

(2023) 05 OHC CK 0126

In the Orissa High Court

Case No : Writ Petition (C) No. 11056 Of 2008

Minakhi Singh & Anr

APPELLANT

Vs

Bharat Petroleum Corporation Ltd. & Anr

RESPONDENT

Date of Decision : 08-05-2023

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Specific Relief Act, 1963 — Section 14

Citation : (2023) 05 OHC CK 0126

Hon'ble Judges : Biswanath Rath, J

Bench : Single Bench

Advocate : D.R. Swain, S.D. Das, A.N. Sahu, S. Biswal, M. Panda, D. Mohanty, H.S. Satpathy

Final Decision : Dismissed

Judgement

Biswanath Rath, J

1. This Writ Petition involves a challenge to the termination of dealership by the order dated 18th June, 2008 passed by the Bharat Petroleum Corporation Ltd. hereinafter in short be reflected as "the BPCL"vide Annexure-13 herein.

2. Factual aspect, as runs through the pleadings in the Writ Petition appears to be, one Ratnakar Satrusal being the Proprietor of M/s.Maa Shakti Filling Station entered into an agreement with Opposite Party No.1 on 26.03.2002 to operate a petrol pump in the name and style of M/s. Maa Shakti Filing Station and the agreement was in the category of 8A9 as appearing at Annexure-1. Petitioners being the Legal Heirs of said Ratnakar Satrusal presently prosecuting the litigation claim, while said Ratnakar was undertaking the petrol pump business, at no point of time faced any complaint from any customer on adulteration of petrol or high speed diesel. It is for the first time on 29.04.2007 Opposite Party No.2-M/s.SGS India Pvt. Ltd., Paradeep in the district of Jagatsinghpur undertook a test and the test ended with an observation that though MS, Speed & HS were

not adulterated marking it 8N9, whereas HSD was adulterated and it is marked as 8P9. The Proprietor bringing the Writ Petition also admitted that Opposite Party No.2 is an authorized Agent of Opposite Party No.1 to take the samples from the outlet and to find-out as to whether there is any adulteration available or not? The Proprietor filed the OMC R.O visit report dated 29.04.2007 as appearing at Annexure-2. Petitioners claim, the procedure for testing has been laid down in the Marketing Discipline Guideline, 2005 (hereinafter in short be called as 8MDG, 2005) issued by Opposite Party No.1 detailing therein as to how the sampling will be done to proceed to test in order to arrive at the conclusion. Petitioners claim that the guideline mentions, samples are to be drawn from the nozzles of the dispensing unit and the samples are to be taken in an aluminum container. For the test done in the retail outlet on 29.04.2007 show the HSD to be adulterated for confirmation, the second sample was sent to the Quality Control Lab hereinafter in short be called as "Q.C. Lab" at Paradeep for test in the Lab belonging to Opposite Party Nos.1 itself. The Lab test was conducted on 2.05.2007, however, as per the Lab test the HSD was reported to be not adulterated. The Proprietor claimed, the Quality Control Lab is the testing Laboratory of Opposite Party No.1. Copy of the report of the Quality Control Lab is also accompanied at Annexure-3. It is for there is contradictory report, the Opposite Party No.2 again entered into an investigation on 7.06.2007. This time, it found the HSD of the Unit involved to be adulterated. Petitioners here claim, on the visit of Opposite Party No.2 on 07.06.2007 the procedure vide MDG, 2005 to be adopted for sampling and testing was not followed and there has been violation of guideline at Clause 2.2.2 of the Marketing Discipline Guideline. It is in reference to the Clause 2.2.2.3 it is alleged that when the aforesaid provision prescribes, samples were to be drawn from the nozzle of the dispensing unit both MS & HSD, it has also be taken in aluminum container and it is argued that in fact there was no collection of sample from the nozzle of the dispensing unit and it was taken directly from the tank and that too it was collected in a glass bottle which was lying in the bushes near the petrol pump. While claiming that there was gross violation of the provision taken note hereinabove, the Proprietor claimed, for running out of stock the HSD pump was closed on 7.06.2007 and the tank was almost empty. While the position stood thus, Opposite Party No.1 came with a new sampling procedure on 17.07.2007. For the new procedure even prescribes, before drawing the sample the container shall be rinsed with same produce properly so that the previous contents are washed out completely. Copy of the OMC R.O visit report dtd.7.06.2007 is accompanied herein as Annexure-4. It is claimed that on 8.06.2007, the Proprietor gave a protest to Opposite Party No.1 on the method adopted by Opposite Party No.2 vide Annexure-5. On 16.06.2007 Petitioner made further request for making an investigation on the procedure adopted by Opposite Party No.2 in taking out the samples from the retail outlet of the Petitioner. Ratnakar Satrusal, Proprietor of the Unit pleaded that since he was not able to witness the marker test at the Quality Control Lab at Paradeep due to his illness, by letter dated 21.06.2007 intimated Opposite Party No.2 that the Marker test shall be attended to by his

authorized agent to witness the test vide Annexure-7. The M.T was carried out on 25.06.2007. The Proprietor was supplied with the marker test report vide Annexure-8 on the same day with negative report as clearly borne out from Annexure-8. It is alleged, being repeatedly harassed, Ratnakar Satrusal, vide Annexure-9 requested Opposite Party No.1 once again to investigate into the manner of collection of sample by Opposite Party No.2. It is here instead of entering into any investigation on the role of Opposite Party No.2, the Proprietor was issued with a show cause asking him to give satisfactory reply on the fact as to why his outlet was failed in W.R.T marker test conducted on 25.06.2007. This show cause notice is at Annexure-10. The Proprietor also responded to the same at Annexure-11. In the meantime Ratnakar Satrusal requested Opposite Party No.1 to supply the product vide 04 KL-ULP and 08 KL-HSD for his retail outlet vide letter dated 19.06.2007. Ratnakar Satrusal also stated therein to have deposited some amount with Opposite Party-Company. It is claimed that since Ratnakar Satrusal was not intimated with the ultimate outcome and there was no response to his representation, said Ratnakar approached this Court, vide W.P. (C) No.14091 of 2007 and this Court vide order dated 10.01.2008 disposed of the Writ Petition directing Opposite Party No.1 to take a decision as expeditiously as possible within one month from the date of production of service of certified copy of the order. As a consequence, Ratnakar Satrusal served a copy of the order dated 10.01.2008 on Opposite Party No.1 on 22.01.2008 and Opposite Party No.1 passed the order of termination thereby terminating the agreement involved herein on 18.06.2008 vide Annexure-13, which is claimed to have been received by Ratnakar on 4.07.2008.

3. This Court finds, though this Writ Petition at the original stage was filed by the Proprietor of the Unit, the Proprietor, Ratnakar Satrusal having died during pendency of this Writ Petition, this Proprietor has been substituted presently by two Legal Heirs, the Petitioners presently. This Court here also finds, even though the Writ Petition was filed by a set of counsel, however, there has been taking out of the power of the first set of counsel in the meantime and there is another set of counsel to represent the Petitioners whose power is also taken away subsequently. As appears, Mr. D.R. Swain as third set of Counsel presently contests the case on behalf of the Petitioners.

4. In the above background of the matter, Mr. Swain, learned counsel for Petitioners presently while reiterating the above in detail, taking this Court to the MDG, 2005 filed as Annexure-16 through additional affidavit and reading through the same claimed that for there is no drawing of the samples from the nozzles of the dispensing unit, there has been no following of the procedures prescribed in paragraph 2.2.2.3. Further taking this Court to the provision at paragraph 2.6(A) of the MDG, 2005, Mr. Swain, learned counsel for Petitioners alleged that there is also violation in the collection of samples in a bottle, which is in clear contradiction of the procedure prescribed in paragraph 2.6(A) of the MDG Guideline. Mr. Swain, learned counsel for Petitioners also took this Court to the provision at paragraph 2.4.5(b) of the MDG Guideline to establish that for there

is gross defect in collection of the sample, there is violation of the provision prescribed in the Guidelines. It is again taking this Court back to the provision at paragraph 2.2.2.3, Mr. Swain, learned counsel for Petitioner alleged here that the provision prescribes, the Inspecting Agency shall pay against the fuel they have collected and should obtain a money receipt from the counter of the outlet. It is alleged that there is in fact no following of the procedure even and the action of Opposite Party No.2 remains contrary to the procedure prescribed therein. Mr. Swain, learned counsel for Petitioners also alleged that there is violation of Guidelines in paragraph no.1.2(viii) as there has been no density testing and the report clearly discloses the column for density remains to be vacant. Mr. Swain, learned counsel for Petitioners claim that as there was collection of sample in contravention of the provision indicated hereinabove from the outlet of the Petitioners and submitted that while the stock of the retail outlet was below the minimum level, there was no possibility of collection of sample through nozzle of the dispensing unit. Further the collection, if any, involving the oil was not available for sale. Mr. Swain, learned counsel for Petitioner raise a question that there was appearance of gross illegality for violation of the guidelines and the collection also remains contrary to the interest in the stock register and other document goes to clear that the diesel as available was not capable of being lifted. Petitioner even though attempted to satisfy the above aspect through the daily sale register, density register, meter reading of the dispensing unit and calibrated DIP Rod to check the underground tank stock and stock hold hanged in the Office room, however, all such attempt of the Petitioner went in vain. It is on the premises that there is gross illegality in the collection of sample and test remains in violation of the provisions indicated hereinabove, Mr. Swain, learned counsel for Petitioner claimed that there is illegal consideration of the whole aspect by Opposite Party No.1 and gross non-consideration of the stand taken by the Petitioner-Establishment to make the impugned order becomes bad.

5. Mr. Swain, learned counsel for Petitioner taking this Court to three decisions of the Hon9ble apex Court in ABL International Ltd. & anr. VRS. Export Credit Guarantee Corporation of India Ltd. & ors. reported in JT 2003(10) SC 300 decided on 18.12.2003, Hindustan Petroleum Corporation Ltd. & ors. VRS. Super Highway Services and anr. reported in (2010) 3 SCC 321, Bharat Petroleum Corporation Ltd. VRS. M/s. Jagannath & Co. & ors. (Civil Appeal No.3838-3839 of 2013 decided on 12th April, 2013) and Indian Oil Corporation Ltd. & anr. VRS. T. Natarajan reported in (2018) 9 SCC 235 attempted to submit that decision in all such cases support the case of the Petitioner. Mr. Swain, learned counsel for Petitioner, accordingly, submitted that for the support of the above judgments to the case of the Petitioners at hand, the impugned order should be interfered with and set aside. Mr. Swain, learned counsel for Petitioners here also brought an additional affidavit and through the additional affidavit attempted to bring on record the copy of Challan dated 3.05.2007 vide Abnnexure-14 to bring to the notice of this Court that Petitioners received the petroleum products with clear mentioning of challan about the amount of product and density of the products,

whereas the record of Opposite Party shows that after 3.05.2007 there was no material ever received by the Petitioners before the day of checking. Petitioners also further pleaded that on the date of checking of the dispensing unit on 7.06.2007 meter of the dispensing unit was clearly showing the quantity of product sold as 4899915.2, which also tallied with the report submitted by Opposite Party No.2. It is on this, Mr. Swain, learned counsel for Petitioners claim, the sample to be collected for checking was collected from underground tank by an ordinary bottle and claimed that the Corporation failed to appreciate that the stock was almost touching the ground and exposed to various vagaries. Mr. Swain, learned counsel for Petitioners alleged here that the modality for collection of sample remains contrary to the procedure prescribed in the guideline. Mr. Swain, learned counsel for Petitioners attempted to bring extract of stock register vide Annexure-15 herein. It is on reiteration of the provision at Clause 1.2 (viii), Mr. Swain, learned counsel for Petitioners claimed that the density of the product has to be determined at the time of collection of the sample so as to compare with density mentioned by the dealer. It is alleged that in the collection of the sample and report there was no mention about the density of products on the report dated 7.06.2007. It is thus alleged that there was gross violation of the MDG Guideline, 2005. Mr. Swain, learned counsel for Petitioners here also enclosed MDG guideline, 2005 at Annexure-16 to the additional affidavit. Taking reference of the notification dated 12.01.2007 issued by the Union Government Mr. Swain, learned counsel for Petitioners claimed that finding defect in the marker test of the products, there has been withdrawal of the marker test vide Annexure-17 & 18. In the above scenario Mr. Swain, learned counsel prayed this Court for interfering in the impugned termination and granting appropriate relief to the Petitioners.

6. In his opposition Mr. Das, learned Senior Advocate appearing on behalf of Opposite Party No.1 taking this Court to the counter affidavit while attempting to challenge the entertainability of the Writ Petition, at the threshold contended that for there is working in terms of the contract being in a realm of private law, no Writ Petition should be entertained involving any action involving a contract. On the issue of taking out of the dealership Mr. Das, learned Senior Advocate attempted to take aid of decisions of the Hon'ble apex Court in the case of Indian Oil Corporation Ltd. VRS. Amritsar Gas Company and others as reported in (1991) 1 SCC 533 and in the case of E. Venkatakrishna VRS. Indian Oil Corporation and Anr. as reported in (2000) 7 SCC 764 and further in the case of M/s. Sanjana M. Wig VRS. Hindustan Petro Corporation Ltd. as reported in AIR 2005 SC 3454. Mr. Das, learned Senior Advocate for Opposite Party No.1 contested the matter on the premises that once there is termination of a commercial contract, there is no question of restoration of such contract. Taking the plea through the provision at Section 14 of the Specific Relief Act, 1963 Mr. Das, learned Senior Advocate for Opposite Party No.1 contested this matter taking help of above law. While admitting that the MDG framed by the Government being approved by the Ministry of Petrol and Natural Gas is

applicable to all Public Sector Oil Marketing Companies also claimed that the MDG, 2005 is applicable since 1st August, 2005. It is contended that the MDG 2005 provides for taking punitive action against the dealers in case there is finding of irregularities / malpractice. It is claimed that for the coming into force of some amendment orders in 2007 giving a new dimension to the marker system to check adulteration of auto fuels, the MDG 2005 was further amended in 2007 with introduction of a new chapter 12 more particularly in introduction of blending of marker in potential adulteration. Copy of such amendment is at Annexure-B/1. Mr. Das, learned Senior Advocate also taking advantage of subsidy granted to kerosene claimed that kerosene is cheaply available, maintaining the adulteration in fuel becomes a challenge to have regular testing in order to maintain environment pure and as such, the Oil Companies have chosen the product / system (marker) after satisfying themselves with the efficacy of the same. The Oil Company pleaded to check the adulteration in auto fuels and the Government asked all Oil Marketing Companies (OMCs) to check the following steps containing the menace of adulteration :-

"To check adulteration in auto fuels and diversion of PDS Kerosene, Government has asked Oil Marketing Companies (OMCs) to take various steps to contain the menace of adulteration. Some of the steps taken by Government/Oil marketing Companies are as under :

- Under the control Orders issued by the Government to prevent fuel adulteration, under the Essential Commodities Act, 1955, Central/State Governments are empowered to take action against those indulging in adulteration. The Union Government has requested the State Governments/ Union Territory Administrations to take steps to control adulteration.
- Oil Marketing Companies (OMCS) undertake regular and surprise inspections of retail outlets and also take action under Marketing Discipline Guidelines (MDG) and Dealership Agreements against those indulging in adulteration and malpractices. MDG provides for termination of dealership in cases of adulteration being established.
- Government has taken the initiatives to expedite the installation of Global Positioning System (GPS) to monitor the movement of tank trucks.
- OMCs have introduced new tamper proof tank-truck locking systems to prevent en-route adulteration by transporters.
- Keeping in view the misuse/diversion of SKO for adulteration, the import of SKO by private parties has been canalized through OMCs.
- As advised by the Government, Oil Marketing Companies (OMCs) have created a separate wing to report to a Director other than Director (Marketing), which will oversee and monitor all activities and operations to curb adulteration and specify norms and guidelines in this regard.

In order to check adulteration the Government has recently taken a number of

new initiatives to check adulteration of petrol/diesel and streamlining PDS kerosene distribution. Checking adulteration is a continuous process and the Ministry of Petroleum & Natural Gas has been reviewing steps taken to curb adulteration from time to time. In the process, several technological and institutional measures have been taken to curb adulteration. The recent steps taken by the Ministry are summarized below:

- Automation of Retail Outlets
- Third Party Certification of Retail Outlets
- Monitoring of Movement of Tank Trucks through Global Positioning System (GPS).
- Marker System in Kerosene
- Revising the Marketing Discipline Guidelines”

7. Through the running page 66 of the brief the Oil Company also admitted that when the representative of the SGS India Pvt. Ltd. carries out the tests at the retail outlet and for the product of the outlet fails, a

fresh product sample is taken from the nozzle of the dispensing unit which is sealed in presence of the dealer or its representative and the said sample product along with sealed tank lorry retaining sample of the last load of that product used to be available at the retail outlet are collected and handed over to the Officer of the concerned Oil market company. It is claimed that the whole exercise of collecting the sample, checking the same, sealing etc. was done in presence of the dealer and or its representative. It is submitted that the samples of the product collected by the SGS India Pvt. Ltd depot sample and tank lorry retail outlet retention of sample are again checked by the concerned Oil Marketing Companies Official in presence of the dealer or its representative and the transporters and or its representative at its quality control Lab. It is only after the sample tallies through the Quality Control Lab then only Oil Company takes action against the dealer. The Oil Company claims that the whole purpose is to prevent the malpractice and or adulteration by adherent dealers and with a view to give to the consumer the best fuel, to prevent environment from pollution, to prevent to loss to Government exchequers so also to save kerosene to be available in appropriate area for the benefit of the people living below poverty level and from getting diverted of the same from commercial use. It is also submitted that there is sufficient safeguard through the provision at clause 2.3 of the MDG, 2005. Answering to the queries while claiming that the agreement involving the Petitioner's retail outlet has been rightly terminated, Mr. Das, learned Senior Advocate claimed that there has been no violation of MDG conditions in the dealership agreement. While not disputing that there has been entering into the licensee agreement dated 26.03.2002 between the parties, Mr. Das, learned Senior Advocate for Opposite Party No.1-the Oil Company brought the condition at Clause-10 to support the case of Opposite

Party No.1.

8. Answering to the allegations through Annexure-6 & 7, the Oil Company refuted the same and submitted that Opposite Party No.1 is conscious of observing principle of natural justice and therefore takes a lot of precautions before penalizing a dealer and a transporter. In response to the allegation at paragraph no.8 the Oil Company contended that there has been proper following of the procedure in MDG chapter. Mr.Das also claimed that there has been also appropriate collection of sample even in the collection of the sample from the nozzle of the dispensing unit. While contesting the allegation of the Petitioners, the Oil Company contended that there has been exaggerated story by the Petitioners only to mislead the Court and to draw sympathy. The Oil Company also alleged that in the event there was any flaw in the collection of the samples, the best course to the Petitioners would have been to report this aspect immediately on the collection of the sample and claimed that the Petitioners' complaint dated 8.06.2007 were after thought. It is also claimed that there was no mentioning of any adoption of wrong procedure even at the time of test on 7.06.2007. Taking this Court to the MDG 2005, Clause (XIII) at page- 38 of the brief it is claimed that an investigation against a retail outlet should be carried out especially by an external agency. It is also contended that there is no parallel investigation required to be carried out by an Official of the Oil Company. For Opposite Party No.2 is an authorized agent the Oil Company claims, there is no flaw in undertaking of the test through such agency. Through paragraph no.17, it is contended that there were three types of sampling procedure in undertaking the testing in the Quality Control Lab, Paradeep. For the deliberate attempt of the Petitioners to frustrate such testing and it is only after the cooperation of the Petitioners at a later stage the Quality Control Lab report was prepared. It is claimed that the Oil Company has been following three sampling procedures long before for undertaking the drastic steps. Taking to the agreement conditions it is claimed that in the first instance while supplying location, sample is retained by the supplying depot the dealer is required to keep the tank lorry sample of the product received jointly signed by the transporter of the dealer and the third sample is sample of retail outlet tank drawn by the Inspecting Officials. It is claimed that it is only after the retail outlet the sample fails, the tank lorry and depot sample are tested and identified just to find the stage at which adulteration took place before taking the suitable action. It is claimed also that the procedure adopted is only with intention to protect the honest and innocent dealer. On the allegation in the Writ Petition it is further submitted that on response to the failure report of the marker test of the Petitioners' retail outlet, in order to establish as to whether there is stage of adulteration / malpractice, the sample was redrawn by Opposite Party No.2 from the Petitioners' retail outlet on 7.06.2007 and the tank lorry sample of the last supply made on

4.05.2007 to the Petitioners' retail outlet being retained by the Petitioners as per the provision of the MDG, 2005 and the storage point sample of T.K. No.11 of Paradeep were tested in Quality Control Lab, that too in the presence of the

authorized representative of the Petitioners. The transport operator and the Opposite Party No.2 further also with the Officials of the Corporation to establish the satisfaction of the authority the Oil Company filed the test report dated 7.6.2007 and 25.06.2007 vide Annexure-C/1 & D/1. It is through the aforesaid documents an attempt

has been made to establish that the product in the Petitioners' retail outlet has failed in the marker test and a case of adulteration was made out against the Petitioners. On the submission of show cause by the

Petitioners, the Oil Company claims that there has been threadbare consideration of the entire case and there has been a valid order vide Annexure-13. On the deposit of the Petitioners claimed to be pending at the end of the Oil Corporation during period of inspection, it is claimed that after the issue involved here is resolved, reconciliation of the account of the Petitioners will be refunded and the excess or in an alternative the Petitioners may be asked to pay. It is further claimed that despite service of notice upon the Petitioners to handover the position of the retail outlet there was delay in handing over with some pretext or otherwise creating a financial loss to the Corporation. It is, on the premises that the retail outlet is constructed on a leasehold land from one Ratnakar Satrusal for a period of thirty years commencing from 1.09.2001 at rental mentioned in the lease deed, Mr. Das, learned Senior Advocate for Opposite Party No.1 contended that the Company is at loss for non-utilization of the leasehold site. At the same time the Company is compelled to go on paying the lease rent to the lessors. On the premises that the Company has spent a huge amount of rupees fifty to sixty lakhs on the site development the Government Company is unable to utilize the site. Finally on the premises that there is no violation of the MDG, 2005 it is alleged that even in spite of order of this Court dated 10.01.2008 in W.P.(C) No.14091 of 2007 the Petitioners despite the dealership being terminated, is not handing over the retail outlet thereby causing a lot of inconvenience to the general public while also causing financial loss to the public sector undertakings i.e. the Government Companies. Mr. Das, learned Senior Advocate in the above background of the matter taking this Court again to each of the pleadings of this Opposite Party attempted to contend that there has not only been scrupulous following of the MDG, 2005 but all care has also been taken in the conduct of the testing reports and it is only after the Petitioners failed in testing certificate in the undertaking of the exercise through the quality control test lab of the company, there has been issuing of Annexure-13. Mr. Das, learned Senior Advocate again taking this Court to a decision of this Court in the case of Amba Filing Station & Anr. VRS. Union of India thru. Secr. Ministry of Petroleum & Ors. as reported in 2012 SCC Online All 143 and a further decision of this Court in the case of Kishore Auto Sales & Ors. VRS. Bharat Petroleum Corporation Ltd. Varanasi & Ors., as reported in 2010 SCC Online All 1002 attempted to submit that there is support of law through the above judgment to the case of Opposite Party No.1- Company. In his attempt, to justify the order at Annexure-13 Mr. Das, learned Senior Advocate for Opposite Party No.1 submitted that there is no

requirement of interfering in the impugned order.

9. In the above background of the case, this Court finds, the following four questions emerge requiring consideration of this Court.

I. If the condition in the agreement restricts the Parties from moving this Court in the Writ Petition under Article 226 of the Constitution of India in challenge of Annexure-13?

II. If there has been any public ailment in the conduct of O.P.1 in arriving its conclusion, vide Annexure-13 ?

III. For both Parties relying on the MDG, 2005, if there is at all violation of the provision of the MDG, 2005 making the outcome, vide Annexure-13 weak ?

IV. For there is agreement involved expired on 25th day of March, 2017, if there is any possibility of any relief to the Petitioner in the consideration of the issue involved herein ?

10. Looking to the factual narrations made by both the Parties bringing an outcome in taking out the licence/ agreement between the Original Petitioner and O.P.1, a Public Sector Undertaking of the Government of India. This Court here finds, both the Parties have entered into an agreement for licence on 26th March, 2002, Clause-1 therein reads as

follows :-

"1. Subject to the conditions contained hereinafter the Company hereby grants License unto the Licensees for a period of 15 (fifteen) years from 26th day of March, 2002 to 25th day of March, 2017 and during the continuance of this Licensee to enter upon the said premises and to use the Motor Sprit and / or HSD Pumps, Storage Tanks, Pipes, and Fittings and all other facilities erected and provided by the Company upon the said premises, and also any additional facilities at any time during the continuance of this Licence provided by the Company upon the said premises (all of which are hereinafter for brevity referred to as "the said facilities") for the purpose of the sale of Motor Sprit and /or HSD, Motor Oils, Greases and other Motor accessories, as the Licensees of the Company. The Company expressly reserves to itself the right to take back the whole or any portion of the said premises or the said facilities or alter them at any time during the continuance of this Licence at its sole discretion."

11. Undisputedly, the agreement was entered into on 26th March, 2002 and was surviving till 25th day of March, 2017. Parties rely here on the conditions at Clause-7(a), Sub-Clauses b, g, k & o of Clause-10 and Clause-13(a)(ix). This Court likes to take down the provisions herein as follows :-

"7(a)- The Licensees shall be responsible to see that full and proper measure is delivered from the pumps installed by the company on the said premises and shall have no recourse against the Company for any loss, damages, cost, charge or expenses which the Licensees may at any time suffer by reason of the pumps

delivering wrong measure or any reason of the Motor Spirit or HSD becoming contaminated in any way. If at any time the pumps shall be delivering wrong measure or shall develop any other defect the Licensees shall forthwith report such defect in writing to the company and subject to sub-clause (b) hereunder shall not operate the defective pump or pumps further until the defect shall have been remedied.

10. The Licensees hereby covenant and agree with the Company as follows :

(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.

(g) Not to adulterate the Petroleum products supplied by the company and at all times to take all reasonable precautions to ensure that the Motor Spirit or H.S.D. is kept free from water, dirt and other impurities and served from the pumps in such condition.

(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.

(o) At all times and from time to time during the currency of this licence to give adequate facilities to the Company, its officers, agents and servants to inspect and test the accuracy and general working of the pumps and other equipment upon the said premises and to investigate the conduct and management by the Licensees of the said facilities and afford to the company its officers, agents and servants all proper and necessary assistance and facilities for conducting such inspection and investigation and for maintenance of the buildings and equipment.

13.(a) Notwithstanding anything to the contrary herein contained the Company shall be at liberty to terminate this agreement forthwith upon or at any time on the happening of any of the events following :

(ix) Upon termination of any other agreement or licence from the Company to the Licensees without prejudice to any other right or remedy reserved thereunder.

12. In the implementation of the agreement, O.P.1 here took aid of the MDG, 2005. Writ Petitioner also brings out allegation involving provisions of MDG, 2005. This Court, therefore, finds, there is cause of action not alone under the terms of the agreement between the Parties herein. In the counter at Page-64 of the Brief, O.P.1 has the following pleading :-

".....To check adulteration in auto fuels and diversion of PDS Kerosene, government has asked Oil Marketing Companies (OMCs) to take various steps to contain the menace of adulteration. Some of the steps taken by Government/Oil Marketing Companies are as under :

- Under the Control Orders issued by the Government to prevent fuel adulteration, under the Essential Commodities Act, 1955, Central/State

Governments are empowered to take action against those indulging in adulteration. The Union Government has requested the State Governments/ Union Territory Administrations to take steps to control adulteration.

- Oil Marketing Companies (OMCs) undertake regular and surprise inspections of retail outlets and also take action under Marketing Discipline Guidelines (MDG) and Dealership Agreements against those indulging in adulteration and malpractices. MDG provides for termination of dealership in cases of adulteration being established.
- Government has taken the initiatives to expedite the installation of Global Positioning System (GPS) to monitor the movement of tank trucks.
- OMCs have introduced new tamper proof tank-truck locking systems to prevent en-route adulteration by transporters.
- Keeping in view the misuse/diversion of SKO for adulteration, the import of SKO by private parties has been canalised through OMCs.
- As advised by the Government, Oil Marketing Companies (OMCs) have created a separate wing to report to a Director other than Director (Marketing), which will oversee and monitor all activities and operations to curb adulteration and specify norms and guidelines in this regard.

In order to check adulteration the Government has recently taken a number of new initiatives to check adulteration of petrol/diesel and streamlining PDS kerosene distribution. Checking adulteration is a continuous process and the Ministry of Petroleum & Natural Gas has been reviewing steps taken to curb adulteration from time to time. In the process, several technological and institutional measures have been taken to curb adulteration. The recent steps taken by the Ministry are summarised below:

- Automation of Retail Outlets
- Third Party Certification of Retail Outlets
- Monitoring of Movement of Tank Trucks through Global Positioning System (GPS)
- Marker System in Kerosene
- Revising the Marketing Discipline Guidelines"

13. Plain reading of the aforesaid, this Court finds, the MDG, 2005 is an introduction by the Union of India as a check measure of adulteration and mal practice in the fuel supply to the general public. Further Union of India is bringing measures from time to time to check and control adulteration binding on the Parties and also applied herein This Court thus finds, once the agreement is not only meant to control the licensee and O.P.1 but there is also taking aid of the MDG, 2005 and instructions of Union of India in controlling the licence involved herein. There is action of O.P.1 vis-à-vis the MDG, 2005 and Union of India

instructions from time to time. This Court also finds, there has been common reliance of particular provisions by both the Parties to the provision of the MDG, 2005. While one Party claiming Annexure-13 is an outcome in failure of exercise of certain provision of the MDG, 2005, the other Party claims, there has been absolute compliance of the provision of the MDG, 2005. This Court thus here finds, the Writ Petition is well maintainable and there involves public ailment, thus answers Question Nos. I & II accordingly.

14. It appears, the Writ Petition while continuing as a Licensee at Paragraph-5 of the Writ Petition alleges, for the first time on 29.4.2007 O.P.2 took samples from the petrol pump and carried on a test in the premises of the Petitioners showing that the MS, Speed and HS were not adulterated i.e., "N" whereas the HSD was adulterated i.e., "P"; through Paragraph-7 of the Writ Petition, it is alleged, the second sample was sent to the QC Lab, Paradeep for testing and the QC Lab conducted the test on 2.5.2007 and found that the HSD was not adulterated, vide Annexure-3. It is for there is confusion between two reports, O.P.2 undertook another testing on 7.6.2007 again the Institution was found adulterating HSD. It is on the second sample collection, the Petitioners have allegation of violation of the provision of the MDG, 2005. The Petitioners here relies on Clause-2.2.2 and Clause-2.2.2.3. It is on the premises of violation of the compulsory provision in the MDG, 2005, the Writ Petition clearly appears resting violation, if any, and the Petitioners claiming the order at Annexure-13 must go. It is here, this Court finds, the Petitioners were served with a show cause notice, vide Annexure-10 to explain as to why necessary action as deemed fit by the Corporation shall not be taken for the breach "Marker Test Failure". The show cause at Pages-40 & 41 of the notice read as follows :-

"However, in spite of the aforesaid terms of the Dealership Agreement, during surprise Marker Test carried out by "SGS" on 7.6.2007 before you, the diesel sample taken from underground Tank No.1, tested at your retail outlet was "P"(positive) for Marker. The said report dated 7.6.2007 was signed by you on behalf of M/s. Maa Shakti Filling Station and Shri Sukant Bark on behalf of SGS India Private Limited. The said process was performed in presence of Dr. Mukul Jain of Authentix Inc. A copy of the said report dated 7.6.2007 was also handed over to you at the retail outlet.

A sample of the diesel was also collected from underground Tank No.1, in your presence which was sealed by SGS (Seal No.002596) and the label on the said sealed bottle was signed by both the parties. The Tank Lorry retention sample (Lorry No. OR 04A 2117) which was received under Invoice No.1202028210 dated 3.5.2007 was also collected by SGS. The said report was signed by both the parties. Then the said samples were handed over to BPCL QC Lab at Paradeep (Orissa) on 9.6.2007.

On June 09, 2007 we had communicated to you to be present at Paradeep Laboratory on 11.06.2007 at 11.00 hours to witness the test to be carried out to detect the presence of Marker in diesel sample taken by SGS on 7.6.2007 but

you or your representative was not present on the said date, time and place. Subsequently, a fresh letter CTC, Maa Shakti FS dated 12th June, 2007 was issued to you for witnessing the test to be carried out and you were informed to be present on 13.6.2007 at 11 AM either in person or through your authorised representative to witness the test. We had also mentioned therein that the failure to be present on the said date this Company will go ahead with carrying out the test as per procedure and the results would be binding on you.

You had vide letter No.MSFS/298/07 dated 12.06.2007 informed that you are quite ill and unable to walk and informed that you will be able to attend the test if the same is carried out on 18.06.2007 or 19.06.2007.

Subsequently, you had issued a letter dated 21.06.07 wherein you have informed that you are not fully fit for attending the Marker Test at Paradeep but you are willing to send your representative to witness the Marker test to be carried out on the sample taken from HSD underground Tank No.1 on 07.06.2007 by SGS and Tank Lorry Retention Sample which was collected from your retail outlet by SGS on 07.06.2007.

When the samples were tested at QC Lab : Paradip, Orissa for Marker test on 25.6.2007 it was found that the Storage Tank sample as well as the Tank Lorry sample was "N"(Negative) for Marker whereas the sample taken on 7.6.2007 by SGS from the underground HSD Tank No.1 of your retail outlet was "P"(Positive) for Marker.

It shows that the retail outlet sample of HSD fails w.r.t. Marker Test.

The said testing was carried out in presence of your authorised representative, SGS representative, transporter's representative and the Officials of our Paradip Installation. Photocopy of the Marker Test Report - High Speed Diesel (HSD) BS - 11 dated 25.6.2007 was handed over to your representative.

You will appreciate that the aforesaid act on your part, i.e. not giving the correct quality of the product to our esteemed customers who come at our retail outlet is in contravention to our DPSL agreement dt. 26th March 2002. Further, the said act of yours is clear fraud and breach of trust reposed in you as a Dealer. Your aforesaid act is also prejudicial to the interest and good name of the company.

We take the aforesaid breach i.e. "Marker Test failure"observed during the Inspection carried out on 7.6.2007, very seriously. Please treat this notice as show cause notice and failure to receive satisfactory reply by 17.8.2007 we may take necessary action as deemed fit by the Corporation as per executed DPSL agreement dated 26th March, 2002."

15. It is here the Petitioner appears to have responded to such show notice on 23.8.2007, vide Annexure-11 with specific allegation at Paragraphs-6 & 7, which is as follows :-

"6. Regarding the SGS Marker Test on dt.07.06.2007 I have informed all the

facts to the authorities vide the following letters:-

- (i) MSFS/297/07 of dt.08.06.2007
- (ii) MSFS/298/07 of dt.12.06.2007
- (iii) MSFS/299/07 of dt.16.06.2007
- (iv) MSFS/303/07 of dt.20.06.2007
- (v) MSFS/305/07 of dt.02.07.2007
- (vi) MSFS/297/07 of dt.08.06.2007

(Xerox copies of all letters are enclosed for your ready reference and consideration)

My respectful submission before your kindself is that the underground dip of HSD was 1.8 and stock was 29 litres (In 20KL tank dip 1.5"23 litres for 3 units increase 2 x 3"6 litres, so 1.8-23+6"29 litres, again dip 2"35 litres for 2 units decrease 2 x 2"4 litres, so 35-4"31 litres) in HSD Tank No.1. This is in dry position since dt.03.06.2007. The fuel was not coming through the nozzle, so sale was stopped. On dt.07.07.2007 at about 1200 hrs the SGS team came to the R.O. and informed me that they want to conduct a Marker Test. I informed them that all the products of the outlet are in a dry position because the stock has not come since last 1 month and 4 days. The SGS team saw the DSR stock then took the dip readings and could ascertain that there is absolutely no stock except the residual products. In spite of this they started to conduct the Market Test. The dip level of HSD was 1.8 and stock was only 29 litres. The SGS team shown the dip as 2 and stock as 35 litres. Only in order to substantiate their justification in testing they had given this inflated figure. They tried to take out fuel from nozzle but as it did not come they discussed on the test carried out on dt.02.05.2007 at QC Lab, Paradeep and getting impression on the report of that day they decided to take the fuel from the underground Tank No.1. The SGS officials seriously committed error and opened the dip hole. After searching for a glass bottle in the nearby fence area no got an used and thrown small glass bottle in the grass area. He brought it and tied with a long wire and illegally inserted this bottle into the dip hole and collected HSD in an unauthorised way directly from the underground tank when there is no allegation that the Dispensing Unit was out of order. Customers also demanded to take fuel in the same way and the complaints given by them were submitted to the authority. I hope the rule regarding the tests is clear that the collection of samples by the testing officials should be done through the nozzle. The containers to be used are to be well rinsed by the same product which is to be tested. Here I may bring it to your kind notice that when HSD was not available through the nozzle, then from where the SGS team got the HSD product of underground Tank No.1 to rinse the said unauthorised bottle and containers to be used for the collection of samples. I am ignorant about the fact that whether the bottle in question was used for carrying Marker mixed Keorsene by any person earlier or contained

Marker chemical and whether those collecting containers were already used containers? The samples of HSD were collected in an improper, illegal and unauthorised manner. Such illegally collected sample is tested at R.O. and a sample of same illegally collected product was labelled and sealed to send to QC Lab, Paradeep. The test report at R.O. was 8P9. To all such illegal activities of SGS team

I could not oppose and became a mute-spectator. Keeping in mind Page-32, Para 6.1.17 of MDG 2005 and fearing to the punitive action mentioned in Serial No. 16, Page 81 of MDG 2005, without creating any objection or refusal and without giving any remarks of protest on illegal activities of SGS and as I could not imagine that how far SGS is empowered to do such collection of samples I was undone and situation compelled me to give my signatures in their documents. Then in my above cited letters enclosed with this reply I have raised objections to such illegal collection to the authority before conduct of test at Paradeep. When the collection of fuel is done in an improper and illegal manner, the test of such illegally collected fuel was to be simply ignored. As the test was already been done the test report is not viable and should not be taken into consideration and to be taken as null and void.

Vide Letter No. MSF/299/07 of dt. 16.06.2007 I had requested to the authority to please investigate the truth as early as possible and to drop further tests at QC Lab, Paradeep. The SGS Authorities have given goby to all the guidelines and I have become scapegoat to such illegal tests.

7. It is a fact that the collected samples from the underground tank was sealed, labelled, signed and handed over to the SGS team and the tank lorry OR04A2117 of dt.03.06.2007 retention samples was also handed over to the SGS team dt.07.06.2007 but the process of collecting samples directly from the tank through the dip hole by inserting an unauthorised used and thrown glass bottle without being rinsed with the same product is against the procedure prescribed under the law. The collection of the samples having not being done in a proper manner, such collection is itself illegal. The collection is always to be done through nozzle and not by directly drawing the same from tank when there is no allegation that the Dispensing Unit was out of order. The position of the tank was dry. The SGS could have asked to the Dy. Manager (Sales) to be present in person or to send a Company official or technician and collect the sample through nozzle by using any permissible way. Hence the collection should have been made when the product would have oozed out of the nozzle which is supplied to the customers. The entire exercise of the testing should not be considered at all as the collection itself was illegal and in my letters I have categorically prayed for the conduction of tests in a legal manner so that the truth prevails finally.”

It is in the aforesaid background, the Petitioner claims, the test measure taken by the Corporation and its Agent remains contrary to the MDG, 2005.

16. Next considering the show cause and the response of the Petitioner, the Corporation through the impugned order observed as follows :-

"We had checked up with the authorities of SGS India Private Limited and they have confirmed that the product (HSD) was collected directly from nozzle. This proves that they had followed the correct procedure in taking the sample and there is no substance in your allegation of incorrect procedure followed for taking of the sample.

When this Company has initially informed you about the testing of the sample at QC Lab : Paradip, you on some pretext or other tried to delay the test being carried out at QC Lab. : Paradip. Finally you have vide your letter dated 21.06.1007 have sent your authorized representative to witness the testing at QC Lab : Paradip on 25.06.2007. The testing was carried out on 25.06.2007 in presence of your authorized representative, SGS representative, transporter's representative and Officials of our Paradip Installation and the final testing report showed that the HSD sample of the retail fails w.r.t Marker Test. A copy of the test report dated 25.06.2007 was also handed over to your authorized representative, on the same date.

As per the norms no Marker Test Kits are given to any dealer by any Public Sector Oil Marketing Company throughout India. There is no need for the dealer to test the product with regard to Marker. There is also order from the Hon9ble Orissa High Court in this regard. At the time of receipt of the petroleum products, the 3 tier sampling procedure being followed gives a clear indicating of point of adulteration i.e. at supply location/during transportation/ at retail outlet. The dealer has no retain the corresponding Tank Lorry sample. In case of the Marker Test failing, on any of the samples drawn from the retail outlet, the corresponding Tank Lorry sample(s) retained by the dealer will also be tested at the Lab for the presence of the Marker. In case the Retail Outlet Tank Lorry Retention Sample fails, the action is taken on the transporter as per the Transport Discipline Guidelines. However, sales and supplies of MS/HSD of the retail outlet will be discontinued till the product is replaced by the Oil Company.

We vehemently deny and dispute your alleged contentions mentioned in your letter dated 23.08.2006 under reference with regard to the wrong sampling procedure followed by SGS India Private Limited.

SGS India Private Limited being authorized representative of this Company not only tests the products of this Company but also checks products of Other Public Sector Oil Marketing Company's i.e. IOCL, HPCL & IBP. They even check the products at depot level, installation level and finally at the retail outlet level with regard to Marker, with a basic aim to prevent the adulterated product/s is/are not sold in the open market.

SGS India Private Limited the authorized representative of this Company are fully aware of the procedure to be followed in respect of drawing of samples and testing the same with regard to Marker. SGS India Private Limited are the

authorized representative of this Company and are also the authorized representative of Other Public Sector Oil Marketing Company have been testing the products at different levels i.e. depot, installation, retail outlets for the aforesaid Public Sector Companies through out the length and breadth of the country. Therefore alleging that the SGS India Private Limited have not followed the correct procedure in the instant case is not acceptable and they have also confirmed the same in writing that the product (HSD) was taken from the nozzle.

The procedure for Marker Test has been universally adopted by the Public Sector Oil Marketing Companies and the same has the approval of the Government of India. As confirmed by you the last two supplies of Tank Lorry samples have shown negative i.e. not pink results, indicating that the product supplied through the tank lorries were not contaminated/ adulterated at the time of delivery to the subject retail outlet, thereafter when SGS tested the product it was shown pink which indicates that the said petroleum product was mixed with the kerosene having the Marker at the retail outlet level.

You will appreciate that this Company is a premier Oil Marketing Company in the country and always endeavour to ensure supply and distribution of quality products to our most valued customers. This

Company always looks forward, that the dealer's network ensures to sell our products and services with correct quality and quantity to our valued customers in the same wave length and objective being the contractual obligation between this Company and yourself as the Licensees. In the instant case, it proves beyond doubt, that you do not have even minimum concern in achieving this objective and completely disown your responsibility and seriously violated the terms of the License granted in your favour and breach of trust reposed upon you by the Company by adulterating the product sold from the outlet and keeping the product dry.

This Company is not satisfied with your reply under reference to our show cause notice dated 07.08.2007 and you have failed to explain any cogent reasons for breaches of the subject Dispensing Pump & Selling License Agreement observed during the inspection dated 07.06.2007. It is therefore that this Company has lost faith completely with you and are no longer interested in carrying the business with you. We state that your alleged reply to our Show Cause Notice is found to be unbelievable, devoid of facts and completely lack of merits. You being a Licensee of contractual dealership Agreement with this Company, it was your sole responsibility to comply with the terms and conditions of the dealership agreement, however you have failed to comply with the same.

In view of the breaches of the subject Dealership Agreement dated 26.03.2002 mentioned aforesaid including our earlier Show Cause Notice dated 07.08.2007, this Company is entitled to terminate the said dealership Agreement dated 26.03.2002 with immediate effect. It is therefore the said Dispensing Pump & Selling License Agreement dated 26.03.2002 including your dealership is hereby

terminated with immediate effect which you may please note.”

17. From Page-52 of the Brief, this Court observes, in their counter affidavit, O.P.1 has specifically denied to have used a small glass bottle traced from the side of the fence of the retail outlet for collection of sample, as alleged. This Court here finds, when one Party alleges, there has been use of small glass bottle for collection of sample, the contesting O.Ps. denied the same stoutly. Allegation by the Corporation, objections of Petitioners and findings in impugned order are clear demonstration of the same. In their counter of O.P.1, this Court again finds, O.P.1 at Paragraphs-13 and 15 has the following specific observation :-

“13 That in reply to para 6 of the writ application, it is submitted that for testing of sample of a petroleum product, one of the forms of testing is called “Clinical Tests” which is normally done by Mobile Laboratories and in the said clinical tests, samples of the product are drawn in aluminium containers, which is a part of the test kit. Similarly, in the case Marker tests, i.e, a new form of testing petroleum products, the sample is drawn in sample bottles made of aluminium in the form of bottle, which forms a part of the test kit. In the present case a Marker test of the products in Petitioner9s Retail Outlet has been conducted as per the amended MDG 2005.

15. That in reply to para 8 of the writ application, it is submitted that as per information received from Opp. Party No 2, the correct procedure has been followed, in drawing of samples as per the MDG Chapter 12. The assertions of the Petitioner are hereby denied that the samples were taken from the tank and that to in a glass bottle which was lying in the bushes nearby the petrol pump. The diesel (HSD) samples which were taken and thereafter tested were taken from the nozzle of the dispensing unit. The assertions made therein just to mislead and gain sympathy. Presuming that be so for academic purpose why the same was not mentioned in the report dated 07.06.2007 by the Petitioner when he was physically present at the retail outlet when the test was carried out. No law prevented him from endorsing his observation in the report before signing. Apart from the aforesaid not only the dealer was present at the retail outlet when the test was carried out by SGS representative but also Dr. Mukul Jain of Authentix Inc. was also present at the time when the test was carried out and the same is evidence from the report dated 07.06.2007.

In the instant case sample of HSD was collected in a container forming part of the test kit from the nozzle of the dispensing unit connected to the HSD underground tank and the HSD sample was tested with the aid of test kit to check whether the product contains any traces of marker or not. The assertion of the Petitioner of the contrary is hereby denied. The container in the test kit is made of aluminium as has been submitted in the preceding paragraphs.

That in reply to part 9 of the writ Petition, it is submitted that the assertions made is an afterthought, as such objections if any, could have been raised/

incorporated, at the time of signing of the test report of the products of the Petitioner's Retail Outlet at Annexure-4 which was prepared by Opp. Party No.2, on their visit to the Retail Outlet on Dt. 7/06/2007. The Petitioner's letter dated 08.06.2007 is misconceived, but is an afterthought and does not have any legs to stand upon, as much as this apprehension is well put to rest as mentioned aforesaid.

When the test was carried out on the Petitioner's retail outlet on Dt. 07.06.2007 then also there was no mention of the wrong procedure being followed by SGS India Private Limited was mentioned in the report. The Petitioner was free to call the concerned Sales Officer if any wrong procedural test was being carried out by representative of SGS and should have requested him and stop the test till the concerned Sales Officer of the Opposite Party No.1 arrives. From the aforesaid it is clear that the assertions made by the Petitioner is after thought as he has neither informed the concerned Sales Officer or not made any report or objection about the irregularities found at the time of test.

18. Bare reading of the Petitioners' show cause response along with the point to point response in the impugned order, there appears, there is flat denial by the Corporation to each of the allegations raised by the Licensee. Besides, there is also clear statement coming through the impugned order on strict compliance of provisions in the MDG, 2005 before attending to the final outcome, further for the death of the Proprietor of the original Petitioner though the Legal Heirs attempted to replace the Proprietor here, they have been abandoned the Firm and pursuing the litigation in their personal capacity. In the circumstance, this Court finds, the Writ Court in exercise of power under Article 226 of the Constitution of India to further probe into such allegations. Law has already been settled that in such situation, High Court cannot sit here as Appellate Authority.

19. This Court reading the judgment vide Indian Oil Corporation. Ltd. and Another v. T. Natarajan (2018) 9 SCC 235 finds, this is a case where the Hon'ble Supreme Court while deprecating the course adopted by the High Court rendered that the High Court could not have behaved as appellate authority. This Court for the factual aspect involved herein and the clear denial by Opposite Party No.1 herein and through the substance through the verity of report enclosed herein finds, such decision restricts the High Court to sit over as an appellate authority and finds, this decision rather supports the case of the Company / Corporation. Similarly taking into account the decision through Amba Filling Station & Anr. Vs. Union of India thru. Secr. Ministry of Petroleum & Ors. 2012 SCC Online Allahabad 143 this Court through the same finds, the Single Bench of the Allahabad High Court through paragraph nos.8 & 9 came to observe as follows:-

"8. As noticed above paragraph 12 of the Government order relied by the Petitioner and filed as Annexure-4 to the writ petition also indicates that if in the marker test the product fails there is no necessity of any further chemical analysis. In the present case, when the test was held on 3.12.2008, marker was found present hence, there was no further requirement of density analysis or any

other analysis. The Control Order 2005 and the Government order clearly relies on the marker test for finding out adulteration, no error has been committed by the Corporation in cancelling the agreement relying on the marker test. Thus the submission that density and other specification was to be checked as per Indian Standard Specification Numbers is not applicable in the facts of the present case.

9. It is stated that the said judgement of the Division Bench stands approved by the Hon'ble Supreme Court with the dismissal of Special Leave to Appeal (Civil) No. 21238 of 2010 in Kishore Auto Sales v. Bharat Petroleum Corporation Ltd. Varanasi decided on 9.8.2010.

The Second decision cited by Mr. Das, learned Senior Advocate appears to have taken note of the Single Bench judgment taken note hereinabove. It is through the same judgment the Single Bench has come to observe in paragraph nos.17 & 25 as follows:-

"17. In order to appreciating the aforesaid contention, this Court may record that under the Marketing Discipline Guidelines, a procedure has been provided for testing of the product at the Retail Outlet and drawing of the samples and testing of the same at the designated laboratory/location for Marker Testing again.

25. There has been no violation of the Marketing Discipline Guidelines in the facts of the case. On the contrary, the Corporation has followed the procedure in testing of the product at the Petitioner's Retail Outlet as also in the testing of the sample at the laboratory. There being no sample of tank lorry or of the supply point available on the relevant date, the question of their examination did not arise.

This Court finds, this decision has clear support to the case of Opposite Party No.1 herein. Question No.III thus answered in favour of O.Ps. as this Court holds, there is no strength in the allegation of the Petitioners so far it relates to violation, if any, of the MDG, 2005.

20. Coming to deal with Question No.IV, this Court here finds, in entertaining the Writ Petition, this Court on 8.9.2008 and 25.2.2009 passed the following interim order :-

"8.9.2008.

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In the meantime, the retail outlet which was allotted to the Petitioner shall not be allotted to anyone without leave of this Court. However, this will not debar the Bharat Petroleum Corporation to run the retail outlet by their own arrangement.

This Misc. Case No.10088 of 2008 may be listed on the next date."

"25.2.2009

Misc. Case No.14328 of 2008

Vide order dated 8.9.2008, it was directed that the retail outlet, which was allotted to the Petitioner shall not be allowed to anyone without leave of this Court. However, this will not debar the Bharat Petroleum Corporation to run the retail outlet by their own arrangement.

This application has been filed on behalf of o.p.1 with a prayer to direct the Petitioner to hand over the retail outlet with keys and instruments so that the o.p.1 will run the outlet.

The procedure to take over the outlet is to be followed by o.p.1 and for that purpose, there is no need of orders of this court as in a normal routine if an outlet is to be taken over, the normal rule is to be followed. Therefore, for this purpose, orders of this Court are not necessary. However, the interim order dated 8.9.2008 shall continue until further orders.

The Misc. Case is disposed of.

Put up the writ petition on 6.4.2009 for final disposal.”

21. From Annexure-1, this Court as taken down at Paragraph-10, the agreement period was from 26th March, 2002 till 25th March 2017. The agreement has already lapsed almost six years back and there is no possibility of restoration of the licence of the Petitioner at this stage. Further this Court finds, the order at Annexure-13 does not suffer either way.

22. The Writ Petition suffers from merit. So far as retention of some deposits by the Petitioners made during the test was undertaken and lying with O.P.1, on dismissal of the Writ Petition, it will now be open to O.P.1 to deal with the same in accordance with law and by completing such exercise within one month from the date of communication of this judgment by either side.

23. This Writ Petition thus stands dismissed but in the circumstance, there is however no cost.

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