Before Augustine George Masih & Alok Jain, JJ.

M/S INDIAN OIL CORPORATION LIMITED AND OTHERS—*Appellants*

versus

M/S PUNJAB MOTOR STORE AND ANOTHER—*Respondents*

LPA No. 441 of 2022(O&M)

September 29, 2022

Constitution of India, Art. 226, 227— Clause X of Letter Patent Appeal 1865 challenging order allowing writ Certiorari— Order of termination of retail outlet dealership of respondent by petitioner quashed by single judge—Holographic seals affixed found to be replaced by other set of holographic seals on further inspection—Unit found discharging less fuel—Court not to re-appreciate evidence under Art. 226—Held, inspection report clearly records serial number of holographic seals and duly signed by authorized representative dealer—Categoric finding that holographic seals were found tampered—No challenge raised to inquiry proceedings—Not a fit case where judicial intervention and exercise of powers under Article 226/227 of Constitution of India should have been exercised. Order of single judge set-aside—Appeal allowed.

Held, that in view of the above position of law coupled with the fact that the inspection report clearly records the serial number of the holographic seals and the same have been duly signed by the authorized representative of the dealer on 16.10.2013. Therefore, it cannot be permitted to wriggle out of the tampering which came to fore when the inspection was done on 25.10.2013. The categoric finding that the holographic seals were found tampered/replaced, during the inspection done on 25.10.2013, being duly admitted and could not be shattered away, therefore, as a necessary consequence, the termination of dealership has been done in accordancewith law. More so, there is no challenge raised to the inquiry proceedings and the procedure duly followed by the appellant and also by adhering to principles of natural justice and equity, this is not a fit case where the judicial intervention and exercise of powers under Article 226/227 of the Constitution of India should have been exercised, specially exercising the powers of certiorari to dislodge the action of the appellant.

(Para 13)

Akshay Bhan, Senior Advocate with Ashish Kapoor, Advocate, *for the appellants.*

Sunil Chadha, Senior Advocate with Akshay Chadha, Advocate and Taanvi Dhull, Advocate, for respondent No.1.

N.K. Vashist, Advocate, for respondent No.2-UOI.

ALOK JAIN, J.

(1) The present appeal raises challenge to the order dated 27.04.2022 passed by the learned Single Judge, whereby CWP-21228-2018, filed by respondent No.1-M/s Punjab Motor Store, has been allowed and the order dated 26.02.2018 passed by the present appellant, terminating the retail outlet dealership, as well as the appellate order dated 30.07.2018 have been quashed. The appellant-M/s Indian Oil Corporation (for short, "the Corporation"), being aggrieved by the said order has approached this Court.

(2) Admittedly, the brief facts of the case are that respondent No.1- M/s Punjab Motor Stores was allotted a retail outlet dealership and an agreement dated 24.08.2011 was executed. Subsequent thereto, the appellant-Corporation inspected the outlet on 08.10.2013 and immediately thereafter when the consequent inspection was conducted on 16.10.2013, it was found that one unit was discharging less fuel causing shortfall to the tune of 220 ml. with every 5 liters and was sealed on account of the said fact. Subsequently, on 25.10.2013, expert inspection was done wherein it was found that the holographic seals affixed by the inspection team on 16.10.2013 were found to be replaced by another set of holographic seals. Subsequent thereto, the appellant registered a complaint and after calling for an explanation from respondent No.1, a show cause notice for termination of the retail outlet was issued to respondent No.1. Respondent No.1 duly replied to the same and in the meanwhile filed a consumer complaint under Section 12 of the Consumer Protection Act, 1986, which was allowed vide order dated 31.10.2014 passed by the District Consumer Disputes Redressal Forum, Ferozepur. However, the appeal filed by the appellant-Corporation against the said order dated 31.10.2014 came to be partly allowed by the State Commission vide order dated 11.04.2016 and on further revision by the appellant, the revision petition was allowed vide order dated 03.01.2017 passed by the National Consumer Disputes Redressal Commission, New Delhi, wherein, it was held that the complaint itself was not maintainable. The appellant after following the due process of law and abiding by the

principles of natural justice, vide its communication dated 26.02.2018, terminated the retail outlet dealership of respondent No.1 against which the said respondent preferred an appeal before the competent authority which, after a detailed discussion and by recording detailed reasons, vide its order dated 30.07.2018, concluded that the termination of the dealership of respondent No.1 was in accordance with the terms of the dealership agreement. It was further recorded that the provisions of MDG-2012, based on established fact of tampering of holographic seals affixed on the dispensing unit (DU) on 16.10.2013 and as observed during the inspectionon 25.10.2013 was fatal and upheld the order of termination passed by the Corporation.

(3) The orders dated 26.02.2018 and 30.07.2018 were assailed by respondent No.1 by filing CWP-21228-2018 before this Court. The learned Single Judge while allowing the writ petition and while dealing with the dispute and the questions of fact, expressed its opinion as under:

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> Regarding tampering with the holographic seals and replacement thereof, it needs to be observed that the petitioner would not derive any benefit thereby. Coupled with, this is the fact that the replaced seals had been issued to an official of the oil company who was a part of the inspecting team on 25.10.2013. It is thus, more than likely that the holographic seals had been tampered with and replaced bythe inspecting team itself in order to frame the petitioner. This is only an inference and thus, it would also be appropriate to examine, whether, such an action (if done by the petitioner) would render it liable to termination of dealership. In myconsidered opinion, it would not as it does not amount to tampering with a dispensing unit nor does it amount to making short deliveries or violating marketing discipline. Learned counsel for the oil company has not been able to point out any other provision of the agreement between the parties which may render the petitioner liable to termination of the dealership and thus, I hold that assuming the petitioner had tampered with the holographic seals or had replaced the same, its dealership could not have been terminated."

(4) Aggrieved by the said findings, counsel for the appellant has vehemently contended that once the learned Single Judge did not hold

that the inquiry as held by the appellant to be bad and the affidavit was also not challenged and despite the fact that it was positively established that the holographic seals had been replaced, Clause 34 and 42 of the agreement dated 24.08.2011 came into play, which read as under:

> 34. The Dealer shall not make short deliveries to his customers. The Dealer shall scrupulously observe all rules and regulations under the Weights & Measures Act and ensure correct delivery of product by using only duly certified measures or measuring devices and shall check delivery date of such devices at least once on a daily basis, before commencement of sales.
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> xx xx xx
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> 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 laws, rules, regulations and requisitions of the Central/State Government and of all authorities appointed by them or either of them including in particular the Chief Controller of Explosives Government of India and/or any other local authority with regard to the safe practices.

(5) It has been further argued that Clause 8.2(iv) read with Clause 5.1.4 of the MDG-2012 which deals with the tampering of dispensing unit makes it clear that any additional/un-authorized fitting and gears inside the dispensing unit/tampering with dispensing unit will invite termination at the first instance for such irregularity. Thus, it becomes imperative to reproduce Clause 5.1.4 and Clause 8.2(iv) of MDG-2012, which reads as under:

> **Clause 5.1.4 of MDG-2012:**
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> 'Any mechanism/fittings/gear found fitted in the dispensing unit with the intention of manipulating the delivery. Removal, replacement/manipulation of any part of the Dispensing Unit including microprocessor chip/electronic parts/OEM software will be deemed as tampering of the

dispensing unit.'

Clause 8.2 (iv) of MDG-2012:

'8.2 Critical Irregularities:-

Critical Irregularities: The following irregularities are classified as critical irregularities:

xxxxxxxxx

Additional/Unauthorized fittings and gears inside the dispensing units/tampering with dispensing units. (5.1.4)

Action: Termination at the first instance will be imposed for the above irregularities.'

(6) To buttress the arguments, learned counsel for the appellant has relied upon the judgment of Hon'ble Supreme Court in ***Syed Yakoob*** *versus* ***K.S. Radhakrishnan and others***[1]**,** to contend that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it, is not entitled to act as an appellate Court. The relevant extract of the judgment is as under:

> 7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. Thereis, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of

[1] 1964 AIR (SC) 477

evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be correctedby a writ, but not an error of tact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writof certiorari can be issued if it is shown that in recording the said finding, the. Tribunal had. erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if afinding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was' insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point andthe inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque 1955-1 S.C.R. 1104, Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam 1958 S.C.R. 1240, and Kaushalya Devi v. Bachittar Singh A.I.R. 1960 S.C. 1168.

(7) It has been further argued by the learned counsel for the appellant that the learned Single Judge has acted as a Court of appeal and has gone into re-appreciation of the evidence to disapprove the cogent finding of tampering of the dispensing unit and has allowed the writ petition.

(8) To sum up, learned counsel for the appellant has contended that in the light of the fact that the inquiry held by the appellant was not bad and there being no fault in the procedure adopted and followed by the appellant, it was not open to the learned Single Judge to substitute its opinion on facts, which is not permissible and hence prays for setting aside of the order dated 27.04.2022 passed by the learned

Single Judge and in more clear words prays for upholding the termination order dated 26.02.2018.

(9) *Per contra*, learned counsel for respondent No.1 has heavily relied upon a report submitted by Midco Limited, Kalina, Mumbai, to contend that Pulsar Assembly and meeting unit have duly passed the functional procedures of Midco Standards and there is no deviation in the same.

(10) Learned counsel for respondent No.1 has further argued that thesaid seals were replaced by the officials of the appellant-Corporation only asthe seal numbers which were found had been issued to one of their employees. Another set of arguments which has been raised by relyingupon Annexure P-41 is that the dispensing unit No.3 on one side has been performing properly and on the other side it is wrongly alleged that there has been some tampering. Learned counsel has demonstrated the working of the dispensing unit by relying upon the photographs also, which were seen during the course of hearing and returned.

(11) The arguments raised by the respondents that the seals were replaced by the officials of the Corporation deserves to be negated for the simple reason that the only person who was benefitting from the shortfall of supply was the respondent and be that as it may, the learned Single Judge could not go into the disputed questions of facts.

(12) Having heard learned counsel for the parties and with their able assistance, we are of the view that the arguments raised by learned counsel for the appellant deserve merit, once the appellate authority had given a detailed reasoning after considering all the aspects, it was not open to the learned Single Judge to have taken a different view, when the conclusion drawn by the authority was plausible and merely because a different view was also possible, further, in case there are disputed questions of fact, the same should not have been gone into by, unless there was a patent error on the face of the record. It is settled preposition of law that the High Court in exercise of its power under Article 226/227 of the Constitution of India cannot venture into re-appreciation of evidence and also go into the proportionality of punishment until it shock its conscious. The High Courtin exercise of its powers under Article 226/227 has to see whether the enquiry was held by the competent authority by following due procedure as established by law and rules and also by abiding by the principles of natural justice. In fact the said view find support from the settled preposition of law by the Hon'ble Supreme Court of India in ***Union of***

India and others *versus* ***P.Gunasekaran*** Civil Appeal No.10386 of 2014, decided on 19.11.2014, wherein, it has in clear terms noted that the High Court is not and cannot act as a second Court of first appeal and the High Court shall not venture into re-appreciation of evidence. The relevant extract of the said judgment is as under:

> "13. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by thedisciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:
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> a. the enquiry is held by a competent authority;
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> b. the enquiry is held according to the procedure prescribed in that behalf;
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> c. there is violation of the principles of natural justice inconducting the proceedings;
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> d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
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> e. the authorities have allowed themselves to be influencedby irrelevant or extraneous considerations;
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> f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
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> g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;
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> h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
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> i. the finding of fact is based on no evidence.
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> Under Article 226/227 of the Constitution of India, the

High Court shall not:

(i) re-appreciate the evidence;

(ii) interfere with the conclusions in the enquiry, in case *the same has been conducted in accordance with law;*

(iii) go into the adequacy of the evidence;

(iv) go into the reliability of the evidence;

(v) interfere, if there be some legal evidence on which findings can be based.

(vi) correct the error of fact however grave it may appearto be;

(vii) go into the proportionality of punishment unless it shocks its conscience."

(13) In view of the above position of law coupled with the fact that the inspection report clearly records the serial number of the holographic seals and the same have been duly signed by the authorized representative of the dealer on 16.10.2013. Therefore, it cannot be permitted to wriggle out of the tampering which came to fore when the inspection was done on 25.10.2013. The categoric finding that the holographic seals were found tampered/replaced, during the inspection done on 25.10.2013, being duly admitted and could not be shattered away, therefore, as a necessary consequence, the termination of dealership has been done in accordancewith law. More so, there is no challenge raised to the inquiry proceedings and the procedure duly followed by the appellant and also by adhering to principles of natural justice and equity, this is not a fit case where the judicial intervention and exercise of powers under Article 226/227 of the Constitution of India should have been exercised, specially exercising the powers of certiorari to dislodge the action of the appellant.

(14) Accordingly, the appeal is allowed and the order dated 27.04.2022 passed by the learned Single Judge is set aside and consequently the writ petition filed by Respondent No.1 stands dismissed, upholding the termination order dated 26.02.2018 passed by the appellant-Corporation.

(15) No order as to costs.

Gaurav Saini