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IN THE HIGH COURT OF DELHI AT NEW DELHI*Reserved on: 3rd September, 2025**Pronounced on: 22nd December, 2025*

+ W.P.(C) 8031/2020, CM APPL. 26159/2020, CM APPL. 1957/2021
& CM APPL. 51745/2022

DELHI PETROL DEALERS ASSOCIATIONPetitioner

Through: Mr. Darpan Wadhwa, Senior Advocate
with Mr. Anand Varma, Ms. Adyasha
Nanda and Ms. Divita Vyas,
Advocates.

versus

BHARAT PETROLEUM CORPORATION LIMITED.....Respondent

Through: Ms. Maninder Acharya, Senior
Advocate with Mr. Rupesh Kr. Sinha
and Mr. Sataroop Das, Advocates
with Mr. Shekhar Gupta, Law Officer
BPCL.

CORAM:**HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present petition under Article 226 of the Constitution of India, 1950 has been filed seeking the following prayers:-

“a) issue writ of mandamus and certiorari or any other writ quashing the Notice dated 08.10.2020 and all other directives pertaining to the same issue, issued by the . Respondent whereby the members of the Petitioner have been directed to disengage any



stand along Bank EDC Terminals and completely switch all Credit Card/ Debit Card Transactions to the EDC Terminal provided by the Respondent.; and/or

b) issue a writ of mandamus or any other writ directing the Respondent to refrain from introducing and implementing any scheme/system which in any manner restricts or impinges upon the Petitioner and its members banking and other financial arrangements; and/or

c) issue a writ of mandamus or any other writ directing the Respondent to refrain from requiring removal of EDC Terminals of the banks selected by the Dealers; and/or

d) Pass any other order or orders as deemed fit and proper in the circumstances of the case and in favour of the Petitioner.”

FACTUAL BACKGROUND

2. Necessary averments in the present petition are as follows:-

i) The petitioner is an association, representing all petrol dealers of Delhi. It has over 380 members, who are petrol dealers of Bharat Petroleum Corporation Limited i.e. the respondent, Hindustan Petroleum Corporation Limited and Indian Oil Corporation Limited. Out of the total, about 102 members are dealers of the respondent.

ii) The respondent is a public sector company dealing in Oil and Gas. The respondent enters into a Dispensing Pump and Selling License Agreement (for short “**DPSL Agreement**”) with its appointed dealers across the country, who set up petrol pumps for selling the respondent’s petroleum products.

iii) The respondent introduced Integrated Payment Solution (for short “**IPS**”), wherein, all the fuel transactions and payments made by its dealers



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were integrated through the respondent's automation system. For the same, the respondent provided Android Point of Sale (POS) machine (Electronic Data Capture Terminal), which was used to pick signals from Multi-Product Dispensers (MPDs)/ Forecourt Controller (FCCs) on the fuel transactions and debit the equivalent amount from the Debit card/ Credit card/ UPI wallet of the customer for the amount fuelled.

iv) The said Android (POS) machines (Electronic Data Capture Terminal) are operated through Pine Labs Private Limited (for short "**Pine Labs**") and AGS Transact Technologies Limited (for short "**AGS**") and the payment gateway for the same is *via* HDFC Bank and RBL Bank. These terminals were installed in addition to the dealer's existing terminals, which were installed by the dealers through their banks.

v) On 11.10.2019, one of the respondent's official sent an E-mail to the dealers, informing them that in the new implemented IPS, there will be no rental charge recoveries on the integrated Electronic Data Capture machines, irrespective of the make of the Electronic Data Capture Terminal (for short "**EDC Terminal**") or the number of EDC Terminals deployed at a particular retail outlet (for short "**RO**").

vi) However, the respondent raised invoices towards rental of the EDC Terminals installed by them. Refuting to the same, the dealers wrote to the respondent informing them about the turnaround from its earlier communication dated 11.10.2019 and seeking reversal of such charges.



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vii) The respondent *vide* E-mail dated 18.04.2020, shared the details of the respondent's Policy, whereby rental charges were made applicable on the EDC Terminals. It also informed that all of its communication prior to December 2019 with respect to rental recoveries on IPS enabled EDC Terminals stands withdrawn.

viii) Thereafter, the respondent informed their dealers that they can only use the respondent's EDC Terminals of Pine Labs and AGS and no other EDC Terminals can be used by them. The dealers were also asked to remove all other standalone EDC Terminals provided by other banks from their respective outlets. Opposing the same, dealers wrote to the respondent criticizing their advice to disengage and remove any standalone EDC Terminal installed by them and completely switching to the EDC Terminal of Pine Labs and AGS provided by the respondent.

ix) However, disregarding the objections raised by the dealers, the respondent wrote to various banks and directed them to remove their standalone EDC Terminals installed at the ROs and to not install any EDC Terminal at any RO in future. The Banks were also informed that the reimbursement of digital incentives and Merchant Discount Rates (for short "**MDR**") for installed terminals will be stopped.

x) Subsequently, the respondent *vide* notice dated 08.10.2020 (for short "**Impugned Notice**") directed their dealers to remove all other EDC



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Terminals by 17.10.2025 and to completely switch to the EDC Terminals provided by the respondent i.e. EDC Terminals of Pine Labs and AGS.

xi) The petitioner representing its members/ dealers of the respondent *vide* letter dated 12.10.2020, objected to the implementation of respondent's directives dated 08.10.2020 and sought withdrawal of the same and consequent information to the banks. But it went in vain.

xii) Hence, the present petition has been preferred assailing the Impugned Notice dated 08.10.2020.

xiii) During the pendency of the present petition, the learned Single Judge of this Court *vide* order dated 15.10.2020 stayed the operation of the Impugned Notice.

SUBMISSIONS ON BEHALF OF THE PETITIONER

3. At the outset, learned Senior Counsel for the petitioner clarified that the present matter doesn't pertain to payment made by the dealers to the respondent against purchase of fuel, since, fuel is purchased from the respondent by its dealers by making 100% payment in advance of the delivery of fuel. In fact, learned Senior Counsel submits that the present matter concerns itself with the manner of collection of payment by the dealers from their own customers.

4. Further, learned Senior Counsel for the petitioner in support of the



present petition made following submissions:-

- i) Once the respondent delivers the fuel to its dealers against 100% advance payment, the respondent does not have any nexus with the manner in which the dealers receive payment from its customers.
- ii) The decision made by the respondent *vide* Impugned Notice dated 08.10.2020, entails that the dealers are compelled to bank only with the HDFC Bank and RBL Bank, as only these Banks provide the payment gateway for the EDC Terminals provided by the respondent.
- iii) The petitioner's members/ respondent's dealers have an existing banking relationship with various banks and they avail credit facilities from such banks to facilitate their businesses. Under the terms of such credit facility, the dealers have to do all their transactions through the bank such facility is availed, including usage of their payment gateway. Thus, the respondent's directive *vide* Impugned Notice will cause the dealers to stop transaction with their existing banks and breach the terms of agreement with their existing banks.
- iv) Electronic Data Capture system was implemented for improving the consumer convenience. However, there is no nexus between the said objective and the respondent's directive *vide* Impugned Notice. The respondent by limiting the access of its dealers to EDC Terminals of only HDFC Bank and RBL Bank, have just disrupted the credit lines of the dealers with other banks.



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v) Earlier, when EDC Terminals of other service providers (eg. PayTM) were used, money was credited in the dealer's accounts on the same day and cash flows were steady. However, with EDC Terminals of HDFC Bank and RBL Bank, the dealers have to wait for money to be credited for one whole day (or two days in case of Sunday/ gazetted holiday), which, in turn, affects the dealers' cash flow to make full advance payment of fuel to the respondent.

vi) The EDC Terminals of various banks with whom the dealers have pre-existing arrangements were free of any rental/ ancillary charges. However, the respondent initially represented that their EDC Terminals would be rent-free, but later turnaround from their own statement and now, they are directing that the dealers have to pay rental charges of Rs. 250 per month for each EDC Terminal provided by the respondent. Further, HDFC Bank provides its standalone EDC Terminal free of cost but respondent is charging rental for such usage from its dealers. Thus, the directive of the respondent puts an unreasonable burden of rental cost on the dealers, for usage of respondent's EDC Terminals. Also, their EDC Terminals doesn't provide service support like paper rolls/ consumables etc. which are provided free of cost by other banks.

vii) Central Government envisaged that the MDR (which is a rate charged for payment processing of debit and credit card transactions) would be borne by the Oil Marketing Companies such as the respondent. Thus, irrespective of identity of the bank, MDR is adjusted between the respondent and the



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banks, who are providing the EDC Terminal. However, the respondent in order to tie-up with only HDFC Bank and RBL Bank, informed other banks that reimbursement of MDR charges would be stopped, if their standalone EDC terminals were not deactivated/ discontinued at respondent's ROs. This in turn, means that the dealers would have to incur such charges causing additional financial burden on them.

viii) The respondent's directive *vide* Impugned Notice has created an artificial distinction between the HDFC Bank and RBL Bank, whose EDC Terminal is being provided by the respondent on one hand and the remaining scheduled Banks approved by RBI on the other hand. This distinction has no reasonable nexus with the object that the respondent purports to achieve by implementing IPS i.e. consumer convenience and plugging of certain purported malpractices arising out of manual intervention in standalone EDC Terminals.

ix) Respondent imposed IPS for digital transactions through credit/ debit cards, however, since digital transactions constitute only a minor part of a dealer's total transactions and a major part of fuel sales to customers are through other modes such as cash and recently UPI, the imposition of IPS by the respondent constitutes an unreasonable and disproportionate restriction on the dealers' right to carry on businesses and avail banking facilities from banks of its own choice and terms. Thus, the real purpose behind the Impugned Notice is not the professed customer convenience but the respondent's commercial benefit through its private arrangements. The said



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constitutes unreasonable interference in the dealers' freedom to conduct their businesses and it will lead to creation of monopoly for POS transactions to be compulsorily made only through HDFC Bank and RBL Bank.

x) The EDC Terminals provided by the respondent are issued by Pine Labs and AGS. Both the Pine Labs and the AGS EDC Terminals are linked to HDFC Bank and RBL Bank. The amounts paid through these EDC Terminals gets deposited in an account with HDFC Bank or RBL Bank. Forcing the dealers to use the EDC Terminals of Pine Labs and AGS, leave them with no option but to transact with a bank of respondent's choice only. Thus, the directive of the respondent amounts to imposition of an unreasonable restriction on the dealers and directly interferes with their right to carry on their businesses.

xi) The restrictions placed by the respondent on its dealers' right to carry on businesses, do not meet the standards of reasonableness and proportionality required under Article 19(2) of the Constitution. It is a well settled law that restriction on fundamental right under Article 19(1)(g) has to be reasonable, proportionate and "least restrictive". Reliance for the same, is placed upon the judgments of the Hon'ble Supreme Court in ***Om Kumar v. Union of India***¹ and ***Akshay N Patel v. Reserve Bank of India***². Further, restriction on fundamental right under Article 19(1)(g) must be by "law" under Article 13, as held in ***Bijoe Emmanuel v. State of Kerala***³.

¹ (2001) 2 SCC 386

² (2022) 3 SCC 694

³ (1986) 3 SCC 615



xii) Respondent's directive is in contravention to the judgement passed by the learned Competition Appellate Tribunal in ***Federation of All Maharashtra, Petrol Dealers Association v. Hindustan Petroleum Corporation Limited and Anr.***⁴. In the said case, the learned Tribunal held that the insistence to exclusively use EDC Terminals issued by a particular bank and to remove other bank terminals from the outlet is against public interest and amounts to a violation of Monopolistic and Restrictive Trade Practices Act, 1969 (for short "**MRTP Act**"). The relevant paragraph of the aforementioned judgment is provided as under:-

"10. At the beginning of the debate the learned counsel appearing on behalf of the complainant very fairly made a statement that the complainant would be satisfied if its members who are the outlet dealers were permitted and continue to use any other Bank terminals. In order to settle the controversy, we made an offer to the first respondent should not insist on the removal of the other bank terminals from outlets of the dealers. To our surprise, however, the first respondent refused to make any such statement and instead argued that they would try to see a via media after negotiating with other banks. To say that we were surprised by this attitude on the part of the Government Oil Company would be an understatement. Be that as it may.

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14. A direction to remove the terminals of other banks excepting that of ICICI bank on the ground that it has a financial arrangement with ICICI bank would be clearly covered under language of clause quoted above. Apart from this, it would amount to an unfair method for promoting the services of ICICI bank. The unfairness would be at large in as much as though the dealer has full right to utilize the

⁴ 2012 SCC OnLine Comp AT 110



services of any other bank, he would have to stop his business with other bank and would have to essentially transact with ICICI bank, which would affect the competition and would give an unfair advantage to ICICI bank over and above the other banks having their terminals at the site of the outlet. This would be apart from causing loss and injury to the ultimate consumer in as much as he would have to shell out 2.5% more than the actual transaction.

15. We may also refer to Section 2(u) of the Act. The definition of trade practice is as under:—

“(u) “trade practice” means any practice relating to the carrying on of any trade, and includes—

(i) anything done by any person which controls or affects the price charged by, or the method of trading of, any trader or any class of traders,

(ii) a single or isolated action of any person in relation to any trade;”

16. This clearly brings out a situation that the insistence on the part of respondent No. 1, which we have indicated earlier, as a trade practice would amount to an unfair trade practice.

17. We, therefore, conclude that the insistence on the part of the first respondent, firstly, to exclusively use ICICI bank terminals and secondly to remove other banks terminals from the outlets cannot be sustained, as it clearly amounts to a violation of letter and spirit of MRTP Act and more particularly the provisions of Sections discussed above. Under the circumstances, we allow this complaint and direct the first respondent that it shall “cease” and “desist” from insisting upon the exclusive use of ICICI bank terminals from the outlets of the members of the complainant's association. It shall also “cease” and “desist” from insisting upon to remove all other banks terminals at the site of the dealers outlets. The direction as indicated above shall issue with the immediate effect. Cost of this complaint shall be borne by the two respondents jointly. Costs are assessed at Rs. 2,00,000/- (Rupees two lakhs).”

xiii) The petitioner's members/ dealers of the respondent are bound by the terms of a standard form-DPSL Agreement. While entering into such



agreement, dealers have little or no room for negotiating the terms of the said agreement and they are placed in a “take it or leave it” situation. The respondent asserts that it has “*freedom to regulate and manage its business without any interference or claim of the dealers*” and that “*The dealers cannot claim right to interfere in the business model of the Respondent and in choice of its vendors*”. Yet, it ought to be considered that the exercise of such unbridled discretion by the respondent is impinging upon the dealers’ rights in manner that is not contemplated or provided for in their contract and is therefore untenable in law. Reliance is placed upon the Judgment of the Hon’ble Supreme Court dated 18.11.2022 in Civil Appeal No. 8571 of 2022 titled as ‘*The State of Madhya Pradesh v. M/s Sew Construction Ltd & Ors.*’. Relevant paragraph of the said judgment reads as under:-

“24. In the context of discretion, we may reiterate this principle. The rights and duties of the parties to the contract subsist or perish in terms of the contract itself. Even if a party to the contract is a governmental authority, there is no place for discretion vested in the officers administering the contract. Discretion, a principle within the province of administrative law, has no place in contractual matters unless, of course, the parties have expressly incorporated it as a part of the contract. It is the bounden duty of the court while interpreting the terms of the contracts, to reject the exercise of any such discretion that is entirely outside the realm of the contract.”

xiv) The respondents are also in breach of petitioner’s members’ legitimate expectation to contract with banks of their own choice. As after enabling the dealers to contract with banks of their own choice for more than two decades and to install EDC Terminals as per their independent arrangements with different banks, the respondent is now *estopped* from altering its position.



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SUBMISSIONS ON BEHALF OF THE RESPONDENT

5. Refuting the submissions made on behalf of the petitioner, learned Senior Counsel for the respondent has made the following submissions: -

- i) The petitioner failed to disclose its legal identity and the capacity in which it is filing the present petition. It is also not disclosed as to what is the source or basis of letter dated 10.12.2020 purportedly authorizing the signatory of the writ petition and the Vakalatnama to sign and verify the pleadings etc. Moreover, it is also not clear if the petitioner company has any Board of Directors or not. Since, in absence of Board of Directors, the petitioner has no mechanism to file the present writ petition, therefore, the present writ petition is not properly filed and liable to be dismissed.
- ii) In the process of implementation of IPS system, the bankers selected by the respondent's vendor has limited role of providing the Gateway for debiting the accounts of the customers and crediting the same amount in the account of the dealers. The banker which has to provide such services can only be a selected bank and it cannot be all the bankers. It is practically impossible for the respondent to use the facility of all the available bankers seeking their service to provide a payment gateway service.
- iii) IPS system through the automation implemented at the RO, integrates all the fuel transactions with digital payments system. By such integration, the EDC Terminal automatically picks up the signal from MPDs/ FCCs of the



fuel transaction done on the dispensing machines and debits the equivalent amount from the Debit card/ Credit card/ UPI wallet of the customer for the amount fuelled, without any manual intervention by the sales man who dispenses the fuel. Thus, IPS system ensures that exactly the same amount, what is filled from the dispensing machine, is billed and collected from the customer. Thereby, completely removing the scope of rounding off or variation of amount in terms of insignificant figures such as few *paise*, whether done mistakenly or deliberately. Additionally, IPS provides advanced beneficial features to customers, like SMS based fuelling confirmation, provisioning of incorporating all fueling and payment details including Vehicle Number in a single bill, etc. IPS system also provides instant 0.75% digital incentive to the customer. For example, if a person purchases fuel of Rs. 1000/-, he is charged the said amount minus the incentive amount of Rs. 7.5/-, thus, the customer ends up paying Rs. 992.5/- instead of Rs. 1000/-. Whereas, in normal digital transaction, the customer in same case pays the full amount of Rs. 1000/- and the incentive amount of Rs. 7.5/- is given to the customer in form of cash back after a delay of few days.

iv) To implement IPS, the respondent had invited open tenders from time to time for certain number of ROs and the successful bidders were given the task to implement IPS system at all its ROs. In Delhi, the respondent in total has 103 ROs and Pine Labs is the automation vendor for implementation of IPS in respect of 98 ROs and AGS is the automation vendor with respect to 5 ROs. Therefore, in terms of the aforesaid arrangement, it is evident that it is for the successful bidder to install, implement and run IPS system at their



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respective RO and the respondent has no interference in it.

v) To successfully implement IPS, the services of the banker as an Acquirer, just like an interface is required and it is for the vendors to choose the banker of its choice for providing services of the Acquirer. The banks which are capable and ready to provide the requisite and customized technical facilities, are selected by the vendor as an Acquirers. This selection and choice of Acquirer banks is of the vendor and not of the respondent as the respondent has no interference in the manner of provision of the services by the vendor.

vi) The role of the Acquirer is limited to check the validity of the customer's card account and to facilitate the transfer from customer's card account to the dealer's bank account, which can be any bank. The Acquirer has nothing to do with any other banking activities of either the customers or the dealers, therefore, selection of a particular banking company as the Acquirer has nothing to do with other banking activities of either dealer or the customer.

vii) MDR is paid to the banker by the respondent for facilitating digital payment for fuel purchase only and not for non-fuel products like groceries, engine oil etc. sold at the RO. However, the dealers use same EDC Terminal for fuel as well as non-fuel transactions and claim MDR even on non-fuel transactions. Therefore, the respondent is defrauded to pay MDR charges for transactions wherein no MDR charges are payable.



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viii) Further, current EDC Terminals are not geo fenced and it can be operated to collect money from any place other than the geographical area of the RO. Thus, the EDC Terminal can be mis-utilized for collection of money at other places, thereby making the respondent liable for payment of MDR charges wherein no MDR charges are payable and wrongful utilization of digital incentives.

ix) It is the prerogative of the respondent to adopt its business processes and strategy. The dealers being the licensees of the respondent under an agreement, are bound to follow the respondent's business strategy and instructions. Further, it is evident that the relationship between the respondent and its dealers is contractual and it is well settled position of law that this Court in exercise of its extraordinary writ jurisdiction should not interfere in the contractual matters of the parties.

x) The petitioner has wrongfully placed its reliance on the learned Competition Appellate Tribunal Judgment in ***Federation of All Maharashtra, Petrol Dealers Association (supra)***, since the said case pertains to the MRTP Act, a legislation which has been repealed w.e.f. 01.09.2009 and is no longer part of the statute book. Further, the said judgment cannot be a binding precedent for this Court, since it being a judgment of a Quasi-Judicial Authority, which is subject to the supervisory jurisdiction of this Court. Moreover, the said judgment is under challenge before the Hon'ble Supreme Court in Civil Appeal no. 8160/2012, therefore, the said judgment cannot be



relied upon or taken into consideration.

xi) Additionally, present case is completely different from the ***Federation of All Maharashtra, Petrol Dealers Association (supra)*** case. Since, the dealers in the present case are free to have their core banking accounts with the bank(s) of their own choice or continue with their current relations, the customers are also free to use any credit/ debit card of the bank of their own choice without any charges or restrictions. However, in aforementioned case, the user of cards of banks other than the ICICI Bank were liable to pay additional charges simply because they were using cards of banks other than ICICI Bank. In the present case, the customers and dealers continue to get all the benefits as they used to get earlier, before implementation of IPS. Also, the respondent continues to bear the MDR and the customers continue to receive the applicable digital incentive, without any deduction.

xii) The respondent bearing entire cost of implementation of IPS facility, the dealers are only asked to pay a nominal sum of Rs. 250/- per machine per month towards sharing of the maintenance costs incurred for upkeep of such expensive technology, rigorous and vast back end support system and extremely sophisticated costly POS machines, been handed over to the dealers, to facilitate safe, secure and transparent digital transactions for the customers of the dealers, while the respondent continues to bear the huge MDR charges charged by the banks and much higher digital incentives paid to the customers.



REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONER

6. Refuting the stand taken by the respondent, learned Senior Counsel for the petitioner submitted that:-

i) The respondent being a State instrumentality, carries out functions of public importance and thus, there is an inherent requirement of fairness in all of its actions. However, the respondent's arrangements with Pine Labs and AGS, which in turn brings on board banks as per their own private arrangements that are not disclosed to the petitioner/respondent's dealers suffer from complete opaqueness and lack of transparency, which doesn't behave a State entity like the respondent.

ii) The respondent has failed to demonstrate that how public and customer interest would not be served if all the Scheduled Banks regulated by RBI are made part of the IPS. In fact, the respondent has made a bald statement that "*It is practically impossible for the respondent to use the facility of all the available bankers seeking their service to provide a payment gateway service.*", without any basis/ foundation and without explaining the alleged impossibility of such an arrangement.

iii) There is no real malpractice that is being remedied by implementation of IPS system. The purported malpractices have been conjured up to create prejudice against the dealers without proof of any particular instance of such malpractice.



iv) Under IPS, digital incentive of 0.75% was also discontinued *vide* letter dated 02.10.2021 and 04.05.2022. Further, it is accepted that manual intervention has been eliminated by implementation of IPS system, but the other benefits of SMS alert and availability of records of all transactions are not limited of IPS and they were available even before its implementation.

v) The respondent's stand to distinguish ***Federation of All Maharashtra, Petrol Dealers Association (supra)*** case with the present case, is just oversimplification and misunderstanding of the substance of the said judgment. Further, as mentioned on behalf of the respondent that the aforementioned Judgment is under challenge before the Hon'ble Supreme Court in Civil Appeal No. 8160/2012, it is relevant to mention that no stay has been granted on the operations of aforesaid judgment and in fact, Hon'ble Supreme Court *vide* order dated 22.03.2012 observed that "... *There will be no interim relief at this stage inasmuch as the order of the Competition Appellate Tribunal has already been acted upon. ...*".

vi) The respondent's attempt to challenge the *locus standi* of the present petitioner is just a feeble attempt to veer away from the merits of the matter. The petitioner is a body of persons representing its affected members, a fact which has been recognized and acknowledged by the respondent on several occasions. Moreover, this Court has entertained the petitions filed by the petitioner while espousing the cause of its members on multiple occasions



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before including in *Delhi Petrol Dealers Association v. Union of India*⁵. Therefore, the respondent cannot on one hand acknowledge and deal with the petitioner representing its members issues and on other hand question the *locus* of the very same respondent to file the writ petition to protect the cause of its members.

vii) The respondent by implementing IPS system in a closed and non-transparent manner, seeking removal of existing EDC Terminal, intend to restrict the free and fair and equitable digitization opportunities and availabilities to the customers through any/ all bankers. It further intends to put into operation discriminatory, unreasonable, and arbitrary practices by leaving it at the discretion of its appointed vendors to make a choice of banks, to the exclusion of others. The petitioner does not object to the IPS system, but questions the way the dealers are restricted to deal with a single bank.

viii) It is pertinent to mention that the respondent *vide* letter dated 15.01.2020 requested the dealers to keep EDC Terminals of other banks so that in case one bank server is down, the customers still have an option to pay through other means of digital payment. Therefore, implementation and promotion of digitization cannot be left at the mercy of the acquirer bank selected by the respondent's vendor and availability of multiple banks, including existing EDC Terminals is necessary.

⁵ (1999) 81 DLT 400



ix) The removal of existing EDC Terminals of other banks entails operational and financial difficulties to the dealers and to the public at large. The same is corroborated from the following instances: -

- Many petrol pumps have CNG facilities also, which are not automated. Such CNG customers also pay from credit/ debit card and for the said transactions the dealers require standalone EDC Terminals.
- In case one card is declined by the system, an alternate card cannot be swiped on the EDC Terminal linked to MPD/FCC as the transaction gets closed after the first decline.
- In case the automation system is down and consequently, the terminal also stops functioning, the petrol pump cannot operate further without automation with the permission from the respondent. Thus, in such cases, when the dealers cannot accept credit/ debit cards for a particular period, it results in loss of sales and revenue.
- Customers do not get an option to make part payment through cash and part payment through debit/ credit card.
- Sometimes, customers after transaction is complete, asks to cancel the transaction from that particular card and in turn either offers to pay through cash or another card. IPS system doesn't support cancelling a card transaction whereas standalone EDC Terminals supported the same.

Therefore, the respondent in the garb of automation under EDC Terminal and on the plea of superior technology cannot seek to adopt and promote unreasonable, restrictive and monopolistic practices.



ANALYSIS AND FINDINGS

Preliminary Objections

7. Before this Court analyses the impugned notice, it is necessary to deal with the preliminary objection raised on behalf of the respondent to the *locus standi* of the petitioner. The petitioner claims itself to be operating from the year 1956 as a Non-Profit Organisation incorporated under Section 8 of the Companies Act, 1956. The petitioner has given a list of dealers who are its members in the present petition and also placed on record a copy of minutes of the meeting dated 12.08.2016, which was attended by the petitioner and all the oil companies, including respondent, thus, recognizing the petitioner as an associate representing respondent's dealers. Reliance is also placed on a **Delhi Petrol Dealers Association v. Union of India**⁶, wherein this Court on previous occasion entertained the petition filed by the petitioner, espousing the cause of its members.

8. In these circumstances, this Court is of the considered opinion that the members of the petitioner association are not fly-by-night operators and have been in existence since for long. This has been brought out from the documents placed on record by the petitioner. Thus, the petition cannot be rejected on this aspect of maintainability.

Impugned Notice

⁶ (1999) 81 DLT 400



9. Prior to the Impugned Notice being issued by the respondent, introducing IPS by way of Android POS machine (EDC Terminal), operated through Pine Labs and AGS payment gateway only and that to *via* HDFC Bank and RBL Bank, the ROs were using EDC Terminals of their respective banks from which they used to take credit. By way of such terminals, the customers would pay from their Debit card/ Credit card/ UPI wallet for the amount fuelled by them and the amount from the customer's account would straightaway go to the dealers' respective bank account.

10. It is the case of the petitioner that since all the dealers have to pay to the respondent 100% in advance for the fuel purchased, the same advance amount is taken on credit from these banks. Therefore, any delay in collection of customers' payments in the dealers' bank accounts entails interest being accrued upon them.

11. *Per contra*, it is the case of the respondent that IPS is a part of its new initiative 'NextGen Pure for Sure' for curbing malpractice and bringing enhanced transparency for better quality and quantity assurance to its retail customers. It has been further contended on behalf of the respondent that there is no other way to successfully implement 'NextGen Pure for Sure' initiative but to switch all digital payments for sales of Motor Spirit/ High Speed Diesel at RO's being routed through IPS only. Thus, in order to completely switch to IPS, it was incumbent to stop using standalone EDC Terminals provided by the dealers' bank as the success of providing a transparent and customer friendly digital transaction experience through IPS



is dependent upon the entire digital card payments being routed and transacted through IPS machines provided by the respondent.

12. It is also the case of the respondent that its relationship with dealers is governed by the terms of DPSL Agreement. Therefore, it has freedom to regulate and manage its business without any interference or claim of its dealers. Reliance has been placed on clause 4 of the said agreement to claim that the premises and facilities of the dealers, at all times, during the continuance of the license, are absolute property and in sole possession of the respondent. Similarly, reliance has also been placed on clauses 10(b) and 10(k) of the agreement which read as under:-

“10. (b) To promote the sales of the Company’s products to the satisfaction of the company and achieve sales target as may be set by the Company from time to time.

xxx

xxx

xxx

(k) To abide by the Petroleum Act, 1934 and the rules framed thereunder for the time being in force as also any other laws, rules or regulations either of the Government or of any local body as may be in force.”

13. It is further argued by the learned Senior Counsel for the respondent that the aforesaid step will also boost and further promote the initiative of the Government of India to promote digital and cashless economy. Reliance was placed upon notification dated 08.12.2016 of Government of India for promotion of digital and cashless economy.

14. *Vide* order dated 13.07.2023, the learned Predecessor Bench of this Court directed the respondent to file an affidavit in the following manner:-



“1. Learned Counsel for the Respondent is directed to file an affidavit clearly stating the malpractices which are sought to be plugged by the implementation of Integrated Payment Solution Programme (IPS) which is under challenge in the present Writ Petition. The affidavit shall also indicate the benefits that will accrue to the customers by the introduction of the said system.

2. Let the affidavit be filed within three weeks.

3. List on 20.09.2023.

4. Interim orders to continue.”

15. Pursuant to the aforesaid direction, the respondent placed on record an affidavit dated 31.08.2023, which records as under:-

“1. That traditionally digital payment for the fuel purchased at Retail Outlets by customers to the dealers were being facilitated through standalone Electronic Data Capture (EDC) terminals provided by the banks, which was not integrated With the Dispensing Units through which the fuel was dispensed to such customers. After dispensation of fuel, the amount was required be manually entered into the EDC terminal by delivery person and then digital payment was being processed.

2. That due to technological advancement, it has now been possible to integrate the two machines i.e. Dispensing Units and digital payment machine like EDC terminal to avoid any manual intervention in entire process of fueling till payment and to provide customers a seamless digital transaction with complete transparency.

3. That the respondent as part of its new technological advancement initiatives “NextGen Pure for Sure”, has adopted the advance technology and is implementing Integrated Payment System (IPS) by integrating dispensing units (MPDs) at its Retail Outlets with the Android Point of Sales (APoS). The standalone EDC terminal provided by individual banks to individual dealers must be replaced with new integrated APoS as the same is not integrated with the Dispensing Units. By such integration, the APoS machine automatically picks up the signal from dispensing machines (MPDs/FCCs) of the fuel transaction done on the dispensing machines and debits the equivalent amount from the Debit/Credit or UPI wallet for the amount fueled, without any manual intervention by the delivery salesman who dispenses the fuel. Accordingly, the IPS system ensures that exactly same amount, what is filled on the dispensing machine, is billed and



collected from the customer. This completely removes scope of rounding off or variation of amount in terms of insignificant figures such as a few paise or unit thereof, whether done mistakenly or deliberately. Additionally, this system provides advanced beneficial features to the customers, like provision of instant digital incentive, SMS based fueling confirmation, provisioning of incorporating all fueling and payment details including Vehicle Number in single bill etc. Further, for the benefit of the customer, IPS system also provides instant digital incentive to the customer. The respondent has filed its detailed counter affidavit and reserves its right to refer and rely upon the averments made in the counter affidavit as part and parcel of this affidavit.

4. That the IPS system is an upgradation of digital payment of system for collection of prices of the fuel, the Motor Spirit and/or HSD, sold at the Retail Outlets. Adoption of such system is increasing in practice and has become very common. The previous system of collection of payments of fuel prices sold at the ROs is outdated in terms of digital advancement. Use of non integrated and stand-alone EDC machines is decreasing day by day and the petitioner cannot be forced to lag behind to such digital advancement.

5. The very fact that upgradation of digital payment system is being objected to, indicates that it is plugging malpractices which are beneficial for RO operators.

6. That vide order dated 13.07.2023, this Hon'ble Court has directed the Respondent to furnish details of malpractices which the implementation of Integrated Payment System (IPS) Program will stop and also the benefits to the customers.

MALPRACTICES WHICH THE IPS SYSTEM STOPS

7. That the implementation of Integrated Payment Solution (IPS) Program stops the following malpractices:

i. 0.75% Merchant Discount Rate (MDR), is paid to the banker by the Respondent for facilitating digital payment for fuel purchase i.e. the Motor Spirit and/or HSD only. MDR charges are not payable on non-fuel transactions like groceries, Engine Oil and other nonfuel petroleum products sold at the Retail Outlets (R Os) However, when the Dealer uses the same POS machine for fuel as well as non-fuel transactions, the Dealer claim MDR even on non-fuel transactions and there is no mechanism to bifurcate the non-fuel and fuel transactions on such POS. Therefore, the Respondent is defrauded to pay MDR charges for transactions wherein no MDR charges are payable. Notices issued to



some Banks in respect of misuse of standalone POS are annexed hereto as Annexure-A/1.

ii. Geo-Fencing: The standalone EDC terminals issued by individual Banks to the Retail Outlet Dealers are not geo fenced and can be operated to collect money from any place other than the geographic area of the Retail Outlet. In such circumstances, the machine can be mis—utilized for collection of money at other places, thereby making the Respondent liable for payment of MDR charges and wrongful utilization of digital incentives. Under the new integrated IPS system the POS Machine has been integrated to the Multi Product Dispensers (MPDs) therefore cannot be used beyond the surrounding of fuel dispensing machines and can be used only for the fuel transactions done through such machines.

BENEFITS TO THE CUTOMERS:

8. I say that the following benefits would be accruing to the customers by the implementation of android based Integratecl Payment Solution (IPS) Program:

i. The Integrated Payment Solution (IPS) integrates the MPD machines with the POS machine and fetch the data directly from the fuel dispensing machine when fueling is done. Therefore, human intervention in collection of digital payment in regard of computation of price of Petrol and Diesel is completely ruled out.

ii. The customer instantly gets benefits on the transactions, if any, available in respect of the fuel purchased. Digital _ payment incentive of 0.75% digital incentive was available to customers as per the notification issued by the Government of India for promotion of Digital and Cashless Economy.

iii. Rounding off and error in collecting digital amount is completely ruled out.

iv. SMS alert to registered mobile of the customer: The end customer is informed about the exact quantity of fuel sold and money paid for the same. Therefore, customers receive information with respect to the quantity of fuel purchased as well as the exact amount spent.

v. The record of all transactions done through IPS are available along with fueling details/time etc. for future reference.

9. I say that the annexures may be read as a part and parcel of this Affidavit.

10. I have read the contents of the aforesaid affidavit and the contents of the same are true and correct to the best of my knowledge and nothing material has been concealed therefrom.”



16. In response to the respondent's affidavit dated 31.08.2023, the petitioner replied by way of an affidavit dated 16.09.2023. In particular, petitioner replied to paragraphs 7 and 8 of the respondent's said affidavit, which read as under:-

"In response to para 7(i):

13. The Respondent has alleged misuse of standalone POS machines by certain dealers for non-fuel transactions and their fraudulent claim of our MDR on such non-fuel transactions. However, to substantiate the same, it has cited the instances of only two retail outlets in Nellore, Andhra Pradesh, whereas the Respondent has approximately 20,000 outlets across the country. Also, a bare perusal of the notices relied upon by the Respondent would reveal that they are concerned with the payment of 0.75% digital incentive (which has since been discontinued, as stated above) and not with the reimbursement of MDR.

14. I state that while the Respondent has sought to justify the IPS system by citing (without substantiating) fraudulent claims for MDR as a malpractice, it does not provide any explanation as to how limiting the IPS to only two banks, i.e., HDFC and RBL, would remedy such alleged malpractice.

In response to para 7(ii):

15. The Respondent's second justification of "Geo-Fencing". . to ensure that the POS terminals are not operated outside the geographic area of the Retail Outlet, is also completely baseless and misleading, inasmuch as there are no instances of a standalone POS terminal being used outside a petrol pump. In fact, the credit facilities under which such POS Terminals are issued, themselves indicate that the POS Terminal is to be used at the petrol pump only. In any case, the Respondent. has not substantiated such allegation of malpractice where a standalone POS Terminal is being used outside the petrol pump for non-fuel transactions.

16. Insofar as the benefits of the IPS system to the customers are concerned, I state the following:

In response to para 8(i) and (iii):



17. The Respondent has repeatedly laboured on the fact that the Integrated POS Terminal under the IPS System would rule out human intervention and fetch the data directly from the fuel dispensing machine, and that would benefit the customer. While the Petitioner does not object to such mechanism being applied, the Respondent has failed to demonstrate how the customer would be benefitted by limiting the IPS to POS Terminals of only two banks, i.e., HDFC and RBL.

18. In any case, the mechanism at present also enables a customer to verify that the amount on the fuel dispensing machine and the amount paid by him/her are the same.

In response to para 8(ii):

19. The Respondent has attempted to mislead this Hon'ble Court by falsely asserting that under the IPS system, the customer instantly gets benefits of 0.75% digital incentive made available. As stated above, vide its own letters dated 02.10.2021 and 04.05.2022, the Respondent has discontinued the digital incentive of 0.75% for all modes of payment. Therefore, even the said purported benefit does not accrue to the customer and the Respondent is misleading this Hon'ble Court by relying upon digital incentive as a benefit to the customer.

In response to para 8(iv) and (v):

20. The benefits of SMS alert and availability of records of all transactions are not limited to the IPS System and are in fact available even in the present modes available. In any case, the said benefits available to the customer cannot be compromised if the IPS System is extended to the POS Terminals of other banks as well. However, the Respondent has failed to provide any reason of rationale for limiting the IPS system to the POS Terminals of only two banks.

21. I state, in light of the above, that the malpractices which have been stated by the Respondent do not have any credible basis, which would necessitate implementation of the IPS System in the manner the Respondent has implemented. Furthermore, while the IPS System may confer certain benefits on the consumers, such benefits are not limited to the IPS System only. In fact, by relying on incentives which are no more available, the Respondent has attempted to mislead the Hon'ble Court. As such, the same ought not to be considered or relied upon by this Hon'ble Court."



17. In the aforesaid backdrop the issue is- “*whether the respondent’s initiative by introducing IPS only through the EDC Terminal being provided by its vendor (Pine Labs and AGS) would satisfy the test of proportionality determining reasonableness of the limitation imposed upon the petitioner through the aforesaid method*”. At this stage, it would be apposite to refer to a judgment of the Hon’ble Supreme Court in **Akshay N. Patel (supra)**, wherein while applying the four-pronged test of proportionality on the impugned measure therein, it was observed and held as under:-

“21. The decision in K.S. Puttaswamy (Privacy-9 J.) [K.S. Puttaswamy (Privacy-9 J.) v. Union of India, (2017) 10 SCC 1, para 325] introduced the proportionality standard in determining violations of fundamental rights, particularly the right to privacy. This doctrine was affirmed in the judgments of five out of the nine-Judges on the Bench. Subsequently, a Constitution Bench in K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India [K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India, (2019) 1 SCC 1] [“Aadhaar-5 J.”] fleshed out the contours of a proportionality analysis and applied it to determine the constitutionality of the Aadhaar Scheme and the Aadhaar Act, 2016. A.K. Sikri, J. conducted a comparative analysis of the types of proportionality analysis globally and elucidated a four-pronged approach that could be suitable for the Indian Constitution. This test was laid down in the following terms : (SCC pp. 378-79, para 319)

“319. ... This discussion brings out that following four subcomponents of proportionality need to be satisfied:

319.1. A measure restricting a right must have a legitimate goal (legitimate goal stage).

319.2. It must be a suitable means of furthering this goal (suitability or rational connection stage).

319.3. There must not be any less restrictive but equally effective alternative (necessity stage).

319.4. The measure must not have a disproportionate impact on the right holder (balancing stage).”

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31. The appellant has submitted that the precedents of this Court indicate that once the citizen can demonstrate that the restriction



directly or proximately interferes with the exercise of their freedom of trade or to carry on a business, it is the State's burden to demonstrate the reasonableness of the restriction and that it is in the interest of the general public [*Sukhnandan Saran Dinesh Kumar v. Union of India*, (1982) 2 SCC 150 : AIR 1982 SC 902; *Laxmi Khandsari v. State of U.P.*, (1981) 2 SCC 600 : AIR 1981 SC 873]. The authority of RBI in issuing the impugned notification is not in challenge. Additionally, the legitimacy of the aim — of ensuring adequate domestic supplies of PPE products — is also not in challenge. The appellant assails the suitability of the measure restricting MTTs in ensuring domestic supplies and for being overbroad in its ambit, since an Indian entity acting as an intermediary in an MTT between two different countries does not impact the availability of PPE products in India. Thus, this Court will be relying on the justification furnished by RBI in determining the proportionality of the impugned measure [Clause 2(iii) of the 2020 MTT Guidelines]. This analysis will be structured along with the following questions:

- (i) Is the measure in furtherance of a legitimate aim?
- (ii) Is the measure suitable for achieving such an aim?
- (iii) Is the measure necessary for achieving the aim?
- and
- (iv) Is the measure adequately balanced with the right of the individual?

C.1. Legitimacy

32. This prong of the test entails an evaluation of the legitimacy of an aim that purportedly violates a fundamental right. The measure must be designated for a proper purpose i.e. a legitimate goal. Five of the Judges in the nine-Judge Bench decision in *K.S. Puttaswamy (9 J.)* [*K.S. Puttaswamy (Privacy-9 J.) v. Union of India*, (2017) 10 SCC 1, para 325] adopted the threshold of a “legitimate State interest” as the first prong for assessing proportionality. This State interest must also be of sufficient importance to override a constitutional right or freedom [*K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India*, (2019) 1 SCC 1, paras 321-322]. In this case, the ban on exports, imports and MTTs of PPE products is to ensure the availability of adequate domestic supplies during a global health pandemic. Adequate stocks of PPE products are critical for the healthcare system to combat the Covid-19 Pandemic. The State's aim of ensuring supplies is in furtherance of the right to life under Article 21 and the Directive Principles of State Policy mandating the State's improvement of public



health as a primary duty under Article 47. The appellant has not challenged the legitimacy of this aim of ensuring adequate PPE in India. RBI, at the time of filing its affidavit on 30-1-2021, had elaborated on the state of the pandemic in the country and the necessity of ensuring adequate stock of PPE products. The executive's aim to ensure sufficient availability of PPE products, considering the ongoing pandemic, is legitimate. Accordingly, we hold that the impugned measure is enacted in furtherance of a legitimate aim that is of sufficient importance to override a constitutional right of freedom to conduct business.

C.2. Suitability

33. In examining the aim of ensuring adequate supplies in India, we will now evaluate the suitability of the prohibition of MTTs in relation to PPE products. This would entail an analysis of whether the proposed measure can further the stated objective. To understand whether the prohibition of MTTs in relation to PPE products was suitable, we must first analyse the framework under which RBI regulates MTTs in India.

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C.3. The necessity of the measure

50. The prong evaluating necessity is often conflated with the prong evaluating the suitability of a measure. The analysis of necessity is an extension of evaluating the suitability of a restriction, coupled with an analysis of whether the proposed measure is the least restrictive manner of arriving at the intended legitimate State interest. This prong has traces of the “narrowly tailored” State interest [*K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India*, (2019) 1 SCC 1, paras 420 and 424] that has often been used by this Court in evaluating claims of infringement of fundamental rights under Part III.

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C.4. Balancing fundamental rights with State aims

53. The fourth and final prong of the proportionality analysis involves the crucial task of conducting a balancing exercise. The Court is called upon to legitimise the “social importance of the limitation on a constitutional right” [*K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India*, (2019) 1 SCC 1, paras 335 and 369] . A measure that fails to justify its existence on this prong is considered to have a disproportionate impact on the right-holder [*K.S. Puttaswamy (Aadhaar-5 J.) v. Union of India*, (2019) 1 SCC 1, paras 335 and 369]”



18. Applying the aforesaid four-pronged test, insofar as the first test of applicability of legitimacy of the measure is concerned, it is also the case of the petitioner that the introduction of IPS is no doubt in the interest of the customers as has been stated during the course of the arguments as well as in their written submissions. Similarly, the second test- whether the measure is suitable for any such aim, there is no dispute on the fact as well that admittedly prior to the issuance of the Impugned Notice, the ROs were using both the standalone EDCs of other banks as well as the EDC Terminals of Pine Labs and AGS.

19. So far as the third test, whether the measure is necessary for achieving the aim or not, the respondent in pursuance of the direction of the learned Predecessor Bench *vide* order dated 13.07.2023 had placed on record its justification as pointed out herein-above.

20. To determine the third test of proportionality as to whether the measure is necessary for achieving the aim or not, a comparative table showing the claim of the respondent and response by the petitioner will be relevant which is as under:-

Respondent's submissions	Petitioner's reply to the submissions made by the respondent
<i>Malpractices which the IPS system stops:</i> 7. That the implementation of	<i>In response to para 7(i):</i> 13. The Respondent has alleged misuse of standalone POS machines



Integrated Payment Solution (IPS) Program stops the following malpractices: i. 0.75% Merchant Discount Rate (MDR), is paid to the banker by the Respondent for facilitating digital payment for fuel purchase i.e. the Motor Spirit and/or HSD only. MDR charges are not payable on non-fuel transactions like groceries, Engine Oil and other non-fuel petroleum products sold at the Retail Outlets (ROs) However, when the Dealer uses the same POS machine for fuel as well as non-fuel transactions, the Dealer claim MDR even on non-fuel transactions and there is no mechanism to bifurcate the non-fuel and fuel transactions on such POS. Therefore, the Respondent is defrauded to pay MDR charges for transactions wherein no MDR charges are payable. Notices issued to some Banks in respect of misuse of standalone POS are annexed hereto as	by certain dealers for non-fuel transactions and their fraudulent claim of our MDR on such non-fuel transactions. However, to substantiate the same, it has cited the instances of only two retail outlets in Nellore, Andhra Pradesh, whereas the Respondent has approximately 20,000 outlets across the country. Also, a bare perusal of the notices relied upon by the Respondent would reveal that they are concerned with the payment of 0.75% digital incentive (which has since been discontinued, as stated above) and not with the reimbursement of MDR. 14. I state that while the Respondent has sought to justify the IPS system by citing (without substantiating) fraudulent claims for MDR as a malpractice, it does not provide any explanation as to how limiting the IPS to only two banks, i.e., HDFC and RBL, would remedy such alleged malpractice.
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Annexure-A/1.	
ii. Geo-Fencing: The standalone EDC terminals issued by individual Banks to the Retail Outlet Dealers are not geo fenced and can be operated to collect money from any place other than the geographic area of the Retail Outlet. In such circumstances, the machine can be mis-utilized for collection of money at other places, thereby making the Respondent liable for payment of MDR charges and wrongful utilization of digital incentives. Under the new integrated IPS system the POS Machine has been integrated to the Multi Product Dispensers (MPDs) therefore cannot be used beyond the surrounding of fuel dispensing machines and can be used only for the fuel transactions done through such machines.	<i>In response to para 7(ii):</i> 15. The Respondent's second justification of "Geo-Fencing". . to ensure that the POS terminals are not operated outside the geographic area of the Retail Outlet, is also completely baseless and misleading, inasmuch as there are no instances of a standalone POS terminal being used outside a petrol pump. In fact, the credit facilities under which such POS Terminals are issued, themselves indicate that the POS Terminal is to be used at the petrol pump only. In any case, the Respondent. has not substantiated such allegation of malpractice where a standalone POS Terminal is being used outside the petrol pump for non-fuel transactions.
<i>Benefits to the customers:</i> 8. I say that the following benefits would be accruing to the customers by the implementation of android	<i>In response to para 8(i) and (iii):</i> 17. The Respondent has repeatedly laboured on the fact that the Integrated POS Terminal under the



based Integrated Payment Solution (IPS) Program: i. The Integrated Payment Solution (IPS) integrates the MPD machines with the POS machine and fetch the data directly from the fuel dispensing machine when fueling is done. Therefore, human intervention in collection of digital payment in regard of computation of price of Petrol and Diesel is completely ruled out. iii. Rounding off and error in collecting digital amount is completely ruled out.	IPS System would rule out human intervention and fetch the data directly from the fuel dispensing machine, and that would benefit the customer. While the Petitioner does not object to such mechanism being applied, the Respondent has failed to demonstrate how the customer would be benefitted by limiting the IPS to POS Terminals of only two banks, i.e., HDFC and RBL. 18. In any case, the mechanism at present also enables a customer to verify that the amount on the fuel dispensing machine and the amount paid by him/her are the same.
ii. The customer instantly gets benefits on the transactions, if any, available in respect of the fuel purchased. Digital payment incentive of 0.75% digital incentive was available to customers as per the notification issued by the Government of India for promotion of Digital and Cashless Economy.	<i>In response to para 8(ii):</i> 19. The Respondent has attempted to mislead this Hon'ble Court by falsely asserting that under the IPS system, the customer instantly gets benefits of 0.75% digital incentive made available. As stated above, vide its own letters dated 02.10.2021 and 04.05.2022, the Respondent has



	discontinued the digital incentive of 0.75% for all modes of payment. Therefore, even the said purported benefit does not accrue to the customer and the Respondent is misleading this Hon'ble Court by relying upon digital incentive as a benefit to the customer.
iv. SMS alert to registered mobile of the customer: The end customer is informed about the exact quantity of fuel sold and money paid for the same. Therefore, customers receive information with respect to the quantity of fuel purchased as well as the exact amount spent. v. The record of all transactions done through IPS are available along with fueling details/time etc. for future reference.	<i>In response to para 8(iv) and (v):</i> 20. The benefits of SMS alert and availability of records of all transactions are not limited to the IPS System and are in fact available even in the present modes available. in any case, the said benefits available to the customer cannot be compromised if the IPS System is extended to the POS Terminals of other banks as well. However, the Respondent has Mailed to provide any reason of rationale for limiting the IPS system to the POS Terminals of only two banks. 21. I state, in light of the above, that the malpractices which have been



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	stated by the Respondent do not have any credible basis, which would necessitate implementation of the IPS System in the manner the Respondent has implemented. Furthermore, while the IPS System may confer certain benefits on the consumers, such benefits are not limited to the IPS System only. In fact, by relying on incentives which are no more available, the Respondent has attempted to mislead the Hon'ble Court. As such, the same ought not to be considered or relied upon by this Hon'ble Court.”
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21. An analysis of the aforesaid claim of the respondent and response by the petitioner demonstrate that the only advantage that can be culled out of using EDC Terminals issued by Pine Labs and AGS, is that it is integrated with MPD/ FCC machines and thus, it is able to fetch data directly from such machines while fuelling is done. Therefore, human intervention in collection of digital payment with regard to computation of price of petrol/ diesel is completely ruled out and since, all transactions are routed through IPS, all records relating to fuelling details, time, amount etc. are available for future reference. Thus, the introduction of EDC terminal issued by Pine Labs and



AGS can be considered to be in pursuance of fulfilling the objective of introducing IPS.

22. As far as the fourth test of balancing the rights of the petitioner with the aims and objective of the respondent's introduced IPS is concerned, it will be relevant to refer to the decision in ***Federation of All Maharashtra, Petrol Dealers Association (supra)***. In the said case, the respondent therein i.e. Hindustan Petroleum Corporation Ltd. (HPCL), had directed their dealers to use EDC terminal of ICICI bank only. Striking down the said direction as unfair trade practice, the learned Competition Appellate Tribunal observed and held as under:-

“5. Basic issue, therefore, is as to whether the first respondent could have insisted that the petrol dealers at their outlets should install ICICI bank terminal alone. Further whether the first respondent could insist on the removal of the terminals set up by other banks at the said outlets. Further, it is to be decided as to whether by issuing directions to use ICICI Bank terminals exclusively and removing all other terminals from the outlets the first respondent has violated any of the provisions of the MRTP Act.

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8. It is to be seen whether the first respondent was justified in the insistence of exclusive user of ICICI bank terminals at the outlets and further whether the first respondent was justified in its direction to remove the terminals of other bank than ICICI from the petrol outlets.

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12. In the earlier paragraphs of this judgment, we have already shown as to how the practice adopted by the first respondent would result in restricting the competition amongst the banks in the matter of providing services to the consumer by setting-up terminals at the outlets. It is already shown that this direction to remove all the other terminals excepting the terminals of ICICI banks and insisting upon the consumer to transact only with ICICI bank would apart from affecting the competition, also impose unnecessary surcharge on the



consumers using any other cards than the ICICI card on the ICICI banks terminals in as much as they would have to shell out 2.5% of the actual cost on petrol or diesel as the case may be, which they purchase on the basis of their credit card. The direction, therefore, clearly amounts to restrictive trade practices, such trade practices under the provisions of Section 38 (1) would be deemed to be prejudicial to the public interest. It is not the case of the first respondent that it comes under any of the Clauses namely Sub-Clauses (a) to (k) of Section 38. No such contention was raised before us.

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14. A direction to remove the terminals of other banks excepting that of ICICI bank on the ground that it has a financial arrangement with ICICI bank would be clearly covered under language of clause quoted above. Apart from this, it would amount to an unfair method for promoting the services of ICICI bank. The unfairness would be at large in as much as though the dealer has full right to utilize the services of any other bank, he would have to stop his business with other bank and would have to essentially transact with ICICI bank, which would affect the competition and would give an unfair advantage to ICICI bank over and above the other banks having their terminals at the site of the outlet. This would be apart from causing loss and injury to the ultimate consumer in as much as he would have to shell out 2.5% more than the actual transaction.”

22.1. The contention of the respondent that the aforesaid decision would not be applicable in the present case as in the said case, the customers who were using cards other than ICICI Bank were made liable to pay additional charges, is not borne out from the aforesaid observation. As pointed out hereinabove, the learned Competition Appellate Tribunal in the aforesaid observation has clearly noted that the unfairness of the decision taken by HPCL would not only be on account of the fact that the customers would have to shell out 2.5% more than the actual transaction, if they used any other bank’s credit card but also on account of the fact that dealers, who have full right to otherwise utilise



services of any other bank would have to stop their businesses with these banks and have to essentially transact with the ICICI bank, which would in effect, affect competition and give an unfair advantage to the ICICI bank over other banks having their EDC Terminals at the site of the dealership outlet.

22.2. The insistence of the respondent to only use the EDC Terminals provided by the Pine Labs and AGS has been highlighted in the counter affidavit and written submissions of the respondent in the following manner: -

**“COUNTER AFFIDAVITS ON BEHALF OF THE
RESPONDENT MOST RESPECTFULLY SHOWETH:**

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PRILIMANARY OBJECTIONS:

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8. ...For successfully running the IPS, the services of the banker as an Acquirer, just like an interface, is required and **it is for the vendors, responsible for installing and running IPS at a particular RO, to choose, the banker of its choice for providing services of the Acquirer. The Banks, which are capable and ready to provide the requisite and customized technical facilities, are selected by the Vendors as the Acquirers. ...Such Vendors have selected HDFC Bank, Indusland Bank and RBL Bank, for providing services of the Acquirer as these banks have undertook to meet the specific technical requirements of the IPS initiative. Otherwise also, it is for the Vendors to choose the banker for provision of server for them and in terms of the agreement the Respondent has no scope to choose the banker for providing services of Acquirer.** Here it is pertinent to mention that the Acquirer has nothing to do with any other banking activities of either the customers or the dealers, therefore, selection of a particular banking company as the Acquirer has nothing to do with other banking activities of the either the dealers or the customers. The role of the Acquirer is limited to check the validity of the card account of the customer, withdraw or facilitate in the transfer of the transaction money from the card account of the customer and to credit the same



in the merchant's bank account, which can be any bank of the merchant, i.e. Dealers choice. ...

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9. ... the IPS element of 'NextGen Pure for Sure ' initiative is dependent upon entire digital card payments being routed and transacted through integrated IPS Machines. ...

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Para-wise Reply:-

1. ... It is further submitted that for technical and commercial reasons IPS system cannot have more than one banking partners to provide the services of the Acquirer or as an interface. ...”

“FINAL WRITTEN SUBMISSIONS ON BEHALF OF THE RESPONDENT.

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II. ROLE OF BANKS

- ...The banker which has to provide such service can only be selected banks and it cannot be all he bankers.

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- It is practically impossible for the respondent to use the facility of all the available bankers seeking their service to provide a payment gateway service.

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IV. IMPLEMENTATION OF IPS

- ... It is for vendors, responsible for installing and running IPS at a particular RO, to choose, the banker of its choice for providing services of the Acquirer. The Banks, which are capable and ready to provide the requisite and customized technical facilities, are selected by the Vendor as the Acquirers. This selection and choice of the Acquirer Banks is of the vendor and not of the Respondent as the Respondent has no interference in the manner of provision of the service by the Vendor. ...The role of the Acquirer is limited to check the validity of the card account of the customer, withdraw or facilitate in the transfer of the transaction money from the card account of the customer and to credit the same in the merchant's bank account, which can be any bank of the merchant, i.e. Dealers choice.

(emphasis supplied)”



22.3. At this stage, it is also relevant to refer to an order dated 25.02.2021 passed by the learned predecessor bench of this Court, wherein it was directed as under:-

“2. Ld. counsel for the BPCL submits that BPCL is willing to make available instead of one bank i.e. HDFC bank, an additional bank in its integrated payment solution. Let the same be stated in an affidavit. Additionally, both counsels shall place two flow charts on record after consulting with each other:

- i. First flow chart shall deal with the system as it operated prior to the notice dated 8th October, 2020.
- ii. Second flow chart shall deal with what would be the position post 8th October, 2020 in terms of the manner in which the payment solution operates.

3. Let the flow charts and affidavit be filed within four weeks. 4. List on 20th April, 2021. Interim orders to continue.”

In compliance of the aforesaid order dated 25.02.2021, the respondent filed an affidavit dated 13.04.2021, which reads as under:-

“3. That the vendors selected by the Respondent corporation i.e. PineLab- M/s AGS Transact Technologies Limited are ready and willing to provide some IPS POS machines at Retail Outlets being provided and managed by them, where. RBL Bank in addition to HDFC Bank Ltd. Will be providing services/ facilities of an acquirer bank. Accordingly, the Retailers will have option to use the IPS POS machines with two bankers providing service of Acquirer for digital transaction.”

As already pointed out hereinabove, RBL Bank was already one of the bankers providing services to the respondent's vendors, which has also been mentioned in para no. 8 of the counter affidavit. The directions *vide* order dated 25.02.2021, was specifically with regard to an additional bank but the aforesaid affidavit was filed showing the additional bank i.e. RBL Bank has



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been added in the IPS. The said affidavit is conspicuously silent on this issue of linking an additional bank with the IPS.

23. The petitioner association by way of an affidavit dated 21.07.2022 stated that financial prejudice would be caused to the ROs on account of IPS being implemented by respondent through HDFC Bank and RBL Bank alone. By way of the said affidavit, it was pointed out that petitioner association is not objecting to the introduction of IPS but it opposed to the fact that the respondent is insisting on the use of POS terminal connected to only HDFC Bank and RBL Bank and removal of all other EDC Terminals provided by other banks. It was further submitted that most of dealers have a longstanding business relationship with different banking institutions, which provides various facilities, like credit/ loan/ overdraft against the primary security of hypothecation on POS terminals (which is Credit Cards swipe receivables) and undertaking for minimum monthly credit card swipes being provided by the dealer and in the event POS terminals of the dealer's Bank are removed, following implications have been pointed out:-

- “(a) The Dealers would have to pay penal interest. As a consequence of this, the Dealers CIBIL would be affected and in turn would affect the borrowing power of the Dealer in case a subsequent facility is to be taken, whether through the Respondent's Bank or otherwise;
- (b) The Dealers would have to surrender their current facility limits;
- (c) The Dealers would immediately be subject to pre-payment charges, in case of closing of facilities, which all banks charge;
- (d) Each facility, as per the RBI Guidelines, have a fixed Marginal Costs of Funds Based Landing Rate (for short “**MCLR**”) which is reset as per the RBI norms in 3 years. In other words, a flat interest rate is charged for 3 years. A change in the facility would imply that the



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MCLR would be reset and the Dealers would perhaps have to pay higher interest on loans.”

23.1 It is also pointed out that members of the petitioner association buy fuel from the respondent on 100% credit which is provided by their banks and the payments made by the end user on the standalone EDC Terminals of their bank is credited the same day. However, in case the EDC Terminals of HDFC Bank and RBL Bank are used, members of the petitioner association have to await credit of payments for one whole day and in case the next day is a Sunday or a gazetted holiday, the members of the petitioner association have to wait two days for credit of the payment. In this situation, it is pointed out if the payments are credited after one whole day, it affects the dealer because then they would never be in a position to make advance payments until the credit is made available by their respective banks. Thus, it is submitted that restricting the usage of EDC Terminals to HDFC Bank and RBL Bank only, grossly effects the cashflows of the dealer as they are forced to commit large amounts of their cash reserves to make such advance payments for buying fuel from the respondent. Another aspect which was urged was that the dealers using the terminals of the respective banks were not charged any rental for the same. However, the respondent is directing the dealers to pay a rental charge of Rs. 250 per month for each of the terminals provided by it. It is pointed out that in several petrol pumps there are about 5 to 10 such machines and thus, on an average a dealer would be required to pay about Rs. 25,000/- to 40,000/- per annum purely as rentals for using POS terminal and considering that there are more than 100 dealers, cumulative rental charges would amount to Rs. 25,00,000/- to Rs. 40,00,000/- per annum.



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24. In these circumstances, there is no reasonable justification for the respondent to insist that the payment gateway can only be made through the banks chosen by its vendors. Further, as pointed out hereinabove, the learned Competition Appellate Tribunal, though under the scheme of MRTP Act, had held that such a practice would be restrictive and unfair in nature on account of the fact that dealers, who have full right to otherwise utilise services of any other bank would have to stop their businesses with these banks and have to essentially transact with the ICICI bank therein, which would in effect, affect competition and give an unfair advantage to the ICICI bank over other banks having their EDC Terminals at the site of the dealership outlet. In the present case, the dealers' financial relations with their respective bank is also effected as pointed out hereinabove. Apart from the bald statement made by the respondent, as pointed out hereinbefore, no justifiable reason has been forthcoming from the respondent, as to why the bankers of the ROs cannot be allowed to have their EDC Terminals, which may be integrated with the system. The only explanation which has been placed on record is that the same is vendor's choice and their relationship with the said banks. There is no reasonable nexus of the restrictive direction of the respondent *vide* Impugned Notice for utilising the EDC Terminals of the vendor's banks and not any other bank with the objective of the IPS. Anything which is restrictive in nature would amount to an arbitrary act and in case of any arbitrary measure, the same would be violative of Article 14 of the Constitution of India. It is trite that any action having vice of arbitrariness shall be in violation of the Fundamental Rights guaranteed under Article 14 of the Constitution of India.



Some of the Judgments passed by the Hon'ble Supreme Court of India may be referred for the same:

24.1 In **Ajay Hasia v. Khalid Mujib Sehravardi**⁷, it was observed as follows:

“16. If the Society is an “authority” and therefore “State” within the meaning of Article 12, it must follow that it is subject to the constitutional obligation under Article 14. The true scope and ambit of Article 14 has been the subject-matter of numerous decisions and it is not necessary to make any detailed reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification. Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because the view taken was that that article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) that that differentia has a rational relation to the object sought to be achieved by the impugned legislative or executive action. It was for the first time in *E.P. Royappa v. State of Tamil Nadu* [(1974) 4 SCC 3, 38 : 1974 SCC (L&S) 165, 200 : (1974) 2 SCR 348] that this Court laid bare a new dimension of Article 14 and pointed out that that article has highly activist magnitude and it embodies a guarantee against arbitrariness. This Court speaking through one of us (Bhagwati, J.) said: SCC p. 38: SCC (L&S) p. 200, para 85]

“The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., ‘a way of life’, and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be “cribbed, cabined

⁷ (1981) 1 SCC 722



and confined” within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.”

This vital and dynamic aspect which was till then lying latent and submerged in the few simple but pregnant words of Article 14 was explored and brought to light in Royappa case [(1974) 4 SCC 3, 38 : 1974 SCC (L&S) 165, 200 : (1974) 2 SCR 348] and it was reaffirmed and elaborated by this Court in Maneka Gandhi v. Union of India [Maneka Gandhi v. Union of India, (1978) 1 SCC 248 : (1978) 2 SCR 621] where this Court again speaking through one of us (Bhagwati, J.) observed: (SCC pp. 283-84, para 7)

“Now the question immediately arises as to what is the requirement of Article 14: What is the content and reach of the great equalising principle enunciated in this Article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.... Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence.”

This was again reiterated by this Court in International Airport Authority case [(1979) 3 SCC 489] at p. 1042 (SCC p. 511) of the Report. It must therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because any [Under Article 32 of the Constitution] action that is arbitrary, must necessarily involve negation of equality. The



doctrine of classification which is evolved by the courts is not paraphrase of Article 14 nor is it the objective and end of that article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State action whether it be of the legislature or of the executive or of an “authority” under Article 12, Article 14 immediately springs into action and strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden thread which runs through the whole of the fabric of the Constitution.”

24.2 In Food Corporation of India v. Kamdhenu Cattle Feed Industries⁸,
it was observed as follows:

“7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is ‘fairplay in action’. Due observance of this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his interaction with the State and its instrumentalities, with this element forming a necessary component of the decision-making process in all State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review.”

⁸ (1993) 1 SCC 71



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25. In the present case, as already noted hereinbefore, the respondent's action on insisting that all the ROs shall install the EDC Terminals of HDFC Bank and RBL Bank only and remove EDC Terminals set up by all other banks has no rational nexus with the object sought to be achieved by introducing IPS. To insist the members of the petitioner association to stop their arrangements with their respective banks in the manner they were running businesses, would amount to an unfair measure. Needless to state that the public authority has to take decisions for public good which in itself casts upon them a duty to act fairly and in a manner without impeding the guarantee of equality under Article 14 of the Constitution of India. While passing the Impugned Notice limiting the usage of EDC Terminals issued by Pine labs and AGS through the gateways provided by their respective banks, the respondent has proceeded to act in an arbitrary manner inasmuch the said decision was not based on any reasonable justification, after some deliberation or exercise undertaken to examine the other alternatives, but was purely based on the choice of the aforesaid vendors namely, Pine labs and AGS. Even before this Court, as pointed out hereinbefore, the respondent despite clear direction did not make any attempt to link any other additional bank with the IPS apart from RBL Bank which was already chosen by the vendors namely Pine Labs and AGS. Thus, in the final analysis, the respondent could not satisfy the fourth test of proportionality i.e. determining the reasonability of limitation imposed upon the members of petitioner association, by the aforesaid Impugned Notice, as the same does not adequately balances with the rights of such members under Article 14 of the Constitution of India being unreasonable, unfair and arbitrary in nature.



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26. In view of the aforesaid facts and circumstances, the Impugned Notice dated 08.10.2020 is hereby set aside and quashed. The respondent is directed to refrain from introducing and implementing any such scheme/ system restricting the use of stand-alone EDC Terminals of dealers' respective banks at the ROs, of members of the petitioner association.

27. The petition is allowed in the aforesaid terms and disposed of.

28. Pending application(s), if any, also stands disposed of.

29. Judgment be uploaded on the website of this Court *forthwith*.

**AMIT SHARMA
(JUDGE)**

DECEMBER 22, 2025/sn/nk/sg