seized for technical analysis and Gilbarco submitted the analysis report vide Annexure P/5 for DU 1387 with a conclusion that the dispensing unit has been manipulated and recommended for all RO and DUs managed by the petitioner. Another report was submitted for DU 0035 with a conclusion that this unit has also been manipulated. The aforesaid conclusions were given as the soldering work was observed near JTAG connector on the back side of CPU card and on FRAM and EEPROM IC 7th Pin on the back side of the CPU card in DU 1387. In DU 0035 Resistors were found removed from the front side of the CPU and the soldering work was observed near JTAG connector on the back side of CPU card and on FRAM and EEPROM IC 7th Pin on the back side of the CPU card, but no test was conducted as to whether these two defects have resulted into loss in delivery of MS (petrol) and HSD (diesel) treating it to be a critical irregularity.

(iii) That both the DUs were manufactured by GVR and earlier installed in some other retail outlet, therefore, the IOCL installed these old and used DUs in the retail outlet of the petitioner. The then Engineer – Indrajeet Singh Rai gave an affidavit that he did the said

soldering work at the time of repair of the said DUs. On 9.7.2021.

(iv) The IOCL heavily relied on the certificate issued by W&M Department on 14.7.2021 which was issued after soldering work done on 9.7.2021 by Indrajeet Singh Rai.

(v) The petitioner was provided an opportunity for personal hearing on 6.9.2022 in which Dipak Kumar Basu, ED & SH along with 3 others were present. The petitioner submitted his case before them on 6.9.2022 and the impugned order was passed by the Divisional Retail Head who was not present on 6.9.2022. Therefore, the ED & SH with 3 others heard the petitioner and the impugned order was passed by another authority who was not present during the course of the personal hearing, therefore, such an order is unsustainable in law.

(vi) That the affidavit of Indrajeet Singh Rai was sent to the GVR and in turn, the GVR sent a letter dated 13.9.2022 to the Divisional Head, Retail Sales, IOCL by which they denied the contents of the affidavit. According to the said letter, Indrajeet Singh Rai was put to strict proof against the allegations made in Para 7 of the affidavit, but he has failed to provide any material that he did the soldering work/repair in the control card. This letter was received behind the back of the petitioner after a hearing on 6.9.2022. A copy of the said letter was not provided to the petitioner and in the impugned order, the authority has relied on this letter to discard the affidavit of Indrajeet Singh Rai.

(vii) Section 15 of the Legal Metrology Act, 2009 gives power of inspection and seizure to any Director, Controller or any Legal Metrology Officer. Sections 26, 27, 28 and 29 of the Act of 2009

prescribe penalties to the manufacturer or sale of non-standard weights and measures. No action has been taken by the aforesaid authorities under the Act of 2009 against the petitioner. Any such inspection or seizure by the officers of the IOCL in the absence of a Legal Metrology Officer cannot be said to be a valid inspection/seizure and amounts to a violation of the provisions of the Act of 2009.

(viii) The earlier inspection was carried out on 1.2.2022 in which nothing was found against the petitioner. All the seals of W&M were found intact. The IOCL has not established that by doing the soldering work on the card the petitioner has received any undue monetary benefit and cheated the customers. The GVR by way of an agreement with the IOCL installed these two DUs in the retail outlet of the petitioner in the year 2018. Earlier these two machines were installed in the year 2013 in some other retail outlets. The machines were installed by the GVR and the W&M Department put their seal. The last inspection was carried out in which all the seals were found intact. If the IOCL had any doubt on the affidavit of Indrajeet Singh Rai he could have been called in the witness box for his cross-examination. The reply was obtained behind the back of the petitioner and relied on by the respondent/IOCL for issuing the termination order.

5. Shri Piyush Mathur, learned senior counsel appearing for the petitioner, submitted that even if some minor irregularities were found during inspection for which, as the petitioner is the first time offender, only the fine could have been imposed, the perverse findings have been recorded in the impugned order treating them as the critical irregularities are unsustainable in law. He further submitted that the

inspection was carried out in the absence of the Meteorology Officer who was very much available in the town on the date of inspection. In order to justify his absence, the respondents have filed a copy of a letter dated 11.4.2022 whereby Inspector, W&M, Shajapur had authorized the Assistant Manager, Retail Sales to remove the seal for inspection of Pulser and Card. This letter was never communicated to the petitioner along with the show-cause notice. The petitioner submitted an application under the Right to Information Act on 17.4.2023 to a copy of a letter dated 11.4.2022. The Public Information Officer vide reply dated 9.5.2022 has stated that the said letter was never given from the office as the same was not entered into the Inward Register. It is filed as Annexure P/23 along with the rejoinder. Therefore, the respondents have created a forged letter to justify their action and for which the proceedings u/s. 340 of the Cr.P.C. are liable to be initiated against them. It is further submitted by the learned senior counsel that The petitioner has also filed DO letter dated 15.11.2006 issued by the Secretary, Food & Civil Supply & Consumer Protection that the officers of the supplying company do not have the authority to search and seizure with regard to weights and measure and powers of the officers of W&M Department. The power of inspection confers on the Director, Controller and Legal Metrology Officer. Even if they have delegated the powers to the Inspector, the Inspector cannot further delegate the powers to the officers of the IOCL. Hence, the entire inspection was carried out without any authority which cannot be the basis for the termination of the dealership of the retail outlet.

6. Shri Mathur learned senior counsel further submitted that after

the conclusion of the hearing on 6.9.2022, an explanation was called from the GVR behind the back of the petitioner which has been made the foundation for the termination of the petitioner's dealership, hence on this ground alone the impugned order is unsustainable and liable to be set aside.

Reply and submissions by the respondents IOCL

7. The IOCL came up with the reply that a random inspection was conducted on the retail outlet of the petitioner on 11.4.2022 by 3 officers headed by the Assistant Manager, of Retail Sales, Shajapur. In DU 1387 the W&M seal and the totalizer seal were found intact but subject to verification. So far as DU 0035 is concerned, W&M seals were not found intact. Before taking inspection, permissions were obtained from the W&M Department vide letter dated 11.4.2022. After inspection, certain parts of DU 1387 and DU 0035 were seized for analysis by the original equipment manufacturer i.e. GVR. During the inspection, some colour photographs were taken showing the absence of seals from DU 0035 and W&M seals on DU 1387. M/s. GVR opened the sealed boxes of both DUs. in the presence of the petitioner online. Thereafter, the report was sent to the W&M Inspector with the original seal of CPU and photographs and in turn, the Inspector, W&M, Shajapur sent his opinion that the W&M seal on the CPU card was tampered in DU 1387 and permission for removal of seal on display card on DU 0035 was never given by the office of W&M Department to the petitioner. It is further submitted that the analysis report was given by M/s. GVR it is opined that there was a manipulation by way of soldering/rework which are filed as Annexure P/5 and P/6 in respect

of both the DUs. However, in the reply, nothing has been said about the working of these two machines as to whether the soldering work has resulted in loss of delivery of petrol and diesel which has given some undue benefit to the petitioner and loss to the customers. The effect of the soldering work has not been explained in both the reports given by the GVR.

8. Shri Amit S. Agrawal, learned senior counsel appearing for the respondents, submitted that the scope of interference with the decision taken by the experts, by the High Court in a writ petition filed under Article 226 of the Constitution of India, is very limited. The Writ Court can only exercise certiorari jurisdiction but not as an appellate Court to reverse the findings given by the experts. The judicial review is confined to examining the decision-making process adopted by the competent authority but not the decision itself. In support of his contention, learned senior counsel placed reliance on the judgments of Apex Court passed in the case of *Hari Vishnu Kamat V/s. Ahmed Ishaque : AIR 1955 SC 233; Sangram Singh V/s. Election Tribunal Kotah : AIR 1955 SC 425; H.B. Gandhi, Excise and Taxation Officer V/s. M/s. Gopi Nath & Sons : 1992 Supp. (2) SCC 312; Union of India V/s. LT. Gen. Rajendra Singh Kadyan : (2000) 6 SCC 698.*

8. On the issue of impermissibility of re-appreciation of evidence, by the High Court learned senior counsel has relied on the judgments of the Apex Court in the cases of *State of Orissa V/s. Murlidhar Jena : AIR 1963 SC 404; Maharashtra State Board of Secondary and Higher Secondary Education V/s. K.S. Gandhi : (1991) 2 SCC 716; T.C. Basappa V/s. T. Nagappa : AIR 1954 SC 440; Syed Yakoob V/s.*

K.S. Radhakrishnan : AIR 1964 SC 477; P. Kasilingam V/s. P.S.G. College of Technology : AIR 1981 SC 789; Suresh Koshy George V/s. University of Kerala : AIR 1969 SC 198; State of U.P. V/s. Sudhir Kumar Singh : AIR 2020 SC 5215.

9. Shri Agrawal, learned senior counsel further submitted that there is nothing wrong in the action of the respondents. An adequate opportunity for a personal hearing was given by the competent authority on 6.9.2022 and thereafter, after its due approval, the impugned order dated 20.9.2022 was passed by the Divisional Head, Retail Sales. It is permissible under the provisions of Order 18 Rule 13 and 15 of the CPC in which the successor Judge can proceed with the suit and the progress already made in the case should not be lost. In support of his contention, he has placed reliance over the judgment of the apex Court in the case of ***Rasiklal Manikchand Dhariwal V/s. M.S.S. Food Products : (2012) 2 SCC 196***. Once the decision has been taken by the competent authority and under his authorization the subordinate officer can issue an order by way of delegation. In support of his contention, he has placed reliance over the judgment of the apex Court in the case of Sidhartha Sarawgi V/s. Board of Trustees for the Port of Kolkata : (2014) 16 SCC 248. He, therefore, prayed for dismissal of the writ petition.

Appreciations & Conclusion

10. Three Oil Companies viz. Bharat Petroleum, Indian Oil Corporation Ltd., and Hindustan Petroleum Ltd. jointly issued the Marketing Discipline Guidelines for retail outlets/dealerships to set very high customer service benchmarks for ONC and their dealer

network. These guidelines are divided into eight chapters and various sub-heads to deal with the procedure for handling products at retail outlets by dealers, handling of MS/HSD/SKO companies, storage point and duties of the oil company, maintenance of companies, types of equipment at retail outlets like dispensing units and other equipments. Chapter 5 provides the type of irregularities at retail outlets and SKO/LDO dealerships. The Chapter 8 provides action to be taken by the OMC under the Marketing Discipline Guidelines. 8.2 defines the critical irregularities. 8.3 defines the major irregularities and 8.4 defines minor irregularities. Sub head 8.8 defines authority to take action. Admittedly, the seal of the metering unit was found tampered in the dispensing unit and the totalizer seal was also found tampered, which comes under the category of critical irregularities and the termination at the first instance will be imposed for the above irregularities if found proven. Sub-Head 8.6 provides that in case of critical irregularities leading to termination, the Head of the State Office/Regional Office/Zonal Office of the concerned OMC or their nominee before recommending/approving the termination of the dealership will provide a personal hearing to the dealer. There is no controversy between the parties about the applicability of these relevant chapters and sub heads of MDG

11. Chapter 5 deals with the type of irregularities at retail outlets. Sub-head 5.1.2 is about the short delivery of products in a case where W&M Department seals are intact. The sales through the concerned unit are to be suspended forthwith and re-calibration and re-stamping are to be done before recommencement of the sale when the W&M

seals are found to be tampered. The seal would be deemed to be tampered if the seal itself is missing, the different seal has been put in, sealing wire is broken and not in one piece. In such cases, the view and opinion of W&M authorities would be obtained and the opinion rendered by the W&M Department should be final and based on the opinion, the penal action would be taken even if the delivery is found to be correct or excess. Sub-heads 5.1.2 and 5.1.3 are reproduced below:

“5.1.2 SHORT DELIVERY OF PRODUCTS

a) With Weights & Measures Department Seals intact

Sales through the concerned dispensing unit to be suspended forthwith and recalibration and re-stamping to be done before recommencement of sales.

(Even if short/excess delivery is found within permissible limit, recalibration and re-stamping to be done before recommencement of sales).

b) With Weights & Measures department Seals tampered

W&M department seals are put on Metering unit and Totaliser unit with the help of a sealing wire and a lead seal which is embossed by W&M inspector.

The seal would be deemed tampered in the following cases also :

1. Seal itself is missing.

2. Different seal has been put other than embossed by W&M inspector.

3. Sealing wire is broken and not in one piece.

In addition other situations which can lead to manipulation of delivery/quantity/totaliser may also be treated as tampering.

In such cases, view and opinion of W&M authorities should be final.

Based on the opinion of the W&M authorities, Penal action to be taken even if the delivery is found to be correct or excess.

In case of this irregularity, sales from the concerned dispensing unit to be suspended, DU sealed. Samples to be drawn of all the products and sent to lab for testing.

5.1.3 TOTALISER SEALS FOUND TAMPERED WITH

Totaliser seals will also be construed as tampered if it allows manipulation of Totaliser reading; deliberately making the totaliser

non functional or not reporting to the OMC if totaliser is not working.

In such cases, views and opinion of W&M authorities would be obtained and the opinion rendered by the W&M department should be final.

In case of this irregularity, sales from the concerned dispensing unit to be suspended & DU sealed. Samples to be drawn of all the products and sent to lab for testing.”

12. Sub-head 5.1.3 of MDG deals with the procedure if the totaliser seals are found tampered with. In such cases, the view and opinion of W&M authorities would be obtained and that should be treated as final. In case of any irregularity, sales from the concerned dispensing unit are to be suspended and DU sealed. Samples are to be drawn of all the products and sent to the lab for testing. Therefore, in the present case, the petitioner's case falls under sub-heads 5.1.2 and 5.1.3. The totaliser seal would also be considered tempered if it allows manipulation of the totaliser reading deliberately making the totaliser non-functional or not reporting to the OMC if the totaliser is not working. There has to be an opinion by W&M that whether it is a case where because of the tempering any manipulation was done totaliser reading or the totaliser was made non-functional. In the present case, the respondents relied on the report given by GVR (Annexure P/5 & P/6), but those reports are not liable to be taken into consideration in case of violation of 5.1.2 and 5.1.3. In respect of DU 0035 in which the W&M seal was found tempered, the Inspector, Shajapur vide letter dated 18.5.2022 has confirmed that the last seal was put on 14.2.2021 in the said DU by the W&M Department and thereafter no permission was given for removal of the seal from main Display Card and accordingly, as per the

photographs of DU 1387 the W&M seal was found tempered. The petitioner in reply to the SCN as well as in this petition did not raise any objection or challenge these opinion. Even if the reports given by the GVR Lab are ignored, but there is no reason for the W&M Department which is an independent statutory authority to give an opinion malafidely against the petitioner. Letter dated 18.5.2022 addressed by Inspector, W&M, Shajapur is reproduced below :

“प्रति,

डीवीजनल रिटेल प्रमुख

इन्दौर मण्डल कार्यालय इन्दौर इण्डियन आईल कार्या. लिमिटेड

विषय:- Non availability of legal Metrology (W &M) seals on display card of D.U. Sr. N. 20130800035 at m/s KANHAIYALAL AND COMPANY, Indian oil Petrol Pump Akodiya Road Shujalpur Mandi, Shujalpur Dist. SHAJAPUR (M.P.)

सन्दर्भ:- आपका पत्र क्रं. IDO/KANHAIYALAL AND COMPANY/W&M dt. 28/04/2022 (कार्यालय में 11/5/2022)

द्वारा:- सहायक मैनेजर (रिटेल सेल्स) शाजापुर सेल्स एरिया शाजापुर
उपरोक्त विषय में सन्दर्भित पत्र में सूचित किया जाता है कि दिनांक 14/7/2021 को सहायक सेल्स मैनेजर (रिटेल सेल्स) देवास/शाजापुर श्री नितिश चौधरीजी की उपस्थिति में Gilbarco-Veeder Root कंपनी के सर्विस इंजीनियर के द्वारा Gilbarco एवं Midco मशीन का कैलीब्रेशन किया गया Gilbarco DU Sr. N. 201308000034 एवं DU Sr. N. 201302001387 को केलीब्रेट कर मेनडिसप्ले कार्ड में Security Plate के साथ, पल्सर यूनिट, कन्ट्रोल

को नाप तौल मोहर (Seal) लगाकर मुद्रांकन कर सत्यापन प्रमाण पत्र
Rs./436/2914/84/2021 dt. 14/7/2021 जारी किया गया।

संस्थान द्वारा DU Sr. N. 201308000034 के मेन डिसप्ले
कार्ड की मोहर हटाने की अनुमति कार्यालय द्वारा नहीं दी गयी।

Gilbarco DU Sr. 201302001387 के CPU नाप तौल मोहर एवं
फोटोग्राम उपलब्ध कराया गया। नाप तौल की मोहर Tempered पायी
गयी।”

13. The only contention of the petitioner is that even if the seal was not there in the machine DU 0035, it was working perfectly and it will not amount to a critical irregularity under the MDG. Such a defence cannot be examined when as per sub head 5.1.2, if the seal itself is missing than it is a case of deemed tempering of the seal of W&M Department and in such case the views and opinion of W&M authorities should be traected as final and the penal action to be taken even if the delivery to be correct or excess. The same analogy applies to the totaliser seal if it is found to be tempered. If the aforesaid conditions are found proved on the basis of the opinion given by the W&M authorities, it comes under the sub head 8.2 – Critical Irregularities and for which only one action is provided i.e. termination of the dealership at the first instance.

14. As per sub head 8.6, in case of critical irregularities leading to termination, the Head of the State Office/Regional Office/Zonal Office will provide a personal hearing to the dealer and which has been done in the present case. Before giving approval or recommendation in this case, the petitioner was called upon to appear in this case on 6.9.2022 and after giving due opportunity of hearing the decision was taken to

terminate the dealership. These guidelines (MDG) are binding on the petitioner, in which, the limited procedure is provided for taking penal action. The said procedural guidelines are not under challenge in this petition by the petitioner. The fact-finding inquiry cannot be compared with a full-fledged trial in civil suits or criminal trials where the witnesses are called upon to depose on oath and the facility of cross-examination is to be given. In the MDG there are categorisations of different types of irregularities and definite and specific penalties/punishment are provided therein. If a particular irregularity is found to be critical and the opinion of statutory authorities i.e. W&M Department, is against the dealer then except termination there is no scope of providing lesser punishment admission per the MDG. If all conditions are fulfilled, then only a limited opportunity of a hearing is liable to be given to the dealer before recommending termination of the dealership agreement. Therefore, the procedure has duly been followed in this case by the IOCL as prescribed in MDG. The action of termination and/or irregularities have been approved by the State Head/ED – Dipak Kumar Basu and thereafter the order of termination has been passed. In view of the above, in the considered opinion of this Court, no scope for interference by the High Court.

15. It is made clear that this court has examined the validity of the impugned action/order in the limited scope of interference by the High Court under Art. 226 of the Constitution of India. If the petitioner is still willing to challenge the opinion given by the W&M department, report given by GVR. inspection report of two members of IOCL, relying on the affidavit of Inderjit Singh on other oral and documentary

evidence on merit, the petitioner is free to approach the Civil court to seek a decree of declaration.

16. Accordingly, this petition is dismissed. However, there shall be no order as to costs.

**(VIVEK RUSIA)
JUDGE**

Alok/-