$~

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 24th November, 2021*
Pronounced on: 10th January, 2022

\+ LPA 24/2021& CM APPL. 1843/2021*(stay)*

INDIAN OIL CORPORATION LIMITED
AND OTHERS ..... Appellants

Through: Mr. Tushar Mehta, Solicitor General with Mr. Parijat Sinha, Mr. Rudra Dutta, Mrs. Sanyukta Gupta and Mr. Akhil Tewatia, Advocates

Versus

ALL INDIA PETROLEUM DEALERS ASSOCIATION
REGISTERED AND OTHERS ..... Respondents

Through: Mr. S. B. Upadhyay, Senior Advocate with Mr. Rajesh Mahale, Advocate for Respondents No.1 and 2.
Mr.Ripudaman Bhardwaj, Central Government Standing Counsel with Mr.Kushagra Kumar, Advocate for Respondent No.3.
Mr. Siddharth Luthra, Senior Advocate with Mr. G. Sivabala Murgan, Advocate for Intervener.
Dr.Pabitra Pal Chowdhury and Mr. Kumar Utkarsh, Advocates for Intervener, i.e. North Bengal Petroleum Dealers Association.

\+ LPA 30/2021& CM APPL. 2389/2021 (*stay*)

INDIAN OIL CORPORATION
LIMITED AND OTHERS ..... Appellants

Through: Mr. Tushar Mehta, Solicitor General with Mr. Parijat Sinha, Mr. Rudra Dutta,

Mrs. Sanyukta Gupta and Mr. Akhil Tewatia, Advocates

Versus

ALL HARYANA PETROLEUM DEALERS ASSOCIATION REGISTERED AND OTHERS ..... Respondents

Through: Mr. Ripudaman Bhardwaj, Central Government Standing Counsel with Mr.Kushagra Kumar, Advocates for Respondent No.3.

\+ LPA 31/2021& CM APPL. 2392/2021 & 12432/2021

INDIAN OIL CORPORATION LIMITED AND OTHERS ..... Appellants

Through: Mr. Tushar Mehta, Solicitor General with Mr. Parijat Sinha, Mr. Rudra Dutta, Mrs. Sanyukta Gupta and Mr. Akhil Tewatia, Advocates

Versus

BIHAR PETROLEUM DEALERS ASSOCIATION AND ANOTHER ..... Respondents

Through: Mr. Sanjoy Ghose, Senior Advocate with Mr. Anuj Aggarwal and Mr.Kumar Utkarsh, Advocates for Respondent No.1.

Mr. Ripudaman Bhardwaj, Central Government Standing Counsel with Mr.Kushagra Kumar, Advocates for Respondent No.3.

Mr. Narender Hooda, Senior Advocate with Mr. Shanth Kumar V. Mahale, Advocate for Interveners.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE JYOTI SINGH

TABLE OF CONTENTS

JUDGMENT

: *Per* D. N. PATEL, Chief Justice

I. SUMMARIUM

1. Being aggrieved and feeling dissatisfied by the common judgment and order of the learned Single Judge passed in **W.P.(C) No.10334/2017, W.P.(C) No.10746/2017 and W.P.(C) No.11246/2017 dated 18.03.2020, Appellants have preferred** the present Letters Patent Appeals. **Appellants**, herein, were **Respondents No.2 to 4** respectively, in the writ Petitions. For the sake of convenience, parties are being referred to hereinafter, by their litigating status before this Court. The prime ground for challenge in the present Appeals, *inter alia*, is that by the impugned judgement, the affect of Amendment, notified in the year 2017, amending the **Marketing Discipline Guidelines, 2012** (hereinafter referred to as "**MDGs**" for the sake of brevity), has been invalidated and nullified.

II. FACTUAL MATRIX

2. Appellants herein, being Oil Marketing Companies (hereinafter referred to as "**OMCs**"), in the year 1981-82, for the first time, formulated and issued the **MDG**s, for maintaining market discipline and uniformity in action for operating the network of Petrol and Diesel Retail Outlets (hereinafter referred to as "**ROs**") under the OMCs.

3. The **MDGs** were reviewed and amended from time to time, in view of changing circumstances as well as to set high customer service benchmarks for the OMCs as also the Dealers' network.

4. The **MDGs** were reviewed and amended again in the year 2012 and **MDG-2012** were issued and made effective from 08.01.2013.

5. The **MDG-2012** were challenged in various High Courts of India. Allahabad High Court, Delhi High Court, Karnataka High Court, etc. have passed orders, which shall be adverted to in the later part of the judgment and have upheld the power, jurisdiction and authority of OMCs to issue the MDGs.

6. As per the stand of the Appellants, in view of detection of large scale malpractices in some States at the time of supply and dispensation of petroleum products to the customers, by manipulating software/hardware, in the Dispensing Units and with a view to motivate the employees of ROs to provide better service standards and deliver the assurances to customers in terms of quality, quantity, cleanliness and behaviour, MDG-12 were amended in the year 2017. There are communications between the OMCs and their respective Dealers, in the month of July, 2017, August, 2017 and September, 2017, wherein highlights of the revisions, sought to be brought about by the amendment, were set out, particularly with regard to revision in Dealers' Margin, to enable the Dealers to make payments of wages to the manpower, employed in the ROs, at rates higher than the minimum wages, applicable under Central Minimum Wages or Statutory Minimum Wages, as notified by the States/UTs, effective from 01.08.2017, as well as benefits such as PF, Bonus, Gratuity etc. It was also clarified that slab-based margins had been introduced in respect of 'Business Return' and 'Manpower' and the non slab-based margins had two components viz. 'Fixed Margin' and 'Variable Margin'.

7. Communication dated 19.09.2017 issued by the OMCs reiterated the aforesaid directions to the Dealers. Additionally, it was directed that payment of wages with effect from August, 2017 were required to be made

through e-payment and that the Wage Register and e-payment details were to be kept ready by the RO Dealers, for verification by officials of the OMCs. Employees of the ROs were henceforth, required to be covered, if not already covered, under Pradhan Mantri Suraksha Bima Yojana (**PMSBY**) and Pradhan Mantri Jeevan Jyoti Bima Yojana (**PMJJBY**).

8. Accordingly, the OMCs amended MDG-2012 on **03.10.2017,** whereby amended/supplemented Clause Nos. 1.5(x), 5.1.2, 5.1.14(b), 5.1.16, 5.1.18, 8.3(vii, viii, ix) and 8.5.7 were incorporated. The said amendments were conveyed by OMCs to their respective Dealers, vide communications dated 03.10.2017, 06.10.2017 and 11.10.2017. OMCs also issued the **Standard Operating Procedure** for "Measure Check of Nozzles at ROs".

9. Writ petition being W.P.(C) No.10334/2017 was preferred before this Court, challenging *inter alia* the amendments to MDG-2012. While the writ petition was pending, two more writ petitions, being W.P.(C) No. 10746/2017 and W.P.(C) No. 11246/2017 were filed and six Intervention applications were filed in W.P.(C) 10334/2017, pursuant to order dated 27.11.2017, passed by the Hon'ble Supreme Court in Transfer Petition (Civil) Nos. 2206/2017, 2227/2017, 2230-2234/2017 and 2273-2276/2017, titled *Bharat Petroleum Corporation Ltd. and Ors. vs. Andhra Pradesh Federation of Petroleum Dealers and Anr*.

10. These writ petitions have been decided by the learned Single Judge vide the impugned judgment dated 18.03.2020, whereby certain clauses challenged in the petitions have been struck down while the others have been read down, which according to the Appellants, has the effect of nullifying/negating/diluting the amendments to MDG-2012, that were issued in public interest i.e for the benefit of the consumers as well as to protect the

rights of the employees employed at the ROs and save them from exploitation. It is this judgment, which is challenged before this Court, by the Appellants.

III. ARGUMENTS CANVASSED BY LEARNED SOLICITOR GENERAL APPEARING ON BEHALF OF THE APPELLANTS IN ALL THE THREE LETTERS PATENT APPEALS

11. We have heard Mr. Tushar Mehta, learned Solicitor General appearing on behalf of the Appellants. Mr. Mehta submitted that the Appellants/OMCs have entered into Dealership Agreements with the Respondents No. 1 and 2 (original Petitioners)/RO Dealers and the relationship between the OMCs and their respective Dealers is purely contractual in nature and governed by the terms of Dealership/License Agreements, executed between the parties. The relationship being in the nature of principal-agent relationship, is governed by provisions of Section 182 read with Section 211 of the Indian Contract Act, 1872 and thus the Appellants/OMCs are empowered to issue the MDG, including amendment to MDG-12, levying penalties and/or issuing such directions to the respective Dealers, as may be necessary to curb or eliminate malpractices in the interest of the customers and to ensure high standards in services rendered as well as to ensure that benefits of beneficial Legislations, such as the Minimum Wages Act, etc. are made available to the employees, employed by the Dealers.

12. Since the OMCs are empowered by virtue of the contractual provisions to issue MDGs, the issue being purely in a contractual domain cannot be agitated by Respondents No. 1 and 2, by invoking the writ jurisdiction. It is a settled law that in matters relating to contracts between

the parties, writ jurisdiction shall not lie and therefore the writ petitions should have been dismissed at the outset, being not maintainable. This aspect of the matter has not been correctly appreciated by the learned Single Judge and the impugned judgment deserves to be quashed and set aside on this ground alone.

13. OMCs/Appellants, in accordance with the changing market scenario, have been reviewing, amending and issuing MDGs for the last four decades in order to maintain discipline and uniformity in action, for operations of the ROs, throughout the Country. MDG-1995 and MDG-1998 were challenged before this Court and the writ petitions were dismissed, by a detailed judgment and order dated 18.08.1999, reported in ***Delhi Petrol Dealer Association and Anr. v. Union of India & Ors***., **(1999) 81 DLT 400.** Further, amendments in MDG-2012 were also challenged before various High Courts, and different High Courts have upheld the power and jurisdiction of the OMCs to issue the MDGs. In this regard, reliance was placed on the judgment of the High Court of Karnataka in ***M/S IBP Company Ltd. and Anr. v. Sri T.A. Jayaprabhu and Ors***., in **Writ Appeal No. 582-597/2010,** decided on 22.01.2015.

14. Reliance was also placed upon Clause 43 of the Dealership Agreement, entered into between the parties to the *lis,* i.e., OMCs and the Dealers. It was submitted that by virtue of Clause 43, the Dealers undertake, faithfully and promptly, to carry out, observe and perform all directions given or rules formulated, from time to time, by the OMCs, for proper carrying on of the dealership of the OMCs. It was urged that validity of Clause 42 of the model agreement, which has been upheld by various High Courts replicates the contents of Clause 43 of the Dealership Agreement in

question. Thus, the OMCs clearly have the power not only to formulate and issue MDGs, but also to amend them and in fact the writ petitioners never questioned the power and authority of the OMCs to issue these Guidelines.

15. Under Clause 1.5 of the amended MDG, Dealers are bound to make payment of minimum wages as notified by OMCs, from time to time or statutory minimum wages as notified by the respective State Governments/UTs, whichever are higher, to the manpower employed at ROs. The argument was that the amendment is not contrary to the Minimum Wages Act, 1948. The aim of the said Act is to ensure that a certain minimum wage is paid to the workers covered by the Act and there is no bar under the Act in directing the employer to pay to an employee, a wage, higher than the minimum wages notified, if one of the contracting party has the power to so direct the other contracting party, under the terms of the contract. Certainly, **if the direction is to pay wages lesser than the minimum wages, notified under the Act, it shall amount to violation of the provisions of the Minimum Wages Act, 1948.** The objective and intent of the Appellants, in issuing such directions, is to benefit the workers at the grass-root level and Clause 43 obliges the RO Dealers, to comply with the directions issued by the OMCs.

16. Quite apart that the Dealers are bound by the obligations under the Dealership Agreement, even otherwise they can raise no objection since the Appellants while issuing the directions to revise the minimum wages, have factored the increase in the wages, into the '**Dealers margins**', thereby ensuring that the employees benefit without any pressure on the Dealers. The Dealers' margins include element of salaries and wages, payable to the employees of the ROs and were calculated on the basis of weighted average

of minimum wages notified by States/UTs, based on latest available State Government Notifications. Dealers have accepted the revision in Dealers' margin, without any demur, but are objecting to enhancement of wages, payable to the employees, which cannot be accepted. Mr. Mehta, learned Solicitor General had taken this Court to communication dated 19.09.2017, annexed as 'Annexure R-2/5' with the counter affidavit, filed in the writ petition and submitted that there is a clear revision in the Dealers' Margin w.e.f. 01.08.2017. Attention of the Court was also drawn to the fine niceties of the calculations, placed on record, indicating the difference in the earlier margins and the present ones, to bring home the point that no burden, by increase in the minimum wages, is actually passed on the Dealers.

17. It was further submitted that directing payment of '**Higher than Minimum Wages**' is an open field and thus under a contract an obligation can always be cast by one party on the other to pay wages higher than the minimum wages, prescribed under the Notifications by the States/UTs. This aspect of the matter has not been correctly appreciated by the learned Single Judge, while passing the impugned judgment and the same thus deserves to be quashed and set aside.

18. Insofar as short delivery of the products is concerned, the amendment in 2017 to MDG-2012 provides that even if short/excess delivery of the Petrol or Diesel is found within permissible limits and the Weights and Measures Department seals are intact, sales are to be suspended and recalibration and re-stamping is to be done, before recommencement of sales, to ensure minimisation of loss to customers as well as the ROs. It was contended that the aim of Legal Metrology Act, 2009 is to ensure that a standard is maintained by the Dealers, by providing the maximum

permissible error in sale and supply of petroleum products and therefore there is no bar in prescribing higher and stringent standards of sale and supply, by reducing the margin of error. It was submitted that there is no penalty, if the short delivery is within permissible limits stipulated by the Weights and Measures Department, however, only if the variation is beyond +/- 25ml per 5 litres measure check, it entails imposition of penalty. By virtue of the amendment, OMCs regulate and ensure that as and when there is short/excess delivery of the Petroleum products, immediate steps shall be taken by the ROs to remedy the situation and till then the sales ought to be suspended. Learned Single Judge has, however, erred in not appreciating that these measures are in public interest and has further erred in suggesting that a time-line of 12 hours be fixed, within which recalibration and re-stamping are to be carried out. This is not only unreasonable but also beyond the domain and jurisdiction of the Court, sitting in a judicial review and exercising powers under Article 226 of the Constitution of India.

19. As far as amendment with respect to payment of salaries and wages to be made through e-payment mode is concerned, the learned Single Judge has erred in holding that the Dealers cannot be compelled to do so. It was submitted by learned Solicitor General that the said amendment is for the welfare of the employees of the Dealers. It was argued that it is well known that payment of salaries in cash leads to exploitation of employees and payments through the electronic mode would ensure that complete salaries are paid to the workers and would also rule out the commissions that are paid to the middlemen. Currently, most of the banking transactions are online and in fact the Dealers also make payments online for purchase of

products from the Appellants. This amendment is also in line with the policies of the Central Government to digitize the economy and will go a long way in making the system of payment to the workers, transparent. To buttress the argument, it was urged that even the employees working under the State and Central Government are paid their salaries, etc. through the electronic mode and no fault can be found with the amendment. Whenever and wherever new systems are introduced, there are bound to be teething problems but that cannot be a reason to interfere in the welfare measures taken in the interest of the larger public good.

20. Defending the amendments with respect to payment of statutory dues, such as Provident Fund, ESIC benefit, Bonus, Annual leave and Gratuity including coverage under the Pradhan Mantri Suraksha Bima Yojana (PMSBY) and Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) Schemes, it was argued that these are welfare measures and need to be enforced. It was pointed out that under the PMSBY, which is an Insurance scheme, the premium is in the affordable range, being Rs.12/- per employee per annum and similarly, under the PMJJBY, the premium is Rs.330/- per employee per annum. Merely by paying the negligible amount towards subscription/premium, the employees will be entitled to benefit of the Schemes, which will be in their interest and welfare. The Dealers in any event can have no objection, since the cost of the welfare measures have been factored in the revised Dealers' Margin/Commission, which is evident from the communication dated 19.09.2017, annexed as 'Annexure R-2/5' with the counter affidavit, filed by the Appellant in W.P.(C) 10334/2017. It was submitted that it is open to the OMCs to issue such directions under the terms of the Dealership Agreements and having entered into the contracts,

with open eyes, the ROs Dealers cannot object to meeting the contractual obligations, till such time the contracts subsist.

21. Learned Single Judge has erred in quashing parts of Clause 8.3, providing for imposition of penalties on the ROs, holding that OMCs do not have the power to levy penalties and in case an injury is caused to them by infraction/breach of any provisions of the Dealership Agreement, it is open to them to claim reasonable compensation or terminate the agreements. It was contended that firstly, the OMCs/Appellants are contractually empowered to impose penalties and secondly, it is not practicable or logistically possible to terminate dealerships for every violation of the provisions of the Agreements/Licences, as this would not only affect the working of the OMCs and the ROs, but would also have an adverse impact on the public at large. By virtue of the amendment in 2017, monetary penalties have been provided to avoid subjecting the Dealers to an extreme penalty of termination and at the same time ensuring that malpractices in the conduct of business are stopped, in the interest of the customers. It is for this reason that for irregularities/malpractices or violations of MDGs, penalties have been provided which include monetary penalties as well as suspension of sales. The power of the OMCs to terminate the contract, for violation of any contractual obligation, exists under the Agreement and where there is a power to impose a major punishment, there is always a power to impose a lesser punishment.

22. The learned Single Judge has erred in reading down the provisions in the amended MDGs with respect to Clause 5.1.14(b) which relates to non-provision of clean toilet facility. It was urged that the learned Single Judge failed to appreciate that although the RO toilets are essentially meant

for use by its employees/staff/customers of the RO, access may be given to walk-in persons, as a matter of courtesy. If the discretion is, however, left to the Manager of the RO, as directed in the impugned judgment, it is open to be exercised arbitrarily and may cause grave inconvenience to the public at large, who are being constantly educated not to befoul public places. It is for this reason that monetary penalties have been prescribed, as in a case of violation of this nature, as an example, an extreme penalty of termination would be highly disproportionate.

23. Learned Solicitor General appearing on behalf of the Appellants relied upon the following decisions:-

(a) ***Delhi Petrol Dealer Association and Anr. v. Union of India & Ors***., **(1999) 81 DLT 400**.

(b) ***M/S IBP Company Ltd. and Anr. v. Sri T.A. Jayaprabhu and Ors***. in **Writ Appeal No. 582-597/2010**, dated 22.01.2015 (Karnataka High Court) .

(c) ***Sam Built Well Pvt. Ltd. v. Deepak Builders & Ors***., **(2018) 2 SCC l76**.

(d) ***Federation of Railway Officers Association & Ors. vs. Union of India & Ors***., **(2003) 4 SCC289**.

(e) ***BALCO Employees' Union (Regd.) vs. Union of India & Ors***., **(2002) 2 SCC 333**.

24. It was thus submitted that the aforesaid aspects of the matter have not been correctly appreciated by the learned Single Judge while passing the impugned judgment and the same deserves to be quashed and set aside.

IV. ARGUMENTS CANVASSED ON BEHALF OF RESPONDENTS NO.1AND 2 (ORIGINAL PETITIONERS) IN ALL THE THREE APPEALS

25. Mr. S.B. Upadhyay, learned Senior Counsel appearing on behalf of Respondent No.1 herein/All India Petroleum Dealers Association submitted that amendments in MDG-2012 in the year 2017 tantamount to re-writing the contract between OMCs and ROs. It was submitted that the Appellants have no power, jurisdiction or authority to amend the MDG-2012, in violation of the statutory provisions, especially, directing payments higher than the minimum wages prescribed in the Notifications issued by States/UTs. By virtue of the amendment in 2017, OMCs are insisting on making payments on account of minimum wages, payment of bonus, gratuity, ESIC, etc. beyond the requirement of the respective Statutes. For applicability of Payment of Gratuity Act, Payment of Bonus Act and the like Statutes, minimum number of employees are required to be employed, in the establishments concerned. It may happen in a given case that a particular RO Dealer may not have employed the minimum number of employees required and thus, no statutory obligations can be fastened on such a Dealer. This aspect of the matter has been correctly appreciated by the learned Single Judge while deciding the writ petitions and, hence, these Appeals be dismissed.

26. It was submitted that payment of wages to the employees at the rate over and above the minimum wages, in accordance with the Statute can at best be a voluntary offer on the part of the ROs, but the Dealers cannot be compelled to do so. Minimum wages vary from State to State and therefore no direction can be passed to pay a uniform wage to the ROs, spread across

the Country. To prescribe one wage for all the ROs would tantamount to treating unequals as equals and thus the learned Single Judge has rightly read down Clause 1.5(x) of the amended MDGs.

27. Insofar as provision of toilet facilities is concerned, the direction in the MDGs to ensure that the toilets are not locked and that doing so can entail a penalty is completely illegal and arbitrary. An RO Dealer cannot be compelled to extend the toilet facility to all the passers-by, who are not customers, as this may result in a security issue, besides raising the cost of expenditure to the Dealer. The learned Single Judge has rightly left the issue at the discretion of the concerned dealer and read down Clause 5.1.14(b) of the amendment in MDG-2012.

28. The amendment in MDG-2012 w.e.f. 01.08.2017 to the effect that even where seals are intact, if there is excess or short delivery of the petroleum products, though within the permissible limit, there shall be recalibration and re-stamping, before recommencement of the sales, is contrary to the provision for permissible error under the relevant Statute. The Legal Metrology Act, 2009 itself provides for +/- 25 ml per 5 litres as a permissible limit of error. Besides, recalibration and re-stamping by the OMCs shall take considerable time, for which the ROs or petrol/diesel dispensing unit shall have to close. This would neither be in the interest of the ROs nor the public. In a response to an RTI query, the Weights and Measures Department of Govt. of NCT of Delhi has clearly stated that it is not mandatory to get dispensing units recalibrated, if the delivery is within the maximum permissible error and reliance was placed on a document dated 17.07.2012, annexed as a part of the writ record.

29. Under Clause 8.3 of the amended MDG-2012, certain penalties have been prescribed by the OMCs, which is beyond the competence of the OMCs and the learned Single Judge has therefore rightly interfered in the matter. The Minimum Wages Act and the other Statues such as ESIC Act etc. have inbuilt provisions providing penalties for violation of statutory provisions and the OMCs cannot empower themselves to impose penalties over and above the Statutes. In many cases the penalties provided are disproportionate to the violation of any provision of law and if the penal provisions are allowed to stand, this would open the doors for the Officers of the OMCs to harass the Dealers, who would then have to live under constant threat of penal action. It was submitted that even a "cure period" has not been provided in the amendment, before imposing the penalties, in case of breach. Importantly, imposition of penalties by virtue of Clause 8.3 of the amended MDG-2012 has the effect of unilaterally amending the Dealership Agreement, which is impermissible. It was further submitted that under the earlier MDGs, there were three categories of irregularities, namely, critical, minor and major and "cure period notice" was required to be given by OMCs to ROs, whereas by virtue of the amendment to Clause 5.1.2, the requirement of "cure period notice"/warning, has been deleted and only penalties have been prescribed. Thus, Clause 8.3 has been rightly struck down by the learned Single Judge.

30. OMCs by virtue of the amendment in MDG-2012 w.e.f. 01.08.2017 have mandated e-payments to all the employees of the ROs, which, besides being arbitrary is impracticable, as several ROs are located in remote areas, where internet facilities are not available or even if available, there are serious technical issues of connectivity. In so far as the direction for

coverage under the PMSBY and PMJJBY Schemes is concerned, by the very nature, the Schemes are voluntary and no dealer can be compelled to mandatorily cover its employees under the said Schemes. It is open to the employees to give their consent to subscribe to the Schemes.

31. Mr. Sanjoy Ghose, learned Senior Counsel appearing on behalf of the Respondent No.1 in LPA 31/2021 submitted that if the OMCs intended to amend the Guidelines so as to mandate payment of wages higher than the statutory minimum wages, there ought to have been stakeholders' consultation, which admittedly did not take place prior to amendment, in MDG-2012. Learned Senior Counsel relied upon the decision of the Hon'ble Supreme Court reported in ***Central Inland Water Transport Corporation Ltd & Anr v. Brojo Nath Ganguly & Anr.*** **(1986) 3 SCC 156** and submitted that on account of unequal bargaining powers of the ROs, the OMCs cannot be permitted to unilaterally amend the MDG-2012. Whenever any minimum wage is to be prescribed/revised, sectoral consultation is a must, in accordance with the provisions of the Minimum Wages Act, 1948. In so far as the e-payment of wages, etc. is concerned, it was pointed out that mode of payment of salary has been prescribed under Section 6 of the Payment of Wages Act, 1936 and thus ROs cannot be compelled to make payments through the electronic mode, contrary to the statutory provision. Amendment in Payment of Wages Act, 2017 prescribes e-payment mode, however, the same is yet to be brought into force. Nonetheless, it is fairly submitted that in so far as Delhi is concerned, State amendment has been notified in the Payment of Wages Act, making the e-payment compulsory, however, the same can only apply to the ROs at Delhi and not to those located outside. Reliance was placed on the decision rendered by the

Hon'ble Supreme Court reported in ***Mahabir Auto Stores and Ors. vs. Indian Oil Corporation and Ors.,*** **AIR 1990 SC 1031**, to contend that it is a reasonable expectation of a citizen from a welfare State that it would act fairly and OMCs can only issue directions, in accordance with law and the terms of the contract between the parties and not contrary, thereto.

V. ARGUMENTS CANVASSED BY THE INTERVENERS

32. Interveners had preferred civil miscellaneous applications for intervention, which were allowed by this Court vide order dated 10.11.2021. Hence, the interveners were permitted to argue and assist the Court.

33. Mr. G. Sivabala Murgan, learned counsel appearing for one of the interveners, had taken this Court to the calculations with respect to the Dealers' Margins and submitted that the same have not been increased to a level to cover up the additional expenditure that shall be incurred by the Dealers on account of payments of higher wages and other dues such as PF, Bonus etc., as envisaged in the 2017 amendment to MDG-2012. Learned counsel reiterated that penalties cannot be imposed by virtue of amendment to MDG-2012, over and above those provided under various Labour Legislations. Learned counsel adopted the other arguments canvassed by learned Senior Counsel appearing on behalf of Respondent No.1 herein.

34. Mr. Siddharth Luthra, learned Senior Counsel appearing on behalf of one of the Interveners submitted that the Dealers cannot be compelled into making e-payments of the salaries, etc. on account of lack of internet facilities and/or connectivity issues in various areas of the Country, where the ROs may be located. Learned Senior Counsel also challenged the imposition of penalties as being contrary to the terms of the Dealership Agreement and beyond the powers of the OMCs. It was submitted that under

the guise of Clause 43 of the Dealership Agreement, the contract cannot be re-written by the OMCs and that too, unilaterally. On the aspect of higher wages, it was urged that all the ROs situated in different States cannot be painted with the same brush and directing every Dealer to pay the same wage would be treating unequals as equals.

35. Learned Counsel appearing on behalf of North Bengal Petroleum Dealers Association, submitted that no doubt, the OMCs are empowered to frame Guidelines, i.e. MDGs, from time to time, deriving power from clause 43, however, the same cannot be in subrogation of any statute, rules or regulations, that exist. Any direction which runs contrary to the statutory provision would be *void ab initio* and untenable in the eyes of law. It was further submitted that there is nothing on record to show how the Dealers' Margins were calculated and factored in, to enable the OMCs to justify the stand that there will be no extra burden on the Dealers, on account of payment of higher wages, etc. Learned counsel adopted the arguments put forth by other counsels on other issues.

36. Learned counsels appearing on behalf of the Interveners and Respondents No.1 and 2 relied upon the following decisions:-

(i) ***Rajasthan State Industrial Development & Investment Corpn. v. Subhash Sindhi Coop. Housing Society,*** **(2013) 5 SCC 427**, Para 26-28

(ii) ***Onkarlal Bajaj v. UOI***, **(2003) 2 SCC 673**, Para 7-8

(iii) ***HPCL v. Super Highway Services Anr.*** **(2010) 3 SCC 321**, Para 31-36

(iv) ***Mahabir Auto Stores and Ors. v. Indian Oil Corporation and Ors***. **(1990) 3 SCC 752**, Para 18-19

(v) ***Swapan Kumar Pal & Ors v. Samitabhar Chakraborty & Ors***. **AIR 2001 SC 2353**

(vi) ***B.N. Nagarajan v. State of Mysore,*** **AIR 1966 SC 1942**

(vii) ***Sant Ram Sharma v. State of Rajasthan,*** **AIR 1967 SC 1910**

(viii) ***Ram Ganesh Tripathi v. State of U.P.,*** **1997 (75) FLR 554 (SC)**.

VI. REASONS AND ANALYSIS

37. Having heard learned Solicitor General appearing on behalf of the Appellants, learned Senior Counsels appearing on behalf of the Respondents No.1 and 2 and learned Senior Counsels/counsels appearing on behalf of Interveners, we hereby partly, quash and set aside the judgment and order of the learned Single Judge passed in W.P.(C) No.10334/2017, W.P.(C) No.10746/2017 and W.P.(C) No.11246/2017 dated 18.03.2020, on account of facts, reasons and judicial pronouncements, detailed hereinafter.

VI A. CLAUSE 43 OF THE DEALERSHIP AGREEMENT

38. Appellants/OMCs entered into Dealership Agreements with the ROs. **Clause 43 of the Dealership Agreement** reads as under:-

> *"43. The dealer undertakes faithfully and promptly to carry out, observe and perform all directions or rules give nor made from time to time by the corporation for the proper carrying on of the dealership of the corporation.*
>
> *The dealer shall scrupulously observe and comply with all laws, rules, regulations and requisitions of the Central/State governments and of all authorities appointed by them or either of them including in particular the Chief Inspector of Explosives, Government of India, and/ or Municipal and/ or any other local authority with regard to the storage and sale of such petroleum products."*
>
> *(emphasis supplied)*

39. Right from the year 1981-82, to maintain discipline in the operation of retail network of thousands of Petrol (MS) and Diesel (HSD) Retail Outlets of OMCs/Oil Companies, throughout the country, the **Marketing Discipline Guidelines (MDGs)** were formulated and issued. These MDGs have been reviewed from time to time. Clause 42 of the model agreement, which has already been upheld by various High Courts, replicates the contents of Clause 43 of the Dealership Agreement, in question.

40. By virtue of powers conferred by Clause 43, the MDGs have been issued. **Thus, this provision is the source of power of the OMCs** to formulate the MDGs.

41. Power of the OMCs, under the earlier MDGs, was subject matter of challenge in several writ petitions in various High Courts, including this Court and was upheld, holding that OMCs have the power and jurisdiction to issue MDGs, to regulate the ROs and that the RO Dealers are bound by these Guidelines.

42. This Court in ***Delhi Petrol Dealer Association and Anr. v. Union of India & Ors*** reported in **(1999) 81 DLT 400**, held as follows, in paragraphs 18,20,21 and 23:-

> *"18. The reading of the above will lay down the principles which necessitated the framing of the guidelines of 1982, 1995 and 1998 respectively. There is no challenge to the guidelines of 1982 though the challenge is made to 1995 guidelines alongwith 1998 guidelines in these two petitions. The purpose of framing the guidelines was to put an end to mal practice and remedy the breaches which were detected from time-to-time and are referred to in the vigilance report which has already been reproduced. It was considered imperative on the basis of the facts as enumerated above that the guidelines had to be framed to check malpractice and there is no arbitrary exercise*

of power. The State Machinery is provided ample discretion in the matter and Clause 43 of the agreement vests in the Authorities powers to remedy breaches and there is no violation of the same. In Peerless General Finance and Investment Co. Ltd. v. Reserve Bank of India, (1992) 2 SCC 343 : AIR 1992 Supreme Court 1033, the Supreme Court considered the powers of Reserve Bank of India in issuance of directions providing for manner in which the deposits received by the residuary non-Banking companies were to be deposited by them and manner in which such deposits are to be disclosed in their balance sheet or books of account and whether such directions were covered under Section 45-K(3) of the Reserve Bank of India Act. Paragraphs 37, 68, 72 and 73 read as follows:

xxxx xxxx xxxx xxxx xxxx

20. In the present case, it is contended by the petitioners that no such power is provided in any of the statutes controlling the sale and distribution of petrol products but at the same time one does not have to look to the statutes particularly when the parties have chosen to enter into contractual obligations. The power has to be traced from the agreement executed between the parties. Clause 43 of the agreement clearly spells out that the dealer shall observe and perform all directions or rules given or made from time-to-time by the Corporation for the proper carrying on of the dealership of the Corporation. Similarly, Clause 56 provides more powers for action when there is a breach of any of the covenants and stipulations contained in the agreement and there is failure to remedy such breach within the period of receipt of the notice by the Corporation in this regard. In the subsequent judgment between the same parties in Reserve Bank of India v. Peerless General Finance and Investment Company Ltd., (1996) 1 SCC 642, the Supreme Court further elaborated the law on the subject and reiterated the findings earlier recorded that the Reserve Bank was within its powers to issue directions and the same were not ultra-vires the powers conferred on the Bank by Section 45-K(3) of the Reserve Bank of India Act.

21. The learned Counsel for the petitioners have not denied that directions could be issued provided the powers are vested in the authorities in terms of the Agreement entered into between the parties. Clause 43, it is contended, does not confer any such powers to impose major and minor penalties particularly when such action violates the rule of law and principles of natural justice as no opportunity is provided to the petitioners to show cause. This argument is misconceived as more drastic remedy such as termination is provided in the various statutes and the various clauses of the agreement such as Clauses 43 and 56 provide ample powers in the respondents to frame the guidelines as have been framed in the present case. The reading of the punishments as prescribed for major and minor penalties could also show that the explanation of the dealer is always called for and action is only taken when it is not found to be satisfactory. In appropriate cases the members of the petitioner association can also ask for a personal hearing and the same cannot be denied. The mere absence of the quantum of fines in various statutes will not make the agreement between the parties redundant on the ground that no power is vested in the authorities to frame such guidelines. The guidelines of 1982 and 1995 have operated satisfactorily and no one came forward on an earlier occasion to impugn those guidelines as the basic purpose for framing of the guidelines was to check adulteration, provide better service to the customers, to check violation of environmental health and safety regulations.

xxxx xxxx xxxx xxxx xxxx

23. The above provision clearly stipulates that in case there is any dispute or difference arising between the parties regarding any right, liability or in relation to the agreement shall be referred to arbitration. The petitioners are at liberty to take recourse to this remedy and cannot impugn the guidelines which admittedly are framed on the basis of the powers vested in the respondents by the agreement entered into between the parties and which are framed for public good."

(emphasis supplied)

43. Division Bench of Karnataka High Court in the case of ***M/S IBP Company Ltd. and Anr. v. Sri T.A. Jayaprabhu and Ors***. in Writ Appeal No. 582-597/2010, vide judgment dated 22.01.2015, held as under:-

> *"11. The relationship between the oil corporations and the writ petitioners as dealers of their products, is not in dispute. It is also not in dispute that the dealers have executed a dealership agreement in favour of the corporations and terms and conditions of the agreement is binding upon both the parties. Copy of Clause 42 of model agreement produced before the Court reads as under:*
>
> > *"42. The Dealer shall at all times faithfully, promptly and diligently observe and perform and carry out at all times all directions, instructions, guidelines and orders given or as may be given from time to time by the Corporation or its representative(s) on safe practices and marketing discipline and/or for the proper carrying on of the Dealership of the Corporation. The dealer shall also scrupulously observe and comply with all lays, rules, regulations and requisitions of the Central/State Government and of all authorities appointed by them or either of them including particular the Chief Controller of Explosives. Government of India and/or any other local authority with regard to the safe practices."*
>
> *12. Learned counsel for the contesting respondents (dealers) is not disputing the incorporation of Clause 42 of model agreement in most of the dealership agreement. The writ petitioners have also produced certain dealership agreements, which shows Clause 42 of the model agreement is also included. Such dealers cannot contend before the Court that the oil corporations have no power to issue instructions, directions, guidelines from time to time on safe practices and marketing discipline for the purpose of carrying on of the dealership of the corporations. It is also mentioned in Clause 42 of the model*

agreement that the dealers were scrupulously observed and comply with all laws, rules, regulations and requisitions of the Central/State Government and all authorities appointed by them or either of them which includes the corporations, which granted licence. The learned Single Judge without considering the effect of Clause 42 of the said agreement has allowed the writ petitions in toto, which according to us is an error committed by the learned Single Judge.

13. In the dealership agreement, if Clause 42 of the model agreement is included, in such circumstance, dealers cannot contend that in-house mechanism of the oil corporations in issuing directions by way of marketing guidelines is not binding on them, cannot be accepted. This legal issue is not disputed by Sri. S. Subhash, learned counsel for the dealers. We could appreciate the contention of dealers only when if Clause 42 of model agreement is not incorporated in any of the agreement. In such circumstance, this court can only say that issuance of Marketing Discipline Guidelines, which is questioned in the writ petitions, does not bind such dealers only. We are also of the view that if Clause 42 of model agreement is not incorporated in the dealership agreement, it is always open for the corporations to include such clause whenever the dealership licence is required to be renewed."

(emphasis supplied)

44. In view of the aforesaid decisions and after perusing and examining Clause No.43 of the Dealership Agreement, between OMCs and RO Dealers, this Court is of the clear opinion that OMCs have the power, jurisdiction and authority to issue MDGs, which would include making amendments thereto and are binding upon the RO Dealers, who have consciously and out of free will, entered into the Dealership Agreements.

Dealers' Margins

45. OMCs had issued a communication dated 31.07.2017 to their respective Dealers, with respect to revision in **Dealers' Margin** w.e.f. 01.08.2017. For ready reference, communication dated 31.07.2017 ("Annexure R-2/2" to the counter affidavit filed by Appellants in W.P.(C) 10334/2017) reads as under:-

> *"Communication Sent on 31.7.2017*
>
> *Dear Dealer of ASHISH PETROLEUM*
>
> ***Revision in Dealers' Margin w.e.f. 1.8.2017***
>
> *We are pleased to inform you that Dealers' Margin has been revised w.e.f. 1.8.2017. The highlights of the revision are as follows:*
>
> *1. The Dealers' Margin has been increased for all category of dealers i.e. low selling and high selling dealers, A Site (CC ROs) and B Site (DC ROs)*
>
> *2. Considering the hardship of ROs selling less than 170 Kl/p.m., special care has been taken to alleviate the same.*
>
> *3. Central Minimum Wages has been considered for the revision in Dealers' Margin. Consequently, all manpower employed in your retail outlet are required to be paid at least minimum wages as applicable under Central Minimum Wages (applicable for Construction workers) or statutory minimum wages as noticed by State, whichever is higher, effective 1.8.2017. Needless to mention that the order statutory requirements like PF, Bonus etc. are to be complied with.*
>
> *4. Enhanced amount of Business Return (in lieu of earlier known Dealers' remuneration) is included in the Dealers' Margin.*
>
> *5. Revision in Return on Net Fixed Assets (NFA - i.e. Return on investments made in the RO), as recommended by IIM Bangalore has been implemented. This has resulted in further increase in Dealers' Margin.*

6. The recommendation of IIP Dehradun on revision in HSD Loss norms has been implemented.

7. The operating cost elements are revised based on AICPI. Electricity cost has been revised on the basis of weighted average.

8. The Bank charges are revised as per the SBI circular.

In view of the above revisions w.e.f. 1.8.17, you will be entitled, for a volume given below, an approximate upward revision of dealer margin as under (net of LFR):

Sales Volume of June 2017 (MS+HSD) In Rs.	*Dealer Margin ..... (as per pre revised) for sales volume of June 17 in Rs.*	*Dealer Margin as revised for Sales w.e.f. ..... similar sales volume of June 17 (in Rs.)*	*Total Increase in Dealer Margin (in Rs.)*
120	*215767.8*	*280650.62*	*64882.81*

In order to improve customer service standards, we advise you to ensure that:

a) All employees at the Retail outlet should be covered under the Pradhan Mantri Suraksha Bima Yojana and Pradhan Mantri Jeevan Jyoti Bima Yojana by 31.8,17.

b) Wages of Aug 2017 and onwards to the employees must be paid thru e-payment mode.

c) Retail Outlet Toilet maintenance & cleanliness should get utmost priority in pursuance of Swachh Bharat Abhiyan.

d) Quality & Quantity is fully assumed to Customers at your Retail Outlet.

These four aspects shall be subject to verification by Company officer from time to time.

We advise you for better upkeep and improved customer service at your Retail Outlet."

(emphasis supplied)

46. A further communication was issued on 26.08.2017, by the OMCs to their respective RO Dealers. For ready reference, the said communication dated 26.08.2017, issued by the Appellants to Respondent No.1 herein, annexed as "Annexure R-2/4" to the counter affidavit filed by OMCs in W.P.(C) 10334/2017, reads as under:-

"Dear BPC Dealer *August 26, 2017*

Revision in Dealer Margin with effectfrom 1.8.2017

Dear Sir/Madam

Further to our mail dated 31.07.2017&1.8.17 on the subject and subsequent discussion our Officials/SOs had with you, the following may please be noted for compliance:

1. *You shall make payment of minimum wages to your RO employees as applicable for scheduled employments in the Central sphere (applicable for Construction workers) or statutory minimum wages as notified by State, whichever is higher. Other statutory benefits shall accordingly be paid.*

2. *Payment of salary for the month of August 2017 and onwards is required to be made through e-payment (RTGS/NEFT etc). To ensure e-payment, bank accounts may please be opened immediately, if not already done.*

3. *You are requested to keep the wage register and e-payment details ready all the time for verification by officials of the Corporation.*

4. *Further, your employees of the Retail outlets are to be covered immediately, if not done already, for the following:*

    a. PMSBY (Pradhan Mantri Suraksha Bima Yojana).

    b. PMJJBY (Pradhan Mantri Jeevan Jyoti Bima Yojana)

Hope this will motivate your employees and result in improved customer services at your Retail Outlet.

Thanking you

Yours faithfully,

Team Retail, BPCL"

(emphasis supplied)

47. Reference may be made to another communication dated 19.09.2017, issued by the OMCs, to their respective RO Dealers, which is annexed as "Annexure R-2/5" to the counter affidavit filed in W.P.(C) 10334/2017 and reads as under:-

" *19th September 2017*

Dear BPCL Dealer,

Revision in Dealers' Margin with effect from 1.8.2017 : Clarification

Dear Madam/Sir,

This is further to our email dated 26.8,2017 on the subject matter, wherein we had outlined the wage payment to your retail outlet employees.

We would like to answer the queries received from a number of dealers in this regard, which are as under:

1. *You are required to pay minimum wages and meet other statutory obligations as notified under Minimum Wages Act of your State, to all employees of your retail outlet.*

2. *To motivate the employees of Retail Outlets to provide better quality of service standards and to deliver the*

assurances given to customers in terms of quality, quantity, cleanliness and behaviour on forecourt, it has been decided that you pay BPCL notified, wage [arrived on the basis of weighted average of Minimum Wages as applicable for scheduled employments in the Central sphere (applicable for Construction workers)]. Accordingly, provisions have been made for BPCL notified wages in the revised Dealer's Margin w.e.f. 1.8.2017, to compensate the dealers in this regard.

3. *In rare cases, where State Government notified minimum wages is higher than BPCL notified wages, State notified minimum wages are payable.*

4. *In view of the above, BPCL notified wages to be paid to all employees of your retail outlet w.e.f. 1.8.2017 are as under:*

a.	*Manager*	*Rs. 15189**
b.	*Skilled Manpower*	*Rs. 13980*
c.	*Semi-Skilled Manpower*	*Rs. 12121*
d.	*Un-Skilled Manpower*	*Rs. 10717*

(i. Not under the purview of Central/State Minimum Wages;*
ii. For ROs selling lower volumes, where Dealer herself/himself may be working as Manager, this obviously shall not be applicable.)

5. *As you are aware, besides the above monthly wages, the following are payable as per statutory provisions to employees working at your retail outlet, viz, PF (13.15%), ESIC (4.75%), Bonus (8.33%), Earned/annual Leave (4.81%) and Gratuity (4.81%).*

We would like to reiterate:

a. Payment of wages for the month of August 2017 and onwards is required to be made through e-payment (RTGS/NEFT etc). To ensure e-payment, bank

accounts may please be opened immediately, if not already done.

b. *You are requested to keep the wage register and e-payment details ready all the time for verification by officials of the Corporation.*

c. *Further, employees of your Retail outlet are to be covered immediately, if not done already, for the following:*

i. ***PMSBY** (Pradhan Mantri Suraksha Bima Yojana).*

ii. ***PMJJBY** (Pradhan Mantri Jeevan Jyoti Bima Yojana).*

In case the wages paid to employees for August 2017 is less than the amount notified by BPCL, as per the foregoing, the differential amount may please be paid latest by 26.9.17, positively.

Trust this will motivate your employees and shall result in improved customer services at your Retail Outlet"

(emphasis supplied)

48. From a combined reading of the aforesaid communications, it is evident that four directions were issued :-

(a) Payment of wages, as notified by OMCs from time to time or statutory minimum wages as notified by the respective State Governments/UTs, whichever is higher.

(b) Payment of salary through e-payment mode.

(c) To maintain the wage register and e-payment details and

(d) The employees of ROs be covered under:-

(1) Pradhan Mantri Suraksha Bima Yojana (**PMSBY**)

(2) Pradhan Mantri Jeevan Jyoti Bima Yojana (**PMJJBY**)

49. It is further evident that in order to maintain the marketing discipline in operations of the retail network of licenses of Petrol and Diesel outlets, OMCs had contemplated amendment in MDG-2012 and at the same time the communications also reveal that due care was taken to ensure that the Dealers are duly compensated and do not suffer losses, due to increase in wages, etc., by factoring the revisions in the Dealers' margins, effective from 01.08.2017.

50. A tabular representation was furnished by the Appellants, as "Annexure R-2/3" with the counter affidavit in W.P.(C) 10334/2017. The chart was referred to and explained by the learned Solicitor General, during the course of arguments, to support the stand, that while issuing directions to pay higher wages, the OMCs had factored the rise in wages in the Dealers' margin. By providing for higher wages, on one hand, it was ensured that the employees are motivated to work and consequently quality service shall be provided to the customers and on the other hand due care was taken that the Dealers do not feel the pressure or burden of the rise in wages. We entirely agree with the submission made on behalf of the Appellants. The chart clearly reflects that there was an increase in the Dealers' margin so that no burden of increase in wages, etc. is passed on to the Dealers and at the same time disbursement of higher wages to the employees motivates them to render quality services to the customers. This aspect is in addition to the legal argument made on behalf of the Appellants, with which also this Court agrees, that the relationship between the OMCs and the Dealers is governed by the Dealership Agreements, under which, more particularly Clause 43 thereof, the Dealers have undertaken to be bound and to comply with the rules and regulations of the Government, including the directives issued by

OMCs and thus the MDGs formulated by the OMCs, are binding on the Dealers. It is thus open to the Appellants to enforce the MDGs and amendments thereto and no fault can be found in this action. We also find merit in the stand of the Appellants that the Dealers are adequately compensated by raise in their margins, which includes element of salaries and wages, payable to the employees, which element was calculated on the basis of weighted average of Minimum Wages notified by the States/UTs, based on latest available State Government Notifications. The Dealers accepted the revision in the Dealers' margin without any demur and as rightly contended by the Appellants, cannot now object to the enhanced wages, which have been duly factored in the margins. For a ready reference, the tabular chart is as under:-

Increase/Decrease in various components of Dealers' Margin w.e.f. 1.8.2017 (for 170 Kls RO (Rs. Per KL)}								
Elements	*After revision Rs./Kl*			*Before revision Rs./Kl*			*Increase/decrease Rs./Kl*		*Reason for revision*
	MS	*HSD*		*MS*	*HSD*		*MS*	*HSD*	
Return on NFA	*393.74*	*332.18*		*46.00*	*39.00*		*755.96*	*751.74*	*As per study report from IIM Bangalore*
Return on WC	*72.86*	*49.06*		*72.88*	*49.06*		*-0.03*	*0.01*	*Slight variation in Wt. Avg. Product prices*
Product Losses	*501.76*	*95.74*		*501.93*	*101.36*		*-0.03*	*-5.54*	*Slight variation in Wt. Avg. Product prices*
Operating cost	*345.86*	*256.19*		*345.68*	*256.06*		*0.05*	*0.05*	*Variation in AICPI (-0.36%)*
Bank charges	*50.96*	*37.74*		*123.01*	*91.12*		*-58.57*	*-58.58*	*Revision of bank charges by SBI*
Business Return	*201.77*	*149.46*		*183.42*	*135.87*		*10.00*	*10.00*	*Business return increased by 10%*
Salaries & wages	*1958.66*	*1450.86*		*1315.83*	*974.69*		*48.85*	*48.85*	*Implementation of wages in line with*

									Central Wages (OMC notified wages)
GST on LFR	*103.42*	*86.18*		*12.04*	*10.08*		*758.95*	*754.97*	*Consequent to revision in NFA/LFR elements as per IIM-B study*
Total	*3629.03*	*2457.41*		*2600.79*	*1657.24*		*39.54*	*48.28*	
Gross increase	*1028.23*	*800.17*							
Net increase	***CC/A site Ros***			***DC/B site Ros***					
Current Dlr. Margin Net of LFR / GST	*3156.26*	*2063.44*		*3395.58*	*2262.87*				
Earlier Dlr. Margin Net of LFR / GST	*2545.75*	*1611.14*		*2575.75*	*1636.14*				
Net increase (Net of LFR / GST)	*610.51*	*452.30*		*819.83*	*626.73*				

Net increase % 23.98 28.07 31.83 38.31

(emphasis supplied)

Amendments to MDGs-2012

51. Before analysing the rival contentions, it would be useful to refer to the amendments to MDG-2012, which are the bone of contentions between the parties. For ready reference, the amendments are as under:-

"Ref: DDO/RS/MDG *Date: 03/10/2017*

To:
All Petrol Pump Dealers of Indian Oil
Under Delhi Divisional Office

Sub: Amendment to Marketing Discipline Guidelines2012

Dear Madam/Sir,

We wish to advise that the Marketing Discipline Guidelines 2012 have been amended, as per details given below, with immediate effect.

DETAILS OF AMENDMENTS TO MARKETING DISCIPLINE GUIDELINES-2012

1. CLAUSE NO. 5.1.2. SHORT DELIVERY OF PRODUCTS

a) With Weights & Measures Department Seals intact

Sales through the concerned dispensing unit to be suspended forthwith and recalibration and re-stamping to be done before recommencement of sales.

(Even if short/excess delivery is found within permissible limit, recalibration and re-stamping to be done before recommencement of sales.)
Penalty in case of short delivery beyond permissible limit:

ii. First instance: Rs. 25,000/- per nozzle found delivering short beyond permissible limit as specified in Legal Metrology Act/Rule.
iii. Second instance within one year of 1st instance: Rs. 50,000/- per nozzle found delivering short beyond permissible limit as specified in Legal

Metrology Act/Rule & suspension of Sales and supplies for 15 days.

iv. *Third instance within one year of 1st instance: Termination of the dealership.*

CLAUSE NO.5.1.16 : AUTOMATED ROS

(a) Dealer Operating the automated RO in Manual mode without authorization

Where automation has been completed at a Retail outlet and if any dispensing unit/MPD there has been found to be operating in manual mode without .proper authorization from the competent authority it will be treated under this irregularity.

(b) In case ATG is switched off / non-operational without authorization from the competent authority.

(c) Any deliberate action on the part of Dealership or their staff or any other agency to make any component of automation system (excluding MPDs / Dispensing Units /ATGs) dysfunctional, partly or fully without authorization from competent authority.

(Authorization through e-mail be signed letter from Company official only will be admissible.)

Penalty in case (a), (b) & (c) above:

i. *Penalty of Rs.1,00,000/- (one lakh only) for the first irregularity.*
ii. *Second offence would lead to suspension of sales and supplies for 7days and penalty of Rs.2,00,000/- (two lakhs only).*
iii. *Third offence would lead to termination of the dealership.*

2. CLAUSE NO. 5.1.14(b) NON PROVISION OF CLEAN TOILET FACILITY

Dealers should check daily and ensure the following;-

a) Toilets are clean all the time.
b) Proper lighting is available.
c) Flush (wherever provided) is working properly.
d) Water is available.
e) Working latch is available on the toilet door.
f) Signage is available.
g) Toilet door found to be locked.

The above protocol is to be prominently displayed near the toilet. Maintenance sheet is to be maintained and displayed.

If OMC officials observe during the inspection that (a) Toilet is found to be not clean or (b) Water is not available or (c) Latch on the toilet door is not available/not working or (d) Toilet door found to be locked at any outlet, a photograph of the toilet shall be taken and letter shall be issued instantly listing the penalty as per MDG.

Penalty in case of Non-provision of Clean Toilet facility:

Penal action will be taken in case during the inspection (a) Toilet is found to be not clean or (b) Water is not available or (c) Latch on the toilet door is not available/not working or (d) Toilet door found to be locked.

i. *First instance Rs. 15,000/-*
ii. *Second instanceRs.25,000/-*
iii. *Third instance (a) Rs. 35,000/- or 45% of the monthly dealer commission (based on average of last 6 months), whichever is higher and*
b) suspension of Sales and supplies for 7 days or rectification of the defect in toilet, whichever is later.

3. CLAUSE NO. 1.5 OBSERVANCE OF STATUTORY AND OTHER REGULATIONS

x) Dealers shall make payment of minimum wages as notified by Oil Marketing Companies (OMCs) from time to time or statutory minimum wages as notified by the respective State Government, whichever is higher to the manpower employed at ROs, Other benefits as notified by OMCs/Statute shall also be paid to the manpower employed at ROs.

4. CLAUSE NO. 5.1.18 : PAYMENT OF WAGES

Dealers shall make payment of minimum wages as notified by Oil Marketing Companies (OMCs) from time to time or statutory minimum wages as notified by the respective State Government, whichever is higher to the manpower employed at ROs. Other benefits viz. PF, ESIC, Bonus, Earned/Annual Leave and Gratuity as notified by OMC/Statute shall also be paid.

Dealers to ensure that:

a) Salaries & Wages are paid through e-Payment.
b) PF, ESIC, Bonus, Earned/Annual Leave and Gratuity are paid as notified by OMCs/Statute.
c) All Employees are covered under:

i. Pradhan Mantri Suraksha Bima Yojana (PMSBY)
ii. Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY)

Dealers are required to maintain records and records should be made available at the retail outlet for inspection at all times.

Penalty in case of Non-payment of minimum wages as applicable

Clause8.3 (ix) : Non-payment of Salary, Wages, other Benefits &Insurance as per clause5.1.18 for the manpower employed at ROs.

Action in case of 8.3 (ix) would be as under:-

i. First instance : 20% of the monthly dealer margin (based on average of last 3 months);
ii. Second instance : 30% of the monthly dealer margin (based on average of last 3 months);
iii. Third & subsequent instances : 40% of the monthly dealer margin (based on average of last 3 months) & suspension of sales and supplies for 15 days.

5. CLAUSE NO. 8.5.7:

The dealer would have a period of 10 days to reply from the date of issuance of Show Cause notice."

(emphasis supplied)

VI B. <u>CLAUSE 1.5</u>

52. Looking to the arguments canvassed by the learned Senior Counsels appearing for the Respondents, the main grievance ventilated is that the RO Dealers cannot be compelled to pay wages to their employees at a rate higher than the minimum wages notified by the respective States/UTs. The said contention cannot be accepted for the following reasons :-

(a) As per Clause 1.5 of the amendment to MDG-2012 w.e.f. 01.08.2017, especially, sub-Clause (x) thereof, which mandates observance of Statutory and other Regulations, it is obligatory for the RO Dealers to make payment of minimum wages, as notified by the OMCs, from time to time or statutory minimum wages, as notified by the respective State Governments, whichever is higher and as per Clause 5.1.18, which specifically deals with payment of wages,

Dealer shall make the payment of minimum wages as notified by OMCs, from time to time or statutory minimum wages as notified by respective State Government, whichever is higher.

(b) Having perused the aforesaid provisions, we are of the view that these are not violative of the provisions under the Minimum Wages Act, 1948, under which there is no bar against the employer being directed to pay wages higher than the prescribed minimum wages. The said field is therefore open to a contracting party to direct the other party to the contract to pay higher wages. It is always open to the Dealers to enter or not to enter into a Dealership Agreement, if the terms thereof are not suitable, but it is not open to seek a direction to make a contract tailor made to suit the Dealers. Certainly, a party can challenge an action of an employer, if the wages paid to the employee are lesser than the prescribed minimum wages as in that case there will be a clear violation of the Statutory provisions under the Minimum Wages Act, which is not the case here.

(c) As mentioned hereinabove, Clause 43 of the Dealership Agreement, empowers and enables the OMCs to issue Marketing Discipline Guidelines to regulate the functioning of the ROs and the directives issued under these MDGs bind the RO Dealers and can be legally enforced by the Appellants. This Court finds no reason to interfere with the direction in the amended MDGs to pay the wages, as directed. This is in the realm of a contractual relationship under the Dealership Agreements, consciously entered into by the RO Dealers and calls for no interference.

(d) The matter can be looked at from yet another angle, in order to deal with the contention of the Respondents that OMCs are not privy to the contractual relationships and service contracts between the RO Dealers and their employees and thus cannot dictate the service conditions and terms of the employees. The framers of the Constitution of India have framed the Directive Principles, which are regarded as the soul of the Constitution and become particularly important in our Country, which is a welfare State. As held by the Hon'ble Supreme Court in ***K.T. Plantation (P) Ltd. vs. State of Karnataka,*** **(2011) 9 SCC 1**, Directive Principles of State Policy lay down the Fundamental Principles for governance of the Country and through these principles, State is required to take steps to sub-serve the common good. In this context, Article 43 of the Constitution of India is relevant and reads as under:-

> *"**43. Living wage, etc., for workers.** – The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas."*

53. The **Constitution** framers kept the wordings of Article 43 expansive by including the phrase "**or in any other way**"**.** This expression allows the State and its Instrumentalities to secure the ideals enshrined in Article 43 viz. living wage and in our view, would apply to the OMCs. The Appellants

are thus justified in their endeavour to achieve the goals of the Directive Principles, through the amendment in 2017 in the MDG-2012.

54. At this juncture, relevant would it be to refer to a passage from the judgment of the Hon'ble Supreme Court in ***Bijay Cotton Mills v. State of Ajmer,*** **AIR 1955 SC 33,** which is as follows:-

> *"4. It can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency, is conducive to the general interest of the public. This is one of the Directive Principles of State Policy embodied in Article 43 of our Constitution. It is well known that in 1928 there was a Minimum Wages Fixing Machinery Convention held at Geneva and the resolutions passed in that convention were embodied in the International Labour Code. The Minimum Wages Act is said to have been passed with a view to give effect to these resolutions [Vide SI Est etc. v. State of Madras, (1954) 1 MLJ 518 at page 521]. If the labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable. On the other hand, the employers cannot be heard to complain if they are compelled to pay minimum wages to their labourers even though the labourers, on account of their poverty and helplessness are willing to work on lesser wages."*
>
> *(emphasis supplied)*

55. In the light of the Directive under Article 43 of the Constitution and the aforementioned judgment, there is no merit in the contention of the Respondents that OMCs, not being privy to the contracts between R.O. Dealers and their employees, cannot dictate the terms of their service conditions. In the light of the Directive Principles, reasonable conditions/

Regulations/Guidelines can certainly be issued by the Appellants to ensure that the employees do not suffer and larger public good is sub-served.

56. At this stage, we may also refer to a judgment of the Hon'ble Supreme Court in ***The U.P. State Electricity Board and Another v. Hari Shankar Jain and Others*, AIR 1979 SC 65,** wherein it was held that the Courts are also bound to evolve, affirm and adopt principles of interpretation, which will further and not hinder the goals set out in the Directive Principles of State Policy and that this command of the Constitution must be ever present in the minds of Judges when interpreting Statutes which concerns themselves directly or indirectly with matters set out in the Directive Principles. Relevant passage is as under :

> *"5. Before examining the rival contentions, we remind ourselves that the Constitution has expressed a deep concern for the welfare of workers and has provided in Article 42 that the State shall make provision for securing just and humane conditions of work and in Article 43 that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure etc. These are among the "Directive Principles of State Policy". The mandate of Article 37 of the Constitution is that while the Directive Principles of State Policy shall not be enforceable by any Court, the principles are 'nevertheless fundamental in the governance of the country' and 'it shall be the duty of the State to apply these principles in making laws'. Addressed to Courts, what the injunction means is that while Courts are not free to direct the making of legislation, Courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy. This command of the Constitution must be ever present in the minds of judges when interpreting statutes which concern themselves directly or*

indirectly with matters set out in the Directive Principles of State Policy."

(emphasis supplied)

57. We may allude to a few other judgments in relation to fixation of wages. In ***Chandra Bhavan Boarding & Lodging, Bangalore v. The State of Mysore and Another,*** **(1969) 3 SCC 84**, the Hon'ble Supreme Court held as under:

"9. We have earlier noticed the circumstances under which the Act came to be enacted. Its main object is to prevent sweated labour as well as exploitation of unorganised labour. It proceeds on the basis that it is the duty of the State to see that at least minimum wages are paid to the employees irrespective of the capacity of the industry or unit to pay the same. The mandate of Article 43 of the Constitution is that the State should endeavour to secure by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The fixing of minimum wages is just the first step in that direction. In course of time the State has to take many more steps to implement that mandate. As seen earlier that resolutions of the Geneva Convention of 1928, which had been accepted by this country called upon the covenanting States to fix minimum wages for the employees in employments where the labour is unorganised or where the wages paid are low. Minimum wages does not mean wage just sufficient for bare sustenance. At present the conception of a minimum wage is a wage which is somewhat intermediate to a wage which is just sufficient for bare sustenance and a fair wage. That concept includes not only the wage sufficient to meet the bare sustenance of an employee and his family, it also includes expenses necessary for his other primary needs such as medical expenses, expenses to meet some education for his children and in some cases transport charges etc., see Unnicheyi and Others v. State of Kerala

[(1962) 1 SCR 946]. The concept of minimum wage is likely to undergo a change with the growth of our economy and with the change in the standard of living. It is not a static concept. Its concomitants (sic) must necessarily increase with the progress of the society. It is likely to differ from place to place and from industry to industry. That is clear from the provisions of the Act itself and is inherent in the very concept. That being the case it is absolutely impossible for the legislature to undertake the task of fixing minimum wages in respect of any industry much less in respect of an employment. That process must necessarily be left to the Government. Before minimum wages in any employment can be fixed it will be necessary to collect considerable data. That cannot be done by the legislature. It can be best done by the Government. The legislature has determined the legislative policy and formulated the same as a binding rule of conduct. The legislative policy is enumerated with sufficient clearness. The Government is merely charged with the duty of implementing that policy. There is no basis for saying that the legislature had abdicated any of its legislative functions. The legislature has prescribed two different procedures for collecting the necessary data, one contained in Section 5(1)(a) and the other in Section 5(1)(b). In either case it is merely a procedure for gathering the necessary information. The Government is not bound by the advice given by the committee appointed under Section 5(1)(a). Discretion to select one of the two procedures prescribed for collecting the data is advisedly left to the Government. In the case of a particular employment, the Government may have sufficient data in its possession to enable it to formulate proposals under Section (5)(1)(b). Therefore it may not be necessary for it to constitute a committee to tender advice to it but in the case of another employment it may not be in possession of sufficient data. Therefore it might be necessary for it to constitute a committee to collect the data and tender its advice. If the Government is satisfied that it has enough material before it to enable it to proceed under Section 5(1)(b) it can very well do so. Which procedure should be adopted in any particular employment depends on the nature of the employment and the information

the Government has in its possession about that employment. Hence the powers conferred on the Government cannot be considered as either unguided or arbitrary. In the instant case as seen earlier the question of fixing wages for the various categories of employees in residential hotels and eating houses was before the Government from 1960 and the Government had taken various steps in that regard. It is reasonable to assume that by the time the Government published the proposals in pursuance of which the impugned notification was issued it had before it adequate material on the basis of which it could formulate its proposals. Before publishing those proposals, the Government had consulted the advisory committee constituted under Section 7. Under those circumstances we are unable to accede to the contention that either the power conferred under Section 5(1) is an arbitrary power or that the same had been arbitrarily exercised."

(emphasis supplied)

58. In ***Y.A.Mamarde and Nine Others and Ghanshyam and Eight Others v. Authority under the Minimum Wages Act, (Small Causes Court) Nagpur and Another*; <u>(1972) 2 SCC 108</u>**, the Hon'ble Supreme Court has held as under**:**

"13. Let us first deal with this question. The Act which was enacted in 1948 has its roots in the recommendation adopted by the International Labour Conference in 1928. The object of the Act as stated in the preamble is to provide for fixing minimum rates of wages in certain employments and this seems to us to be clearly directed against exploitation of the ignorant, less organised and less privileged members of the society by the capitalist class. <u>This anxiety on the part of the society for improving the general economic condition of some of its less favoured members appears to be in supersession of the old principle of absolute freedom of contract and the doctrine of laissez faire and in recognition of the new principles of social welfare and common good.</u> Prior to our Constitution this principle was advocated by the movement for liberal

employment in civilised countries and the Act which is a pre-Constitution measure was the offspring of that movement. Under our present Constitution the State is now expressly directed to endeavour to secure to all workers (whether agricultural, industrial or otherwise) not only bare physical subsistence but a living wage and conditions of work ensuring a decent standard of life and full enjoyment of leisure. This Directive Principle of State Policy being conducive to the general interest of the public and, therefore, to the healthy progress of the nation as a whole, merely lays down the foundation for appropriate social structure in which the labour will find its place of dignity, legitimately due to it in lieu of its contribution to the progress of national economic prosperity. The Act has since its enactment been amended on several occasions apparently to make it more and more effective in achieving its object which has since secured more firm support from the Constitution. The present rules under Section 30, it may be pointed out, were made in October 1950, when the State was under a duty to apply the Directive Principles in making laws. No doubt the Act, according to its preamble, was enacted to provide for fixing minimum rates of wages, but that does not necessarily mean that the language of Rule 25 should not be construed according to its ordinary, plain meaning, provided of course, such construction is not inconsistent with the provisions of the Act and there is no other compelling reason for adopting a different construction. A preamble though a key to open the mind of the Legislature, cannot be used to control or qualify the precise and unambiguous language of the enactment. It is only in case of doubt or ambiguity that recourse may be had to the preamble to ascertain the reason for the enactment in order to discover the true legislative intendment. By using the phrase "double the ordinary rate of wages" the rule-making authority seems to us to have intended that the worker should be the recipient of double the remuneration which he, in fact, ordinarily receives and not double the rate of minimum wages fixed for him under the Act. Had it been intended to provide for merely double the minimum rate of wages fixed under the Act the rule-making authority could have so expressed its intention

in clear and explicit words like "double the minimum rate of wages fixed under the Act". This intendment would certainly have been stated in the explanation added to Rule 25(1) in which the expression "ordinary rate of wages" has been explained. The word "ordinary" used in Rule 25 reflects the actuality rather than the worker's minimum entitlement under the Act. To accept Dr Barlingay's suggestion would virtually amount to recasting this phrase in Rule 25 for which we find no justification. This rule calls for practical construction which should ensure to the worker an actual increase in the wages which come into his hands for his use and not increase calculated in terms of the amount assured to him as a minimum wage under the Act. The interpretation suggested on behalf of the respondents would have the effect of depriving most of the workers who are actually getting more than the minimum wages fixed under the Act of the full benefit of the plain language of Rule 25 and in case those workers are actually getting more than or equal to double the minimum wages fixed, this provision would be of no benefit at all. This construction not only creates a mere illusory benefit but would also deprive the workers of all inducement to willingly undertake overtime work with the result that it would to that extent fail to advance and promote the cause of increased production. We are, therefore, clearly of the view that Rule 25 contemplates for overtime work double the rate of wages which the worker actually receives, including the casual requisites and other advantages mentioned in the explanation. This rate, in our opinion, is intended to be the minimum rate for wages for overtime work. The extra strain on the health of the worker for doing overtime work may well have weighed with the rule-making authority to assure to the worker as minimum wages double the ordinary wage received by him so as to enable him to maintain proper standard of health and stamina. Nothing rational or convincing was said at the bar while fixing the minimum wages for overtime work at double the rate of wages actually received by the workmen should be considered to be outside the purpose and object of the Act. Keeping in view the overall purpose and object of the Act and viewing it

harmoniously with the general scheme of industrial legislation in the country in the background of the Directive Principles contained in our Constitution the minimum rates of wages for overtime work need not as a matter of law be confined to double the minimum wages fixed but may justly be fixed at double the wages ordinarily received by the workmen as a fact. The Bombay High Court has no doubt held in Union of India v. B.D. Rathi (supra), that "ordinary rate of wages" in Rule 25 means the minimum rate for normal work fixed under the Act. The learned Judges sought support for this view from Section 14 of the Act and Rule 5 of the Railway Servants (Hours of Employment) Rules, 1951. The workers there were employees of the Central Railway. With all respect we are unable to agree with the approach of the Bombay High Court. Section 14 of the Act merely lays down that when the employee, whose minimum rate of wages is fixed by a prescribed wage period, works in excess of that period the employer shall pay him for the period so worked in excess at the overtime rate fixed under the Act. This section does not militate against the view taken by us. Nor does a provision like Rule 5 of the Railway Rules which merely provides for fifty-four hours employment in a week on the average in any month go against our view. The question is not so much of minimum rate as contrasted with the contract rate of wages as it is of how much actual benefit in the form of receipt of wages has been intended to be assured to the workman for doing overtime work so as to provide adequate inducement to them willingly to do overtime work for increasing production in a peaceful atmosphere in the industry. The problem demands a liberal and rational approach rather than a doctrinaire or technical legalistic approach. The contract rate is not being touched by holding that Rule 25 contemplates double the rate of wages which actually come into the workman's hands any more than it is touched by fixing the minimum rate of wages under Sections 3, 4 and 5 of the Act. The decision of the Mysore High Court in Municipal Borough, Bijapur v. Gundawan (M.N.) and Others [AIR 1965 Mys 317] and of the Madras High Court in Chairman of the Madras Port Trust v. Claims Authority and Others [AIR 1957 Mad 69] also

take the same view as the Bombay High Court does. We need not, therefore, deal with them separately."

(emphasis supplied)

59. In ***M/s. Polychem Ltd. v. R.D. Tulpule, Industrial Tribunal, Bombay,*** **(1972) 1 SCC 885**, the Hon'ble Supreme Court held as under:

"7. Wage policy relating to workmen appears to be a complex and sensitive area of public policy. The reason is plain. The relative status of workmen in the society, their commitment to industry and their attitude towards the management, their motivation towards productivity and their standard and way of life, are all conditioned by wages. It is accordingly not a purely economic policy in which the employer and the employee alone are interested. Besides the worker and the management, the consumer and the society at large and a fortiorari the State, are also vitally interested, and no wage policy can ever be applied in vacuum in disregard of the realities of the social and economic conditions in our country. Considering the question of wages in the background of the directive principles enshrined in our Constitution a wage structure should serve to promote, a fair remuneration to labour ensuring due social dignity, personality and security, a fair return to capital, and strengthen incentives to efficiency, without being unmindful of the legitimate interest and expectation of the consumer in the matter of prices. Guided by this principle, if the financial capacity of the industry permits, the workers should, broadly speaking, be allowed their due share in the prosperity of the industry, to which they have contributed by their labour, so as to enable them, within reasonable limits, to improve their standard of living."

(emphasis supplied)

60. From the above-stated judicial pronouncements, the following conclusions can be drawn :

i. State **can impose reasonable conditions/restrictions in freedom of contract and trade**.

ii. Courts are duty bound to affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy.

iii. Article 43 of the Constitution mandates that the State should endeavour to secure by a suitable Legislations or economic organization or in any other way, to all workers, a living wage and fixing of the minimum wage is the first step in that direction. Minimum wage does not mean wage just sufficient for bare sustenance but includes other expenses necessary for the primary needs of the workman and his family such as medical, education, transport, etc.

iv. **MDG** is a **Guideline issued by the OMCs, Instrumentalities of the State** to regulate the R.O. Dealers and the direction to pay higher wages is thus a **step in the right direction** of taking forward the **mandate of Article 43 of the Constitution of India**.

v. OMC's, being the Instrumentalities of State and having **control over monopolistic goods such as oil**, which they sell to general public, through R.O. Dealers, are under a Constitutional obligation **to ensure a "living wage" for the workers employed by the R.O Dealers**. In any event, Dealers have no reason to object, having accepted the revisions in their margins, which is plainly evident from the tabular chart, referred to above, which reflects the difference in the Dealers' margins, pre-01.08.2017 and post-01.08.2017.

vi. The nature of the amendment directing payment of higher wages is for the welfare of the employees of the ROs. It is in the nature of a fair wage, which can be prescribed as a term of the contract. In the present case, interest of the RO Dealers has been adequately protected by increase in the "**Dealers' Margin**". It would not be wrong to hold that if the Dealers do not disburse the higher wages after having received higher margins, it would amount to "**Unjust Enrichment" on the part of the Dealers**.

vii. The aforesaid aspects of the matter, in our view, have not been correctly appreciated by the learned Single Judge and there is merit in the contentions raised by the Appellants.

VI C. CLAUSE 5.1.2 – SHORT DELIVERY OF PRODUCTS

61. Learned Solicitor General and learned Senior Counsels representing the respective sides have read and re-read Clause 5.1.2 of the amendment in 2017 in MDG-2012. While the contention of the Appellants is that even where the Weights & Measures Department Seals are intact and there is short/excess delivery, though within the permissible limit, the sales of the concerned Dispensing Unit are to be suspended and recalibration and re-stamping is to be done, before recommencement of sales, Respondents urged that where the dispensation is within the permissible limit, there cannot be suspension of sales, especially when no time limit is prescribed for recalibration and re-stamping in the MDGs. In order to appreciate the argument, it is pertinent to refer to Clause 5.1.2, which is extracted hereunder for ready reference :-

*"**Clause 5.1.2***

a) With Weights & Measures Department Seals intact

Sales through the concerned dispensing unit to be suspended forthwith and recalibration and re-stamping to be done before recommencement of sales.

(Even if short/excess delivery is found within permissible limit, recalibration and re-stamping to be done before recommencement of sales.)

Penalty in case of short delivery beyond permissible limit:

*i. **First instance**: Rs. 25,000/- per nozzle found delivering short beyond permissible limit as specified in Legal Metrology Act/Rule.*
*ii. **Second instance within one year of 1st instance**: Rs. 50,000/- per nozzle found delivering short beyond permissible limit as specified in Legal Metrology Act/Rule & suspension of Sales and supplies for 15 days.*
*iii. **Third instance within one year of 1st instance**: Termination of the dealership."*

62. Having examined the rival contentions, we are of the view that the stand of the Respondents cannot be accepted for the following reasons :-

(a) The objective of the Legal Metrology Act, 2009 is clearly to ensure that a certain standard is maintained by the RO Dealers and for this reason, there is a provision of maximum permissible error in sale and supply of petroleum products. There is no bar under the Statute in prescribing higher standards of sale and supply by reducing the margin of error. It was sought to be explained on behalf of the Appellants that even though under the aforesaid Act, there is a permissible error of +/- 25 ml per 5 litres, the Statute does not prohibit

the OMCs from prescribing and stipulating higher and stringent standards to safeguard the interest of the consumers and therefore, recalibration is required to be done when the error is above +/- 10 ml per 5 litres. Further, when the permissible error prescribed by the OMCs is not just (-)10 ml per 5 litres but also (+)10 ml per 5 litres i.e. when the dispensing units dispense more than the desired quantity of sale, causing loss to the Dealers, even their recalibration is provided for as the OMCs do not want even the Dealers to suffer any loss. We find force in the said argument of the Appellants. There is no reason why the OMCs should be deprived of their right to impose stringent standards to ensure that the errors are minimized.

(b) Clause 43 of the Dealership Agreement enables the Appellants to issue the Marketing Discipline Guidelines and amendments thereto. Thus, the obligations cast on the Dealers by the directions issued in the form of MDGs are in the nature of a contractual relationship and the terms of contract, needless to state, are binding on the parties to the contract. By amending the MDGs and directing the RO Dealers to maintain higher standards of delivery of products in larger public interest, failing which the sales shall be suspended, followed by recalibration and re-stamping, before recommencement of sales, in our view, Appellants have not violated any Statutory provision and in fact it only furthers the objective of the Legal Metrology Act, which is to ensure that a certain standard is maintained by the Dealers. In this context, we may allude to the judgment of the Hon'ble Allahabad High Court (Lucknow Bench) in ***Dr. Ashok Nigam and Anr. v. State***

of UP and Ors. in PIL(C) No. 10652/2017 dated 30.05.2017, relevant paragraphs of which are as follows :-

"2. A wide spread open crime on the part of Petrol Pump Operators, licensed by respondent Nos. 5, 6 and other oil companies affecting entire public at large at large throughout the State, was unearthed by Special Task Force (hereinafter referred to as, 'STF') when it made surprise checking on certain petrol pumps at capital city, Lucknow, in State of Uttar Pradesh and has detected a chain of crime, which involve a very large number of persons, different agencies, wings and also the departments of Government, continuing with impunity, defrauding and cheating the innocent customers of oil in the State.

18. Dr. Ashok Nigam pointed out that as a result of aforesaid indication given by State Government, things immediately slowed down. STF went on back foot. It is in this backdrop, we find it really difficult to appreciate how Government, which is expected to show a rock like strength in such situation, so as to give a clear and straight message to all wrong doers that there is no tolerance whatsoever at the end of a welfare of State, is tolerating and even giving relaxations to the persons indulged in cheating with people at large. Hence on 22.05.2017, we passed following order:

> *"1. A disturbing and disappointing picture has emerged from so-called affidavit of compliance filed by State of U.P. through Sri Gaya Prasad Kamal, Special Secretary, Department of Food and Civil Supplies. It appears that credit of entire success of nabbing Petrol Pumps, who were indulged in short supply of fuel by using an electronic device in dispensing unit in their Petrol Pumps, goes to Special Task Force but thereafter there is an effort on the part of State and, that too, at the highest level, to dilute/hush up the matter in different way, like by issuing certain Government Orders after diluting entire exercise.*

One of such Government order dated 02.05.2017 has been placed before us which shows that now, instead of Special Task Force, checking of Petrol Pumps/Diesel Pumps shall be made by a Committee which shall be constituted by concerned District Magistrate in every District and it shall consist of one Executive Magistrate, District Supply Officer, Supply Inspector, a Police Officer not below the rank of Inspector, Senior Inspector/Inspector Weight and Measurement Department and one officer of concerned Oil Company.

2. The role of Weight and Measurement Officer and Supply Officer is already suspicious when electronic devices were found in the dispensing units of Petrol Pumps inasmuch such chips could not have been installed without opening machine and disturbing seals put by Weight and Measurement Department etc. Therefore, prima facie their collusion was already there and yet they have been made part of checking team.

3. The most interesting thing is that now Chief Secretary has directed all the Officers in State of U.P. that in case electronic device or short supply of fuel or any other kind of irregularity is found at a Petrol Pump, only concerned dispensing unit shall be sealed and no other dispensing units. Meaning thereby, no action shall be taken against concerned Petrol Pump owner/occupier though licence is given to run Petrol Pump and not to a particular dispensing unit. If its owner has committed some illegality or offence, he is liable for cancellation of licence itself and action for such illegality cannot be confined to only dispensing unit. Apparently illegal act of offence doers is being compromised or compounded. This direction issued by Chief Secretary is really unfortunate. We find that there is a clear lack of will on the part of respondent-state in taking a strict, tough and law

enforcing action so that a message should go to all such persons not to indulge in such activities.

4. Let Chief Secretary himself appear on 25.05.2017 alongwith a personal affidavit stating, why this kind of direction has been issued (like Government Order dated 02.05.2017)that no action shall be taken against Petrol Pump owners/occupiers but only concerned dispensing unit(s) shall be sealed. It appears that at some level, there is something wrong on the part of Government also and somebody is trying to protect erring Petrol Pump owners by avoiding/deferring strict action against them.

5. Respondent Oil Companies, respondents 5 and 6, have also not disclosed as to what action they have taken in the matter against erring Petrol Pump owners.

6. Let respective counsels appearing for respondents-5 and 6 also inform about the steps taken by them as also the time schedule within which entire matter shall be dealt with and concluded.

7. Dr. L.P. Mishra, learned counsel appearing for respondent 5 expressed his apprehension that Petrol Pump owners may create a panic by closing Petrol Pumps, as they had done earlier also, and that is how creating a huge chaos and public inconvenience and it is probably for this reason, State has taken lenient view in the matter.

8. To avoid any such kind of blackmailing or illegal activities on the part of Petrol Pumps, we direct to State Government that to meet out eventuality, if any such action or threat etc. is taken/shown by one or more Petrol Pump, State Government shall issue a direction to all District Magistrates concerned to ensure running of Petrol Pumps by appointing Receiver(s)and in

no case any Petrol Pump owners will be allowed to blackmail people by such activities.

9. Put up this matter on 25.05.2017.

10. Copy of this order shall be made available to learned Standing Counsel for communication to concerned authorities and compliance, by tomorrow."

30. It is true that oil companies in majority are owned and controlled by Central Government but in this case their involvement also cannot be excluded since they are under the obligation, under terms and conditions of marketing disciplines, for a regular periodical inspection. But here also we find an attempt to show a self disclosure of cleanliness instead of nabbing erratic and offending officials who do not work impartially, objectively and judiciously. They are indulged in nefarious criminal acts. We can understand frustration and helplessness which officials of STF must be facing. Though in the affidavit filed by Chief Secretary, it is stated that STF's hands have not been tied or stopped, but language and message of order dated 02.05.2017 is self speaking and explainable, fortified from the fact that from 03.05.2017 and onward, we find no registration of FIR against any erring petrol pumps.

That has been done in words and what has been instructed between the lines, is evident and easily discernible. Any person of ordinary prudence can easily decipher message underlying therein. Still whatever has been left, it is our duty to take hold of the stock of situation, so as to compel forthwith action and application of mind to the State authorities. Let them wake up, realize their public duty and trust and statutory obligations they have, and take action effectively, speedily and in such a manner so as to leave a clear but bold message to all those who indulged in the act of cheating helpless public at large that none will be spared. Everyone shall be punished adequately."

63. We may, at this stage, deal with the finding of the learned Single Judge that the OMCs would do well to provide a defined timeline by which recalibration and re-stamping are carried out, failing which, they should permit RO Dealers to recommence sales, if the error in delivery is within the permissible limits and that a period of 12 hours from the time the defect is noticed, should be ideal.

64. Clause 5.1.2 of the amended MDGs provides that in case of short/excess delivery within permissible limit, after suspension of the sale, recalibration and re-stamping is required to be done. It is true that no time limit has been provided in the MDGs, within which the said action is required to be carried out and as a sequitur, there is no provision permitting the Dealers to recommence sales, prior to completion of recalibration and re-stamping. The reason for not providing defined timelines, is not far to see. It is rightly pointed out by the Appellants that if the timeline is stipulated, it would give a handle to the Dealers to put any time of defect, since it would be the Dealer who would be the first to notice the defect and would perhaps be the one to note the timing. In such an event, whenever an issue would arise of short/excess delivery, the Dealer would insist on recommencing the sale on expiry of the timeline, as per the time noted by the Dealer. It is not difficult to foresee that this would open gates for the Dealers to manipulate the timings, to suit their convenience and further encourage malpractices. There is also merit in the contention of the Appellants that several ROs are located in remote corners of the Country and it would be logistically and practically impossible to uniformly implement the timelines. Therefore, in our opinion, the finding of the learned Single Judge that the OMCs should provide timelines for recalibration and re-stamping and further suggesting a

timeline of 12 hours cannot be sustained. There is yet another aspect of the matter. Once the Dealers are aware that there are no time limits prescribed for recalibration and re-stamping, after the sales are suspended, the Dealers would make every endeavour to ensure that the dispensing units work efficiently and there are least possible errors in dispensing the petroleum products. This is the normal and expected human conduct. Non-provision of the timeline, therefore, in our opinion, will act as a deterrent and would bring greater discipline amongst the RO Dealers, which is the very purpose of the MDGs.

65. The OMCs with their expertise in the field have taken a conscious decision to refrain from stipulating any timelines and the logic explained by the Appellants does not seem unreasonable. Each case would depend on its own facts and circumstances and fixation of a time limit would complicate matters and make the system unworkable. Once the Expert Bodies, after due deliberation, have framed Clause 5.1.2, it is not for this Court, exercising jurisdiction in judicial review to frame the Guidelines for the working of the RO Dealers or suggest a time limit and re-write the clause. Clause 5.1.2(a) cannot thus be termed as unreasonable or arbitrary and the learned Single Judge has erroneously struck down the said provision.

66. Having said so, we may, however, add a caveat. While there are no timelines stipulated in the MDGs, yet in our opinion the OMCs should not delay the process of recalibration and re-stamping and steps must be taken to ensure that as soon as the sale is suspended in a given RO, the next process must start as one cannot overlook the fact that prolonged suspension of sales would not only affect the business of the RO Dealers but would also have a deleterious effect on the consumers.

VI D. CLAUSE 5.1.18–PAYMENT OF WAGES

67. For ready reference, Clause 5.1.18 of the amendment in MDG-2012 made effective from 01.08.2017 reads as under:-

> *"Dealers shall make payment of minimum wages as notified by Oil Marketing Companies (OMCs) from time to time or statutory minimum wages as notified by the respective State Governments, whichever is higher, to the manpower employed at ROs. Other benefits viz. PF, ESIC, Bonus, Earned/Annual Leave and Gratuity as notified by OMCs/Statute shall also be paid.*
>
> *Dealers to ensure that:*
>
> *a) Salaries & wages are paid through e-Payment.*
>
> *b) PF, ESIC Bonus, Annual Leave and Gratuity are paid as notified by OMCs/Statute.*
>
> *c) All Employees are covered under:*
>
> *i) Pradhan Mantri Suraksha Bima Yojana (PMSBY),*
>
> *ii) Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY),*
>
> *Dealers are required to maintain records and the records should be made available at the retail outlet for inspection, at all times."*

68. First part of this Clause concerns payment of higher wages, which has been dealt with in the earlier part of the judgment.

69. In so far as second part of Clause 5.1.18 is concerned, it creates a contractual obligation on the RO Dealers to disburse the salaries and wages of their employees, though the mode of **e-payment**. Two-fold arguments

were addressed on behalf of the Respondents, assailing the said direction. Firstly, that on account of lack of internet facilities or connectivity issues at the ROs, more particularly, those located in remote parts of the Country, it is not practically feasible or possible to make e-payments and secondly, the OMCs have no privity of contract with the employees of the ROs and cannot dictate the terms of their service conditions.

70. None of the two contentions, in our view, merit acceptance for the following reasons :-

(a) It bears repetition to state that by virtue of Clause 43 of the Dealership Agreement, the Dealers have undertaken to faithfully and promptly carry out, observe and perform all directions made by the Corporation, from time to time for proper carrying out of the dealership. Respondents cannot therefore escape the contractual obligations cast upon them coupled with the assurance and undertaking to scrupulously and faithfully follow all directions issued by the Appellants, in furtherance of the Dealership Agreement.

(b) Payment of salaries and wages by e-payment mode is a welfare measure since it ensures that complete wages are disbursed to the employees, as reflected in the books of accounts and the employees do not suffer on account of any malpractice on the part of the Dealers of paying lesser wages than due. Payment through the electronic mode would make the system transparent and certainly reduce the chances of exploitation of the employees at hands of the RO Dealers.

(c) Payment of salaries and wages by e-payment mode would go a long way in resolving several issues under the Labour Law Legislations such as Industrial Disputes Act in case any disputes arise between the employees

and the Dealers, *vis-a-vis* their status as a 'workman' or the amount of wages.

(d) Insofar as the practical difficulty of lack of internet facilities or technical issues in the network, is concerned, suffice would it be to state that most of the transactions are carried out by the Dealers, online, including payments made by them for purchase of products from the Appellants, as brought out by the learned Solicitor General. Surely, if online transactions can be done for the other purposes, the salaries can also be disbursed online. In any case, every RO Dealer would have a bank account and most of the Banks in the current times have online facilities. The Dealers can therefore easily transact and make e-payments through their bankers. There may be certain remote areas in the Country where the Dealers may not have access to internet facilities and in such exceptional cases, it will always be open to the concerned Dealer to find an alternate method of payment after due intimation to and exemption from the Appellants. This, however, will only be an exception and not the Rule. Payments through electronic mode is a step forward for the welfare of the employees of the ROs with the advancement of technology and this Court finds no reason to interfere in the said mandate.

(e) Clause 5.1.18(b) directs the RO Dealers to disburse the benefits of Provident Fund, Employees State Insurance Bonus, Annual Leave and Gratuity to their respective employees. Challenge to the same, in our view, is untenable in law. First and foremost, the obligation clearly arises out of the Dealership Agreements and the assurance given by the Dealers under Clause 43 thereof. It needs no reiteration that payments towards PF, ESIC benefits, etc. are beneficial and welfare measures. While perusal of the writ

petitions indicates that the Respondents have laid no serious challenge to the applicability of the Statutes in this regard, however, a subtle argument was made before the learned Single Judge that in certain cases the ROs may not employ the minimum number of employees so as to be covered under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and similar Statutes. It may well be that in certain cases the ROs may not employ the number of employees considered as a threshold under the respective Statutes to be covered by the concerned Acts, however, in such exceptional cases the contract between the parties, being the Dealership Agreements, will hold the field, enabling the Appellants to issue directions to pay Provident Fund, etc. in the interest and welfare of the employees, as is sought to be done by them. Thus, even in the absence of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, Payment of Bonus Act, 1965 and Payment of Gratuity Act, 1972 being applicable, the objective that the said Statutes seek to achieve can be adopted by the Appellants including the methodology of calculations of the dues there-under. In so far as the argument of privity of contract, strenuously urged by the Respondents, is concerned, suffice would it be to state that the Appellants are an Instrumentality of the State and as brought out in the earlier part of the judgment, it is their Constitutional obligation, as enshrined in Article 43 of the Constitution of India, to enforce the Directive Principles of State Policy and ensure that the employees employed by the RO Dealers are given the benefits of Provident Fund, etc. as the wage cannot mean a wage for bare sustenance.

(f) So far as Clause 5.1.18(c) is concerned, the amended Guidelines cast an obligation upon the RO Dealers to ensure that all employees are covered under –

i. Pradhan Mantri Suraksha Bima Yojana (**PMSBY**) and

ii. Pradhan Mantri Jeevan Jyoti Bima Yojana (**PMJJBY**).

(g) Dealers are also required to maintain the records which are to be made available at the ROs for inspection, at all times.

(h) The grievance of the Respondents in this regard is that the Schemes are voluntary in nature and in case the employees refuse to subscribe under them, the Dealers cannot compel them to be members of the Schemes. This contention also cannot be accepted for the following reasons :-

(i) As per Clause 5.1.18(c), the Dealer is required to ensure that the employees are covered under the two Schemes, namely PMSBY and PMJJBY. Appellants have taken a categorical stand in the tabulation presented to the Court during the course of hearing and which was not rebutted by the Respondents that the cost towards the premium under the two Schemes has been factored in the revised Dealers' Margin/Commission and is as under :-

> *"Further, the Pradhan Mantri Suraksha Bima Yojana (PMSBY) is an insurance* ***scheme*** *with affordable premium of just Rs.12 per employee per annum and the Pradhan Mantri Jeevan Jyoti Bima Yojana (PMJJBY) is an insurance having a premium of Rs.330 per employee per annum. It is submitted that the direction to ensure that the employees are covered under the said two insurance schemes is merely a welfare measure. In fact, the cost for the said welfare measure has been factored in the revised Dealers' margin/commission."*

(ii) This is also supported by Annexures R-2/2, R-2/3, R-2/4 and R-2/5 annexed to the counter affidavit, filed by the Appellants herein, in the writ petition. Annual premium for PMSBY is Rs.12/- per employee per annum and under the PMJJBY is Rs.330/- per employee per annum. Once the Schemes are for the welfare of the employees of the ROs and the premiums payable are not only affordable but also covered under the **"Dealers' Margin",** subscription of the employees to the Schemes cannot be termed as unreasonable. The revision in the margins has been gladly accepted by the Dealers and thus it is imperative that they pay the premiums towards subscriptions under the Schemes.

(iii) Moreover, learned Solicitor General had also pointed out that not a single employee has approached the OMCs, resisting coverage under the PMSBY or PMJJBY Schemes. Learned Single Judge while agreeing with the fact that the object of the provision is altruistic, was of the view that making the coverage compulsory, is problematic in law and the premiums being on the lower side would make no difference. The learned Single Judge also opined that the same purpose would be achieved, if the OMCs were to call for the details of the employees and hand over the consent forms to enable them to join the Schemes. Wherever the employees consented, the OMCs can directly make the annual contribution on their behalf to enable them to join the Schemes. Having considered the said part of the judgment, we cannot agree with the learned Single Judge. As brought out above, the premiums payable under the Schemes have already been factored

in the Dealers' margin and the benefits of the revision have been reaped by the Dealers and non-disbursement of the amounts would be unjust enrichment. Secondly, being in the nature of insurance Schemes, with premiums in the affordable range, they would go a long way towards the welfare of the employees of the ROs and secure their tenure and future. With regard to the alternative methodology suggested by the learned Single Judge, we find merit in the contention of the Appellants that it would be more feasible to implement the Schemes through the RO Dealers rather than by the OMCs, for whom it would be impracticable and logistically impossible to implement, for every RO, situated across the Country.

(iv) Payment of premium under PMSBY and PMJJBY Schemes is a welfare measure in the interest of the employees of the RO Dealers. The Dealers/Respondents are dealing in sale of petroleum products and in a way have a monopoly in the business. In order to maintain minimum standards of the ROs coupled with balancing the measures for welfare of the employees to motivate them in rendering quality services, we are of the view that under the Dealership Agreements, contractual obligations can always be cast on the Dealers in the nature of directions issued under Clauses 5.1.18(a), (b) and (c).

(v) In our view, the directions issued in Clauses 5.1.18(a), (b) and (c) are a step forward in the direction of welfare of the employees of the ROs at the same time balancing the same with the interest of the Dealers by ensuring that Dealers' Margins are

increased and no loss is caused. This Court finds no reason to strike down the said Clause.

VI E. CLAUSE 8.3 – MAJOR IRREGULARITIES

71. For ready reference, Clause 8.3, as amended, reads as under:-

*"**Clause 8.3:-***

8.3 Major Irregularities:

The following irregularities are classified as major irregularities:

i. Refusal by the dealer to allow drawl of samples/carry out inspections.(5.1.8)

ii. Non availability of reference density at the time of inspection. (5.1.9)

iii. Selling of normal MS/HSD as branded fuels. (5.1.10)

iv. Stock variation beyond permissible limits but sample passing quality tests (5.1.11)

v. Non maintenance of records since last inspection. (5.1.12)

vi. Overcharging of MS/HSD/CNG/Auto LPG (5.1.13)

vii. Non provision of clear toilet facility. [5.1.14 (b)].

vii. Automated Retail outlets: 5.1.16 (a), (b), (c)

ix. Non-payment of Salary, Wages and other benefits (as per clause 5.1.18)to the manpower employed at the ROs.

x. Short delivery of products with W&M seals intact: 5.1.2(a)

Action: Except in case of(iii), (vii), (viii), (ix) & (x) above:

First instance: *Suspension of sales and supplies for15days.*

Second instance: *Suspension of sales and supplies for30days.*

Third instance: *Termination of the dealership.*

Action in case of(iii) above would be asunder:-

First instance: *Penalty of recovery of differential price since last inspection.*

Second instance: *Termination of the dealership.*

Action in case of(vii) above would be asunder:-

First instance: *Penalty ofRs.15,000 (Rupees Fifteen Thousand).*

Second instance: *Penalty ofRs.25,000 (Rupees Twenty Five Thousand)*

Third & subsequent instances: *(a) Rs.35,000 or 45% of the monthly dealer margin (based on average of last 6 months), whichever is higher; and*
(b)Suspension of Sales and supplies for 7 days or rectification of the defect in toilet, whichever is later.

Action in case of (viii) above would be as under:-

First instance: *Penalty of Rs. 1,00,000 (Rupees one lakh only)*

Second instance: *Penalty of Rs. 2,00,000 (Rupees two lakhs only) and suspension of sales and supplies for 7 days.*

Third instance: *Termination of the dealership.*

Action in case of (ix) above would be as under:-

First instance: *Penalty of 20% of the monthly dealer margin (based on average of last 3 months).*

Second instance: *Penalty of 30% of the monthly dealer margin (based on average of last 3 months).*

Third & subsequent instances: *Penalty of 40% of the monthly dealer margin (based on average of last 3 months) & suspension of sales and supplies for 15 days.*

Action in case of (x) above would be as under:

First instance: *Rs.25,000 (Rupees twenty five thousand only) per nozzle found delivering short beyond permissible limit as specified in Legal Metrology Act/Rule.*

Second instance: (within one year of 1st instance): *Rs.50,000 (Rupees fifty thousand only) per nozzle found delivering short beyond permissible limit as specified in Legal Metrology Act/Rule & suspension of Sales and supplies for 15 days.*

Third instance (within one year of 1st instance): Termination of the dealership."

72. Much was argued by learned Senior Counsel appearing for the Respondents and Interveners that Appellants have no power, jurisdiction and authority to levy the monetary penalties, for violation of the directions issued under various Clauses of the MDGs and/or committing major irregularities thereunder. It was also contended that Section 74 of the Indian Contract Act, 1872 prohibits imposition of penalties and in case of breach of any of the provisions of the Dealership Agreement, the OMCs can seek compensation/damages, if the breach is established.

73. *Per contra*, learned Solicitor General urged that for every irregularity/breach, termination of the Dealership Agreement, which is an extreme penalty, cannot be resorted to.

74. We agree with the stance of the Appellants that **"Termination of a Dealership Agreement"** is a major and extreme penalty and could be disproportionate in a given case for a given irregularity/breach. It is for this reason that Clause 8.3 not only classifies the major irregularities but also enumerates the monetary penalties. Perusal of the said Clause, clearly reveals that with due deliberation, the penalties have been provided for and termination of the Dealership is only at the stage when the irregularities reach the third stage after first and second stage of monetary penalties including suspension of sales. This Court finds merit in the contention of the Appellants that termination for every breach would be an extreme and harsh step and would perhaps lead to termination of all dealerships or atleast to a large extent, which is an avoidable situation.

75. In any case, it hardly needs a mention that once the Competent Authority has the power to impose a major penalty, it would have the power

and jurisdiction to impose lesser penalties. In this context, we may refer to the judgment of the Hon'ble Supreme Court in ***State of Madhya Pradesh v. Ram Ratan***, **1980 Supp SCC 198,** relevant paras of which are as under :-

> ***"7.*** *In service jurisprudence for different types of misconduct various penalties are prescribed in service rules. 1966 Rules prescribe as many as 9 penalties which can be awarded for good and sufficient reasons. In the list of penalties the first three are styled as "minor penalties" and the remaining six are styled as "major penalties". Compulsory retirement is one of the major penalties. Similarly, removal from service which shall not be a disqualification for future appointment in Government service and dismissal from service which shall ordinarily be a disqualification for future employment under the Government are the other two major penalties. The disciplinary authority keeping in view the gravity of misconduct committed by the Government servant will tentatively determine the penalty to be imposed upon the delinquent Government servant. Degree of seriousness of misconduct will ordinarily determine the penalty keeping in view the degree of harm that each penalty can inflict upon the Government servant. Before serving the second show-cause notice the disciplinary authority will determine tentatively the penalty keeping in view the seriousness of misconduct. But this is a tentative decision. On receipt of representation in response to notice, the disciplinary authority will apply its mind to it, take into account any extenuating or mitigating circumstances pleaded in the representation and finally determine what should be the penalty that would be commensurate with the circumstances of the case. Now, if a major penalty was tentatively decided upon and a lesser or minor penalty cannot be awarded on the view taken by the High Court because this was not the specified penalty, the Government servant to whom a notice proposing major penalty is served would run the risk of being awarded major penalty because it would not be open to award a lesser or a minor penalty than the one specified in the show-cause notice. Such a view runs counter to the principle of penology. In criminal and quasi-criminal*

jurisprudence where the penalties are prescribed it is implicit thereunder that a major penalty would comprehend within its fold the minor penalty. If a major penalty is proposed looking to the circumstances of the case, at that stage, after taking into consideration the representation bearing on the subject and having an impact on the question of penalty a minor penalty can always be awarded. In penal statute maximum sentence for each offence is provided, but the matter is within the discretion of the judicial officer awarding sentence to award such sentence within the ceiling prescribed by law as would be commensurate with the gravity of the offence and the surrounding circumstances except where minimum sentence is prescribed and court's discretion is by legislation fettered. This is so obvious that no authority is needed for it but if one is needed, a Constitution Bench of this Court in Hukum Chand Malhotra v. Union of India [AIR 1959 SC 536 : 1959 Supp 1 SCR 892 : 1959 SCJ 419] dealt with this very aspect. Relevant portion of the second show-cause notice which was before this Court may be extracted:

"On a careful consideration of the report, and in particular of the conclusions reached by the Enquiry Officer in respect of the charges framed against you the President is provisionally of opinion that a major penalty viz. dismissal, removal or reduction should be enforced on you..."

Ultimately, after taking into consideration the representation made by the concerned Government servant penalty of removal from service was imposed upon him. It was contended before this Court that in view of the decision of the Privy Council in High Commissioner for India and High Commissioner for Pakistan v. I.M. Lall [AIR 1948 PC 121 : (1948) 75 IA 225] and Khem Chand v. Union of India [AIR 1958 SC 300 : 1958 SCR 1080 : (1959) 1 LLJ 167] it is well-settled that the punishing authority must either specify the "actual punishment" or "particular punishment" in the second show-cause notice otherwise the notice would be bad. Repelling this contention this Court observed as under:

"Let us examine a little more carefully what consequences will follow if Article 311(2) requires in every case that the "exact" or "actual" punishment to be inflicted on the Government servant concerned must be mentioned in the show-cause notice issued at the second stage. It is obvious, and Article 311(2) expressly says so, that the purpose of the issue of a show-cause notice at the second stage is to give the Government servant concerned a reasonable opportunity of showing cause why the proposed punishment should not be inflicted on him; for example, if the proposed punishment is dismissal, it is open to the Government servant concerned to say in his representation that even though the charges have been proved against him, he does not merit the extreme penalty of dismissal but merits a lesser punishment, such as removal or reduction in rank. If it is obligatory on the punishing authority to state in the show-cause notice at the second stage the "exact" or "particular" punishment which is to be inflicted, then a third notice will be necessary if the State Government accepts the representation of the Government servant concerned. This will be against the very purpose for which the second show-cause notice was issued.

.. If in the present case the show-cause notice had merely stated the punishment of dismissal without mentioning the other two punishments, it would still be open to the punishing authority to impose any of the two lesser punishments of removal or reduction in rank and no grievance could have been made either about the show-cause notice or the actual punishment imposed.

....

***10**. The fact situation in this appeal is that in the notice dated February 12, 1970, the disciplinary authority stated that it was tentatively proposed to impose major penalty viz. removal from service. Original notice is in Hindi language. Its translation in English language is placed on record. It clearly transpires from the notice that the punishing authority tentatively proposed to impose a major penalty of removal from service. Ultimately, after taking into consideration the representation*

of the respondent the disciplinary authority imposed penalty of compulsory retirement. In relation to penalty of removal from service the penalty of compulsory retirement inflicts less harm and, therefore, it is a lesser penalty compared to removal from service. Compulsory retirement results in loss of service for certain years depending upon the date of compulsory retirement and the normal age of superannuation, but the terminal benefits are assured. In removal from service there is a further disqualification which may have some repercussion on terminal benefits. It was not disputed before us that in comparison to removal from service compulsory retirement is a lesser penalty. Therefore, when in the second show-cause notice major penalty of removal from service was tentatively proposed, it did comprehend within its fold every other minor penalty which can be imposed on the delinquent Government servant. That having been done, no exception can be taken to it."

(emphasis supplied)

76. The relationship between the Dealers and the Appellants is guided by Dealership Agreement subsisting between them. The said agreement provides for certain obligations on the part of Dealers and in terms of breach of such terms, the Appellants have a right to take action, including termination of Dealership Agreement. The civil right under the agreement is obviously in addition to and not in substitution to right of various State Authorities or their Instrumentalities to take action against the Dealers for violation of the terms of the Agreement or the directions issued to them under the MDGs.

77. Appellants have formulated common Guidelines to provide for uniform and consistent practices and action against the Dealers in the form of MDGs. The provisions of MDGs are essentially between the Appellants and the Dealers, covering their rights and obligations, on various counts

such as, methodology of sampling, filling and decantation of tank lorries, maintenance of equipment at Retail Outlets and other aspects of purely commercial nature and linked with the Dealership Agreement.

78. The MDGs for Retail Outlets/SKO Dealerships, which have been in existence for last 3 decades, facilitate marketing of petroleum products (MS/HSD/SKO) by the Dealers on the principles of highest business ethics and excellent customer service.

79. These Guidelines are updated/amended from time to time to meet the growing customer expectations, ensuring quality & quantity of products and service, enforcing discipline amongst the Dealers' network and preventing malpractices in the sale of petroleum products. MDGs aim to bring consistency amongst the OMCs with respect to implementation of various marketing practices and different cases of malpractices for taking civil action under dealership agreements.

80. Penalties are imposed where malpractices and/or violation of Guidelines are established as the Dealers are expected to carry on business on the principles of highest business ethics and excellent customer service, complying with the Guidelines.

81. Appellants brought out that it was noticed that in some cases, the RO Dealers were involved in Chip manipulation, short delivery, not maintaining toilets, etc. which was adversely affecting not only the image of the Appellants but also the consumers. Short delivery of product, non-provision of customer convenience facilities, selling of normal Petrol & Diesel as branded products, etc. was affecting the brand image of the Appellants and directly hitting the sales volume. In addition, the unwary customers are short-changed. In view of the aforesaid, we agree with the Appellants that it

was imperative that some sort of monetary penalties are provided for in the MDGs, which would help in curbing the malpractices and be a deterrent, at the same time falling short of the extreme penalty of terminating the Dealership Agreement.

82. It bears repetition to state that once Clause 56 of Dealership Agreement, entitles the OMCs to terminate the agreement, it is implicit that the Appellants have the power to impose lesser penalties, as has been stipulated in Clause 8.3 of the MDG-2017. For ready reference, Clause 56 of the Dealership Agreement is extracted hereunder:-

> *"56. Notwithstanding anything to the contrary herein contained the Corporation shall be at liberty to terminate this Agreement upon or at any time after the happening of any of the following events namely:-*
>
> *a. If the dealer shall commit a breach of any of the covenants and stipulations contained in the agreement and fail to remedy such breach within four days of the receipts of a written notice from the Corporation in that regard.*
>
> *b. Upon*
> *i. The death or adjudication as insolvent of the dealer if he an individual.*
> *ii. The dissolution of the partnership of the dealer's firm or the death or adjudication as insolvent of any partner of the firm if the dealer be a firm.*
> *iii. The liquidation whether voluntary or otherwise of the passing of an effective resolution for winding up, if the dealer be a company or co-operation society.*
>
> *c. If any attachment is levied and continued to be levied for a period of seven days upon the effects of the dealer or any individual partner for the time being of the Dealer's firm or any member of the dealer Co-operative society.*

d. If the Dealer or any partner in the dealer's firm or any member of the Co-operative society appointed as dealer hereunder shall be convicted of a criminal offence.

e. If a receiver shall be appointed of any property or assets of the dealer or of any partner in the dealer's firm of any member of the dealer Co-operative society.

f. If the license issued to the dealer by the relevant authorities for the storage of petroleum products supplied by the corporation is cancelled or revoked.

g. If the dealer shall for any reason make default in payment to the corporation in full or his outstanding as appearing in corporation's books of account beyond 4days of demand by the corporation.

h. lf the dealer does not adhere to the instructions issued from time to time by the corporation in connection with safe practices to be followed by him in the supply/storage of the corporation products or otherwise.

i. If the dealer shall deliberately contaminate of temper with the quality of any of the corporation's products.

j. If the dealer shall sell the corporation's products at prices higher than those fixed by the corporation.

k. If the dealer shall either by himself or by his servants or agents commit or suffer to be committed any act which in the opinion of the General Manager of the corporation from the time being in whose decision's shall be final, is prejudicial to the interest or good name of the corporation or its products the General Manager shall not be bound to give reasons for such decision.

l. If any information given by the dealer in his application for appointment as a dealer shall be found to untrue or in correct in any material respect.

The corporation right to terminate this Agreement under the terms of this clause shall be without prejudice to any of its other rights and remedies against the dealer. In the event of the corporation terminating this agreement under the provisions of this Clause, it shall not be liable to pay for any loss or compensation in respect of such termination provided that the supply of any petroleum by the corporation to the dealer, pending expiry of an notice of termination or after any, act, contravention or omission by the Dealer entitling the corporation to terminate this agreement shall have become known to the corporation shall not in any way prejudice or affect the right of the corporation to revoke and/or enforce the termination of this agreement and the license and the license granted hereunder."

(emphasis supplied)

VI F. CLAUSE 5.1.14(b) – NON-PROVISION OF CLEAN TOILET FACILITY

83. Clause 5.1.14(b), which is incorporated by an amendment to MDG-2012 w.e.f. 01.08.2017 reads as under:-

*"**CLAUSE 5.1.14 (b): NON PROVISION OF CLEAN TOILET FACILITY***

Dealers should check daily and ensure the following:

a) Toilets are clean at all time.
b) Proper lighting is available.
c) Flush (whenever provided) is working properly.
d)Water is available.
e) Working latch is available on the toilet door.
f) Signage is available.

g) Toilet door found to be locked.

The above protocol is to be prominently displayed near the toilet. Maintenance sheet is to be maintained and displayed.

If OMC officials observe during the inspection that (a) Toilet is found to be not clean or (b) Water is not available or (c) Latch on the toilet door is not available/not working or (d) Toilet door found to be locked at any outlet, a photograph of the toilet shall be taken and letter shall be issued instantly listing the penalty as per MDG."

84. Learned counsels appearing on behalf of the Respondents and the Interveners submitted that the RO Dealers cannot be compelled to extend toilet facilities to persons other than employees/staff or the customers. This Clause has been read down by the learned Single Judge to the extent that access to RO toilet facility to persons other than employees/staff and other customers would be at the discretion of the concerned RO Dealer and/or its Manager. The RO Dealer/Manager will employ his/her discretion, keeping in mind the security and safety of the RO. The RO Dealer/Manager will have the right to deny access if he/she finds that the person is a dodgy character or is carrying inflammable article(s) which he/she does not wish to surrender, before making use of the toilet facility. Learned Solicitor General did not seriously oppose the contention and in fact submitted that the toilet facilities at the ROs are essentially provided for the use of the Dealer's employees/staff and the customers/consumers.

85. We are in complete agreement with the learned Single Judge that this is a matter which is best left to the discretion of the ROs Manager, who, we are sanguine, would be best suited to decide to whom the facility is to be

extended. To this extent, the reading down of Clause 5.1.14(b) of the MDG-2017, by the learned Single Judge, is upheld.

VII. CONCLUSION:

86. As a cumulative effective of aforesaid facts, reasons and judicial pronouncements, we hereby uphold the amendments to MDG-2012, incorporated on 03.10.2017, except to the limited extent as mentioned in paragraph 85, hereinabove and set aside the impugned judgment, passed by the learned Single Judge in W.P.(C) No.10334/2017, W.P.(C) No.10746/2017 and W.P.(C) No.11246/2017, dated 18.03.2020.

87. The Appeals are partly allowed. All pending applications are accordingly disposed of.

CHIEF JUSTICE

JYOTI SINGH, J

JANUARY 10, 2022
kks