

(2017) 01 CHH CK 0019
In the Chhattisgarh High Court
Case No : 803 of 2002

M/s. Agarwal General Trading Co.

APPELLANT

Vs

General Manager, Indian Oil Corp. Limited

RESPONDENT

Date of Decision : 02-01-2017

Acts Referred:

Constitution of India, Article 226, Article 12 - Power of High Courts to Issue certain writs - Application of Acts of Parliament and of the Legislature of the State of Assam to autonomous districts and autonomous regions in the State of Assam
Code of Civil Procedure, 1908, Order 39Rule 1, Order 39Rule 2, Order 43Rule 1 -
Specific Relief Act, 1963, Section 14(1)(c) -
Petroleum Rules, 2002, — Rule 3(1)

Citation : (2017) 01 CHH CK 0019

Hon'ble Judges : Sanjay K. Agrawal

Bench : Single Bench

Advocate : Prateek Sharma, Prafull Bharat, Anand Shukla, ?Prateek Kumar Singh, ?Govind Prasad Rathia

Final Decision : Dismissed

Judgement

1. Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner herein calls in question the order dated 8-4-2002 (Annexure P-2) by which his dealership agreement has been terminated and he also seeks to challenge the inspection report dated 8-1-2002 (Annexure P-1).

2. Essential facts requisite to judge the correctness of the plea raised at the Bar are as under: -

2.1) The respondent Indian Oil Corporation Limited granted dealership to the petitioner to run a retail outlet at Dharamjaigarh on 5-4-1982 against the open

category and thereafter, license was issued under the provisions of the Madhya Pradesh Motor Spirit and High Speed Diesel Oil (Licensing and Control) Order, 1980. On 8-1-2002, a vigilance inspection was made to the outlet of the petitioner and samples of Motor Spirit Petrol (MSP) and High Speed Diesel (HSD) were taken and density test was conducted at the outlet itself and it was found that there is variation in density limits and sales and supplies were suspended with immediate effect. Copy of the inspection report dated 8-1-2002 was supplied to the petitioner. The petitioner filed C.S.No.4-A/2002 before the Court of Civil Judge Class-I, Raigarh for permanent injunction claiming relief that the defendants be restrained from prohibiting the petitioner herein from running the petrol pump and proceeding for dealership termination be also set-aside and the petitioner be allowed to supply the petroleum products continuously. In the said civil suit an application under Order 39 Rules 1 and 2 of the CPC for temporary injunction was also filed, reply was filed by the present respondents and ultimately, the trial Court by its order dated 15- 3-2002 rejected the application for temporary injunction in which it has also been observed that the copy of test report dated 16-1- 2002 was filed by the defendants. Thereafter, ultimately, the suit was dismissed as withdrawn on 21-5-2002. In the meanwhile, the sample was sent for testing in Nishatpura Laboratory and Research Octane Number (RON) test was conducted in which it was found that the sample of Motor Spirit (MS) collected from the petitioner's outlet does not meet the specification with RON test. The petitioner was served with show cause notice dated 23-1- 2002 stating inter alia that MS sample failed with RON test and stock variation was also found which was beyond the permissible limits, Daily Sales Register and Density Register were found incomplete during inspection by the Field Officer. The show cause notice was replied by the petitioner on 25-1-2002 denying the charges levelled against him and thereafter, by the impugned order dated 8-4-2002, the order of termination has been passed terminating the dealership of the petitioner. The petitioner had filed this writ petition on 18-4-2002 supported by the affidavit of Shri Manoj Agarwal, Manager of the petitioner Company, stating inter alia that no copy of dealership agreement was ever furnished by respondent No.1 to the petitioner Company and the petitioner Company has been carrying on the business of selling petroleum products through its retail outlet.

2.2) The petitioner Company is a registered firm constituted by Shri Vijay Kumar Agarwal and Shri Gajanand Agarwal who are partners in that said firm and the said firm is being run by the aforesaid partners. They are carrying on the business of selling petroleum products through its retail outlet in the name of the petitioner firm as a duly constituted dealer of the respondent IOCL at Dharamjaigarh. It was further pleaded that on 8-1-2002, respondent No.3 visited the retail outlet of the petitioner firm and took samples of petrol - Motor Spirit (MS) and diesel - High Speed Diesel (HSD) and he drawn a report called Random Inspection Report and immediately stopped further supplies to the petitioner. Thereafter, a civil suit was instituted by the petitioner and temporary injunction

was refused on 15-3-2002. During the pendency of civil suit, the order of termination was served to the petitioner. It was further pleaded that the petitioner has not been afforded proper opportunity to explain and argue its case in person. The samples were never sealed. The petitioner sought quashment of inspection report as well as the order terminating dealership agreement dated 8-4-2002.

2.3) After being noticed, the respondents filed return controverting the averments made in the writ petition and also pleaded that samples were properly taken. Disputed question of fact has been raised which can be settled only by way of civil suit. The dispute is arbitrable dispute as there is arbitration clause and the petitioner is a rank manipulator as the samples of MS and HSD fail the requisite criteria and even fail in the test conducted at Nishatpura Laboratory and therefore dealership has been validly terminated.

2.4) In the rejoinder, the petitioner for the first time raised a point that the copy of test report conducted at Nishatpura Laboratory on 16-1-2002 has not been supplied to it and the petitioner has not been noticed while making test at Nishatpura Laboratory, Bhopal and that sample was not properly sealed and cost of sample was also not paid to the petitioner and thus the procedure of inspection made is in violation of the Marketing Discipline Guidelines - 2001 and he is ready and willing for arbitration but dealership be restored first.

2.5) It is important to mention that the petitioner has not filed dealership agreement and in para 6.12 of the petition, the petitioner has simply averred that no copy of the dealership agreement was ever furnished by respondent No.1 to the petitioner. Upon the direction of this Court, the officer of respondent No.1 as well as the General Manager of respondent No.1 has also filed an affidavit that the dealership agreement was lost, but no reason even has been assigned by the IOCL as to when the dealership agreement was lost and what steps have been taken to trace out the said dealership agreement.

3. Mr. Prateek Sharma, learned counsel appearing for the petitioner, has made following submissions in support of the petition: - 1. That, copy of the dealership agreement was never supplied to the petitioner.

2. That, while taking the sample on 8-1-2002 neither the cost of sample was paid nor it was sealed properly, as it bears no seal and therefore it is violative of the Marketing Discipline Guidelines - 2001 which provide that sample should be sealed and labeled.

3. That, termination of agreement has been made vide Annexure P-1 dated 8-1-2002, but no notice dated 19-1- 2002 was served to the petitioner, no reply dated 11-2- 2002 was served to him and no specific breach has been mentioned while terminating the agreement and it smacks non-application of mind.

4. That, no opportunity of hearing was granted to the petitioner before undertaking the random test at Nishatpura Laboratory on 16-1-2002 and no copy

of test report was supplied to the petitioner.

5. Learned counsel for the petitioner relied upon the decisions of the Supreme Court in the matters of Indian Oil Corporation Ltd. v. Nilofer Siddiqui and others, 2015 AIR SCW 6568, Hindustan Petroleum Corporation Limited and others v. Super Highway Services and another, (2010) 3 SCC 321 and Harbanslal Sahnia and another v. Indian Oil Corpn. Ltd. and others, AIR 2003 SC 2120.

4. On the other hand, Mr. Prafull Bharat, learned counsel appearing for respondents No.1 to 3, while opposing the submissions of learned counsel for the petitioner would submit as under: - 1. That, the petitioner was supplied with the dealership agreement while granting dealership on the basis of which only he has been granted license by the licensing authority as per the provisions contained in the M.P. Motor Spirit and High Speed Diesel Oil (Licensing and Control) Order, 1980.

2. That, the sample was taken in accordance with the Marketing Discipline Guidelines - 2001 and payment of sample was made to the petitioner immediately on the said date duly recorded in the inspection note dated 8-1-2002.

3. That, the dealership agreement being revocable, the present suit is not maintainable in view of Section 14(1)(c) of the Specific Relief Act, 1963.

4. That, the judgment referred by learned counsel for the petitioner - Super Highway Services (supra) is not applicable in the instant case, as that relates to retesting of the sample at the retail outlet. Therefore, the petitioner is not entitled to rely upon the aforesaid decision.

5. That, the petitioner is a rank manipulator which is apparent from the inspection report conducted by respondent No.3 and the test report given by the Nishatpura Laboratory, a copy of which was duly served to the petitioner but the petitioner has suppressed the fact and has filed this writ petition.

6. Learned counsel for respondents No.1 to 3 relied upon the decisions of the Supreme Court in the matters of Kisan Sahkari Chini Mills Limited and others v. Vardan Linkers and others, (2008) 12 SCC 500 and Indian Oil Corporation Ltd. v. Amritsar Gas Service and others, (1991) 1 SCC 533.

7. That, the petitioner raised disputed question of fact which requires recording of evidence particularly in view of the fact that the dealership agreement, which is alleged to have been breached, has not been filed by the petitioner.

8. That, the petitioner has not availed the opportunity of retesting as provided in the Marketing Discipline Guidelines - 2001.

5. After hearing learned counsel for the parties, following points arise for consideration: 1. Whether the writ petition filed questioning the termination and seeking restoration of retail outlet is maintainable in the light of Section 14(1)(c) of the Specific Relief Act, 1963? and / or

Whether the writ petition is liable to be dismissed on the ground of availability of alternative remedy?

2. Whether the termination of dealership agreement is valid and proper?

6. The contention made on behalf of the respondent IOCL is that the instant writ petition as framed and filed is not maintainable in light of Section 14(1)(c) of the Specific Relief Act, 1963, whereas learned counsel for the petitioner would rely upon the judgment rendered by the Supreme Court in the matter of Harbanslal Sahnia and another v. Indian Oil Corpn. Ltd. and others, AIR 2003 SC 2120 wherein the Supreme Court has held as below: - "7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants, and therefore, the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. [See Whirlpool Corporation v. Registrar of Trade Marks, Mumbai, (1998) 8 SCC 11]. The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

7. In the matter of Sanjana M. Wig (Ms) v. Hindustan Petroleum Corpn. Ltd ., (2005) 8 SCC 242 , the Supreme Court has held as under: - "It may be true that in a given case when an action of the party is dehors the terms and conditions contained in an agreement as also beyond the scope and ambit of the domestic forum created therefor, the writ petition may be held to be maintainable; but indisputably therefor such a case has to be made out. It may also be true, as has been held by this Court in Amritsar Gas Service (supra) and E. Venkatakrishna v. Indian Oil Corpn., (2000) 7 SCC 764 that the arbitrator may not have the requisite jurisdiction to direct restoration of distributorship having regard to the provisions contained in Section 14 of the Specific Relief Act, 1963; but while entertaining a writ petition even in such a case, the court may not lose sight of the fact that if a serious disputed question of fact is involved arising out of a contract qua contract, ordinarily a writ petition would not be entertained. A writ petition, however, will be entertained when it involves a public law character or involves a question arising out of public law functions on the part of the respondent."

8. In the matter of Noble Resources Ltd. v. State of Orissa and another, (2006) 10 SCC 236, the Supreme Court has held that: "14. Respondent 2 is "State"

within the meaning of Article 12 of the Constitution of India. Its conduct in all fields including a contract is expected to be fair and reasonable. It was not supposed to act arbitrarily, capriciously or whimsically.

15. It is trite that if an action on the part of the State is violative of the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field. A distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the court's scrutiny would be more intrusive, in the latter the court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of Article 14 of the Constitution. While exercising contractual powers also, the government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on their part. Indisputably, inherent limitations exist, but it would not be correct to opine that under no circumstances a writ will lie only because it involves a contractual matter.

16. This dicta of law was laid down by this Court as far back in 1977, wherein this Court in *Radhakrishna Agarwal v. State of Bihar*, (1977) 3 SCC 457 accepted the division of types of cases made by the Patna High Court in which breaches of alleged obligation by the State or its agents could be set up. It reads as under: (SCC p. 463, para 12)

"(i) Where a petitioner makes a grievance of breach of promise on the part of the State in cases where on assurance or promise made by the State he has acted to his prejudice and predicament, but the agreement is short of a contract within the meaning of Article 299 of the Constitution;

(ii) where the contract entered into between the person aggrieved and the State is in exercise of a statutory power under certain Act or rules framed thereunder and the petitioner alleges a breach on the part of the State; and

(iii) where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State."

9. Further, in the matter of *ABL International Ltd. and another v. Export Credit Guarantee Corporation of India Ltd. and others*, (2004) 3 SCC 553, the Supreme Court has held that: "A writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution, but there is no absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. It has even been held [in *Gunwant Kaur case*, (1969) 3 SCC 769] that in a writ petition, if the facts require, oral evidence can be taken. This clearly shows that in an appropriate case, the writ court has the jurisdiction to entertain a writ petition involving disputed questions of fact and there is no absolute bar for entertaining

a writ petition even if the same arises out of a contractual obligation and/or involves some disputed questions of fact."

10. As laid down by the Supreme Court in *Sanjana M. Wig (Ms) (supra)*, a writ petition can be entertained when it involves a public character or a question arising out of public law functions on the part of the respondent IOCL. The dispensation of petroleum products is a function that necessitates dealings with the general public. Maintaining accuracy of measure of the petroleum products dispensed through the retail outlets of the respondent Corporation would involve question of general public interest, as it is the common man who will be availing of the facilities offered and purchasing fuel and other petroleum products from such outlets. This Court is of the considered opinion that there are no seriously disputed questions of facts that require appreciation of evidence, and as issues affecting the public good are involved, there can be no bar to entertain the petition, keeping in mind the permissible parameters of judicial review.

11. Learned counsel for the petitioner has placed reliance in *Super Highway Services case (supra)* by submitting that as termination of dealership has serious consequences, there is a need to strictly adhere to the Marketing Discipline Guidelines. Reliance has been placed upon paragraph 31 of the said judgment wherein the Supreme Court has held that cancellation of dealership agreement of a party is a serious business action and in order to justify such action the authority concerned has to act fairly and in complete adherence to the Rules/Guidelines framed for the said purpose. In that case, it was found by the Supreme Court that non-service of notice to the aggrieved person before termination of his dealership agreement offended the well established principle that no person should be condemned unheard. Their Lordships concluded that termination of dealership agreement of the respondent was arbitrary, illegal and in violation of the principles of natural justice, as there was no admissible evidence to prove service of notice upon the respondent, or refusal thereof.

12. Though the principles of law enunciated in the above judgment cannot be disputed on the facts obtaining in that particular case, however, they will not apply to the case in hand, where the petitioner was served with a show cause notice by the respondent IOCL to which he has given reply. Only after consideration of reply, the petitioner's dealership agreement has been terminated. Therefore, the petitioner has been afforded due and reasonable opportunity of hearing before terminating his dealership and as such, he cannot be permitted to complain that he has not been afforded due opportunity of hearing before terminating his dealership agreement and as such, the judgment rendered in *Super Highway Services case (supra)* is not applicable.

13. In the matter of *Tata Cellular v. Union of India*, (1994) 6 SCC 651, the Supreme Court has laid down certain principles for exercise of the power of judicial review which are as under: -

"94. The principles deducible from the above are:

- (1) The modern trend points to judicial restraint in administrative action.
- (2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.
- (3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.
- (4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.
- (5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.
- (6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure. ..."

14. In the matter of Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517, the Supreme Court has held as under: - "22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made "lawfully" and not to check whether choice or decision is "sound". When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions.

Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before

interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say:

"the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action."

15. In the matter of Hindustan Petroleum Corpn. Ltd. v. M/s. Pinkcity Midway Petroleums, AIR 2003 SC 2881, the Supreme Court was dealing with a case where the dealer had indulged in short supply and there was tampering of seals. The dealership agreement empowered the Company to stop supplies in case of breach of any clause of the agreement. Dealing with clause 30 of the dealership agreement, which provided for stoppage or suspension of supplies, the Supreme Court held as under: - "22. A perusal of this Clause shows that if the dealer commits a default in complying with the obligations enumerated in Clause 20 of the Agreement, the appellant is entitled to stop or suspend supply of its petroleum products to such a dealer without prejudice to other remedies available under the Agreement. This right of the appellant to take action against an erring dealer under the terms of the Agreement is dehors the proceedings that may be available to be initiated against an erring dealer under the provisions of various other enactments referred to in Clause 20 of the said Agreement including under the provisions of the 1985 Act. This right of the Corporation to suspend the supply of petroleum products to an erring dealer is a right exercised under the terms of the contract and is independent of the statutory provisions of the various Acts enumerated in Clause 20 of the Agreement. The Courts below, in our opinion, have committed an error by misreading the terms of the contract when they came to the conclusion that the only remedy available as against a misconduct committed by an erring dealer in regard to short-supply and tampering with the seals lies under the provisions of the 1985 Act. The Courts below have failed to notice that when a dealer short-supplies or tampers with the seal, apart from the statutory violation, he also commits a misconduct under Clause 20 of the Agreement in regard to which the appellant is entitled to invoke Clause 30 of the Agreement to stop supply of

petroleum products to such dealer. The power conferred under the Agreement does not in any manner conflict with the statutory power under the 1985 Act nor does the prescribed procedure under the 1985 Act in regard to search and seizure and prosecution apply to the power of the appellant to suspend the supply of its petroleum products to an erring dealer. The power exercised by the appellant in such a situation is a contractual power under the agreement and not a statutory one under the 1985 Act. The existence of dual procedure; one under the criminal law and the other under the contractual law is a well-accepted legal phenomenon in the Indian jurisprudence."

16. Thus, from the aforesaid discussion, it is quite evident that the petitioner can maintain the writ petition questioning the termination of his dealership and as such, the existence of alternative remedy, if any, would not bar the entertainment of the writ petition. This first question is answered accordingly.

17. Determination of the first question that the writ petition is maintainable would bring me to the next plea raised by the petitioner that samples taken from his retail outlet on 8-1-2002 were not sealed properly and cost of the samples was not paid to him contrary to the Marketing Discipline Guidelines - 2001.PARA>

18. It is the stand of the respondent IOCL that surprise inspection at about 7.30 p.m. on 8-1-2002 at the petitioner's retail outlet was conducted and several irregularities were detected during the inspection such as non-maintainability of DSR book, density register, variations in MS density beyond permissible limit as per last challan density and variation in HSD stock up to 2709 litres. Samples of MS & HSD were collected strictly in accordance with the Marketing Discipline Guidelines - 2001. The samples were drawn properly after proper rinsing and sealed properly with seal number and thereafter, samples were sealed and one sample was taken after complete rinsing and immediately thereafter, sales and supply were suspended. The respondent IOCL has filed the random inspection report dated 8-1-2002 along with its return. The foot note appended to the said inspection report, which is not in dispute, clearly mentions that "the samples drawn after proper rinsing and sealed properly with seal Nos.642685 x 5, 642666 x 4 and 016848 x 1. Payment received for the samples". Thus, the petitioner's contention that the samples were not properly sealed and cost of the samples was not paid is not born on record, on the contrary, there is a clear document available on record which says that the samples were sealed properly, duly numbered and cost of the samples was received by the petitioner, as such, this submission is not established

19. Another submission raised by the petitioner is that the samples so collected from the petitioner's outlet were sent to Nishatpura Laboratory of the IOCL for testing, but the copy of the test report was not supplied to the petitioner and therefore he suffered prejudice. It is true that the samples so collected were sent to Nishatpura Laboratory of IOCL for testing and same has duly been acknowledged by the Laboratory that it was received in the sealed condition (see para 318 of the paper book) and as per the laboratory test report dated

16-1-2002, the sample failed in research with RON test on the basis of which show cause notice dated 23-1-2002 was served to the petitioner seeking explanation. The petitioner admittedly filed civil suit on 15-3-2002 stating inter alia that the respondent IOCL be restrained from terminating his dealership and he may be allowed to continue the retail outlet as sales and supply were suspended immediately on 8-1-2002. Application for temporary injunction was also filed in that civil suit. The respondent IOCL filed its reply to the application for temporary injunction and along with the reply, a copy of the test report dated 16-1-2002 was also filed before the trial Court as document No.20 and a copy was supplied to the petitioner herein. Copy of the test report was also taken note of by the trial Court in its order dated 15-3-2002 which is a part of the record (Annexure P-12 paragraph 6) and as such, the petitioner cannot contend that copy of the test report was not supplied, as he has not taken recourse of re-testing of the sample even after service of the test report. Thereafter, the petitioner filed appeal under Order 43 Rule 1 of the CPC challenging the order rejecting temporary injunction, but ultimately, the appeal was withdrawn on 18-5-2002 and the civil suit was withdrawn on 21-5-2002.

20. Now, the question for consideration is whether the termination of the petitioner's dealership by order of the IOCL dated 8-4-2002 is valid or it is liable to be quashed.

21. The dealership agreement was signed between the petitioner and the respondent IOCL on 5-4-1982. The petitioner did not file copy of the dealership agreement along with the writ petition and conveniently, in paragraph 6.12 of the petition, he has simply stated that no copy of the dealership agreement was ever supplied by respondent No.1 to the petitioner. It is pertinent to mention here that the petitioner has been granted license to run the petrol pump by the licensing authority under the Madhya Pradesh Motor Spirit and High Speed Diesel Oil (Licensing and Control) Order, 1980. Under sub-rule (1) of Rule 3 of the Petroleum Rules, 2002, license is required to be taken for storage of petroleum products. Therefore, unless a copy of dealership agreement by the petroleum company is supplied to the licensing authority, no such license under the Control Order of 1980 can be granted. Thus, it is inconceivable to hold that the petitioner was not supplied with the copy of dealership agreement. The petitioner coming to the court seeking relief has to place the entire material before the court to claim and establish that he is entitled for the relief. Merely stating that no dealership agreement was ever supplied to him is no answer and he cannot claim relief by merely stating so in his writ petition. The respondent IOCL has also acted equally in irresponsible manner by not providing copy of agreement to decide the lis between the parties. This Court has directed the respondent to file a copy of the dealership agreement then the IOCL, the respondent Company, filed the copy of agreement along with an affidavit of one Sanjay Mathur, Chief Division Retail Sales Manager on 22-6-2013 stating that the subjected dealership agreement is untraceable. The respondent IOCL is a Government company which is State within the meaning of Article 12 of the Constitution of India and has a

duty to act fairly and objectively. The dealership agreement was granted on 5-4-1982 and the respondent continued its business with the petitioner till 2002, but the dealership agreement was not filed by the respondent also to assist the Court to reach to a conclusion and even no details have been shown before the Court to show that the respondent Company lost the dealership agreement though the said dealership agreement was relied upon by the respondent Company while terminating the dealership on 8-4-2002 and no enquiry report has been submitted as to what efforts have been taken to trace the dealership agreement and as to whether responsibility has been fixed for loss of such dealership agreement. Such an act on the part of the respondent IOCL cannot be approved by this Court.

22. The sample of Motor Spirit (MS) was examined by Nishatpura Laboratory of IOCL and the sample failed in Research Octane Number test pursuant to which show cause notice was issued to the petitioner and the petitioner replied on 25-1-2002 that the dealership agreement was terminated on 8-4-2002. The petitioner's contention was that the dates of show cause notice and reply have wrongly been mentioned in the order of termination but that would not make the order illegal as it has been explained in the affidavit that the show cause notice is dated 23-1-2002 and the reply of show cause notice is dated 25-1-2002. Though the order of termination states about serious violation of various terms and conditions of the agreement of dealership, but no details of such violation have been given in the order of termination. However, the respondent IOCL has filed document that on 11-9-1995, the sample was taken from the petitioner's outlet and sample failed in requisite requirement vide Annexure R-12. Likewise, on 9-5-1995, vide Annexure R-14, the sample failed to the specification of specified requirement and as such, the petitioner's sample failed in laboratory test and on account of that, initial 30 days' suspension was ordered. Thus, the petitioner has been subjected to penalty earlier also prior to this termination.

23. The Marketing Discipline Guidelines - 2001, serial No.1, provides that if nature of irregularity is adulteration of MS / HSD, first penalty is fine of Rs.20,000/- and suspension of sales and supplies of all products for 30 days, and the second penal action is termination. Therefore, in the instant case, on 9-5-1995, the petitioner has been imposed penalty of suspension of sales and supplies for 30 days by the respondent IOCL (Annexures R-13 and R-14) and this is the second time where the sample test failed in laboratory test and therefore termination was directed after serving notice and after consideration of reply from the petitioner. Considering the facts and circumstances, it cannot be held that the termination of dealership is unjustified. Accordingly, the order of termination of dealership for failure of sample in laboratory test, is strictly justified.

24. There is an additional reason for upholding the order terminating the dealership agreement of the petitioner. The petitioner immediately after inspection by the officials of the respondents on 8-1-2002, rushed to the civil

court questioning the inspection report dated 8-1-2002 by which sales and supply of his outlet was suspended and also to restrain IOCL not to take further steps and not to terminate the agreement, in which the petitioner's application for temporary injunction seeking stay of operation of memo dated 8-1-2002 was rejected by the trial Court and against which the petitioner preferred miscellaneous appeal also questioning the same, but thereafter, withdrew the civil suit as well as the miscellaneous appeal without reserving liberty to file the writ petition. Therefore, challenge to the inspection report dated 8-1-2002 has become final. The petitioner cannot be, in this writ petition, allowed to contend challenging of the inspection report dated 8-1-2002 as barred by the principle of *res judicata*. (See *Daryao and others v. State of U.P. and others*, AIR 1961 SC 1457, *Gulabchand Chhotalal Parikh v. State of Gujarat*, AIR 1965 SC 1153 and *Union of India v. Nanak Singh*, AIR 1968 SC 1370.

25. Not only this, the petitioner, even after termination of his dealership, indulged in malpractice and found involved in illegal activities by selling petroleum products. Consequently, the licensing authority, in exercise of power conferred under the Control Order of 1980, revoked the license granted to the petitioner under that Order to run the petrol pump and the said order has been affirmed in appeal by the learned Sessions Judge and as such, as on today, the petitioner has no license, as per law, to run the retail outlet.

26. The remedy under Article 226 of the Constitution of India is an equitable remedy and the petitioner approaching the writ court has not come with clean hands, as he has not brought adequate material, even the basic document i.e. the dealership agreement was not brought before the Court upon which his petition rested. The civil suit filed was withdrawn abruptly and unconditionally on refusal of temporary injunction by the trial Court. The petitioner continued with malpractice by selling petroleum products even after termination of dealership agreement which led to revocation of his license by the licensing authority and duly confirmed in appeal by the appellate authority.

27. In view of aforesaid analysis, the writ petition deserves to be and is accordingly dismissed subject to payment of cost of Rs.25,000/- payable to the High Court Legal Services Committee.

28. In view of the observation made in the preceding paragraph (22), the Registrar (Judicial) is directed to send a copy of this order to the Secretary, Department of Petroleum, Government of India for information and appropriate needful action against the erring officials of IOCL, the respondent herein.