

A.F.R.

Court No. - 40

Case :- WRIT - C No. - 28993 of 2024

Petitioner :- Gyanendra Kumar

Respondent :- Union Of India And 7 Others

Counsel for Petitioner :- Saurabh Srivastava

Counsel for Respondent :- A.S.G.I.,C.S.C.,Komal Mehrotra

Hon'ble Shekhar B. Saraf,J.

Hon'ble Vipin Chandra Dixit,J.

1. Heard learned counsel for the parties and perused the record.
2. This writ petition under Article 226 of the Constitution of India has been filed whereby the petitioner is aggrieved by the order of show cause notice dated 08.09.2023, wherein the petitioner has been show caused with regard to alleged discrepancy found in the joint inspection.
3. In the present case, the factual matrix is that the inspection by the respondent authorities was carried out on 04.03.2023 and the samples' test came out on 23.06.2023. The respondent authorities sat over the sample tests for the period of two and half month and then issued a show cause notice on 08.09.2023. The relevant Clause 8.5.6 of Marketing Discipline Guidelines, 2012 reads as follows :-

"8.5.6 in respect of all cases of irregularities, a show cause notice, within 30 days from the date of inspection will be issued to the dealer indicating all the irregularities. However, in case samples of MS/HSD were drawn during inspection then the show cause notice will be issued within 30 days of test results. The show cause notice should be issued along with all reports and other documents, etc. which forms the basis of the notice."
4. From the perusal of the said clause, it is patently clear that show cause notice is required to be issued within 30 days from the date of inspection and if the samples are taken during the inspection, this show cause notice is required to be issued 30 days from the date of test results but in the present case, show cause notice has been issued after more than 2 months from the date of receipt of test results. No proper explanation has been provided by the respondent authorities to indicate the reasons of such delay.

5. Upon further reading of aforesaid clause, we are of the view that this clause is mandatory in nature. Even if some flexibility is provided for the two months delay cannot be accepted. The judgment relied upon by the respondents being ***Indian Oil Corporation Ltd. and Ors. vs. R.M. Service Centre and Ors.*** reported in **(2019) 19 SCC 662** is factually different and would not apply in the present case as in the Hon'ble Supreme Court judgment, the clause referred used the word "*preferably*", but in the present case, the words are different and there does not appear to be any ambiguity with regard to the time provided for issue of show cause notice in the said clause.

6. In light of the same, the present show cause notice cannot be sustained on the ground that the same has been issued with an inordinate delay. Accordingly, the show cause notice is quashed and set aside and the respondent authorities are granted liberty to carry out fresh inspection and draw samples and act in accordance with law.

7. With the above direction, the writ petition is disposed of.

Order Date :- 10.2.2025

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(Vipin Chandra Dixit, J.) (Shekhar B. Saraf, J.)