GAHC010016572020

2026:GAU-AS:16098

# THE GAUHATI HIGH COURT
## (HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

**Case No. : WP(C)/686/2020**

JYOTSNA SAHA
W/O LT. TAPAN KUMAR SAHA, R/O AEAIANI PART-II, P.O. AND P.S. BAGARIBARI, DIST. KOKRAJHAR (BTAD), ASSAM

VERSUS

THE UNION OF INDIA AND 6 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF PETROLEUM, SHASTRI BHAWAN, DR. RAJENDRA PRASAD ROAD, NEW DELHI-110001

2:THE INDIAN OIL CORPORATION LTD.
A PUBLIC SECTOR COMPANY REGISTERED UNDER THE COMPANIES ACT AND HAVING ITS REGISTERED OFFICE AT G-8
ALL YAVAR JANG MARG
BANDRA (EAST)
MUMBAI
REP. BY ITS EXECUTIVE DIRECTOR

3:THE INDIAN OIL CORPORATION LTD.
ASSAM OIL DIVISION
REP BY CHIEF GENERAL MANAGER
DIGBOI
ASSAM-786171

4:THE CHIEF GENERAL MANAGER
INDIAN OIL CORPORATION LTD. ASSAM OIL DIVISION
STATE OFFICE
INDIAN OIL BHAVAN
SECTOR -III
NOONMATI
GUWAHATI-781020
ASSAM

5:THE CHIEF DIVISIONAL RETAIL SALES MANAGER
INDIAN OIL CORPORATION LTD. GUWAHATI DIVISION OFFICE EAST POINT TOWER
BAMUNIMAIDAM
GUWAHATI-781021

6:THE SENIOR DIVISIONAL RETAIL SALES MANAGER
INDIAN OIL CORPORATION LTD. GUWAHATI INTEGRATED DIVISION OFFICE
NOONMATI
GUWAHATI-781020

7:THE DEPUTY GENERAL MANAGER
INDIAN OIL CORPORATION LTD. GUWAHATI DIVISION OFFICE EAST POINT TOWER
BAMUNIMAIDAM
GUWAHATI-78102

**Advocate for the Petitioner** : MR. P K TIWARI, MR. D J DAS,MR. A R GOGOI,MR. U PATHAK,MR H K DAS

**Advocate for the Respondent** : ASSTT.S.G.I., SC, I O C,MS. A TALUKDAR,MR. D K SARMAH

**BEFORE**

**HON'BLE MR JUSTICE ARUN DEV CHOUDHURY**

| | | |
|---|---|---|
| For the Petitioner | : | Mr. P. K. Tiwari, Sr. Advocate.<br>Mr. H. K. Das, Advocate. |
| For the Respondents | : | Mr. D. K. Sarmah, Advocate. |
| Date on which Judgment is Reserved | : | 01.10.2026 |
| Date of pronouncement of | | |

Judgment : **03.11.2026**

Whether the pronouncement is of the operative part of the Judgment : NA.

Whether the full Judgment has been pronounced : Yes.

## JUDGMENT & ORDER (CAV)

**(A.D.Choudhury, J)**

1. Heard Mr. P. K. Tiwari, learned Senior Counsel, assisted by Mr. H. K. Das, learned counsel for the petitioner. Also heard Mr. D. K. Sarmah, learned counsel for the respondents.

2. By means of this writ petition, the petitioner has challenged the order dated 29.11.2019, passed by respondent Indian Oil Corporation Limited (hereinafter referred to as the Corporation), whereby the dealership of M/s Mohamaya KSK, of which the petitioner is the proprietor, has been terminated on the allegation of installation of an unauthorized "Double Metallic Gear" in one of the dispensing units at the retail outlet.

   The petitioner further challenges an Inspection Report dated 28.03.2018 prepared by the Anti-Adulteration Cell (AAC), alleging it to be faulty.

   The petitioner has questioned the sustainability of the impugned action, primarily contending that the allegation made against her is not supported by a subsequent joint inspection and that her explanation has not been properly appreciated.

3. The facts are in a narrow compass.

4. The petitioner was granted the dealership pursuant to an agreement dated 19.04.2010.

An inspection was conducted by QRC/Eastern Region on 28.03.2018, during which a Double Metallic Gear was allegedly found in the left-side meter assembly of a MIDCO mechanical dispensing unit.

Following the inspection, the dispensing unit was sealed with holographic seals, and photographs and other relevant documents were prepared in the presence of the petitioner's employees.

5. According to the petitioner, prior to the aforesaid inspection, the dispensing unit was inspected on 21.09.2017, 07.03.2018, and 17.03.2018, during which no such unauthorized gear or additional fitting was detected.

6. Be that as it may, contending that the presence of the said gear constituted an unauthorized fitting in the dispensing unit, the Corporation issued a show-cause notice to the petitioner, to which the petitioner replied on 22.05.2018.

The petitioner disputed the allegation and contended, *inter alia*, that the Corporation had installed and maintained the dispensing unit, and that she had no occasion to tamper with it.

7. According to the petitioner, the dispensing unit, thereafter, met with an accident on 13.06.2018, as a result of which the holographic seals were damaged or displaced. She filed an FIR, and a GD Entry was recorded relating to the alleged accident.

However, the respondents contend that they did not immediately intimate the accident to the Corporation, and they also dispute the explanation offered for the subsequent condition of the holographic seals.

8. Thereafter, on 15.02.2019, a joint inspection was conducted in the presence of the representative of the Corporation, the QRC, the Original Equipment Manufacturer (OEM), the officials from the Weights and Measures Department, and the petitioner.

The condition of the holographic seals was examined, and the seal particulars were compared with those recorded during the inspection dated 28.03.2018. According to the respondent Corporation, some of the seals were found damaged or displaced.

9. The petitioner attributes such condition to the alleged accident and contends that no foreign object or additional fitting was found in the dispensing unit during the joint inspection conducted on 15.02.2019.

The petitioner also relies on the observations of the OEM technician, who, according to her, did not find any additional fitting in the metering unit.

10. Thereafter, the corporation issued a show-cause notice dated 10.06.2019 to the petitioner regarding the alleged unauthorized gear and the circumstances concerning the dispensing units and their seals.

The petitioner submitted her reply on 26.06.2019, reiterating her earlier explanation and disputing the tampering allegation.

11. The petitioner thereafter approached this Court by filing WP(C) No. 6783/2019, which this Court disposed of by order dated 13.09.2019, directing the Corporation to afford the petitioner an opportunity of personal hearing and pass an appropriate order on the show-cause notice.

Pursuant thereto, the petitioner was heard on 17.10.2019, and she also submitted a representation on that date.

12. By the impugned order dated 29.11.2019, the Corporation concluded that the presence of Double Metallic Gear and the circumstances relating to the holographic seals establish a critical irregularity under the applicable marketing discipline guidelines and terminated the dealership.

13. Mr. Tiwari, learned senior counsel for the petitioner, submits that the inspection dated 28.03.2018, conducted in the absence of other concerned authorities mandated under the Discipline Guidelines, cannot form the basis for terminating the dealership.

It is contended that the subsequent joint inspection dated 15.02.2019, involving the OEM, did not disclose any foreign object or additional fitting in the dispensing unit. Therefore, the joint inspection shall take precedence over the incomplete inspection dated 28.03.2018.

It is further contended that the damage or displacement of the holographic seals was attributable to the accident dated 13.06.2018, and the FIR and GD entry support her explanation.

14. According to learned senior counsel, the absence of the alleged foreign object is consistent with

the petitioner's explanation, and that there is no sufficient material to conclude that the accident was a created event or that the petitioner removed the object in between.

15. Mr. D.K. Sharma, learned counsel for the corporation, argues that the photographs taken during the inspection dated 28.03.2018 clearly show a double metallic gear in the metering unit. It is contended that the petitioner's representative was present during such inspection and sealing, signed the relevant document, and acknowledged the inspection.

According to Mr. Sharma, the subsequent absence of the foreign object cannot nullify the findings of the first inspection, especially when the holographic seals were later found damaged or displaced.

16. It is further contended that the petitioner has not satisfactorily explained how the seals were damaged and why the alleged foreign object was no longer found in the dispensing unit; the alleged incident was not immediately intimated to the Corporation, and that the FIR and GD Entry relied upon by the petitioner by themselves do not establish the circumstances in which the dispensing unit was damaged, and the fitting disappeared.

17. The respondents contend that the subsequent inspection cannot be treated as disproving the first inspection, and that the action taken against the petitioner is justified under the applicable marketing discipline guidelines.

18. Mr. Sharma, learned counsel for the corporation, has also questioned the maintainability of the writ petition, on the ground that the petitioner has an alternative remedy under clause 8.9 of the Marketing Discipline Guidelines 2012, as amended in 2017.

It is argued that the said provision provides a dealer, aggrieved by an order in case of critical irregularity, with the right to appeal within 30 days of receipt of the order, and that the appeal should preferably be disposed of within 90 days of filing.

19. According to the respondents, the petitioner ought to have availed herself of the said remedy, particularly since the controversy raised involves appreciation of inspection reports, photographs, conditions of holographic seals, and the explanation relating to the alleged accident.

20. The learned counsel for the petitioner counters that termination of dealership carries serious

civil consequences and affects her livelihood, thereby attracting Article 21 of the Constitution of India. It is also contended that the Corporation had to act fairly and that it could not have passed an order with such consequences without properly considering the petitioner's explanation, particularly the subsequent inspection and the OEM's observations.

Therefore, in the facts of the present case, the objection as to the maintainability of the writ petition cannot be sustained, argues Mr. Tiwari, learned Senior Counsel.

21. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties and has also perused the materials available on record.

22. In the backdrop of the arguments advanced, the relevant provisions of the Marketing Discipline Guidelines, 2012, require consideration.

23. Clause 5.1.4 addresses additional or unauthorized fittings or gears found in dispensing units, as well as tampering with dispensing units.

The provision describes a mechanism, fitting, or gear found installed in a dispensing unit that is likely to manipulate delivery. It further provides that adding, removing, replacing, or manipulating any part of the dispensing unit, including any mechanism, gear, microprocessor chip, electronic part, or OEM software, shall be deemed to constitute tampering.

The said clause further provides that, in such cases, the OEM's views and independent opinion are to be obtained, and a suitable decision taken.

Clause 8.2(iv) classifies the irregularity contemplated under clause 5.1.4 as critical irregularity for which termination at the first instance is prescribed.

24. The dispute as to whether the material on record establishes the irregularity contemplated under clause 5.1.4, and whether the requirement concerning the views and independent opinion of the OEM has been duly complied with, is relevant to the petitioner's challenge.

The petitioner relies on the subsequent joint inspection and the OEM's observations to dispute the conclusion drawn from the first inspection.

25. The respondents, on the other hand, relied upon the photographs taken during the first inspection and the subsequent condition of holographic seals.

26. The evidentiary significance of these circumstances cannot be determined by considering any one of them in isolation. Thus, the rival submissions disclose a factual controversy concerning the inspection dated 28.03.2018, the photographs taken during that inspection, the signature of the petitioner's representative on the relevant documents, the subsequent condition of the holographic seals, the alleged accident, and the finding recorded during the joint inspection dated 15.02.2019.

27. The petitioner relies on the absence of the alleged foreign object during the subsequent inspection and attributes the seals' damage to the accident.

The respondents rely on the photographs and the circumstances under which the dispensing unit was sealed, and contend that the unit's subsequent condition does not displace the findings of the first inspection.

28. In the opinion of this Court, neither the subsequent absence of foreign object nor the finding recorded during the first inspection can be considered in isolation.

The evidentiary significance of the photographs, the documents signed by the petitioner's representative, the explanation relating to the accident, and the observations recorded during the subsequent inspection require consideration as a whole. Whether the explanation furnished by the petitioner satisfactorily accounts for the subsequent condition of the dispensing unit, and what inference ought to be drawn from the circumstances relied upon by the respondents, are matters which call for examination of the relevant record in detail.

Therefore, in this Court's considered opinion, it would not be appropriate for this Court, in exercise of judicial review, to re-appreciate the disputed factual materials as if it were an appellate court over the Corporation's findings.

29. Here, the Court considers the maintainability of the writ petition on the ground that an alternative and efficacious remedy is available.

It is true that an alternative remedy does not, in every case, operate as an absolute bar to exercising jurisdiction under Article 226 of the Constitution of India.

Nevertheless, where the applicable Marketing Discipline Guidelines provide an appellate mechanism and the principal controversy involves appreciation of disputed factual materials,

the existence of such remedy is a relevant consideration in determining whether this Court should examine the merits in the first instance.

30. Given the nature of the controversy and the matters requiring examination, this Court considers it appropriate to leave the merits to the appellate authority and refrain from exercising its discretionary jurisdiction.

31. Clause 8.9 of the Marketing Discipline Guidelines provides for an appeal against an order in a case of critical irregularity within 30 days from receipt of the order, with disposal contemplated preferably within 90 days from filing.

The guideline also identifies the appellate authority based on the nature of the case and the category of dealership.

32. The appeal, therefore, shall be presented before the competent appellate authority in accordance with the Marketing Discipline Guidelines.

33. In the present case, the plea founded on Article 21 does not warrant a different course.

The serious consequences of termination require that the petitioner's case be considered fairly and the decision be supported by relevant materials. At the same time, admittedly, one of the two dispensing units continues to operate under the interim order passed by this Court, and the petitioner has not been completely deprived of her means of livelihood.

34. Therefore, the appropriate course is to preserve the existing arrangement for that dispensing unit and leave the legality and sustainability of the impugned order to be examined by the competent appellate authority, without expressing any opinion on the merits.

35. Accordingly, the writ petition is disposed of without expressing any opinion on the merits of the impugned order; however, the petitioner is relegated to the appellate remedy available under clause 8.9 of the Marketing Discipline Guidelines with the following observations and directions:

I. The petitioner may prefer an appeal before the competent authority within 30 days from today.

II. If the petitioner prefers such an appeal within the aforesaid period, the appellate authority shall entertain and consider it on merits, subject to compliance with other

applicable requirements under the guidelines, but without rejecting it on the ground of limitation arising from the date of the impugned order.

III. The appellate authority shall consider the entire material on record, including the first inspection report, the photographs, the documents bearing the signature of the petitioner's representative, the subsequent joint inspection, and the independent opinion of the OEM, the condition of the holographic seals, the FIR and GD Entry relating to the alleged incident, and any subsequent investigative report in this regard by the police, the explanation furnished by the petitioner, and the findings recorded in the impugned order.

IV. All questions of fact and law are left open for consideration by the appellate authority.

V. The petitioner shall be given an effective opportunity of hearing and the appeal shall be disposed of by a reasoned order in accordance with law, preferably within a period of 90 days from its filing.

VI. Having regard to the fact that one of the two dispensing units is presently operating by virtue of an interim order passed by this Court, the existing arrangement in respect of that dispensing unit shall continue on the same terms and conditions until the disposal of the appeal and subject to any order that may be passed by the appellate authority.

VII. Parties to bear their respective costs.

**JUDGE**

**Comparing Assistant**