

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 6.7.2012**

+ **W.P.(C) Nos.9432-33/2005**

M/s Bharat Filling Station & Anr. ...Petitioners

versus

M/s Indian Oil Corporation & Anr. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. N.S.Mathur Advocate

For Respondents : Mr. M.M.Kalra Advocate with Mr. Kunal Kalra
Advocate for Respondent no.1.
Mr. Ruchir Mishra Advocate with Mr. Mukesh
Tiwari Advocate for Respondent no.2

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

ANIL KUMAR, J.

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1. The petitioner has filed the above noted petition seeking quashing of order dated 14th July,2003 terminating the dealership, agency of the retail outlet functioning under the name and style M/s Bharat Filling Station and a writ of mandamus directing the respondent to restore the dealership and restore the possession of the retail outlet and an appropriate writ directing the respondents to compensate the petitioners @ Rs.2.4 lakhs per month w.e.f June, 2001.

2. Brief facts to comprehend the disputes are that the petitioner no. 2, a disabled War veteran, was allotted a retail outlet for the sale of petrol and petroleum products by the respondent no.1, Indian Oil Corporation, at Gurgaon Road, near Palam New Delhi on 11th July, 1997 under a scheme of allotment of petrol pumps on preferential basis to Ex-servicemen, particularly those who suffered disabilities while in action. Petitioner no.2 started a petrol pump under the name and style of Bharat Filling Station (Petitioner no.1). Though initially petitioner no.2 was the sole proprietor of petitioner no.1, it was subsequently converted into a partnership firm consisting of petitioner no.2, his son - Flying Offr. Bharat Mehra (Retd.) and his daughter Ms. Monish Mehra Makhija, as partners of said petitioner no.1. An agreement dated 8th February, 1998 was executed between the petitioner no.2 and the respondent no.1 for running the aforesaid outlet. Though the agreement was for a period of five years, it was renewed from time to time and was lastly renewed on 2nd May, 1999.

3. On 10th June, 2001 the Economic Offences Wing, Crime Branch, Delhi Police along with the officials of the respondent no.1 corporation came for inspection at 8 P.M. at the petitioners' petrol pump on the basis of some complaint filed before them and inspection was carried out. According to the respondents during this inspection it was found that 3 Z-line dispensing units (2HSD & 1MS of 2-3 wheelers) were

having extra fittings which were not part of original equipments. It was alleged that an extra switch was installed in the sloping column inside nozzle boot resulting in delivering short supply of 200 ML in every 5 litres. The officials of L&T were called to check the equipments, who confirmed that the extra switch installed by the petitioners in the aforesaid 3 Z-line machine was not a part of the original equipment supplied by them. On the basis of this inspection, the petitioner No. 2 was arrested on the same day i.e. 10.6.2001 and an FIR was lodged by the Crime Authorities under Section 120 and Section 420, IPC against him. On the basis of aforesaid alleged irregularities as found in the investigation, the respondent no.1, terminated the dealership of the petitioners vide communication dated 13th June, 2001.

4. The petitioners challenged the order of termination by filling a writ petition (CWP No. 3916 of 2001) before this Court. The High Court by an order dated 18th March, 2003 quashed the Termination order dated 13th June, 2001 holding that the order was passed in violation of the principles of natural justice as the petitioners were not given an opportunity of being heard and directed the restoration of petrol pump and its dealership to the petitioners. This Court passed the following order:

"..... The result of the aforesaid discussion is that this writ petition is allowed. Rule is made absolute. Termination order dated 13th June, 2001 is hereby quashed.

It may be mentioned at this stage that before this writ petition could be filed the respondent had taken over the possession of the petrol pump. It is being run by the respondent no. 2 at present. Since the termination order dated 13th June, 2001 is quashed, the respondent no 2 shall restore the position of this petrol pump to the petitioner. The respondent no. 2 shall be at liberty to take appropriate action after complying with principles of natural Justice and **in accordance with marketing discipline guidelines.**

In the facts and circumstances of the case there shall be no order as to costs."

5. Aggrieved by the above said order and judgment dated 18th March, 2003, the respondent no.1 preferred a Letters Patent Appeal being LPA No. 299 of 2003. However during the pendency of the LPA the respondent Corporation accorded the petitioners a post decisional hearing, consequent to which by an order dated 18th July, 2003, the termination order dated 13th June, 2001 was maintained. The Hon'ble Division Bench disposed of the LPA No. 299 of 2003 by an order dated 18th July, 2003 stating:

".....During the pendency of the appeal the appellant was protected but in the meanwhile the enquiry has been conducted, post decisional hearing has been given and the decision has been taken in accordance with law according to the appellant. Therefore now it would be for the appellant to challenge the order dated 14th July, 2003. It would be open for the parties to raise all the contentions/question which are raised herein, if the petition is filed by the respondent herein. This appeal having become infructuous, stands disposed of."

6. Thereafter the petitioner filed the present petition challenging the order of termination dated 14th July, 2003 after allegedly giving him post decisional hearing. The petitioner no. 2 has averred in his petition that despite the Division Bench of this Court having afforded him liberty to file a petition challenging the validity of the Order of Termination dated 14th July, 2003, he was unable to institute a petition before 24th May, 2005 as his physical condition had been fragile and perilous.

7. The Petitioner no.2 submitted that over the past few years he had been diagnosed with CAD Angina Pectoris, Ischaemic heart disease, Osteophytes with Sclerosis, Episodic dizziness, neural disorder, high blood pressure, Hypertension Cervical Spondylosis, Chronic Bronchitis, Cervical Radiculopathy, vertigo, tingling and numbness of both arms and an undiagnosed neuro problem causing a sleep disorder and since the treatments had been undergoing, it prevented him from filing the present petition on an earlier date immediately after 18th July, 2003 when liberty was given to him to challenge the order of termination of his dealership.

8. The petitioner has contended that the termination order dated 14th July, 2003 is arbitrary and discriminatory as both M/s. Libra Filling Station and M/s Bharath Filling Station had been raided on 4th June and 10th June, 2001 respectively and charged with short

deliveries of 25% and 5% respectively and both had their dealerships terminated. However the possession of the petrol pump was restored back to M/s Libra Filling Station, pursuant to a settlement reached between the respondent no.1 Corporation and Libra Filling Station even though the short delivery in their case was 5 times that of the petitioners, whereas the dealership of the petitioners still stands terminated and has not been restored. The petitioners have also cited the cases of M/s. Hemkunt Service Station and M/s. United Engineers Service Station v. Union of India (judgment dated 25-11-2005 in WP(C) No. 2281/2003) to contend that the usual disciplinary action in cases of short delivery is only suspension of sales and services and the termination of dealership of the petitioners in the present case is arbitrary and discriminatory.

9. The petitioners also contended that the post-decisional hearing that was accorded to them by Respondent Corporation was not a proper hearing, as access to the relevant documents and inspection of the alleged extra switches was denied to the petitioner. The petitioner submitted that though he had made an application to the respondent no.1 corporation vide letters dated 12th May, 2003 and 17th May, 2003 seeking the inspection of the alleged extra fittings and the production of a complete set of documents on the basis of which the Show Cause Notice was issued, however, the respondent no.1 declined to provide

inspection of the machines and equipment in question without any cogent and legally sustainable reasons. The petitioners further alleged that the respondent no.1 corporation declined to hand over the documents as sought and that they conducted the post decisional proceedings in undue haste. The petitioners contended that the denial of the inspection of the Dispensing machines have caused great prejudice in their defense, as without examining and inspecting the same, the petitioners could neither explain nor account for their presence/absence. It was also submitted that the respondents in their letter to the petitioners, dated 21st May, 2003, had stated that they were not in a position to provide inspection of the said machines as the dispensing units which were found to have extra fittings during the raid were sealed by the police authorities and the criminal proceedings lodged against the petitioners were still pending. However, M/s Larsen & Turbo were allowed to inspect the 3 dispensing units on 11th June, 2001 though the same has been professed to have been sealed on 10th June, 2001.

10. The petitioners have contended that the enquiry conducted by the respondent Corporation was defective as no specific enquiry officer was appointed to conduct the enquiry. It was submitted that the Show Cause Notice was issued by Mr. Ravi Prasad on behalf of Mr. A.K. Verma, the Chief Divisional Sales Manager. On 12th May, 2003 when

the petitioners had appeared they were heard by Mr. Ravi Prasad, however, on 28th May, 2003 they were heard by Mr. A.K. Verma. The petitioners further contended that no rules or procedure were laid down by the respondent no.1 Corporation for conducting the enquiry and that no enquiry report was ever prepared or handed over to the Disciplinary Authority. It was also contended that no opportunity to argue was granted at the hearing on 28th July, 2004, after the filing of reply on 28th May, 2004.

11. The petitioners have contended that the impugned order is neither a reasoned nor a speaking order and that none of the grounds set out in the reply by the petitioners were considered by the Disciplinary Authority. It was averred that the order merely records

‘Reply not found satisfactory. No cause to recall the earlier Order of Termination.’

The petitioners have further contended that the Order of Termination proceeds on the basis that in his reply to the Show Cause Notice, petitioner no. 2 had admitted that extra fittings were installed in the machine resulting in short delivery. However it is averred that in the reply to the show cause notice, petitioner no. 2 had stated that he gave a three line statement that he knew nothing about the extra fittings in the 3 units.

12. The petitioners have contended that the impugned Order of Termination is illegal as it proceeds as if it was a continuation of the earlier enquiry. It was averred that the earlier order of termination was set aside by this Court and the respondents were directed to conduct a fresh enquiry. However, the impugned order records that there was no reason to recall the earlier order of termination.

13. The petitioners have contended that they were allegedly given the post decisional hearing contrary to the express finding of this Court in its Judgment dated 18th March, 2003 rendered in CWP No. 3916 of 2001. It is averred that this Court had clearly found that the alleged offence cannot be said to be so grave that it was necessary to dispense with the requirement of observance of Show Cause Notice. It was contended that a post-decisional enquiry can be contemplated only when the danger to be averted or the act to be prevented is imminent or where the action to be taken can brook no delay and that the circumstances of the present case does not justify a post decisional hearing. The petitioners have relied on *Liberty Oil Mills v. UOI*, 1984 (3) SCC 465 and *Allied Motors Ltd. v. Bharat Petroleum*, 2004 (76) DRJ 720 in support of their contention.

14. The petitioners has further contended that the impugned order is contrary to the 'Marketing Discipline Guidelines', in particular Chapter 6-'Prevention of Irregularities at Retail Outlets', as the said guidelines do not contemplate such a major penalty as termination of dealership for a minor irregularity of short delivery of products at the first instance. Relying on Delhi Petrol Dealers Association & Anr. v. Union of India, 81 (99) DLT 400 the petitioners have contended that the Marketing Discipline Guidelines, which were framed to prevent arbitrariness and discrimination by the respondent no.1 corporation in their dealings with the retail outlets, have the force of law and that the respondent no.1 corporation was bound to follow them. The petitioners further contended that despite the express and specific direction of this Court, given in the order dated 18th March, 2003 to take appropriate action after complying with the principles of natural justice and in accordance with the Marketing Discipline Guidelines, the respondents has not conducted the enquiry proceedings nor levied the penalty in accordance with the Marketing Discipline Guidelines. The petitioners further contended that the respondents **has not set out any reasons for departing from the guidelines** and imposing the major penalty of termination in its order of termination dated 14th July, 2003 and therefore, the order is illegal, non-est and liable to be set aside.

15. The petitioners have further contended that the nature of the penalty levied must necessarily have a nexus with the duration and magnitude of the alleged infraction. The petitioners submitted that their retail outlet had an impeccable record of service and efficiency. The petitioners contended that the past record and performance of the petitioner at the filling station and the previous inspection records by various agencies till a week before the raid on 10th June, 2001 were not considered by the respondents while making the order of termination. It was submitted that the Retail Outlet Inspection Report dated 27th November, 2000 had recorded that the Weight and Measures seals and the Totalizer seals were intact and the delivery at the 6 Dispensing Units randomly inspected out of the 13 dispensing units were found to be correct. The report of another Retail Outlet inspection conducted on 19th February, 2001 had also recorded that all the seals were intact and the delivery at the 6 inspected Dispensing Units were correct. It was also recorded in the report that the sales in the Trading Area was more than the Trading Area Average and that the dealer enjoyed a good reputation. An inspection conducted by the Area Sales Manager of the Respondent Corporation on 19th May, 2001 had also found the seals to be intact and the delivery of the 6 dispensing units inspected was found to be correct. A random inspection conducted by Mrs. Banerjee, an official of the respondent Corporation on 28th March, 2001 had found that one Dispensing Unit for Petrol and one Dispensing Unit of High Speed Diesel were delivering excess quantities and the petitioners were

advised to re-stamp those Dispensing Units. On 3rd June, 2001, one week prior to the inspection that led to the discovery of the alleged irregularities, Mr. Marwah, Director, Marketing of the respondent Corporation had conducted a surprise comprehensive inspection of the petitioners' petrol pump and no complaint of any short delivery was made. The only irregularity found was that the sales and other rooms were found to be locked and without lights resulting in the entire building being dark and other similar minor irregularities. The petitioners further contended that the alleged infraction in the present case even theoretically could not have exceeded 7 days as the inspection conducted by the Director, Marketing of the respondent Corporation on 3rd June, 2001 had not found any instance of short delivery and therefore, the highest penalty of termination of dealership was unwarranted.

16. The petitioners have contended that the raid conducted by the Economic Offences Wing on 10th June, 2001 was pre-determined and mala-fide. The petitioner has submitted that the Chief Divisional Manager, Marketing Division and The Area Sales Managers had demanded illegal gratification from the allottees of the various retail outlets on a regular basis and victimize those who do not submit to their illegal demands. It was also submitted that there is a general resentment towards dealers from the defense background as they do

not generally comply with these practices of entertaining and gratifying such officials. It was further submitted that presently only one defense officer is running the petrol pump allotted to him. It was also submitted that as the petitioners had refused to oblige the contractor appointed by the respondent no.1 Corporation, various structural and civil defects such as leaking office ceiling, faulty electrical wiring and system survived the revamping of the petitioners' outlet under the Vision 2000 scheme. It was also submitted that Mr. Rakesh Arora, the Area Sales Manager of the respondent no.1 Corporation from 1991 to 2001 had informed the Petitioner sometime in April, 2001 that he had been instructed by Mr. G. Tewari, the Chief Divisional Manager to discover some pretext of irregularity and to shut down the outlet, as they wanted to re-allot the same to some more obliging allottee. The petitioners have further contended that the mala-fide of the respondent no.1 Corporation is clear from the fact that no officials of the manufacturers of the original equipment, M/s. Larsen & Turbo, nor any of the Department of Weights and Measures were present at the time of the raid. It was submitted that the 3 dispensing units were sealed on the night of the raid itself without ascertaining whether the alleged extra fittings were 'extra' or original fittings and part of the original equipment. It is further submitted that only the Department of Weights and Measures have the authority to conduct verification under the Standards of Weights and Measures (Enforcement) Act, 1985 and to issue certificate of verification. However no official of the said

department was present at the time of the raid nor was any certificate of verification obtained from them subsequently to verify the allegation and charge of short delivery. It was further submitted that neither petitioner no. 2 nor the Manager, Shri. Jai Bhagwan was present at the retail outlet at the time of the raid and the employees who were present were confined to a room during the duration of the investigation. Though petitioner no. 2, on arriving at the outlet later on, had requested that the sealing tape be removed and he be shown the alleged extra switch, he was not allowed to go near the dispensing units nor shown the switch.

17. The writ petition is contested by the respondents. The respondent no.1 has filed a counter affidavit contending inter alia that the petition is highly belated and has been filed simply to harass the respondent no.1. It is averred that the LPA which the present respondents had preferred against the order of the High Court dated 18th March, 2003 was disposed off vide order dated 18th July, 2003, as a post decisional hearing was given to the petitioners and the termination order was upheld by the competent authority. As the petitioner did not prefer an appeal against the said order he cannot now be permitted to raise the same issue in another writ petition. It is further contended that the simple pretext that petitioner no. 2 was not well and hence he could not file a writ petition before is not sufficient ground for filing the present

writ petition at such a belated stage. It was submitted that the dealership of M/s. Bharath Filling Station is a partnership firm and that the petitioner has given no explanation as to why the writ petition was not filed earlier through the other partners.

18. The respondent no.1 has contended that in the dealership agreement entered into between the parties, there is a valid arbitration clause which clearly lays down that in case of any dispute between the parties to the agreement the same shall be referred for arbitration in accordance with the agreement inter se between the parties and therefore the writ petition is not maintainable. The respondent no.1 has also contended that the dealership agreement between the parties is determinable in nature and can be terminated by either party by giving notice and therefore the writ petition is not maintainable as the petitioner cannot force the respondent no.1 to restore the dealership in favour of the petitioners.

19. The respondent no.1 has contended that the facts in the case of M/s. Libra Filling Station are entirely different from that of the present case. It was submitted that in the case of Libra Filling Station there was a question of short delivery, but in the present case the delivery system had been tampered with by putting extra fittings which were not part of

the original equipments and therefore the action of termination taken against the petitioners is fully justified.

20. The respondent no.1 has contended that the Division Bench of this Court while hearing LPA No. 299 of 2003 had permitted the respondent no.1 corporation to give post decisional hearing to the petitioners and since the petitioners had not preferred an appeal against the said order of the Division Bench, they should not be allowed to challenge the said decision at this stage. It is further contended that the petitioners themselves had participated in the post decisional hearing in response to the show cause notice and therefore they have no right to say that the post decisional hearing was not proper. It is contended that the petitioner has been given a proper opportunity of being heard and that the principles of natural justice have been followed by giving post decisional hearing under the order of the Division Bench.

21. The respondent no.1 has contended that the action of termination was taken as per the terms of the dealership agreement. It was contended that the petitioners committed serious breach of the terms of agreement as well as serious malpractice and therefore the dealership of the petitioner was cancelled. It was submitted that petitioner no. 2 had unilaterally limited his role as a dealer and delegated responsibilities to

individuals who were not part of the firm in contravention to clauses 45 and 47 of the dealership agreement. It is further submitted that the decision to terminate the dealership was taken principally on account of the violations of clause 16, 23 and 56(k) of the dealership agreement.

22. The respondent has submitted that the Marketing Discipline Guidelines are not a sufficient and complete document for defining the conduct of dealers and that the same are not applicable in the present case in as much as the petitioner was found to be involved in tampering with the fittings of the dispensing unit by putting extra fitting. It is not only a serious offence but also against public interest to allow such persons to continue business. It was therefore an extreme case where the dealership was liable to be terminated. It is further contended that even otherwise the order of termination was in accordance with the Marketing Discipline Guidelines as the respondent is authorized under the guidelines to take the extreme action of termination in extreme cases like the present case.

23. The respondent has further contended that the previous inspection reports by the various agencies till a week before the raid on 10th June, 2001 were not relevant in as much as at the time of the raid the petitioner was caught red-handed of installation of extra fitting in the dispensing units by the officials of the Economic Offence Wing. It

was further contended that once a person has been caught red-handed committing a serious offence he cannot take the benefit of his earlier conduct.

24. The respondent has submitted that though the earlier order of termination was set aside by a single Judge of this Court by an order dated 18th March, 2003, the operation of the order was stayed by a Division Bench of this Court in an LPA filed against the said order. Thereafter permission was taken from the Division Bench to give a post decisional hearing and accordingly a hearing was given and order of termination sustained. It was contended that the termination was subsisting even at the time of giving the show cause notice as permission was taken from the Court for a post decisional hearing and therefore there is no continuation of illegal proceedings as alleged by the petitioner.

25. This Court has heard the learned counsel for the parties on various the respondents pursuant to show cause notice dated 7th May, 2003 given during the pendency of appeal filed by the respondents against the order dated 18.3.2003 passed in CWP 3916 of 2001 setting aside the order of termination dated 13th June, 2001 and directing the respondents to restore the petrol pump to the petitioners. The Court has also perused the file of M/s Libra Filling Station produced by the

respondents whose dealership was also terminated, however, it was restored by the respondents in 2003 though the allegations against the said dealer were also of short supply.

26. The order of termination of dealership of the petitioner by order dated 13.6.2001 was set aside in the earlier writ petition and the respondents were directed to restore the dealership to the petitioners. The respondents had not complied with the principles of natural justice which was one of the grounds for setting aside the order of termination dated 13.6.2001. Thereafter, during the pendency of appeal, the respondents gave a notice to the petitioner and has again held by order dated 14.7.2003 that the order of termination dated 13.6.2001 is sustainable. The question for consideration in this writ petition is whether the order dated 14th July, 2003 has been passed in compliance with the principles of natural justice and whether the order of termination of dealership dated 13th June, 2001 can be sustained.

27. Whether the alleged post decisional hearing is in compliance with the principles of natural justice and on the basis of it the respondents can sustain the order of termination of dealership of the petitioners? The respondent no.1 has contended that the post decisional hearing has been given after taking the permission of the Division Bench of this Court and the petitioners not having challenged the order allowing post

decisional hearing and having voluntarily participated in the post decisional hearing cannot now challenge the post decisional hearing.

28. The concept of post decisional hearing was developed to maintain a balance between administrative efficiency and the requirements of law, justice and fairness. In emergent situations requiring immediate action, where the observance of the requirement of a pre-decisional hearing would defeat the very purpose of taking the action the Courts have permitted post decisional hearing to substitute the requirement of a pre-decisional hearing. **Even in such emergent situations, the post decisional hearing should not be reduced to an empty formality.**

The quasi judicial body is required to give the offending party a proper hearing, by informing the offending party about the materials on which they had relied in taking the action, giving him an opportunity to rebut the evidence led against him and an opportunity to present evidence to defend his case. Further it is imperative that the quasi judicial body gives well reasoned speaking orders, as it will ensure that the quasi judicial body applies its mind to the problem at hand and do not treat the post decisional hearing as a mere formality. The practice of quasi judicial bodies treating post decisional hearing as a mere formality doesn't subscribe to the requirement of fairness. In fact the Apex Court has refused to allow post decisional hearings because of the tendency of the quasi judicial bodies to uphold its decisions and the post decisional

hearing being reduced to a mere formality. In H.L. Trehan & Ors. V. Union of India & Ors. the Apex Court had observed:-

“ In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. In this connection, we may refer to a recent decision of this Court in K.I. Shephard and Ors. v. Union of India and Ors. JT 1987 (3) 600. What happened in that case was that the Hindustan Commercial Bank, The Bank of Cochin Ltd. and Lakshmi Commercial Bank, which were private Banks, were amalgamated with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn under Section 45 of the Banking Regulation Act, 1949. Pursuant to the schemes, certain employees of the first mentioned three Banks were excluded from employment and their services were not taken over by the respective transferee Banks. Such exclusion was made without giving the employees, whose services were terminated, an opportunity of being heard. Ranganath Misra, J. speaking for the Court observed as follows:

We may now point out that the learned Single Judge of the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand, the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could now represent and their cases could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then given them an opportunity of representation when the requirement is that they should

have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose.

The view that has been taken by this Court in the above observation is that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. Thus, even if any hearing was given to the employees of CORIL after the issuance of the impugned circular, that would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution.”

29. In the present case the respondent no.1 corporation seems to have treated the post decisional hearing as a mere mechanical exercise to validate the earlier illegal order of termination that had been passed by them. The respondent no.1 corporation had not laid down any rules or procedure for conducting the enquiry proceedings. The enquiry had been conducted by two different officials and neither of them seems to have submitted any enquiry report to the authority who had to take punitive action against the petitioners. Further the disciplinary authority doesn't seem to have taken into consideration any of the defenses taken by the petitioners in the reply to the show cause notice submitted by them, while making the order of termination.

30. During the pendency of the Letters Patent Appeal filed by the respondents against the judgment dated 18th March, 2003 in Civil Writ Petition No.3916/2001 setting aside the termination order dated 13th June, 2001 and directing the respondents to restore the possession of the petrol pump to the petitioner, the show cause notice dated 7th May, 2003 was given by Sh. Ravi Prasad for Chief Divisional Retail Sales Manager to the petitioner alleging inter-alia that on 10th June, 2001 on Inspection by Economic Offence Wing of Crime Branch, Delhi, it was found that three Z-line dispensing units (2 HSD & 1 MS of 2-3 wheelers) were having extra fittings which were not part of the original equipment resulting in short supply of 200 ml in every 5 Litres; the L&T expert who had supplied the equipment had also confirmed the extra switch installed by the petitioners which was not the part of the original equipment leading to filing of an FIR No.239/2001 under Section 120 and under Section 420 of IPC. The alleged malpractices were in violation of the terms and conditions of the agreement more particularly Clause 16, 23 and Clause 56(k) and were also in violation of MS/HSD Control Order 1998 and Weight and Measures Act. On account of it the dealership agreement was terminated on 13th June, 2001, however, in compliance with the order of the Court the petitioners were directed to show cause within 7 days as to why the dealership agreement should not have been terminated by filing a reply and the petitioners were also permitted to appear before Sh. Ravi Prasad on 12th May, 2003.

31. The alleged show cause notice dated 7th May, 2003 was replied by communication dated 12th May, 2003. In reply to the allegations made in the show cause notice it was categorically stated that the show cause notice and alleged enquiry initiated by the respondents was with the sole purpose of completing a mere formality as the respondents have already arrived at a pre determined conclusion adversarial to the petitioners.

32. The petitioners categorically demanded the inspection of alleged extra fitting and a complete set of documents on the basis of which the alleged show cause notice dated 7th May, 2003 was issued as after 10th June, 2001 neither the inspection of alleged extra fittings was given nor even access to the petrol pump was given to the petitioner nor any documents have been supplied to the petitioners on the basis of which the allegations made against the petitioners could be inferred. The respondents had alleged that Officials of L & T had confirmed the alleged extra fittings, however, there report was also not given to the petitioners so that they could reply to the allegations made against them.

33. The petitioners, thereafter, on 17th May, 2003 sent another reminder and a reply to show cause notice dated 7th May, 2003 seeking inspection of alleged extra fittings which allegedly had led to short

supply of fuel on the basis of which the whole case had been made out by the respondents against the petitioners.

34. In reply to the demand by the petitioners for inspection of the alleged extra fittings which was the basis for taking action against the petitioners and the alleged documents, the respondents sent a letter dated 21st May, 2003 alleging that the police authorities during the raid had sealed the alleged extra fittings and since the criminal case was still pending, therefore, the inspection of the dispensing machine with alleged extra fittings could not be provided to the petitioners. The respondents, however, provided the copies of the inspection report carried out by the concerned officials. The respondents, however, did not provide the reports of L & T officials confirming the alleged presence of extra fittings in the pumps. By letter dated 21st May, 2003 the petitioners were asked to file a reply to show cause notice within four days.

35. A detailed reply dated 28th May, 2003 was filed by the petitioners. In the reply besides the various details given by the petitioners, they categorically stated the particulars of surprise and routine inspection earlier carried out by various agencies and by Weight and Measure officials in which nothing was found. The details of inspections carried

out earlier by various agencies including the officials of respondents are as under:-

By Weights and Measures Officials (Annexure-III)

Dispensing units and their nozzles checked for accuracy and stamped	24/6/2000
Dispensing and their nozzles checked for accuracy stamped	29/7/2000
Dispensing units and their nozzles checked for accuracy and stamped	9/3/2001
Surprise Checked by weights and measures found every Pump within limits	11/11/1999

Hence the legal authorities charged with a duty to ensure correct delivery of MS and HSD, duly certified that the dispensing units with their nozzles were in compliance with the legal standards and hence in perfect order. The last certificate before the incident, dated March 9, 2001 reflects this position clearly even, during the raid by the Police, the stamped seals on the dispensing units were found intact.

By Indian Oil Officials (Annexure-II)

- SLV Retail Outlet Inspection and Analysis Report Sales Average-More than Trading Area	19/05/2001
Dispensing Unit Report-Delivery check within limits - Random surprise Inspection by Mrs.SC Banerjee, Sr.Consumer manager 2 HSD pumps showing excess delivery	28/3/2001
Dispensing Unit Report-Delivery check within limits -SLV Retail Outlet Inspection and Analysis Report	19/2/2001
Remarks-Sale more than Trading Area due to good reputation of the Dealer Dispensing Unit Report-Delivery check within limits	

-SLV Retail Outlet Inspection and Analysis Report 27/11/2000

Remarks-Sale more than Trading Area due to good reputation of the Dealer

Dispensing Unit Report-Delivery check within limits

-Surprise Mobile Lab Test of MS/HSD by State Level Coordinator 07/12/2000

Remarks-Density of all samples within limit

-SLV Retail Outlet Inspection and Analysis Report 26/09/2000

Remarks-Sale more than trading area.

Dispensing Unit Report-Delivery check within limits

-SLV Retail Outlet Inspection and Analysis Report 28/08/2000

Remarks-Sale more than trading area.

Dispensing Unit Report-Delivery check within limits

- Surprise Mobile Lab Test of MS/HSD by State Level Coordinator 12/05/2000

Remarks-Density of all samples within limit

36. Perusal of the record of alleged enquiry which was produced by the respondents, reveals that on the basis of alleged show cause notice dated 7th May, 2003 and replies given by the petitioner, a note was prepared by Sh. Ravi Prasad, Senior Sales Manager stipulating that the dealer has not given any satisfactory reply to show cause notice and the malpractices having been admitted by him, the punitive action of termination taken against the petitioner firm, is wholly justified and no ground is made out for recalling the order of termination under the

circumstances. It was also stated that the petitioners are also facing trial for malpractices committed by him. The note does not deal with any of the contentions and pleas which had been raised by the petitioners. It does not deal with the plea of the petitioners to give them the inspection of the dispensing pump with alleged extra fittings. It does not deal with the plea of the petitioners to supply them all the incriminating material to them so that they could reply to show cause notice effectively. It appears to be a perfunctory note prepared just to justify the termination of dealership which was done without any show cause notice and again to justify the termination under the garb of show cause notice which was given in post decisional hearing.

37. On account of this note by Sh.Ravi Prasad, the order dated 14th July, 2003 has been passed by Mr.Y.Sahai, General Manager, D&H. Though by letter dated 21st May, 2003 the respondents had asked the petitioner to appear before Sh. A.K.Verma on 26th May, 2003 at 11 AM, however, no hearing was given to the petitioners on the said date. Prior to 21st May, 2003 even the relevant documents had not been supplied nor the inspection was given. In the termination order it has been mentioned that the hearing was given to Sqr.Ldr. K.D.Mehra, partner of the petitioner before CDRSM on 12th May, 2003 and he had made the same submission as stated in the reply dated 28th May, 2003. However, why all the relevant documents were not given and hearing had not

been given has not been considered even in the order passed on 14th July, 2003. Rather perfunctorily it has been held that there was no ground to recall the order dated 13th June, 2001.

38. Apparently the alleged show cause notice dated 7th May, 2003 and the order passed on 14th July, 2003 sustaining the order dated 13th June, 2001 is mere a formality and is in complete derogation of the principles of natural justice on the basis of which this Court had already set aside the order dated 13th June, 2001. By merely giving a show cause notice dated 7th May, 2003 the principles of natural justice were not complied with. First the petitioners terminated the dealership without even giving notice. Again only a formality of giving a notice was fulfilled, which notice also did not detail the specific allegations against the petitioners and the basis of the same and without giving a due opportunity to the petitioners to represent their case. The documents, the opinions about the alleged extra fitting and the alleged extra fittings' inspection was given nor any cogent reasons had been disclosed for not giving the same. Even if the dispensing pump was sealed by the police and the matter was in the Court, the permission could be obtained. No efforts were made to even approach the police authorities or the Court for obtaining permission to give inspection to the petitioners. It has not even been alleged that any application was filed by the respondents before the police authorities or the Court for permission for inspection.

Notice is only the first limb of the principles of natural justice which should also be precise and unambiguous. After the notice is given the time should be given to respond to it within adequate time so as to enable the person concerned to make his effective representation and thereafter, an opportunity ought to have been given to the petitioners in the facts and circumstances to explain their version or their defense in the facts and circumstances of the petitioners.

39. The allegations of the respondents that the petitioner admitted that there was tampering on their behalf is also not borne out from the record and any of the correspondence by the petitioners to the respondents. Any alleged admission ought to have been specific and unequivocal. There is no such admissions on the part of the petitioners. In the circumstances, the minimum which was required from the respondents was to show them the alleged extra fittings and the alleged opinion/submissions of officials of L&T who had alleged that the alleged extra fittings were not a part of the original equipment supplied by them. The show cause notice dated 7th May, 2003 should have been precise and unambiguous, if the case of the respondents was that the petitioner had admitted about using that extra fitting on the basis of which the respondents had come to the conclusion that the extra fittings was used and was inserted on behalf of and within the knowledge and consent of the petitioners. Rather the petitioners had categorically asserted and gave details of various inspections carried out

earlier in which no tampering or any additional fitting was found. In the circumstances the allegations of the respondents that the petitioners had admitted that the extra fittings were in the pumps is deliberate attempt by the respondents to justify their illegalities.

40. The learned counsel for the respondents is unable to explain as to where is the admission on the part of the petitioners about the extra fittings on the basis of which the alleged termination order is passed. Rather in reply to the show cause notice Sdq.Ldr.K.D.Mehra had stated that he did nothing wrong on the pump and he had expressed complete ignorance of the happenings that led to the incident. He had even given the statement before the police that he knew nothing about the alleged extra fittings which were not shown to him by the police authorities and even by the petitioners.

41. There is no evidence led by the respondents before the enquiry officer or documents produced to substantiate the allegations made by them against the petitioners. Rather who was the enquiry officer is also not clear from the record. The show cause notice was issued by Mr. Ravi Prasad, Chief Divisional Retail Sales Manager before whom appearance was put by the petitioners, without documents of the inspection of alleged extra fittings and inspection of alleged extra fittings, on 12th May, 2003. No cogent reason was disclosed for not giving the relevant documents including the reports/opinions of the L &

T officials and the alleged report of M/s Oilco Services (India) Ltd, the copies of which are available in the record produced by the respondents before this Court. These documents are relevant and it appears that the decision is also based on the same yet why the copies of these reports could not be supplied to the petitioners before giving them a show cause notice has not been explained. The relevant documents had been demanded by the petitioner even thereafter, however, the respondents failed to supply them.

42. Thereafter Sh.A.K.Verma, Chief Divisional Retail Sales Manager had denied inspection of alleged extra fittings. Though while denying the inspection of alleged extra fittings the petitioners were asked to appear before Sh.A.K.Verma on 26th May, 2003, however, no such opportunity for personal hearing was given and rather termination order had been passed on 14th July, 2003 by the General Manager, Y.Sahai on the basis of alleged note of Sh.Ravi Prasad which also does not deal with the pleas and contentions raised by the petitioners and is based only on the premise that the petitioners had admitted their culpability. If the respondents themselves had allowed personal hearing to the petitioners, then why the hearing was not given, has not been explained by the counsel for the respondents. The inevitable inference on perusal of the record of enquiry and these facts and circumstances is that show cause notice in the alleged post decision hearing was a mere eyewash and an attempt to justify the illegal order of termination

passed by the respondents which had been set aside by the Court in the earlier writ petition.

43. This has also not been disputed that the Weights and Measure seals were intact on the pumps. If that be so then how the pumps were tampered with and all the alleged extra fittings were installed and how they could lead to short delivery has not been considered neither in the note of Sh.Ravi Prasad dated 6th June, 2003 which is on the file of the alleged enquiry nor it has been considered by the General Manager while sustaining the order dated 13th June, 2001 reaffirming the termination of the dealership. The respondents have also made contradictory submissions in as much as the inspection of alleged extra fittings was declined on the ground that they had been sealed by the police on 10th June, 2001, however, in the show cause notice it was stated that the units were sealed after the joint inspection was carried out on 11th June, 2003 with the officials of the respondents and crime branch officials. The respondents have not taken into consideration various pleas which have been raised by the petitioners which included that the seals were found intact in the retail outlet inspection and analysis report which was conducted on 19th May, 2001 just three weeks before the alleged incident. Even a surprise check was conducted 9 weeks prior to the alleged raid and another random surprise inspection report dated 28th March, 2001 of Ms.S.C.Banerjee, Senior Consumer Manager had recorded that high speed diesel pumps were in

fact delivering in excess of the stated amount on account of which the petitioners were advised to re-stamp the excess delivery unit. These pleas have been raised by the petitioner even in the present writ petition and in the reply it has been stated that they are not relevant. The learned counsel for the respondent has utterly failed to disclose as to how these facts will be irrelevant. The dealership agreement cannot be terminated by merely giving a show cause notice and without considering the pleas and contentions raised by the petitioners. Another glaring fact against the respondents is that before passing the termination order the fact that even if it is admitted that there was an infraction it could not have exceeded more than one week as an inspection had been conducted exactly one week prior to raid that is on 3rd June, 2001 and no shortfall of delivery was noted, has even been considered before imposing the extreme penalty of termination.

44. Perusal of the file of the enquiry proceedings produced by the respondents reveals that there is no report of enquiry proceedings placed before the authorities who have taken the decision to terminate the dealership agreement. Copy of the alleged enquiry report has not even been supplied to the petitioners nor any reasonable opportunity granted to the petitioner. In the circumstances the plea of the petitioners that the show cause notice and alleged enquiry is nothing but an eyewash to sustain the illegal termination order dated 13th June,

2001 which was set aside by this Court in W.P(C) No.3916/2000 dated 18th March, 2003 is to be sustained.

45. From the perusal of the record it appears that only on the basis of alleged FIR, the contents of which were taken to have been proved, without any enquiry or giving a reasonable opportunity to the petitioners, the order of termination dated 13th June, 2001 has again been sustained by order dated 14th July, 2003. Such an action on the part of the respondents rather supports the plea of the petitioners that Mr. Rakesh Arora, Area Sales Manager in 1999-2001 had informed the petitioners in April, 2001 that Mr.G.Tiwari, Chief Divisional Manager wanted to shut down the outlet as he wanted to re-allot the same to some more obliging allottees, as the petitioners and other dealers who were allotted petrol pumps on account of being war disabled persons were not pleasing the officials of respondent No.2. It will be appropriate for the respondent no.1 Corporation to conduct an enquiry against Mr.G.Tiwari, in the facts and circumstances

46. Pursuant to the FIR registered against the petitioner being FIR No.239/2001 Police Station Delhi Cantt (CB) under Section 420/120B of IPC, the Criminal Court had not even found sufficient material to even frame the charges. It has been held by the Criminal Court that there were no sufficient grounds or even prima facie case against the petitioners and the petitioners were discharged. While discharging the

petitioners and others by order dated 1st August, 2009 the Court had observed as under:-

“ On perusal of record it reveals that as far as contentions regarding role of different accused persons are concerned the same is subject matter of trial and maintainability of the investigation and the final report is necessary to be considered at this stage only. It is clear from the contents of the charge sheet and the documents attached with the same that the basic allegations against accused persons is regarding supply of less quantity of the petrol against consideration of more quantity. The nature of the allegations is clearly related to the weights and measures and in my opinion such allegations can be considered only within the scope of the Standard of Weights and Measures (Enforcement) Act 1985. In that eventuality the maintainability of the final report U/s.420 R/w 120 B IPC is under serious doubt:-

“Section 66 of the act runs as follows:

Section 66 Provisions of Indian Penal Code not to apply to any offence under this Act-

The provision of the Indian Penal Code, 1960 (45 of 1960), in so far as such provisions relate to offences with regard to weights or measures, shall not apply to any offence which is punishable under this Act.”

If language of Section 66 is applied to the facts of the present case, it becomes clear that a claim for existence of offence U/s.420 R/w Section 120 B IPC is not sustainable. Otherwise also it is clear from the record that there is no reliable evidence to show that there was any inducement in terms of Section 420 of the Indian Penal Code. The facts stated by the complainant that he calculated the mileage shown by his scooter etc. are not corroborated by any other evidence neither oral or documentary. The scooter of the complainant has not been mechanically inspected to corroborate the allegations made by the complainant. Further, there is no bill or receipt etc. regarding the alleged sale of the petrol to the complainant by the concerned petrol pump. Further, it is not a case of decoy customer who could have shown that the petrol has been supplied in less quantity. The alleged act qua the complainant is

basically the past act and in fact there is no spot act to show short supply of petrol to any customer.

The other provisions which are invoked by the IO is Section 50, 51 and 52 of the Standard of Weights and Measure Act.

“Section 50 deals with Penalty for contravention of Sections 30 & 31 of the act and runs as follows:

Whoever prevents the Controller or any officer authorized by the Controller in this behalf, from searching any premises or prevents an Inspector from making any seizure of any weight, measures, packaged commodity, goods documents, record or label, shall be punished with imprisonment for a term which may extend to two years, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.”

“Section 51 deals with Penalty for Contravention of Section 33 of the Act and runs as follows: (1) Whoever manufacturers, distribute, packs, sells or keeps for sale or offers or exposes for sale, or has in his possession for sale, any commodity in packaged form, shall, unless each such package conforms to the provisions of the Standards Act and the rules made thereunder, read with Section 33, be punished with fine which may extend to five thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to five years and also with fine.”

(2) Whoever manufacturers, packs, distributes or sells, or causes to be manufactured, packed, distributed or sold, any commodity in packaged form, knowing or having reason to believe that the commodity contained in such package in lesser in weight measure or number than the weight, measure or

number, as the case may be, stated on the package or label thereon, shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to three thousand rupees or with both, and for the second or subsequent offence with imprisonment for a term which may extend to five years and also with fine.

“Section 52 deals with Penalty for Contravention of Section 35 of the Act and runs as follows: Whoever sells any commodity by heaps without complying with the provisions of Sections 35 shall be punished with fine which may extend to one thousand rupees, and, for the second or subsequent offence with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees or with both.”

As far as Section 50 & 51 are concerned, same are not attracted by fact of the present case to any extent and it is not easy to understand as to why the IO has invoked these two Sections in this case.

As far as Section 52 is concerned, the same deals with the violation of provisions of Section 35 and it is clear from the other provisions of the Act that the power has been conferred on an Inspector who is competent under the Act to inspect and test at all reasonable times any weight and measure which is in possession/custody or control of any person or in any premises. Similarly, the power has been conferred to such Inspector and such Inspector is also empowered to enter into the premises and to search the same.

If the report of the IO is perused in light of provisions of the Standard of Weights and Measures (Enforcement) Act 1985, it becomes clear that there was no official of concern department available with the police team at the time of alleged inspection much less the Inspector who was empowered.

The inspection or examination of machines at the petrol pump by the police in absence of any competent person under the Standard of Weights and Measures (Enforcement) Act 1985, is not as per law and in my opinion the investigation of the case stands vitiated as mandatory provisions of law have not been followed by the police team.

It is also not clear from the record as to what enquiry was made by the police before forming a raiding party to inspect the petrol pump. Such evidence could have corroborated the version of the police. There is no record of any sale transaction of the petrol pump for a given period or a given quantity to substantiate the allegations of cheating. Moreover, the tampering with the petrol disbursing machines can be considered only as a preparation for the offences of cheating etc and there is no evidence to show even an attempt to cheat on part of the accused persons. Mere, preparation does not constitute any offence.

In view of above discussions, I am of the considered view that the inspection and investigation has not been done as per law in this case and the case cannot be proceeded further against any of the accused persons. It cannot be said that there are sufficient grounds or a prima facie case against them. With these observations, all the accused persons are discharged in this case. Sureties discharged. B/Bs cancelled. Documents, if any be returned against proper receipt.

File be consigned to the record room.”

47. The learned counsel for the petitioner has relied on AIR 1983 SC 1086, Rudul Sah v. State of Bihar; AIR 1986 SC 494 Bhim Singh v. State of J&K; AIR 1987 SC 355, Pudr v. State of Bihar; AIR 1993 SC 1960, Nilabhati Behera v. State of Orissa; 1991 CrL.J 2395, Mrs.Meera Nireshwalia v. State of Tamil Nadu; AIR 1997 SC 610, D.K.Basu v. State of W.B; AIR 2000 SC 969, Chairman, Railway Board

v. Chandrim A.Das; AIR 2001 SC 3660, M.S.Grewal v. Deepa Chan Sood; 126 (2006) DLT 663, Mamta Devi v. BSES and 151 (2008) DLT 192 (DB), Sunita v. State of NCT of Delhi in support of his plea that the compensation can be awarded by this Court in the writ petition for deprivation of the rights of the petitioners.

48. In Rudul Sah (Supra) the Supreme Court had held that in exercise of its jurisdiction under Article 32, the Supreme Court can pass an order for the payment of money in the nature of compensation consequential upon the deprivation of a fundamental right to life and liberty of a petitioner. In the case relied by the petitioners, a person was detained illegally in the prison for over 14 years after his acquittal in a full dressed trial. He had filed a Habeas Corpus petition in the Supreme Court for his release from illegal detention which relief was granted and, therefore his detention after his acquittal was held to be wholly unjustified. Taking into consideration the great harm done to him, the Supreme Court had directed to pay to the petitioner a further sum of Rs.30,000/- as an interim measure in addition to the sum of Rs.5,000/- already paid to him. In Bhim Singh, MLA (Supra) it was held by the Supreme Court that if a person is arrested with mischievous and malicious intent then a victim can be compensated by awarding suitable monetary compensation in appropriate cases. In the instant case the MLA was arrested while on route to the Assembly and

resultantly on deprivation of his right to attend the impending Assembly session and he was awarded Rs.50,000/- as compensation.

49. In Peoples' Union for Democratic Rights (Supra) 600 to 700 peasants and landless people mostly belonging to backward classes had been holding a peaceful meeting in District Gaya and without any previous warning by the police they were surrounded and fire was opened on them resulting in injuries to many people. In the circumstances as a working principle and for convenience direction was given by the Supreme Court that Rs.20,000/- be paid for every case of death and Rs.5000/- for injured person which was without prejudice to their claim which could be advanced on their behalf. In Nilabati Behera (Supra) it was held that a claim in public law for compensation for contravention of human rights and fundamental freedom, the protection of which is guaranteed in the Constitution, is an acknowledged remedy for enforcement and protection of such rights and such a claim based on strict liability made by resorting to a constitutional remedy is permissible. The said case was a case of custodial death and on account of violation of fundamental right to life, the deceased whose monetary income was between Rs.1200/- to Rs.1500/-, compensation of Rs.1,50,000/- was considered appropriate and awarded.

50. A Single Judge of Madras High Court in *Mrs. Meera Nireshwalia (Supra)* where the petitioner was arrested by officer in-charge of a police station and order of detention was passed by Deputy Commissioner of Police without jurisdiction, was awarded compensation of Rs.50,000/-. In the said case the petitioner was dispossessed of the house during the period she was put under detention after her arrest and thereafter she was not allowed to enter into the house. In exercise of power under Article 226 of the Constitution of India the possession of the property was restored to the petitioner.

51. In *D.K.Basu (Supra)* in a case of custodial death it was held that any form of torture or cruel, inhuman or degrading treatment would fall within inhibition of Article 21, whether it occurs during investigation, interrogation or otherwise. The Supreme Court had issued the requirement to be followed in all cases of arrest or detention till legal provisions are made in that behalf as preventive measures.

52. In *Chairman, Railway Board & Ors (Supra)* the Supreme Court had held that notwithstanding the suit filed for damages in a civil suit, compensation by a rape victim can be claimed in a petition under Article 226 of the Constitution of India. The respondent in this case was raped by a Railway employee in a building belonging to Railway and a writ petition was filed by the victim against Government for

compensation. It was held that where public functionaries are involved and the matter relates to the violation of fundamental rights or the enforcement of public duties, the remedy would still be available under the Public Law notwithstanding that a suit could be filed for damages under the private law. It was further held that it was more so when it was not a mere matter of violation of an ordinary right of a person but the violation of fundamental rights which was involved as the rights of the victim of rape were violated which are guaranteed under Article 21 of the Constitution.

53. In *M.S.Grewal & Anr (Supra)* 14 school children had died and a writ petition claiming compensation was filed. The plea of non maintainability of the writ petition was subsequently not pressed and it was held that the writ petition was not liable to be dismissed on technical grounds as the technicalities cannot and ought not to outweigh course of justice and in the circumstances compensation of Rs.5 lakhs per child who had died in the incident to their parents with 6% simple interest from the date of the judgment of the High Court was awarded as compensation.

54. In *Mamta Devi & Ors (Supra)* a Single Judge of this Court had awarded compensation in a writ petition under Article 226 of the Constitution of India for a deceased who died during installation of a

sub station maintained by Delhi Vidyut Board due to current in the grid. It was held to award compensatory damages in writ jurisdiction on account of negligence has to be inferred from admitted facts and not basic facts which are required to be proved. In the instant case the deceased was technically unqualified and some of the respondents were found guilty of getting the work done from a non technical person and Delhi Vidyut Board was held responsible for not taking proper care. In the instant case the petitioners, the legal representatives of the deceased were awarded a sum of Rs.1 lakh as compensation with the stipulation that this amount would be taken note of in the proceedings in the Civil Court claiming compensation. In Sunita (Supra) a Division Bench of this Court in a case of custodial death had awarded a compensation of Rs.3 lakhs after a period of six years of custodial death. It was held award of compensation in a writ petition under Article 226 of the Constitution of India by way of a public remedy will not come in the way of aggrieved person claiming additional compensation in Civil Court in enforcement of private law remedy in tort nor would come in the way of criminal Court ordering compensation under Section 357 of the Criminal Procedure Code.

55. Consequently on the basis of the precedents relied on by the petitioner, the damages as claimed by the petitioners since June, 2001 cannot be awarded to the petitioners in the present writ petition. The

petitioners, however, shall be entitled to initiate appropriate legal proceeding, if so advised, for recovery of damages from the respondents in accordance with law.

56. The next question for consideration is whether the order of termination is discriminatory in so far as the possession of M/s. Libra Filling Station has been returned to the proprietors of the filling station even though the short delivery in their case was 5 times that of the petitioners. The allegation against the petitioners was of short delivery of 5% whereas the allegations against M/s Libra Filling Station was of short delivery of 25%. The respondent no.1 has contended that the facts in the Libra Filling Station case was different as it was a case of short delivery, but in the present case the delivery system had been tampered with by putting extra fittings. The distinction that is sought to be drawn by the respondents seems to be quite artificial and contrary to record. The respondents have also produced the file of the M/s Libra Filling Station. Perusal of the file reveals that the allegation of the respondents is incorrect and misleading. Short delivery can be only be by tempering with the equipment. A perusal of the order of termination that was communicated to both M/s. Libra Filling Station and M/s. Bharath Filling Station quite clearly shows that the charges against both the filling stations was of tampering with the dispensing units resulting in short delivery. The relevant portion of both the letters are extracted

below- The order of termination dated 18th June, 2001 send to M/s.

Libra Filling Station-

“During the inspection it was found that you have willfully and deliberately tampered/manipulated with the metering unit in one of the dispensing units (MIDCO Serial No 9677) by superimposing 0 on 1 so as to dupe the customer resulting in the delivering less quantity for payment made.”

The order of termination dated 13th June, 2001 send to M/s.

Bharath Filling Station/petitioners:-

“During Joint inspection, it was noticed that the external fitting has been installed in the machine which was connected to the wiring system of the display and it was found that in one direction of the switch, it was giving a variation in the range of 200mL in 5 Litre Measurement on lesser side.”

57. The distinction as alleged by the respondent no.1 is therefore, not sustainable and is a futile feeble attempt by the said respondents to justify their illegalities. Despite the termination of the dealership of M/s Libra Filling station, it was restored by the respondents subject to payment of fine under Marketing Disciplinary guidelines in 2003 consequent to which the Civil Writ petition 10464 of 2003 filed by M/s Libra Filling Station was withdrawn by him on 16th September, 2003.

58. In the case of the petitioners the allegation of short delivery has not been substantiated. Even if it is assumed that there were short deliveries for a period of about one to three weeks, as inspections by the respondents were carried out earlier also and nothing was found by the respondents. Therefore, the next question will be whether the penalty of termination is excessive considering the facts and circumstances of the case.

59. The respondent has contended that the petitioners have violated clauses 45, 47, 16 & 23 of the dealership agreement and therefore under clause 56(k) of the agreement the dealership was cancelled. It is true that whenever the respondent Corporation enters into a dealership agreement it executes a memorandum of agreement which contains provisions for termination of dealership. Clause 56 of the said agreement stipulates that the respondent no.1 is at liberty to terminate the dealership on the happening of certain events mentioned therein. However the Government of India has issued Marketing Discipline Guidelines to ensure that the agreements with the dealers are worked out in a systematic manner and the respondent no.1 corporation does not invoke the termination clause arbitrarily. These Guidelines have been laid down in order to ensure that retail outlets are carried on the principles of highest business ethics and excellent customer service and customers receive product of the right quality and quantity. The

purpose is also to ensure that dealers follow the correct and safe practices in handling and dispensing petroleum products, show courteous behavior to customers and provision of uniform code of conduct and discipline is enforced throughout the country dealership network of the industry. For ensuring uniform code of conduct and discipline, the Guidelines also enumerate the nature of irregularities which may be committed by such dealers and the action which is required for such irregularities. Chapter 6 of these Guidelines filed "Prevention of Irregularities at Retail Outlets" stipulates major as well as minor irregularities and provides for the penalties for such major and minor irregularities. At the end of Chapter 6, nine notes are given. Short-delivery of products is treated as major as well as minor irregularity. When weights and measure seals are tampered with, short delivery of products is treated as major irregularity and when weights and measure seals are intact but deliveries are below tolerance limit, short delivery of product is treated as minor irregularity. The penalty for short delivery of products as major irregularity is provided in the following manner:

"Short Delivery of Products

When weights and measure seals are tampered with:

- (i) Suspension of sales and supplies of all products for 30 days along with a fine of Rs. 50,000/- in the first instance.
- (ii) Fine of Rs. 1 lakh and suspension of sales and supplies of all products for 45 days in the second instance.

(iii) Termination in the third instance."

Penalty for short delivery products as major irregularity is provided in the following manner:

Short Delivery of Products

When Weights and Measure seals are intact but deliveries are below tolerance limit:

(a) Sales and supplies should be stopped from the Dispensing unit till recalibration is carried out by Weights and Measures department.

(b) (i) Suspension of sales and supplies of all products for 15 days along with a fine of Rs. 20,000/- in the first instance.

(ii) Suspension of sales and supplies for 30 days along with a fine of Rs. 50,000/- in the second instance.

(iii) Suspension of sales and supplies of all products for 45 days along with a fine of Rs. 1 lakh in the third instance.

(iv) In extreme cases, where it is proved that the dealer has tampered with the delivery system, termination will be considered in the fourth instance."

Notes appended to the guidelines that are relevant for the present case are quoted below:

(i) The above are general guidelines and notwithstanding what has been stated above, the Competent Authority of the concerned Oil Company can take appropriate higher punitive action against the erring dealer including termination in the first or any instance.

(ii) Every punitive action would be taken after show-cause notice of minimum seven days.

(iii) The cycle of calculating second and third instances shall be five years starting from the date of first irregularity.

(iv) In case, two or more irregularities are detected at the same time RO, action will be taken in line with what is listed in the MDG under the relevant category for each irregularity.

(v) All irregularities established under "Major" and "Minor" categories will be treated separately for the purpose of imposing penalties.

(vi) Field staff should ensure that samples for testing are sent to the Laboratory within 10 days of drawal of the same. Lab test reports should thereafter be made available within ten days.

(vii) In case of irregularities not specifically mentioned /covered above, the competent/appropriate authority of the concerned Oil Company shall impose proper penalty and /or issue warning letter after inquiry and in accordance with the principles of natural justice.

(viii) Under existing laws, Control Orders, etc., various authorities of Central Government/State Government--In addition to Oil Company Officers --are empowered to carry out checks of the dealership for determining and securing compliance with such laws/Control Order. If any "malpractice or irregularity" is established by such authorities after checking the same would also be taken as a "malpractice or irregularity" under these guidelines and prescribed punitive action would be taken by the Oil Company, on receipt of advice from such authority.

(ix) Wherever fine with suspension has been provided, fine must be paid within suspension period, failing which suspension would be extended by the equivalent period. If fine is not paid even within the extended period, the dealership would be terminated.

60. The guidelines have been enacted to provide a uniform code of conduct and discipline and to ensure that the agreements with the dealers are worked out in a systematic manner. That being so the respondent Corporation was bound to follow the guidelines while imposing penalties for offences that have been enumerated in the guidelines. In *United Engineers Service Station v. Union of India & Anr.*, this Court had observed,

“ It has to be kept in mind that the Marketing Discipline Guidelines have force of law having been upheld by this Court in *Delhi Petrol Dealer Association & Anr. v. Union of India & Ors.*, 81(1999) DLT 400. The object is salutary to provide for checks and balances and penalties uniformly by different oil companies while dealing with defaulting dealers. There are a number of violations mentioned and the consequences of such violations or repeated violations. The guidelines are also in furtherance of a larger public policy that there must be uniformity in the manner in which oil companies deal with the dealers. It thus removes any arbitrariness or subjectivity which may creep in such a matter, specially in matters of livelihood of the person concerned.”

61. It is true that in exceptional cases if the respondents is of the opinion that a higher penalty than the one prescribed in the guidelines is to be imposed the respondents can do so. But in such cases the respondents is duty bound to justify the higher penalty on the facts and circumstances of the case. The only reason given by the respondent for imposing the highest penalty of termination is that the offence is of a serious nature and it is against public interest to allow such persons to

continue in business. The irregularity that has been alleged against the petitioner is short delivery of products resulting from the introduction of an extra switch in the nozzle. Even if this is treated as a major irregularity termination is contemplated by the guidelines only at the third instance. The respondent has given no reasons for considering the offence to be so serious as to warrant termination at the first instance. Apparently even if it is proved that the petitioners had indulged in short delivery which has not been proved, the extreme penalty of termination is disproportionate to the allegations made by the respondent no.1 Corporation.

62. The respondent no.1 has not also taken into account the past conduct of the petitioners. The guidelines have provided a skewed structure for imposing penalties. The gravity of the penalty to be imposed has been made dependent on the number of instances of irregularities the offender has been found guilty off before the present irregularity. That being so the contention of the respondent corporation that the past conduct of the petitioners is not relevant as they have been caught red handed is not acceptable and is contrary to their own guidelines and based on their own assumption. The petitioners had been running the retail outlet for 23 years prior to the order of termination. There has never been any complaint of short delivery or other malpractices against the petitioners. A surprise inspection

conducted by the Director, Marketing of the respondent corporation on 3rd June, 2001, i.e. one week prior to the inspection that had led to the alleged discovery of the alleged irregularities, had not found any instances of short delivery. So it is clear that the duration of the alleged irregularity cannot have been more than 7 days. In the circumstances the extreme penalty of termination was unwarranted and is extremely disproportionate, even if it is held that the allegations against the petitioners were established. Consequently the penalty of termination of dealership agreement of the petitioners is liable to be set aside and the respondents are liable to restore the dealership of the petitioners on the same terms and conditions as they were at the time of termination.

63. The impugned order reiterating the termination order dated 13th June, 2001 was passed on 14th July, 2003 and the Division Bench of this Court had disposed of the LPA filed by the respondents on 18th July, 2003 granting liberty to the petitioners to file a petition challenging the order of termination. The present writ petition had been instituted by the petitioners on 24th May, 2005 and so it is alleged that there has been a delay of close to 2 years. The petitioners have stated that petitioner no. 2 had been suffering from a number of ailments and was undergoing treatment for the same which prevented him from filing the petition at an earlier date. They have placed on record the relevant medical records. It has also been stated that the other two partners of

the petitioner firm have been residing in Bangalore and Singapore respectively and therefore were unable to file the petition. This has not been denied by the respondents that the other two partners of the firm were not in India. The dealership of the petitioners had been terminated without following the principles of natural justice and not restored despite the order passed in the earlier writ petition. A perfunctory show cause notice was given and again without conducting a proper enquiry, the order of termination has been sustained. The Petitioner no.2 is a war veteran and is suffering from various problems. Resources are required for initiating the litigation. The son of the petitioner also returned in 2005 which fact has not been disputed by the petitioners. In the circumstances the delay as has been alleged by the respondents will not deprive the petitioners their rights and reliefs which they have claimed against the illegal and arbitrary actions of the respondents. The relief sought by the petitioners cannot be denied to them on this ground. The plea of the respondents of that the petition suffers from delay and laches is therefore, repelled.

64. Another contention raised by the respondent no.1 corporation is that the writ petition is not maintainable as the relationship between the parties was contractual and there was an arbitration clause in the dealership agreement. The said plea was also taken by the respondents

in the earlier writ petition which was allowed. The Court in CWP No. 3916 of 2001 had held as under:-

“ On the other hand judgment of Supreme Court in the case of Harbans Lal (supra), which was a case of termination of dealership by IOC itself, would squarely apply to the facts and circumstances of this case. In fact this judgment answers both the contentions raised by learned Counsel for the respondent No. 2 to the maintainability of the writ petition. In this case, the Supreme Court negated the contention of IOC to the effect that writ petition was not maintainable as relationship between the parties was contractual and further the Dealership Agreement contained an arbitration clause. In that case for certain alleged irregularities committed by the dealer show-cause notice was given which was however not persuaded. But thereafter dealership was terminated. The Supreme Court set aside the termination order. One may also make mention of the judgments of the Supreme Court in the cases of Kumari Shrilekha Vidyarthi v. State of J&K, reported in AIR 1991 AC 537 and Mahavir Auto Stores and Ors. v. Indian Oil Corporation and Ors., AIR 1990 SC 1031.”

65. This Court also concurs with the view taken in the earlier writ petition. The relief was not declined to the petitioner on this ground. The Letters Patent Appeal filed by the respondents was also not allowed on the ground that the petitioners cannot be granted relief, as alternative remedy was available to them.

66. Regarding the plea of the petitioners that the writ petition shall be maintainable seeking quashing of the order terminating the dealership

and for restoration of dealership and possession of the petrol pump, a writ petition shall be maintainable the learned counsel for the petitioners has relied on (1994) SCR 1122, Himmatlal Harilal Mehta v. The State of Madhya Pradesh and Ors; (2003) 2 SCC 107, Harbans Lal Sahnia & Anr v. Indian Oil Corporation Ltd and Ors; AIR 1971 SC 870, Coffee Board, Bangalore v. Joint Commissioner Tax Officer, Madras and Anr; AIR 2004 Andhra Pradesh 198, Estate Officer & Manager (Recoveries), A.P.Industrial Infrastructure Corporation Ltd and Anr v. Recovery Officer, Debts Recovery Tribunal, Bangalore & Ors; AIR 1985 SC 1147, Ram and Shyam Company v. State of Haryana; AIR 1969 SC 556, M/s.Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar; AIR 1965 SC 1321, Municipal Council, Khurai and Anr v. Kamal Kumar and Anr and AIR 1971 SC 33, L.Hirday Narain v. Income Tax Officer, Bareilly.

67. In Himmatlal Harilal Mehta (supra), relied on by the petitioners, it was held by the Supreme Court that the principles that a Court will not issue a prerogative writ when an adequate alternative remedy is available would not apply where a party has come to Court with an allegation that his fundamental rights has been infringed and has sought relief under Article 226 of the Constitution of India. More so when a remedy provided by the Act for the alternative relief is an onerous and burdensome. In the case of the petitioners, in the first

instance his dealership agreement was terminated without complying with the principle of natural justice, without giving notice and even disclosing the basis on which it was held that there was an additional instrument in the dispensing unit. The said order was set aside, however as a post decisional hearing proceedings, another vague notice has been given and without giving a proper hearing and giving documents on the basis of which the allegations were made against the petitioners and giving them a proper hearing, the order of termination which was set aside has again been reaffirmed. In the circumstances, the alleged remedy of arbitration in the facts and circumstances can only be termed as burdensome. More so because the respondents have discriminated the petitioner vis-à-vis other dealers whose dealerships were terminated and then restored and the dealership of the petitioner has been terminated in stark violation of their own guidelines without any rational and legal justification for the same.

68. Similarly, in *Harbans Lal Sahania & Another* (supra), it was held by the Supreme Court that rule exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In appropriate case, inspite of availability of alternative remedy, the High Court may still exercise its jurisdiction in at least three contingencies; i) where the petition seeks enforcement of any of the fundamental rights; ii) where there is a failure of principles of

natural justice; or iii) where the orders or proceedings are wholly without jurisdiction or the vires of an act is challenged. In the present case in post decisional hearing, the respondents gave a notice dated 7th May, 2003 which was also not précise and rather ambiguous, as on the basis of the alleged notice the petitioners could not be comprehend the detrimental case set up against them which they had to meet. The documents on the basis of which it was alleged that the petitioners had tampered with the dispensing unit and additional parts .with the dispensing unit, i.e. opinion of Larson & Turbo and other inspection report dated 11th June, 2001 were not provided to the petitioners nor they were given inspection of alleged additional equipment with the dispensing unit on the ground that the dispensing unit were sealed on 10th June, 2001 whereas the inspection was given to the enforcement official on 11th June, 2001. In any case, even if the dispensing unit were sealed, the respondents could have obtained order or permission from the appropriate Court where the matter was pending, to give inspection to the petitioners. No effort at all was made by the respondents as even an application to this effect was filed with the concerned police officials or the concerned Court. Perusal of the file of the enquiry proceedings shows no evidence has been recorded of any person who had deposed about the alleged additional equipment, nor the pleas and contentions raised by the petitioners have been considered. On the wrong premise that the petitioner had admitted their lapses, a note was prepared by an official. On the basis that the petitioners have admitted their lapse and

on the basis of the alleged note, the termination order dated 13th June, 2001 has again been reaffirmed by order dated 14th July, 2003. The entire procedure is in violation of the basic principles of natural justice and is an attempt by respondent No.1 to justify its illegality and somehow perpetuate it. In the circumstances, it cannot be held that writ petition shall not be maintainable and the petitioners shall not be entitled for the relief claimed by them. In any case, the writ petition was filed by the petitioners in 2005 and after considerable period, the writ petition cannot be dismissed on the ground that alternative remedy is available to the petitioners. In A.P. Industrial Infrastructure Limited & Another (supra) the Court had declined to dismiss the writ petition which was filed challenging the sale proclamation of property by the Debts Recovery Tribunal on the ground that alternative remedy of appeal under Section 20 of the Recovery of Debts Due to Banks Act was available to the petitioners after 5 years of admission of writ petition by the High Court. The Supreme Court had held that there are at least two well recognized exceptions to the doctrine with regard to the exhaustion of statutory remedy. It was held that doctrine has no application in a case where impugned order has been made in violation of principles of natural justice. Moreover, in a case where the Court having admitted the writ petition and having put the parties to trial normally cannot refuse to exercise its jurisdiction and dismiss the writ petition on the ground of availability of an alternative remedy. In para 69 and 70 at page 211, the Court had held as under;-

"69. We are not impressed by the submission. It is a true and very well established proposition of law that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court under Article 226 of the Constitution of India. It is equally well settled that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. It may be one of the factors that may have to be taken into consideration in the matter of granting writs. It is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law. The Court in exceptional cases can always issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted. There are at least two well-recognised exceptions to the doctrine with regard to the exhaustion of statutory remedies. In the first place, it is well settled that where proceedings are taken before a Tribunal under a provision of law, which is ultra vires, it is open to a party aggrieved thereby to move the High Court under Article 226 for issuing appropriate writs. In the second place, the doctrine has no application in a case where the impugned order has been made in violation of the principles of natural justice.

70. It is not possible to dismiss the petitions under Article 226 of the Constitution of India as not maintainable on the ground of there being an alternative remedy available in cases where the Court has entertained and admitted the writ petition and was heard on merits. It is a different matter altogether when the Court in exercise of its discretion refused to interfere even at the threshold on the ground of availability of an alternative and efficacious remedy. **But in a case where the Court having admitted the writ petition and having put the parties to trial normally cannot refuse to exercise its jurisdiction and dismiss the writ petition on the ground of availability of an alternative remedy.** It is a matter always well within the discretion of the Court and that discretion is required to be exercised in a judicial and judicious manner. It is equally a well settled proposition of law that where the

order is illegal and invalid as being contrary to law, a petition at the instance of person adversely affected by it would lie to the High Court under Article 226 of the Constitution and such a petition cannot normally be rejected on the ground that an appeal lies to the authorities specified under an enactment. It needs no restatement at our hands that the Court has imposed a restraint in its own wisdom on its exercise of jurisdiction under Article 226 of the Constitution where the party invoking the jurisdiction has an adequate, alternative and efficacious remedy. The availability of alternative remedies does not oust the jurisdiction of this Court. (See for the proposition: *Khurai Municipality v. Kamal Kumar*, MANU/SC/0227/1964: [1965]2 SCR 653, *Baburam v. Zilla Parishad*, MANU/SC/0399/1968: [1969]1 SCR 518, *Hirday Narain v. I.T. Officer, Bareilly*, MANU/SC/0268/1970: [1970] 78 ITR 26(SC), and *Ram and Shyam Company v. State of Haryana*, MANU/SC/0017/1985: AIR 1985 SC 1147).

69. Similarly, in the case of *Ram and Shyam Company* (supra), it was held that an appeal in all cases cannot be said to provide in all situation an alternative effective remedy keeping aside the nice distinction between jurisdiction and merits. In *Coffee Board, Bangalore* (supra), it was held in a case where demand of tax was not backed by valid law, the petitioner would have a right to move the Supreme Court for enforcement of fundamental rights.

70. The prepositions which have been laid down by the Courts in the precedent relied on by the petitioners, has not been refuted by the respondents, nor the respondents have cited any other precedent to the contrary. In the circumstances, the plea of the respondents that writ

petition will be barred as an alternative remedy is available to the petitioners, cannot be accepted.

71. Therefore, in the facts and circumstances and for the foregoing reasons the Writ Petition of the petitioners is allowed. The order of termination of dealership dated 13th June, 2001 which was reaffirmed by the respondents after alleged post decisional hearing by order dated 14th July, 2003 are also quashed and set aside. The Respondents are directed to restore the dealership of the petitioners under the name and style of M/s Bharat Filling Station' on the Delhi Palam Road, Opposite APS colony, New Delhi on the same terms and conditions which were at the time of termination on 13th June, 2001. The dealership of the petitioners be restored within two weeks. The Petitioners shall also be entitled for costs of Rs.40,000/- from the respondent no.1 in the facts and circumstances of the case. Costs be paid by the respondent no.1 within four weeks. With these directions, the writ petition is allowed and all the pending applications are also disposed of.

ANIL KUMAR, J.

July 6, 2012

k/vk