

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1558 OF 2015

M/s.Bhawani Auto Traders & Ors.	.. Petitioners
Vs.	
Indian Oil Corporation Ltd. & Ors.	.. Respondents

Mr.P.S. Dani, Senior Advocate i/by Mr.Jaydeep Thakkar for the petitioners.
Mr.Sunil Gangan i/by M/s.R.M.G. Law Associates for the respondent nos.1 to 3.

CORAM : R.D. DHANUKA, J.
DATE : 10th July 2018

P.C.:

1. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 31st December 2014 passed by the appellate authority rejecting the application filed by the petitioners for re-verification and re-testing of the dispensing unit on various grounds.

2. The order has been impugned on various grounds including on the ground that the order was passed by the appellate authority ex parte. There was no hearing on 27th October 2014 or 28th October 2014 in presence of the petitioners or their advocates. The petitioners placed these allegations on record vide letter dated 19th January 2015. There was no response to the said letter.

3. Mr.Dani, learned senior counsel appearing for the petitioners relied upon the judgment of the Supreme Court in the case of **Hindustan**

Petroleum Corporation Limited & Ors. Vs. Super Highway Services & Anr. (2010) 3 SCC 321 in support of the submission that the report of the MIDCO Lab was carried out in the absence of the petitioners could not have been relied upon by the respondents against the petitioners. In support of this submission, learned senior counsel invited my attention to paragraph 4 of the impugned order dated 31st December 2014. He submits that the testing was not carried out in presence of the petitioners. The entire testing process, submission of report and consideration thereof in the impugned order is in violation of principles of natural justice.

4. The respondents have not filed any affidavit-in-reply to this letter controverting the assertion made in the said letter that there was no hearing on 27th October 2014 or 28th October 2014. The fact remains that the impugned order was passed on 31st December 2014. The appeal filed by the petitioners is still pending before the appellate authority.

5. In these circumstances, in my view, it would be more appropriate if the appellate authority is directed to hear the appeal on its own merit without being influenced by the observations made in the impugned order dated 31st December 2014. It is ordered accordingly.

6. It is made clear that during the course of the arguments, if the appellate authority comes to the conclusion that no appropriate conclusion can be drawn by the appellate authority for want of re-testing, the appellate authority would be at liberty to order re-testing and re-verification irrespective of the order passed by the appellate authority on 31st December 2014.

7. Writ petition is disposed of in aforesaid terms. It is made clear that this Court has not expressed any views on merit of the matter. All contentions of both the parties are kept open. The appellate authority shall decide the matter expeditiously and not later than six months from the date of the first hearing. The parties are directed to appear before the appellate authority and shall not seek any unnecessary adjournment.

R.D. DHANUKA, J.