

**IN THE HIGH COURT AT CALCUTTA
(CONSTITUTIONAL WRIT JURISDICTION)
APPELLATE SIDE**

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

WPA 7674 of 2023

**Saumajit Roy Chowdhury
-Vs.-**

Indian Oil Corporation Ltd. & Ors.

For the Petitioner : Mr. Pingal Bhattacharyya
Mr. Rajdeep Sinha

For the Respondents : Mr. Puspendu Chakraborty

Heard on : 28.07.2023

Judgment on : 07.08.2023

Partha Sarathi Chatterjee, J.:- In invocation of extra ordinary jurisdiction of this court under Article 226 of the Constitution of India, the writ petitioner has called in question the tenability and/or sustainability of the letter of termination of Indian Oil Retail Outlet Dealership (hereinafter referred to as the dealership) issued by the Executive Director & State Head, Indian Oil Corporation Ltd. (in short, IOCL), West Bengal State Office, show cause notice dated 25.11.2022 and fact finding letter dated 24.9.2002.

Factual scenario as depicted in the writ petition is that the petitioner was appointed as Indian Oil Retail Outlet Dealer (hereinafter called as the dealer) (B-site) under Open Category at Village- Bahiri, P.S.-Bolpur, District- Birbhum. As a sequel thereto, a letter of intent was issued and an agreement was entered into by and between the petitioner and the IOCL (hereinafter called as the dealership agreement) on 31.1.2015. The petitioner started running the outlet under the name and style of M/s. Krit Filling Station as per the terms and conditions contained in the dealership agreement, Market Discipline Guidelines (in short, MDG), other relevant rules and regulations of Govt. of India and the State of West Bengal.

On 24.9.2022, some officials of the IOCL inspected the petitioner's outlet and the samples of Motor Spirit (in short, MS) and High Speed Diesel (in short, HSD) were drawn and sent to laboratory for testing. On that day itself, by a letter dated 24.9.2002, the Business Manager, COCO-Rampurhat, IOCL. (MD), Durgapur Divisional Office informed the petitioner that during inspection, some

irregularities were detected. A summary of irregularities were mentioned in that letter in a tabular form which is as follows:-

S. No.	Irregularity	Violation as per amended MDG 2012 dt: 03.08.2018
1	Positive stock variation	Clause 5.1.11
2	Non availability of reference density at the time of inspection.	Clause 1.4.1(c), 1.5 (i) & 5.1.9
3	Non maintenance of Stock/Sales and density records	Clause 1.5 (i) & 5.1.12 (i)
4	Short Delivery of products with W&M seal intact beyond permissible limits	Clause 1.4.2 (d) & 5.1.2 (a)
5	Non provision of clean toilet facility (gents) and ladies toilet door locked	Clause 1.6 (vi) & 5.1.14 (b)
6	Non maintenance of customer complaint book	Clause 1.6 (iv) & 5.1.17
7	Non maintenance of hydrometer and thermometer calibration certificates, 5L can calibration certificates and fire extinguishers test certificate	Clause 1.4.2 (b) & 5.1.12 (v)
8	Driveway salesmen at RO not in uniform/wearing badges	Clause 5.1.17
9	Poor Housekeeping	Clause 1.6 (x) & 5.1.17

In view of the irregularities mentioned in Sl. Nos. 1, 2 & 3, the sales and supplies of the petitioner's retail outlet were suspended and the petitioner was asked to give explanation in respect of the irregularities, as detected within 10 days.

The petitioner submitted his explanation by a letter dated 1.10.2022 dealing with all the irregularities referred in the letter dated 24.09.2022. The petitioner was handed over the system generated stock details for the period commencing from 2.3.2022 to 25.9.2002 with regard to MS and HSD and on perusal of the same, huge variation in between SAP receipt and receipt as per automation system was detected by the petitioner.

On 8.10.2022, test report of the samples of MS and HSD was handed over to the petitioner. The report revealed that samples passed the required specification and no adulteration was found.

The petitioner was granted dealership of another retail outlet in the District of Birbhum which he decided to run under the name and style of 'M/s. Sauptika Filling Station. On 31.01.2022, the tank of that outlet could not be prepared by IOCL authority but to start functioning the outlet, the IOCL authority issued load of MS and HSD and hence, the MS and HSD allotted to the petitioner for 'M/s. Sauptika Filling Station was poured in the subject outlet which would be explicit from the GPS location tracker of tank lorry bearing no. WB-39A-9779.

On 25.11.2022, a show cause notice was issued asking the petitioner to show cause, within 10 days from the date of issue of that letter, as to why action should not be taken as per Clauses 8.2(vi) of the amended MDG 2012 as in vogue and clause 3, 29, 30, 34, 39(a) and 42 of the dealership agreement.

A reminder was given to the petitioner by a letter dated 13.1.2023 to submit his show cause which was issued to him for violation of Clauses 5.1.11 and clause 5.1.6. of MDG of 2012 which is critical irregularity and which attracts

termination at first instance in line with clause 8.2.(vi) of MDG 2012 and also for violation of clause 3, 29, 30, 34, 39(a) and 42 of the dealership agreement and the petitioner was asked to attend the hearing scheduled to be held on 27.1.2023.

Challenging the show-cause notices dated 24.9.2022 and 25.11.2022 and suspension of petitioner's retail outlet, the petitioner preferred one writ petition *vide* WPA no. 28450 of 2022 and the copy of the writ petition was duly served upon the respondents and hence, the petitioner did not respond to the show cause notice dated 25.11.2022.

On 27.1.2023, the learned advocate of the petitioner by giving one letter informed the General Manager (Retail Sales), W. B. Sales Office, IOCL that on 19.1.2023, the writ petition was mentioned before the Hon'ble Justice Mousumi Bhattacharya and upon consideration of the urgency of the matter, Her Ladyship directed the matter to appear at the top of the list on 25.1.2023 and on 25.1.2023 the writ petition appeared against serial no. 36 but due to paucity of time, the same could not be taken up for hearing. The Hon'ble Court remained closed on account of Saraswati Puja on 26.1.2023 and 27.1.2023 and also on 28.1.2023 and 29.1.2023 being the Saturday and Sunday and hence, a request was made to adjourn the date of hearing on 27.1.2023.

The respondents did not adjourn the hearing. The petitioner attended the office in person, as directed and the matter was taken for hearing. In the minutes of the personal hearing, it was observed that no reply to show cause notice dated 25.11.2022 was received by IOCL. The petitioner submitted that all points in defence to the said show cause notice were covered in the writ petition

and the submissions of the petitioner in respect of the irregularities referred in the show cause notice dated 25.11.2022 were recorded.

By virtue of one letter dated 24.02.2023, the petitioner's retail outlet dealership was terminated with immediate effect for violation of clauses 5.1.11 and 5.1.6. which are classified as critical irregularity under clause 8.2(vi) of MDG-2012 as well as for violation of clauses clause 3, 29, 30, 34, 39(a) and 42 of the dealership agreement and security deposited by the petitioner was directed to be forfeited.

Mr. Bhattacharya, learned advocate representing the writ petitioner submits that the petitioner preferred a writ petition *vide*. WPA no. 28450 of 2022 challenging the show cause notice dated 24.9.2022 and 25.11.2022 and hence, the petitioner did not respond to the show cause notice dated 25.11.2022.

He submits that by a letter dated 27.1.203, the petitioner's learned advocate duly informed that respondents that upon mentioning, the writ petition was upgraded in the list but due to paucity of time, the writ petition could not be taken up for hearing 25.1.2023 and the Hon'ble Court remained closed from 26.1.2023 to 29.1.2023 on account of Saraswati Puja followed by Saturday and Sunday. He vehemently contends that taking advantage of such situation, the respondents concluded the hearing on 27.1.2023 in hot haste manner and consequently, the writ petition became infructuous. He contends that such conduct itself speaks about the pre-conceived mind of the respondent. He submits that since the earlier writ petitioner became infructuous and the same

was withdrawn and taking leave from the Hon'ble Court, the instant writ petition has been filed.

It was urged by Mr. Bhattacharya that though MDG contain provision for appeal against the order of termination but since the respondents proceeded in violation of the principle of natural justice without giving any opportunity to the petitioner to file his reply to the show cause and since the respondents have acted arbitrarily and thereby have violated the petitioner's fundamental rights enshrined under Article 14 and 21 of the Constitution of India, despite having provision for appeal, the petitioner is entitled to invoke writ jurisdiction of this Hon'ble Court.

He argues that the respondents brought an allegation that there was positive stock variation but they could not prove that there was unauthorised purchase. He stressed on the point that unless, the respondents can prove that there was unauthorised purchase, the respondents cannot terminate retail outlet dealership of the petitioner.

He contends that the samples of MS and HSD were collected from the petitioner's outlet but such samples passed the test and no adulteration was found. He further contends that the petitioner had justified the reasons for positive stock variation saying that it occurred since there were variations between SAP receipt and receipt as per automation system, shortage of delivery due to some problems in nozzles lock and the load of M/s. Sauptik Filling Station had been poured in the tank of subject outlet but without taking into account

these aspects, the order of termination has been passed with pre-determined mind.

He submits that actual cause behind such termination is that the petitioner's wife has filed one civil suit against the respondents regarding some disputes cross up in relation to M/s. Sauptik Filling Station and hence, only to wreck vengeance, the petitioner's retail outlet dealership has been terminated. To buttress his argument, he places reliance upon the judgments delivered in cases of *Unitech Limited & Ors. –vs- Telangana State Industrial Infrastructure Corporation (TSIIC) and Others* reported in 2021 SCC OnLine SC 99, *Madhya Pradesh High Court Advocates Bar Association and Another –vs- Union of India and Another* reported in 2022 SCC OnLine SC 639 and two unreported judgments passed by this Hon'ble Court in WP no. 12206(W) of 2014 (*M/s. Bimala Gas Service & Anr. –vs- Indian Oil Corporation Ltd. & Ors.*) and in MAT 1493 of 2018(*Indian Oil Corporation Ltd. & Ors. –vs- Bimala Gas Services & Ors.*).

In response, Mr. Chakraborty, learned advocate appearing for the respondents submits that the dealership agreement contains the 'arbitration clause' whereas MDG contain the provision for appeal against the order of termination but since the respondents have invoked the MDG, the petitioner was required to prefer the appeal to impugn the order of termination. According to Mr. Chakraborty on account of existence of efficacious alternative remedy, the writ petition cannot lie. He submits that the petitioner can be relegated to the appellate authority. In support of his such contention, he places reliance upon a judgment delivered in case of *Indian Oil Corporation Ltd. –vs- Tapas Kumar Das*

reported in 2017 SCC OnLine Cal 4635 and one unreported judgment passed in Civil Misc. Writ Petition no. 24349 of 2014 (*M/s. Maa Durga Kisan Sewa Kendra –vs- Union of India & Ors*).

Mr. Chakraborty cites a judgment referred at 2020 SCC OnLine SC 847 (*State of U.P. –vs- Sudhir Kumar Singh and Others*) for the proposition that, jurisdiction of the High Court under Article 226 of the Constitution would not be invoked merely basing upon a plead of breach of principle of natural justice unless the petitioner can show that prejudice was caused to him due to such breach.

Drawing my attention to paragraph -26 of the writ petition, he submits that in the writ petition itself, the petitioner has pleaded that since all points in defence in response to the show-cause notice were covered in the writ petition, the petitioner did not file the reply to the subsequent show-cause. He submits that even if the petitioner would file the reply, the same would not make any difference.

The order of the termination was sought to be justified by Mr. Chakraborty on merit as well contending that the petitioner did not deny that there was no positive stock variation and the petitioner took three stands in three different times. Initially the petitioner took the plea that since there was no canopy over the outlet, there might be variation of stock in the monsoon time and then in show cause notice he took the stand that due to the problems in nozzle locks there were shortage of delivery and in the writ petition, he took the plea that load of Sauptik Filling Station was poured in the tank of the subject

outlet. He submits that almost in every case, difference between SAP receipt and receipt as per automation system occurs and he strenuously contends that for the reasons assigned by the petitioner, there cannot be positive stock variation. He vehemently contends that the respondents have rightly passed the order of termination of the petitioner's retail outlet.

It is condign to note that non-entertainment of petition under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation and/or restriction. It is essentially a rule of policy, convenience and discretion rather than a rule of law. It is a rule of discretion and not a rule of jurisdiction. There cannot be a blanket ban. Whether or not the extraordinary jurisdiction would be invoked is to be decided in the context of the facts and circumstances of case at hand.

It this perspective, the reference in *Whirlpool Corporation –vs- Registrar of Trade Marks, (1998) 8 SCC 1* would be instructive wherein it was held that despite existence of efficacious alternative remedy, writ petition can be entertained if the same is filed for enforcement of any of the Fundamental Rights or where there has been violation of principle of natural justice or where the order or proceedings are wholly without jurisdiction or where *vires* of an Act is challenged.

It is apposite to refer an authoritative pronouncement made in case of *Union of India –vs- R. Reddappa* reported in *(1993) 4 SCC 269* wherein it was ruled that once the High Court is satisfied of injustice and/or arbitrariness, then

the restriction, whether self-imposed or statutory goes removed and no rule or technicality on exercise of power can come in the way of rendering justice.

Whenever a plea of breach of natural justice is made against the state and if such plea is found sustainable, the same can be treated as arbitrary action of the State which attracts the provision of Article 14 of the Constitution of India. It is axiomatic that the principles of natural justice are very flexible principles and the same cannot be applied in any straitjacket formula. The theory of reasonable opportunity and the principles of natural justice have been evolving and with the development of law, an element of de facto prejudice is treated as a factor to be considered.

In the judgment of *State of U.P. –vs- Sudhir Kumar Singh (supra)*, it was held that where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction *per se* does not lead to invalidity of the orders passed. Litigant is to show that prejudice has been caused to him following non-observation of principle of natural justice.

In the case at hand, the petitioner assailed the show cause notice in a writ petition and hence, he did not respond to the show cause notice. During pendency of the writ petition, the respondents took the matter for hearing rendering the writ petition infructuous. Basing upon a statement made in the writ petition to the effect that '*all points of defence in response to the show cause is covered in the writ petition*', the respondents have proceeded.

Mr. Chakraborty contends that the petitioner could not justify the reason behind positive stock variation. So, even if the petitioner would have been given

opportunity to submit reply to the show cause notice, the same would not make any difference.

In such fashion, despite having knowledge of pendency of the writ petition, hearing has been taken rendering the writ petition infructuous, a coordinate bench of this court has been forced to comment that the respondents have acted in '*unwarranted haste*'.

It would not be always proper to allow the State and its functionaries to dispense with the requirement of principles of natural justice on the plea that no prejudice would be caused or on the plea that even if such principles would have been followed, the same '*would not make any difference*'. Those pleas also have to be considered in the context of facts and circumstance of the case.

The basic concept and/or theory of fair play in action is squarely applicable in administrative, judicial and quasi-judicial field. When an authority assumes jurisdiction to discharge quasi-judicial function, then such authority must act fairly and impartially. In case of disciplinary proceeding and in case of proceeding of like nature, when one official of a department is the complainant and another official of that department is quasi-judicial authority to test the veracity of such complaint and to punish, then it is essential that such authority while discharging quasi-judicial functions must act impartially and without any bias or pre-determined mind. Settled proposition of law is that if the court finds that authority has acted arbitrarily and with closed mind, the Court can extend the compass of judicial review to render justice. Rule of law cannot afford to tolerate arbitrariness and unreasonableness.

Scope of judicial review grounded on illegality, irrationality say, *Wednesbury* unreasonableness and procedural impropriety. The doctrine of reasonableness gives way to doctrine of proportionality also. Judicial review of administration action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and *mala fides*. The basic requirement of Article 14 is fairness in action by the State. State must act for a discernible reason and not whimsically and also not for any ulterior purpose. Admittedly, scope of judicial review must be confined to decision making process but if it is found that decision is perverse, irrational or grossly disproportionate, that decision will come under the purview of judicial review.

In the case at hand, in the show cause notice date 25.11.2022 (page-2), regarding positive stock variation, the following observation was made:-

“Accordingly, study was carried out and it has been observed that positive stock variation was is attributable to unauthorised purchase of products as per Clause 5.1.6 of the amended MDG-2012 which stipulates as under:..”

In page 5 of the show cause notice dated 25.11.2022, the following comment was made:-

“positive stock variation beyond permissible limits is a violation of Clause 5.1.11 and Clause 5.1.6 of MDG -2012 as detailed in Point 1 above. The same is Critical Irregularity in line with Clause 8.2(vi) of MDG-2012 which attracts termination at the first instance.

Moreover, aforesaid acts/omissions on your part also tantamount to violation of Clause 3, 29,30,34, 39(a) and 42

of the Dealership agreement dated 31.12.2015 executed by you....”.

In the letter dated 13.1.2023, which was issued to give reminder to the petitioner to submit show cause, the authority concerned opined as follows:-

“ ... Accordingly, a Show Cause Notice Ref IOCL/DDO/MDT/2022023/2 dated 25.11.2022 was issued to you for violation of Clause 5.1.11 and clause 5.1.6 of MDG of 2012 which is critical irregularity and attracts termination at first instance in line with clause 8.2 (iv) of MDG of 2012, Moreover, aforesaid acts/omissions on your part also tantamount to violation of Clause 3, 29 , 30, 34, 39(a) and 42 of the Dealership agreement dated 31.12.2015 executed by you.”

In the case of *Oryx Fisheries Pvt. Ltd. –vs- Union of India & Ors.* reported in (2010) 13 SCC 427 (the judgment was referred in WP no. 12206(W) of 2014 (*M/s. Bimala Gas Service & Anr. –vs- Indian Oil Corporation Ltd. & Ors*), it was observed that *‘it is well settled that a quasi-judicial authority, while acting in exercise of its statutory power must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice’.*

In the judgment of *Oryx Fisheries Pvt. Ltd.(supra)* , it was also held that *‘...at that stage the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated*

by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony’.

On reading of the show cause notice, the person against whom it has been issued must have confidence that if he can show acceptable and/or satisfactory cause, he can prove his innocence but if he finds that the submission of show cause would be mere empty formality as the authority has already made up its mind, then basing upon such cause notice a fair proceeding cannot be conducted.

In the show cause notice itself, the authority concerned observed that positive stock variation was attributable to unauthorised purchase of products as per Clause 5.1.6 of MDG and positive stock variation being violation of Clauses 5.1.11 and 5.1.6 of MDG is a critical irregularity which attracts termination at the first instance and the acts and omissions on the part of the petitioner tantamount to violation of Clauses 3, 29, 30, 34 and 39(a) and 42 of the dealership agreement. Hence, it is clear as day that the authority even at the show cause stage has confronted the petitioner with definite conclusions of his alleged guilt. Basing upon the ratiocination of the judgment of *Oryx Fisheries Pvt. Ltd. (supra)*, there cannot be any qualm in the mind of any prudent man to perceive that the authority concerned has proceeded with a pre-conceived mind which is sufficient enough to vitiate all the proceedings initiated and the actions taken basing upon such show cause notice.

Making an endeavour to defend the decision of the authority concerned on merit, Mr. Chakraborty has invited the observations of the court on the

defensibility of the decision of the authority terminating the petitioner's retail outlet.

Generally, the word '*guidelines*' means an agency statement or declaration of policy that the agency intends to follow, that does not have the force or effect of law and that binds the agency but does not bind any other person. Undoubtedly, no circular, notification or rule or act has been placed before me to show as to how such guidelines can have statutory force.

Yet, having scanned the anatomy of the guidelines, it is luminescent that Chapter- 8 deals with the actions to be taken by the OMC (Oil Marketing Company) under the MDG and the clause 8.1 of MDG speaks that all irregularities (mentioned in chapter- 5) are classified into three categories , i.e. Critical, Major and Minor.

The Clause 8.3 contains enumeration of Major irregularities and clause 8.3(iv) speaks about '*stock variation beyond permissible limits but sample passing quality test*'- (5.1.11) whereas clause 8.2 has categorised critical irregularities and clause 8.2(vi) speaks about '*unauthorized purchase/sales of products*'- (5.1.6).

The clause 8.2 which speaks about critical irregularities which entail termination at the first instance whereas clause 8.3(iv) prescribes punishment suspension of sales and supplies for 15 days at first instance, suspension of sales and supplies for 30 days at second instance and termination of the dealership at the third instance.

Relevant portions of clause 5.1.11 and 5.1.6 of MDG are set out below for the sake of clarity.

“5.1.11 STOCK VARIATION OF MS/HSD (Beyond Permissible limits) FUEL:

Stock reconciliation should be carried out and variation, if any, established after taking into account the normal operational variation of 4% of tank stock and after considering the following factors:

- i) Evaporation/handling losses in MS as follows:
0.75% on quantity sold upto an annual average of 600 KLs
0.60% on additional quantity beyond an annual average of 600 KLs.*
- ii) Handling losses in HSD as follows:
0.25% on quantity sold upto an annual average of 600 KLs
0.20% on additional quantity beyond an annual average of 600 KLs*
- iii) Shrinkage losses and Temperature variation losses on MS and HSD to be taken into account (only in those cases/locations where and when the Shrinkage Allowance/TVA is applicable)*

(Annexure – 8, 9, 10)

In case of positive stock variation beyond permissible limits, samples will be drawn and sent to laboratory for testing. Sales and supplies of all products to be suspended immediately. Study to be carried out to identify the reasons for stock variation. If the sample passes but some other irregularity like unauthorized purchase etc. is established, action to be taken accordingly. However, if the sample fails, action in line with that of adulteration will be initiated.....”

“5.1.6 : UNAUTHORISED PURCHASES/SALES OF MS/HSD OR ANY OTHER PRODUCT WHICH COULD BE USED AS A SUBSTITUTE FOR THESE PRODUCTS

Dealers should purchase only those petroleum products authorized by the principal Oil Company for sale from the Retail Outlet. Purchase of the products from sources other than those authorized by the oil company would be treated as unauthorized purchase.

Any sales of MS/HSD other than through the dispensing units of that RO would be treated as unauthorized sales.”

In the letter styled as ‘fact finding letter’ dated 24.8.2022 whereby explanation from the petitioner was sought for in respect of irregularities referred in Sl. 1,2 & 3 in the table inserted therein, clause 5.1.11 was invoked most probably for the reason that the test report of the samples was not received then. Suffice it observed no adulteration was found in the test.

In the show cause dated 25.11.2022, the authority concerned already decided that positive stock variation was attributable to unauthorised purchased and invoked 5.1.16 of amended MDG. So, it is graphically clear that at the show cause stage, the respondents decided to invoke Clauses 5.1.6 and 8.2(vi).

Clause 5.1.11 directs that if case of positive stock variation beyond permissible limits, samples will be drawn and sent to laboratory and if the sample passes but some other irregularity like unauthorized purchase etc. is established, action to be taken accordingly whereas Clause 5.1.6 says that purchase of the products from sources other than those authorized by the oil company would be treated as unauthorised purchase and any sales of MS/HSD

other than through the dispensing units of that RO would be treated as unauthorized sales.

Hence, two things say, i) purchase of products from other sources and ii) sales of MS/HSD other than through the dispensing units are to be proved before holding that there was unauthorized purchase.

There is no guideline when and how unauthorized purchase would be held to have been established and burden rests upon whom! Is it the burden upon the authority concerned, who alleged 'unauthorized purchase', to prove or there is reverse onus! The authority concerned has come up with positive assertion and hence, ordinarily, burden rests with it. If a dealer is asked to discharge his burden to prove there was no unauthorized purchase, then burden to prove negative fact would be imposed upon him. In that case, only a special legislation or provision can come in the rescue of the authority to impose reverse onus upon the dealer. MDG itself did not give unfettered power to invoke Clause 5.1.6 unless unauthorized purchased is proved. There cannot be any automatic conclusion that since there was a positive stock variation, there was unauthorized purchase.

So, it is quite vivid that for the same offence, namely, positive stock variation, both clause 5.1.11 and clause 5.1.6 can be invoked and action under clause 8.3(iv) and 8.2.(vi) can be taken and absence of guideline when clause 5.1.11 would be invoked and dealer shall be punished under clause 8.3(iv) and when 5.1.6 would be applied and dealer would be punished under clause 8.2 (vi) will lead to arbitrary and/or whimsical action from the end of the officials

handling the dealerships of products of IOCL. If they remain pleased with dealer-A, they may invoke 5.1.11 and in other case, they may invoke clause 5.1.6.

Termination of dealership can be stated to be the capital punishment in like proceeding. Before imposition of capital punishment even the Court is to assign reason and the court is to consider aggravating and mitigating factors and follow the well accepted theory or theories of punishment and if the Court takes resort to retributive theory instead of the reformatory theory, it has to give special reason for that.

Here, no special reason has been shown as to why the authority is not invoking clause 5.1.11 and the clause 8.3(iv) and why they are invoking clause 5.1.6 and clause 8.2(vi) of MDG. The authority concerned has abruptly jumped to the conclusion in a closed mind. Positive stock variation in the petitioner's retail outlet has been detected for the first time and hence, applying the doctrine of proportionality, it can be argued that the punishment is disproportionate.

A decision is an authority for what it decides and not can logically be deduced therefrom. Even in slight distinction on fact or an additional fact may make a lot of difference in decision making process. The judgment is a precedent for the issue of law that is raised and decided and not the observations made in the facts of any particular case. In case of *Indian Oil Corporation Ltd. –vs- Tapas Kumar Das (supra)*, the order by which an arbitral award was set aside was assailed. The dealer invoked arbitration clause at show cause stage and subsequently, order of termination was passed and hence, permission was accorded to initiate a fresh reference. There is no scintilla of doubt regarding

binding effect of the ratiocination enunciated in the judgment of *State of U.P. – vs- Sudhir Kumar Singh (supra)* but the same is distinguishable on facts.

In view of foregoing analysis, it can safely be concluded that in pre-conceived mind even at the show cause, the authority concerned decided to invoke clause 5.1.6 and 8.2.(vi) of MDG and confronted the dealer with definite conclusions of his alleged guilt and hence, all the subsequent actions taken on the basis of such show cause notice stand vitiated.

Regarding merits of the decision it can be said that the authority has proceeded in unwarranted haste and though no plausible materials have come, yet abruptly jumped to the conclusion that there was unauthorized purchase without assigning any reason and placing a reverse onus upon the petitioner. The person or authority having power to punish must keep in mind that by awarding punishment fundamental or other rights of the wrongdoer are snatched away and hence, punishment must be commensurate, proportionate and/or justified and before applying deterrent theory of punishment and before awarding highest punishment, such person or authority must be satisfied that the wrongdoer is incorrigible and beyond the reach of reformatory influence and the such person or authority must assign reason for awarding highest punishment. The positive stock variation was detected in the petitioner's retail outlet for the first time and in this perspective, it may be argued that the punishment is not proportionate and the same has been awarded without assigning any special reason. Accordingly, for the above reasons, the decision to terminate the petitioner's retail outlet dealership cannot be sustained.

Ex consequenti, the writ petition is allowed. The show cause notice dated 25.11.2022 and the order of termination dated 24.2.2023 are set aside. The respondents are directed to resume supply of MS, HSD and other products, if any, to the petitioner's retail outlet namely, M/s. Krit Filling Station within 4(four) weeks from the date.

With these observation and order, the writ petition is being **WPA 7674 of 2023** stands thus **disposed of**, however, without any order as to the costs.

Parties shall be entitled to act on the basis of a server copy of this Judgement and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Partha Sarathi Chatterjee, J.)