

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

+ **W.P.(C) 5983/2012**

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Reserved on: 06th August, 2015
Date of Decision: 21st August, 2015

M/S BHATIA SERVICE STATION

..... Petitioner

Through: **Mr. Shyam D. Nandan with Mr. Siddharth Bambha, Advocates.**

versus

INDIAN OIL CORPORATION LTD.

..... Respondent

Through: **Mr. Rajat Navet with Ms. Prachi V. Sharma, Advocates.**

CORAM:

HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. The petitioner, M/S Bhatia Service Station seeks quashing of termination letter dated 14.09.2012 issued by the General Manager, Indian Oil Corporation Ltd., New Delhi (respondent herein) whereby dealership of the petitioner to the petrol retail outlet at premises bearing No.4, Factory Road, Ring Road, near Trauma Centre, Safdarjung Hospital, New Delhi has been terminated.

2. The facts germane to the present petition are that the respondent is a company fully controlled and managed by the Central Government, being the national oil distributing concern is engaged in refining, pipeline transportation and marketing of petroleum products to exploration and

production of crude oil and gas, marketing of natural gas and petrochemicals. The petitioner is an authorized dealer of the respondent since 1960 and has been operating a retail outlet from the aforementioned premises since then. The constitution of the petitioner concern has been changed and approved by the respondent from time to time and as on date Smt. Vandana Aggarwal is the sole proprietor of the petitioner concern. The last and subsisting dealership agreement was executed between the parties on 11.11.2009.

3. On 27.10.2011, a surprise inspection was conducted by a team of Anti Adulteration Cell, Northern Region (AAC,NR) of the respondent at the retail outlet of the petitioner. The inspection team, after inspecting the retail outlet, observed abnormal short delivery from three dispensing units (for short 'DU'). All the three DUs were sealed by the inspecting team. On the basis of the above inspection report dated 27.10.2011, the respondent issued a show cause notice dated 28.10.2011 to the petitioner. The petitioner, vide letter dated 01.11.2011 objected and replied to the aforesaid show cause notice dated 28.10.2011. Prior to the aforementioned inspection dated 27.10.2011, the retail outlet of the petitioner was inspected on 22.09.2011 by the Field Officer; thereafter on 26.09.2011 by the Joint District Supply Officer (for short 'DSO') and further on 13.10.2011 by the Vigilance Teams but no discrepancy was ever found by any of the said team. Further, on 09.11.2011 the manufacturer, of two out of three DUs i.e. L&T(Gilbarco) submitted its report for the component of DUs taken by the inspecting team on 27.10.2011. The lab opined that no manipulation was observed and as such concluded that there is no alteration in DUs. Thereafter, the testing lab of the

manufacturer of the other dispensing units i.e. MIDCO, submitted its report on 10.11.2011 wherein it opined that even though there was some deviation found in the circuit which was not as per standard design of MIDCO but no specific finding of manipulation with the same was observed by the testing lab. On 20.12.2011, the expert of the respondent corporation submitted its observations with the respondent on above stated reports given by the L&T and MIDCO. The petitioner was given a clean chit, but only with regard to MIDCO's observation of the circuit not being as per set standards, and the said expert opined that the possibility of manipulation cannot be ruled out.

4. On the basis of the aforementioned material and facts, on 05.01.2012 the competent authority i.e. General Manager of the respondent, after considering all the material on record concluded that no case for termination of petitioner's dealership was made out and rejected the recommendation of the department to terminate the petitioner's dealership and ordered further necessary action. The respondent vide letter dated 10.01.2012, conveyed the decision of the competent authority, i.e., the General Manager dated 05.01.2012 and allowed the petitioner to recalibrate the concerned three dispensing units by the weight and measurement department in the presence of Area Field Officer and resumed sales from the said Dispensing units. Pursuant to the letter dated 10.01.2012 all the three dispensing units were recalibrated by the weight and measurements department in the presence of the Area Field Officer and a certificate to this effect was issued by the concerned department and the petitioner deposited the requisite fee with the weight and measurement department on 13.01.2012. However, on 21.04.2012, at 2:30 pm, a team of the respondent consisting of three officials

from sales department visited the retail outlet of the petitioner and vide the letter dated 21.04.2012 illegally terminated the dealership of the petitioner on the basis of the inspection dated 27.10.2011. The said letter called upon the petitioner to remove its goods, property and belongings within three days of the receipt of the termination letter dated 21.04.2012.

5. Aggrieved, the petitioner challenged the illegal termination dated 21.04.2012 before this Court in a petition bearing W.P. (C) No. 2406/2012 on which notice was issued on 24.04.2012 and an order directing to maintain *status quo* as on 21.04.2012 was passed. On 05.07.2012, after hearing the matter at length, and while recording the contention of both the parties, this Court, with the consent of the parties referred the matter back to the respondent for re-examination of the case and permitted the respondent to issue supplementary show cause notice. Pursuant to the above order the respondent issued a supplementary show cause notice to the petitioner dated 16.07.2012 and called upon it to file a response to which the petitioner filed its reply. Vide letter dated 14.09.2012 the respondent terminated the petitioner's dealership agreement.

6. Learned counsel for the petitioner contended that the respondent terminated the petitioner's dealership on the same reasons as stated in the termination letter dated 21.04.2012 which was specifically set aside by this court. The respondent failed to re-examine the show cause notice as directed by this court and has mechanically and illegally passed the termination order dated 14.09.2012. The respondent has no power to review its own order. Once the competent authority had passed its order rejecting the respondent

department's recommendation to terminate the petitioner dealership, the respondent could not have reviewed the decision which had brought an end to the show cause notice. The respondent has sought to terminate the agreement in stark violation of the Marketing Discipline Guidelines, 2005 (for short "MDG") which *inter alia* regulates the contractual relations between the parties. Once the petitioner has corrected any alleged defect as per the procedure prescribed in the MDG, the respondent cannot terminate agreement. This has not been discussed by the respondent in the impugned termination. The respondent is estopped from reneging from the permission granted to the petitioner to resume the sale of products from the sealed DUs after recalibrating the same as per the prescribed procedure. Once the respondent has condoned the alleged breach, it does not lie in the mouth of the respondent to treat the same condoned acts as a breach of the agreement and thereafter to terminate the agreement. The impugned termination has now been passed by lower rank officer than the officer who had rejected the recommendation of the termination of petitioner's dealership.

7. Learned counsel for the petitioner further contended that Government contracts like the one in question are in the form of distribution of largesse by the State. The same cannot be done in an arbitrary manner since large amount of public money is involved. The respondent has been targeting the petitioner since September 2011 and there was a barrage of inspections on the retail outlet despite which the petitioner had come out unscathed. No short delivery was observed at the petitioner RO. The Anti-Adulteration Cell or the Officers of the AAC were not authorized, qualified to measure the delivery in terms of law as well as otherwise. The said inspecting team has

not specified that what tools/equipments/methods were used to measure the delivery, whether the said tools/equipments/methods were appropriate/approved to measure the delivery and whether the said tools/equipment were in confirmation with the Physical Character, Configuration, Constructional Details, materials and performance. In the absence of such information no action can be taken on the basis of the said alleged report of short delivery. The Controller of the Weight and Measurement vide its letter dated 06.10.2003 in response to the RTI filed by the Petrol Dealers Association has specifically informed that the AAC team of the Respondent is not authorized under the Act to inspect any short delivery.

8. It was lastly contended by the learned counsel for the petitioner that prior to the said inspection, the outlet of the petitioner was also inspected on 22.09.2011 by the Field Officer of the respondent; thereafter on 26.09.2011 it was inspected by Joint DSO of the respondent and further on 13.10.2011 it was again inspected by the Vigilance Team of the respondent, wherein all the said inspections, no discrepancy of any type whatsoever was found/observed by any of the aforesaid inspecting teams and it was only in the inspection on 27.10.2011, which was conducted in haste and not in terms of prescribed norms and in the absence of the authorized representative of the petitioner that the short delivery was purported to be found by the AAC, NR team. The inspecting team has not even alleged that there seems to be some switch fitted in the DUs. It is very much manifest from the conduct of the respondent that the whole of the chain of events had been scripted and organized with some ulterior motive on the part of the respondent.

9. *Per Contra*, learned counsel for the respondent submits that the petitioner has indulged in malpractices and unprecedented short delivery of petroleum products. The short delivery detected by the Anti Adulteration Cell of the respondent at the surprise inspection of the RO of the Petitioner on 27.10.2011, in one of the dispensing units was to the tune of 660 ML per 5 liters, whereas, the permissible limit is only 25 ML per 5 liters, while in two other dispensing units short delivery was found to the tune of 290 ML and 230 ML respectively. Samples were taken three times by the AAC officers and each time short delivery was detected, proving beyond doubt that the petitioner herein was guilty of short delivery and thus in breach of the terms and conditions of the Dealership Agreement. The agreement between the parties specifically provides for dispute resolution by Arbitration in terms of clause 61 of the dealership agreement dated 11.11.2009, therefore the appropriate remedy is arbitration and not invoking the writ jurisdiction of this Court. The petitioner has raised issues such as irregularities and short delivery, which gives rise to disputed questions of facts, which cannot be adjudicated by this Court while exercising Writ jurisdiction under Article 226 of the Constitution of India. The allegation that the concerned delivery units are old is a baseless allegation inasmuch as age of dispensing unit is only related to frequent breakdown and by no means can result in short delivery. Manipulating the electronic devices by remote or otherwise has become a common practice in the recent past and short deliveries can be switched to normal delivery by pressing

unsuspected/hidden switches and there is every possibility that the same may have happened during the inspections on 22.09.2011, 26.09.2011 and 13.10.2011.

10. Learned counsel for the respondent further urged that as the respondent was getting repeated complaints against the petitioner, a surprise inspection was carried out by the AAC, NR team of the Respondent on 27.10.2011, in which unprecedented short delivery was detected. Vide its letter dated 10.01.2012, the respondent allowed the petitioner to get the DUs recalibrated and start sales again only on account of the inconvenience being caused to the general public at large on account of closure of three DUs at the retail outlet. The letter dated 10.01.2012 was only subject to the final outcome of the inspection and by no stretch of imagination can be construed to be closing the issue of short delivery. It has been observed in the report dated 27.10.2011 that since there was a joint in the cable connecting the standard design control card, the possibility of manipulation with the delivery system cannot be ruled out, this coupled with the actual short delivery detected during the inspection clearly shows that the petitioner is guilty of short delivery. The termination of the dealership agreement has been made in terms of the dealership agreement and has nothing to do with the MDG 2005 guidelines. The reason why the petitioner had come out unscathed in the previous inspections was only for the reason that the petitioner was forewarned and made necessary manipulations in the electronic devices prior to the inspection, so that the Vigilance Team of the respondent could never detect short delivery. The respondent had received various complaints from the customers who had visited the petitioner's RO.

The officials of the respondent including officers of the AAC are fully authorized, to carry out inspections and take samples for detecting malpractices which includes short delivery, in terms of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order 2005.

11. It was lastly contended by learned counsel for the respondent that the inspection dated 27.10.2011 was planned to catch the RO staff/dealer unaware, as on the previous occasions when the inspection was carried out, the dealer/his staff managed to manipulate the electronic adjustments as they were routinely cautious. The inspection was carried out in the presence of petitioner's staff available at the site and there is no question of same being done in the absence of the authorized representative of the petitioner.

12. I have carefully considered the submissions made by learned counsel for both the parties and have also perused the material on record.

13. As regards the submission of learned counsel for the respondent that the present petition is not maintainable as there is an arbitration clause involved in the dealership agreement, it is a 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. Availability of a statutory remedy may be one of the factors that may have to be taken into consideration in the matter of granting writs. However,

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.

14. A question similar to the one raised by the respondent was considered by the Apex Court in '**Harbanslal Sahnia and Anr. v. Indian Oil Corpn. Ltd. and Ors.**' (2003) 2 SCC 107 wherein the Supreme Court observed:

“7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act and is challenged (See *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors*, AIR 1999 SC 22). The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.”

(emphasis supplied)

15. It is a trite law that principles of natural justice are to be treated as part of Article 14 of the Constitution. The rule of exclusion of writ jurisdiction

by availability of an alternative remedy is a rule of discretion and not one of compulsion. Moreover, in a case where the Court having admitted the 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 not possible to dismiss the petition 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 has 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 a normal trial 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. Therefore, this court is of the view that while cancelling the dealership agreement of the petitioner, principles of natural justice were to be observed by the respondent corporation to the extent that the MDG were to be strictly construed and any violation thereof would mean infraction of Article 14 of the Constitution. The availability of alternative remedies does not oust the jurisdiction of this Court.

16. 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.

17. Therefore, this Court seeks to determine whether the respondent corporation followed principles of natural justice while terminating the dealership agreement of the petitioner.

18. Whenever the respondent corporation enters into a dealership agreement, such dealership agreements have certain express terms and conditions that need to be strictly construed by the contracting parties which are in consonance with the principles of natural justice. The MDG was introduced with the sole intention to prevent the respondent corporation from terminating contracts arbitrarily. They have been in existence for over a decade to facilitate the marketing of petroleum products by the dealers of the Public Sector Oil Marketing Companies on the principles of highest business ethics and excellent customer service. MDG also provides for taking punitive action against the dealers found indulging in irregularities/malpractices. It further seeks to ensure that the concerned dealers follow correct and safe practices in handling and dispensing petroleum products and also achieve the highest standards of customer service. Therefore, the MDG has been enacted for smooth functioning of the dealership agreements between the respondent corporation and respective dealers in petroleum products.

19. In **‘Bharat Filling Station & Anr. v. Indian Oil Corporation Ltd.’**, 104 (2003) DLT 601, this court while considering the said guidelines observed as under:

“11.However, at this stage we are dealing with the question as to whether before imposing the penalty principles of natural justice are required to be observed. As pointed out above, respondents' own Guidelines prescribed this procedure. It is trite of law that any action, even administrative, which visits person with penal or civil consequences, before taking such action principles of natural justice are generally to be followed unless the Legislature has by incorporating a statutory provision specifically excluded the observance thereof. In the instance case, there is no such exclusion. On the contrary the respondents have themselves provided for the mechanism for taking such action and have rather incorporated the provision for issuing of show-cause notice. In fact, even as per the argument of Mr. Kalra, the respondents would be required to serve such a show-cause notice. The penalties which are to be given in case of such irregularities are already mentioned above. Mr. Kalra submits that the respondent-IOC has right to take appropriate highest punitive action even in the first or any instance. That means in a given case the respondent No. 2 can depart from the normal penalties. If respondents want to take such action, they will have to justify the same on the facts and circumstances of a particular case and this itself necessitated observance of principles of natural justice by putting the dealer to notice that going by the serious irregularity in a given case, the respondent propose to terminate the dealership and Therefore such a dealer will have to be given an opportunity to show cause against such a proposed action. When normally from the Guidelines a dealer is put to notice for any irregularity, like in the instant case, the first instance which would visit is the penalty of suspension for a few days and some fine in monetary terms.”

20. The MDG has been enacted for such dealership agreements as the one involved in the instant case and therefore, I am of the view that these guidelines need to be strictly construed by both the parties. Further any dealership agreement cancelled by the respondent corporation cannot be effected on the basis of dealership agreement itself as the MDG have to be followed while taking recourse to such action. The respondent corporation cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standards or norms which are not irrational or irrelevant. Therefore, petitioner cannot be exempted from the application of MDG merely by following the dealership agreement.

21. In the instant case, the respondent has departed from the standard norms laid down in the Marketing Discipline Guidelines and the standard norms of natural justice and fair play and such departure was clearly unreasonable and discriminatory. Further the respondent corporation terminated the dealership of the petitioner vide its letter of termination dated 21.04.2012 without even issuing show-cause notice and/or providing any opportunity of hearing. It was only when this Court set aside the impugned termination and with the consent of both the parties referred the matter back to the respondent for re-examination that the respondent agreed to re-examine the issue in hand after affording an opportunity of hearing to the petitioner. However, after according due opportunity to the petitioner the respondent again served a letter of termination dated 14.09.2012 under reference: DDO/R/BHATIA terminating the dealership of the petitioner on the same very grounds as done in the termination letter dated 21.04.2012. It

is therefore, hard for this court to establish that whether the said termination was done with proper consideration to the contentions of the petitioner or in a mechanical manner. This Court, therefore, is of the view that the termination of the dealership agreement is in violation of the principles of natural justice.

22. Reverting to the merits of the present case, four inspections were conducted by the concerned officials of the respondent corporation at the petitioner's petrol retail outlet. It is the contention of petitioner that in the three inspections dated 22.09.2011, 26.09.2011 and 13.10.2011, no discrepancy was observed by the respondent. The same has not been disputed by the learned counsel for the respondent. Further, in the inspection dated 27.10.2011, a fourth team from the Anti Adulteration Cell, visited and carried out an inspection at the retail outlet of the petitioner without there being a representation on behalf of the petitioner.

23. On 09.11.2011, L&T (Gilbarco) submitted its analysis report wherein it was observed that the electronic circuitry sent to them was original and no alteration/tampering/changes were observed to alter the pump delivery. However, it was further advised that the pump needs to be tested for any tampering. However, no document has been brought on record either by the petitioner or the respondent to suggest that the pumps were totally tested for discrepancies as alleged by the respondent. Vide report dated 10.11.2011, MIDCO limited submitted its test report with regard to MEB Control Card, pulser assembly and power card wherein it was concluded that MEB control card, power card and pulser assembly has duly passed the functional testing

procedure of MIDCO and there is no deviation in standard performance. Further, in the report of the DGM (Engineering) dated 20.12.2011, it has been specifically stated that since there was a joint in the cable connecting the Standard Design control card, the possibility of manipulation within the delivery system cannot be ruled out. However, vide reference: GM/07 dated 05.01.2012, the General Manager of the respondent corporation has specifically observed the following:

“(I) **Violation of Clause 6.1.3(a) of MDG 2005:**

- (i) No convincing reason has been advised by the AAC team for either not demonstrating the said short delivery in the DUs to the dealer’s representative or for not taking the acknowledgment of the RO staff on the inspection report in whose presence the short deliveries are said to have been detected. If either of the two actions had been completed the said short deliveries from the DUS would have been established beyond any doubt. Therefore in the absence of any acknowledgement of either the dealer’s representative or the RO staff for having witnessed the short deliveries the contention of the AAC team is at best one sided with no basis to corroborate the same. Therefore based on the available records there is no basis to establish the short deliveries as advised by the inspection team.
- (ii) It is a recorded fact that during the stock reconciliation by the inspecting team the stock variation was found to be within permissible limits. Therefore the comments of DDO that the stock variation/position can be manipulated by the dealer and hence no variation was found is without any merit or basis. Are we to conclude that at every RO where the stock variation is found

within permissible limits, the same is on account of the “manipulation” carried out by the dealer?

Considering the above facts, there is no merit in the department’s conclusion that the explanation of the dealer has not been found satisfactory.

(II) **Violation of Clause 6.1.5 of MDG 2005**

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The observation regarding the MIDCO Unit’s electronic card is only a “possibility” and therefore based on the same no conclusion can be drawn since no “additional/unauthorized fitting were detected in the DU during the inspection as confirmed by AAC team. Accordingly recommendation for termination of dealership in line with clause 6.1.5 of MDG is not tenable.”

24. Further, vide letter dated 02.04.2012, the GM of the respondent corporation wrote to the DGM (AAC) directing the concerned DGM (AAC) to review their comments on the inspection carried out at the petitioner’s RO on 27.10.2011. Vide letter dated 16.04.2012, DGM AAC team wrote back to the GM retreating the earlier stand. The aforementioned observation of the General Manager dated 05.01.2012, has been brought on record by the petitioner who has alleged that the said document has been concealed by the respondent. Whatever may be the reason for such concealment, the said observation of the concerned General Manager has cleared the petitioner of all its allegations of manipulation as alleged by the DGM (Engineering) in

his report dated 20.12.2011. This court is also of the view that the finding given by the GM prevails over the findings given by the DGM (AAC) and as such it is hard to establish any form of manipulation on the part of the petitioner.

25. It has also been contended on behalf of the petitioner that the inspection dated 27.10.2011 has not been conducted in the presence of the petitioner. Learned counsel for the respondent has not disputed this fact and has further stated that the inspection dated 27.10.2011 was planned to catch the RO staff/dealer unaware, as on the previous occasions when the inspection was carried out, the dealer/his staff managed to manipulate the electronic adjustments as they were routinely cautious. The inspection was carried out in the presence of petitioner's staff available at the site and there is no question of same being done in the absence of the authorized representative of the petitioner. This argument does not find favour with this court as well. It is hard for this Court to give a finding on the allegations made by the respondent *inter alia* pertaining to the alleged manipulation of the DUs by the petitioner's staff as nothing has been brought before this Court to justify that claim. This Court therefore, in the absence of any document on record in this regard refrains from giving a finding upon this contention of the respondent.

26. Principles of natural justice require that a person must be allowed an adequate opportunity to present their case where certain interests and rights may be adversely affected by a decision-maker. The said inspection dated 27.10.2011 was conducted by the AAC of the respondent without giving

adequate opportunity to the petitioner to represent itself. Therefore, I am of the view that the aforementioned inspection so conducted by the respondent cannot be the only determinative ground to terminate the agreement of the petitioner as while conducting such termination, principles of natural justice were not strictly adhered to.

27. During the course of arguments, it was further contended on behalf of the petitioner that any irregularity or alleged defect has been corrected as per the prescribed procedure in the MDG. Learned counsel for the respondent has also contended that the respondent corporation is paying the rent for the land which the petitioner's RO is located and is also paying the salary of a security guard protecting it.

28. One must wonder why the respondent corporation is ready to incur such heavy expenditure for a retail outlet instead of according an opportunity to the petitioner to resume its sales and conducting necessary inspection with the proper processes and procedures, based on the MDG thereafter. Since the respondent corporation and the petitioner are not willing to reach at an amicable solution, this court is of the view that under the circumstances prevailing in this case it is necessary in the interest of justice for the Court to exercise its jurisdiction.

29. Therefore, in view of the above findings, this court is of the view that a corporation such as the respondent owned and controlled by the Government should take decisions on the basis of valid principles with legitimate reasons attached to them. If such decisions are not based on valid principles with legitimate reasons attached to them, it is liable to be struck

down unless it can be proved that the decision so taken is not arbitrary, irrational or discriminatory.

30. In the instant case, it appears that the respondent has cancelled the dealership agreement of the petitioner arbitrarily and has also concealed letters such as the one dated 05.01.2012 issued by the General Manager of the respondent corporation. Further, during the course of arguments, it has been contended by the learned counsel for the petitioner that several other dealership agreement which involved discrepancies and shortages of similar nature as that of the petitioner has been given a green signal by the respondent corporation. The said submission finds support from the report of the General Manager dated 05.01.2012 wherein he has specifically stated:

“ (iii) **Violation of Clause 45(o) of Dealership Agreement:**

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It is also pertinent to mention that during the surprise inspection of ROs carried out under DSO from 5 to 7.11.2011 short delivery ranging from 20 ml to 70 ml per 5 ltrs had been detected at 73 DUs at 47 ROs. Since the seals were found intact in these DUs, recalibration of the same was carried out and sales were commenced as confirmed by the department. In the case of the subject RO also the seals of the DUs were found to be intact. Therefore the required action should also have been recalibration of the DUs as had been done in the case of 73 DUs. Instead the recommendation of the department is to terminate the RO. Reason for applying/recommending two different yardsticks is not understood.

Taking into consideration the facts as brought out above, I find no case to agree to the recommendations of the department for

the termination of the RO dealership. Further necessary action may be taken accordingly.”

31. Therefore, reasonable doubt appears as to the intentions of the respondent corporation in the recourse taken by the respondent corporation while cancelling the dealership agreement of the petitioner. This Court cannot allow the respondent corporation to proceed arbitrarily and without any reasonable merit in its actions.

32. In the light of aforesaid discussion, the petition is allowed and the impugned letter of termination dated 14.09.2012 issued by the General Manager of the respondent corporation is set aside. The respondent is directed to remove the seals from the delivery units belonging to the petitioner to enable the petitioner to resume its delivery operations within a period of one week.

33. No order as to costs.

C.M. APPL. Nos.12308/2012, 18198/2012 & 6050/2015

The applications are dismissed as infructuous.

**(VED PRAKASH VAISH)
JUDGE**

AUGUST 21, 2015

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