HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 18416 of 2007

ORDER:

No representation on behalf of the petitioner. Heard learned Standing Counsel for the respondent Corporation and perused the record.

The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of the respondents in suspending sales and supplies of petroleum products in the petitioner outlet from 23.07.2007 pursuant to Test report dated 25.07.2007, without considering the request of the petitioner for conducting second sample test, as illegal, arbitrary and violative of principles of natural justice.

On 03.09.2007 this Court while issuing notice before admission passed the following order:

> "The grievance of the writ petitioner is that the third respondent had inspected and searched the retail outlet run and managed by the writ petitioner on 21.08.2007 and drawn samples of the Motor spirit and High Speed Diesel and subjected the same to 'Marker Test'. The third respondent filed the report that the sample had not conformed and passed the test. Based upon this report of the third respondent, the first respondent had passed an order on 25.08.2007 calling upon the writ petitioner to explain why the dealership should not be terminated. It is also further pointed out that on 22.08.2007, the retail outlet of the petitioner is inspected and the sales operations have been suspended. The principal contention of the learned counsel for the writ petitioner is that the third respondent does not have any power of search and seizure and without having any such power, upon a mere authorization by the first respondent, the third respondent could not have searched and collected

the samples from the writ petitioner's retail outlet and therefore the entire procedure followed by the third respondent and his report which forms the basis for the proposed action is contrary to the Motor Spirit and High speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order, 2005. The question as to whether the third respondent could have been authorized for conducting the search and seizure the operations is liable to be examined at the next stage of hearing. As at present, since the petitioner had suffered suspension of the sales operations, it becomes necessary to complete the exercise of analyzing the sample in quick time. Since the controversy centers around the right of the third respondent to collect the sample itself, I consider it appropriate to order the Sales Officer or any other Officer of a superior rank than the Sales Officer of the first respondent to inspect the retail outlet of the petitioner and collect the samples afresh and analyse the same. In the process, the Sales Officer or any other superior officer than him of the first respondent may seek the help and assistance of the third respondent. But, however, the samples collected so far and the samples which are liable to be collected now pursuant to this order be subjected to analysis separately and the report be made available within a period of three weeks. If the sample to be collected now by the Sales Officer passes the Marker Test then the sales operations of the writ petitioner outlet can be considered to be permitted to be carried on. However, in the event, the Market Test has not been passed through, the question of permitting the writ petitioner to carry on with the sales operations for the present does not arise and the same will be decided at the next stage of hearing. The test now ordered be accomplished within a period of ten days."

Subsequently, the respondent Corporation issued proceedings No.SDO/RO/6029 dated 30.01.2009 terminating the dealership agreement entered with the petitioner and consequently directing the petitioner herein to hand over physical possession of the retail outlet. Challenging the same, the petitioner is said to have filed

W.P.No.21916 of 2009. In view of the subsequent writ petition, which is still pending, nothing survives for adjudication in the writ petition.

Accordingly, the writ petition is closed. No order as to costs.

Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

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JUSTICE C. PRAVEEN KUMAR

22.12.2015
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