A.F.R.
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2026:AHC-LKO:43245

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

WRIT - C No. - 22251 of 2018

M/s Sardar Baldev Singh and Co. Thru. Prop.Sri Karamjeet Singh
.....Petitioner(s)

Versus

Indian Oil Corporation Ltd. Thru. Executive Director and Ors.
.....Respondent(s)

Counsel for Petitioner(s)	:	Radhika Singh, Richa Mishra, Tushar Hirwani
Counsel for Respondent(s)	:	Ratnesh Chandra, Manish Jauhari

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Ms. Radhika Singh, learned counsel for the petitioner with Ms. Richa Singh, Advocate and Sri Manish Johari, learned counsel appearing for the respondents.

2. By means of the present writ petition, the petitioner has challenged the order dated 04.07.2017 passed by respondent No.3 whereby the retail outlet dealership of the petitioner situated at Tulsipur, District Balrampur, has been terminated. The petitioner has also assailed the appellate order dated 15.05.2018 passed by respondent no.2 dismissing the statutory appeal preferred under Clause 8.9 of the Marketing Discipline Guidelines, 2012 (hereinafter referred to as "MDG-2012").

3. The facts giving rise to the present writ petition, as pleaded by the petitioner, are that the petitioner has been running the aforesaid retail outlet since the year 1973 and claims to have maintained an unblemished record throughout the tenure of the dealership. According to the petitioner, at no point of time was any allegation of adulteration, short delivery or any other malpractice established against him. A dealership

agreement governing the rights and obligations of the parties came to be executed on 16.05.2011.

4. It is the case of the petitioner that pursuant to the Government Order dated 02.05.2017, a joint inspection of the retail outlet was conducted on 10.05.2017 by the authorities concerned. During inspection, in one Tokheim dispensing unit, certain pulsar cables were found joined by adhesive tape and a joint was noticed in the Weights and Measures seal affixed to the motherboard. In another Gilbarco dispensing unit, the Weights and Measures seal of the pulsar at the MS unit was found broken. However, according to the inspection report itself, no additional electronic device, chip or any unauthorized fitting was found inside either of the dispensing units and no discrepancy in the quantity of fuel delivered was detected.

5. Thereafter, the respondent Corporation issued a fact-finding letter dated 02.06.2017 alleging violation of Clauses 5.1.2, 5.1.3 and 5.1.4 of the MDG-2012. The petitioner submitted a detailed reply denying the allegations. Subsequently, a show cause notice dated 13.06.2017 was issued, to which the petitioner submitted his reply on 29.06.2017. The competent authority, not being satisfied with the explanation furnished by the petitioner, passed the order dated 04.07.2017 terminating the dealership. The statutory appeal preferred by the petitioner also came to be dismissed on 15.05.2018. Aggrieved thereby, the present writ petition has been filed.

6. Learned counsel for the petitioner submits that both the impugned orders are arbitrary, illegal and unsustainable in law inasmuch as they proceed merely on suspicion without there being any legally admissible evidence establishing tampering of the dispensing units or manipulation of fuel delivery. It is submitted that the respondents have failed to establish the essential ingredients contemplated under Clause 5.1.4 of the MDG-2012.

7. Elaborating the submissions, learned counsel contends that the dispensing machines, including their motherboard, pulsar card, pulsar

cables, seals and other internal components, exclusively belonged to the respondent Corporation. Their installation, calibration, repairs, maintenance and sealing were carried out only by the engineers of the Corporation, its authorized service agencies and officials of the Weights and Measures Department. The petitioner had neither technical access to nor control over the internal mechanism of the dispensing units and, therefore, no presumption of tampering could legally be drawn against him.

8. Learned counsel further submits that the Tokheim dispensing unit bearing Serial No. D425A104 was an old machine manufactured in the year 2003 and was installed at the petitioner's retail outlet in the year 2008 after being shifted from another outlet. It is submitted that the said machine had repeatedly developed technical defects and had remained non-functional for considerable periods. The respondent Corporation itself had undertaken repairs on several occasions. It is further submitted that even prior to the inspection dated 10.05.2017, the dispensing unit had remained out of order since 23.03.2017 and complaints in that regard had already been lodged by the petitioner. The inspection report itself records that the dispensing unit was not dispensing fuel on the date of inspection. It is, therefore, contended that there existed neither any opportunity nor any motive for the petitioner to manipulate a machine which was admittedly lying defective.

9. Learned counsel next submits that although the inspection team noticed taped joints in certain pulsar cables and a broken seal in another dispensing unit, no additional electronic chip, foreign device or unauthorized fitting was recovered from either of the dispensing units. Likewise, no short delivery, excess delivery or adulteration of fuel was detected during inspection. It is urged that in the absence of these essential features, the respondents could not have concluded that the dispensing mechanism had been tampered with.

10. It is also contended that much before the inspection, the petitioner had addressed a written communication dated 28.04.2017 requesting the respondent Corporation to replace the old and rusted sealing wire. Thus,

the condition of the seal was already within the knowledge of the Corporation. According to the petitioner, during inspection the seal was handled roughly by the inspecting officials, resulting in its breakage, which was thereafter wrongly attributed to the petitioner.

11. Learned counsel for the petitioner further submits that the inspection proceedings themselves stood vitiated for non-compliance with the Government Order dated 02.05.2017 as well as the provisions of the MDG-2012. It is submitted that the inspection team was not constituted in accordance with the prescribed procedure; independent witnesses were not properly associated; mandatory procedure relating to opening, seizure and resealing of the dispensing units was not followed; videography of the inspection was not supplied despite repeated requests; and the recovery memo did not bear the signatures of all mandatory officials, including representatives of the Original Equipment Manufacturer and police personnel.

12. It is further submitted that the respondents have relied only on the presence of joints in the pulsar cable and the condition of the seals to allege tampering. However, neither of these circumstances, by itself, is sufficient to conclusively establish that any unauthorized manipulation or tampering had taken place. In support of the said submission, reliance has been placed upon the technical opinion furnished by the Department of Electronics and Communication Engineering, National Institute of Technology, Karnataka, wherein it has been opined that visual inspection revealing soldering marks, jumper wires or cable joints is insufficient to conclude tampering unless supported by scientific examination, as such features may also arise during repairs or maintenance carried out by authorized personnel.

13. Learned counsel submits that despite seizure of the relevant components during inspection, neither laboratory testing nor any conclusive expert examination was undertaken to establish actual tampering of the dispensing mechanism. According to her, in the absence of scientific evidence, actual short delivery or recovery of any

unauthorized electronic device, the impugned orders rest merely upon conjectures and suspicion and, therefore, deserve to be quashed.

14. In support of the submissions advanced, learned counsel for the petitioner has placed reliance upon the following judgments :-

(i) **Chairman Indian Oil Corporation and others Vs. M/s Lallite Filling Centre and another [Special Appeal Defective No.145 of 2026]**. Relevant paragraphs 24, 28, 29, 30 and 31 are being quoted as under :-

> *"24. The other limb of the submission of the learned counsel for the appellants, touching the merit of the dispute, if examined, would reveal that Clause 5.1.4 of the MDG refers to an additional/unauthorized fittings/gears found in dispensing units/tampering with dispensing units. It further provides that any mechanism or fitting or gear found fitted in the dispensing unit which is likely to manipulate delivery or any addition, removal, replacement or manipulation of any part of the dispensing units including any mechanism, gear, micro-processor chip, electronic parts/OEM Software, if found will be deemed to be tampering of the dispensing units.*
>
> *28. The learned Single Judge also noticed that even earlier the respondent had complained regarding irregular functioning of the said dispensing unit and it was found that the said unit was making excess delivery. In such circumstances, no benefit could accrue to the respondent and it is admittedly, not a case of short dispensing of fuel. The only unit which was said to have been tampered was actually a non-functional unit from which no sales were carried out.*
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> *29. The learned Single Judge also noticed that the inspection of the outlet was carried out on 08.06.2017 whereas the dealership was terminated on 15.07.2017. It also noticed that at the time of termination, the appellants had not even obtained*

> *the report from its Original Equipment Manufacturer (OEM). The report of the OEM was obtained by the appellants on 18.12.2017, almost after 5 months of the termination.*
>
> *30. The learned Single Judge has also noticed that the basic premise upon which the dealership was terminated was based on tampering of dispensing unit which was clearly arbitrary for the reason that the Unit which was found to be tampered was already non-functional, from which no sales were made. Coupled with the fact that the other units were all found to be intact with the seals of the Weights and Measures Department. Without even waiting for the report of the OEM, the termination order was passed which clearly amounted to pre-judging the issue and thus on the basis of such findings, the writ petition was allowed. It also considered the earlier litigation inter se the parties and thereafter taking a holistic view, it allowed the writ petition.*
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> *31. This Court having considered the aforesaid judgment find that the appellants could not dispute the fact that the seals of the Weights and Measures Department was found intact. The appellant also could not dispute that merely upon the basis of the inspection report, the agreement was terminated while the report from the OEM came almost 5 months thereafter."*

(ii) **Indian Oil Corporation Ltd. Vs. M/s Modern Service Station [Special Appeal No.456 of 2023]**. Relevant paragraphs 24 to 27 are being quoted as under :-

> *"24. Having considered the rival submissions of the parties, we are definitely of the view that the learned Single Judge while dealing with the case of the petitioner correctly came to the conclusion that when a particular defence which was taken by the petitioner was not considered then that itself*

becomes a violation of the principles of natural justice. In the instant case, the petitioner had taken a definite stand that when on 16.9.2020, the engineer of M/s. GVR Mr. Girendra had opened the unit and had broken the seal then the dispensing unit was no longer in the control of the petitioner/respondents and there was every possibility of the seal being tampered and the unit being fiddled with by the engineer of M/s. GVR Mr. Girendra. When the defence of the petitioner was not considered the learned Single Judge correctly came to the conclusion that the petitioner was wronged inasmuch as there was a definite violation of principles of natural justice. Also the learned Single Judge rightly put an end to the matter and did not remand the case for a fresh appraisal. He, therefore, rightly relied upon the decision in M/s Chaudhary Filling Point, Kazipur through its Prop. And another vs. State of U.P. through Prin. Secy. Food & Civil Supplies and Ors. reported in 2019 (3) ADJ 345 the relevant paragraph no. 39 is being reproduced here as under:

"39. As seen from the reading of the impugned order, the only reason assigned for being not satisfied with the explanation offered by the petitioner was that there was tampering in the DU and pulsar card contains certain soldering marks. However, what was not considered by the competent authority was that at what point of time this unauthorized tampering/soldering was done in the dispensing unit and how the dealer is manipulating the distribution of fuel. No material, much less credible one has been brought on record by the respondents to disclose the unauthorized access to the equipment by the petitioner. It was specific stand of the petitioner that periodically the Weights and Measurements Department officials inspected the seals and they were found to be intact. Further more, what is the impact on tampering/soldering in

> *delivery unit is not disclosed. How the dealer can manipulate delivery of fuel by inserting such unit is not explained. The only objective of a dealer to tamper with dispensing unit is to manipulate delivery of fuel. In this case, the delivery of fuel was found to be accurate prior to checking of unit and after the checking. Furthermore, the defence of the petitioner that it is possible that the supplier himself might have done soldering while repairing for proper functioning of the unit by supplier himself cannot be brushed aside."*
>
> *25. This Appellate Court, thus, finds that when the main defence of the petitioner that i.e. the tampering was, in fact, a result of the act of the Original Equipment Manufacturer and that the petitioner had no hand in it was not considered then definitely the petitionerâ€™s interest was prejudiced.*
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> *26. We are thus of the view that the writ petition was rightly allowed and the matter was also rightly not remanded back. This we say as the appellants definitely had not been able to bring on record any fact by which it could be ascertained that the dealer had an authorized access to the equipment after the M/s GVR engineer had opened the dispensing unit and had fiddled with the motherboard and that the dealer was in any way responsible for the tampering etc.*
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> *27. For the reasons stated above, the Special Appeal stands dismissed."*

(iii) **M/s Aliganj Kisan Seva Kendra and another Vs. Indian Oil Corporation Ltd. and others [Writ-C No.16998 of 2023]**. Relevant paragraphs 40 and 45 to 48 are being quoted as under :-

> *"40. For appreciating the controversy involved in the writ petition, it would be apt to quote relevant clauses 16, 44 & 58(m) of the dealership agreement, which is as follows:-*

"16. No repairs to the outfit shall be done by the Dealer unless preciously authorized by the Corporation in writing. The Dealer shall not interfere with or attempt to adjust the outfit or any apart thereof but shall notify the Corporation immediately of the necessary of any repair or adjustment and thereby ensure that the outfit is in proper working order and delivering full and proper, measure at all times. The Dealer shall not operate the outfit while it is out of order.

44. The Dealer undertakes faithfully and promptly to carry out, observe and perform all direction or rules given or made from time to time by the Corporation for the proper carrying on of the Dealership of the Corporation. The Dealer shall scrupulously observe and comply with all laws, rules regulations and requisitions of the Central/State Governments and of all authorities appointed by there or either of them including in particular the Chief Controller of Explosive, Government of India, and/or any other local authority with regard to the storage and sale of such petroleum products.

58(m). If the Dealer shall either by himself or by his servants or agents commit or suffered to be committed any act which in the opinion of the General Manager of the Corporation for the time being in NOIDA whose decision shall be final, is prejudicial to the Interest or good name of the Corporation or its products, the General Manager shall not be bound to give reasons for such decision."

45. It is also evident from the perusal of the impugned order that it is admitted to the parties that the dispensing unit was not a new unit. It is also not in dispute that the dispensing unit installed at the petitioners' retail outlet was earlier used by Quality Retail Outlet and in the running condition, *the same was installed at the petitioners' retail outlet, which was dispensing oil till the date of survey, i.e., 06.05.2017 without any discrepancy.*

46. It is admitted fact between the parties that the dispensing unit installed at the petitioners' retail outlet was not new and it is also not in dispute that before reinstalation of dispensing unit of the petitioner site any certificate was issue certifying the fact that the mother board was not tampered or any repair was being undertaken by the Corporation or its agencies. Further before reinstalling the dispensing unit at the petitioners' retail outlet a certificate was ever issued duly certifying the fact that control card was in confermity with the MIDOC standard design.

47. It is also not in dispute that at the time of survey, the dispensing unit was not in working condition or it was not dispensing oil. Therefore, negative onus cannot be fastened upon the petitioners as alleged by the Corporation.

48. Bare reading of the relevant clauses of the dealership agreement and the Marketing Discipline Guidelines, presumption will be drawn against the petitioners that some manipulation has been done, but the presumption has to be proved by the Corporation by cogent materials to show that there was irregularity in dispensing unit, but the report submitted by the OEM does not say so. In absence of such finding against the petitioner, the impugned termination order cannot be sustained in the eyes of law."

(iv) **M/s Prakash Automobiles Indian Oil Dealer Vs. Indian Oil Corporation Ltd. [Writ-C No.558 of 2020]**. Relevant paragraphs 24, 25 and 28 are being quoted as under :-

"24. It is also relevant to notice that the only basis for passing the impugned orders is the report by the OEM and as noticed above, the report of the OEM

is also inconclusive for the reason the OEM also could not state with certainty that the said alien part as detected in the pulsar card was responsible for any short delivery. The report merely draws a conclusion but it does not indicate how and what tests were done to arrive at such a conclusion, apart from the fact that the said report of the OEM was not even put or given to the petitioner before passing of the impugned order of termination.

25. Learned counsel for the IOC could not dispute that the show cause notice was based merely on the basis of the inspection report and at that point of time, the report of the OEM was not there and the show cause notice also did not indicate that the Corporation would be relying upon the said report and even if they proposed to do so then it was a duty of the Corporation to have provided the copy of the report to the petitioner prior to the passing of the order to enable the petitioner to meet the reasons or contest the same and having not done so it has resulted in deprivation of an opportunity of hearing especially when the proposed action was in the nature of termination which impacted the rights of the petitioner to run the dealership which was a right to do business and earn livelihood.

28. It will be worthwhile to mention that in a similar matter, a coordinate Bench of this Court in M/s Mishra Automobiles Vs. Union of India and others;2024:AHC-LKO:53503 and dealing with similar issue and relying upon Clause 5.1.4 of the MDG, in paragraphs 14 to 18 has held as under:-

"14. From the aforesaid provision, it is clear that when any mechanisms, fitting, gear found fitted in dispensing unit with the intention of manipulation of delivery would amount to invite proceedings under the said sections and lead to cancellation of the license. Therefore, from a bare reading of Clause 5.1.4 of the MDG Guidelines, it is clear that any

mechanism or fitting in the dispensing unit should result in manipulation of delivery or such additional fitting should at least the capable of manipulating the delivery. There is no dispute with regard to the fact that the foreign component was in fact found on the pulsar cards but the dispute in the present case is only with regard to the fact that as to whether discovery of a foreign component on the pulsar card would automatically lead to the conclusion that same has been installed with an intention of manipulation of delivery. In the present case, the peculiar facts are that seals of the dispensing units were intact at the time inspection. The foreign component found in the pulsar card has been reported by the OEM. Thee is no clear finding that such foreign component would led to the short supply of diesel in its original report dated 11.05.2017 or in subsequent clarification issued on 17.05.2017.

15. To return a finding with regard to the intention of manipulating the delivery, the basic fact which has to be established that the installation of the foreign component had in fact led to manipulating the delivery meaning thereby that on installation of foreign component on the pulsar cards, the dispensing unit had dispensed lesser quantity of fuel than it was supposed to dispense.

16. We do not agree with the submission of the counsel for the respondent that mere finding of the foreign component of the pulsar cards is sufficient in itself to come to a conclusion that the same has been done with an intention to manipulate the delivery. In case there is manipulation in delivery meaning thereby short supply of the fuel dispensed from the dispensing unit is a question of fact and can not be assumed. Only when it is established that the dispensing unit had in fact dispensed lesser quantity of fuel, coupled with the fact that foreign *component was found in the pulsar card, can a person be held responsible for violating provisions of 5.1.4 of the MDG Guidelines and consequential cancellation of his license can be done. Apart from finding a foreign component on the Pulsar Cards there should have been categorical finding with regard to the intention to manipulate the delivery.*

17. On perusal of the relevant provision i.e. 5.1.4 of MDG Guidelines, it is found to be substantially penal in nature and its essential ingredients, prima facie, consist of:

(1) The finding of the foreign objects in the dispensing unit, which is only a ground for inquiry and inspection.

(2) Intention of manipulating the delivery.

Mere presence of foreign elements does not ipso facto show intention unless there is evidence to show that the foreign components are capable of or in fact affecting the fair dispensation of fuel.

In the present case, there is no evidence with regard to the second necessary ingredient, which is 'intention of manipulating the delivery' and also the inquiry fell short of returning any finding as to show any such manipulation. Therefore, the petitioner cannot be said to have violated 5.1.4 of the MDG Guidelines.

18. In the aforesaid circumstances, firstly, it is not the case of the respondent Oil Company that there was any shortfall of the delivery, coupled with the fact that even the OEM has never reported, the result of the foreign body attached to the pulsar card and secondly, the benefit of doubt of the seal being intact during the time of inspection has to be given to the petitioner as the foreign component cannot be inserted without breaking the seal of the dispensing unit. Counsel for the respondent also could not confirm as to whether the foreign

> *component can be inserted on pulsar card without breaking the seals. Therefore, reading the inspection report dated 05.05.2017 wherein in paragraph 2, it has clearly been found that the delivery was found to be correct, coupled with the fact that in paragraph-5, it has been stated that seals were broken in presence of the inspecting team leads to have irrebuttable conclusion that the seals were intact and there was no short supply of the fuel and consequently, in the aforesaid circumstances, it cannot be concluded that there was intention to manipulate the delivery, and hence any violation of Clause 5.4.1. of the MDG Guidelines.""*

15. In support of his submissions, learned counsel has placed reliance upon the judgment of the Division Bench of this Court in ***Chairman, Indian Oil Corporation*** (Supra), wherein it has been held that Clause 5.1.4 of the MDG contemplates tampering by way of unauthorized fittings or manipulation capable of affecting delivery. The Division Bench held that where the dispensing unit alleged to have been tampered with was itself non-functional and no short delivery was detected, termination of dealership merely on suspicion could not be sustained. It was further held that passing the termination order without even awaiting the report of the Original Equipment Manufacturer amounted to pre-judging the issue.

16. Reliance has also been placed upon another Division Bench judgment in ***Indian Oil Corporation Ltd. and others versus M/s Modern Service Station*** (Supra), wherein the Court held that failure to consider the specific defence of the dealer amounts to violation of the principles of natural justice. The Division Bench further held that unless cogent material is brought on record to establish that the dealer had unauthorized access to the dispensing unit after it had been handled by the Corporation's engineers or authorized personnel, liability cannot be fastened upon the dealer.

17. It is submitted that mere soldering marks or tampering noticed in the dispensing unit do not by themselves establish manipulation unless it is shown when such tampering occurred, how the dealer gained unauthorized access to the equipment and how such alteration affected the delivery of fuel. It was observed that where delivery was found to be accurate and no material existed connecting the dealer with the alleged tampering, the extreme penalty of termination could not be justified.

18. Learned counsel has further relied upon the judgment in ***M/s Aliganj Kisan Seva Kendra*** (Supra), wherein this Court held that where the dispensing unit supplied by the Corporation was an old or previously used machine and no certificate regarding its integrity prior to installation was produced, the burden could not automatically be shifted upon the dealer. It was further held that if the dispensing unit was itself non-functional, adverse presumption against the dealer could not be drawn merely on the basis of the condition of the machine, unless supported by cogent material establishing manipulation.

19. Reliance has lastly been placed upon the judgment of this Court in ***M/s Prakash Automobiles*** (Supra), wherein it was held that an inconclusive OEM report, which neither established that the foreign component resulted in short delivery nor disclosed the basis of its conclusion, could not furnish sufficient material for terminating a dealership. The Court further held that Clause 5.1.4 of the MDG requires not merely the existence of a foreign component but also material demonstrating its capability or intention to manipulate delivery and that mere presence of a foreign object, without proof of its effect on fuel delivery, is insufficient to sustain termination.

20. Per contra, learned counsel appearing for the respondents submits that the writ petition is wholly misconceived and deserves to be dismissed. According to him, both the termination order as well as the appellate order have been passed strictly in accordance with the provisions of the MDG-2012, the dealership agreement and after affording full opportunity of hearing to the petitioner.

21. Learned counsel submits that during the inspection conducted on 10.05.2017, serious irregularities were detected at the petitioner's retail outlet. The Weights and Measures seal of the pulsar unit was found broken and a joint secured by tape was noticed in the pulsar cable, constituting critical irregularities under the MDG-2012. Consequently, sale from the concerned dispensing unit was immediately suspended and, after completion of the fact-finding inquiry and consideration of the petitioner's reply to the show cause notice, the competent authority rightly terminated the dealership.

22. Learned counsel for the respondents submits that the explanation furnished by the petitioner in response to the show cause notice was duly considered by the competent authority but was found wholly unsatisfactory. It is contended that the irregularities detected during inspection were of a critical nature attracting the provisions of the Marketing Discipline Guidelines, 2012 and, therefore, in exercise of powers conferred under Clauses 15, 16, 19 and 44 read with Clause 58 of the Dealership Agreement, the competent authority rightly terminated the dealership by order dated 04.07.2017.

23. It is further submitted that the petitioner thereafter preferred a statutory appeal under Clause 8.9 of the MDG-2012. The appellate authority afforded the petitioner an opportunity of personal hearing on 27.03.2018, examined the memorandum of appeal, the written submissions and the entire material available on record and thereafter, by a reasoned order dated 15.05.2018, affirmed the order of termination. It is, therefore, submitted that the petitioner has already availed of the statutory remedy and no procedural infirmity survives.

24. Learned counsel contends that the petitioner's reliance upon his alleged satisfactory conduct since the year 1973 is wholly misconceived. According to him, past conduct cannot wipe out or dilute the effect of a critical irregularity detected during inspection. Similarly, the annual stamping and calibration certificates issued by the Weights and Measures Department merely certify the condition of the dispensing units at the

time of inspection and do not rule out subsequent tampering or manipulation.

25. It is further submitted that during inspection a joint secured by adhesive tape was found in the pulsar cable. As per the opinion of the representative of the Original Equipment Manufacturer, no such joint ought to exist in the cable. Consequently, the pulsar unit was sealed and handed over to the Supplies Inspector for further examination. It is submitted that although no additional electronic device or fitting was noticed, the existence of the joint itself constituted a serious irregularity and the same was duly recorded in the inspection report.

26. Learned counsel further submits that a joint was also noticed in the sealing wire of the Weights and Measures seal affixed to the motherboard, thereby clearly indicating interference with the sealing mechanism. According to him, after considering the inspection report, the reports submitted by the Government officers, the show cause notice, the petitioner's reply and the grounds raised in appeal, the appellate authority has recorded a categorical finding that the dealership had rightly been terminated.

27. It is further contended that the termination order was issued only after obtaining the approval of the competent authority, namely, the State Head (Executive Director, UPSO-I), and, therefore, the decision-making process does not suffer from any procedural irregularity. It is also submitted that Clause 1.4.2 of the MDG-2012 casts a continuing obligation upon every dealer to carry out daily visual inspection of the dispensing units, immediately report any broken Weights and Measures seal to the Oil Company and ensure proper maintenance of the dispensing units. According to the respondents, the petitioner failed to discharge these obligations and is consequently responsible for the irregularities detected during inspection.

28. Learned counsel lastly submits that the allegations made by the petitioner regarding violation of the Government Order dated 02.05.2017, procedural lapses during inspection, absence of tampering

and non-compliance of the Marketing Discipline Guidelines are wholly baseless and unsupported by any material on record. It is urged that both the disciplinary authority and the appellate authority have considered each of the petitioner's objections and have recorded concurrent findings of fact. Such findings, according to the respondents, do not warrant interference by this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India.

29. I have considered the rival submissions advanced by learned counsel for the parties and have perused the material brought on record.

30. The controversy in the present case essentially revolves around the interpretation and application of Clause 5.1.4 of the Marketing Discipline Guidelines, 2012 and whether the material collected during inspection constituted sufficient evidence to establish tampering of the dispensing units so as to justify the extreme penalty of termination of the dealership.

31. Before adverting to the rival submissions, it would be appropriate to notice Clause 5.1.4 of the Marketing Discipline Guidelines, 2012. The said clause treats as a critical irregularity any additional or unauthorized fitting, gear or mechanism found in the dispensing unit which is likely to manipulate delivery. It further provides that any addition, removal, replacement or manipulation of any part of the dispensing unit, including its electronic components, software or microprocessor chip, shall be deemed to amount to tampering of the dispensing unit.

32. A plain reading of the aforesaid provision shows that every irregularity noticed in a dispensing unit does not automatically amount to tampering within the meaning of Clause 5.1.4. The provision contemplates unauthorized manipulation of the dispensing mechanism or such alteration which is capable of affecting the quantity of fuel delivered through the dispensing unit. Since termination of dealership visits the dealer with serious civil consequences, the ingredients of the clause must be established by cogent and reliable material.

33. It is well settled that although the scope of judicial review under Article 226 of the Constitution does not permit this Court to re-appreciate evidence as an appellate authority, the Court is nevertheless required to examine whether the findings recorded by the authorities are based upon some legally admissible material, whether the decision-making process is fair, and whether the conclusion arrived at is so arbitrary or unreasonable that it warrants interference.

34. In *Chairman, Indian Oil Corporation* (Supra), the Division Bench of this Court examined the scope of Clause 5.1.4 of the Marketing Discipline Guidelines. The Court held that the clause contemplates unauthorized fittings or mechanisms capable of manipulating delivery. It was noticed that although certain irregularities had been detected, the dispensing unit itself was non-functional and no short delivery had been established. The Division Bench further held that termination without even awaiting the report of the Original Equipment Manufacturer amounted to pre-judging the issue and could not be sustained.

35. The aforesaid judgment assumes significance in the present case because the inspection report itself records that the Tokheim dispensing unit was not dispensing fuel on the date of inspection. The petitioner has consistently asserted that the machine had remained defective since 23.03.2017 and that complaints regarding its malfunction had already been lodged with the respondent-Corporation. These assertions have not been specifically disputed by placing any material to the contrary.

36. Equally relevant is the judgment of the Division Bench in *Indian Oil Corporation Ltd. and others versus M/s Modern Service Station*. The Court held that failure of the competent authority to consider the specific defence raised by the dealer amounts to violation of the principles of natural justice. The Division Bench further observed that unless there exists material demonstrating unauthorized access of the dealer to the dispensing unit after it had been handled by the Corporation's engineers or authorized personnel, liability cannot be fastened merely on assumptions.

37. While affirming the judgment of the learned Single Judge, the Division Bench approved the principles laid down in *M/s Chaudhary Filling Point*, wherein it was held that mere existence of soldering marks or signs of repair on the dispensing unit does not establish manipulation unless the respondents are able to demonstrate when such tampering took place, how the dealer gained unauthorized access to the equipment and, more importantly, how such alteration resulted in manipulation of fuel delivery.

38. In *M/s Aliganj Kisan Seva Kendra versus Indian Oil Corporation Ltd.*, this Court also dealt with a case where the dispensing unit supplied by the Corporation was an old machine previously installed elsewhere. The Court held that where no certificate regarding the integrity of the dispensing unit prior to installation was produced by the Corporation and the dispensing unit itself was not functioning properly, adverse presumption could not be drawn against the dealer merely because certain irregularities were noticed during inspection. The burden continued to remain upon the Corporation to establish the alleged manipulation by cogent evidence.

39. Likewise, in *M/s Prakash Automobiles versus Indian Oil Corporation Ltd.*, this Court reiterated that mere presence of a foreign component or any alteration in the dispensing unit is not sufficient to establish violation of Clause 5.1.4 unless it is further shown that such component was capable of affecting delivery or had actually resulted in manipulation of the quantity of fuel dispensed. The Court also emphasized that an expert report, if relied upon, must be supplied to the dealer so as to enable him to effectively meet the allegations.

40. The consistent principle emerging from the aforesaid decisions is that proceedings under Clause 5.1.4 of the Marketing Discipline Guidelines are substantially penal in nature. Consequently, the burden lies upon the Corporation to establish by credible material that the dispensing unit had in fact been tampered with in a manner capable of manipulating fuel delivery and that such manipulation could reasonably be attributed to the dealer.

41. It is in the light of the aforesaid legal principles that the evidence available on record and the findings recorded by the disciplinary authority as well as the appellate authority are required to be examined.

42. The principal question which arises for consideration before this Court is whether the material collected during the inspection dated 10.05.2017 constituted sufficient evidence to establish tampering of the dispensing units so as to justify termination of the petitioner's dealership under the provisions of the Marketing Discipline Guidelines, 2012 and the Dealership Agreement.

43. From a perusal of the inspection report, the termination order dated 04.07.2017 and the appellate order dated 15.05.2018, it is evident that the respondents have principally relied upon three circumstances, namely, (i) taped joints found in three pulsar cables of the Tokheim dispensing unit, (ii) a joint found in the Weights and Measures seal affixed to the motherboard of the said dispensing unit, and (iii) the broken Weights and Measures seal of the pulsar in the Gilbarco dispensing unit.

44. Equally significant is the fact that both the disciplinary authority and the appellate authority have themselves recorded that no additional fitting, chip, electronic device or unauthorized gear was found inside either of the dispensing units. The termination order specifically records that although no additional fittings were found during inspection, the cut in the pulsar cable established that it was made to connect additional fittings. The appellate authority has reiterated the same reasoning.

45. The aforesaid finding, in the considered opinion of this Court, is based upon an assumption rather than upon any technical material. Neither the termination order nor the appellate order refers to any expert opinion demonstrating that the taped joints in the pulsar cable were actually connected with manipulation of the dispensing mechanism or that such joints were capable of affecting the quantity of fuel delivered through the dispensing unit.

46. The respondents have repeatedly relied upon the opinion of the OEM engineer that there should not be any joint in the pulsar cable. However, the record does not disclose that the OEM ever opined that the taped joints had resulted in short delivery of fuel or that they were capable of manipulating delivery. Merely because an OEM engineer opined that there ought not to be a joint in the cable cannot, by itself, constitute proof of tampering within the meaning of Clause 5.1.4 of the MDG-2012.

47. The respondents have also not disputed that no discrepancy in delivery of fuel was noticed during the inspection. There is no allegation in the inspection report that either short delivery or excess delivery was detected. Likewise, there is no allegation of adulteration of fuel. The absence of any discrepancy in delivery assumes considerable significance, particularly when the allegation is one of tampering with the dispensing mechanism.

48. The petitioner has consistently asserted that the Tokheim dispensing unit was manufactured in the year 2003, had been shifted from another retail outlet and was installed at the petitioner's outlet in the year 2008. The respondents have not disputed these facts. On the contrary, both the termination order and the appellate order acknowledge that the dispensing unit was an old machine. The respondents have merely observed that the age of the dispensing unit is immaterial.

49. The petitioner had also specifically pleaded that the said dispensing unit had remained non-functional since 23.03.2017 and complaints regarding its malfunction had already been lodged with the Corporation. The appellate authority has itself noticed this defence. However, the said defence has been rejected merely by observing that the recovery of the taped joint was sufficient irrespective of whether the dispensing unit was functional or not.

50. This Court finds that such reasoning overlooks an important factual aspect. If the dispensing unit had admittedly remained out of order and was not dispensing fuel on the date of inspection, the

respondents were required to establish, by cogent technical evidence, as to how the alleged irregularity was intended to manipulate delivery or confer any advantage upon the dealer. Neither of the impugned orders deals with this aspect.

51. Another aspect which cannot be ignored is that the Dealership Agreement itself provides that repairs, calibration and maintenance of the dispensing units are to be undertaken by the Corporation or its authorized agencies. The petitioner has consistently pleaded that he was neither technically competent nor authorized to open the dispensing units or interfere with their internal mechanism. This defence has not been examined with the degree of scrutiny which the seriousness of the consequence demanded.

52. The respondents have sought to fasten liability upon the petitioner by relying upon Clause 1.4.2 of the MDG-2012, which obligates the dealer to conduct daily visual inspection of the Weights and Measures seals and immediately report any irregularity. Undoubtedly, such an obligation exists. However, the breach of a duty to report a visible irregularity cannot automatically lead to the conclusion that the dealer himself tampered with the dispensing mechanism.

53. Significantly, the petitioner has placed reliance upon a written communication dated 28.04.2017 requesting replacement of the old and rusted sealing wire. If such a communication had indeed been submitted prior to the inspection, the respondents were required to examine its effect while considering the allegation relating to the broken seal. Neither the disciplinary authority nor the appellate authority has dealt with this contention except by observing that it was an afterthought.

54. The Court further notices that the petitioner had specifically relied upon the technical opinion of the Department of Electronics and Communication Engineering, National Institute of Technology, Karnataka, wherein it has been opined that visual inspection revealing soldering marks, cable joints or jumper wires cannot by itself establish tampering unless supported by scientific examination. The impugned

orders are conspicuously silent on this material, although the said opinion directly addressed the technical issue involved in the present case.

55. Equally, despite seizure of the relevant components, no laboratory analysis or scientific examination has been brought on record demonstrating that the taped joints or the alleged irregularities had any nexus with manipulation of the dispensing mechanism. The respondents have proceeded on the premise that because a taped joint ought not to exist, it necessarily follows that the same was introduced for manipulating delivery. Such an inference, in the absence of supporting technical evidence, cannot be accepted as a substitute for proof.

56. The appellate authority has observed that recovery of three pulsar cables with joints "amounts to tampering with the dispensing unit." In the opinion of this Court, such conclusion is merely a reiteration of the allegation and not the result of any independent analysis. The appellate authority has neither discussed the essential ingredients of Clause 5.1.4 nor recorded any finding that the alleged irregularity was capable of affecting delivery or that the petitioner had unauthorized access to the internal mechanism of the dispensing unit. The appellate order, therefore, substantially affirms the disciplinary authority without independently addressing the core issues raised in appeal.

57. The controversy involved in the present case is no longer res integra. This Court, as well as the Division Bench, has on several occasions interpreted the scope of Clause 5.1.4 of the Marketing Discipline Guidelines, 2012 and has consistently held that the drastic consequence of termination of dealership can follow only when the Corporation establishes, on the basis of cogent material, that the dispensing unit had been tampered with in a manner contemplated by the said clause.

58. In *Chairman, Indian Oil Corporation, New Delhi and others versus M/s Lallite Filling Centre*, the Division Bench examined an identical controversy where the dispensing unit alleged to have been

tampered with was itself lying non-functional and no discrepancy in fuel delivery had been detected. The Division Bench observed that Clause 5.1.4 contemplates additional or unauthorized fittings or manipulation capable of affecting delivery. The Court further held that termination of dealership merely on the basis of suspicion, particularly where the dispensing unit was not in operation and no short delivery had been established, could not be sustained in law.

59. The ratio of the aforesaid judgment squarely applies to the facts of the present case. Here also, the respondents do not dispute that the Tokheim dispensing unit had remained out of order prior to the inspection and was not dispensing fuel on the date of inspection. More importantly, no discrepancy in delivery was found and no additional electronic fitting or device was recovered. Thus, the factual foundation of the present case is substantially similar to the one considered by the Division Bench.

60. Equally important is the observation of the Division Bench in *Lallite Filling Centre* that the Corporation ought not to prejudge the issue without obtaining reliable technical material. Although the respondents have referred to the opinion of the OEM representative, neither the termination order nor the appellate order discloses any scientific opinion establishing that the taped joints in the pulsar cable had actually affected or were capable of affecting the quantity of fuel delivered.

61. The Division Bench in *Indian Oil Corporation Ltd. and others versus M/s Modern Service Station* reiterated another equally important principle, namely, that failure to consider the specific defence raised by the dealer amounts to violation of the principles of natural justice. The Court further held that unless credible material exists to demonstrate unauthorized access of the dealer to the dispensing unit after it had been handled by the Corporation's engineers or authorized personnel, liability cannot be fastened merely on assumptions.

62. In the present case, the petitioner specifically pleaded that the dispensing units belonged to the Corporation, that all repairs and maintenance were undertaken by the Corporation through its authorized agencies, that the Tokheim dispensing unit was an old second-hand machine repeatedly repaired by the Corporation, and that no additional device was recovered during inspection. Although these submissions have been noticed in the impugned orders, there is no meaningful discussion as to how, despite these facts, the respondents concluded that the petitioner himself had manipulated the dispensing unit.

63. The Division Bench in *Modern Service Station* approved the earlier judgment in *M/s Chaudhary Filling Point*, wherein it was held that the mere existence of soldering marks or signs of repair does not establish manipulation unless it is further shown when such tampering took place, how the dealer gained unauthorized access to the dispensing unit and in what manner the alleged tampering affected delivery of fuel. The Court also observed that where delivery was found to be correct, the allegation of manipulation cannot be accepted merely on suspicion.

64. These observations fully support the petitioner's contention in the present case. The respondents have not brought on record any material to indicate as to when the taped joints came into existence, whether they were introduced during any repair undertaken by the Corporation or its authorized agencies, or how the petitioner gained unauthorized access to the internal mechanism of the dispensing unit. The entire finding rests upon the assumption that the existence of taped joints necessarily establishes tampering.

65. This Court also finds considerable force in the ratio laid down in *M/s Aliganj Kisan Seva Kendra versus Indian Oil Corporation Ltd.* In the said case also, the dispensing unit supplied by the Corporation was an old machine which had earlier been installed elsewhere. The Court held that unless the Corporation establishes that the dispensing unit was free from defects or unauthorized alterations at the time of installation, adverse inference cannot automatically be drawn against the dealer merely because certain irregularities are noticed subsequently.

66. In the present case, the respondents themselves admit that the Tokheim dispensing unit was manufactured in the year 2003 and was installed at the petitioner's retail outlet in the year 2008 after being shifted from another location. No material has been produced to demonstrate that before its installation at the petitioner's outlet the Corporation had certified the integrity of its motherboard, pulsar cables or electronic components. This aspect assumes significance particularly when the petitioner has consistently pleaded that the machine had undergone repeated repairs.

67. The judgment in *M/s Prakash Automobiles versus Indian Oil Corporation Ltd.* also lends support to the petitioner's case. This Court held therein that mere recovery of a foreign component or any alteration in the dispensing unit does not automatically establish violation of Clause 5.1.4. What is further required to be established is that the alleged alteration was capable of manipulating delivery or had actually resulted in manipulation of fuel supply. It was also held that an inconclusive expert report cannot form the sole basis for terminating a dealership.

68. Applying the aforesaid principle to the present case, this Court finds that neither the OEM opinion nor the findings recorded by the respondents explain the technical impact of the taped joints. The respondents have merely stated that there should not have been a joint in the pulsar cable. They have not established by any scientific or technical evidence that the alleged joint either manipulated or was capable of manipulating the quantity of fuel delivered.

69. The respondents have repeatedly emphasized that Clause 5.1.2 read with Clause 8.2 of the MDG-2012 permits termination even where delivery is found correct, provided the Weights and Measures seal is found tampered. There can be no quarrel with the proposition that tampering with a statutory seal is a serious irregularity. However, before invoking the penal consequences flowing from the said clause, the Corporation must first establish, on the basis of reliable material, that the seal had in fact been tampered with by or at the instance of the dealer.

Such foundational facts cannot be presumed merely because a broken seal or a joint in the sealing wire was noticed during inspection.

70. The respondents have also relied upon Clause 1.4.2 of the MDG-2012 to contend that the petitioner failed to report the alleged irregularity. In the opinion of this Court, breach of the obligation to carry out visual inspection or to report a damaged seal may constitute a lapse on the part of the dealer. However, such omission cannot, in the absence of independent evidence, be elevated to proof that the dealer himself manipulated the dispensing mechanism or inserted unauthorized fittings so as to attract the extreme penalty of termination.

71. The cumulative effect of the aforesaid decisions leaves no manner of doubt that proceedings under Clause 5.1.4 of the Marketing Discipline Guidelines are penal in nature and must, therefore, satisfy a higher standard of proof than mere suspicion. Since the respondents have failed to establish the essential ingredients of tampering by cogent technical evidence and have rested their conclusions primarily upon presumptions arising from taped joints and the condition of the seals, the findings recorded in the impugned orders cannot be said to be legally sustainable.

72. Having examined the rival submissions, the pleadings on record, the inspection report, the termination order dated 04.07.2017, the appellate order dated 15.05.2018 and the authorities relied upon by the parties, this Court is of the considered opinion that the respondents have failed to establish the charge of tampering in the manner contemplated under the Marketing Discipline Guidelines, 2012.

73. It is not in dispute that during inspection no additional electronic device, chip, gear or any other unauthorized fitting was recovered from either of the dispensing units. Both the disciplinary authority as well as the appellate authority have accepted this factual position. Thus, one of the principal circumstances ordinarily associated with manipulation of dispensing units is admittedly absent in the present case.

74. Equally undisputed is the fact that no discrepancy in delivery of fuel was detected during the inspection. The respondents have neither

alleged nor established that the petitioner indulged in short delivery, excess delivery or adulteration of fuel. The absence of any such finding considerably weakens the foundation upon which the allegation of manipulation has been built.

75. The disciplinary authority has proceeded on the premise that since there existed taped joints in the pulsar cables, the same must have been intended for connecting additional fittings. Such conclusion is purely inferential. Neither the OEM representative nor any other technical expert has opined that the taped joints were capable of manipulating delivery. No technical report explaining the functioning of the pulsar cable or the impact of such joints upon fuel delivery has been placed on record.

76. The appellate authority has merely affirmed the aforesaid reasoning by observing that recovery of three pulsar cables with joints amounts to tampering of the dispensing unit. Such observation, in the opinion of this Court, is again conclusory in nature. A conclusion unsupported by technical analysis cannot substitute proof, particularly when the allegation entails civil consequences of a serious nature.

77. It is also noteworthy that the petitioner consistently pleaded that the Tokheim dispensing unit was an old machine manufactured in the year 2003, shifted from another retail outlet and installed at the petitioner's outlet in the year 2008. The respondents have admitted these facts. The petitioner further pleaded that the said dispensing unit had remained under repeated repairs and had become non-functional since 23.03.2017. The inspection report itself records that the dispensing unit was not dispensing fuel on the date of inspection. These circumstances were relevant considerations while appreciating the allegation of tampering, but neither authority has examined them in their proper perspective.

78. The respondents have repeatedly relied upon Clause 1.4.2 of the MDG-2012 to contend that the petitioner was under an obligation to conduct daily visual inspection of the seals and report any irregularity.

While such obligation undoubtedly exists, failure to discharge the same may constitute negligence on the part of the dealer. However, negligence cannot automatically be equated with deliberate tampering of the dispensing mechanism unless supported by independent evidence establishing the dealer's involvement.

79. The petitioner also specifically pleaded that prior to the inspection he had requested replacement of the rusted sealing wire. Whether the said explanation ultimately deserved acceptance or not, it required objective consideration by the authorities. The impugned orders reject the explanation merely by describing it as an afterthought without assigning any convincing reasons. Administrative authorities exercising quasi-judicial functions are expected to deal with every material defence in a reasoned manner, particularly when the consequence is termination of a long-standing dealership.

80. Another significant aspect which weighs with this Court is that the respondents have not produced any material establishing unauthorized access of the petitioner to the internal electronic components of the dispensing unit. Under the dealership arrangement, installation, calibration, maintenance and repairs were admittedly carried out by the Corporation through its engineers or authorized agencies. In the absence of any evidence demonstrating when and by whom the alleged taped joints came into existence, the finding that the petitioner himself manipulated the dispensing unit remains unsupported by tangible material.

81. This Court is conscious that the scope of judicial review under Article 226 of the Constitution is confined to examination of the decision-making process and does not extend to re-appreciation of evidence as an appellate authority. However, where findings are founded upon assumptions rather than legally admissible evidence, or where relevant material has not been considered, the writ court would be justified in exercising its power of judicial review to prevent manifest arbitrariness.

82. The impugned orders reveal that the respondents have proceeded on the assumption that because there existed taped joints in the pulsar cables and irregularity in the Weights and Measures seals, the petitioner must necessarily have indulged in tampering. Such presumption overlooks the settled legal position that suspicion, however strong, cannot take the place of proof. The Corporation was required to establish, through cogent technical evidence, that the alleged irregularities were capable of manipulating delivery and that such manipulation was attributable to the petitioner. No such evidence is forthcoming.

83. This Court is, therefore, of the considered opinion that the findings recorded by the disciplinary authority as well as the appellate authority suffer from the vice of non-consideration of relevant material, reliance upon presumptive conclusions unsupported by scientific evidence and misapplication of Clause 5.1.4 of the Marketing Discipline Guidelines, 2012. Consequently, both the impugned orders cannot be sustained.

83. Accordingly, the writ petition succeeds and is **allowed**.

84. The order dated 04.07.2017 passed by respondent no.3 terminating the petitioner's retail outlet dealership and the appellate order dated 15.05.2018 passed by respondent no.2 affirming the said order are hereby quashed.

85. The respondents are directed to restore the petitioner's dealership and all consequential benefits flowing therefrom within a period of six weeks from the date of production of a certified copy of this order, subject to there being no other legal impediment.

86. There shall be no order as to costs.

(Irshad Ali,J.)

July 06, 2026
Gautam