

(1993) 01 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1358 of 1992

Pali Filling Station	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 19-01-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Essential Commodities Act, 1955 — Section 3

Citation : AIR 1993 Raj 138 : (1993) 1 RLW 9 : (1993) 2 WLC 111

Hon'ble Judges : Rajendra Saxena, J

Bench : Single Bench

Advocate : N.N. Mathur, Adv assisted by Sandeep Mehta, for the Appellant; S.K. Vyas, Additional Government Advocate, R.C. Maheshwari, M.D. Purohit and K.N. Joshi, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Saxena, J.—The petitioner firm through this writ petition has challenged the validity and legality of order dated 29-2-92 (Annex. 6), whereby the District Collector (Supply), Pali suspended its licence under Clause 11 of the Rajasthan Petroleum Products (Licensing and Control) Order, 1990 (hereinafter referred to as "the Order, 1990") for a period of 30 days as well as the order dated 31-3-92 (Annex. 14) passed by the District Supply Officer, Pali (respondent No. 6) cancelling its licence No.32/91 under Clause 11 of the Order, 1990 and has prayed that the said orders be declared illegal and void and be quashed.

2. The petitioner is a proprietary firm and Shanker Dan is its proprietor. Shankerdam was appointed as a dealer for the retail out let of petroleum Products at Ramasia, Pali by the Indian Oil Corporation (respondent No. 4) in the year 1976. However, for the reasons and circumstances best known to the respondent No. 4, neither any formal letter of appointment was issued nor the dealership agreement was executed. On the other hand, a letter dated 27th May, 1976 (Annex. 1) was received from the District Manager of respondent No. 4

wherein it was intimated that it was proposed to award the retail out let dealership in the names of Sarva Shri Shanker Dan Charan and Sidharth Charan. (respondent No. 5). It is the case of the petitioner that since Shri Shanker Dan Charan had made the application for appointment as a dealer in his own name and not with respondent No. 5, he made an objection to respondent No. 4; that thereupon Shanker Dan's objection was accepted and respondent No. 4 rectified its error and issued letter dated 28-9-76 (Annex. 2) to the Collector and District Magistrate, Pali informing that Shri Shanker Dan Charan was appointed as a dealer for the proposed diesel filling station at Sumerpur-Pali road near Kilometer stone 6 at Ramasia and requested that a no objection certificate and approval of the site plan be sent. Thereafter, a no objection certificate was issued in favour of Shanker Dan, who started his business. It is alleged that Shanker Dan purchased the agricultural land, got its conversion for the installation of the diesel pump and the lease-deed of the land was also issued in his favour. Shanker Dan further got installed the electrical and water connections as well as the telephone and petitioner's business was going on smoothly. But to its utter surprise, respondent No. 4 issued a notice dated 26-3-90 (Annex. 3) alleging that the retail out let dealership at Ramasia was awarded jointly in the name of Shri Shanker Dan Charan and Sidharth Charan in terms of their appointment letter dated 11-5-76 (Annex. Rule 4/2); that it had come to their knowledge that without their prior written permission, the petitioner had effected several changes in the constitution of the firm immediately after the appointment letter and thereafter had contravened Clause 6(a) and (b) of the said appointment letter. Respondent No. 4, therefore, asked the petitioner to show cause within 30 days as to why action terminating its dealership should not be taken. The Petitioner submitted its reply dated 26-4-90 (Annex. 4) refuting these allegations and asserted that no letter of appointment as dealer jointly with Sidharth Charan was ever received by it nor any dealership agreement was entered into regarding the said retail out let. It was further asserted that Shri Sidharth Charan (respondent No. 5) was never appointed as a dealer jointly with Shri Shanker Dan Charan. Thereafter, on 28-4-90, the petitioner filed a suit in the Court of Civil Judge, Pali against respondent No. 4 for the relief of perpetual injunction challenging the notice Annexure-3. The petitioner also filed an application for temporary injunction under Order 39, Rules 1 and 2 read with Section 151, CPC and the learned Civil Judge by his order dated 26-4-90 directed the respondent No. 4 to maintain status quo. It is the case of the petitioner that Shri Sidharth Charan, respondent No. 5, who was selected in the IAS in the year 1983, filed an application in the said suit for his impleadment as a party which is still pending. Thereafter, on 4-2-92, respondent No. 5 also filed a criminal complaint in the Court of Munsif and Judicial Magistrate, Pali against the petitioner and two others for the offences under Sections 418, 467, 471 and 477 read with Section 120B IPC alleging inter alia that in fact the disputed retail out let dealership had been awarded jointly in their favour, but Shanker Dan Charan concealed the said fact from him and further more forged documents to get the said dealership granted in his exclusive name. The Judicial Magistrate transmitted that complaint to the

S.H.C., P.S. Sadar, Pali u/s 156(3), Cr.P.C. for investigation, who registered crime No. 10/92. It is alleged that Sidharth Charan (respondent No. 5), who is an IAS Officer, malafidely and abusing his office managed to get an application moved by the Superintendent of Police, Pali to Shri Tapeswar Panwar, IAS (respondent No. 7), the then Collector, Pali for terminating the licence issued in favour of the petitioner firm under the provisions of Order, 1990 and that in pursuance thereof respondent No. 2 issued order dated 29-2-92 (Annexure. 6) suspending its licence for a period of 30 days. It is the case of the petitioner that neither any notice nor an opportunity to show cause was given to it by the Collector and that its licence was suspended malafidely and arbitrarily. The petitioner made a representation dated 1-3-91 (Annex. 7) to the Collector and the S. P., Pali wherein he specifically mentioned that the dealership was not issued in favour of Shanker Dan Charan; that all the licences and permissions were issued in the name of M/s. Pali Filling Station of which Shri Shanker Dan was the sole proprietor; that in the year 1980 Sidharth had applied for LPG dealership for Jodhpur, who in his affidavit had specifically deposed that he did not have any link/association with any petroleum company; that in the year 1984 Sidharth, with a mala fide intention, had made a complaint against the petitioner before the respondent No. 4, and that a civil suit for perpetual injunction filed by the petitioner was pending in the Court of Civil Judge wherein a stay order was issued. It was also mentioned therein that thereafter Sidharth had lodged an FIR against Shanker Dan, who was granted anticipatory bail. It was mentioned in the said representation that Sidharth had demanded Rs. 1.50 lacs from the petitioner for making an application for withdrawal of his name from the letter of intent and thus he was trying to black-mail the petitioner firm. It is the case of the petitioner that on 3-3-92 Shri M. R. Sharma, District Supply Officer, Pali (respondent No. 8) issued a show cause notice (Annex. 10) to it, In the said notice, it was stated that the S.H.O., Pali on investigation was found certain irregularities. It was pointed out that in the year 1976, Sidarth got issued a joint dealership in the name of Sarva Shri Shanker Dan and Sidharth for the Pali Filling Station, that Shanker Dan by committing forgery removed the name of Sidharth and procured the appointment letter in his own name from respondent No. 4 and has thus, cheated respondent No. 5. It was further alleged in notice Annex, 10 that Shanker Dan had obtained a licence No. 32/ 91 on the basis of a forged document. The petitioner firm submitted its reply dated 20-3-91 (Annex. 11) categorically refuting the said allegations along with the copies of the application dated 6-5-76 (Annex. 12) and the Bank Draft of Rs.25,000/- deposited by Shanker Dan as security amount for the Pali Filling Station. The District Supply Officer (respondent Nos. 6-8) held that from the notice dated 26-3-90 (Annex. 3) issued by I.O.C. it was proved that Shanker Dan and Sidharth had jointly filed the application for dealership of the Pali Filling Station, that the application dated 31-1-91 for grant of licence filed by the petitioner under Clause 4(i)(a) of Order 1990 was incomplete; that many facts therein were concealed; and that the petitioner had procured the licence by submitting forged documents. He observed that it was also a matter for consideration that when

the letter for proposal for the grant of dealership was issued by the I.O.C. in the joint name of Shankerdan and Sidharth Charan then how the dealership was issued exclusively in the name of Shankerdan and that on this aspect, the petitioner has not given any explanation. He further observed that the N.O.C. issued by the District Magistrate, Pali in favour of Shankerdan pertained to the conversion of the agricultural land, which had no direct relation with the dealership in dispute. He held that since the petitioner firm did not submit the agreement executed, between it and the IOC, it raised a suspicion about its proprietorship. He further observed that petitioner's contention to the effect that it has not violated any condition of the licence, was immaterial and irrelevant because under Clause 4(i)(a) of Order, 1990 the application has to be verified with the declaration of the applicant that all the facts mentioned therein are correct and that nothing has been concealed but on the other hand, the petitioner has procured licence by filing forged documents. Respondent No. 6, therefore, by his impugned order dated 31-3-92 (Annex. 14) cancelled licence No. 32 issued in favour of M/s. Pali Filling Station under Clause 11 of the Order, 1990.

3. It may be mentioned here that the petitioner had initially filed this writ petition challenging the validity of suspension order dated 29-2-92 (Annex. 6) but since thereafter the said licence was also cancelled by respondent No. 6 by his order dated 31-3-92 (Annex. 14) the same was also challenged and the writ petition was accordingly amended. Respondents Nos. 7 and 8, who were the then Collector, Pali and District Supply Officer, Pali respectively have also been impleaded in their personal capacity.

4. Separate but identical replies have been filed on behalf of respondents Nos. 1 to 3 and 6 to 8 wherein certain preliminary objections have been taken. Firstly, it has been pleaded that since the petitioner firm has not availed the efficacious and alternative remedy available to it under clauses 20 and 21 of Order, 1990 by filing appeal to the Collector and a revision petition to the Divisional Commissioner, this writ petition is not maintainable. Secondly, it has been asserted that this writ petition has not been filed bona-fidely; that it involves so many disputed questions of facts, which cannot be decided without recording the evidence and; that the petitioner has not come with clean hands, suppressed material facts and deliberately pleaded wrong facts, therefore, it is not entitled for any relief under the extraordinary jurisdiction of this court. The third objection is that since a civil suit is pending in the Court of Civil Judge, Pali and the investigation in the FIR registered on the basis of the complaint filed by Sidharth also is pending, this writ petition should not be entertained. On merits, it has been contended that the impugned orders Annexs. 6 and 10 were passed by the Collector and the District Supply Officer respectively legally and that those are neither illegal nor without jurisdiction.

5. The India Oil Company, in its reply has controverted certain facts detailed in the writ petition and asserted that Sarva Shri Shanker Dan and Sidharth Charan

filed a joint application for dealership of Pali Filling Station; that the matter was considered by the Dealership Selection Committee and that one of the basic considerations, which prevailed with the said Committee was that one of the partners of the proposed firm namely Shri Sidharth Charan was B.Sc. (Agriculture) as per its report Annex. Rule 4/1, that pursuant to the recommendations of the selection committee, a joint dealership was awarded in favour of Shankerdan and Sidharth for the retail out let at Ramasia and the letter for retail out let proposal dated 11-5-76 (Annex. Rule 4/2) was issued; that subsequently it has come to the notice of the I.O.C. that Shri Shankerdan Charan had unauthorisedly changed the constitution of the firm, that on 30-12-76 he joined Shri Chhagan Lal Mutha and Smt. Lata Jain as partners without its permission and thereafter he again unauthorisedly changed the constitution of the said firm in the year 1983 w.e.f. 20-11-83 when he held himself as the sole proprietor of the firm M/s. Pali Filling Station. It has also been pleaded that for the said illegal and unauthorised acts of Shankerdan a show cause notice (Annex. 3) was issued to the petitioner firm; that initially diesel filling station was proposed to be established at Summerpur-Pali Road near Kilometer Stone 4 and, therefore, the District Manager (Respondent No. 4) had requested the Collector, Pali by his letter dated 7-6-76 (Annex. Rule 4/3) for issuing a no objection certificate but later on the site was changed and it was decided to have the filling station near Kilometer stone No. 6 and, therefore, in letter dated 28-9-76 (Annex. 2), it was mentioned that their previous letter dated 7-6-76 (Annexure. R/3) be treated as cancelled. It has been asserted that in the letter dated 28-9-76 (Annex. 2) sent by the Sales Officer, Jodhpur to the Collector, the name of one person Shri Shanker Dan was mentioned for the sake of convenience as having been appointed as the dealer for the aforementioned retail out let instead of writing the names of two persons viz., Shanker Dan and Sidharth Charan (Respondent No. 5). It has also been pleaded that since the dealership is granted by the Regional Office, that too after the proper selection by the Selection Committee, the Sales Officer of IOC at Jodhpur had in authority to change the dealership and therefore, letter Annex, 2 is of no consequence. It has also been pleaded that since the dealership was awarded jointly in favour of Shankerdan Charan and Sidharth Charan, the fact of depositing the Security amount of Rs. 25,000/- by Shankerdan alone is of no significance.

6. Respondent No. 5, Sidharth in his reply has averred that the petitioner firm is not proprietary firm; that since he was an unemployed graduate, at the request of Shankerdan Charan, he along with him had submitted an application for the dealership of the disputed diesel out let and that the I.O.C. had awarded joint dealership in their favour but Shankerdan Charan fabricated the letter dated 11-5-76 by removing his name, he has pleaded that since Shankerdan was not capable to establish the filling station for want of financial resources, he deceitfully excludes him (Sidharth) and entered into a partnership with other persons, and that when he came to know about the said fraudulent act of Shankerdan Charan, he filed a criminal case, which is pending. Sidharth has

averred that letter dated 28-9-76 (Annex. 2) was a nullity because it was issued by an authorised person of the Indian Oil Company. He has admitted that petitioner has filed a Civil suit but pleaded that the petitioner firm deliberately did not implead him and obtained an ex parte injunction order and that his application for impleadment is still pending. He, however, did not categorically deny the allegation that by using his official power, he has influenced the Collector. He has asserted that since the matter pertains to a dispute between two partners, therefore, such a matter cannot be decided under Article 226 of the Constitution of India.

7. I have heard the learned counsel for the parties at length and carefully perused the relevant record.

8. It was been vigorously contended on behalf of all respondents that petitioner had remedy of appeal and revision under Clauses 20 and 21 of the Order, 1990 and as such this writ petition is legally not maintainable. On the other hand, the learned counsel for the petitioner firm have argued that since the impugned order (Annex. 6) suspending the licence was passed by the Collector and in continuation thereof, the District Supply Officer, by his impugned order (Annex. 14) cancelled the licence, the petitioner had no efficacious alternative remedy by filing an appeal before the Collector under Clause 20 or a revision before the Commissioner, who was also an IAS Officer and that there were specific allegations that respondent No. 5 Sidharth being an IAS Officer, had influenced the Collector and other officers and that the impugned orders were passed mala fide and those were without jurisdiction. Shri Mathur has also contended that at that time the budget session of the Rajasthan Legislative Assembly was going on and the Commissioner was busy, hence he could not have decided the appeal against the impugned order (Annex. 6) by which the licence was suspended for 30 days. Hence, under these, circumstances, this writ petition was filed, which is maintainable.

9. I have thoughtfully considered the rival contentions. Clause 20 of Order, 1990 lays down that any person aggrieved by an order made by any authority lower in rank than the Collector may appeal to the Collector and if the order is made by the Collector, then may appeal to the Commissioner. Since, order (Annex. 6) was passed by the Collector himself suspending the licence for a period of 30 days only, an appeal could lie before the Commissioner but since the District Supply Officer by his order dated 31 -3-92 (Annex. 14) cancelled the licence itself and order Annex. 6 had become infructuous hence the appeal could not lie before the Collector. The petitioner has shown sufficient reasons for not filing the appeal/revision before the Commissioner. Moreover, the rule that the party, who applies for the issue of a high prerogative writ should before he approaches the High Court under Article 226 of the Constitution of India, have exhausted other remedies open to him under the law, is not one which bars the jurisdiction of the High Court to entertain the petition or to deal with it but is rather a rule which courts have laid down for the exercise of their jurisdiction.

10. In *A.V. Venkateswaran, Collector of Customs, Bombay Vs. Ramchand Sobhraj Wadhvani and Another*, , the Apex Court has held as under :--

"The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Article 226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or nonest and that in all other cases, Courts should not entertain petitions under Article 226, or in any event not grant any relief to such petitioners" cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court."

11. Again in *Baburam Prakash Chandra Maheshwari Vs. Antarim Zila Parishad now Zila Parishad, Muzaffarnagar*, it has been reiterated that the existence of alternative remedy is no bar to writ petition, where it is alleged that the Tribunal has acted according to some provision of law, which was ultra vires or where it is alleged that it acted in violation of principles of natural justice.

12. In *Collector of Customs and Excise, Cochin and Others Vs. A.S. Bava*, the Apex Court has laid down that it is settled that the existence of a remedy by way of revision does not bar the jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution of India.

13. In the instant case, the petitioner has specifically pleaded that the Collector without giving him any opportunity of hearing, had abruptly and arbitrarily suspended the impugned licence just on the filing of a criminal case by respondent No. 5 and on the recommendation of the Superintendent of Police specially when the investigation was pending and no charge-sheet was filed in the Court and as such there was a clear violation of the principles of natural justice. He has further alleged that the District Supply Officer, who is under the direct subordination of Collector, in pursuance to the suspension order Annex. 6, had illegally cancelled the licence without any violation of the conditions of the licence or any provision of Order, 1990, and, therefore, his order (Annex. 14) was also without jurisdiction. He has also levelled allegations of mala fide personally against the Collector and the District Supply Officer and also arrayed them as respondents Nos. 7 and 8. Hence, keeping in view all these facts and

circumstances, I am of the considered opinion that the petitioner has no efficacious and alternative remedy and, therefore, on this ground, the writ jurisdiction of this Court is not barred. On the other hand, there exist sufficient and valid grounds to hold that in the interest of justice, it is a fit case wherein this writ petition should be entertained. Hence, the first preliminary objection raised on behalf of the respondents fails.

14. It has been strenuously argued on behalf of the respondents that the petitioner by fabricating certain documents, has procured the dealership from the I.O.C. (respondent No. 4), that a criminal case has been registered against him at the police station, Sadar, Pali for alleged forgery and criminal conspiracy and, therefore, this Court, should not invoke its extraordinary jurisdiction under Article 226 of the Constitution of India. Apparently, this argument is misconceived and meritless. This is an admitted fact that Shankerdan has been continuously running the disputed retail outlet of petroleum products at Ramasia since, 1976; that for the first time by letter dated 26-3-90 (Annex, 3), the Dy. General Manager of respondent No. 4 issued a show-cause notice to the petitioner alleging that though the retail outlet dealership was awarded jointly the petitioner without permission has effected several changes in the constitution of the firm immediately after the appointment letter was issued and thus has contravened Clause 6(a) and (b) of the said appointment letter. The parties are also at common ground that till this date, the dealership awarded in favour of the petitioner firm has not been cancelled by the I.O.C. and that a civil suit is still pending in the court of civil Judge, Pali for the relief of perpetual injunction restraining respondent No. 4 from cancelling the dealership and that in the said suit, an ad interim injunction has also been issued against the I.O.C. It is also not in dispute that the application of Sidharth Charan (respondent No. 5) for his impleadment as a party in that suit is still pending. Hence, simply because on the criminal complaint filed by respondent No. 5, FIR case No. 10/92 at P. S. Pali, for offences under Sections 418, 467, 417 and 477 read with Section 120B IPC against Shankerdan and two others has been registered and which is still under investigation and wherein no charge-sheet had been filed till the filing of this writ petition, it cannot be assumed or presumed that the petitioner has committed the alleged forgery or has obtained the disputed dealership fraudulently. There has always been a golden thread in the web of criminal jurisprudence of this country that an accused has to be presumed innocent till his guilt is proved to its hilt by adducing clear, cogent and convincing evidence resulting in his conviction. The petitioner has filed letter dated 28-9-76 (Annex. 2) of Sales Officer, Jodhpur, wherein it was specifically mentioned that Shri Shankerdan Charan had been appointed as the dealer of the disputed retail outlet and the Collector was requested to issue a not objection certificate. This fact has been admitted by the respondent No.4 in, its reply but it has been averred that the said letter was without authority. The respondent No.4 has also admitted that the security amount Rs. 25,000/- was deposited by Shri Shankerdan in respect of the disputed retail outlet and that the land was also got converted by him for

installing the disputed retail outlet. It has been alleged by the petitioner that the water, electric and telephone connections on the disputed retail out-let are also in his name. The said facts have not been refuted by any of the respondents. The petitioner has also specifically mentioned about filing of the Civil suit as well as the registration of criminal case at the instance of respondent No. 4 against him. Therefore, at this stage, it cannot be presumed that the petitioner has forged certain documents or fraudulently procured the dealership or that his hands are soiled or that he has not come with clean hands.

15. It is needless to mention that only controversy to be decided in this petition is whether the order (Annex. 6) of the Collector suspending the licence and Order (Annex. 14) of the District Supply Officer cancelling the said licence are unjustified, illegal and without jurisdiction and whether they deserve to be quashed ? The controversy as to whether the dealership of the disputed retail outlet was awarded jointly in the name of Shankerdan and Sidharth by respondent No. 4 or it was awarded exclusively in favour of Shankerdan or whether the petitioner has contravened the terms and conditions of Clause 6(a) and (b) of the alleged appointment letter (Annex. 1), are not to be decided in this writ petition. The controversies as to whether Sidharth Charan was a partner in the petitioner firm, whether he has been cheated Shankerdan and whether the impugned dealership was obtained by Shankerdan fraudulently by using forged documents, can not be decided here. These controversies can only be resolved either by the Civil Court or the criminal Court of competent jurisdiction after reading the evidence. In the instant case, the only controversy to be resolved is as to whether the petitioner firm has contravened any terms and conditions of the licence or has committed any illegality warranting the suspension and cancellation of its licence under the provisions of Order 1990? In such circumstances, it cannot be agitated by the respondents that the petitioner has not come with clean hands or has suppressed material facts and, therefore, this writ-petition does not deserve to be entertained. Therefore, the preliminary objection raised on behalf of the respondents, on this count, also falls to the ground.

16. Another preliminary objection raised on behalf of the respondents is that since the matter involves certain disputed questions of fact, which cannot be decided without recording the evidence and, therefore, this writ petition is not maintainable. I am afraid this argument is also devoid of any force and substance. Firstly, there is no dispute that the petitioner firm viz., M/s. Pali Filling Station was given licence by the District Supply Officer under the Rajasthan Petroleum Products (Licencing and Control) Order, 1979 and thereafter under the Order, 1990 and that it has been continuously running the disputed retail outlet since the year 1976. The only grounds mentioned in impugned orders Annex 6 and Annx. 10 for suspension /cancellation of the licence are that a criminal case No. 10/92 Was registered at Police Station, Sadar, Pali and that by removing the name of Sidharth from the original letters issued by the L.O.C., the dealership was obtained fraudulently by Shankerdan. On the other hand, Clause 11 of the

Order, which deals with the suspension and cancellation of the licence reads as under, :--

"11. Suspension and Cancellation of Licence:-- If any licensee or his agent or Servant or any other person acting on his behalf contravenes any of the terms and conditions of the licence, then, without prejudice to any other action that may be taken against him, under the Essential Commodities Act, 1955 (Central Act 10 of 1955) his licence may be cancelled or suspended by an order in writing of the Licensing Authority:

Provided that no order shall be made under this clause unless the licensee has been given a reasonable opportunity of being heard against the proposed cancellation or suspension:

Provided further that during the pendency or in contemplation of proceedings of cancellation of a licence, the Collector may suspend the licence for a period of thirty days."

17. A bare perusal of the aforementioned clause makes it clear that if any licensee or his agent or servant or any other person acting on his behalf contravenes any of the terms of the licence then his licence can be suspended or cancelled by an order after giving him reasonable opportunity of being heard against such suspension or cancellation. However, during the pendency or contemplation of proceedings of cancellation or suspension of a licence, the Collector may suspend the licence for a period of 30 days. Therefore, a licence can only be cancelled if there is any contravention of the terms and conditions of the licence and not for any other reason. The licencing authority has no jurisdiction or authority to decide the question of title as to who are the partners of the dealership firm or their proprietary dispute inter se. Prescribed form "C" issued under Clause 4(a)(b) of Order 1990 contains the terms and Conditions of the licence and enjoins Upon the licensee to maintain stock register, daily accounts as per terms of condition 3(3), to furnish the licencing authority monthly return in form "D" of the stock received and delivered of each of the petroleum products within five days of the close of the month (condition No. 4), to display at a conspicuous place of his business premises, the opening stock of the Petroleum Products, price per liter and the working hours of the shop (condition No. 5), on demand issued to a customer a cash memo or invoice etc. (condition No. 6), not to refuse to sell petroleum products to any customer while having stocks of the same (condition No. 7), to give all facilities at all reasonable times to the inspecting authorities for inspection of his stocks, accounts, godowns and for taking samples pf the petroleum products for examination (condition No. 8), to comply with the direction given by the State Government or the Collector or the licencing authority (condition No. 9), and not to enter into transaction involving purchase, sale or storage for sate of petroleum products in speculative manner prejudicial to the maintenance and easy availability of their supplies in the market; not to compel the customer to purchase any other item along with petroleum products as a precondition for sale, not to sell any

petroleum product at a price higher than the price fixed by the competent authority and not to keep his premises closed during working hours on any day without exhibiting the reasons for closure and not to contravene the provisions of Order, 1990 or any other law relating to essential commodities for the time being in force (condition No. 11). Apparently, neither in Annexure 6 nor Annexure 14, there is any allegation about the contravention of any of the aforementioned terms and conditions of the licence. Therefore, for the disposal of this writ petition, no complicated or disputed facts are involved requiring the recording of evidence. Hence, this preliminary objection is also without legs and the same crumbles down.

18. On merits, the learned counsel for the petitioner have submitted that the orders Annexure 6 and Annexure 14 are ex facie illegal void and wholly without jurisdiction because neither there is any allegation nor any finding that any of the provisions of the terms and conditions of the licence were contravened by the petitioner firm. On the other hand, the Collector, as well as the D.S.O. have cancelled the licence on different grounds namely, that a criminal case was registered against the petitioner firm and that the petitioner firm obtained the licence by not producing the order of dealership appointment, concealing the fact that the dealership in question was awarded in the joint name of delinquent licensee and Sidharth. According to the teamed counsel for the petitioner, the licence could not have been cancelled on such irrelevant grounds. They have submitted that the impugned orders were passed mala fide at the instance of respondent No. 5, who was an IAS Officer. On the other hand, the learned Dy. Govt. Advocate as well as the learned counsel for other respondents have contended that since the petitioner did not disclose the name of Sidharth as partner of the firm in the application for grant of licence, he had concealed material facts and falsely verified the said application and as such, it was not at all entitled for the issuance of the licence in its favour and, therefore, the impugned orders were not Without-jurisdiction, illegal or passed mala fide. - -

19. It would suffice to add that there was neither any allegation nor any mention in Annex. 6 that the petitioner firm had contravened any terms and conditions of the licence and as such an enquiry was contemplated for the said contravention. On the other hand, it was mentioned therein that Shankerdan Charah in the capacity of proprietor of M/s. Pali Filling Station had procured the dealership fraudulently and obtained the licence for which a criminal case has been registered against him in the police station and that the Superintendent of Police had also recommended for cancellation of the licence. Apparently, on the basis of such an irrelevant ground the impugned licence could not have been suspended without a specific finding passed by a Court of competent jurisdiction on the said allegations. Since, no enquiry was contemplated for the contravention of any terms and conditions of the licence issued under Clause (iv) in favour of the petitioner firm the Collector was not empowered to suspend the licence without giving a reasonable opportunity of being heard to the petitioner against the proposed suspension in view of the first proviso to Clause 11 of the Order, 1990

on the basis of registration of a criminal case or the unproved allegations of forgery etc. Therefore, the order Annex. 6 suspending the licence even for 30 days passed by the Collector was arbitrary, unjustified, unwarranted and without jurisdiction.

20. As regards, the order (Annex. 14) cancelling the licence, it may be mentioned at the very outset that the D.S.O. has also not held that the petitioner firm had contravened any terms and conditions of the licence, On the other hand, it appears that the D.S.O; illegally assumed the jurisdiction of a civil court or criminal court. In Annex. 14, the District Supply Officer has held that it was proved that Shankerdan and Sidharth had jointly filed an application to the Indian Oil Company for dealership, which was proved by a notice dated 26-3-90 (Annex. 3) issued by the I.O.C. Suffice it to say that letter (Annex. 3) is simply a show cause notice. The District Supply Officer has further held that the application filed by the petitioner firm under Clause 4(1)(a) of Order, 1990 was incomplete, wherein many facts were concealed and that by filing forged document, the licence was obtained. The District Supply Officer, however, did not care to give any detail as to how and in what manner the said application for licence was incomplete and what material facts were concealed therein. As mentioned earlier, since the civil and criminal cases are still pending and no final verdict has been given by the Courts of competent civil and criminal jurisdiction, it cannot be held at this stage that the petitioner firm has obtained the licence fraudulently or by forging certain documents. Moreover, it was not the domain of the District Supply Officer to decide as to who were the partners of the petitioner firm, in whose name the dealership was granted or to hold that certain documents alleged to have been filed by the petitioner firm were forged. The District Supply Officer has nowhere given a specific finding in order (Annex. 14) that the petitioner firm had given wrong facts in its application as has been argued by the learned counsel for the respondents in this Court. Therefore, by no stretch of imagination, it cannot be held that the licensee petitioner firm had contravened any terms and conditions of the licence.

21. The District Supply Officer has further held that the petitioner firm was silent as to how the joint dealership awarded by the I.O.C. remained in the exclusive name of Shankerdan and that since the petitioner firm has not submitted the agreement of dealership entered by it with the I.O.C., the proprietary rights of the firm are in doubt. From the reply of the respondent No. 4, as well as the pleading of the petitioner, it stands firmly established that till this date, no agreement regarding the dealership has been executed by the I.O.C. for the reasons best known to them. On the other hand, the Collector had issued the NOC in favour of the petitioner firm. He had also been issuing and renewing the licences in favour of the petitioner firm under the Rajasthan Petroleum Products (Licencing and Control) Order, 1979. Therefore, in such circumstances, the licence issued in favour of the petitioner firm could not have been cancelled on the grounds mentioned in the impugned order Annex. 14 keeping in view the specific provisions of Clause 11 of Order, 1990.

22. The District Supply Officer has further mentioned in order Annex. 14 that petitioner firm's contention that it did not contravene any terms and conditions of the licence was immaterial. Apparently, this observation of the District Supply Officer is against the clear and unambiguous provisions of Clause 11, which specifically lays down that the licence can only be cancelled if the licence contravenes any of its terms and conditions. Hence, it is manifest that the approach of the District Supply Officer was patently faulty, illegal and against the provisions of Clause 11. A perusal of notice dated 26-3-90 (Annex. 3) reveals that the said show cause notice was given by the I.O.C. to M/s. Pali Filling Station. The licence was also issued in favour of M/s. Pali Filling Station. Therefore, there was not a fringe of evidence to establish that the petitioner had falsely verified the contents of the application filed under Clause 4(1)(a) of the Order, 1990. In such circumstances, the only irresistible conclusion that can be drawn is that the Order Annex. 14 cancelling the licence of the petitioner firm was passed on the basis of extraneous considerations and that the same is ex facie without jurisdiction and illegal, which cannot be sustained.

23. No other point was pressed before me.

24. In the premise of the above discussion, I allow this writ petition and quash the order dated 29-2-92 (Annex. 6) passed by the Collector, Pali as well as the order dated 31-3-92 (Annex. 14) passed by the District Supply Officer, Pali cancelling the licence of the petitioner firm. It is also made clear that none of the observations made in this writ petition shall affect the proceedings pending in the civil suit before the Civil Judge, Pali as well as in the investigation proceedings arising out of the criminal complaint filed by respondent No. 5, No order as to costs.