

**SUPREME COURT OF INDIA****Bench: Justices J.K. Maheshwari and Sanjay Karol****Date of Decision: 17th May 2024**

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 6509-6510 OF 2024

(Arising out of SLP(C)Nos.16671-16672 of 2015)

**M/S. HINDUSTAN PETROLEUM CORPORATION LIMITED & ORS. ...  
APPELLANT(S)****VERSUS****DHARAMNATH SINGH & ORS. ... RESPONDENT(S)****Legislation:**

Section 3 of the Essential Commodities Act, 1955

The Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution,  
and Prevention of Malpractices) Order, 2005

Section 100 of the Code of Criminal Procedure, 1973

**Subject:** Appeal against the High Court's decision upholding the quashing of the appellant's termination of the respondent's dealership license due to procedural lapses in the collection and testing of fuel samples.**Headnotes:**

Termination of Dealership - Procedural Compliance - Appeal against High Court order affirming the quashing of dealership termination for violation of procedural norms during sample collection - Appellants contended that the dealership was terminated due to violations of the dealership agreement clauses and that SGS India, the agency appointed for sample collection, was authorized under Marketing Discipline Guidelines - Respondent challenged the validity of the sample collection process by SGS India, arguing it violated Clause 7 of the Control Order, which mandates sample collection by specific authorized officers - Single Judge and Division Bench upheld the respondent's contention, finding procedural lapses in sample collection and testing.

Procedural Lapses - Clause 7 of Control Order - The High Court found that SGS India lacked authority under Clause 7 of the Control Order to collect samples and the entire process was flawed as the required authorized officers were not involved - The Division Bench upheld the Single Judge's decision, emphasizing the need for compliance with statutory procedures.

Sample Collection Authority - The appellants argued that the Marketing Discipline Guidelines permitted third-party agencies to collect samples - Supreme Court held that while the guidelines allowed administrative convenience, they could not override statutory provisions - The respondent was not prosecuted under the Control Order, rather the dealership was terminated for breach of contractual terms.

Judicial Discipline - Supreme Court noted adherence to principles laid down in prior judgments - Held that dealership termination must strictly comply with procedural rules and guidelines - Following the precedent in R.M. Service Centre, termination was justified if based solely on contractual breaches without violating statutory procedures.

Decision - Appeals allowed - Supreme Court found the dealership termination valid as per the terms of the agreement and procedural compliance under Marketing Discipline Guidelines - Noted no prosecutable offense under the Control Order, thus adherence to its procedural requirements was unnecessary for this case.

**Referred Cases:**

- Allied Motors Limited v. Bharat Petroleum Corporation Ltd. (2012) 2 SCC 1
- Indian Oil Corporation Ltd. v. R.M. Service Centre (2019) 19 SCC 662
- Harbanslal Sahnia v. Indian Oil Corporation & Ors. (2003) 2 SCC 107
- Hindustan Petroleum Corporation & Ors. v. Super Highway Services & Anr. (2010) 3 SCC 321
- Nazir Ahmad v. The King Emperor SCC OnLine PC 41
- National Insurance Company Ltd. v. Pranay Sethi (2017) 16 SCC 680

**J U D G M E N T**

**SANJAY KAROL, J.**

Leave granted.

2. These appeals by special leave impugn judgment and order dated 05<sup>th</sup> May 2015, passed in FMA 653 with 654 of 2012 which upheld the order of the Learned Single Judge in W.P.No.22993(W) of 2007 whereby the action of the instant appellant(s) in terminating the license of the instant respondent, was quashed and set aside.

### **Background facts**

3. A brief review of facts is necessary to adjudicate the present controversy.
- 3.1 The respondent was appointed a dealer for petrol/diesel/motor oil/grease and other such products of the appellant(s) by way Dealership Agreement<sup>1</sup> dated 1<sup>st</sup> February 1997.
- 3.2 On 18<sup>th</sup> August 2007, certain officials of one SGS India<sup>2</sup> claiming to be an agency appointed by the appellant(s) arrived at the respondent's petrol pump and took samples of High Speed Diesel (HSD) and Motor Spirit (MS).
- 3.3 The appellant issued show cause notice against the respondent dated 20<sup>th</sup> August, 2007, wherein the respondent was asked to submit a response to the alleged irregularities within a period of 7 days.
- 3.4 On the basis of the Preliminary Test Report, the Senior Sales Officer, Durgapur Sales Area informed the respondent of the suspension of supply with immediate effect.
- 3.5 The authorities of the appellant(s) conducted Joint Marker Test and the sample failed on such re-test as well. This is evident from the Analysis Report<sup>3</sup>.

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<sup>1</sup> 'Agreement'

<sup>2</sup> 'Agency'

<sup>3</sup> At page 164 of the paper book



6. Hence, the present appeals.
7. We have heard Mr. N. Venkataraman, learned Additional Solicitor General for the appellants, and Mr. Rana Mukherjee, learned senior counsel for the respondent. The submissions made, are recorded briefly as under:-

**A.     Appellant**

- (i) It was submitted that Clause 4 of the Agreement provides that a license was terminable immediately on **(a)** the termination of the Agreement; **(b)** breach of any of the terms thereof which are described in Clause 58;  

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- (ii) The tests conducted by the Agency as also the officials of the appellant(s) found the respondent to be in breach of Clause 58(h), (i), (m);
- (iii) The appellant(s) found the respondent to have violated in total, five clauses of the Agreement – Clauses 26, 27, 44, 58(i) and (m) and as such the same was terminated;
- (iv) It was contended that the Agency had the authority to conduct the tests in question as Clause 2.2.2.3 of Marketing Discipline Guidelines<sup>5</sup> dated 1<sup>st</sup> August 2005 issued by the Government of India, provides that apart from oil company officials, mobile labs and ‘agencies authorized by oil companies’ were permitted to draw samples.
- (v) It was in furtherance of such guidelines that *vide* Circular dated 3<sup>rd</sup> November 2006 the Agency was appointed to carry out audits and Market Tests.
- (vi) The provisions of the Control Order do not apply to the present case as the respondent is not prosecuted for its violation and instead, the

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<sup>5</sup> MDG

Agreement stands terminated for breach of the terms and conditions of the Agreement.

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- (vii) It is also submitted that Clause 8 of the Control Order makes clear that there is no bar to appoint an outside agency to conduct the Marker Test.
- (viii) Reliance is placed on ***Indian Oil Corporation Ltd. v. R.M. Service Centre***<sup>6</sup>, and more specifically para 14 thereof.

### **B. Respondent**

- (i) The MDG are issued under Section 3 of the Essential Commodities Act, 1955 and therefore possess statutory force. The suspension of supply to the respondent was in terms of the aforesaid. It cannot choose to follow only those portions of the law that suit its position. The termination of the Agreement could not be carried out without adhering to the inspection guidelines as per the Control Order.
- (ii) Clause 39 of the Agreement uses the term “*duly authorized representative*” which is not defined in the Agreement. The Control Order under Clause 2(b) defines an “*authorized officer*” and it states that only such a person shall have power of search and seizure as per Clause 7.
- (iii) As per the quality control measures in Clause 27 of the Agreement, the opinion of the Chief General Manager on the contamination of products is slated to be final, however, termination of the respondent’s license was issued by the Senior Regional Manager.
- (iv) The agreement does not prescribe any procedure for collection of samples, testing or any other procedure of alleged adulteration of products. The Control Order (2005) was preceded by a similar order of 1998 and both would be binding on an oil manufacturing company. As

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<sup>6</sup> (2019) 19 SCC 662

such the procedure mentioned in Clause 7 of the Control Order would be required to be followed.

- (v) The process of drawing the sample by the agency was improper. The sample collected was in the absence of an authorized officer of the appellant. The blank space for the signatures of 'OMC Field Officer' was left blank.
- (vi) Due to non-compliance with the provisions of the Control Order, the drawing of samples is without basis.
- (vii) **R.M. Service Centre** (supra) does not support the case of the appellant. The action sought to be taken by the appellant is penal in nature and therefore, there cannot be two procedures prescribed for the action. A third party cannot be permitted to collect samples in violation of the control order by stating that prosecution has not been launched thereunder and instead prosecuting the dealer for violation of MDG.
- (viii) No power has been conferred upon the oil manufacturing company to bypass the procedure of drawing of samples. Section 100 Cr.P.C. was made applicable to ensure the sanctity of the investigation as the outcome thereof could result in penal consequences. Grant of such powers to a third party (agency) would be illegal.
- (ix) The said judgment does not lay down the correct position in law and non-adherence to the control order would vitiate the entire process.
- (x) In furtherance of the above submissions, the learned senior counsel for the respondent further relies on **Harbanslal Sahnia v. Indian Oil Corporation Ltd.**<sup>7</sup>; **Hindustan Petroleum Corporation & Ors. v. Super Highway Services & Anr.**<sup>8</sup>; **Allied Motors Ltd. v. Bharat Petroleum**

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<sup>7</sup> (2003) 2 SCC 107

<sup>8</sup> (2010) 3 SCC 321

**Corporation**<sup>910</sup>; and **Nazir Ahmad v. The King Emperor**<sup>10</sup>, and certain other decisions.

8. It is necessary to refer to certain Rules, Regulations/provisions of documents for being part of the record to examine the issue in the present *lis*. For ease of reference, they are extracted hereunder :

### **Provisions of the Agreement and other relevant documents**

#### I. **Agreement *inter se* parties**

Certain clauses of the agreement between the parties dated 1.2.1997, relevant to the present dispute:

“4. The licence and permission granted as aforesaid for the use of the outfit shall terminate immediately on the termination of this Agreement or on any breach of any of the terms thereof.

X X X X

26. The dealer shall be responsible for all loss, contamination, damage or shortage of or to the products whether partial or entire, and no claim will be entertained by the corporation therefor under any circumstances except in cases where the corporation is satisfied that loss arose from leakage from underground tanks or pipes which the dealer could not reasonably have discovered and of which the dealer gave immediate notice in writing to the corporation on discovery. Corporation will consider compensation only from the date of receipt of notice till leakage is rectified.

27. All the products supplied by the Corporation to the dealer hereunder shall be in accordance with the specifications laid down by the Corporation from time to time. The dealer shall take every possible precaution against contamination of the corporation's products by water, dirt or other things injurious to their quality and shall not in any way directly or indirectly alter the specifications of the said products as delivered. The Corporation shall have the right to exercise at its discretion at any time and from time to time quality control measures for products marketed by the corporation and lying with the dealer the opinion of the Chief Regional Manager for the time being at the corporation's Regional Office at Calcutta as to whether any product of the corporation has been contaminated shall be final and binding upon the dealer, in the event of the said Chief Regional Manager finding that the contamination has been due to any Act or default of the dealer or of his servants or Agents, the corporation shall have the right, without being bound to do so, to

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<sup>9</sup> (2012) 2 SCC 1

<sup>10</sup> SCC OnLine PC 41





## II. **The Motor Spirit and High Speed Diesel (Regulation of Supply, Distributor and Prevention of Malpractices) Order, 2005**

“2. Definitions - in this order, unless the context otherwise requires:

- (a) "adulteration" means " [presence of marker in motor spirit and high speed diesel and/or] the introduction of any foreign substance into motor spirit or high speed diesel illegally or unauthorisedly with the result that the product does not conform to the requirements of the Bureau of Indian Standards specifications number IS 2796 and IS 1460 for motor spirit and high speed diesel respectively or any other requirement notified by the Central Government from time to time;
- (b) "authorized officer" means an officer authorized under the provisions of clause 7;”

x            x            x            x            x

**“7. Power of search and seizure -** (1) any Gazette Officer of the Central Government or a State Government or any Police Officer not below the rank of Deputy Superintendent of Police duly authorized, by general or special order of the Central Government or a State Government, as the case may be, or any officer of the oil company, not below the rank of sales officer, may, with a view to securing compliance with the provisions of this Order, or for the purpose of satisfying himself that this Order or any order made thereunder has been complied with or there is reason to believe that all or any of the provisions of this Order have been and are being or are about to be contravened, -

- (a) enter and search any place or premises of a dealer, transporter, consumer or any other person who is an employee or agent of such dealer or transporter or consumer;
- (b) stop and search any person or vehicle or receptacle used or intended to be used for movement of the product;
- (c) take samples of the product and seize any of the stocks of the product and the vehicle or receptacle or any other conveyance used or suspected to be used for carrying such stocks and thereafter take or authorize the taking all measures necessary for securing the production of stocks or items so seized before the Collector or District Magistrate having jurisdiction under the provisions of the Essential Commodities Act, 1955 and for their safe custody pending such production;
- (d) inspect, seize and remove with, such aid or assistance as may be necessary, books, registers, any other records or documents of the dealer, transporter, consumer or any other person suspected to be an employee or agent of the dealer, transporter or consumer;

(2) While exercising the power of seizure provided under subclauses (c) and (d) above, the authorized officer shall record in writing the reasons for doing so and a copy of such recording shall be

provided to the dealer, transporter, consumer or any other concerned person, as the case may be.

(3) The provisions of S. 100 of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure shall, as far as may be, apply to searches and seizures under this Order.

**III. Marketing discipline guidelines, 2005**

“Chapter – 2

**INDUSTRY GUIDELINES FOR SAMPLE COLLECTION AND TESTING (3-TIER) SAMPLING SYSTEM)**

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**2.2.2 AT RETAIL OUTLETS**

At the Retail outlets, samples are required to be drawn by the following :

2.2.2.1 By the dealer/his representative on receipt of each supply through tank lorries at the retain outlet.

2.2.2.2 Oil companies have to draws the samples from all tanks of retail outlets as given below :

- a) From 1% of total No. of retail outlets under each divisions/controlling office every month till 31.12.05.  
From 10% p.m. of the total number of retail outlets w.e.f. 01.01.2006 which will be progressively increased to 20% p.m. from 01.01.2007 and 50% p.m. from 01.01.2008.

2.2.2.3 Persons/agencies authorized to draws samples are :

Oil company officials Mobil labs  
Agencies authorized by oil companies.

However, in case of stock variation beyond permissible limits, density, failure, filter paper test failure and during special drives/campaigns or in case of specific complaint against the retail outlets. Company officials are to draw samples and forward them for testing as per laid down procedure.

Samples are to be drawn from nozzle (s) of the dispensing units from all tanks of both MS and HSD by the persons/agencies as referred above.

All the inspecting officials shall bring their own aluminum containers for drawing samples. They will pay the cost of samples collected by them and obtain cash memo for the same.”

## **Consideration and Conclusion**

9. As we have referred to earlier, the appellant(s) have placed strong reliance on the judgment of this Court in ***R.M. Service Centre*** (supra).

The relevant extracts are as under:-

“14. The first issue required to be examined is whether the appellants were required to follow the procedure under the Control Order read with Section 100 of the Code. The Control Order has been issued under Section 3 of the Act. Such Act has been enacted for control of the production, supply and distribution and trade and commerce, of certain commodities. In respect of high speed diesel and motor spirit, the Control Order is issued for regulation of supply and distribution and prevention of the malpractices. Section 6-A of the Act provides for confiscation of the essential commodity whereas, Section 7 of the Act makes any person who contravenes any order made under Section 3 liable for criminal prosecution. Therefore, we find that the effect of issuance of the Control Order is that in the event of violation of such Control Order, any person who contravenes any order made under Section 3 of the Act i.e. the Control Order, he is liable to be punished by a court. Therefore, the violation of the Control Order has penal consequences leading to conviction. The provisions of search and seizure contained in Clause 7 read with Section 100 of the Code will come into play only in the event a person is sought to be prosecuted for violation of the provisions of the Control Order. Admittedly, in the present case, the dealer is not sought to be prosecuted for the violation of the Guidelines, therefore, the procedure for drawing of samples which is a necessary precondition under the Control Order for prosecuting an offender does not arise for consideration.

15. The dealer has entered into an agreement on 20-12-1995. It is not disputed that the dealer is bound by the Guidelines issued by the Public Sector Oil Marketing Companies. Clause 2.4.4 of the Guidelines provides for procedure for drawing of samples. Note (2) provides that the samples drawn should reach the laboratory for testing “preferably within ten days of the collection of the samples”. Similarly, sub-clause (A) of Clause 2.5 of the Guidelines provides that all samples should be suitably coded before sending them to the laboratory for testing “preferably” within ten days of drawing the samples. Sub-clause (I) of Clause 2.5 of the Guidelines is that the purpose of mentioning time-frame for various activities such as sending samples to the laboratory preferably within ten days is to streamline the system and is in no way related to quality/result of the product. In view of the language of the Guidelines, the findings recorded by the High Court that the timeline is to be strictly adhered to cannot be sustained.

16. The Guidelines as mentioned in sub-clause (I) of Clause 2.5 of the Guidelines is to streamline the functioning i.e. the oil companies should not arbitrarily or without any justification send the sample for testing at their sweet will. ....”

10. What falls from the extract quoted above is that any person who contravenes the Control Order is liable to be punished by the Court. Therefore, for a person to be prosecuted for violating the provisions relating to search and seizure contained in Clause (7) thereof, such a person will have to be brought to the book, particularly, for having violated the said Control Order.

11. In contrast, as has been submitted by the learned counsel for the appellants, the respondent was sought to be prosecuted only for the violation of the terms of the agreement *inter se* the parties and not for any other alleged violation, if any.<sup>11</sup>

12. Keeping in view the aforesaid, the submission of the respondents that **R.M. Service Centre** (supra) does not aid the case of the appellants, cannot be accepted. As already noticed above, the respondent has not been prosecuted for violation of the Control Order. Reliance on **Allied Motors** (supra) in our considered opinion, does not help the case of the respondent, for therein, what was alleged and ultimately held proved that the dealership was terminated without a show cause notice and in violation of principles of natural justice. That is not the pleaded case of the respondent herein.

13. In **Hindustan Petroleum Corporation Limited & Ors. v. Super Highway Services & Anr.**<sup>12</sup> this Court observed as under :

“31. The cancellation of dealership agreement of a party is a serious business and cannot be taken lightly. In order to justify the action taken to terminate such an agreement, the authority concerned has to act fairly and in complete adherence to the rules/guidelines framed for the said purpose. The non-service of notice to the aggrieved person before the termination of his dealership agreement also offends the well-established principle that no person should be condemned unheard. It was the duty of the petitioner to ensure that Respondent 1 was given a hearing or at least serious attempts were made to serve him with notice of the proceedings before terminating his agreement.

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<sup>11</sup> Page 2 of written submission of the appellants

<sup>12</sup> (2010) 3 SCC 321

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

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14. The crux of the above decision is that when a dealership agreement is to be cancelled, it has to be so done strictly in consonance with Rules/Guidelines framed in that regard. When a sampling test is being conducted a dealer is to be given prior notice so as to ensure his or his representative’s presence can be secured. In the present facts, the respondents have taken issue with the process of collection of samples, being aggrieved by the fact that a third party, namely, SGS India was appointed to take samples and not with the lack of service of notice or any other such non-compliance of the principles of natural justice as discussed in the said judgment.

15. We have also perused the decision in ***Harbanslal Sahnia & Anr. v. Indian Oil Corporation & Ors.***<sup>13</sup>. This judgment deals with the correctness of writ proceedings in respect of contractual matters. It was observed the petitioner’s dealership which was their “bread & butter” came to be terminated for an irrelevant and non-existent cause. As such, a writ petition would be maintainable. The maintainability is not an issue before us. Therefore, this judgment is not applicable to the present case.

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<sup>13</sup> (2003) 2 SCC 107

16. That apart, the observations in ***National Insurance Company Ltd. v. Pranay Sethi***,<sup>14</sup> tell us that in deference to judicial discipline and decorum, the judgments/orders passed by a coordinate Bench are to be respected by another Bench of co-equal strength. As such, we follow the holding in ***R.M. Service Centre*** (supra).
17. It stands clarified that we have taken note of and considered all contentions raised across the Bar, however, in view of the above discussions, no other point survives for consideration. Consequentially, the appeals are allowed keeping in view that the termination of the agreement *inter se* the parties was only based on the contravention of the terms of the dealership agreement.
- Pending application(s), if any, shall stand disposed of.
18. No costs.

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<sup>14</sup> (2017) 16 SCC 680