**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

**WRIT PETITION No.24699 OF 2008**

**ORDER:**

The present Writ Petition came to be filed seeking issuance of writ of *mandamus* declaring the letter vide Ref.Y.Lingaiah, dated 07.11.2008, issued by the 2nd respondent, as arbitrary, illegal and violative of Guideline No.6.2.1 of the Revised Marketing Discipline Guidelines, 2005 (for short, 'Guidelines, 2005').

2. The averments in the affidavit filed in support of the writ petition are as under:

The petitioner herein is the oldest retail outlets of respondent Corporation in Tenali Town, Guntur District, distributing and marketing the petroleum products of the respondent Corporation since 1968. On 30.10.2008 Sri M.Gopal, Deputy Manager (Retail Sales), Indian Oil Corporation (IOC), Guntur-II, visited the retail outlet and drawn a sample of "Lube Discipline Scheme" of Servo 2T Supreme Grade and also recorded the metre readings at the closing hours. Thereafter, on 07.11.2008 at about 8.00 p.m., the petitioner received a letter along with enclosure of even date from the 2nd respondent, intimating that the sample drawn from their retail out-let, which when sent for testing to the respondent's Kondapalli Lab failed in "viscosity and ash content". It is further mentioned therein that they have to show cause as to why action should not be taken as per the Guidelines, 2005. As the same being the first failure, they were advised to stop sales for a period of 30 days w.e.f. 07.11.2008 and also arrange to pay a penalty of Rs.1,00,000/- by way of Demand Draft in favour of respondent-Corporation payable at Vijayawada within 30 days from the of the said letter. Challenging the same, the present writ petition is filed.

3. Respondents filed counter opposing the averments made in the writ petition. It is stated that as per the Dealership Agreement subsisting between the petitioner and the Indian Oil Corporation Limited, the petitioner has to purchase all the petroleum products dispensed by it at the retail outlet from the IOC and the petroleum products were supplied to the petitioner only after due verification after meeting the necessary ISI specifications. As per Clause 27 of the Dealership Agreement, the petitioner has every right to check the quality of the product supplied to it with regard to the specifications and accept delivery only if it meets such specifications. It is said that lubricants are manufactured in a highly reputed lube-blending plants of the Corporation under strict vigilance and supervision to ensure that the same meet the required specifications. It is not necessary that every invoice/document of supply should reflect the product specifications. The Corporation is conscious of its responsibility towards the consumers to ensure that the dealers sell quality products to them and in furtherance thereof, it undertakes routine inspections to verify the quality of the product being dispensed at the retail outlets. The Corporation undertakes this exercise strictly in accordance with the procedure laid down in the Guidelines, 2005. It is further stated that the Corporation in strict consonance with the Guidelines, 2005, issued show cause notice and for preventing the sale of off spec to the customers at large, suspended the sales of all the products for 30 days in the show cause notice stage itself as it affect the public at large. It is

further stated that Respondent –corporation supplies the essential products i.e., petroleum products and these products are to be supplied to the public strictly in accordance with the specifications fixed by the Corporation and any change in the specification would cause serious disorder in the public at large. As per the terms of the dealership agreement, any breach of the covenants therein would result in termination of the dealership agreement itself.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents.

5. By an order, dated 12.11.2008, this Court issued *rule nisi* and suspended the proceedings, dated 07.11.2008.

6. The only argument advanced by the learned counsel for the petitioner is that without issuing any notice to the petitioner and without following the procedure contemplated under the Guideline No.6.2.1 of the Guidelines, 2005, the impugned order came to be passed. The learned counsel for the respondent-corporation states that the impugned letter, dated 07.11.2008, may be treated as a show cause notice and that the respondent authorities may be directed to pass appropriate orders after hearing the petitioner.

7. In view of the above and without expressing any opinion on the merits, the present writ petition is disposed of, by treating the letter, dated 07.11.2008, as a show cause notice, to which the petitioner shall give a reply within a period of four (04) weeks from today and the respondent Corporation is directed to pass appropriate orders after giving an opportunity to the petitioner, in accordance with law, preferably within a period of eight (08) weeks thereafter. Till such time, the interim order passed by this Court

on 12.11.2008 shall be in force.

Consequently, Miscellaneous Petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

**JUSTICE C. PRAVEEN KUMAR**

Date:14.12.2015
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