IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE NINALA JAYASURYA

WRIT APPEAL No. 162 of 2020

(Taken up through video conferencing)

Indian Oil Corporation Limited,
A company registered under the Companies Act, 1956
& having its registered office at Indian Oil Bhavan, G-9,
Ali Yavar Jung Marg, Bandra (East),
Mumbai - 400051, and others. …. Appellants

Versus

M/s. Pullareddy Service Center,
Dealer, Indian Oil Corporation Ltd.,
Pullareddypeta (V), Duvvur(M),
Kadapa District - 516175 ,
Represented by its Proprietor,
K.C. Obulamma. …. Respondent

Counsel for the appellants	: Mr. L. Ravichander, Senior Counsel For Mr. Dominic Fernandes
Counsel for the respondent	: Mr. N. Ashwani Kumar
Date of hearing	**:** 19.07.2021
Date of Pronouncement	: 21.09.2021.

JUDGMENT

(Per Ninala Jayasurya, J)

Aggrieved by the order dated 13.12.2019 passed by the learned Single Judge allowing W.P.No.3105 of 2018, the respondents therein instituted the present appeal.

2. The writ petition was preferred by the petitioner / respondent who is a dealer of the Indian Oil Corporation Limited, appellant No.1 herein, aggrieved by the order of the respondent No.2 / appellant No.2 dated 03.01.2018, confirming

the order of termination of dealership, passed by the respondent No.3 / appellant No.3 dated 14.07.2015.

3. The brief facts leading to the filing of the writ petition as set out in the affidavit thereof may be stated thus:

The petitioner entered into a dealership agreement with respondent No.1 / appellant No.1 under 'B' category dealership for running an outlet for the purpose of sale of Motor Spirit and / or HSD / Motor Oil, Greases and other motor accessories *vide* agreement dated 10.04.1990 and had been successfully running for over 25 years. The petitioner's outlet was subjected to periodic inspection and no irregularities / infirmities have been found by any officer at any point of time. On 05.02.2015, respondent No.4 conducted inspection of the outlet, and alleged that an additional / unauthorized double gear was found in the petrol dispensing unit (Model No.MIDCO MECH 981 C) manufactured by MIDCO company and that there was positive stock of variation of (+) 821 Lts., in petrol and negative stock variation of (-) 393 Lts., in diesel. While recording the same in the report, it was mentioned that the seal of Weights and Measurements on the dispensing unit is intact.

4. On the basis of the said report, the respondent No.3, issued a letter titled as 'explanation letter' on 23.02.2015 and called for explanation from the petitioner to which a detailed explanation dated 26.02.2015 was submitted *inter alia* contending that allegation of double gear is false and unsubstantiated as respondent No.4 himself stated in the report that the seal of Weights and Measures is intact and therefore, any additional fitting in the dispensing unit is impossible. Further that as maintenance and service of dispensing unit is by the

members of respondent No.1, the petitioner cannot be held liable for any inherent fittings in the dispensing unit.

5. Dissatisfied with the explanation, a Show Cause Notice dated 27.06.2015 proposing to terminate of dealership was issued by respondent No.3. The petitioner submitted reply dated 03.07.2015 reiterating its earlier explanation and further asserted that it has not committed any breach of the terms of the agreement or the Marketing Discipline Guidelines, 2012 (for short "MDG"). However, respondent No.3 had issued a termination letter dated 14.07.2015 *inter alia* holding that the petitioner violated the Marketing Discipline Guidelines, 2012.

6. Against the said order of termination, the petitioner approached respondent No.2 and filed an appeal on 24.08.2015 as provided under Clause 8.9 of MDG. The respondent No.2 afforded an opportunity of personal hearing, passed order in the appeal on 03.01.2018 holding that the termination of the dealership of the petitioner is in accordance with the Guidelines based on the established fact of unauthorized fitting.

7. The learned Single Judge after hearing both sides and referring to the brief factual matrix, allowed the writ petition by placing reliance on the judgment of High Court of Judicature of Andhra Pradesh at Hyderabad in **P.Laxmikant Rao v. Union of India**[1] wherein it was observed that the equipment for measuring and supply of petroleum products is chosen and fitted by the respondents themselves and a dealer has absolutely no say in the matter and a subsequent judgment in **Ram Lal Agarwal v. Indian Oil Corporation Limited and others**[2] wherein the order of termination was quashed as the same does not record a finding of

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[1] 2011(3) ALD 505
[2] 2014(4) ALD 139

deliberate insertion of double gear and actual manipulation of delivery of fuel and proceeded as if its mere existence is sufficient to terminate the dealership.

8. While dealing with the submissions made on behalf of the Oil Company/ appellant No.1 distinguishing the above said judgments to the effect that variation was not noticed in the quantity unlike in the present case, the learned Single Judge opined that even the noticed variation cannot fix the complicity of the petitioner as the first cited judgment by the counsel for the petitioner shows that the dealer has absolutely no say in the matter and the terms of the agreement prohibit a dealer from meddling in any manner.

9. The learned Single Judge with reference to the judgment of Gauhati High Court in **Nibedita Roy v. Union of India and Others**[3] while observing that in the said case, a contention was raised that the petitioner therein had tampered with the seal, which is not present in the instant case, opined that the query raised by the Gauhati High Court in the said ruling as to how double gear can be inserted without tampering the seal is also raised in this case, which remained unanswered by the respondents. In the ultimate analysis of the matter, the learned Single Judge at Para No.10 held thus:

" The inspection report clearly shows that the weights and measures seals were intact. It also reveals that DU covers seals were sealed with AAC. Hence, when the inspection report is to the effect that the seals are intact, by virtue of the above rulings, the impugned order cannot be sustained."

10. Sri L. Ravichander, learned Senior Counsel appearing for the appellant No.1 / Corporation advanced strenuous arguments, assailing the order passed by

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[3] 2018(2) GLT 217

the learned Single Judge. He submits that the view taken by the learned Single Judge to the effect that when seals are intact, there is no chance of tampering with dispensing unit is not tenable. He submits that when the presence of second gear is established and the manufacturing Company (MIDCO) has given a letter / e-mail that the original dispensing unit has one gear, the Court erred in coming to a conclusion in favour of the petitioner. He submits that the learned Single Judge was carried away by the judgment in **P.Laxmikanth Rao's** case (referred 1 supra) and though the facts are similar to some extent, there are crucial differences between the said case and the present case. He submits that the learned Single Judge therein recorded findings in favour of the dealer *inter alia* on the ground that the opinion tendered by the manufacturing Company (L&T) was not made available to the petitioner / dealer therein. However, he submits that, in the present case, the e-mail of the manufacturing Company (MIDCO) was furnished to the petitioner. He submits that the authorities concerned have complied with the requirements of law by furnishing the relevant material and after affording an opportunity of hearing, recorded the conclusions which warrants no interference by the Writ Court in the proceedings under Article 226 of the Constitution of India. The learned counsel while trying to distinguish the judgment in **Ram Lal Agarwal**'s case (referred 2 supra) submits that in the said case, no variation in dispensing of fuel was noticed by the inspecting team and whereas in the present case, stock variations were found.

11. The learned counsel further submits that the dealer is the overall custodian of the dispensing unit and its maintenance is his responsibility. While submitting that no allegations of malafidies or colourable exercise of power have been attributed to the appellants / respondents, the learned Senior Counsel emphasizes the aspect that the presence of second gear was not disputed and in

fact the report containing the said features was signed by the petitioner's representative without any demur. He submits that when nothing is attributable to the appellant / authorities of the Corporation, the moot question that arise would be for whose benefit, the gear is inserted? Answering the same, the learned counsel adds, that undoubtedly the petitioner is the beneficiary. However, he submits that the learned Single Judge failed to appreciate the same. He reiterates that the dispensing units are in the custody and control of the dealer and he has to answer the discrepancies / technological intrigues as stock variations in the quantities would enure to the benefit of the petitioner. He also submits that the learned Single Judge misread the clause in the agreement which places onus on the dealer to take care of the out fit, as also of the receptacles or containers in which the company's products are supplied to the dealer and failed to appreciate that the dealer is responsible for any unauthorized or additional fittings in the dispensing unit. He also contends that the learned Single Judge failed to notice that there is a positive stock variation in the stock of petrol and negative stock variation in diesel which is beyond permissible limits and the representative of the dealer, affixed his signature in the inspection report, without disputing the same. He submits that as a matter of fact, if there are any variations in the stocks, a duty is cast upon the dealer to intimate the same to the Oil Company, which is conspicuously absent in the present case.

12. He submits that the learned Single Judge without appreciating the several legal and factual contentions raised on behalf of the appellant / Oil Company, allowed the writ petition and the same is liable to be set aside. To buttress his contentions, the learned Senior Counsel placed reliance on the judgments

reported in **Tata Cellular v. Union of India[4], State of Bihar and Others v. Jain Plastics and Chemicals Limited[5], Orissa Agro Industries Corporation Limited and Others v. Bharati Industries and Another[6], Michigan Rubber (India) Limited v. State of Karnataka and Others[7], Joshi Technologies International INC v. Union of India and Others[8],** and **Indian Oil Corporation and Others v. Bapuji Fuels[9].**

13. *Per contra,* Mr. N. Ashwani Kumar, learned counsel appearing for the respondent / petitioner supports the judgment of the learned Single Judge contending *inter alia* that the same does not suffer from any legal infirmities. He submits that the learned Single Judge has duly appreciated the legal precedents cited on behalf of the dealer and the conclusions arrived at by the learned Single Judge cannot be flawed. While drawing the attention of this Court to page No.60 of the material papers, he submits that as per the report dated 05.02.2015, the inspecting officer clearly endorsed in the relevant column that the W & M seals are intact by putting " ✓ " mark on "YES". He contends that once the seals are intact, the question of insertion would not arise and further that the petitioner / dealer cannot be held responsible for the discrepancies, if any, since the officials of the Oil Company / Corporation and the Weights and Measures Department alone would deal with the dispensing units and other equipment of the outfit. Therefore, the presence of double gear cannot be attributable to the writ petitioner / dealer, he emphasizes.

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[4] (1994) 6 SCC 651
[5] (2002) 1 SCC 216
[6] (2005) 12 SCC 725
[7] (2012) 8 SCC 216
[8] (2015) 7 SCC 728
[9] (2018) 11 SCC 778

14. With reference to difference in quantities, the learned counsel submits that there were no such complaints on the earlier occasions made against the petitioner who is in the business of supply of the petroleum products for over 25 years and the same is proof positive that the petitioner is not otherwise indulging in any irregularities. He also states that periodical inspections are being conducted and there were no complaints at any point of time against the petitioner. Further, there is no evidence to substantiate that the petitioner introduced the gear into the dispensing unit and submits that identical issues fell for consideration in W.A.No.318 of 2011 and a Division Bench by judgment dated 21.07.2011 rejected the same. He submits that the said judgment covers the entire gamut of arguments as advanced on behalf of the appellants in the present case and the appeal is therefore liable to be dismissed in terms of the said judgment. The learned counsel also places reliance on the judgment of the Hon'ble Supreme Court **in Hindustan Petroleum Corporation Limited & Others v. Super High Way Services and Another**[10] and the judgments of learned Single Judges in **P.Laxmikanth Rao's** case (referred 1 supra), **Ram Lal Agarwal's** case (referred 2 supra)**, Nibedita Roy's** case (referred 3 supra), **Bharat Filling Station and Others v. Indian Oil Corporation and Others**[11] and **Govind Saraf Kisan Seva Kendra v. Indian Oil Corporation Limited**[12]**.**

15. On a due consideration of the submissions made by both the learned counsel, and perusal of the materials on record, the issue that falls for consideration is, whether the view taken by the learned Single Judge warrants interference by this Court, in the facts and circumstances of the case?.

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[10] (2010) 3 SCC 321
[11] MANU/DE/3040/2012
[12] AIR 2017 MP 25

16. The whole controversy centers around the crucial observation in the inspection report dated 05.02.2015 about the presence of additional / double gear, which is not in dispute. While it is the contention of the appellants that since the dispensing unit and other equipment are in the care and custody of the petitioner / dealer, the responsibility lies with it and the benefit by virtue of such additional gear coupled with variations in stock would enure to the dealer, the same is opposed by the petitioner contending that it is well-nigh impossible to meddle with the dispensing unit when there is no allegation of tampering of seals, which in fact, undisputedly are intact, as per the inspection report. Further, the dealer cannot be held responsible for the presence of additional equipment as it is the authorities alone who have access to the dispensing unit.

17. While highlighting the aspect of stock variation, Mr. L. Ravichandar, learned Senior Counsel, submitted that the learned Single Judge lost sight of the same and went wrong in relying on the judgment in **Ram Lal Agarwal's** case (referred 2 supra) wherein there is no allegation of variations in stock. Further, in **P.Laxmikanth Rao's** case (referred 1 supra), non-supply of manufacturing Company's letter was found to be in violation of principles of natural justice, which is not applicable to the facts of the present case as the letter/e-mail of MIDCO was furnished to the dealer along with the show-cause-notice.

18. In **Ram Lal Agarwal's** case (referred 2 supra), wherein reliance was placed on the judgment in **P.Laxmikanth Rao's** case (referred 1 supra) which was later upheld by the Division Bench in W.A.No.318 of 2011, the learned Single Judge was examining more or less similar factual situation, but there is no allegation of stock variation as pointed out by the learned Senior Counsel. In the said case, the Inspecting Team observed the presence of double gear in one of

the dispensing units. However, they did not find any irregularity or illegality in the functioning of the dispensing units, no differentiation was noted in dispensing of fuel nor the quantity of petroleum products was found to be deficient in any manner. It was *inter alia* contended on behalf of the Oil Company/respondent therein that mere existence of double gear in the dispensing unit is sufficient to hold a dealer responsible as double gear gets installed only to manipulate delivery and actual shortage of delivery is not material.

19. The learned Single Judge while interpreting Clause 5.1.4 of MDG which is pressed into service in the present case also, opined that double gear in dispensing unit would assume critical irregularity only if deficiency is noticed in the quantity of fuel dispensed with. The said clause reads thus:

> *"5.1.4 Additional/unauthorized fittings/gears found in dispensing unit/tampering with dispensing unit:*
>
> *Any mechanism/fittings/gear found fitted in the dispensing unit with the intention of manipulating the delivery……."*

20. At para 27 of the judgment, the learned Single Judge opined as follows:

> *"……If the material available on record does not necessarily lead to the conclusion that the tampering and tinkering has taken place at the hands of the writ petitioner, it will be totally unjust to penalize him. It is a fundamental principle of law that no innocent person should be penalized for no fault of his. That would be contrary to cannons of justice. In the absence of linkage of the presence of the additional gear with 39 teeth in the equipment at the premises of the retail outlet run by the petitioner to him, it will not be safe to infer that he is guilty of tampering with the equipment. If there is no reasonable substratum to a conclusion that the petitioner is guilty of tampering with the equipment, no adverse action of termination of his dealership*

agreement could have been drawn against him. The petitioner therefore could not have been faulted unnecessarily."

21. It may be trite to observe here that it is not the case of the appellants that by virtue of presence/or help of double gear, less quantity of petrol / diesel is dispensed with on testing at the time of the inspection conducted on 05.02.2015. No doubt, no satisfactory explanation is forthcoming with regard to the stock variations. However, in the absence of any evidence to the effect that additional gear was inserted by / or at the behest of the petitioner / dealer and as a result of the same, there was stock variation which reaps benefit to the petitioner, no conclusion can be arrived at for penalizing the petitioner. In this regard, it may be apt to refer to the judgment of the Division Bench cited by Mr. N. Ashwani Kumar in support of his contentions. In W.A.No.318 of 2011, the Hon'ble Division Bench while confirming the orders of the learned Single Judge in **P.Laxmikanth Rao's** case (referred 1 supra) *vide* orders dated 21.07.2011 elaborately dealt with the similar issues. In the said case, the dealership of the petitioner therein was terminated on the allegation that a spurious gear was found to have been introduced into the unit resulting in the short supply of High Speed Diesel (HSD). It is the case of the Oil Company that the dealer committed mal-practice/irregularity of short supply by tampering with the Corporation's equipment, namely, dispensing unit by using unauthorized fittings/gears and that the said act of the dealer putting additional gear to the dispensing unit resulting in short supply tantamount to tampering with the dispensing unit. It was contended before the learned Single Judge that once the seal is found to be intact, the dealer cannot be held responsible for any error or defect as to the measurement and further that the dealer has no control over the dispensing unit and the Corporation and the Maintenance Agency are in complete control over the units.

While upholding the judgment of the learned Single Judge, the Division Bench held as follows:

> *"On the basis of the charge, it is appropriate that before any conclusion as to misconduct or malpractice or tampering by the dealer is arrived at, it must be demonstrated by the appellants by the standards of preponderance of probabilities (no lesser standard known to law exists) that the dealer could access the internal mechanism of the unit and could introduce the spurious gear. Alternatively, a compelling inference as to tampering by or on behalf of the dealer could have perhaps been legitimately arrived at if the respondents could establish that proper gear was in fact installed in the unit on an earlier occasion and the dealer or his agents could have substituted the gear with a spurious one, even while the seal to the unit was intact. In the absence of officials of Weights and Measures Department and by obtaining only their telephonic approval, the seals were broken by agents of the appellants and the Metering Unit opened. It is the admitted factual scenario that the seals of the dispensing unit were intact and as observed by the learned Single Judge it is not the case of the appellants that the dealer or any other individual could gain access to the unit where the "spurious gear" was introduced even while the seal of the unit was intact. It is not the case of the appellants that the seals of the unit were tampered with or duplicate seals substituted for the seals put by officials of the Legal Metrology Department. Neither the show cause notice nor the final order impugned in the writ petition unravels the mystery of the closed unit and metaphysical entry of the spurious gear into the unit. This was a fatal error in the order of termination of the dealership, on account of which the learned Single Judge was persuaded to invalidate the order of termination of the respondent's dealership, by the appellants."*

22. Further, with regard to the presence of the spurious gear, the Hon'ble Court recorded its conclusions as follows:

"Responding to a query from this Court as to how the appellants could explain the curious case of the spurious gear inside a locked unit, the learned senior counsel would urge that since the authorized dealer of the gears supplied by Larsen and Turbo had through a letter, dated 10.05.2010, informed the appellants that the gear found in the dealer's unit was an unauthorized gear and not manufactured and supplied by the authorized supplier, the inference is compelling that since it was only the dealer who stood to gain from short delivery of HSD, he must have introduced the gear notwithstanding that the unit was sealed and despite absence of an explanation as to how a spurious gear could have been introduced into the sealed unit. His contention does not commend acceptance by this Court as it suffers from the logical fallacy of an undistributed middle. The letter of the supplier to the appellants, dated 10.05.2010, is not conclusive of the fact that a standard gear was in place till the inspection nor it is to be construed by any principle of law that a spurious gear was not installed.

Since the HSD vended by the dealer is clearly found to be in short supply and that is an undisputed fact, and since a spurious gear having 39 teeth instead of 38 was also found embedded inside the HSD unit, the conclusion is irresistible in a world governed by physical laws that someone or some agent introduced a non-standard gear into the HSD unit. But from this fact to take a logical leap to infer that it was introduced by the dealer, is irrational. The chain of circumstances is not complete and merely because the dealer alone would stand to benefit from the short supply, no such inference could legitimately be drawn.

It is the admitted position that the supplier of the gears is a private agent. Neither the State nor an instrumentality of the State is the accredited supplying agent of the appellants. There is nothing in the pleadings, including in the counter affidavit of the appellants herein before the learned Single Judge that establishes that the introduction or replacement of the gears is by the respondent dealer."

23. While disposing of the writ appeal, the Division Bench opined that "the conclusion as to the dealer's malfeasance was arrived at by the appellants therein on the singular fact that there was short supply of HSD and on the opening of the seal of the unit after breaking it, the spurious gear was found." It was further observed that "the basis of these two facts found is inadequate and is flawed for the reason that the fact that a spurious gear was introduced by the dealer was not legitimately inferred and the fact of the external seals of the unit being intact was not adverted to nor explained in the order of termination."

24. This Court is of the considered view that the above said judgment of the Hon'ble Division Bench applies to the facts of the case in principle and is, therefore, not persuaded to take any different view in the facts and circumstances of the case, wherein no material/evidence was brought on record to the effect that the additional gear was inserted by the dealer with a view to manipulate the delivery of petrol / diesel. It is neither the case of the appellants that unauthorized fittings / additional gears in the dispensing units were inserted by the dealer in collusion with the authorities nor any such allegations were made to that effect. In the absence of which, nothing adverse against the petitioner / dealer can be inferred. This Court is, therefore, inclined to uphold the submissions made by the learned counsel for the respondent and reject the contentions contra of the learned Senior Counsel for the appellant No.1 / Corporation.

25. In **Indian Oil Corporation's** case relied on by the learned counsel for the appellants, the Hon'ble Supreme Court looking to the facts and circumstances of the case and on perusing the material on record held that acknowledgment of inspection report by putting seal and signature cannot be allowed to be resiled on

the ground that the same were signed in good faith and the officials of the Oil Company cannot take advantage of the same. The said Judgment, in the considered view of this Court, is not applicable to the facts of the present case. Signing of the inspection report acknowledging the presence of additional gear would not *ipso facto* amount to accepting the insertion of the same by the petitioner. The burden lies on the appellants to establish that the same was inserted to manipulate the delivery of the fuel. In the present case, respondent No.3 / the Original authority arrived at the conclusions to the effect that being custodian of the outlet / equipment, the petitioner is responsible for presence of additional / unauthorized gear without adverting to the plea that it is not possible to do so when seals are intact. Even the appellant No.2 / appellate authority based its findings on assumptions and presumptions while opining that termination of the dealership was based on established fact of unauthorized fitting alone and the issue of excess stock of MS and negative stock in HSD is of no further consequence, is not being dealt with. As pointed out by the Division Bench, no finding was recorded as to how a spurious gear can be inserted in the dispensing unit when the seals are intact. It may be pertinent to note here that Clause 8.5.2 of MDG provides as follows:

”All cases of irregularities needs to be established before any action is taken against a dealer.”

Against the back ground of the above stated factual and legal position, the orders impugned in the writ petition cannot stand to legal scrutiny.

26. There is no dispute with regard to exposition of Law by the Hon’ble Supreme Court in the other judgments relied on by the learned Senior Counsel. In **Joshi’s** case (referred 8 supra), the Hon’ble Supreme Court was dealing with an appeal filed against the dismissal of writ petition by the High Court of Delhi

holding that the appellant is not entitled to any deductions under Section 42 of the Income Tax Act in the absence of stipulations to that effect in the contracts signed between the parties. The Hon'ble Supreme Court summarized the principles with regard to maintainability of the writ petition even in the contractual matters viša-vis State acts, the relevant of which, to the present context may be reproduced hereunder:

> *"70.7. Writ can be issued where there is executive action unsupported by law or even in respect of a corporation there is denial of equality before law or equal protection of law or if it can be shown that action of the public authorities was without giving any hearing and violation of principles of natural justice after holding that action could not have been taken without observing principles of natural justice.*
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> *70.8. If the contract between private party and the State/instrumentality and/or agency of the State is under the realm of a private law and there is no element of public law, the normal course for the aggrieved party, is to invoke the remedies provided under ordinary civil law rather than approaching the High Court under Article 226 of the Constitution of India and invoking its extraordinary jurisdiction.*
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> *70.9. The distinction between public law and private law element in the contract with the State is getting blurred. However, it has not been totally obliterated and where the matter falls purely in private field of contract, this Court has maintained the position that writ petition is not maintainable. The dichotomy between public law and private law rights and remedies would depend on the factual matrix of each case and the distinction between the public law remedies and private law field, cannot be demarcated with precision. In fact, each case has to be examined, on its facts whether the contractual relations between the parties bear insignia of public element. Once on the facts of a particular case it is found that nature of the activity or controversy involves public law element, then the matter can be examined by the High Court in writ petitions under Article 226 of the Constitution of India to see whether*

action of the State and / or instrumentality or agency of the State is fair, just and equitable or that relevant factors are taken into consideration and irrelevant factors have not gone into the decision-making process or that the decision is not arbitrary.

70.10. Mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to consider and give due weight to it may render the decision arbitrary, and this is how the requirements of due consideration of a legitimate expectation forms part of the principle of non-arbitrariness.

70.11. The scope of judicial review in respect of dispute falling within the domain of contractual obligations may be more limited and in doubtful cases the parties may be relegated to adjudication of their rights by resort to remedies provided for adjudication of purely contractual disputes. "

27. The Hon'ble Supreme Court, in the factual scenario of the said case ultimately was not inclined to interfere with the judgment of the High Court *inter alia* holding that it was purely a contractual matter, with no element of public Law involved there under.

28. It may be appropriate to mention here that the orders impugned in the writ petition were passed by the authorities of the appellant-Corporation, an instrumentality of the State, in terms of the MDG, issued by the Government of India, which have been made applicable uniformly to all Public Sector Oil Marketing Corporations are executive in nature and can be subjected to judicial review under Article 226 of the Constitution of India. The Hon'ble Supreme Court in **Sanjana M.Wig (Ms.) vs. Hindustan Petroleum Corporation Limited**[13] had an occasion to deal with issue of judicial review under Article 226 of the

[13] (2005) SCC 242

Constitution of India viša-vis availability of alternative remedy. In the said case, the dealership of the appellant therein was terminated alleging violation of various conditions of the agreement. The writ petition filed by the dealer was dismissed in *limine*. It was contended before the Hon'ble Supreme Court, *inter alia* that the High Court erred in dismissing the writ petition on the premise that mere existence of an arbitration clause in the agreement, without considering the question that the arbitrator had no jurisdiction to pass an award namely restoration of possession to the dealer. Dealing with said contentions, the Hon'ble Supreme Court observed as follows:

> *"12. The principal question which arises for consideration is as to whether a discretionary jurisdiction would be refused to be exercised solely on the ground of existence of an alternative remedy which is more efficacious. Ordinarily, when a dispute between the parties requires adjudication of disputed question of facts wherefor the parties are required to lead evidence both oral and documentary which can be determined by a domestic forum chosen by the parties, the Court may not entertain a writ application. (See Titagarh Paper Mills Ltd. V. Orissa SEB [(1975) 2 SCC 436] and Bisra Stone Lime Co. Ltd. V. Orissa SEB[(1976) 2 SCC 176 : AIR 1976 SC 127.]*
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> *13. However, access to justice by way of public law remedy would not be denied when a list involves public law character and when the forum chosen by the parties would not be in a position to grant appropriate relief.*
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> *18. It may be true that in a given case when an action of the party is dehors the terms and conditions contained in an agreement as also beyond the scope and ambit of the domestic forum created therefor, the writ petition may be held to be maintainable; but indisputably therefor such a case has to be made out. It may also be true, as has been held by this Court in Amritsar Gas Service[(1991) 1 SCC 533] and E.Venkatakrishna [(2000) 7 SCC 764] that the arbitrator may not have*

the requisite jurisdiction to direct restoration of distributorship having regard to the provisions contained in Section 14 of the Specific Relief Act, 1963; but while entertaining a writ petition even in such a case, the Court may not lose sight of the fact that if a serious disputed question of fact is involved arising out of a contract qua contract, ordinarily a writ petition would not be entertained. A writ petition, however, will be entertained when it involves a public law character or involves a question arising out of public law functions on the part of the respondent."

The Hon'ble Supreme Court, in facts and circumstances of the said case, however, held that no case has been made out for grant of relief of restoration of dealership.

29. In the present case, no disputed questions were raised and the dealership of the petitioner was simply terminated without adverting to the crucial aspect of the case regarding the existence of double gear in dispensing unit when the seals are intact and the responsibility was fixed on the dealer in an arbitrary manner. Alternative remedy under the said circumstances, is not a bar and the expression of the Hon'ble Supreme Court referred to above applies to the case on hand.

30. In the aforesaid view of the matter, the judgments relied on by the learned Senior Counsel for the appellants in **Jain Plastics and Chemicals Limited's** case (referred 5 supra) and **Orissa Agro Industries Corporation Limited's** case (referred 6 supra)**,** reiterating the legal position that a writ petition under Article 226 of the Constitution of India where disputed questions of facts are involved is not maintainable, is of no much help to the appellants.

31. In **Tata Cellular's** case (referred 4 supra), the Hon'ble Supreme Court while dealing with the power of judicial review etc., in tenders / contractual matters laid down *inter alia* that the Court does not sit as a court of appeal but merely reviews the manner in which the decision was made in the tender process

and awarding of contracts. The Hon'ble Supreme Court in **Michigan Rubber (India) Limited** case (referred 7 supra) opined that a Court before interfering in the tender or contractual matters, in exercise of power of judicial review, is required to examine *inter alia* as to whether the process adopted or decision made by the authority is malafide or intended to favour some one or whether the process adopted or decision made is so arbitrary and irrational. The said judgments would be of no support to the appellants in the context of order terminating dealership which has serious civil consequences and the same can be tested on the touchstone of Article 14 of the Constitution of India by exercising powers of judicial review.

32. The order of the learned Single Judge though, is not exhaustive, the reasoning while allowing the writ petition with reference to the judgment in **P.Laxmikanth Rao's** case (referred 1 supra), which was upheld by the Division Bench as stated earlier, cannot be viewed as one without any valid reasons or suffers from any legal infirmity.

33. Considering the matter in its entirety and in the light of the judgment in W.A.No.318 of 2011 dated 21.07.2011, this Court is of the view that no good grounds are made out warranting interference by this Court in the order under appeal.

34. Accordingly, for the aforegoing reasons, the Writ Appeal is dismissed. No order as to costs. As a sequel, miscellaneous applications, if any, pending shall stand dismissed. No order as to costs. Pending miscellaneous applications, if any, shall stand dismissed.

ARUP KUMAR GOSWAMI, CJ **NINALA JAYASURYA, J**

BLV/ CBS

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI

HON'BLE MR. JUSTICE ARUP KUMAR GOSWAMI, CHIEF JUSTICE
&
HON'BLE MR. JUSTICE NINALA JAYASURYA

WRIT APPEAL No.162 of 2020

21st day of September, 2021

BLV/CBS