



**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 11247 of 2025

M/S Lallite Filling Centre Thru. Proprietor Smt. Vijaya Kirti and another
.....Petitioner(s)

Versus

U.o.i. Thru. Secy. Ministry of Petroleum New Delhi and 3 others
.....Respondent(s)

Counsel for Petitioner(s)	: Manish Misra, Gaurav Upadhyay
Counsel for Respondent(s)	: A.s.g.i., Arvind Kumar, Manish Jauhari

Court No. - 17

HON'BLE SUBHASH VIDYARTHI, J.

1. Heard Sri Manish Misra and Sri Gaurav Upadhyay, the learned counsel for the petitioners, Sri Manish Jauhari, the learned counsel for the opposite parties no.2 to 4 (Indian Oil Corporation Limited) and perused the records.

2. By means of the instant petition filed under Article 227 of the Constitution of India the petitioners have challenged the validity of an order dated 07.08.2025, passed by the Executive Director Retail and Sales, Indian Oil Corporation, Head Office, Mumbai also sitting at Indian Oil Bhawan at Vibhuti Khand, Gomti Nagar, Lucknow, whereby the petitioners' dealership agreement dated 28.09.2007 has been terminated.

3. The learned counsel for the opposite parties no.2 to 4 has raised a preliminary objection that the petitioners have got an alternative remedy

of filing an appeal under Clause 8.9 of Marketing Discipline Guidelines (MDG 2012) and, therefore, the writ petition is liable to be dismissed.

4. Replying to the aforesaid preliminary objection, the learned counsel for the petitioners has submitted that the impugned order itself states that the petitioner's dealership agreement was previously terminated by means of an order dated 15.07.2021. The petitioner had filed an appeal against the aforesaid order, which was dismissed by means of an order dated 26.11.2021. The petitioner had challenged both the orders by filing Writ-C No.1034 of 2022, which was disposed of by means of an order dated 18.10.2024 by observing that the licensing authority has passed the termination order without taking into consideration the reply submitted by the petitioner and without giving any opportunity of hearing to the petitioner. This court found that the appellate order also suffers from the vice of perversity as it wrongly records that the defence of the petitioner was considered whereas neither the petitioner's reply was considered, nor was an opportunity of hearing given to the petitioner, which was in contravention of Clauses 8.5.6 to 8.5.8 of MDG Guidelines.

5. This court had remanded the matter to the licensing authority to pass a fresh order in accordance with law within a period of six months, which period has expired on 17.04.2025 but neither any fresh order was passed within the time granted by this Court, nor did the Corporation seek extension of time granted for passing the fresh order.

6. Thereafter, the petitioners filed Contempt Application (Civil) No. 2747 of 2025 in which notice was issued by means of an order dated 01.09.2025. During pendency of the contempt petition, the opposite parties were intending to allot the petrol pump in question to a third party, where upon the petitioner filed Writ-C No.10025 of 2025, and it was during hearing of the aforesaid writ petition on 14.10.2025 that the learned counsel for the Corporation informed about passing of the impugned termination order dated 07.08.2025. Accordingly, Writ-C

No.10025 of 2025 was dismissed as not pressed giving liberty to the petitioner to file a fresh petition challenging the termination order.

7. As the petitioner had previously challenged the termination order as well as the appellate order by filing Writ C No. 1034 of 2022 whereby both the orders had been set aside and when the matter was pending consideration of the licensing authority for passing order afresh, the petitioners had filed Writ C No. 10025 of 2025 for restraining the Corporation from allotting the outlet to any other person and as in the meanwhile the impugned termination order dated 07.08.2025 was communicated to the petitioner during hearing of Writ C No. 10025 of 2025 on 14.10.2025 whereupon the learned Counsel for the petitioner had sought and was granted liberty to file a fresh petition assailing the validity of the termination order dated 07.08.2025, which liberty was granted to the petitioner, the present Writ Petition, which has been filed in terms of the liberty granted in terms of the order dated 14.10.2025 passed in Writ C No. 10025 of 2025 cannot be said to be barred by availability of alternative remedy, more so, when the alternative remedy is not a statutory remedy.

8. Further, the termination order has been passed by the Executive Director Retail and Sales, Indian Oil Corporation, Head Office, Mumbai also sitting at Indian Oil Bhawan at Vibhuti Khand, Gomti Nagar, Lucknow and as per Clause 8.9 of Marketing Discipline Guidelines, an appeal against the termination order would lie before the Executive Director (Retail) in the Head Quarters or any other ED level officer at the Head Quarter so nominated by the company, who is an authority equal in rank to the authority who has passed the termination order and not an authority superior to him.

9. An appeal against any impugned order should lie before an authority superior to the authority which has passed the impugned order and not before an authority which is equivalent in rank to the authority who has passed the impugned order. In case the appellate authority is equal in rank to the authority who has passed the original impugned

order, such an appeal would be meaningless. This court is of the considered view that such an appeal would not bar the maintainability of a writ petition against the termination order. Therefore, the preliminary objection raised by the learned counsel for the opposite party nos.2 to 4 is turned down, and the court proceeds to examine the merits of the matter.

10. On 28.09.2007, Indian Oil Corporation entered into an agreement whereby the petitioner was appointed as its dealer for the retail sale of Petrol/HSD/Motor oils/greases and such other products as may be specified by the corporation from time to time.

11. On 08.06.2017, an examination of the petitioner's outlet was carried out by the corporation and on the basis of an inquiry report dated 08.06.2017, the petitioner's agreement was terminated by means of an order dated 15.07.2017, which was affirmed by means of an order dated 26.11.2021 passed in an appeal filed under clause 8.9 of MDG, but it was set aside by the judgment and order dated 18.10.2024 passed by a coordinate Bench of this court in Writ-C No. 1034 of 2022.

12. After remand of the matter, the opposite party no. 2 has passed a new termination order dated 07.08.2025.

13. The learned counsel for the petitioner has submitted that the order dated 07.08.2025 is a mere reiteration of the earlier termination order dated 15.07.2017, which was set aside by this court.

14. The impugned termination order states that the inspection report dated 08.06.2017 categorically records that the weights and measurements sealing wire of the GVR unit was found broken, the pulsar card in question was replaced on 01.07.2016, it was re-stamped and sealed by the Weights and Measurements Department. The petitioner did not inform the corporation regarding any rusting in the seal put on the unit by the Weights and Measurements Department. Clause 5.1.2(b)(iii) of MDG 2012 provides that if the sealing wire is broken, the

views and opinion of the Weights & Measurements authorities would be obtained, and the opinion of the department would be final.

15. The termination order also states that in the present case, W&M officials were a part of the inspection team, and as such, no separate opinion was required. This is a critical irregularity as per clause 8.2(ii) of MDG 2012 mandating termination at the first instance. The OEM Service Engineer, who was a part of the joint inspection team, confirmed the presence of soldering marks on the pulsar card. Subsequently, the pulsar card was sent to Gilbarco (OEM) and they have submitted a report dated 28.12.2017 that in the pulsar card some tracks are cut and rejoined, this could be an attempt to tamper. As per clause 5.1.4 of MDG 2012 *“addition, removal, replacement or manipulation of any part of the dispensing unit, including any mechanism, gear, microprocessor chip/ electronic parts / OEM software will be deemed as tampering of the dispensing unit.”* Tampering with the pulsar card is a critical irregularity under clause 8.2 (iv) of MDG 2012, mandating termination at the first instance itself.

16. The order states that the malpractices committed by the petitioners are squarely covered by the provisions contained in clause 5.1.2 (b) read with clause 8.2 (ii) of MDG 2012 and second paragraph of clause 5.1.4 read with clause 8.2 (iv) of MDG 2012, which two clauses are independent of each other and dealership can be terminated for breach of any one of them. The order further stated that the malpractices committed by the petitioners have been considered prejudicial to the interest and good name of the corporation. Accordingly, the petitioner's license agreement has been terminated.

17. A copy of the inspection report dated 08.06.2017, as also the analysis report dated 18.12.2017 submitted by Gilbarco Veeder Root, have been annexed with the counter affidavit filed by the Corporation. The inspection report states that as the machine was not functional, delivery could not be tested. The seal wire of a unit was found broken and upon inspection there were tampering marks on the pulsar card. The

pulsar card of the other side of the machine was found correct, but the machine could not be started as it was wholly shutdown. The analysis report dated 28.12.2017 submitted by Gilbarco Veeder Root states as follows:

“On visual inspection we observed that

- 1. Track from U1 Pulsar opto 3rd pin f U31C is cut and rejoined using solder lead,*
- 2. Track from U2 Pulsar Opto to 5th pin of U31C is cut and rejoined using solder lead,*

Analysis and investigation:-

The Pulsar Card (LE91031), was connected to our standard test setup and observed the card is producing 500ml for one rotation of sensor disk, which is OK

Conclusion:-

The Pulsar card (LE91031) some tracks are cut and rejoined. This could be an attempt to tamper. There is no additional attachment found to alter the delivery.”

Clause 5.1.2 of MDG, 2012 provides as follows: -

“5.1.2. SHORT DELIVERY OF PRODUCTS

a) With Weights & Measures Department Seals intact

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

b) With Weights & Measures department Seals tampered

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

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

1. Seal itself is missing
2. Different seal has been put other than embossed by W&M inspector
3. Sealing wire is broken and not in one piece.

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

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

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

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

Clause 8.2 of MDG, 2012 provides as follows:

“8.2 Critical Irregularities: The following irregularities are classified as critical Irregularities:

- i. Adulteration of MS/HSD (5.1.1)*
- ii. Seals of the metering unit found tampered in the dispensing pumps.(5.1.2 (b))*
- iii. Totalizer seal of dispensing unit tampered or deliberately making the totalizer non functional or not reporting to the company if totalizer is not working. (5.1.3 read with 5.1.2)*
- iv. Additional/Unauthorized fittings and gears inside the dispensing units/tampering with dispensing units. (5.1.4)*
- v. Unauthorized storage facilities (5.1.5)*
- vi. Unauthorized purchase / sales of products. (5.1.6)*
- vil. Tank lorry carrying unauthorized product found under decantation at the RO (5.1.7)*

Action:

Termination at the FIRST instance will be imposed for the above irregularities.”

18. The learned counsel for the petitioners has submitted that even as per the inspection report, the machine was not functional at the time of inspection and it could not be made functional even to test the delivery. Therefore, the entire allegations are in respect of a machine from which sales were not being carried out. As no sale was being made or could be made from a machine which was non-functional, there is no allegation that the petitioner was indulging in selling lesser quantity of the product.

19. The learned Counsel for the petitioners has also submitted that Clause 5.1.4 of MDG provides that the report of OEM should be obtained before taking any action, but in the present case, the termination order had already been passed without any report of OEM.

20. In **Chaudhary Filling Point v. State of U.P.**: 2019 SCC OnLine All 3620 the entire inquiry proceedings against the petitioner were quashed on the ground that the Expert's opinion was obtained subsequent to the order of termination and the same has been done in the present case also.

21. It has been pleaded in the petition that the petitioner no.2 who is the proprietor of the petitioner no.1 is a 70 years old widow lady. She had been managing, the petrol retail outlet for about a decade since prior to its termination and there has not been any allegation of short delivery during the entire period of working of the outlet. In the month of June 2016, out of the four dispensing units installed at the petitioner's outlet, one unit of Gilbarco Veeder Root (two nozzles) had got damaged and the petitioner had made a complaint through a letter dated 28/06/2016. The machine was checked and repaired by the engineers of the corporation, but even thereafter it could not work properly and in the month of May 2017, the petitioner submitted an online complaint to the corporation in this regard. The authorized engineer of the corporation again visited the retail outlet of the petitioners on 27.05.2017, inspected the dispensing unit, found the seal to be intact and as he could not repair the unit without breaking the seal, he raised a requisition for permission from the Weights and Measurement Department for breaking the seal.

Even during inspection or analysis of the pulsar card, no alteration of the circuit or addition of any device or tampering with the equipment has been found, and no allegation of measuring a lesser quantity has been levelled. During inspection, delivery of fuel from all the three functional units was found to be correct and the fourth machine was non-functional and therefore its delivery could not be checked. During the analysis by the by the OEM Gilbarco Veeder Root delivery from the pulsar card, which is alleged to be tampered was also found to be correct. In these circumstances, it is not a case of short delivery of products, so as to attract any action under Clause 5.1.2 which is titled **“Short Delivery of Products”**.

22. The opposite parties no.2 to 4 have placed reliance on the inspection report and the analysis report. The counter affidavit refers to the following judgments:

“1. Indian Oil Corporation Limited and another Vs. T. Natrajan: Civil Appeal No.6748 of 2018, ECI PIC SMO MCML (JV) Vs. Central Organization for Railway Electrification and another: 2017 SCC OnLine All 2912, M/s Maharashi Filling Station (Indian Oil Dealer) Vs. Indian Oil Corporation Ltd. U.P. State Officer and another: Writ-C No.20271 of 2018, M/s Kisan Sewa Kendra, Sarai Dubaulia Vs. Union of India and others: Writ C No.32973 of 2018, M/s Shree Rajendra Agro Service Centre through its Proprietor Vs. Indian Oil Corporation Ltd.: Special Appeal Writ No.456 of 2023, Executive Director Retail and Sales Indian Oil Ltd. and others Vs. M/s Mishra Automobiles and others: Special Appeal No.215 of 2024, Savitri Devi and others Vs. Union of India and others: Writ-C No.29859 of 2017, S.J. Lal Filling Station Indian Oil Retail Outlet and another Vs. Indian Oil Corporation Ltd. and another: Writ-C No.16611 of 2021, but copies of none of the aforesaid judgments have been provided to the Court.

23. The counter affidavit has been sworn by the Divisional Retail Head of Indian Oil Corporation (the opposite party no.4) who possesses a bachelor degree in engineering. The verification clause in the counter

affidavit states that the deponent verifies the averments contained in paragraphs 1 to 4 of counter affidavit as being true to his personal knowledge, the contents of paragraph 5 and 7 to be true on the basis of records and the contents of paragraph 8 to be true on the basis of legal advice. Paragraphs no.9 to 32 of the counter affidavit have not been verified at all. Unverified contents of the counter affidavit cannot be taken into consideration.

24. Further, Rules 8 and 12 of Chapter IV of the Allahabad High Court Rules provide as follows: -

Chapter IV

AFFIDAVIT AND OATH COMMISSIONERS

* * *

8. Affidavits filed or presented in Court:- The provisions of Rules 5,6 and 11 of Chapter IX shall, so far as may be, apply to an affidavit filed or presented in Court. It shall be in the language of the Court and shall bear the general hearing:

“In the High Court of Judicature at Allahabad.”

The affidavit and every exhibit annexed thereto shall be marked with the particulars of the case or proceeding in which it is sworn.

The affidavit shall contain no statement which is in the nature of an expression of opinion or argument.

* * *

12. Facts to be within the deponent's knowledge or source to be stated: Except on interlocutory applications, an affidavit shall be confined to such fact as the deponent is able of his own knowledge to prove.

On an interlocutory application when a particular fact is not within the deponent's own knowledge, but is based on his belief or information received from others which he believes to be true, the deponent shall use the expression “I am informed and verily believe such information to be true,” or words to that effect, and shall sufficiently describe for the purpose of identification, the person or persons from whom his information was received.

When any fact is stated on the basis of information derived from a document, full particulars of that document shall be stated and the deponent shall verify that he believes such information to be true.”

25. The case laws ought not to have been mentioned in the counter affidavit and those ought to have been cited during submissions. Moreover, copies of the case-laws ought to have been provided for perusal of the Court, but the same has not been done. This is not the manner in which case-laws should be cited before the High Court.

26. In **Indian Oil Corpn. Ltd. v. T. Natarajan**: (2018) 9 SCC 235, the matter of termination of dealership agreement was referred to an arbitrator and the arbitrator held that “The act of continuing the sales even after the breakage of Totaliser Seal committed by the claimant, in question, calls for stern action. However, it is noted that there was no variation in the quality and quantity. Again, the petitioner has already suffered substantially for more than two (2) years for the closed status of the retail outlets. Therefore, a lenient view may be considered by the respondent, bearing in mind the element of benefit of doubt.” The aforesaid award attained finality. The respondent then on 20.02.2013 filed a representation requesting the IOC for resumption of the supply of fuel to him pursuant to the directions of the award. IOC rejected the representation. The respondent filed a writ petition challenging the order of rejection. The Single Judge Bench of Madras High Court dismissed the Writ Petition. A Division Bench allowed the appeal, set aside the order of the Single Judge and issued a mandamus to IOC to restore the dealership and resume the supply of fuel to his fuel station, holding that:

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“21. The application filed by the Corporation to set aside the award has already been dismissed by the learned Single Judge. The Corporation is now taking advantage of the liberty granted by the learned Single Judge while confirming the award to consider the representation. There is absolutely no need to submit a representation and passing orders thereon by the Corporation in view of the conclusiveness reached to the award setting aside the order of termination. Since the supply was stopped only on account of the order of termination of dealership, naturally supplies should

resume immediately after the award and upholding the said award by the learned Single Judge. This aspect was not considered by the learned Single Judge. We are therefore of the view that the appellant must succeed.”

27. The Hon’ble Supreme Court allowed the appeal filed against the order of the Division bench holding that: -

“30. In our opinion, the writ court (Single Judge) was, therefore, justified in dismissing the respondent's writ petition and upholding the rejection on the ground that the High Court cannot interfere in the administrative decision of IOC and nor can it substitute its decision by acting as an appellate court over such decision in exercise of writ jurisdiction. It is more so when such decision is based on reasons involving no arbitrariness of any nature therein which may call for any interference by the High Court.”

This judgment was based on the facts of the case, where the Hon’ble Supreme Court upheld the decision of the Single judge Bench of the High Court.

28. In **ECI-SPIC-SMO-MCML (JV) v. Central Organization for Railway Electrification**: 2017 SCC OnLine All 2912, the Writ Petition was filed challenging the termination of a works contract and this Court was of the view that it was not a fit case where this Court must exercise its public law remedy available in Constitution which is extraordinary discretionary remedy under Article 226 and instead petitioner must be relegated to avail its alternative remedy by invoking arbitration clause in the agreement or avail common law remedy in Civil Court, which bar is not attracted in the present case. The petitioner has already availed the remedy of appeal once and I have already held the remedy of appeal would not bar maintainability of the writ Petition for reasons recorded in the earlier part of this judgment.

29. The respondents have referred to a judgment in the case of M/s Kisan Sewa Kendra, Sarai Dubaulia Vs. Union of India and others: Writ C No.32973 of 2018, without mentioning the name of the Court and the date of the judgment and without providing a copy of the judgment. This

should not be the manner of citing case laws before the High Court and in absence of a copy of the judgment or sufficient particulars with which the Court could have found out the judgment, I cannot discuss this judgment.

30. The learned counsel for the petitioners has submitted that although Clause 8.2 of MDG provides that tampering of seals of dispensing unit will be a critical irregularity, and termination will be imposed for the above irregularity, this critical irregularity obviously refers to tampering of the seal of a working metering unit, as the object of punishment of termination of license is to penalize for carrying out sales by a unit of which the seal is tampered. There is no allegation that the petitioner was carrying out sales from a unit of which the seal was tampered as the dispensing unit was non-functional.

31. It is also relevant to notice that Clause 8.4 of MDG provides that short delivery with Weights and Measurements Department seals intact would be treated as a minor irregularity, and in such a case, the action recommended is mere issuance of a warning letter at the first instance, for the second instance within one year of the first instance, Rs.10,000/- per nozzle found delivering short, and on third and subsequent instances within one year of the first instance, Rs.25,000/- per nozzle found delivering short. Clause 8.5.2 states that all cases of irregularities need to be established before any action is taken against the dealer.

32. The petitioner has not been found guilty of short supply. The only Unit which is said to have been tampered, was a non-functional Unit and no sales were being carried out from this Unit. The analysis report states that a track from U1 Pulsar up to third pin of U3 IC was cut and rejoined, apparently at the same place, and a track from U2 Pulsar up to fifth pin of U3 IC was cut and rejoined, and it does not say that circuit was altered. The analysis report says that when the pulsar card was connected to the standard test setup of the OEM, it was observed that the card was producing 500 ml for one rotation of sensor disk, which was

OK. Therefore, upon testing it was not found that the pulsar card was measuring any lesser quantity of the product.

33. The conclusion drawn in the analysis report states that some tracks in the pulsar card had been cut and rejoined and this could be an attempt to tamper. No additional attachment was found to alter the delivery and the circuit had not been altered.

34. A bare provision of the analysis report discloses that the report merely expresses an apprehension of attempt to tamper and there is no positive finding that there was any tampering.

35. The pulsar card was producing accurate quantity of the product and no alteration in the measurement of the quantity of the product was found.

36. In view of the foregoing discussion, I am of the considered view that the impugned termination order is unsustainable in law.

37. Accordingly, the Writ Petition is allowed. The termination order dated 07.08.2025, passed by the Executive Director Retail and Sales, Indian Oil Corporation, Head Office, Mumbai also sitting at Indian Oil Bhawan at Vibhuti Khand, Gomti Nagar, Lucknow, whereby the petitioners' dealership agreement dated 28.09.2007 has been terminated, is set aside. As a consequence of quashing of the termination order, the petitioner's dealership agreement is ordered to be restored and the opposite parties are directed to restore supplies to the petitioner's retail outlet unit.

(Subhash Vidyarthi,J.)

December 17, 2025
Ram/Ankit