

IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: July 8, 2010
Decision on: July 22, 2010

**W.P. (C) Nos. 14824-26 of 2006 & CM Nos. 15547 of 2007
& 2612 of 2010**

DIESEL SERVICE CENTRE & ORS. Petitioners
Through: Mr. A. Maitri, Advocate.

versus

BHARAT PETROLEUM CORPORATION LTD. Respondent
Through: Mr. Sudhir Chandra, Senior Advocate
with Mr. A.K. Mishra, Mr. Parijat Sinha
Mr. Vikram Ganguly and
Mr. T.K. Majumdar, Advocates.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in Digest? Yes

J U D G M E N T

Background

1. This is the second round of litigation arising out of a communication dated 11th August 2005 sent by the Respondent Bharat Petroleum Corporation Ltd. ('BPCL') to the Petitioner No. 1 informing it that its dealership stood terminated. Earlier the Petitioner had challenged the said letter by filing Writ Petition (C) No. 13298-13300 of 2005 in this Court. The said writ petition was disposed of by an order dated 10th November 2005. While quashing the decision dated 11th August 2005, the Court held that the BPCL would be free to issue a fresh show cause notice to the Petitioner and after granting the Petitioner an opportunity of being heard, would pass a reasoned order. It was left open to the BPCL to take

a decision whether to suspend business till the enquiry is completed. If an enquiry was initiated, it was directed to be completed within three months and a reasoned and speaking order be passed.

2. Challenging the order dated 10th November 2005, BPCL filed LPA No. 30 of 2006 before the Division Bench of this Court. However, no stay was granted. It may be noted that LPA No. 30 of 2006 later stood disposed of by an order dated 23rd February 2007 whereby the Division Bench declined to interfere with the order of the learned Single Judge except clarifying that the said order should not be treated as a precedent and that the present writ petition should be decided without being influenced by any of the observations by the learned Single Judge.

3. To revert to the narration, consequent upon the order dated 10th November 2005, a letter dated 9th January 2006 was written by the BPCL to the Petitioner asking the Petitioner to treat BPCL's letter dated 11th August 2005 as a show cause notice and to furnish a reply thereto. The Petitioner No. 1 replied to the said show cause notice on 12th January 2006. An oral hearing was granted on 3rd March 2006. Thereafter by a detailed reasoned order dated 17th August 2006, the BPCL concluded that there was no reason to take a view different from what was expressed in its letter dated 11th August 2005. Accordingly, it was decided that the BPCL would not continue its business relationship and/or agreement with Petitioner No.1; that the BPCL's petroleum products would not be sold to the Petitioner No.1 for being resold to its retail customers; that the Petitioner No.1 would not be allowed to retain possession of the BPCL's

assets including its signage and/or its logo. The list of such assets was furnished with the letter with the request that it should be returned to the BPCL within 15 days. Finally, the Petitioner No.1 was not allowed to use the BPCL's name in any manner whatsoever.

4. The present writ petition challenges the above letter dated 17th August 2006. By an order dated 4th October 2006, a learned Single Judge of this Court stayed the operation of the order dated 17th August 2006, *inter alia*, on account of the fact that the Petitioner's dealership had continued for the last 27 years and that prior to the incident of 14th July 2005, no shortcomings were found or communicated to the Petitioner.

5. In the meanwhile, the term of the agreement came to an end on 19th November, 2005 and was not continued. Therefore, no supplies were made to the Petitioner by the BPCL. However, with the Respondent BPCL not being able to enter the premises to recover its assets, it filed CM No. 15547 of 2007.

Events leading to the filing of this petition

6. Sometime in 1978, an agreement was entered into between the Petitioner No. 1 firm and the Respondent BPCL whereby licence was granted to the Petitioner No. 1 to operate a retail outlet of the BPCL at Karnal for dispensing both high speed diesel (HSD) and motor spirit ('MS'). It is stated that a team of the BPCL inspected the retail outlet ('RO') of the Petitioner No.1 on 14th July 2005. The team comprised of three senior officials of the BPCL i.e. Mr. J.P. Meena (Deputy Manager

(Sales) Panipat), Mr. K.G. Ghatwai (Manager (Quantity Control Cell - Northern Region) and Mr. P.S. Bhargava, General Manager (Quality Control Cell - Central Office). It must be mentioned here that the land on which the RO was operating belonged to the Petitioner No.1 firm of which Petitioners 2 and 3 are partners.

7. There are two versions of what transpired on 14th July 2005 at the RO. According to the report of the inspection team, a copy of which has been placed on record as Annexure P-5, the team began its visit at around 11.15 am and introduced themselves to one Mr. Jagjeet Singh Chawla who was available at the RO. Mr. Chawla then associated himself with the inspection. While checking the four HSD Dispensing Units with respect to 5 litres measure (four to five readings were taken for each Dispensing Unit), the supply from the dispensers was “found to be erratic”. The short delivery was varying between 40-100 ml and the excess delivery from the same dispensers was varying upto 50 ml. Since no apparent reasons could be detected for such variation, the company technician Mr. Naresh was called for further examination of the dispensers. It is stated that when two dispensers were opened by Mr. Naresh, it was observed that “the gears fitted between the metering unit and totalizer were of non-standard type and one of the gears was loosely fitted”. It was observed that “the gears were having 19 & 39 teeth as against a normal design of 20 & 38 teeth respectively”. Photographs of the gears were taken by the team with the camera and the gears were taken out for further examination/study by the engineering team. As regards the MS Dispensing Units, one unit was observed giving short

delivery of 50 ml per 5 litres. In order to prepare a joint statement with Mr. Chawla on the findings, the team went to the sales room. It is stated that at that time the people present at the RO entered the sales room and blocked its door. That group consisted of about 30 persons who were “the office bearers/members of the local/state petroleum dealers association.” One of these members was having a camera with which photographs were taken of the inspecting team. The persons gathered started shouting and talking loudly among themselves and used foul/abusive language against the officers of BPCL. One in the group snatched the camera of the inspecting team and the papers on which the findings of the RO inspection had been written. The team was unable to prepare a joint report at the spot and was forced to leave. They were prevented from taking the non-standard gears fitted to the dispensing units to the BPCL’s territory office for further investigation. When the team got into the car and was about to leave, one car blocked the passage. The assembled group insisted that “unless a certificate to the effect that everything was found alright during the inspection was issued, the team would not be allowed to leave the premises”. In the above mentioned threatening environment and considering the mood of the group of the people assembled, an inspection report was prepared forcibly which was signed by Shri J.P. Meena. Thereafter, the group insisted that the report must be signed by all the team members and then only the team would be allowed to leave. Therefore, other team members also signed the said report. A narration of all the above facts is contained in an undated report of the inspection team which is at Annexure P-5 to the writ petition.

8. On 11th August 2005, a letter was written to the Petitioners by the BPCL referring to the incidents of 14th July, 2005 and the report of the inspecting team. It stated that on 18th July 2005, one of the members of the inspecting team had filed a letter with the Senior Superintendent of Police, Karnal narrating the incidents as mentioned in the inspecting team's report. Reference was also made to a news item in Hindi published on 15th July 2005 in the *Dainik Jagaran*, Karnal and on 19th July 2005 in the *Punjab Kesari*, Karnal. Copies of the inspection team's report and the news reports were enclosed with the letter. The Petitioners were told by the BPCL that they had neither intimated their version of the incident to the BPCL "nor made any statement in the newspaper contradicting the news item as reported in the newspapers". Therefore, the inaction on the part of the Petitioners suggested that "you were either a party to the said news item and/or concurred with the contents of the said news items". The letter proceeded to state that since the Petitioners had neither given their version of the incident to the BPCL nor caused any report to be published in the newspaper contradicting the news item, the Petitioners intended to communicate to the general public that the BPCL was not a good company which should be trusted by the public. It was thereafter observed in the letter dated 11th August 2005 as under:

"In the circumstances aforesaid, we have reason to believe that if you had not tampered with the equipments, as has been mentioned in the aforesaid report of the inspecting team of BPCL and the inspecting team of BPCL had really come to collect a bribe under the pretext of conducting inspection as hinted in the said news items, you would have, as BPCL's dealer, reported about the

incident to BPCL immediately on 14.07.2005 itself and could have called upon some of the officers of BPCL to ascertain the position instead of maligning the name of BPCL in public by calling other dealers who had nothing to do with the said retail outlet and/or instigating the reporters of the said newspapers to malign and prejudice the good name of BPCL.”

9. In para 8 of the letter dated 11th August, 2005, the analysis of the facts as stated in the inspecting team’s report was set out. Then in para 9, the summary of the findings of the inspecting team were set out as under:

“After considering all the aforesaid documents and as no action was taken by you rebutting the reports in the newspapers and/or intimating us of your version of the incident that had taken place at the retail outlet on 14.07.2005, we are of the view that the inspecting team had found that:-

(a) you had tampered with the dispensers and either by yourself or through your servants or agents interfered with the working parts of the outfit or other equipments provided by BPCL.

(b) the gear fitted between the metering unit and totalizer were of non-standard type and one of the gears was loosely fitted. These gears were having 19 and 39 as against the correct design of 20 to 38 teeth respectively.

(c) MS dispensing unit was giving short delivery of 50 ml per 5 litres.

(d) you have continued sale of MS and HSD with

the full knowledge that the metering units were delivering short or was showing wrong measure of the quantity and continued to operate the said defective measuring units.

From the said report, it is clear that you have committed fraud and/or wrongful gain by overcharging the customers and your such act is not only a breach of the agreement between BPCAL and you but also illegal and violation of various Acts and laws. We further find that you prohibited and interfered in the job of the inspecting team and in fact did not provide facilities to the said inspecting team for carrying out their job of inspection and thereby committed a breach of the agreement.”

10. The letter dated 11th August, 2005 proceeded to state that the Petitioners' inactions were forbidden by law and were of such a nature that if permitted, it would defeat the provisions of the law, injure the customers of the BPCL and would be opposed to public policy. Consequently, the dealership was terminated as mentioned hereinbefore. This letter dated 11th August, 2005 was subsequently treated as the show cause notice.

11. The Petitioners' version of the incident is contained in their reply dated 12th January 2006 consequent upon the order passed by this Court in terms of which the said letter dated 11th August 2005 was accepted as a show cause notice. The stand of the Petitioner No.1 firm was that an inspection report was signed by Mr. J.P. Meena on 17th June 2005. A

calibration carried out on 6th June 2005 indicated that all the pumps were working satisfactorily. It was maintained that on 14th July 2005 the inspection team found the seals to be intact and un-tampered and the dispensing units in proper working order. This is claimed to have happened in the presence of Mr. Naresh Kumar, the technician.

12. The Petitioners claim that when Petitioner No. 3 sought a copy of the inspection report, it was refused. It was alleged that the team compelled Petitioner No.3 to sign certain blank papers stating that “they would prepare the report at leisure and send a copy thereof to us later”. Petitioner No. 3 is claimed to have refused to sign such blank papers/sheets. The Petitioners state that the news of the visit by the vigilance team at the Petitioner’s premises had spread amongst the association members, around five of whom reached the premises. Some journalists also reached the premises. It is then stated by the Petitioners in their letter dated 12th January, 2006 that “it was apparent from the attitude of the vigilance team that there was a clear attempt to prejudice our business by implicating us in some issue of misconduct as defined by the guidelines. My son informed the members of the association about his apprehensions and they took up the matter with the members of the vigilance team”. The letter proceeds to state that the vigilance team “categorically informed that their attitude and demeanour while carrying out the vigilance check amounts to misconduct and that the association would take up the matter to the highest level”. It is then stated as under:

“Apparently, the Vigilance team sensed the futility of carrying forth its unsavory conduct and handed over to my son, a copy of a satisfactory inspection

report as well as Pump Maintenance Report signed by Mr. Naresh Kumar, Technician. The members of the Vigilance Team left thereafter.”

13. The Petitioners’ letter dated 12th January, 2006 also states that one Mr. Shiv Om, Sales Assistant of the BPCL conducted an inspection on 16th July 2005 and gave a satisfactory report. A copy of the said report was enclosed with the reply. It is claimed by the Petitioners that since nothing had gone amiss there was no occasion for them to go to the police and had the Petitioners been called upon to give their version “they would have been more than willing to do so”. It was denied that the news items in the local newspapers were got published by the Petitioners. Since no explanation was sought from them there was no occasion to make statement to the Press. It was pointed out that the complaint was made only 4 days after the alleged incident. It was questioned that if indeed there was an unsavoury incident, “was it not the boundant (*sic*) duty of the officials of the public sector undertaking to make an immediate report to the police officials?” It is claimed that upon an enquiry it was found that the case has been closed as Mr. Ghatwai had stated that he did not wish any action to be taken in the complaint. As regards the past relationship, it was claimed that since there had not been a single complaint either from any customer or the BPCL as to the Petitioners’ conduct in business, there was no occasion for loss of trust and that they were within their rights to give a complaint against the conduct of a particular official. It is claimed that the tampering of the seal “was an impossible act” since the seal was put by the BPCL itself and an additional seal by the Weights & Measures Department. A

detailed reference was made to the Marketing Discipline Guidelines ('MDG') in which there were ambiguities, removal of which was sought by the Federation of All India Petroleum Traders ('FAIPT'). It was also pointed out that even assuming that there was tampering of meters or lesser volume or charging of higher price, the MDG did not envisage the penalty of termination of dealership.

14. By a further letter dated 3rd March 2006, soon after the personal hearing, a letter was written to the BPCL by the Petitioners where *inter alia* it was stated that "in the event any BPCL official is perturbed or disturbed by any averment or allegation on our behalf, we are, still standing by our version, ready and willing to apologise". It was requested that the penalty of termination was not warranted.

15. The Petitioners on 20th September 2006 filed a compilation of documents in this petition. This included the leaflets in Hindi and English issued by the Haryana Petroleum Dealers Association ('HPDA') which *inter alia* referred to the incident that took place in the Petitioners' petrol pump at Karnal. The said pamphlet alleged that "BPCL officers are habitual of flouting rules". It is further demanded that "Enquiry on Arjun Heera, D.S. Bhargava, J.P. Meena, K.G. Ghatwai, Ms. Widhani's property and character should be handed over to the CBI for inquiry". Among the documents filed was a 'closure report' of the police dated 5th September 2005 which recorded the fact that the officials of the BPCL informed the police that they were not willing to pursue the matter any further.

16. In the counter affidavit, it has been pointed out by the BPCL that the letter dated 12th January 2006 was referred to Mr. P.S. Bhargava, one of the members of the inspecting team, for his comments. He replied on 31st January 2006 in which, *inter alia*, he reiterated that the inspection report signed by the three of them stating that a mob had surrounded them, threatened them, snatched their camera and compelled them to write out a satisfaction report, was correct. He reiterated that “a threatening atmosphere had been created on the site on 14th July 2005 and the inspecting team was not allowed to go out of the site unless they gave the so called satisfaction report”. The counter affidavit pointed out that this letter dated 31st January 2006 of Mr. Bhargava was served on the Petitioners to enable them to reply but they did not do so.

Submissions of counsel

17. Mr. Maitri, learned counsel appearing for the Petitioners submitted that the MDG did not provide for such severe penalty as was handed down to the Petitioners. According to him, the maximum penalty action for adulteration of MS/HSD for the first time was a fine of Rs.20,000/- and suspension of sales and supplies of all products for 30 days. For short delivery of products, it was a fine of Rs.10,000/- and suspension of sales for 15 days. It was only on the second time irregularity in the case of adulteration that the penalty of termination was envisaged. As regards the over-charging for the first time incident, a fine of Rs.5,000/- and a suspension of sales for 15 days was envisaged. Mr. Maitri accordingly submitted that the penalty of termination of dealership was disproportionate. The supplies to the Petitioners’ petrol pump was

stopped for nearly five years now and that the Petitioners had suffered enough. He submitted that there was no justification for the impugned order of termination.

18. Mr. Maitri then submitted that without prejudice to the above submissions, the inspection reports, copies of which were given to the Petitioners and enclosed with the petition clearly showed that the inspection team did not find anything amiss. It was submitted that it was on account of the Petitioners not being able to accede to the illegal gratification demanded by the officials of the BPCL that they were being harassed. He relied on the judgment of the Supreme Court in *Hindustan Petroleum Corporation Ltd. v. Super Highway Services 2010 STPL (Web) 136 SC* in which the Court emphasized that termination of a dealership was of a severe consequence and that the procedure followed must be absolutely fair and just. It was observed that the non-service of notice to the aggrieved person before termination of his dealership agreement also offends the well-established principle that no person should be condemned unheard. It is submitted that despite the orders of this Court, the procedure adopted was neither just nor fair. Mr. Maitri submits that where the machines are entirely maintained by the HPCL the termination of services of the dealer on the ground of tampering of the machines is not fair. He accordingly prayed that the termination order should be set aside.

19. Mr. Sudhir Chandra, learned Senior counsel appearing for the BPCL first submitted that the agreement entered into with the Petitioners had

already come to an end on 19th November 2005. The agreement was not renewed. The Petitioner was, therefore, not a dealer anymore and there could be no mandamus issued to execute a fresh dealership agreement with the Petitioner, particularly when on account of the incident of 14th July 2005, the BPCL had lost its confidence and trust in the Petitioner No. 1 and did not wish to renew the dealership agreement. According to the BPCL, the FIR lodged still exists but for some reasons has not been investigated. Mr.Sudhir Chandra disputed the correctness of the closure report which he termed as a collusive document. He submitted that the incident of 14th July 2005 was indeed extraordinary where the inspecting team was surrounded by a mob instigated by the Petitioners; the mob snatched the team's camera, papers and the notes of inspection; the members of the inspecting team were threatened, gheraoed and compelled to write out a satisfaction report. He submitted that the BPCL could not be expected in the circumstances to condone the acts and continue the dealership.

20. Mr. Sudhir Chandra submitted that this was a case where the MDG could be departed from since this was an extraordinary circumstance. The version of the Petitioners, as released to the press, was that the BPCL officers had come to the petrol pump to collect bribes and, therefore, this was clearly done to malign and defame BPCL. The pamphlets issued by the HPDA of which the Petitioner No.3 was an active member, included several scandalous imputations about the BPCL officers. Clearly, the BPCL could not be expected to carry on any business relationship with the Petitioners.

21. Mr. Sudhir Chandra referred to the judgment of the Supreme Court in *Surya Dev Rai v. Ram Chander Rai (2003) 6 SCC 675* and submitted that in exercise of its powers under Article 226 of the Constitution, this Court had only to examine if in the circumstances, the action taken by the BPCL was just and fair. BPCL could not be compelled to continue the dealership which, in any event, had come to an end. He pointed out that an apology had been offered by the Petitioners which clearly indicated that they were not standing by their own version.

22. Mr. Maitri, in his rejoinder submitted that the Petitioners were not concerned with what the HPDA did. The Petitioners could not be held responsible for the press reports either, particularly since the names of the Petitioners never figured in the said reports. The ground that the dealership agreement has come to an end and cannot be renewed, was not pleaded in the earlier round of litigation by the BPCL and, therefore, could not be used to frustrate the present writ petition. The termination order pertained to what was alleged to be found during inspection for which no convincing proof had been produced by the BPCL. Mr. Maitri submitted that unless something extraordinarily incriminating was found against a dealer, a contract of dealership was usually renewed. He submitted that the main object of the BPCL was to somehow get the land owned by the Petitioners to be given on lease to the BPCL and that since the Petitioners were not willing to do so, they were falsely implicated by BPCL.

Loss of mutual trust and non-continuation of dealership

23. It must be noticed at the outset that there is no prayer by the Petitioners that a mandamus should be issued to BPCL to renew the dealership agreement. The challenge is principally to BPCL's decision to terminate the dealership of Petitioner No.1 which in turn was essentially based on what happened at the RO licenced Petitioner No.1 at Karnal on 14th July 2005. Although there is a wide divergence in the version of the Petitioners on the one hand and the BPCL on the other as to what transpired, it is plain that an unpleasant incident did take place at the RO on 14th July 2005. Both in the present writ petition as well as in the earlier writ petition, the Petitioners do not deny the fact that the members of the HPDA reached the premises upon hearing of the "news of the visit by the vigilance team at the Petitioners' premises" and also that "some journalists also reached the premises by this time". The statement that "the vigilance team was categorically informed that their attitude and demeanour while carrying out the vigilance check amounts to misconduct and that the association would take up the matter to the highest level" does indicate that even according to the Petitioners what happened at the RO at Karnal was not a pleasant one. Clearly, there was a confrontation. It is not difficult to visualise a scenario of the three BPCL officers being surrounded by the members of the HPDA, with journalists watching and the vigilance team being "categorically" told that the vigilance team was allegedly committing misconduct.

24. The printed pamphlets of the HPDA, which has been placed on record by the Petitioners themselves, also corroborate the fact that the

members of the HPDA were indeed openly accusing the BPCL's officers and in particular the members of the vigilance team of misconduct. The pamphlet referred to the incident at Karnal, and demanded a CBI enquiry against these officers. It called for a dharna on 16th August 2005 outside the Panipat office of the BPCL. The statements made in the pamphlets issued by the HPDA, which have not been denied by the Petitioners as they have themselves placed it on record, are prima facie scandalous. However, this Court is not called upon to determine if these allegations were justified or not. What is plain from the pamphlets, however, is that the Petitioners and the members of the HPDA did not repose any faith or trust in the BPCL.

25. Therefore, the submission of the learned counsel for the Petitioners that the Petitioners have nothing to do with the HPDA and that somehow this Court should accept that the Petitioners continue to repose faith and trust in the BPCL is not at all convincing. In fact, even during the course of his submissions, learned counsel for the Petitioners stated that the BPCL somehow tried to get the Petitioners to give the land owned by them on lease to the BPCL and since they were refusing to do so, a false report about the incident of 14th July 2005 was put forward in revenge by the officers of the BPCL. Apart from the fact that such an allegation finds no mention in the pleadings, this Court fails to appreciate why the BPCL would want "revenge" to be taken against the licensee of a RO because the licensee is unwilling to give the land on lease to the BPCL. In any event, this further demonstrates the complete lack of trust between the parties.

26. There is merit in the contention of Mr. Sudhir Chandra, learned Senior counsel appearing for the BPCL that independent of the impugned decision to terminate, the dealership agreement having come to an end on 19th November 2005 and the Petitioner No. 1 no longer continuing as a dealer, no mandamus can possibly be issued to the BPCL to continue the dealership. To require the BPCL to continue its dealership agreement five years after it has come to an end is, apart from being legally untenable, also rendered implausible with neither party reposing trust in the other.

Is the termination of the dealership arbitrary?

27. The only question, therefore, that survives is whether the impugned letter of termination dated 17th August 2006 , which reaffirms the earlier letter dated 11th August 2005 issued by the BPCL, is arbitrary and therefore invalid as contended by the Petitioners. The scope of the powers and jurisdiction of this Court under Article 226 of the Constitution is limited. The Court is, in this petition, essentially concerned with the question whether the procedure adopted by the BPCL in arriving at the impugned decision was just and fair. A further question that arises is whether the termination of the dealership was, in the circumstances, a ‘disproportionate’ measure.

28. As regards the procedure, any grievance that the Petitioners may have had on that score does not survive after the previous order by this Court. Although it was contended that even the procedure followed thereafter was not fair, this Court finds that an oral hearing was also given to the Petitioners thereafter. This court is not able to agree with the contention

of the Petitioners that there has been any procedural unfairness on the part of the BPCL. The issue, therefore, boils down to the reasonableness of the impugned order of termination.

29. The question whether the Petitioners were overcharging for the products sold by them or whether there was a tampering with the seals of the dispensing units, are disputed questions of fact. Therefore this Court proposes to confine itself to examining whether, arising out of the incident of 14th July 2005, as spoken to by the parties, the BPCL was justified in proceeding to terminate its dealership agreement with Petitioner No.1 .

30. This Court is conscious of the fact that there are divergent versions of what happened on 14th July 2005. Still, as noticed hereinbefore, the fact that there was a collection of members of the HPDA and journalists on the spot and that there were unpleasant exchanges between them and the vigilance team and that even at that stage the vigilance team was accused of indulging in misconduct, clearly shows that the atmosphere was a hostile one. The calling of journalists at the RO office of the Petitioner No.1 on 14th July 2005 and the statements made to them by the Petitioners is a further pointer to the fact that that there was a breakdown of the relationship between the parties. The fact that an FIR was lodged after four days is also not denied. That the BPCL officers were unwilling to go back thereafter to make further statements to the local police as stated in the 'closure' report is also not difficult to appreciate. In this

scenario, if the BPCL took a decision to stand by its officers who had undertaken the inspection, such decision cannot be termed arbitrary or unreasonable. It is indeed difficult to accept, in the absence of any material in support, that the officials of the BPCL fabricated the inspection report which is Annexure P-5. This version has been reaffirmed by way of an additional affidavit filed in this Court by the BPCL describing in detail what transpired on 14th July 2005.

31. The incident of 14th July 2005 was indeed an extraordinary one. This Court is unable to accept the submissions of the learned counsel appearing for the Petitioners that such an incident like this should be evaluated in terms of the MDG. The MDG does not envisage any such situation. It talks of particular instances of ‘irregularity’ and misconduct like overcharging of products, tampering of seals, adulteration and so on. The response by the BPCL to such incident also, therefore, cannot be evaluated with reference to the MDG. It was in the discretion of the BPCL to decide whether in the light of the incident where its officers were gheraoed, criminally intimidated and threatened the dealership agreement should be continued. BPCL’s decision to terminate the dealership cannot, in the circumstances noticed hereinbefore, be characterized as arbitrary or disproportionate.

32. This Court, therefore, concludes that the impugned decision dated 17th August 2006 of the BPCL, reaffirming its earlier decision dated 11th August 2005, does not suffer from any legal infirmity warranting any

interference by this Court.

33. It is expected that since the dealership agreement even otherwise came to an end on 19th November 2005, consistent with their obligations therein the Petitioners will permit the BPCL to remove their assets from the premises. If for some reason that does not happen, it will be open to the BPCL to take recourse to such measures as are available to it in accordance with law.

34. For the aforementioned reasons, the writ petition is dismissed with costs of Rs.10,000/- which will be paid by the Petitioners to the Respondent BPCL within a period of four weeks. The pending applications are disposed of.

S. MURALIDHAR, J.

JULY 22, 2010
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