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WPA 2025 of 2023

M/s Hira Petroleum through its Authorized Representative Jitendra Prasad
-Vs-
Union of India & Ors.

Ms. Ujjayani Chatterjee,
Mr. Rajib Ghosh,
... for the petitioner

Mr. Sanjib Kumar Mal,
Mr. Bimalendu Das,
Ms. Shomrita Das
... for the respondent nos. 2 to 7/Oil Company

The issue, after exchange of affidavits, appears to be the non-compliance of the Marketing Discipline Guidelines (MDG) by the Oil Company.

According to learned counsel appearing for the petitioner, the alleged infraction of the MDG pertains to Clause 5.1.4 of the MDG as amended in 2017. Counsel submits that the amendments, which were introduced in 2017, are not relevant for the facts of the present case and the Guidelines as they were in 2013 would be sufficient for the facts of the case.

The question is whether the petitioner can be brought under the clauses relating to critical/major irregularities which includes manipulation of any part of the Dispensing Unit including microprocessor chip and OEM software. The petitioner is aggrieved by the non-speaking nature of the impugned notice of termination and also by the absence of a Show Cause Notice under Clause 8.5.6 of the MDG.

The admitted facts are that samples were taken by the Company on 20th April, 2022, Report was obtained on 10th June, 2022 and the impugned Show Cause Notice was issued on 4th July, 2022. On a consideration of Clause 8.5.6, it is clear that the impugned Show Cause Notice will have to be issued within 30 days of the Test Results. The dispute is whether the Oil Company issued the Show Cause Notice within 30 days from taking the samples. It appears that the Oil Company fell behind the timelines under Clause 8.5.6. The Oil Company says that the Company was within the timelines under Clause 8.5.6 of the MDG.

The other issue before the Court is whether the impugned notice of termination dated 19th January, 2023 gives sufficient time to the petitioner to explore the alternative remedy provided under Clause 8.9 of the MDG. Clause 8.9 provides for preferring an appeal within 30 days from the date of receipt of the order in relation to critical irregularities. The controversy is resolved by learned counsel appearing for the Oil Company, who submits that the time for preferring the appeal under MDG can be extended for the petitioner to explore the option of appeal under Clause 8.9.

WPA 2025 of 2023 is disposed of with a liberty to the petitioner to prefer an appeal under Clause 8.9 of the MDG within 7 days from date. The appeal shall be disposed of within the time period provided under Clause 8.9, that is within 90 days from the date of filing of the appeal with the Appellate Authority. The Appellate Authority shall decide all points with a fresh look in the matter. The interim protection granted to the petitioner shall continue until one week of the decision made by the Appellate Authority.

(**Moushumi Bhattacharya, J.**)