

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

204

CWP-25361-2018

Date of Decision: 03.08.2023

M/s Indra Filling Station

...Petitioner

Versus

Union of India and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Aashish Chopra, Sr. Advocate with
Ms. Nitika Sharma, Advocate
for the petitioner.

Mr. Akshay Bhan, Sr. Advocate with
Mr. Ashish Kapoor, Advocate and
Mr. Sushant Kareer, Advocate
for respondents No.2 to 4.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 08.06.2018 (Annexure P-30) whereby dealership has been terminated and order dated 12.09.2018 (Annexure P-36) whereby appeal filed by the petitioner against order of termination has been dismissed.

2. The brief facts of the case which are necessary for the adjudication of the present petition are that the petitioner through its partner was allotted petrol pump in 1972 and an agreement was entered into between petitioner and respondent i.e. Indian Oil Corporation (for short '**corporation**'). On 28.01.2018, the officials of respondent conducted inspection at the outlet. A report dated 28.01.2018 was prepared in the

presence of the petitioner and officials of the respondents. The relevant extracts of the report read as :

FORM NO. SL 5(S)
Dated: 05.02.2018

INDIAN OIL
RETAIL OUTLET INSPECTION REPORT
DO/RO/HO

Dealer's Name and Address:

INDRA FILLING STATION,
JALANDHAR CANTT

Divisional Office: JALANDHAR
Date of Inspection: 28.01.18
SALES PERFORMANCE

As given by FO & DO
from time to time

2. XX XX
3. COMMENTS/SUGGESTIONS

3.1	Dispensing Pumps	02 Nos. of MRD/MPP (01 of GVR & 01 of D/coayne)
3.2	Emblem Posts	Monotil available
3.3	Sales Room	Sale Factory
3.4	Fitting	Needs Improvement
3.5	Delivery	Needs Improvement
3.6	Pump Island	Granite Slab bro Km
3.7	Lube Display	Needs Improvement

Sd/- for Indra Filling Station

XX XX XX XX

9.0 ANY OTHER SUGGESTION:-

IOCL PSO Team reached the RO alongwith DO Office
(Shri Rahul Jain and Shri Raj Vishwarkarma and DU
Vendor (both GVR & Gems) were called at site. W&M

officials also reached the spot.

Variation in Mb Nozzle of GVR DU was observed. It gave cross delivery of + 50 ml/ 5 ltr in feeding mode and start (-50 ml/5ltr) in direct mode.

Seals of Pulsar was broken and Pulsar checked. As per vendor who was present, no, additional fifty was found in GVR & Gonu DU. Both vendors have given their report on date. Photograph of Pulsar cards were taken and is annexed alongwith the report.

3. On 29.01.2018, in continuation of inspection of 28.01.2018, another inspection was conducted. The entire dispute is confined to report prepared on 29.01.2018. As per petitioner, an inspection report bearing No.73371 was prepared in the presence of an official of Legal Metrology Department whereas as per respondent, report bearing No.73368 was prepared on 29.01.2018. Dichotomy between both the reports is stark. For the ready reference, relevant extracts of reports bearing No.73371 and 73368 are reproduced as below:

Report No.73371

DETAILS OF WORK CARRIED OUT BY SERVICE ENGINEER :-

During joint inspection with IOCL Team and W.M. Officer Shri Krishan Lal opened all Pulsars and found no any external fitting visually found all Pulsars Cards are OK, all measurement and Sealings on Pulsar Card are OK.

DETAIL OF REMARKS BY DEALER:

DU is OK

Report No.73368

DETAILS OF WORK CARRIED OUT BY SERVICE ENGINEER :-

During joint inspection with IOCL Team found sealing wire on Pulsars A1 and B2 Breaked and also found Resoldering work on both A1 and B2 Pulsars.

DETAIL REMARKS BY SERVICE ENGINEER :

Inspection done at the presence of W.M.officer and IOCL

Officer Mrs. Survi and Engg. Officer Mr. Vishav Karma.

DETAIL REMARKS BY DEALER

Note : For further verification of both Pulsar Card will be sent to GILBARCO VEEDER ROOT.”

4. The samples drawn at the time of inspection were sent to the office of Original Equipment Manufacturer (OEM). The original equipment manufacturer prepared its report dated 14.03.2018 in the presence of representative of the petitioner as well as Corporation. The test report dated 14.03.2018 was furnished with respect to pulsar cards A1 and A2 whereas as per inspection report dated 29.01.2018, resoldering work was found on pulsar card A1 and B2. An official of the corporation in criminal proceedings initiated by petitioner has confirmed that as per record, samples were drawn qua pulsars A-1 and B-2 whereas report was received with respect to pulsar card A1 and A2. It is apt to notice that on 01.02.2018, new pulsar card was inserted and DU was made operational. It was done in the absence of IOC officials.

5. Prior to receipt of report from OEM, the respondent issued show cause notice dated 07.02.2018 calling upon the petitioner to show cause as to why dealership agreement should not be terminated. The petitioner filed its reply and respondent on the basis of report received from OEM as well as inspection report came to a conclusion that there was soldering on the part of petitioner, thus, there is tampering with the equipment, thus, dealership agreement is liable to be terminated. The respondent vide impugned order dated 08.06.2018 (Annexure P-30) terminated dealership agreement. The petitioner preferred CWP No.15781 of 2018 before this Court which came to be disposed of vide order dated 04.07.2018 relegating the petitioner to the Appellate Authority. The

petitioner preferred an appeal before Appellate authority which came to be dismissed vide order dated 12.09.2018. The findings recorded by Appellate Authority qua inspection and test report read as :

Appellant's Contention F:

BECAUSE the report No 73368 dated 29.01.2018 (Annexure P-9) which has been made on the basis of the impugned order dated 08.06.2018, has itself been discredited by the LMO Jaiandhar. Further Also, allegation in the report No 73368 Dated 29.01.2018 (Annexure P-9) Stand disproved in view of the reports dated 28.01.2018 and 29.01.2018 of the respondent No.3 (Annexure P-2 & 3) as well as report dated 14.03.2018 (Annexure P-29), in addition to the fact that no variation in the stock has been reported.

Observation :

I observe that there are contradictory claims/reports on record, in this matter which ought to have been brought to a logical conclusion before arriving at a decision. Basically two different reports of the same date i.e. 29.01.2018 were made by OEM which has created confusion in the entire event. However there are two fundamental issues which form the base of this case;

- a. In spite of inconsistencies observed in the process, it is recorded and accepted by the appellant in the report no. 73368 dt 29.01.2010 that irregularities were observed by the team in the pulsars of GVR unit. The appellant has also acknowledged that the same pulsars were taken out and sent to lab for testing which he witnessed. The lab report for these pulsars confirmed tampering.*
- b. The appellant was fully aware that the suspected pulsars of GVR DU were taken by the IOC team for testing and as such, GVR DU was*

not to be operated even if IOC DO team did not explicitly communicate the to the appellant. First, he failed to inform of this fact to the inspecting team on 05.02.2018 and second he got the pulsars changed on 01.02.2018 without any format communication from respondent no.1 & 2. This inter alia points to involvement of appellant in hiding the facts.”

6. Mr. Chopra, Senior Advocate *inter alia* contends that there is stark contradiction between reports No.73371 and 73368 which were allegedly prepared on the same date. As per report No.73371, all pulsars were found intact and no external fitting was found. Pulsar cards were also found 'OK' and seal on pulsar cards was also perfect whereas contradictory report on the same date has been prepared and his signatures have been obtained by deceit. The report No.73371 bears signatures of Legal Metrology Officer whereas report No.73368 does not bear signatures of Legal Metrology Officer. In view of Para 5.1.2(b) of Marketing Discipline Guidelines, any inspection report in the absence of Legal Metrology Officer is invalid. The Assistant Controller, Legal Metrology, Jalandhar vide communication dated 03.04.2018 has confirmed that report No.73368 dated 29.01.2018 is not in the knowledge of the Legal Metrology Officer. The report No.73371 prepared by Inspector is absolutely correct. The report No.73368 is disclosing inspection of A1 and B2 pulsar whereas test report has been received with respect to pulsar A1 and A2. Original Equipment Manufacturer i.e. Gilbarco Veeder Root in its communication dated 28.03.2018 has stated that new pulsar card was inserted on 01.02.2018, however, this fact was not mentioned in the report due to pressure of IOC officials.

From the conjoint reading of inspection reports No.73368, 73371 and test report, it comes out that there was manipulation on the part of IOC officials and they have obtained report as per their suitability. The endeavour of IOC official was to terminate dealership agreement and for the said purpose they have manipulated documents.

7. Per contra, Mr. Akshay Bhan, Senior Advocate submits that inspection report 73368 bears signatures of dealer/petitioner. In the report, it was specifically noticed that sealing wires on pulsars A1 and B2 have been broken and resoldering work was done. The first inspection report dated 28.01.2018 is disclosing variation in nozzle and there was -50 ml delivery against 5 ltrs oil delivery under direct mode. There was no malafide on the part of officials of IOC. The original equipment manufacturer had prepared report in the presence of petitioner and it candidly proved that there was no proper soldering of the pins.

As per policy of the Corporation, actual loss to customer is not necessary. Dealership is liable to be terminated if there is tampering with equipment. Indian Oil Corporation Ltd. cannot control each and every petrol pump, thus, it is necessary to maintain high standard. Letter of OEM is confirming that official of OEM had found tampering in the equipment. The adjudicating and appellate authority have recorded categorical findings and this Court cannot interfere until and unless there is violation of procedure or misreading of evidence or patent illegality. This Court cannot re-appreciate evidence and record findings qua facts.

To buttress his contention, learned Senior Advocate relies upon judgment of Hon'ble Supreme Court in **Syed Yakoob vs. K. S.**

Radhakrishnan and others, 1964 AIR (Supreme Court) 477 and Division

Bench judgment of this Court in **Indian Oil Corporation Limited and ors. vs. Punjab Motor Store and ors, (LPA-441-2022, decided on 29.09.2022).**

11. I have heard the arguments of learned senior counsels for the parties and with their able assistance perused the record.

12. Para 5.1.2(b) of the Guidelines as relied upon by the petitioner read as :

“(b) With Weights & measures department Seals tampered

W&M department seals are put on metering unit and Totaliser unit with the help of a sealing wire and a lead seal which is embossed by W&M inspector.

The seal would be deemed tampered in the following cases also:

- 1. Seal itself is missing*
- 2. Different seal has been put other than embossed by W&M inspector.*
- 3. Sealing wire is broken and not in one piece.*

In addition other situations which can lead to manipulation of delivery/quantity/totaliser may also be treated as tampering.

In such cases, views and opinions of W&M authorities would be obtained and the opinion rendered by the W&M department should be final. Based on the opinion of W&M authorities, penal action to be taken even if the delivery is found to be correct or excess.”

Para 5.1.4 of the Guidelines as relied upon by the respondent read as:

“5.1.4 Additional/unauthorized fittings/gears found in dispensing units/tampering with

dispensing unit.

Any mechanism/fittings/gear found fitted in the dispensing unit which is likely to manipulate the delivery.

Addition, Removal, replacement or manipulation of any part of the dispensing Unit including any mechanism, gear, microprocessor chip/electronic parts/OEM software will be deemed as tampering of the dispensing unit.

In such cases, views and independent opinion of the original equipment manufacturer would be obtained and suitable decision taken.

In case of this irregularity, sales from the concerned dispensing unit to be suspended, DU sealed. Samples to be drawn of all the products and sent to lab for testing.”

13. A two Judge Bench of Hon'ble Supreme Court in **M.P. Power Management Co. Ltd. v. Sky Power Southeast Solar India (P) Ltd., (2023) 2 SCC 703** has adverted with ambit and scope of interference in contractual matters. The Court has held :

“82. We may cull out our conclusions in regard to the points, which we have framed:

82.1. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

82.2. The principle laid down in Bareilly Development Authority [Bareilly Development Authority v. Ajai Pal Singh, (1989) 2 SCC 116] that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the

decisions, which are purported to be followed, including Radhakrishna Agarwal [Radhakrishna Agarwal v. State of Bihar, (1977) 3 SCC 457], may not continue to hold good, in the light of what has been laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] and as followed in the recent judgment in Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706 : 2020 SCC OnLine SC 847].

82.3. *The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent State in a case by itself to ward off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.*

82.4. to 82.6. XXXX XXXX XXXX

82.7. *The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. Again, the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.*

82.8. XXXX XXXX XXXX

82.9. *The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.*

82.10. XXXX XXXX XXXX

82.11. *Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the fundamental right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible rule in favour of the Court turning away the petitioner to alternate fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the writ court. This is, undoubtedly, so if the Court is duty-bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of*

ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553] , if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL [ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553]. It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition

From the conspectum of above cited judgment, it can be easily gleaned that there is no bar to entertain writ petition in contractual matter though contract is a non-statutory contract.

14. Hon'ble Supreme Court in **Syed Yakoob's case (supra)** has adverted with scope of interference under Article 226 against orders of Courts and Tribunals. The Hon'ble Supreme Court has held that finding of fact cannot be reopened. Writ Court can interfere if Tribunal has refused to admit admissible evidence or admitted inadmissible evidence or finding is based on no evidence or there is error of law or procedure has not been followed. The relevant extracts of the aforesaid judgment read as :

“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 is in excess of it, or as a result of failure to exercise jurisdiction. 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, 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. There is, 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 result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of 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 a finding 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 and the 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 Ahmad Ishaque [(1955) 1 SCR 1104] Nagandra Nath Bora v. Commissioner of Hills Division and Appeals Assam [(1958) SCR 1240] and Kaushalya Devi v. Bachittar Singh [AIR 1960 SC 1168])

15. From the perusal of record and arguments of both sides, it comes out that dispute is confined to inspection reports No.73368 and 73371. As per petitioner, inspection report No. 73371 is a genuine piece of document and 73368 cannot be relied upon. Report No.73368 is not bearing signatures of inspector Legal Metrology whereas report No.73371 is bearing signatures of official of Legal Metrology. The petitioner is further disputing test report on the ground that samples were drawn qua pulsars A1 and B2 whereas test report is disclosing pulsars A1 and A2.

The adjudicating authority as well as Appellate Authority has dealt with issues raised by the petitioner. The Appellate Authority, as noticed hereinabove in Para 5, has returned categorical findings qua issues raised before this Court. As per petitioner, inspection report bearing signatures of Legal Metrology Officer is genuine whereas as per respondent inspection report even not bearing signatures of Inspector Legal Metrology is valid because it is bearing signatures of the dealer/petitioner. It is

undisputed fact that as per test report of OEM, there is resoldering i.e. tampering with original equipment. OEM in its communication has confirmed authenticity of inspection report 73368 as well as tampering found on the inspection. As per policy of the Corporation, if there is tampering with the equipment, dealership is liable to be terminated. Para 5.1.2(b) of the Guidelines as relied upon by the petitioners does not mandate that seal should be opened in the presence of officers of Legal Metrology Department. In any case, it cannot vitiate entire proceedings.

The questions raised by petitioner are purely questions of fact and Hon'ble Supreme Court time and again has held that in contractual matters, the High Court cannot interfere unless and until there is *malafide* or violation of prescribed procedure or violation of principles of natural justice or the findings recorded are apparently either based upon no evidence or contrary to the evidence.

16. In the present case, the test report which was prepared in the presence of petitioner is undisputed, however, inspection reports are disputed. The test report was prepared in the presence of petitioner who at that stage did not raise objection qua pulsar A2 vis-a-vis B2. The petitioner remained silent and subsequently raked this issue which is nothing more than an afterthought ruse on the part of petitioner. In the inspection report No.73371, there is nothing about drawing of samples whereas inspection report 73368 talks of samples. Had samples not been drawn, there was no question of testing.

17. Furthermore, the questions raised by petitioner are disputed questions of fact. There is neither *mala fide* on the part of one particular official of the respondent nor violation of principles of natural justice or

prescribed procedure nor any other glaring infirmity. There is no consideration of irrelevant evidence or ignorance of material evidence on record. The Appellate Authority has recorded categoric findings qua objections raised by petitioner. Thus, there is no ground warranting interference of this Court under Articles 226/227 of the Constitution of India.

In view of above facts and findings, this Court does not find any substance in the petition. The petition deserves to be dismissed and accordingly dismissed.

18. Before parting with the judgment, it would be apt to notice that Inspection Report No.77371 dated 29.01.2018 is alleged to have been prepared in the presence of Indian Oil Corporation’s official. Indian Oil Corporation has not carried out any investigation qua said officer. It would be unfair on the part of Indian Oil Corporation if no enquiry is conducted to this effect and thereafter, if necessary, an appropriate action is taken against erring official.

(JAGMOHAN BANSAL)
JUDGE

03.08.2023
anju

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>