

**HIGH COURT OF MADHYA PRADESH : JABALPUR**  
**(Division Bench)**

**W.A. No.380/2021**

*Indian Oil Corporation Ltd. & others*  
**-Versus-**  
*M/s Krishna Gas Agency*

Shri Aditya Adhikari, Senior Advocate with Shri Eijaz Siddiqui, for the appellants.

Shri Manikant Sharma, Advocate for the respondent.

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**CORAM :**

**Hon'ble Shri Justice Mohammad Rafiq, Chief Justice.**  
**Hon'ble Shri Justice Vijay Kumar Shukla, Judge.**

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<b><i>Whether approved for reporting ?</i></b>	Yes.
<b><i>Law laid down</i></b>	<i>A show cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee.</i>
<b><i>Significant paragraph No(s).</i></b>	23.

Judgment Reserved on : 9-8-2021  
Pronounced on : 17-8-2021

**[Hearing convened through video conferencing]**

**J U D G M E N T**  
**(Jabalpur, dtd.17.08.2021)**

**Per : Vijay Kumar Shukla, J.-**

The present intra-court appeal has been filed under Section 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand

Nyaypeeth ko Appeal) Adhinyam, 2005, being aggrieved by the order dated 07-01-2021 passed by the learned Single Judge in ***WP-18913-2013 [M/s Krishna Gas Agency vs. Indian Oil Corporation Ltd. and others]***, whereby the writ petitioner filed by the respondent/writ-petitioner [hereinafter referred to as “the petitioner”] has been allowed. The petitioner has challenged the order dated 26-12-2011 passed by the appellants, whereby the distributorship of LPG Gas cylinders granted in the name of M/s Krishna Gas Agency has been terminated.

2. The facts leading to filing of the present appeal as putforth by the petitioner are that Late Manish Yadav was awarded Indane Distributorship at Gadarwara, District Narsinghpur under Physically Handicapped (PH) category in the year 1994 and the distributorship was commissioned under the name and style of M/s Krishna Gas Agency, Gadarwara. Thereafter, Shri Manish Yadav died on 28-8-2007 and, therefore, his wife started taking care of the firm and applied for reconstitution of the firm.

3. The appellants vide letter dated 12-11-2007 approved the proposal of the petitioner and directed her to submit the requisite documents for the reconstitution of the firm. In the meantime, the mother-in-law, namely, Smt. Heera Devi Yadav of the petitioner

preferred a writ petition (WP-8014-2008) before this Court claiming her right to be inducted in the firm as a Partner under the provisions of the Hindu Succession Act and, therefore, intimation in that regard was sent on 15-03-2010 to the petitioner and No Objection Certificates (NOCs) of legal heirs of Late Manish Yadav were also sought from her within fifteen days therefrom. The said writ petition was dismissed on 21-03-2013 having rendered infructuous.

4. The appellants by letter dated 17-9-2009 directed the petitioner to submit the NOC of legal heir, mother-in-law along with an application for reconstitution as per new policy. The petitioner was further directed to make adequate infrastructural arrangements and she was advised to ensure home delivery to the customers and also to ensure that those customers who take re-filled gas cylinders from the godown of the petitioner, are given cash and carry rebate of Rs.8 through INDSOFT. Thereafter, counselling of the petitioner was conducted and vide letter dated 8-9-2010 the appellants proposed to terminate the distributorship of the petitioner owing to irregularities caused by the petitioner-firm. The reply submitted by the petitioner was rejected by the appellants and distributorship of the petitioner was terminated on 26-12-2011 holding that the irregularities found out by the inspecting officers of the appellants were major irregularities and as per Marketing Discipline Guidelines,

2001 [for brevity, “MDG-2001] and penal action was taken. It was also held that the firm was not running in terms of the legal agreement with the appellants and that was also one of the reasons for terminating the distributorship of the petitioner.

5. A detailed reply was submitted by the appellants in the writ petition contending *inter alia*, that Late Manish Yadav was awarded Indane Distributorship at Gadarwara, District Narsinghpur under “PH” category in 1994 and the same was commissioned under the name and style of M/s Krishna Gas Agency, Gadarwara. It was putforth that Late Manish Yadav expired on 28-8-2007 and, therefore, reconstitution proposal was received from the wife of the deceased, Smt. Keerti Yadav on 19-10-2007. The reconstitution proposal was approved subject to furnishing of the NOCs of the legal heirs of the deceased. The appellants refuted that Smt. Keerti Yadav was competent to file the writ petition on behalf of the petitioner-firm, as no NOC was provided by her and besides that, no succession documents establishing that she was the only legal heir of the deceased was furnished by her.

6. As setforth, on 26-7-2008 and 27-7-2008 the petitioner-firm was inspected which revealed that the petitioner was not giving cash and carry rebate to the customers, who were not provided with

home delivery of the gas cylinders and, therefore, a fine of Rs.10000/- was imposed on the petitioner vide Ref : Jabalpur/AO/Inspection/08, dated 03-12-2008 under Clause 14 of the MDG-2001, as the major irregularity was established against the distributorship.

7. It is asserted that on 22-11-2008 a refill audit was conducted by the appellants' "Multi Disciplinary Team" (MDT) and it was established that the petitioner diverted 30 domestic cylinders for non-domestic use and did not extend cash and carry rebate to the customers, who were not provided home delivery facility which led to imposition of major penalty in terms of Clauses (7) and 14 of the MDG-2001 on 7-03-2009 and since this was the second instance in the previous two years and hence, a fine to the extent of Rs.1,00,275/- was imposed and recovered from the petitioner.

8. The appellants further putforth that another refill audit was conducted and major irregularities were pointed out and, therefore, an explanation was sought from the petitioner on 29-7-2010. The reply made by petitioner on 6-10-2010 and 8-10-2010 was rejected, as the same was without any corroboration. It is contended that as per provisions of the MDG-2001, if a major irregularity is established thrice at any distributorship within a span

of two years, then penal action for third instance of major irregularity leads termination of the distributorship. Hence, the distributorship was terminated by the appellants vide order dated 26-12-2011.

**9.** The learned Single Judge has allowed the writ petition filed by the petitioner by the judgment impugned in the present intra-court appeal quashing and setting aside the order dated 26-12-2011 terminating the distributorship of the petitioner on the ground that the decision-making process adopted by the appellants suffers from violation of the principle of natural justice.

**10.** The learned counsel for the appellants submitted that the learned Single Judge has erred in not considering the fact that the petitioner has admitted in paras 6.5 and 6.8 of the petition that the irregularities were minor and very harsh punishment was imposed against the petitioner, but as per the Policy the irregularities were major. It is putforth that as per the prevailing MDG-2001 for LPG distributorship, irregularities were established against the distributorship of M/s Krishna Gas Agency as per Clauses (7) of (14) of the MDG-2001 within the area of distribution made on specific request of customers, were major irregularities. It is asserted that the learned Single Judge has further erred in holding that the principle of natural justice has not been followed, whereas the

petitioner was issued a notice to show cause regarding the irregularities inspected by the appellants at the firm and the petitioner was afforded proper opportunity to put forth her side. Further, the petitioner was given warning by the appellants in respect of irregularities and when she did not make any improvement, the distributorship was terminated by a speaking order.

**11.** It is further submitted that the petitioner/Distributorship agency had been guilty of three major irregularities within a span of two years under the MDG-2001. The dates of detection of the irregularities are mentioned – (i) Major MDG Clause (14) on 26-27<sup>th</sup> July, 2009; (ii) Major MDG Clauses (7) and (14) on 22<sup>nd</sup> November, 2008; and (iii) Major MDG Clauses (7) & (14) and minor MDG Clause (2) on 11-12<sup>th</sup> June, 2010.

**12.** It is urged with vehemence that the learned Single Judge has erred in presuming that by letter dated 20-11-2009 and 12-11-2007 the appellants had finally accepted the proposal for reconstitution of the firm. The learned Single Judge has overlooked the fact that proposal for the reconstitution of the firm was proposed to Smt. Keerti Yadav on 19-10-2007. Since the mother of the deceased dealer also claimed for reconstitution of the dealership, the

appellants had no other option but to direct the petitioner to submit the same.

**13.** The learned counsel for the respondent supported the order passed by the learned Single Judge and assiduously urged that the main reason for termination of the dealership was that it was being run without a valid agreement. After the death of Late Manish Yadav, Smt. Heera Devi and Smt. Keerti Yadav submitted an NOC for running the dealership and the appellants communicated to various authorities to grant NOCs in the name of Smt. Kirti Yadav and she was allowed to run the dealership. Smt. Kirti Yadav submitted proposal of reconstitution of dealership and the same was approved by the Regional Manager as well as Legal Department of the Company on 12-11-2007 as 100% share. Despite approval of reconstitution agreement was not executed by the Company. The Authority has also forwarded all requisites for considering the claim of the petitioner, which included affidavits and NOCs.

**14.** The learned counsel for the respondent also alleged malafide in the matter stating that the Officers of the appellants had arranged the events in such a manner, within a period of two years that the third instance of the major irregularity is attracted in the matter.



**15.** The learned counsel for the respondent further asseverated that a show cause notice was issued, but the details of the consumers were not given, that in respect of whom violation was alleged in the first and second instances. In the third instance the allegations of diversion of 38 gas cylinders and not giving rebate on non-home delivery were levied. The respondent submitted a detailed reply and contended that no inquiry report or documents were supplied to her and along with the reply affidavits of consumers were submitted by her.

**16.** It is strenuously argued that by order dated 26-11-2011 the appellants terminated the dealership of the petitioner by a non-speaking order. It has been passed without considering the reply of the petitioner. Even a single line of the reply of the petitioner is reproduced and no consideration was given to the petitioner while taking stringent action of snatching the sole livelihood of the petitioner, who is a widow having small children. Further the appellants have also failed to consider the affidavits of the consumers and have not reflected the same in the impugned order. It is urged that the order of termination of distributorship is purely reproduction of the show cause notice and it is clear that the show cause notice is also vitiated, as the same was given with premeditated intention.

Further, the impugned order does not reflect the explanation of the petitioner and it is verbatim reproduction of the show cause notice.

**17.** It is pleaded on behalf of the respondent that the show cause notice did not contain the details of the earlier inspection and consumers, as has explained in respect of third inspection and the same has deprived the petitioner to put her explanation or affidavits of consumers which were submitted by the petitioner in respect of the third inspection. Therefore, no proper opportunity was given to the petitioner and the show cause notice was vitiated.

**18.** We have heard the learned counsel for the parties and bestowed our anxious consideration on the arguments advanced. We have also perused the records produced by the learned counsel for the appellants showing material regarding three instances of major irregularities.

**19.** The respondent was served with a show cause notice of termination of distributorship, vide communication dated 26-12-2011. Vide memo dated 8-9-2010, the following informations were supplied by the appellants to the respondent in the show cause notice, regarding three instances of major irregularities :

**“The first instance of major irregularity :**

During the inspection on 26 & 27-07-2008, it was found that the distributorship is not providing home delivery facilities to the customers and not passing on the Cash-N-Carry rebate to the customers on non-home delivery. This constitutes major irregularity under Clause 14 of the LPG MDG-2001 and is treated as the first instance of major irregularity by the distributor and a penal action was taken as per the norms laid down in the said guidelines. Accordingly, fine of Rs.10000/- was levied and paid by you vide DD No.655870 dated 13-02-2009.

**The second instance of major irregularity :**

During the refill audit conducted by a team of officers on 22-11-2008 it was found that 30 domestic cylinders were diverted to non domestic use and Cash-N-Carry rebate was not provided to the customers to whom cylinders were not home delivered. This constitutes as major irregularity under clauses 7 & 14 of the LPG MDG, 2001 and is treated as the second instance of major irregularity by the distributor and a penal action was taken as per the norms laid down in the said guidelines, and a fine of Rs.100275/- was collected from the distributorship vide debit note No.500098, dated 01-6-2009.

**The third instance of major irregularity :**

During the refill audit conducted on 11 & 12-06-2010 by Asst. Manager (LPG-S) Sagar for M/s Krishna Gas Agency, Gadarwara many irregularities were observed and established.

*Diversion of 38 domestic cylinders for non-domestic use. This is treated as third instance of violation of MDG-2001, under major clause No.7 in a span of two years.*

*Not giving rebate on non home delivery of cylinders to the customers (con. no.1074, 1023, 8287 and 110). This is treated as third instance of violation of MDG-2001, under major clause no.14 in a span of two years.*

*Unauthorized/unapproved non-home delivery of cylinders to consumer no.23085, 7740, 1074, 1076, 1022, 1059, 1023, 1126, 5901, 85557, 22213, 8287,*

*110, 1049, 5310, 7521, 7885, 22193, 22482 & 531. This is treated as first instance of violation of clause no.2 of minor irregularities of MDG-2001.*

Our Jabalpur Area Office has sought your explanation on the irregularities observed vide letter ref.JAO/DIST/66 dated 01-7-2010. Your explanation letter dated 26-7-2010 was received by Jabalpur Area Office on 29-7-2010. After going through your explanation letter, your reply has not been found to be satisfactory. The above mentioned irregularities are established against M/s Krishna Gas Agency, Gadarwara.”

**20.** On going through the aforesaid notice, it is clear that the details of the consumers were not given in respect of whom violation was alleged in the first and second instances. In the third instance, the allegation of diversion of 38 domestic cylinders in not giving rebate on non-home delivery were levelled. The show cause notice did not contain details of earlier inspection and consumers as has been explained in respect of third inspection and the same has deprived the petitioner to furnish her explanation or affidavits of consumers.

**21.** The appellants as well as respondent have relied on the judgment of the Apex Court rendered in the case of **Gorkha Security Services vs. Government (NCT of Delhi) and others, (2014) 9 SCC 105**. In the said judgment pertained to challenge of blacklisting of a consumer. In the factual background it was held that it is mandatory requirement to mention that action of blacklisting is

proposed; or it should be possible to draw clear inference to this effect from notice. The show cause notice only mentioning that costs were liable to be levied and other “actions taken as deemed fit” against the appellant-firm, but the notice was silent on contemplated action of blacklisting. It was ruled by the Supreme Court that is incumbent on the part of the Department to state in show cause notice that it intended to impose a penalty of blacklisting, so as to provide adequate and meaning opportunity to show cause against the same. However, even if it is not mentioned specifically but from the reading of the show cause notice, it can be clearly inferred that such an action was proposed, that would fulfil this requirement.

**22.** In the case in hand, the show cause notice lacks the substantial material to propose of termination of dealership of the respondent and it does not contain the details of the earlier inspection and consumers. Even, the records produced before us, do not indicate the same.

**23.** In a recent decision of the Apex Court rendered in the case of **UMC Technologies Private Limited vs. Food Corporation of India and another, (2021) 2 SCC 551**, it is ruled that a show notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly

inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting.

**24.** In the instant case, the show cause notice was not clear and specific, as it did not contain the details of the consumers, which has deprived the respondent/writ-petitioner to put-forward her explanation and affidavits of customers, as she has submitted in respect of the third instance. Thus, the show cause notice is vague, which has resulted in denial of proper opportunity to the respondent to defend herself, in a case where an order of termination of dealership has been passed by the appellants. The learned Single Judge has rightly held that the appellants/respondents have already taken a decision and approved the proposal for reconstitution of the firm. From the letter dated 20-11-2019 as well as letter dated 12-11-2007, it is luminescent that the appellants have admitted that the proposal for reconstitution of the firm has been approved by them. Once the authority itself has accepted the proposal and approved the same for reconstitution of the firm, after the death of the husband of the petitioner showing that the said agency is only the source of her livelihood and the proposal was accepted by the appellants.

Thereafter, if any objection is raised by the mother-in-law of the petitioner and even thereafter, she was allowed to run the agency by the appellants, its termination, denial of renewal of licence on the ground of non-submission of NON from her mother-in-law has been held to be not justified and unreasonable. The learned Single Judge has taken note of the letter dated 8-9-2010, which is appended as Annexure-P/8 to the writ petition. The relevant portion of the said letter is reproduced hereunder :

*“After the sad demise of Shri Manish Kumar Yadav, on 28-8-2007, both Smt. Kirti Yadav w/o Late Shri Manish Kumar Yadav & Smt. Heera Devi Yadav, mother of Late Manish Kumar Yadav, have given an application for keeping the supplies to distributorship running. On humanitarian ground Corporation allowed the distributorship to run.”*

**25.** The contents of the above-referred letter makes it limpid clear that the appellants have allowed the respondent to run the Distributorship/firm which was initially allotted to her husband, Late Manish Kumar Yadav. Accordingly, the stand taken by the appellants that in absence of NOC of the mother-in-law of the respondent, she is not entitled to claim renewal of the licence and the petition challenging the order of termination of Distributorship of the agency is not tenable, is unsustainable and the said stand was rightly rejected by the learned Single Judge and he has rightly held that the decision-

making process adopted by the appellants was violative of the principle of natural justice.

26. For the premised reason, we do not find any merit in the contention of the learned counsel for the appellants that the direction to continue the LPG distributorship could not have been granted in view of Section 14(c) of the Specific Relief Act. The aforesaid relief is ancillary to the main relief, as the order of termination of dealership was set aside.

27. In view of our preceding analysis, we do not perceive any illegality in the order passed by the learned Single Judge allowing the writ petition and we concur with the findings ascribed by the learned Single Judge in the writ jurisdiction.

28. Resultantly, **the writ appeal, being sans substratum, is dismissed** without any order as to costs.

**(Mohammad Rafiq)**  
**Chief Justice**

**(Vijay Kumar Shukla)**  
**Judge**

*ac.*