(2025) 11 JH CK 1902

In the Jharkhand High Court

Case No : L.P.A No.551 Of 2015

Bharat Petroleum Corporation Ltd APPELLANT

Vs

M/s Suresh Kumar Patwari (CC-182137) RESPONDENT

Date of Decision : 14-11-2025

Acts Referred:

Citation : (2025) 11 JH CK 1902

Hon'ble Judges : Sujit Narayan Prasad, J;Arun Kumar Rai, J

Bench : Division Bench

Advocate : Mrinal Kanti Roy, Rishi Ranjan Vats, Aprajita Bhardwaj

Final Decision : Allowed

Judgement

Sujit Narayan Prasad, J

1. The instant appeal under Clause 10 of the Letters Patent is directed against the order dated 11.08.2015 passed in W.P(C) No.1400 of 2015 whereby and whereunder the order dated 23.02.2015 by which the agreement dated 10.10.2013 to run the retail outlet of the respondent-writ petitioner was terminated, has been quashed and set aside by the learned writ Court.

Factual Matrix

2. The brief facts of the case as per the pleadings made in the writ petition needs to refer herein which reads as under:

(i) The writ petitioner (respondent herein) is a proprietorship firm running retail petroleum outlet at Dumka.

(ii) An agreement for a Dispensing Pump and Selling License Agreement (Dealership Agreement) was executed on 10.10.2013 between Bharat Petroleum Corporation Ltd. (herein after referred to as Company/appellant herein) and writ petitioner (respondent herein) for sale and supply of petroleum products to the writ petitioner for 15 years.

(iii) On 09.07.2014, inspecting team of the oil company visited the retail outlet of the petitioner and conducted a surprise inspection of the outlet and conducted search and seizure operations.

(iv) On the same day, i.e., on 09.07.2014, the inspecting team of the petroleum company issued oral instructions suspending the sales and supplies of the petroleum products from the retail outlet of the writ petitioner.

(v) Thereafter, a show cause dated 02.08.2014 was issued to the writ petitioner, by which the Territory Manager (Retail), Ranchi, had ordered for extension of suspension of sales and supplies of petroleum products from the retail outlet of the petitioner till final decision is taken by the Company in the matter.

(vi) In the aforesaid show cause notice cum written order of suspension of sales and supplies, the test reports dated 16.07.2014 mentioned all details of seals numbers, date of sampling, receipt of samples and date of analysis etc. and the petitioner was asked to submit a reply upon the alleged irregularities.

(vii) The writ-petitioner filed a detailed reply to the show cause on 13.08.2014 explaining and providing all detailed stand which it had to take against the material contained in the said letter dated 02.08.2014 along with the matter of taking of samples and test reports.

(viii) Thereafter, after providing an opportunity of hearing to the petitioner, the Corporation had passed an order dated 23.02.2015 by which the dealership agreement of the petitioner was terminated.

3. Being aggrieved, the writ petitioner has preferred a writ petition being W.P.(C) No. 1400 of 2015 for quashing the order dated 23.02.2015 by which the Dealership Agreement for sales and supply of petroleum product was terminated.

4. The learned writ Court after appreciation of contentions of both the parties, vide order dated 11.08.2015 has allowed the said writ petition and has quashed the impugned order dated 23.02.2015 by which dealership agreement was terminated.

5. To challenge the aforesaid order dated 11.08.2015 passed in W.P.(C) No. 1400 of 2015, the instant appeal has been preferred by the appellant-Bharat Petroleum Corporation Limited.

6. Here, it requires to refer herein that before filling the W.P.(C) No. 1400 of 2015, the respondent-writ petitioner had also filed W.P.(C) No. 5788 of 2014 and L.P.A No. 105 of 2015.

7. The said W.P.(C) No. 5788 of 2014 was filed by the petitioner for quashing the order dated 02.08.2014 whereby the suspension of sales and supplies of petroleum products by the oral order dated 09.07.2014 has been affirmed/rectified and further for seeking a direction for lifting the suspension of the sales and supplies of petroleum products.

8. The said writ petition was disposed of by the learned Single Judge vide judgment dated 30.01.2015, issuing direction to the respondent – BPCL (appellant herein) to pass final order keeping in view the Motor Sprit and High-Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Order,2005 and also the finding recorded in the said order.

9. Being aggrieved by the judgment dated 30.01.2015 passed by the learned Single Judge in W.P.(C) No. 5788 of 2014, the company had preferred L.P.A No. 105 of 2015 which was allowed vide order dated 12.02.2015 and the appellate court interfered with the finding of the learned writ Court vis-a-vis adulteration part of the sample of MS drawn from the retail outlet of the petitioner and directed that matter be finally decided by the respondent no.4, i.e., General Manger and further directed that till the matter is finally decided by the respondent no.4 by passing a speaking order as contained in clause 8.5.8 of MDG 2013, the sale and supply of petroleum products to the petitioner's retail outlet shall remain suspended.

10. Thereafter, in pursuance of the judgment passed in L.P.A No. 105 of 2015, the company had passed order dated 23.02.2015 by which the Dealership Agreement for sales and supply of petroleum product was terminated.

11. The respondent-writ petitioner, being aggrieved with the order dated 23.02.2015, had approached this Court by filing a writ petition being W.P(C) No.1400 of 2015. Before the learned writ Court it has been contended that that adulteration is not within the definition of ‘adulteration’ defined in clause 5.1.1 under the Marketing Discipline Guidelines,2012 (herein after to be referred as (‘Guidelines, 2012’) since, even as per the test report dated 16.07.2014 pertaining to Motor Gasoline, it has been found to be within the range of IS-2796:2008, which provides that it should be in between 720-775.

12. The learned Single Judge has considered the said aspect in W.P(C) No.1400 of 2015 and vide impugned order dated 11.08.2015, has found the contention of the writ petitioner to be correct which led the learned Single Judge to quash the order dated 23.02.2015, against which the present appeal has been preferred.

13. It is evident from the factual aspect as narrated in the writ petition that in pursuance to the agreement dated 10.10.2013, in between Bharat Petroleum Corporation Ltd. (Appellant herein) and the writ petitioner (Respondent herein), a license to run the retail outlet was granted in favour of the respondent-writ petitioner.

14. On an inquiry conducted by the QCC team at the said retail outlet on 09.07.2014 various irregularities have been found at the said retail outlet and, consequently, the sales and supplies of petroleum products from the said retail petroleum outlet of the petitioner was suspended vide oral order dated 09.07.2014.

15. Thereafter, after finding variation in the density of Motor Gasoline as

indicated in Laboratory Test Report dated 16.07.2014 and other irregularities, a show cause notice dated 02.08.2014 was issued to the writ petitioner to which the respondent-writ petitioner replied on 13.08.2014 and further replied by written submission dated 17.09.2014. The company after being not satisfied with the said reply and after going through the Test Report has terminated the license to run the retail outlet of the respondent-writ petitioner vide its order dated 23.02.2015.

Submission on behalf of the appellant-BPCL:

16. Mr. Mrinal Kanti Roy, the learned counsel appearing for the appellant-BPCL has taken the following grounds to assail the impugned judgment:

(i) The learned Single Judge has not considered the fact regarding the implication of the variation in the density as per the condition available under the definition of adulteration which contains three parameters for the purpose of coming to the conclusion as to whether the fuel is adulterated or not.

(ii) It has been contended that the learned Single Judge has only taken into consideration the definition of adulteration pertaining to the fuel product being in the range of IS:2796 leaving aside the other parameter which is available under the Guidelines, 2012 under clause 5.1.1.

(iii) It has been contended that although the fuel product, i.e., motor spirit was found to be within the range of 720-775 but as per the scrutiny of the issue of density of the motor spirit it was found to be having 6.6 kg/M3 whereas as per the condition stipulated under Clause 1.2(iv) it should be +/- 3.0 kg/M3 .

(iv) The variation is there and, as such, a show cause notice was issued to the respondent-writ petitioner which has been responded but there is no explanation save and except the explanation furnished by taking the stand that the motor spirit was found to be within the range of 720-775.

(v) It has been contended that the variation in density of MS was found in the retail outlet of the respondent-writ petitioner and such adulteration comes under the critical irregularities as per Clause 8.2 of the Guidelines, 2012 and, as such, the punitive action for termination of the license has been taken.

(vi) The learned Single Judge, therefore, has not considered the most important aspect of the matter regarding the issue of adulteration and only has gone into the issue of motor spirit was found to be within the range.

17. Reliance has been placed upon the judgment rendered by the Hon’ble Apex Court in the case of Indian Oil Corpn. Ltd. v. R.M. Service Centre, (2019) 19 SCC 662.

18. The learned counsel for the appellant company based upon the aforesaid ground has submitted that the impugned judgment dated 11.08.2015 passed by the learned Single Judge, therefore, suffers from an error and, as such, it is not sustainable in the eyes of law.

Submission on behalf of the Respondent-writ petitioner:

19. Per contra, Ms. Aprajita Bhardwaj, the learned counsel appearing for the respondent-writ petitioner to defend the impugned order has raised the following grounds:

(i) There is no error in the impugned judgment, since, the motor spirit was found to be within the range of 720-775 as would be evident from the test report dated 16.07.2014 itself as available in Annexure-2 to the memo of appeal.

(ii) It has been contended that the learned Single Judge, therefore, has considered the said aspect of the matter and making a specific note to defend that it has not been found to be within the definition of adulteration and, if the view has been taken by quashing the order dated 23.02.2015 of terminating the retail outlet license, the same cannot be said to suffer from an error.

(iii) It has been contended that the issue of variation in density is not worth to be considered as is being argued on behalf of the appellant.

(iv) The learned counsel has further submitted that the issue of adulteration has been taken into consideration by the learned Single Judge as per the 'Guidelines, 2012' and, hence, order passed by the learned Single Judge cannot be said to suffer from an error.

(v) It has been contended that the issue of order of termination has also been submitted to be disproportionate to the offence committed.

20. The learned counsel based upon the aforesaid grounds has submitted that the order passed by the learned Single Judge needs no interference and the present appeal is fit to be dismissed.

Analysis:

21. We have heard the learned counsel appearing for the parties and gone through the findings recorded by the learned Single Judge in the impugned judgment dated 11.08.2015 as also the material available on record.

22. The question which requires consideration in the present case is as to whether the consideration so made by the learned Single Judge in the impugned judgment dated 11.08.2015 by putting reliance upon the one part of the issue of adulteration as provided under Clause 5.1.1 of the Marketing Discipline Guidelines, 2012, can be said to be correct by ignoring the other parameter as available in the said guideline of the definition of adulteration.

23. This Court before considering the aforesaid issue, needs to refer herein the Clause 5.1.1 of Marketing Discipline Guidelines, 2012, which inter alia contains the definition of the 'adulteration' as also the issue of density has also been taken into consideration, for ready reference the relevant provisions of Clause 5.1.1 need to be referred herein, which reads as under:

"CHAPTER-5

TYPE OF IRREGULARITIES AT RETAIL OUTLETS (MS / HSD)

AND SKO / LDO DEALERSHIPS

5.1 MS/HSD

5.1.1 ADULTERATION OF PRODUCT

Definition :

“Adulteration” means the introduction of any foreign substance into Motor Spirit

/ High Speed Diesel illegally or unauthorizedly with the result that the product does not conform to the requirements of Bureau of Indian Standards specification number IS:2796 and IS:1460 for Motor Spirit and High Speed Diesel respectively and amendments thereon, and / or

If the observations on the sample under scrutiny and the reference sample do no fall within reproducibility / permissible limits of the test method for which the samples are examined, and / or

Any other requirement for the purpose to identify adulteration, issued by the Competent Authority from time to time.

Handling of adulterated product

In case of proven adulteration, the product (MS/HSD) will be sent to the nearest refinery as per the directive of MOP & NG’s letter (P21027/29/2001-Dist dated 21-12-2002).

In case of proven adulteration at the RO, the entire expenses towards transportation, pumping of product, tank cleaning, incidental charges, local levies, etc. will be recovered from the dealer. The dealer will be paid an amount equivalent to the cost of Furnace Oil and for the actual quantity received at the Refinery end.

In case of proven adulteration by the transport contractor / crew, in addition to the action as per the TDG, all the expenses would be recovered from the transport contractor. The loss on account of product down gradation and transit loss, if any would also be recovered from the transport contractor. The dealer will receive full value of the product.”

24. Hence, we find that Chapter-5 of the ‘Guidelines, 2012’ deals with ‘Type of Irregularities at Retail Outlets’ relating to MS /HSD and its clause 5.1.1 deals with ‘Adulteration of Product’ relating to MS/HSD and provides definition of ‘Adulteration’.

25. Clause 5.1.1 which contains three conditions for the purpose of taking decision regarding the issue of adulteration. The first pertains to the fuel, either it is MS/HSD, which means the introduction of any foreign substance into Motor Spirit/ High Speed diesel illegally or unauthorizedly with the result that the

product does not conform to the requirements of Burau of Indian Standards specification number IS:2796 and IS:1460 for Motor Spirit and High Speed diesel respectively and amendments thereon; second condition provides that if the observations on the sample under scrutiny and the reference sample do not fall within reproducibility/permissible limits of the test method for which the samples are examined and third condition says about any other requirement for the purpose to identify adulteration, issued by the Competent Authority from time to time.

26. Adverting to the factual aspect of the present case, the appellant company had conducted inquiry at the retail outlet of the respondent-writ petitioner on 09.07.2014 and Retail Outlet (RO) sample of MS and HSD were collected by the QCC Team and samples were sent to the laboratory for examination.

27. Based upon the aforesaid pretext and in terms of the raid conducted in the retail outlet of the respondent-writ petitioner, apart from other irregularity, adulteration was found in the Motor Gasoline in test report dated 16.07.2014, by the Quality Assurance Laboratory, Kolkata, which is available as Annexure-2 at page 52 of the memo of appeal.

28. The test report dated 16.07.2014, of Motor Gasoline (BSIII) reads as under:

BHARAT PETROLEUM CORPN. LTD.

(A Govt. of India Undertaking)

QUALITY ASSURANCE LABORATORY BUDGE BUDGE, KOLKATA

(An NABL Accredited Laboratory)

TEST REPORT

MOTOR GASOLINE(BSIII)

Issued to

TM RETAIL RANCHI

Date:

16.07.2014

Test Report No.

BGB/MDG(F)/1407/00092

Date of Sampling(By client)

09.07.2014

Source of Sample M/s Suresh Kumar Patwari, Dumka,

Dhanbad Sample received on

12.07.2014

RO Tank No. & DU No.   Tank-01

Sample Analysed on

12.07.2014

Type of Sample: MGD(F)

Location/territory: Ranchi Retail Territory

Letter Reference: Dated 12.07. 2014

Wooden box Seal No.(RO)   381184

Aluminium cont.seal no.(RO)

381141

Wooden box Seal No.(TL):   NA

Aluminium cont. seal no.(TL)

NA

Wooden box seal no(SL)   386326

Aluminium cont. seal no.(SL)

380360

Sr.No

Chartacteristics

TEST METHOD [P:] of IS:1448

Requirement   as per   IS-

2796:2008

(Latest Version)

SL

TL(NA)

RO/09.07. 2014

Dhanbad

TK No-07

28.06.2014

28.06.2014

JH01J6287

1

Appearance

VISUAL

Report

Clear

Clear

2

Colour

VISUAL

Report

Yellow

Yellow

3.

Density. 15 ? . kg/m3

3.1

Observed Density at Laboratory

757.3

749.5

3.2

Observed Density by Inspecting officer

P:16720-775

750.2

3.3

Recorded at RO (After Last Receipt)

NA

3.4

Recorded at RO (Morning Density)

NA

3.5

Recorded at

RO(Before Last Receipt)

NA

3.6

TL receipt (as observed at RO)

3.7

Invoice density

756.1

3.8

Recorded Density at Supply Location

756.3

4.

Distillation

P:18

4.1

IBP.C

Report

39.0 38.0

4.2

Recovery at 70 ?, (E70) % by Vol.

10 to 45

15.0 21.0

4.3

Recovery upto 100

? , (E100) % by

Vol.

40 to 70

51.0 56.0

4.4

Recovery upto 150

? , (E150) % by

Vol.

75 Min.

93.0 92.0

4.5

Final Boiling Point (FBP) ?, Max.

210

183.0 195.0

4.6

Residue % by vol. Max.

2

1.0 1.0

5.

Research Octane Numbr (RON) Min.

ASTM D 269991

92.6 91.7

6.

Existent gum, g/m3. Max

P:2940

14 20

7.

Total Sulphur, % mass, Max

ISO:204870.015

0.005 0.007

Remarks

1. Corresponding Supply Location Sample (SL) is meeting the requirements of Motor Gasoline (BSIIl) for the tests carried out.

2. Corresponding Tank lorry Retained Sample (TL) was not made available for testing as the same was not retained by the dealership.

3. Product as represented by Retail Outlet (RO) Sample is meeting the requirements of Motor Gasoline (BSIII) for the tests carried out. However, the test results of Recovery upto 70 Deg C(21%). Recovery upto 100 Deg C (56%). Final Boiling Point (195 Deg C) and RON (91.7) are beyond reproducibility limit of

corresponding SL sample results. In absence of reference density, the lab density (749.5 kg/m3) could not be compared with the same. Again there is a density variation of 6.6 kg/m3 between lab density (749.5 kg/m3) and invoice density(756.1 kg/m3). The product is not the same as supplied by our supply location. Moreover, variation in density, distillation and RON results indicates introduction of some hydrocarbon into RO tank.

Authorized Signatory

(SIDDHARTHA MITRA)

Dy. Manager QA. Lab.

Bharat Petroleum Corpn. L.

Budge Budge, Kolkata

29. After going through the test report, we find that the motor spirit was found to be within the range of 720-775.

30. But, so far as density is concerned, in the test report dated 16.07.2014 of MS(BSIII), in remarks column it has been stated that there is density variation of 6.6 kg/M3 between lab density (749.5Kg/ m3) and invoice density (756.1 Kg/ m3).

31. Here, it is pertinent to note that as per the condition stipulated under the Clause 1.2(iv) of 'Guidelines, 2012' the permissible variation limit for density is upto +/- 3.0 kg/M3 .

32. Hence, show cause notice dated 02.08.2014 was issued to the respondent-writ petitioner to submit reply for the alleged irregularities. But, the respondent-writ petitioner in his reply dated 13.08.2014 and written submission dated 17.09.2014, filed during the personal hearing, has not been able to satisfy the variation in the density which is contrary to the condition stipulated under Clause 1.2(iv) which is up to +/- 3.0 kg/ M3 , but herein it was found to be 6.6 kg/M3.

33. The appellant has considered the said aspect of the matter to be adulteration by taking into consideration the condition stipulated in the Clause 5.1.1 of 'Guidelines, 2012'.

34. The aforesaid fact has not been disputed on behalf of the respondent-writ petitioner rather, the emphasis has been given in course of argument as was argued before the learned writ Court that the motor spirit was found to be within the range of 720-775 which is as per the norms of IS-2796:2008.

35. The learned Single Judge has also considered only that aspect of the matter

leaving aside the issue of density which violates the condition stipulated under Clause 1.2(iv) of the 'Guidelines, 2012', wherein it has been provided that the density should not vary from +/- 3.0 kg/ M3 but in the present case it has been found to be 6.6 kg/M3 as per the Test Report dated 16.07.2014 of motor gasoline as available at Annexure-2.

36. This Court, therefore, is of the view that adulteration since has been defined under Clause 5.1.1 of the 'Guidelines, 2012' comprising of three eventualities and even if one of the eventualities is found to be available, then the product/ fuel, herein motor spirit, will come under the fold of adulteration as provided under Clause 5.1.1 of the 'Guidelines, 2012'.

37. This Court, after having discussed the aforesaid fact and adverting to the impugned judgment dated 11.08.2015, has found that the learned Single Judge has only considered the issue of range in between 720-775 as provided under IS-2796:2008, which led the learned Single Judge to interfere with the order dated 23.02.2015 of termination of license of retail outlet of the respondent writ petitioner by holding that there is no adulteration since the motor spirit has been found to be within the range of 720-775 and hence, the learned Single Judge had quashed the order dated 23.02.2015.

38. But the aforesaid finding cannot be said to be proper, reason being, that when the definition of adulteration contains three eventualities, then either of the eventualities found to be available the authority is competent enough to take penal action against the concerned dealer.

39. Herein, one of the arguments which has been advanced on behalf of the appellant by referring to Clause 8.2 which pertains to Critical Irregularities of the 'Guidelines, 2012' and appellant has submitted that Clause 8.2.(i) will be applicable, i.e, adulteration of MS, where at the first instance the punishment of termination has to be imposed and clause 8.3 will not be applicable in the case in hand.

40. On the other hand, the learned counsel appearing for the respondent-writ petitioner has taken the ground that since the adulteration was found as per the range of 720-775 of IS-2796:2008 for Motor Gasoline and, as such, it cannot come under the category of critical irregularities rather, it was minor irregularity and, as such, on this count also the termination of license is not proper.

41. Before, proceeding further, it would be pertinent to see the Clause 8 of the 'Guidelines, 2012' which provides for action to be taken by OMC under the Marketing Discipline Guidelines for all the irregularities which are classified into three categories, i.e., Critical, Major and Minor. Clause 8 of the 'Guidelines, 2012' reads as under-

CHAPTER 8

8. Action to be taken by OMC under the Marketing Discipline Guidelines

8.1All irregularities (mentioned in chapter-5) are classified into three categories, 1.e. Critical, Major and Minor.

8.2 Critical Irregularities: The following Irregularities are classified as critical Irregularities:

i. Adulteration of MS/HSD (5.1.1)

ii. Seals of the metering unit found tampered in the dispensing pumps.(5.1.2 (b))

iii. Totalizer seal of dispensing unit tampered or deliberately making the totalizer non functional or not reporting to the company if totalizer is not working. (5.1.3 read with 5.1.2)

iv. Additional/Unauthorized fittings and gears inside the dispensing units/ tampering with dispensing units. (5.1.4)

v. Unauthorized storage facilities (5.1.5)

vi. Unauthorized purchase / sales of products. (5.1.6)

vii. Tank lorry carrying unauthorized product found under decantation at the RO (5.1.7)

Action: Termination at the FIRST instance will be imposed for the above irregularities.

8.3 Major Irregularities:The following irregularities are classified as major irregularities:

i. Refusal by the dealer to allow drawl of samples/carry out inspections. (5.1.8)

ii. Non availability of reference density at the time of inspection. (5.1.9)

iii. Selling of normal MS/HSD as branded fuels. (5.1.10)

iv. Stock variation beyond permissible limits but sample passing quality tests. ((5.1.11)

v. Non meintenance of records since last inspection. (5.1.12)

vi. Overcharging of MS/HSD/CNG/ Auto LPG(5.1.13)

vii. Non provision of clean toilet facility. (5.1.14.b).

viii. Dealer operating the automated RO in manual mode without authorization. (5.1.16)

Action: Except in case of (iii) & (vii) Suspension of sales and supplies for 15 days for the first irregularity, 30 days for the second irregularity. and a third offence would lead to termination of the dealership.

Action in case of (iii) above would be as under:-

In the first instance OMC would impose a penalty of recovery of differential price since last inspection. Termination will be the action in case of 2nd instance.

Action in case of (vii) above would be as under:-

Penal action will be taken in case during the inspection (a) Toilet is found to be not clean or (b) Water is not available or (c) Latch on the toilet door is not available/not working.

In the first instance Rs. 10000/-, Second instance Rs. 20000/-, Third instance Rs. 25000/- and Fourth instance onwards (1) Rs. 30000/- or 45% of the monthly dealer commission (based on average of last 6 months), whichever is higher and (il) suspension of Sales and supplies for 7 days or rectification of the defect in toilet, whichever is later.

8.4 Minor Irregularities: The following irregularities are classified as minor Irregularities:

i. Short delivery with Weights & Measures Departments' seals intact where the dealer has not informed the OMC of this defect. (5.1.2(a)}

ii. Non maintenance of specified records where records from last inspection are maintained but prior records are not available.(5.1.12)

iii. Non provision of facilities like air, Telephone and first aid box. (5.1.14.a)

iv. Miscellaneous.

a) Non display of authorized Retail Selling prices of MS /HSD/CNG/AUTO LPG. (5.1.15)

b) Non display of density, opening stock of the day, sticker ensuring Zero before delivery on dispensing unit, name of product on each nozzle of MPD, contact details of authorized persons to be contacted in case of Complaint/ Grievance/ Emergency. (5.1.17)

c) Non maintenance of complaint book or not providing the same when demanded by the customer. (5.1.17)

d) Poor housekeeping.(5.1.17)

e) Driveway Salesmen at the ROs not in uniform/wearing badges. (5.1.17)

(One or more irregularity under the above category a, b, c, d or e will be considered as one irregularity only for the purpose of taking action).

Action: (except in case of (i) above):-Warning-cum-guidance letter in the first instance, Rs. 10000/- per irregularity on second instance and Rs. 25000/- per irregularity on third instance onwards.

Action in case of (i) above would be as under:-

First instance: warning letter to be issued

Second instance within one year of 1 instance: Rs.10000/- per nozzle found delivering short.

Third and subsequent instances within one year of 1 instance: Rs. 25000/-per nozzle found delivering short.

42. Hence, Clause 8.2 of 'Guidelines, 2012', provides that in a case of critical irregularities which only pertains to punitive action of termination while Clause 8.3 pertains to major irregularities wherein the termination is not required to be there rather, the suspension of the license is to be there and the third category Clause 8.4 is minor irregularities under which at the first instance warning letter has to be issued and in second and third instance Rs.10,000/- and Rs.25000/- has to be imposed as penalty.

43. In the light of the aforesaid, this Court is not in agreement with submission made by the respondent-writ petitioner, reason being that once the adulteration has been proved by variation in the density beyond the prescribed limit, as has been referred hereinabove, then it will certainly come under the fold of the Clause 8.2 critical irregularities, which warrants the termination of the license to run the retail outlet.

44. Another ground has been taken by the respondent-writ petitioner that the termination of the license is disproportionate, but this Court is also not in agreement with such submission, since, the sale of adulterated product is not only the crime to an individual, rather it is a crime to the Society. The reason being that the people go to the retail outlet in all trust and belief and if they are being given the adulterated product, then certainly such retailer does not deserve for any sympathy.

45. Therefore, this Court is of the view that once the issue of adulteration has been established, then such licensee of the said outlet is not required to be given any compassion.

46. This Court, after having discussed the aforesaid facts, as referred hereinabove is of the view that the order dated 11.08.2015 passed in W.P(C) No.1400 of 2015 by the learned Single Judge needs interference and, accordingly, the same is hereby quashed and set aside.

47. In the result, the instant appeal stands allowed.

48. Pending I. As, if any, stands disposed of.

