
(2016) 09 AHC CK 0124
In the Allahabad High Court
Case No : Writ. C. No. 67004 of 2014

M/S Sainik Krishak Sewa Kendra

APPELLANT

Vs

Indian Oil Corporation Ltd.

RESPONDENT

Date of Decision : 06-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 11 ADJ 565 : (2016) 6 AllWC 5537 : (2016) 118 ALR 820

Hon'ble Judges : V.K. Shukla and Mahesh Chandra Tripathi, JJ.

Bench : Division Bench

Advocate : A.C. Pandey, Advocate, for the Petitioner; Archana Singh, Advocate, for the Respondent

Final Decision : Allowed

Judgement

V.K. Shukla, J.(Oral)—M/S Sainik Krishak Sewa Kendra through its Proprietor Shri Virendra Singh is before this Court assailing the validity of decision dated 22.10.2014 passed by General Manger, Indian Oil Corporation Ltd. refusing to restore the dealership in favour of petitioner in lieu of provisions of Section 14(1)(c) of Specific Relief Act, 1963.

2. Brief background of the case is that petitioner is an Ex-Army personnel and had actively participated in Army Operation in Sri Lanka in Peace Keeping Force in the year 1987 and has sustained serious injuries of bullet in his leg.

3. Indian Oil Corporation has issued an advertisement for commissioning of Krishak Sewa Kendra at Kalwari, District Mirzapur and petitioner has also proceeded to move an application for awarding him dealership of the said retail outlet in defence category. The candidature of petitioner was considered and he was awarded dealership of retail outlet vide a dealership agreement dated 22.03.2006 and the dealership was granted to the petitioner under defence category at Kalwari, District Mirzapur.

4. Petitioner submits that behind his back, inspection of retail outlet was carried

out and in the said inspection that has been so carried out, various irregularities were sought to be pointed out and based on the said inspection report, a fact finding letter dated 28.05.2010 was issued to the petitioner, to which he submitted his reply on 28.05.2010 and as reply submitted by petitioner was not satisfactory, a show cause notice dated 23.08.2010 was issued to the petitioner. Petitioner has submitted a detailed and elaborate reply dated 06.09.2010 and thereafter his agreement in question was cancelled vide order dated 11/21.04.2011. Petitioner, at the said point of time, has preferred Writ Petition No. 30446 of 2011 (M/s Sainik Krishak Sewa Kendra v. Union of India and others) and then at the said juncture, petitioner was relegated to prefer appeal. Petitioner, thereafter, has preferred appeal before the Appellate Authority and the said appeal was dismissed by the Appellate Authority i.e. Executive Director (Retail Sales) Indian Oil Corporation (Mktg. Division), Indian Oil Bhawan, Mumbai. Against the order of Appellate Authority, petitioner has preferred Writ Petition No. 71050 of 2011 (M/s Sainik Krishak Sewa Kendra v. Union of India and others) and this Court on 09.12.2011 relegated the petitioner to avail the remedy that is provided under Clause 69 of the Agreement executed between the parties to invoke the Arbitration Clause.

5. In such a situation and in this background, the Arbitrator was appointed by Director (Marketing) of the Corporation vide a letter dated 22.03.2012 and thereafter the Arbitrator took up the matter and ultimately he has proceeded to give award on 27.02.2013 in following terms:

"A. The alleged Inspection report dated 26.05.2010 carried out at the Retail Outlet M/s Sainik Krishak Sewa Kendra is hereby struck down as been vitiated and mala fide. The consequent actions based on this inspection report are null and void.

B. Respondent Corporation Ltd. is directed to review its decisions which were based on the inspection report dated 26.05.2010.

C. A cost of Rs. 30000/- to be paid by the respondent to Claimant, Sh. Virendra Singh towards Arbitration cost."

6. Against the award in question, the Indian Oil Corporation Ltd. initiated proceedings under Section 34 of the Arbitration and Conciliation Act, 1996 by filing Misc. Case no.570 of 2013 and the District Judge, Allahabad on 09.12.2013 proceeded to reject the said objection under Section 34 of the Arbitration and Conciliation Act, 1996 being time barred.

7. The Authorities on the spot, in spite of the fact that Arbitrator had proceeded to give award in favour of petitioner, were not at all restoring back the petrol pump of petitioner and in this background, petitioner had preferred Writ Petition No. 15466 of 2014 (M/s Sainik Krishak Sewa Kendra v. Director Marketing India Oil Corporation Ltd. & others) and this Court on 12.03.2014 proceeded to pass following order:

"Heard learned counsel for the petitioner and Smt. Archana Singh for the respondent-Indian Oil Corporation.

In a dispute relating to the termination of a dealership of the petitioner a grievance was raised before this Court by the petitioner which was disposed of on the ground that the petitioner may invoke the arbitration clause under the agreement.

Consequently, the arbitrator was appointed who gave his award on 27.2.2013, copy of the award has been filed on record. The respondent-Indian Oil Corporation filed objections against the said award under Section 34 of the U.P. Arbitration and Conciliation Act, 1996 which came to be rejected on 9.12.2013. The petitioner has now come up before this Court praying for a mandamus to enforce the award.

Learned counsel submits that the terminology of the award is such that it should be enforced in a manner so as to restore the petrol pump of the petitioner.

Whatever be the nature of the award, so far as its enforcement is concerned, the provision under the 1996 Act is Section 36 and therefore the petitioner will have to apply under Section 36 of the said Act for the said purpose.

Consequently, we are not inclined to entertain this petition without prejudice to the rights of the petitioner to file an appropriate application under Section 36 of the 1996 Act."

8. This is an accepted position that an application under Section 36 of the Arbitration and Conciliation Act, 1996 has been filed and the same is pending and during the pendency of the same, the General Manager has proceeded to pass a review order and as per the same, the termination order passed earlier had been reviewed and damages has been sought to be awarded to the petitioner for the notice period which is three months and mention has been made that dealership cannot be restored in view of the provisions of Section 14(1)(c) of Specific Relief Act, 1963 and thus impelling the petitioner to be before this Court.

9. On the presentation of the Writ Petition in question, this Court on 11.12.2014 had proceeded to pass following order:

"Heard Sri A.C. Pandey, learned counsel for petitioner and Mrs. Archana Singh, learned counsel appearing for the respondents-Indian Oil and perused the records. The Arbitrator in his award dated 27.2.2013 has directed as under :

"A. The alleged inspection report dated 26.5.2010 carried out at the Retail Outlet of M/S. Sainik Krishak Sewa Kendra is hereby struck down as been vitiated and malafide. The consequent actions based on this inspection report are null and void.

B. Respondent Corporation Ltd. is directed to review its decisions which were based on the inspection report dated 26.5.2010.

C. A cost of Rs. 30000/- to be paid by the respondent to the Claimant, Sh. Virendra Singh towards Arbitration cost."

It appears that the distributorship of the petitioner was arbitrarily terminated by the Indian Oil Corporation. Once the arbitrator has given its award and the objection of the respondents-Indian Oil against the award under Section 34 of Arbitration Act has been rejected, normally the award ought to have been executed.

Learned counsel appearing for the respondents prays for and is granted three weeks time to file counter affidavit. The petitioner will have one week thereafter to file rejoinder affidavit.

List immediately thereafter.

Meanwhile the effect and operation of the impugned order dated 22.10.2014 passed by the respondent no. 1? The General Manager, Indian Oil Corporation Ltd. Shall remain stayed."

10. Thereafter Counter Affidavit has been filed on behalf of respondents justifying the action so taken and to the said Counter Affidavit, Rejoinder Affidavit has been filed and thereafter with the consent of parties, present Writ Petition has been taken up for final hearing and disposal.

11. Shri A.C. Pandey, counsel for the petitioner submitted before this Court that exercise of authority, in the present case by the Indian Oil Corporation, is nothing but misuse of authority in the peculiar backdrop of the case and the fact of the matter is that agreement in question has been arbitrarily cancelled and accordingly, the Writ Petition deserves to be allowed.

12. Request made by the petitioner has been resisted by Smt. Archana Singh, Advocate by submitting that action that has been so taken is strictly in consonance with the terms and conditions of the agreement and in view of the provisions as contained under Section 14(1)(c) of the Specific Relief Act, 1963, no relief can be accorded to the petitioner as damages is the only remedy and the said damages have already been directed to be ensured.

13. After respective arguments have been advanced, the factual situation that is so emerging before us is that petitioner was awarded dealership of retail outlet under defence category at Kalwari, District Mirzapur based on the dealership agreement dated 22.03.2006. This is an accepted position that based on the inspection of the retail outlet carried out by Assistant Manager (RS) Mirzapur on 26.05.2010, the agreement in question was sought to be cancelled and thereafter appeal preferred against the same has been rejected and then the matter has been referred to the Arbitrator for being decided. The Arbitrator concerned, on the basis of evidence that has been so adduced, on 27.02.2013 has recorded a categorical finding that the alleged inspection report dated 26.05.2010 carried out at the Retail Outlet M/s Sainik Krishak Sewa Kendra was illegal and accordingly struck down being vitiated and malafide. The consequent

actions based on this inspection report has been declared null and void. The Arbitrator has also proceeded to make a mention that respondent Corporation shall also review its decisions, which were based on the inspection report dated 26.05.2010 and cost of Rs.30000/- was directed to be paid by the respondent to claimant, Sh. Virendra Singh towards Arbitration cost. The objections preferred against the award of Arbitrator dated 27.02.2013 was also turned down being time barred in Misc. Case no.570 of 2013 vide a judgement dated 09.12.2013 passed by the District Judge, Allahabad and the net effect of the same is that award in question has become enforceable in law.

14. On one hand, Indian Oil Corporation has proceeded to prefer its objections against the award and the said objections in question have also been turned down being time barred and thus the net effect of the same is that award has attained finality. At this juncture, taking advantage of the fact that in the award in question, respondent corporation was directed to review its decision, which were based on the inspection report dated 26.05.2010, the impugned order dated 22.10.2014 has been passed by the General Manger, Indian Oil Corporation Ltd. refusing to restore the dealership in favour of petitioner in lieu of provisions of Section 14(1)(c) of Specific Relief Act, 1963.

15. The Corporation was directed to review its decision, which were based on the inspection report dated 26.05.2010 as based on the inspection report, earlier cancellation order has been set aside by Arbitrator by declaring action to be null and void and the net effect of the same was that once the award has been passed declaring the entire action as null and void, then the agreement in question stood revived and whatever decision was required to be taken by the Corporation, the same was required to be consequential action but in the present case, the Corporation concerned instead of proceeding to restore the dealership of the petitioner, have proceeded to award damages for the notice period which is three months and mention has been made that dealership cannot be revived under the provisions of Section 14(1)(c) of the Specific Relief Act, 1963.

16. At the point of time when the Oil Corporation has proceeded to pass the order impugned, it has proceeded to place reliance on the judgement in the case of Indian Oil Corporation Limited v. Amritsar Gas (1991) 1 SCC 533.

17. The judgement in the case of Indian Oil Corporation Limited v. Amritsar Gas (supra) has been subject matter of consideration by the Apex Court on two subsequent occasions in the case of Hindustan Petroleum Corporation Limited and others v. Super Highway Services and another 2010 (3) SCC 321, wherein the Apex Court has proceeded to make a mention that cancellation of dealership agreement is a serious business and cannot be taken lightly and the Authority concerned has to act fairly and in complete adherence to rules/guidelines framed. Relevant extract of the said judgement is being extracted below:

"The cancellation of dealership agreement of a party is a serious business and cannot be taken lightly. In order to justify the action taken to terminate such an

agreement, the concerned authority has to act fairly and in complete adherence to the rules/guidelines framed for the said purpose. The non-service of notice to the aggrieved person before termination of his dealership agreement also offends the well- established principle that no person should be condemned unheard. It was the duty of the petitioner to ensure that the Respondent No.1 was given a hearing or at least serious attempts were made to serve him with notice of the proceedings before terminating his agreement.

In the instant case, we are inclined to agree with Mr. Bhatt's submissions that the High Court did not commit any error in allowing the writ petition filed by the Respondent No.1 herein, upon holding that notice of the Laboratory Test to be conducted at the Barauni Terminal had not been served upon the Respondent No.1, which has caused severe prejudice to the said respondent since its dealership agreement was terminated on the basis of the findings of such Test. Admittedly the dealership agreement was terminated on the ground that the product supplied by the petitioner corporation was contaminated by the respondent. Such contamination was sought to be proved by testing the T.T. retention sample in the laboratory at Barauni Terminal.

The Guidelines being followed by the Corporation require that the dealer should be given prior notice regarding the test so that he or his representative also can be present when the test is conducted. The said requirement is in accordance with the principles of natural justice and the need for fairness in the matter of terminating the dealership agreement and it cannot be made an empty formality. Notice should be served on the dealer sufficiently early so as to give him adequate time and opportunity to arrange for his presence during the test and there should be admissible evidence for such service of notice on the dealer. Strict adherence to the above requirement is essential, in view of the possibility of manipulation in the conduct of the test, if it is conducted behind the back of the dealer.

In the present case, there is no admissible evidence to prove service of notice on the respondent or refusal of notice by the respondent. Further, the notice dated 28.05.2008 which was allegedly refused by respondent, did not give him adequate time to arrange for the presence of himself or his representative during the test to be conducted at 3.00 PM on 29.05.2008. It is also to be noted that the endorsement regarding the alleged refusal is dated 29.05.2008 itself. Thus, the termination of the dealership agreement of the respondent was arbitrary, illegal and in violation of the principles of natural justice."

18. Apex Court in the case of Indian Oil Corporation v. Niloufer Siddqui in Civil Appeal No. 7266 of 2009 decided on 01.12.2015 has considered the provisions of Section 14(1)(c) and has concluded that Indian Oil Corporation Ltd. being a Government of India undertaking is bound to act fairly and its conduct is subject to scrutiny on the touchstone of Article 14 of the Constitution of India and the said provision would not at all give an unfettered right to terminate the distributorship without assigning any reason and unilateral termination of

distributorship without assigning any reason which is liable to be read down in the light of Article 14 of Constitution of India as well as observations made by this court in Central Inland Water Corporation Limited's case (supra). The relevant paragraph of the said judgement are being extracted below:

"27. It was further contended by him that IOCL, being a Government of India Undertaking is bound to act fairly and its conduct is subject to scrutiny on the touchstone of Article 14 of the Constitution of India. He further submitted that it is clear from the evidence on record that the action of IOCL was high handed and arbitrary. He placed strong reliance upon the decision of this Court in the case of Mahabir Auto Stores and others v. Indian Oil Corporation and others. Paragraph 12 of the aforesaid case reads thus:

"12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in Radha Krishna Agarwal v. State of Bihar. It appears to us, at the outset, that in the facts and circumstances of the case, the respondent company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See Radha Krishna Agarwal v. State of Bihar at p. 462, but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration; it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to E.P. Royappa v. State

of Tamil Nadu; *Maneka Gandhi v. Union of India*; *Ajay Hasia v. Khalid Mujib Sehravardi*; *R.D. Shetty v. International Airport Authority of India* and also *Dwarkanadas Marfatia and Sons v. Board of Trustees of the Port of Bombay*. It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and nondiscrimination in the type of the transactions and nature of the dealing as in the present case."

19. Apex Court in the same judgement in paragraph 35 held as follows:

"We agree with the contentions advanced by Mr. Sibal that condition no. 8 of the letter of allotment is unconscionable as it gives IOCL an unfettered right to terminate the distributorship without assigning any reason. In the instant case, respondent no.2 is far weaker in economic strength and has no bargaining power with IOCL. At the time when the letter of allotment was issued, respondent no.2 had no other means of livelihood and was dependent on the grant of Indane Gas agency by IOCL for sustenance of himself and family members. The letter of allotment contains standard terms and respondent nos. 2 and 3 had no opportunity to vary the same. Condition no.8 of letter of allotment provides for unilateral termination of distributorship without assigning any reason which is liable to be read down in the light of Article 14 of Constitution of India as well as observations made by this court in *Central Inland Water Corporation Limited's* case (supra). The relevant paragraph cited by the learned senior counsel is reproduced hereunder:

"89. Should then our courts not advance with the times? Should they still continue to cling to outmoded concepts and outworn ideologies? Should we not adjust our thinking caps to match the fashion of the day? Should all jurisprudential development pass us by, leaving us floundering in the sloughs of 19th century theories? Should the strong be permitted to push the weak to the wall? Should they be allowed to ride roughshod over the weak? Should the courts sit back and watch supinely while the strong trample underfoot the rights of the weak? We have a Constitution for our country. Our judges are bound by their oath to "uphold the Constitution and the laws". The Constitution was enacted to secure to all the citizens of this country social and economic justice. Article 14 of the Constitution guarantees to all persons equality before the law and the equal protection of the laws. The principle deducible from the above discussions on this part of the case is in consonance with right and reason, intended to secure social and economic justice and conforms to the mandate of the great equality clause in Article 14. This principle is that the courts will not enforce and will, when called upon to do so, strike down an unfair and unreasonable contract, or an

unfair and unreasonable clause in a contract, entered into between parties who are not equal in bargaining power. It is difficult to give an exhaustive list of all bargains of this type. No court can visualise the different situations which can arise in the affairs of men. One can only attempt to give some illustrations. For instance, the above principle will apply where the inequality of bargaining power is the result of the great disparity in the economic strength of the contracting parties. It will apply where the inequality is the result of circumstances, whether of the creation of the parties or not. It will apply to situations in which the weaker party is in a position in which he can obtain goods or services or means of livelihood only upon the terms imposed by the stronger party or go without them. It will also apply where a man has no choice, or rather no meaningful choice, but to give his assent to a contract or to sign on the dotted line in a prescribed or standard form or to accept a set of rules as part of the contract, however unfair, unreasonable and unconscionable a clause in that contract or form or rules may be. This principle, however, will not apply where the bargaining power of the contracting parties is equal or almost equal. This principle may not apply where both parties are businessmen and the contract is a commercial transaction. In today's complex world of giant corporations with their vast infrastructural organisations and with the State through its instrumentalities and agencies entering into almost every branch of industry and commerce, there can be myriad situations which result in unfair and unreasonable bargains between parties possessing wholly disproportionate and unequal bargaining power. These cases can neither be enumerated nor fully illustrated. The court must judge each case on its own facts and circumstances."

Further, it has been rightly contended by the learned senior counsel Mr. Sibal by placing reliance upon Mahabir Auto Stores's case (supra) that IOCL being a Government of India Undertaking is bound to act fairly, reasonably and its conduct is subject to scrutiny on the touchstone of Article 14 of the Constitution of India."

20. Apex Court in the same judgement in reference of applicability of Section 14(1)(c) of Specific Relief Act, 1963 has held as follows:

"Ms. Pinky Anand, the learned Additional Solicitor General on behalf of the appellant-IOCL contended that the High Court has erred in granting the relief of restoration of distributorship as the same is contrary to the provision of Section 14(1)(c) of the Specific Relief Act, 1963 (for short "the Act"). She further contended that the agreement in the instant case is determinable in nature and as per the provision of Section 14 (1)(c) of the Act, the agreement which is determinable in nature cannot be specifically enforced by the court. Thus, the High Court has erroneously held that the provision of Section 14(1)(c) of the Act is not applicable to the facts situation of the case.

She further contended that the High Court has wrongly directed IOCL to restore the terminated distributorship as the same is bad in law. She submitted that once a distributorship, even if it is terminated in breach of the contract, cannot

be restored in favour of the respondent no. 2 and the only remedy available is to claim damages from IOCL. She placed strong reliance upon the judgment of this Court in the case of *Indian Oil Corporation Ltd. v. Amritsar Gas Services & Ors.*, (1991) 1 SCC 533

On the other hand, Mr. Kapil Sibal, the learned senior counsel contended that the question of maintainability of suit under Section 14(1)(c) of the Act was never raised by IOCL either before the trial court or before the first appellate court. He further submitted that it is apparent from the letter of allotment and the conduct of the parties that neither the contract was revocable nor it had become void for any reason. Thus, the provision of Section 14(1)(c) of the Act is not attracted in the instant case as has been rightly held by the High Court.

He further contended that the *Amritsar Gas Services & Ors.* case (supra) relied upon by IOCL in its contentions has no relevance in the instant case for the reason that the said case relates to the Law of Arbitration. In the instant case, it is clear from the letter of allotment that there was no arbitration clause enumerated therein to attract the Law of Arbitration and related case laws.

We agree with the contentions advanced by the Mr. Sibal. The High Court in the impugned judgment and order has rightly held that the provision under section 14(1)(c) of the Act is not applicable to the facts and circumstances of the instant case. It held thus:

"10.(iii) Furthermore, from the terms of agreement, namely, the letter of allotment and the conduct of the parties, it appears that neither the contract was revocable nor it had become void for any reason whatsoever. Hence, provision of Section 14(1)(c) of the Specific Relief Act is not applicable to the facts and circumstances of the instant case and the suit cannot be legally held to be maintainable under the said provision?"

On the issue of cost, we are of the opinion that since the respondents have been litigating for a period of around 37 years, spending precious time in the courts of law seeking justice for themselves, they are entitled thereto in the facts and circumstances of the case. The respondent nos. 2 and 3 are ex-servicemen in whose favour the distributorship was awarded, the same was terminated arbitrarily and unfairly. This conduct on the part of IOCL defeats the laudable object of the scheme of the Government of India by which distributorship was allotted in favour of the ex-defence personnel, war-widows and dependants. Thus, respondent nos. 1 & 2 deserve to be awarded with costs.

Accordingly, we pass the following order:

(i) This Civil Appeal is dismissed. The order dated 13.12.2007 granting stay shall stand vacated.

(ii) We direct the appellant-IOCL to restore the LPG distributorship in favour of respondent nos. 1 or 2 and 3 forthwith and submit a compliance report to this court.

(iii) The cost of Rs. 1 lakh be paid to respondent nos. 1 and 2 within four weeks from the date of receipt of the copy of the Judgment.

(iv) All pending applications are disposed of."

21. On the parameters that has been settled by the Apex Court in the case of Indian Oil Corporation v. Niloufer Siddiqui(supra), as far as the case in hand is concerned what we see that as far as petitioner is concerned, he is an ex-defence personnel and by virtue of being ex-defence personnel, he was allocated the retail outlet in question and this much is also clearly reflected that agreement in question in favour of petitioner has been sought to be cancelled based on the inspection that has been so carried out. The said inspection, on the face of it, has been declared to be illegal and entire action pursuant to the said inspection has been declared to be null and void.

22. Once the fact of the matter is that Indian Oil Corporation has lost the case before the Arbitrator and even failed before the District Judge also, then, in the facts of the case, can they be permitted to cancel the agreement in question as it has been sought to be done. The answer would be "No" for the simple reason that what cannot be achieved directly, the same can not be permitted to be achieved indirectly.

Conferment of authority to cancel the agreement implicit in itself that the power conferred must be informed by reasons and should be free from arbitrariness. Indian Oil Corporation falls within the scope and ambit of Article 12 of the Constitution of India and they have to act fairly and they cannot proceed to find ways to defeat the legitimate right of the petitioner that has found favour before the Arbitrator and before the District Judge. Even before us the Corporation has miserably failed to demonstrate the background that impelled the Corporation to take action. The earlier action is being pointed out that on inspection large scale illegalities have been found and accordingly once discretion is there to cancel the agreement, action has been taken. No one doubts this fact that authority to terminate dealership is there, but the larger issue is as to whether the authority of termination has been validly exercised. Totality of circumstances are speaking for itself that having failed before the Arbitrator and District Judge, such action has been taken. In the facts of the case, action taken has to be accepted as arbitrary and unreasonable as in the garb of review, such action could not have been taken.

23. Once the action of the Corporation is not fair, then, in our considered opinion, the case in hand is squarely covered by the judgement of the Apex Court in the case of Indian Oil Corporation Ltd. v. Niloufer Siddiqui, (supra) and here also petitioner is an Ex-Defence personnel, in whose favour dealership has been awarded, and the conduct of Corporation has the tenets of defeating laudable object of the Scheme of Government by which distributorship has been awarded to Ex-Defence personnel. The Indian Oil Corporation is directed to take up further follow up action in accordance with law, preferably within next three months

from the date of production of certified copy of this order.

24. With this, Writ Petition is allowed.