$~43

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

\+ W.P.(C) 864/2018 & CM No.3669/2018

HARISH GUPTA AND ANR. ..... Petitioners

Through Mr. Rajesh Mahale, Advocate

versus

INDIAN OIL CORPORATION LTD. ..... Respondent

Through Ms. Mala Narayan with Ms. Neha Dawar, Advocates

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 30.01.2018

1. Issue notice. Learned counsel for the respondent accepts notice.

2. The petitioners operate a retail outlet of Indian Oil Corporation Ltd. (IOCL). The grievance of the petitioner is that the supplies to the retail outlet have been suspended on account of certain allegations.

3. It is stated that an inspection at the retail outlet was carried out on 21.12.2017 and the following irregularities were found:

> "(1) Poor Housekeeping at the Retail Outlet wherein wrappers on Driveway and waste on the backside of the retail outlet were observed
> (2) Customer Attendants were not in proper uniform
> (3) Air facility was not manned
> (4) Non display of Stock board with RSP display of 20-12-2017
> (5) Daily RSP change taking place after 6 AM on few occasions
> (6) Positive stock variation was found in MS by 154 Litres beyond the permissible limits."

3. Subsequently, a Show Cause Notice was also issued by IOCL calling upon the petitioner to show cause within a period of 15 days why action should not be taken against the petitioners' dealership**.** The relevant extract of the Show Cause Notice is extracted below:

> "We are now in receipt of the test reports from both the laboratories wherefrom it is found the samples drawn are meeting the specifications. However, apart from the samples drawn, the other irregularities, as have been mentioned above, falls under the irregularities mentioned in violation of the MDG-2012 as amended on 02.10.2017. Irregularities mentioned at Sr. No.1, 2, 3 & 5 falls under clause 5.1.17, Irregularity mentioned at Sr. No.4 falls under Clause 5.1.15 and Irregularity mentioned at Sr. No.6 falls under Clause 5.1.11 of MDG 2012 as amended on 02.10.2017.
>
> Since the irregularities mentioned at Sr. No.1-5 fall under minor irregularities and irregularity mentioned at Sr. 6 falls under major irregularities in line with Clause 8.4 (iii) and Clause 8.3 (iv) of MDG 2012 as amended on 02.10.2017, you are therefore, advised to show cause within a period of 15 days why action against your dealership be not taken. If your reply is not received within the stipulated period or the reply filed by you is not found to be satisfactory, Corporation shall be constrained to take action against your dealership as per its norms which may include action in line Clause 8.3 and 8.4 MDG, 2012 as amended on 02.10.2017.
>
> This letter is issued without any prejudice and is in the interest of the Corporation."

4. It is apparent from the above that apart from the major irregularity pertaining to the variation in the stock of 154 Litres, which was beyond the permissible limits, no other major irregularity has been alleged.

5. The learned counsel appearing for the petitioner also drew the

attention of this Court to the Marketing Discipline Guidelines (MDG), which provide for the action to be taken in respect of such major irregularities. The petitioner claims the present instance is the first instance of such irregularity. In terms of Para 8.3 of the MDG, the sales and supplies to the retail outlet are required to be suspended for a period of 15 days in case of the first instance. The relevant extract of the MDG is set out below:

> "8.3 **<u>Major Irregularities:</u>** The following Irregularities are classified as major irregularities:
>
> i. Refusal by the dealer to allow drawl of samples/ carry out inspections. (5.1.8)
> ii. Non availability of reference density at the time of inspection. (5.1.9)
> iii. Selling of normal MS/HSD as branded fuels. (5.1.10)
> iv. Stock variation beyond permissible limits but sample passing quality tests. (5.1.11)
> v. Non maintenance of records since last inspection. (5.1.12)
> vi. Overcharging of MS/HSD/CNG/Auto LPG (5.1.13)
> vii. Non provision of clean toilet facility. (5.1.14.b).
> viii. Automated Retail Outlets : 5.1.16 (a), (b), (c)
> ix. Non-payment of Salary, Wages and other benefits (as per clause 5.1.18) to the manpower employed at the ROs.
> x. Short delivery of products with W&M seals intact : 5.1.2 (a)
>
> Action: Except in case of (iii), (vii), (viii), (ix) & (x) above:
>
> First instance: Suspension of sales and supplies for 15 days.

Second instance:	Suspension of sales and supplies for 30 days.
Third instance:	Termination of the dealership.”

5. In the present case, the supplies to the petitioner’s retail outlet have been suspended since 21.12.2017, and thus *prima facie* it appears that the petitioner has already suffered the maximum punishment that could be imposed on the petitioner if the allegations set out against the petitioner in the Show Cause Notice were established.

6. This Court is informed that the petitioner has already responded to the Show Cause Notice and the same is being considered by IOCL.

7. In view of the above, this Court is of the view that the supplies to the petitioner’s retail outlet cannot be suspended indefinitely pending consideration of the petitioner’s response to the Show Cause Notice, particularly, since it appears that the petitioner has already suffered the maximum punishment that could have been imposed on the irregularity.

8. In the circumstances, IOCL is directed to immediately resume the supplies to the petitioners’ retail outlet forthwith without prejudice to the final order that may be passed by IOCL pursuant to the Show Cause Notice issued to the petitioner. To make it abundantly clear, the resumption of supplies shall be subject to the further final order that may be passed by the IOCL pursuant to the proceedings commenced under the MDG.

9. The petition and the pending application are disposed of with the aforesaid directions.

10. Order *dasti.*

VIBHU BAKHRU, J

JANUARY 30, 2018/NS