



W.P.No.1302 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Orders reserved on : 23.04.2025

Orders pronounced on : **22.05.2025**

CORAM :

THE HON'BLE MR.JUSTICE D. BHARATHA CHAKRAVARTHY

W.P.No.1302 of 2010

M/s.R.V.N.Agencies,
Rep. by its Partner,
Janarthanan

.. Petitioner

Versus

1. Indian Oil Corporation Limited,
Rep. by its General Manager,
Retail Sales, Indian Oil Bhavan,
134, Nungambakkam High Road,
Chennai - 600 034.
2. The Executive Director,
Indian Oil Corporation Limited,
Marketing Division, Southern Region,
'Indian Oil Bhavan',
139, Mahatma Gandhi Road,
(Nungambakkam High Road),
Chennai - 600 034.

.. Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the entire records leading to the impugned order of termination TNLA/TERM, dated 30.12.2009 and quash the same.

For Petitioner : Mr.T.V.Krishnamachari,
Senior Counsel,
for by Mr.V.K.Elango

For Respondents : Mr.T.Rajaraman, Senior Counsel,
for Mr.R.Ravi

ORDER

This Writ Petition is filed with a prayer to call for the records leading to the impugned order of termination, dated 30.12.2009, and to quash the same.

2. The petitioner asserts that they have been licensees of a retail petroleum outlet since 1977. A Retail Outlet Dealership Agreement was entered into. In 2009, a representative of the first respondent visited their

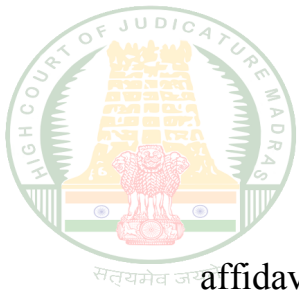


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outlet. During this visit, no discrepancies were found in the stock maintained in the godown. However, in the office room, some customers had left their oil tins open, as they were accustomed to using them whenever needed. The representative drew samples from the sold-out open tins belonging to a customer. Subsequently, a show-cause notice was issued on 08.06.2009. It is alleged that in the Servo 2T Supreme samples drawn, the viscosity was 5% lower, measuring 50.017 cSt against the required 55.63 cSt. Therefore, relying on the Marketing Discipline Guidelines, 2005, the above show-cause notice was issued. Following the issuance of the show-cause notice, the petitioner filed an interim application under Section 9 of the Arbitration and Conciliation Act, 1996, and also W.P.No.1098 of 2010, challenging the Marketing Discipline Guidelines, 2005. However, the impugned order of termination, dated 30.12.2009, was passed. The present Writ Petition challenges this order.

3. The respondents resist the Writ Petition by filing a counter-



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affidavit. The respondents contend that Clause - 5 of the Dealership Agreement allows for termination if there is a breach of conditions. The petitioner was duly heard, and an opportunity for a personal hearing was also provided; his reply to the show-cause notice was considered, leading to the issuance of the impugned order. The assertion that the sample was not drawn from the point of sale is incorrect, as officials confirmed that the samples were drawn in the presence of the Manager of the retail outlet, *Kulanginathan*, who also affixed his signature on the sample tag. Bills were issued, and payments for the samples taken by the officials were collected. The samples were tested and found adulterated and not up to standards. Consequently, the dealership is terminated. Therefore, the Writ Petition lacks merit and is liable to be dismissed.

4. Heard *Mr.T.V.Krishnamachari*, learned Senior Counsel for the petitioner, and *Mr.T.Rajaraman*, learned Senior Counsel for the respondents.



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5. Apart from the other grounds, the learned Senior Counsel for the petitioner would primarily rely upon the show-cause notice dated 08.06.2009. The show-cause notice categorically states that the official visited the retail outlet on 27.03.2009 and drew Servo 2T Supreme samples. It is further noted that the samples were tested on 02.04.2009 and did not meet the specifications. The learned Senior Counsel, then drawing upon the furnished test report, which is a computer-generated document, would point out that the test report shows that the sample was drawn on 02.04.2009. Whereas, as per the show-cause notice, it was drawn on 27.03.2009. Though the inspection lot number is mentioned, further details are not provided. The name and place of the sample are also mentioned as RAVI 1005. It also states that the batch number of the sample is not furnished. Therefore, it can be seen that the respondents cannot confirm that the sample tested to be wanting on specifications belongs to the petitioner. In the absence of this, the impugned order of termination is untenable.



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6. Per *contra*, Mr.T.Rajaraman, learned Senior Counsel for the respondents, submits that the Writ Petition is not maintainable as there are alternative arbitration remedies under the agreement and an appellate remedy under the rules. He submits that the pleading regarding the mismatch of the sample report is not explicitly raised in the grounds made in the affidavit filed in support of the Writ Petition and, therefore, was not answered. The learned Senior Counsel submits that more than 15 years have passed, and at this distant point, not every record may be available. He submits that when the sample is admittedly taken from the office room, the petitioner's assertion that it belongs to the customer is *ex facie* unacceptable. Therefore, he submits that the Writ Petition be dismissed.

7. I have considered the rival submissions made on either side and examined the material records of the case.



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8. The first submission made on behalf of the learned Senior Counsel for the petitioner is that there is an alternate remedy; therefore, the petitioner should be relegated to it. However, in this case, the impugned order of termination was passed on 30.12.2009, and the Writ Petition was entertained, an interim order was also granted, and the matter has been pending before this Court for the past ten years. Thus, this is not an appropriate case to relegate the petitioner to avail themselves of the alternative remedies. Therefore, the case must be considered on its merits.

9. With reference to the ground that is raised, the grounds o, p, and q are extracted below:

"o. There are serious material discrepancies between the show cause notice dated 08.06.2009 and the impugned order of termination dated 30.12.2009. This has vitiated the impugned order.

p. It is settled law that the impugned order of termination the respondents cannot improve the case by trying to refer to some materials not referred to in the show cause notice dated 08.06.2009.

q. The samples said to have been taken on 27.03.2009 and said to have been sent for lab report on 02.04.2009, the show cause notice dated 08.06.2009 and the petitioner's



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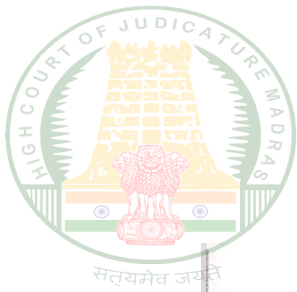


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reply dated 23.07.2009 and personal hearing dated 18.08.2009 and the alleged impugned order of termination dated 30.12.2009 are all based on the Marketing Discipline Guidelines 2005, which has been struck down by the Hon'ble High Court of Karnataka by its judgment dated 13.01.2010 as arbitrary and unconstitutional."

Thus, it cannot be said that the pleading was completely omitted, although it could have been articulated more effectively.

10. Therefore, the respondents were given additional time to produce the materials related to the samples. From the records submitted, the image of the test report is extracted below:-



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INDIAN OIL CORPORATION LIMITED
KORUKKUPET TERMINAL Laboratory,
K.H. ROAD
CHENNAI 600021

TEST REPORT

FAILURE

Material: 2903000 -SERVO 2T SUPREME (APITC) - BULK
Reason for test: INSP. PLAN - 2T SUPREME (JASO FB)-2903
Industry standard description:

Inspection lot number: 790000827513
Store/Tank no.:
Stock represented: 0.001 K29
Note: LUBE SAMPLE DRAWN UNDER LDS

Sample drawn date: 02.04.2009
Sample receipt date: 02.04.2009
Lot release date: 02.04.2009

SRL CHARACTERISTIC	TEST METHOD (ASTM/IS/IS1448)	SPECIFICATION LIMIT & UNIT	TEST RESULTS
Operation : 00000001	2T SUPREME (JASO FB)- INSPECTION -MANU		
1. Appearance	VISUAL	Clear	Clear
2. Flash Point PMCC °C.	D 93	Min. 70.0 CEL	104.0

UD Code: REJ -REJECTED: SPECIFICATIONS NOT MET -HOLD

UD description :
NAME AND PLACE OF RO: SAMPLE CODE: RAVI 1005
DIVISIONAL OFFICE: SALEM
PRODUCT : SERVO 2T SUPREME
SOURCE OF SAMPLE: PUMP ISLAND
SAMPLE DRAWN BY: MR.S.RAVIKUMAR, AM[RLS]/SALEM
REASON FOR TESTING: UNDER LDS
BATCH NO. OF SAMPLE: NOT FURNISHED
SEAL NO. OF ALUMINIUM CONTAINER: 179420
SEAL NO. OF WOODEN BOX: 179440

TEST REPORT NO. 7877 DT.02.04.09

TEST RESULTS:
COLOUR [VISUAL] = GREEN
K.V.@40°C = 50.017 cSt AS AGAINST REQUIREMENT OF 55-63 cSt
SULPHATED ASH: 0.080% AS AGAINST REQUIREMENT OF 0.078 TO 0.095%

REMARKS:
THE SUBJECT SAMPLE DOES NOT MEET SPECIFICATION IN RESPECT OF
K.V. @ 40°C

"Computer generated document. Signature not required."
Released by: 00022570

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11. Similarly, the image of the sample analysis report is also reproduced hereunder:-

SI **CONFIDENTIAL**

LABORATORY ACCREDITED TO ISO / IEC - 17025 BY NABL

FAILURE

INDIAN OIL CORPORATION LIMITED
(Marketing Division)

QUALITY CONTROL TEST REPORT
FOR LUBE DISCIPLINE SCHEME
SAMPLE

REPORT NO.: 7877 DATE: Testing Lab: Regional Laboratory
Korukkupet, Chennai - 21.

Date Tests Performed Divisional Office: *Trichy Salem*

Source: RAVI 100S Sample Drawn by: *Sri K. Ranganath, SRS Ram, SRS Anand*

Product Name: LTS Sample Drawn on: 27/3/09

Batch No. Sample Received on: 31/3/09

Sl.No.	Test	Requirement	Test Results	Test Method IS : 1448
1	Appearance	Report	Passes	Visual
2	Colour	Green	Green	Visual
3	Kinematic Viscosity cSt @ 40°C	55-63	50.917	P - 25
4	Kinematic Viscosity cSt @ 100°C		-	P - 25
5	Viscosity Index, Min.		-	P - 56
6	Flash Point : COC/ PMCC, °C Min.	70	104	P-69/P-21
7	TAN/ TBN mg KOH / gm*		-	IP - 276
8	Moisture *	NIL	N/A	Crackling
9	Sulphated Ash, % by wt.	0.078 to 0.095	0.080	P - 4

REMARKS : *Does not meet spec in viscosity*
I : 179420
O : 179440
Sample drawn by Sri S. Ravi Kumar
AMCS, Salem DO, sent to ICRPT
to Sri K. Ranganath, SRS Ram, SRS Anand

Signature: *[Signature]*
Name: _____

(LAB - IN - CHARGE)

Note : I) This report refers only to the Sample Submitted
II) This report shall not be reproduced, except in full without written approval of Lab-in-Charge.
III) * Test Not covered under the scope of NABL Accreditation

790000
82252

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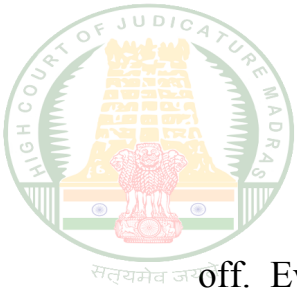
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Thus, it can be seen that the test report and the analysis report do not match.

12. As per the test report, the sample drawn date is 02.04.2009; however, the sample was drawn on 27.03.2009. The sample receipt date is also given as 02.04.2009, while it was received on 27.03.2009. Even the lot release date is recorded as 02.04.2009, which is inaccurate if considered alongside the other report. The lot number is noted as 790000827513, but there is no column referencing the lot number in the test report. The number is scribbled at the bottom of the report; however, in the remarks column, a different number is mentioned as I:179420.

13. Regarding the petitioner, it is stated that their Divisional Office is located only in Trichy. In the test report, it can be seen that Trichy and *S.K.Murugavel* were initially mentioned, but this was subsequently struck



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off. Even in the counter-affidavit, no particulars are provided regarding who conducted the inspection, when the sample was drawn, and when it was tested. Therefore, when a reasonable doubt or apprehension is expressed as to whether the sample referred to in the show-cause notice and the test report belongs to the petitioner or not, and in the absence of any supporting material from the respondents to confirm that the correct sample was tested and considered in relation to the petitioner, I believe that the impugned order cannot be sustained. It is also noted that this Writ Petition dates back to 2010. An interim order was granted initially concerning the termination order, and 15 years have now passed without any misconduct or deficiency being reported in relation to the said dealership.

14. In view thereof, this Writ Petition deserves to be allowed. The impugned order of termination, dated 30.12.2009, stands quashed. There shall be no order as to costs.



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WEB COPY Neutral Citation: yes

grs

To

1. The General Manager,
Indian Oil Corporation Limited,
Retail Sales, Indian Oil Bhavan,
134, Nungambakkam High Road,
Chennai - 600 034.
2. The Executive Director,
Indian Oil Corporation Limited,
Marketing Division, Southern Region,
'Indian Oil Bhavan',
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D.BHARATHA CHAKRAVARTHY, J.

grs

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