SUPREME COURT OF INDIA

Allied Motors Ltd.

Vs.

Bharat Petroleum Corp.Ltd.

C.A.No.11200 of 2011

(Dalveer Bhandari an Dipak Misra,JJ.,)

16.12.2011

JUDGMENT

Dalveer Bhandari,J.,

1. Leave granted.

2. This appeal is directed against the judgment dated 11th August, 2009 delivered in Letters Patent Appeal No.296 of 2009 by the Division Bench of the High Court of Delhi upholding the judgment dated 6th May, 2009 passed by the learned Single Judge in Writ Petition (Civil) No.2927 of 2005.

3. The main issue which arises for adjudication in this appeal pertains to the termination of the dealership of the appellant in an illegal and arbitrary manner.

4. According to the appellant, it had been operating the petrol pump for the last 30 years and during this period it was given 10 awards from time to time declaring its dealership as the best petrol pump in the entire State of NCT of Delhi. On a number of occasions, samples of the appellant were tested by the respondent-Corporation and on each occasion its samples were found to be as per the specifications.

5. According to the appellant, it had maintained highest standards and norms of an excellent petrol pump, yet, the respondent-Corporation, in a clandestine manner, terminated its dealership in the most arbitrary manner and in total violation of the principles of natural justice.

6. It was further urged by the appellant that its dealership was terminated without even issuing any show cause notice and/or giving an opportunity of hearing to it. The termination of dealership was contrary to the mandatory procedural provisions of law. According to the appellant, the said termination was mala fide, arbitrary and illegal.

7. It may be pertinent to mention that in the morning of 15th May, 2000, an unauthorized police officer accompanied by the officials of the respondent conducted a raid at the appellant's petrol pump. According to the appellant, the raid was illegal as an unauthorized police officer could not conduct a search and seize the samples of the appellant.

8. The appellant urged that the samples taken in this raid were in complete violation of the mandatory procedural provisions of law as provided under the Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and prevention of Malpractices) Order, 1999 (hereinafter referred to as "Order"). The appellant while reproducing the relevant provisions of law has submitted as under:-

> "(a) Clause 4 of the said Order provides for power of search and seizure. Sub-Clause (A) of the section authorizes any police officer not below the rank of the Deputy Superintendent of Police (for short, DSP) duly authorized or any Officer of the concerned Oil Company not below the rank of Sales Officer to take samples of the products and/or seize any of the stocks of the product which the officer has reason to believe has been or is being or is about to be used in contravention of the said Order."

9. In the present case, however, the samples were collected in complete violation of the aforesaid provisions. The Police official who had conducted the raid and collected the samples was admittedly below the rank of DSP. This is also recorded in the Metropolitan Magistrate's order dated 27.5.2002 passed in FIR No.193 of 2000 wherein it is stated as under:

> "In the present case the search and seizure was conducted by an unauthorized police officer of the rank of Inspector which is totally contrary to the mandatory provisions of the said Clause
> 4."
>
> (b) Sub-Clause (B) of Clause 4 of the said Order provides that while exercising the power of seizure under Clause 4 (A) (iv) the authorised officer shall record in writing the reasons for doing so, a copy of the which shall be given to the dealer."

10. According to the appellant, in the present case, no such reasons in writing were provided. (c) Clause 5(2) of the said Order lays down the procedure for sampling of product which provides that "the Officer authorised in Cl. 4 shall take, sign and seal six samples of 1 litre each of the Motor Spirit or 2 of 1 lit. each of the High Speed Diesel, 2 samples of the Motor Spirit (or one of High Speed Diesel) would be given to the Dealer or transporter or concerned person under acknowledgement with instruction to preserve the sample in his safe custody till the testing or investigations are completed, 2 samples of MS (and/or one of HSD), would be kept by the concerned Oil Company or department and the remaining two samples of MS (and/or one of HSD) would be used for laboratory analysis."

11. The appellant urged that in the present case, samples were allegedly taken from 6 sources. Therefore, the respondent Corporation as per the provision should have taken 36 samples (6 samples from each of the source) and handed over 12 samples (2 from each of the 6 sources) to the appellant, being the dealer, under acknowledgement. The respondent Corporation however, neither took 36 samples, nor did it hand over the prescribed number of 12 samples to the appellant. This is clear from the counter affidavit filed by the respondent in Writ Petition (C) No.7382 of 2001 placed on record. It is clearly stated in the counter affidavit filed by the respondent Corporation that it is pertinent to state that two samples from each of the tanks containing adulterated products were drawn by the answering respondent in the presence of the police officials of the crime branch and the representative of the appellant as well.

12. Out of these two samples, one sample was retained by the crime Branch of Delhi Police and another by the respondent, Bharat Petroleum Corporation Limited (for short BPCL). It has, therefore, been clearly admitted that only 2 samples as opposed to 6 samples were drawn from each tank and that no sample was handed over to the appellant. Furthermore, the learned counsel appearing for the respondent in the proceedings before the Division Bench in LPA No.296 of 2009, has specifically admitted, as is also recorded in page 8 of the impugned order that "there was no receipt of two samples from each source being handed over to appellant". It is also relevant to state that in all previous representations made by the appellant to the respondent and previous writ petitions filed, the respondent has never denied the averment that 2 samples were not handed over to the appellant. (d) Clause 5(3) of the said Order provides that "Samples shall be taken in clean glass or aluminium containers. Plastic containers shall not be used for drawing samples."

13. According to the appellant, in the present case, plastic containers were used for drawing samples in complete violation of the said provision. This is also recorded in the Metropolitan Magistrate's order dated 27.5.2002 wherein it is stated that in Clause 5 of the order it was specifically legislated that the sample shall be taken in clean glass or aluminium containers and plastic containers would not be used for drawing out the samples. But in clear contravention to the mandatory provisions, plastic containers were used by the police officer while drawing samples. From the file, it is clear that sample Nos.7, 8 and 9 were drawn from the car of the complainant in plastic containers by the police and therefore, the report on the basis of the samples taken in the plastic containers cannot be relied upon at all.

> (e) Clause 5(4) of the said Order provides that "The sample label should be jointly signed by the officer who has drawn the sample, and the dealer or transporter or concerned person or his representative and the label shall contain information as regards the product, name of retail outlet, quantity of sample, date, name and signature of the officer, name and signature of the dealer or transporter or concerned person or his representative."
>
> According to the appellant, this was not done.

14. The Metropolitan Magistrate's order dated 27.5.2002 passed in FIR No.193 of 2000 specifically records as follows:

> "The law being as noticed above, it is very clear that the search and seizure is bad in law and is in contravention of mandatory provisions of the Essential Commodities Actand contravention of Motor Spirits (High Speed Diesel Act) and in any case the prosecution cannot establish its case against any of the accused and accused persons are liable to be discharged on this very ground and no charge should be framed... There is no evidence whatsoever to show that petrol supplied was adulterated or not."

15. The appellant referred to section I (c) of Chapter 6 of the Guidelines of 1998 which provides as follows:

> "Wherever samples are drawn, either pursuant to random checks or where adulteration is suspected, 3 sets of signed and sealed samples (6x1 ltr of MS and 3x1 ltr of HSD) should be collected from the RO, out of which one set should be kept with the dealer, one with the company and the third to be sent for laboratory resting within 10 days. For the sample kept with the dealer, proper acknowledgement will be obtained and the dealer will be instructed to preserve the same in his safe custody till the testing/investigation are completed."

16. According to the appellant, it is clear that the samples were collected in violation of mandatory procedure of law as provided under the said Order and therefore the termination order passed on the basis of test reports of samples so collected is completely illegal and liable to be set aside.

17. The appellant relied on the case of *Harbanslal Sahnia and Another v. Indian Oil Corporation Ltd. and Another*[1] wherein the Indian Oil Corporation terminated the dealership of Harbanslal Sahnia on the basis that the sample drawn from the petrol pump did not meet the standard specification. This Court found that two government orders providing for the procedure for taking samples had been violated and in view of the same found that the failure of the sample taken became irrelevant and non-existent fact which could not have been relied upon for terminating dealership, and quashed the order terminating the dealership and restored possession. It is submitted that the fact that two samples were not left with the appellant is not only a violation of the mandatory principles of law but also of fair play and natural justice as the appellant is deprived of its valuable right to contest the veracity of the test reports. This provision of law is the single most important check on arbitrary action by the respondent.

18. According to the appellant, these samples were taken in violation of the mandatory provisions of law. The test reports, given on 16.5.2000, formed the basis for the termination of the appellant's dealership. The termination was in clear violation of the procedures prescribed by law. The termination was also in violation of mandatory Marketing Discipline Guidelines and the prescribed procedures. The termination was also in violation of the principles of natural justice and fairplay.

"According to the appellant, this is clear from the following facts:-

a) Clause (d) of Section 1 of the Marketing Disciplines provides that: If the samples is certified to be adulterated, after laboratory test, a show cause notice should be served on the dealer and explanation of the dealer sought within 7 days of the receipt of the show cause notice. Thus under the said provision seven days is to be given to the dealer to provide an explanation and only if explanation is found unsatisfactory can appropriate action be taken. In the instant case, however, no show cause notice was given and no opportunity was given to the appellant to provide any explanation. Instead appellant's dealership was summarily terminated on the very date the alleged test reports certifying the sample to be adulterated was received i.e. 16.5.2000, the very next day after the samples were taken. It is relevant to state that the premeditated nature and mala fide of the test reports was writ large as the test reports on the basis of which the appellant's dealership was allegedly terminated itself indicated "terminated dealer".

b) Clause (d) of Section 1 of the Marketing Discipline Guidelines further provides that if the explanation of dealer is not satisfactory, the Company should take action as follows:

a. Fine of Rs.1 lakh and suspension of sales and supplies for 45 days in the first instances;
b. Termination in the second instance."

19. It is thus clear from the above provision that the Guidelines prescribe termination only in case of second instance of adulteration of Motor Spirits. It is an admitted case that this was the first instance of alleged adulteration of Motor Spirits.

20. One of the grounds taken by the respondent-Corporation for termination in its letter dated 16.5.2000 was that "in the past also a product sample collected from the retail outlet was found to have failed specification." This earlier offence in respect of the "product sample" referred to in the order of 16.5.2000, was, however, in respect of lube sample and not petrol/MS. This is clear from the Delhi High Court's order dated 9.9.2004 passed in WP (C) No.7382 of 2001, which records respondent Corporation's counsel's submission in that respect as below: "It was also emphasized that there was a past history where inspection of the outlet had been carried out on 12.12.1998 and Lubes samples were collected which were found off-specifications."

21. It is also submitted that a previous alleged case of off spec lube, does not make the first alleged case of motor spirit adulteration, a second offence of motor spirit adulteration. Off-spec lube is not a case of adulteration which is clear from the definition of "adulteration" set out in the Marketing Discipline Guidelines which defines "adulteration" as "the introduction of any foreign substance into motor spirit/high speed diesel illegally or unauthorizedly."

Lube falls into a completely different category and is in a separate chapter in the Marketing Discipline Guidelines being Chapter 7 as contrasted from Chapter 6 which deals with "Adulteration of Product". Chapter 7 of the said guidelines separately provides for prevention of irregularities at retail outlet in respect of lubes. Clause 9 of the said Chapter provides the following punishments in case of sales of adulterated lubes.

> "a. Suspension of sales and supplies of all products for 15 days along with a fine of Rs.20,000/- in the first instance.
>
> b. Suspension of sales and supplies for 30 days along with a fine of Rs.50,000/- in the second instance.
>
> c. Termination in the third instance."

22. Thus while the guidelines provide for termination of dealership in the second instance of adulteration of petrol/MS, the punishments prescribed for adulteration of lubes provides for termination only in case of third instance.

23. Further, the fourth note provided at the end of this Chapter 6 provides as under:

> "In case, two or more irregularities are detected at the same time at the same RO, action will be taken in line with what is listed in MDG under the relevant category for each irregularity."

24. According to the appellant, the respondent has clearly acted in violation/contravention of, or at the very least in departure from, the Motor Spirits High Speed Diesel Order and the Marketing Discipline Guidelines and has also acted contrary to the principles of natural justice and fair play both in respect of taking samples which formed the basis of termination, as also in respect of the termination of dealership.

25. The appellant referred to the decision in Bharat Filling Station and Another v. Indian Oil Corporation Ltd. 104 (2003) DLT 601 wherein the Delhi High Court specifically referred the Market Discipline Guidelines. Relevant part of the judgment is reproduced as under:-

> "As noted above, IOC, whenever enters into dealership agreement, executes memorandum of agreement which lays down standard terms and conditions. These conditions, inter alia, include provisions for termination of the dealership as well. It is provided that the agreement can be terminated by giving required notice. It may however be mentioned that at the same time in order to ensure that such agreements with the dealers are worked out in a systematic manner and the respondent IOC does not invoke the termination clause arbitrarily, Government of India has issued Marketing Discipline Guidelines."

26. The appellant also referred to the decision of this Court in *Ramana Dayaram Shetty v. International Airport Authority of India and Others*[2] wherein this Court held that "it is well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them." It is submitted that the respondent was bound to act in accordance with the Marketing Discipline Guidelines.

27. It is further submitted that in the case of Ramana Dayaram Shetty (supra), this Court held that "the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largesse including awards of jobs, contracts, quotas, licenses etc. must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

28. The appellant further submitted that in the present case the respondent has departed from the standard norms laid down in the Marketing Discipline Guidelines and the standard norms of natural justice and fairplay and that such departure was clearly arbitrary, irrational, unreasonable and discriminatory.

29. The appellant urged that the respondent Corporation terminated the dealership without even issuing show-cause notice and/or providing any opportunity of hearing. The termination is clearly in violation of the principles of natural justice.

30. The appellant also asserted that the termination was mala fide is further strengthened by the fact of an internal email of the respondent dated 3 days after the raid on May 18, 2000 stating that "the samples were taken as complaint samples but the comments on the test result were given due to reasons explained to you over the phone."

31. It is also stated that another email dated 22nd May, 2000 recorded that "Delhi Territory had drawn samples regularly from the retail outlet. All 10 samples drawn in 1999-2000 were found on spec." Despite this, the dealership had already been terminated the very day after the raid.

32. The appellant also urged that the order of the Delhi High Court in Writ Petition (Civil) No.7382 of 2001 dated 9.9.2004 directed the respondent to give a show cause notice, personal hearing and pass a reasoned order. It was not given and the appellant was constrained once again to approach the High Court who then directed the respondent to grant the appellant a personal hearing at a higher level. The action of the respondent is mala fide which is reflected from the fact that at various stages the respondent-Corporation has tried to improve its case by supplanting reasons in support of the termination. This is clear from the following facts:

"i. The first notice dated 16.5.2000 terminating the dealership points out the following three grounds for termination:

a. One of the samples during the raid and taken from the laboratory testing had failed specification of U.L.P.

b. In the past also a product sample collected from the retail outlet was found to have failed specification; and c. Breach of agreement between the parties vide which the appellant had covenanted not to adulterate petroleum products. ii. Despite the fact that termination order was quashed by the High Court vide its order dated 9.9.2004 passed in W.P. (C) No.7328 of 2001, with specific direction to the respondent to give the appellant personal hearing and pass a reasoned order, the respondent Corporation vide letter 22.11.2004 confirmed the original order of termination without granting the appellant an opportunity of hearing. Further despite Court's specific order to treat the original termination order dated 16.5.2005 as the show-cause notice, the respondent added additional grounds of termination and terminated the dealership on these grounds in addition to the grounds taken in 16.5.2000. The additional grounds were:

> "a. Loss of Market Share in 1997.
>
> b. Non-availability of density record during routine mobile inspection on 28.4.1998 and 30.5.1995;
>
> c. Failure to meet specifications during a routine inspection on 12.12.1998;
>
> d. Two complaints received in 1997.

33. The appellant submitted that it is pertinent to note that all the grounds pertain to a period prior to the termination of the dealership in 2000 and hence were known to the respondent even at the time it issued its termination order dated 16.5.2000. Despite the same these were taken as grounds for the first time in the year 2004 making it abundantly clear that these grounds were added as an after thought only with a view to improve its case of termination.

34. The appellant further urged that in the order dated 16.5.2000 it was simply stated that one of the samples drawn had failed specification of ULP without clarifying which ULP specification it had failed. However, as per the order dated 22.11.2004, the ULP specification that the samples were said to have failed were in respect of Research Octane Number and ASTM distillation which were co-incidentally the only two tests that IIP Dehradun had not carried out when the samples were sent to IIP Dehradun pursuant to Delhi High Court's order dated 6.12.2000 passed in W.P. (Crl.) No.877 of 2000. In fact since these two tests were not carried out by IIP Dehradun in its order dated 22.11.2004, the test reports were not considered as being irrelevant.

35. The appellant further urged that the mala fide intention of the respondent is clearly evident that even at the stage of final disposal and two years after the filing of the present special leave petition, the respondent has made serious effort to improve its case by filing a supplementary affidavit dated 19.8.2011, vide which the respondent has sought to allege for the first time that it handed over requisite number of samples to the appellant. The supplementary affidavit states that "Samples of products were collected from five tanks of petrol/motor spirit. From each of the five tanks of petrol/motor spirit, six sets of samples in aluminium bottles (i.e. total of thirty 30 sample bottles) were taken. In addition to this, six samples in aluminium bottles were taken from the tank lorry which was found to be decanting petrol/motor spirit in the underground tanks for petrol/motor spirit. As such, the total number of samples taken in bottles were 36. Out of the 36 sample bottles collected, 12 were retained by the BPCL, 12 were handed over to the dealer and 12 were sent for testing to the specified laboratory.

36. The appellant further submitted that the said averment is completely false and contradictory to its own pleadings before the High Court in WP (C) No.7382 of 2001 produced on record by the respondent itself with the counter filed by it in the present proceedings. It is stated that "it is pertinent to state that two samples from each of the tanks containing adulterated products were drawn by the answering respondent in the presence of the police officials of crime branch and representative of the petitioner as well. Out of these two samples one sample was retained by the crime branch of Delhi Police and the other by BPCL."

37. The appellant further submitted that it is also pertinent to mention that in the proceedings before the Division Bench of the High Court in LPA No.296 of 2009 the learned counsel appearing for the respondent Corporation has specifically admitted and is also recorded in page 8 of the impugned order that "there was no receipt of two samples from each of source being handed over to the appellant-petitioner."

38. The appellant submitted that it is clear that the termination of the dealership by the respondent Corporation was pre-determined and mala fide and hence liable to be set aside.

39. On behalf of the respondent, Shri Arjun Hira, General Manager (Retail), North, Bharat Petroleum Corporation Ltd., has filed an affidavit before this Court refuting the allegation that the termination of the agency was predetermined or mala fide. The respondent Corporation submitted that because of adulteration in the petrol, the respondent-Corporation had taken swift action in order to save its reputation. The respondent-Corporation referred to clause 10(g) of the DPSL Agreement dated 28.1.1971 which reads thus:

> "Not to adulterate the Petroleum products supplied by the Company and at all times to take all reasonable precautions to ensure that the Motor Spirit or H.S.D. is kept free from water, dirt and other impurities and served from the pumps in such conditions."

40. The respondent-Corporation submitted that the termination was in line with the terms and conditions of the Agreement entered into between the parties and the breach of trust has been committed by the appellant. It is also mentioned that since the respondent-Corporation had

not received any response to the letter dated 16.5.2000 it was assumed that the appellant had accepted the wrong deeds and had no grievances.

41. The respondent also submitted that the respondent-Corporation did not show any haste in getting the samples tested. The samples were drawn and tested as per the procedure laid down and on the receipt of the results indicating the adulteration of products. Thus, the action contemplated under the provisions of the DPSL Agreement dated 28.01.1971 was taken.

42. The respondent-Corporation denied that the action initiated against the appellant was in any manner mala fide or manipulated for grabbing the business outlet on the false pretext. The respondent-Corporation also submitted that reliance cannot be placed upon the Report submitted by the IIP Dehradun as the tests conducted by them do not comply the specifications laid down by the Bureau of Indian Standards. Moreover, the IIP, Dehradun did not conduct the RON Test. Not following the specifications and conducting of the RON Test was essential for testing the quality and the specification of the ULP for meeting specifications of the Motor Spirit.

43. According to the respondent, the report submitted by the IIP, Dehradun is sacrosanct. The said sample was sent much after the incident of adulteration and the same is not in accordance with the MS/HSD Control October, 1998 issued by the Government of India.

44. In the rejoinder affidavit, the appellant reiterated its submissions mentioned in the petition and denied the allegations levelled in the counter affidavit.

45. The appellant submitted that the accuracy and veracity of the original test report also comes into question as the results of the independent laboratory, the IIP Dehradun report indicated no adulteration. In addition, the original test report on the basis of which the appellant's dealership was terminated can also not be relied upon in view of the conclusive finding of the Metropolitan Magistrate that the samples had been taken in violation of mandatory provisions of law.

46. According to the appellant, as per the report submitted by IIP, Dehradun the samples were not adulterated though the report had not gone into the aspect of RON on account of which the samples were alleged to have failed the specification. Thus, even assuming, though not conceding, that there was no test report which conclusively established that the petrol was not adulterated there was also no test report which conclusively established that the petrol was in fact adulterated.

47. The appellant urged in the rejoinder that the Metropolitan Magistrate vide his order dated 27.5.2002 discharged all the accused persons as the Court was satisfied that prima facie there was no material on record even to frame charges against them. The order clearly records that the search and seizure carried out was unlawful and in complete contravention and disregard of the mandatory provisions of law inasmuch as the raid was conducted by an official below the rank of Sub-Inspector and the samples were drawn in plastic containers. The Court also

observed that there was no evidence whatsoever to show that the petrol supplied was adulterated. The finding of the Metropolitan Magistrate reads thus:

> "the law being as noticed above, it is very clear that the search and seizure is bad in law and is contravention to the mandatory provisions of Essential Commodities Actand contravention to the Motor Spirits (High Speed Diesel) Act and in any case the prosecution cannot establish its case against any of the accused and accused persons are liable to be discharged on this ground alone and no charges can be framed.
>
> It is very clear that the search and seizure is bad in law and is in contravention to the mandatory provisions of Essential Commodities Act and contravention to the Motor Spirits (High Speed Diesel) Act and in any case the prosecution cannot establish its case against any of the accused and accused persons are liable to be discharged on this ground alone and no charges can be framed. Further, it is an admitted that that there was no receipt of two samples from each source being handed over to the petitioner. This is clear evidence of the fact that the samples were never handed over. In addition, the High Court in its order dated 9.9.2004 held that ".. there is no manner of doubt that the principles of law applied to the given facts of the present case are squarely covered by the judgment of the Supreme court in Harbanslal Sahnia's case."

48. Mr. Mukul Rohtagi, learned Senior Advocate appearing for the appellant in support of his contentions placed reliance on some of the following judgments.

49. In Harbanslal Sahnia and Another (supra), the Court dealt with the question of termination of dealership by the Indian Oil Corporation Ltd. In this case, it was asserted before this Court that dealership has been terminated on irrelevant and non-existent grounds, therefore, the order of termination is liable to be set aside. In this case, there has not been compliance of the procedure. The failure of the sample taken from appellants' outlet on 11.2.2000 becomes an irrelevant and non-existent fact which could not have been relied on by the respondent Corporation for cancelling the appellants' licence.

50. In the above case, the Court came to the conclusion that the dealership was terminated on irrelevant and non-existent cause. The Court while allowing the appeal quashed and set aside the Corporation's order terminating dealership of the appellants.

51. Reliance has been placed on the celebrated judgment of the Privy Council in Nazir Ahmad v. King Emperor AIR 1936 PC 253 wherein the principle has been enunciated that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

52. Reliance has also been placed on decision in Ramana Dayaram Shetty (supra) wherein this Court has held thus:

> "The power or discretion of the Government in the matter of grant of largesse including award of jobs, contracts, quotas, licences, etc. must be confined and structured by rational, relevant and non- discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

53. In this case, the Court held that the action of the respondent was invalid. The acceptance of the tender was invalid as being violative of equality clause of Constitution as also of the rule of administrative law inhibiting arbitrary action.

54. Reliance has been placed on *Kumari Shrilekha Vidyarthi and Others v. State of U.P. and Others*[3] the Court observed thus:

> "48. .....Non-arbitrariness, being a necessary concomitant of the rule of law, it is imperative that all actions of every public functionary, in whatever sphere, must be guided by reason and not humour, whim, caprice or personal predilections of the persons entrusted with the task on behalf of the State and exercise of all power must be for public good instead of being an abuse of the power."

55. Reliance has also been placed on *Karnataka State Forest Industries Corporation v. Indian Rocks*[4] the Court observed thus:

"38. Although ordinarily a superior court in exercise of its writ jurisdiction would not enforce the terms of a contract qua contract, it is trite that when an action of the State is arbitrary or discriminatory and, thus, violative of Article 14 of the Constitution of India, a writ petition would be maintainable (See*: ABL International Ltd. v. Export Credit Guarantee Corpn. Of India Ltd*[5].

56. Reliance has also been placed on *Gujarat State Financial Corporation v. M/s. Lotus Hotels Pvt. Ltd*[6]. In this case the Court held that the public corporation dealing with public cannot act arbitrarily and its action must be in conformity with some principles which meets the test of reason and relevance.

57. We have heard the learned counsel for the parties at length and have perused the decisions relied on by the parties.

58. In the instant case, samples were taken on 15th May, 2000. On the very next day i.e. on 16th May, 2000, without even giving a show-cause notice and/or giving an opportunity of hearing, the respondent-Corporation terminated the dealership of the appellant. The appellant had been operating the petrol pump for the respondent for the last 30 years and was given 10 awards declaring its dealership as the best petrol pump in the entire State of NCT Delhi. During this period, on a number of occasions, samples were tested by the respondent and were found to be as per specifications.

59. In the instant case, the haste in which 30 years old dealership was terminated even without giving show-cause notice and/or giving an opportunity of hearing clearly indicates that the entire exercise was carried out by the respondent Corporation non-existent, irrelevant and on extraneous considerations. There has been a total violation of the provisions of law and the principles of natural justice. Samples were collected in complete violation of the procedural laws and in non-adherence of the guidelines of the respondent Corporation.

60. On consideration of the totality of the facts and circumstances of this case, it becomes imperative in the interest of justice to quash and set aside the termination order of the dealership. We, accordingly, quash the same.Consequently, we direct the respondent-Corporation to handover the possession of the petrol pump and restore the dealership of petrol pump to the appellant within three months from the date of this judgment.

61. The appeal is consequently allowed with costs which is quantified at Rs.1,00,000/- (Rupees one Lakh only) to be paid by the respondent Corporation to the appellant within four weeks from today.

Judgment Referred.

[1]*(2003) 2 SCC 0107*
[2]*(1979) 3 SCC 0489*
[3]*(1991) 1 SCC 0212*
[4]*(2009) 1 SCC 0150*
[5]*(2004) 3 SCC 0553*
[6]*(1983) 3 SCC 0379*