

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate side

PRESENT:

HON'BLE JUSTICE CHITTA RANJAN DASH
AND
HON'BLE JUSTICE PARTHA SARATHI SEN

MAT 151 OF 2022

Indian Oil Corporation Ltd. & Ors.
vs.
Prabir Kumar Baidya & Ors.

For the Appellants	:	Mr. Jishnu Saha, Sr. Adv. Mr. M. S. Yadav, Adv. Ms. Satabdi Naskar, Adv.
For the Respondent No. 1	:	Mr. Biswaroop Bhattacharya, Adv. Mr. Pritam Choudhury, Adv. Ms. Priti Banerjee, Adv. Mr. Abhisek Addhya, Adv.
Heard on	:	31.08.2022, 08.09.2022, 16.11.2022, 17.11.2022, 05.12.2022, 16.12.2022 & 04.01.2023.
Judgment on	:	11.05.2023.

CHITTA RANJAN DASH, J.:-

1. Judgement passed by Hon'ble Single Judge on 14.01.2022 in WPA 10713 of 2021 is brought under challenge in this appeal by respondents Oil Company.
2. A compendium of facts relevant for disposal of this appeal runs as follows :-
 - (a) Following due procedure under the brochure and guidelines agreement for LPG distributorship in favour

of the respondent no.1 (writ petitioner) was executed between the competent authority of the present appellants and the respondent no. 1 on 29.01.1990.

- (b) The respondent no. 1 allegedly entered into a partnership agreement with the private respondent no. 3 (Swati Rai) on 09.11.2016 whereby and whereunder the present respondent no.1 (writ petitioner) agreed to change the constitution of the proprietorship to a partnership by inducting present respondent no. 3 (Swati Rai) as his partner and by agreeing to retire from the partnership altogether after five years upon handing over the entire distributorship to respondent no. 3 (Swati Rai). On 9.11.2016 itself, present respondent no.1 (writ petitioner) also executed a power of attorney in favour of respondent no. 3 (Swati Rai) giving her, *inter alia*, the right to work, manage, control and supervise the management of the distributorship.

Aforesaid act of the present respondent no. 1 (writ petitioner) was alleged to be violative of Clause 21 of the distributorship agreement.

- (c) Such action of present respondent no. 1 (writ petitioner) came to the knowledge of the competent authority of the

Oil Company on the basis of a complaint made by present respondent no. 3 (Swati Rai) on 23.04.2018.

- (d) On receipt of the aforesaid complaint a meeting was called by the competent authority of the appellants to ascertain the veracity of such complaint. In the said meeting the present respondent no. 1 (writ petitioner) is alleged to have accepted the fact that he had entered into a partnership with respondent no. 3 (Swati Rai) and he also allegedly admitted to have executed a power of attorney in her favour.
- (e) The gist of the aforesaid meeting as recorded by the competent authority of the appellants was issued vide communication of the appellants to present respondent no. 1 (writ petitioner) on 09.05.2018.
- (f) The present respondent no. 1 (writ petitioner) responded to the communication of the appellants dated 09.05.2018 wherein he (respondent no. 1) stated that he is in the process of cancelling the agreement of partnership and undertook that he shall complete the process very soon. Thereafter respondent no. 1 (writ petitioner) forwarded to the competent authority of the appellants a deed of cancellation of the partnership agreement bearing signature of respondent no. 3 (Swati

Rai) dated 29.06.2018 and a deed of revocation of power of attorney dated 03.08.2018 executed in her (Swati Rai's) favour on 09.11.2016.

- (g) Owing to admitted violation of the terms of the distributorship agreement, respondent no. 1 (writ petitioner) was issued with a show-cause notice dated 16.10.2018 which, *inter alia*, recorded that respondent no. 1 (writ petitioner) had admitted the execution of the partnership agreement with respondent no. 3 (Swati Rai).
- (h) Respondent no. 1 (writ petitioner) replied to the show-cause notice on 19.12.2018 admitting the factum of creation of partnership, receipt of money from respondent no. 3 (Swati Rai), his intention to return the money to Swati Rai and further sought for condonation of the violation upon agreeing to pay requisite ratification fees as per new reconstitution policy which came into force during 2018.
- (i) Clause 4.5 of detailed guidelines for reconstitution of LPG distributorship, 2018 authorises the competent authority of the appellants' oil company to condone the violation committed by a dealer on payment of requisite ratification fees provided in Clause 4.5.1. On the basis

of the show-cause reply of the respondent no. 1 (writ petitioner) dated 19.12.2018, the competent authority of the appellants accepted the ratification fees of Rs. 16,54,846.75/- from respondent no. 1 (writ petitioner) on 06.04.2019 along with an undertaking by the respondent no. 1 (writ petitioner) to the effect that the partnership agreement has been cancelled and the power of attorney in favour of respondent no. 3 (Swati Rai) has been revoked with the consent of said Swati Rai.

On acceptance of ratification fees, as deposited by respondent no. 1 (writ petitioner) a warning letter was issued to him on 26.04.2019 to the effect that he shall not change any constitution of distributorship without prior approval of the corporation as the same is against the policy guideline and in case of any further such instance, the company/corporation would be constrained to take suitable action against the distributorship of respondent no.1 (writ petitioner) as per policy in vogue.

- (j) More than a year after, on 24.07.2020, second complaint was received by the competent authority of the appellants from respondent no. 3 (Swati Rai) to the

effect that she had not executed any deed of cancellation of the partnership agreement and her signature on the alleged cancellation deed is not of her.

On receipt of such complaint from respondent no. 3 (Swati Rai), respondent no. 1 (writ petitioner) was called to the office of appellant no. 5 on 28.07.2020. The impugned termination letter dated 19th February, 2021 issued by appellant no. 5 is stated to be containing the outcome of such meeting dated 28.07.2020.

- (k) Nearly after six months on 20.11.2020 show-cause notice in continuation of the first show-cause notice dated 16.11.2018 was issued to the respondent no. 1 (writ petitioner).

Respondent no. 1 (writ petitioner) gave reply to such notice on 08.12.2020 denying the assertion of respondent no. 3 (Swati Rai) in her complaint dated 24.07.2020.

- (l) Thereafter, notice of personal hearing was issued to respondent no. 1 (writ petitioner) on 19.01.2021 which the respondent no. 1 (writ petitioner) attended along with his advocate. After going through the materials-on-record, the impugned notice dated 19th February, 2021 terminating the LPG distributorship licence of

respondent no.1 (writ petitioner) was issued by appellant no. 5.

3. The respondent no. 1 filed the writ petition on grounds thus:-

- (i) The order of termination of his LPG distributorship license is illegal and arbitrary and suffers from non-application of mind by the competent authority.
- (ii) The impugned order of termination of license is based on no evidence and the grounds of termination of licence that he (respondent no.1) had filed before the competent authority of the oil company a forged deed of cancellation of partnership firm and that before the competent authority he had accepted the position that the signature of Swati Rai appearing on the deed of cancellation of partnership firm is not of Swati Rai (respondent no. 3) are totally fallacious.
- (iii) Without expert opinion the competent authority of the appellants has reached a wrong conclusion to the effect that the deed of cancellation submitted by him is a forged document.
- (iv) The violation committed by the writ petitioner (present respondent no.1) having been condoned and the ratification fees having been accepted, termination of his distributorship licence amounts to double punishment.

- (v) The principle of natural justice has not been complied with before passing the impugned termination order dated 19.02.2021.

4. The present appellants being the opposite parties before the Hon'ble Single Judge disputed the assertions made by the writ petitioner and submitted that in view of existence of arbitration clause in the agreement between the parties for referral of the matter to the arbitrator, the writ petition is not maintainable. Further adequate opportunity of hearing has been given to the writ petitioner and there has been no violation of the principle of natural justice; the ratification fees though accepted from the appellant, the agreement between the parties being determinable one under Clause 28 of the agreement, there is no bar to determine the agreement and cancel the distributor licence of the petitioner when it is found that there has been contravention of any clause of the agreement by the petitioner.

5. Hon'ble Single Judge in the impugned judgment addressed the following issues :-

- (1) Whether the writ petition as laid is maintainable in view of existence of arbitration clause in the agreement between the parties;
- (2) Whether there has been a breach of the principle of natural justice in view of the assertion of the petitioner that hearing given to the petitioner was inadequate and ineffective;

(3) Whether the petitioner having not challenged the order of the appellate authority dated 10.06.2021, he is competent to challenge the order of termination of his distributorship licence dated 19.02.2021.

5.1. Hon'ble Single Judge relying mainly on ***Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & ors. [(1998) 8 SCC 1]***; ***Radha Krishan Industries Vs. State of Himachal Pradesh & ors. [(2021) 6 SCC 771]***; ***Unitech Limited Vs. Telengana State Industrial Infrastructure Corporation (TSIIC) [2021 SCC OnLine SC 99]*** held that existence of an arbitration clause in the agreement between the parties does not disentitle the High Court from resorting to exercise of jurisdiction under Article 226 of the Constitution of India provided the case falls within exceptions elucidated in the case of ***Whirlpool Corporation supra***.

5.2. Relying on the case of ***Sarvepalli Ramaiah & ors. Vs. District Collector, Chittoor District & ors. [(2019) 4 SCC 500]*** and ***Rajesh Kumar & ors. Vs. Dy. CIT & ors. [(2007) 2 SCC 181]*** Hon'ble Single Judge held that the decision making authority in the case being the appellant no. 5 himself in whose eyes interest of the appellants were of paramount importance; there being inadequate and ineffective opportunity of hearing afforded to the petitioner and the impugned order dated 19.02.2021 having the potency of giving rise to significant civil consequences, there has been gross violation of the principle of natural justice.

5.3. On the question of order of appellate authority not being impugned before the writ court, Hon'ble Single Judge held that petitioner was required to challenge

order of the appellate authority but the appellate authority having dismissed the appeal by holding that the appeal filed by the petitioner is not maintainable and by further recording that it had not entered into the merit of the case, there was no need for the petitioner to challenge the appellate order in the writ.

6. Mr. Jisnu Saha, learned Senior Counsel appearing for the appellants with his usual zest, fairness, insight to the facts and erudition contends that though he is not agreeable on law with the finding of Hon'ble Single Judge on the question of maintainability of the writ petition under Article 226 of the Constitution of India, when there is alternative remedy, he, for the purpose of this appeal does not impugn such finding. However, some justifications have been given along with citations against such finding in the written note of arguments submitted later on (which we do not want to address as those were not placed before us in course of hearing).

Similarly, Mr. Saha, learned Senior Counsel appearing for the appellants does not want to impugn the finding of the Hon'ble Single Judge on the question of petitioner (respondent no.1) not challenging the appellate order in the writ petition.

Mr. Saha, learned Senior Counsel appearing for the appellants with all vehemence at his command but with utmost humility impugnes the finding of Hon'ble Single Judge so far as non-compliance of the principle of natural justice is concerned.

7. Per contra, Mr. Bhattacharyya, learned Counsel appearing for the respondent no. 1 oppugns the contention raised by Mr. Saha, learned Senior Counsel appearing for the appellants and takes us through the records of the case

to show us as to how the second complaint by respondent no. 3 (Swati Rai) has come to be filed and he also questions the action of the appellants in unnecessary meddling in the private dispute between respondent no. 1 and respondent no. 3, though ratification fees has already been accepted by competent authority of the appellants along with undertaking filed by respondent no. 1 and the law department of the appellants have okayed the entire process by giving the green signal to proceed ahead.

8. We shall deal with the questions and submissions raised by learned Counsels for the parties at relevant stage. But before proceeding further we would like to bring on record in our judgement, the facts which is the subject matter of affidavit filed by one Kalpana Misra, an officer of the appellants in obedience to order dated 04.03.2022 passed by a co-ordinate Bench in this appeal.

8.1. Kalpana Misra, on the relevant date of filing of the captioned affidavit, was working as Manager (LPG-Sales), Kolkata 2 LSA. The gist of the affidavit filed by her runs as follows:

i) In reply to show-cause notice dated 16.10.2018, respondent no.1 (writ petitioner) prayed for condonation of the action in entering into partnership with respondent no. 3, Swati Rai.

ii) The action of the respondent no.1 (writ petitioner) was condoned in accordance with “guidelines for reconstitution, 2018” (‘2018 guidelines’ for short) restoring

status qua ante as it was prior to partnership with respondent no.3, Swati Rai.

iii) Respondent no.1 (writ petitioner) along with required ratification fees also gave an undertaking in consonance with clause 4.5.1 of 2018 guidelines. The undertaking given by respondent no. 1 (writ petitioner) reads thus :

“I/we undertake to take full responsibility for our actions in the past and verify that what has been stated above is true and correct to the best of my knowledge and nothing material has been concealed therefrom. If any information/declaration given by me in this affidavit shall be found to be untrue or incorrect or false, Indian Oil Corporation Ltd. would be within its rights to take suitable action as deemed fit including termination and that I would have no claim, whatsoever against Indian Oil Corporation Ltd. (as applicable) for such termination”.

iv) The requirement of the aforesaid undertaking in the form prescribed in ‘2018 guidelines’ was to enable the appellant oil company to verify the declaration made by the respondent no.1 (writ petitioner).

- v) On 20.12.2019, the appellant oil company sought opinion of the law section of the corporation regarding the documents received from respondent no.1 (writ petitioner).
- vi) The Manager (Law) on 08.01.2020 opined in favour of dissolution of the partnership but recommended solicitation of affirmation from the parties who have signed the cancellation deed i.e. partnership cancellation deed.
- vii) On 18.02.2020, the Chief General Manager (LPG) wrote to the General Manager (Vigilance) stating that the complaint filed by Swati Rai (respondent no.3) be treated as closed.
- viii) After about 4 (four) months on 29.06.2020 the Vigilance Department of the appellant oil company wrote to the Executive Director and state-head of the Corporation that it would be appropriate to suitably intimate Swati Rai, respondent no. 3 to confirm the authenticity of the deed of cancellation of partnership as submitted by respondent no.1 (writ petitioner).
- ix) In this context, Kalpana Misra is stated to have been authorised to visit the residence of Swati Rai, respondent no.3 who on questioning, denied to have signed any deed of cancellation. Thereafter, she (Swati Rai) made further complaint to the same effect on 24.07.2020.

After the second complaint dated 24.07.2020 submitted by Swati Rai (respondent no.3) further show-cause notice in continuation of the earlier show-cause notice was issued to respondent no.1 (writ petitioner), enquiry was held which according to the appellants was held on due observance of the principle of natural justice and the impugned letter of termination was issued against the appellant no.1 (writ petitioner) vide annexure P-12.

9. The grounds of termination of LPG distributorship of the respondent no.1 (writ petitioner) are violation of Clause 21, Clause 23(c)(i). For the aforesaid violation, the LPG distributorship of respondent no.1 (writ petitioner) was terminated in consonance with Clause 27(a) of the agreement.

9.1. Clause 21 of the agreement reads thus:

“The Distributor shall not sell, assign, mortgage or part with or otherwise transfer his interest in the distributorship or the right, interest or benefit conferred on him by this agreement to any person. In the event of the Distributor being a partnership firm any change in the constitution of the firm, whether by retirement, introduction of new partners or otherwise howsoever will not be permitted without the previous written approval of the Corporation notwithstanding that the Corporation may have dealings with such reconstituted firm or impliedly waived or condoned the breach or default mentioned hereinabove by the

Distributor. In the event of the death of any of the partners, the Distributor shall immediately inform the Corporation giving the necessary particulars of the heirs and legal representatives of the deceased partner and it shall be the option of the Corporation either to continue the distributorship with the said firm or to have a fresh agreement of distributorship with any reconstituted firm or to terminate the distributorship agreement and the decision of the Corporation in that behalf shall be final and binding on all the parties concerned. No claim on premature termination for compensation or otherwise will be made or sustainable against the Corporation on account of such termination.”

This Clause bars any LPG distributor from changing the constitution of the distributorship.

9.2. Clause 23(c)(i) of the agreement reads thus:

“Except with the previous written consent of the Corporation:-

- (i) The Distributor shall not enter into any agreement, contract or understanding whereby the operations of the Distributor hereunder are or may be controlled/carried out and/or financed by any other*

*person, firm or Company, whether directly or indirectly
and whether in whole or in part.”*

This Clause also is to the same effect and casts responsibility on the distributor not to enter into any agreement, contract or understanding whereby the operations of the distributor under the agreement are or may be controlled/carried out and/or financed by any other person, firm or company.

9.3. Clause 27(a) is the general power of the corporation to determine the agreement and terminate the LPG distributorship which has been invoked in the present case to terminate the LPG distributorship of respondent no.1 (writ petitioner).

10. Mr. Jishnu Saha, learned senior Counsel appearing for the appellant relying on the case of **Nand Kishore Prasad Vs. State of Bihar and Ors. [(1978) 3 SCC 366]** (paras 19, 20, 21, 24, 25, 27); **H.B. Gandhi Vs. M/s Gopi Nath & Sons & Ors. [1992 Supp (2) SCC 312]** (paras 8 and 9); **West Bengal Central School Service Commission & Ors. Vs. Abdul Halim & Ors. [2019 (18) SCC 39]** (paras 27 to 32); **Deputy General Manager (Appellate Authority) & Ors. Vs. Ajai Kumar Srivastava [2021 (2) SCC 612]** (paras 24 to 28), submits that the writ court cannot find fault with the decision arrived at by the authority concerned but if there is any fault in the decision making process, then the writ court shall have scope for interference.

It is further submitted by Mr. Saha, learned senior Counsel appearing for the appellant that upon each complaint being made by Swati Rai (respondent no.3), the respondent no.1 (writ petitioner) was afforded full and effective

opportunity of showing cause; he was also afforded the opportunity of face to face meeting with Swati Rai (respondent no.3); he was also afforded personal hearing which he attended along with his Advocate, Mr. Acharya. In course of the face to face meeting with Swati Rai (respondent no.3), the respondent no.1 (writ petitioner) did not controvert Swati Rai's assertion to the effect that she had not executed any deed of cancellation or any deed of revocation of partnership and she has not signed any deed. It is further submitted by Mr. Saha, learned senior Counsel appearing for the appellant that despite proper and effective opportunity no evidence was produced by respondent no.1 (writ petitioner) to demonstrate that signature in the deed of cancellation is that of Swati Rai. In the circumstances, it is humbly submitted by Mr. Saha, learned senior Counsel appearing for the appellant that neither the decision to terminate the distributorship of the respondent/writ petitioner nor the decision making process leading to the termination of the same was an error vulnerable to judicial review.

We have already reproduced the submissions made by Mr. Bhattacharyya, learned Counsel appearing for the respondent no.1 (writ petitioner) in paragraph 7 *supra* and we do not want any further duplication.

11. In **Commissioner of Police, Bombay Vs. Gordhandas Bhanji (AIR 1952 SC 16)**, Hon'ble Justice Vivian Bose speaking for the Three Judge Bench in paragraph 9 of the Judgement in His Lordship's unimitable words held thus:

“An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the

order was his order and not that of Government. We are clear that **public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do.** Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

(Emphasis supplied by us)

12. Aforesaid dictum of Hon’ble Supreme Court still holds the field. We are, therefore, compelled to eschew the explanation and erudite submissions made on behalf of the appellant and shall look at the impugned order vide annexure P-12 to find out in what way principle of natural justice has been complied with by the authority concerned and whether the process of decision making by the competent authority suffers from any vice or vulnerability. From annexure P-12 it is found that first complaint from Swati Rai, respondent no.3, was received by the appellant oil company on 23.04.2018. In the said complaint Swati Rai had alleged that she has provided financial assistance to the tune of Rs.50 lakhs to the present respondent no.1 (writ petitioner) in lieu of which, he (writ petitioner) had executed

notarised deed of partnership dated 09.11.2016 and registered general power of attorney dated 09.11.2016.

12.1. On the basis of the aforesaid complaint Swati Rai (respondent no.3) and respondent no.1 (writ petitioner) were called to Kolkata Area Office. On 22.05.2018 respondent no.1 (writ petitioner) admitted everything and on the basis of '2018 guidelines' unauthorised act of respondent no.1 (writ petitioner) was condoned on payment of requisite ratification fees. Respondent no.1 also submitted an undertaking as extracted *supra*.

12.2. It is further found from annexure P-12 that after about two years on 24.07.2020 another complaint was lodged by Swati Rai for which a face to face meeting in between Swati Rai (respondent no.3) and present respondent no.1 (writ petitioner) was organised on 28.07.2020 at Area Office Kolkata. After the said meeting continuation show-cause notice dated 20.11.2020 was issued to respondent no.1 (writ petitioner) to which he (writ petitioner) replied on 08.12.2020. On the basis of the aforesaid meeting and reply sent by respondent no.1 (writ petitioner) the authority in annexure P-12 came to the following finding :

“From the meeting and the reply sent by you, it transpired that no cancellation deed/dissolution of the partnership agreement dated 9/11/2016 has been signed by Ms Swati Rai and a forged dissolution cancellation deed has been submitted by you for condoning the past mistakes. Further, Smt. Swati Rai, vide letter dated 15.09.2020 has stated that her

signature has been forged and confirmed that she has not signed any Deed of Cancellation and/or Deed of Dissolution relating to Deed of Partnership dated 09.11.2016 entered into between her and yourself relating to M/s Prayojani.”

12.3. After coming to such finding the competent authority afforded another opportunity to the respondent no.1 (writ petitioner) to prove his case before the personal hearing officer and in this regard letter dated 19.01.2021 was issued to respondent no.1 (writ petitioner). The meeting was held at 3 p.m. through V.C. on 09.02.2021. Mr. Anupam Acharya, learned Advocate took part in the personal hearing on behalf of respondent no.1 (writ petitioner). Thereafter what transpire in the meeting and how the authority has come to the finding that is important and for ready reference we feel persuaded to extract the material of annexure P-12 herein below :

“Your advocate Shri Anupam Acharya made the following submissions:-

A. As per his opinion, complainant Smt. Swati Rai had executed the dissolution of the partnership agreement dated 09.11.2016.

B. The Registered Deed for revocation of POA vide deed no- 344 of 2018 was executed on 06.07.2018 and another deed of cancellation of partnership Agreement was executed on 29.06.2018 and the same was

notarized on 07.07.2018. Allegation of Smt. Swati Rai that the signature on this dissolution of partnership deed was not her signature is baseless and without any merit. Further, allegation of Smt. Swati that the signature on the cancellation deed was not entered upon by her and the same has been forged is not accepted and the documents is valid one. However, the representative of the distributor made the submission that in the event there is any discrepancy in the cancellation of the partnership agreement the same can be ratified later on.

C. That the cancellation deed of partnership agreement dated 09.11.2016 is an authentic document since the same was executed and notarized before a competent authority. Certificated by Notary public is suffice to prove that the dissolution deed is in order.

D. He further stated that you have returned more than the amount you received from the complainant Smt. Swati Rai. Further condonation was done by IOCL after you deposited Rs. 16 lakhs as condonation fees.

During the course of personal hearing, you were asked whether you had attended the meeting held at Kolkata

Area Office in presence of Area Manager and Ms. Swati Rai on 28.07.2020 where Smt. Swati Rai stated that she has not made any cancellation agreement and that the signature on the document was not her signature. Shri Anupam Acharya on your behalf confirmed that you as the proprietor of M/s Prayojani have attended the meeting. In the personal hearing you stated that you do not accept that the signature is not of Smt. Swati Rai as stated by her in the meeting dated 28.07.2020.

However you have not raised any objection during the meeting on 28.07.20. Mr Acharya, further, on your behalf, stated that you do not have any further submission or any other additional documents to prove your case.

Based upon the **above noted submission** and **available documentary evidence**, it is amply clear that you, as the Proprietor of M/s Prayojani, have intentionally mislead the Corporation by producing forged documents which you failed to clarify and hence committed the above mentioned acts which are detrimental to the interests of the Corporation and is in violation of the Distributorship Agreement dated 29.01.1990.”

12.4. From the aforesaid materials which are there in the impugned order (annexure P12), it is clear that the respondent no.1 (writ petitioner) did not object on 28.07.2020 during face to face meeting the allegation/assertion of Swati Rai, respondent no.3 and the reference “available documentary evidence” as mentioned in the last paragraph quoted *supra* are nothing but two complaints of Swati Rai (respondent no.3).

13. From the aforesaid materials-on-record, we fail to understand in what manner there has been effective compliance of the principle of natural justice. Before affording opportunity the authority has already pre-decided the issue and in coming to the conclusion they have relied on the bald complaints made by Swati Rai, respondent no.3 and alleged silence of respondent no.1 (writ petitioner) during the face to face meeting between Swati Rai and him (writ petitioner) on 28.07.2020.

13.1. The second question, which hunt our ingenuity is the facts narrated in the affidavit of Kalpana Misra. Kalpana Misra has specifically averred in her affidavit that on verification of documents filed by the respondent no.1 the law department of the oil company okayed the same. The Chief General Manager (LPG) also wrote to the General Manager (Vigilance) stating that the complaint by Swati Rai (respondent no.3) be treated as closed. When after due enquiry the first complaint lodged by Swati Rai, respondent no.3 was closed in view of acceptance of ratification fees etc. then visit of an officer of the oil company to the residence of Swati Rai, respondent no.3, to confront her about the genuineness of the documents and subsequent complaint by her on 24.07.2020 should not have been

given effect to inasmuch as it was a dispute between Swati Rai, respondent no.3 and respondent no.1 (writ petitioner). If Swati Rai had alleged fraud/forgery etc. it was a personal injury sustained by her and she had remedy both under criminal law and civil law. She had the opportunity to redress her grievance by taking to appropriate recourse of law.

14. When complaint was made by Swati Rai, respondent no.3 it was the duty of the appellant oil company to direct her to approach the proper forum for redressal of her grievance inasmuch as the oil company has got no proper in house mechanism to address the question of fraud committed on a stranger to the company by one of the distributor who is a party to the agreement between the appellant oil company and such distributor. Though Swati Rai was a party both in the writ petition and the appeal, she did not opt to appear before this Court to put forth her grievance. The appellant no.1 (writ petitioner) on the other hand has provided details of cheques given to Swati Rai on different dates in his averments in the writ petition. That goes uncontroverted by Swati Rai, respondent no.3. It might have so happened that though a supposition, some cheques issued by respondent no.1 (writ petitioner) might have bounced and in that event also Swati Rai, respondent no.3 had the remedy under the provisions of Negotiable Instruments Act. There is nothing on record however to that effect. It was not incumbent on respondent no.1/writ petitioner to prove the negative that he has not committed fraud on Swati Rai or thereby indirectly affected the appellant oil company. In the fitness of things Swati Rai, could have approached the proper Court to prove the affirmative by alleging that respondent no.1 (writ petitioner) has

committed fraud on her and consequently on the appellant oil company. The assumption of misconceived jurisdiction by the appellant oil company to saddle wrong onus on respondent no.1 (writ petitioner) is, in itself an anathema to the salutary principle of natural justice. You cannot ask a person to do a thing which he is not obliged under law to do.

15. The appellant oil company and respondent no.1 (writ petitioner) are in a vertical agreement, the appellant oil company being an instrumentality of State and respondent no.1 (writ petitioner) being an ordinary citizen. Their relationship is to be governed by the terms of the agreement and not by fundamental rights as per law appealable in India. But it is settled law that in a vertical contract, the principal being in a dominant position is expected to act fairly in every sphere. The narration of events in the affidavit of Kalpana Misra is telltale to the effect that there is some gap somewhere which has not come on record. When law section of the appellant company okayed the matter and the higher authorities of the oil company opined to treat the complaint filed by Swati Rai, respondent no.3 as closed, it was not known and not on record as to why again the matter was brought to fore without any rhyme and reason that too by giving personal visit to the house of Swati Rai, respondent no.3 without any notice to respondent no.1 (writ petitioner).

15.1. In such a matter the appellant oil company should have drawn the line when to stop and what to do. The best course available to the oil company as discussed *supra* was to direct Swati Rai, respondent no.3 to get her grievance redressed in proper Court of law and return to them with the order of the Court.

Though respondent no.1 (writ petitioner) acted fairly and impleaded Swati Rai both in the writ petition and in the appeal, she did not turn up to offer her version of the story and that itself tells a lot about the intention she nurtures and about her seriousness in redressing her grievance.

16. Notwithstanding our findings *supra*, let us assume for the sake of argument that there has been due observance of the principle of natural justice. Even then is it a matter of botheration of the appellant to step into the shoe of Swati Rai, respondent no.3. Our answer is “No”. Swati Rai, respondent no.3 having alleged to have suffered a personal injury, it was open for her to fight it out in competent Court of law. If she would have provided the appellant oil company order of a competent Court to show that respondent no.1 (writ petitioner) has defrauded her, then the oil company (appellant) was well within its power to take appropriate action against respondent no.1 (writ petitioner) after issuing due notice of show cause to him. Here Swati Rai, respondent no.3 has filed bald complaints without any proof against the respondent no.1 (writ petitioner). Non-objection of respondent no.1 (writ petitioner) to the allegation of Swati Rai, respondent no.3 during face to face meeting has misconceivedly been taken as an evidence against respondent no.1 (writ petitioner). The notarial cancellation of partnership deed and registered revocation of power of attorney, tendered by the respondent no.1 (writ petitioner) has not at all been given due weightage in course of the enquiry.

17. We are, therefore, constrained to hold that the decision arrived at by the appellant oil company vide annexure P-12 is a decision based on no evidence at all. We are conscious of the fact that the competent authority of the appellant sans

judicial or quasi judicial training may not know whether to write an order following inductive or deductive method. Such a lacunae is condonable. But any order based on no evidence is certainly a glaring defect in the process of decision making, which is amenable to judicial review.

18. In consequenti, we affirm the order passed by Hon'ble Single Judge and direct the appellant oil company to issue LPG distributorship in favour of the respondent no.1 (writ petitioner) within a period of 10 (ten) days hence.

19. Accordingly, the appeal is dismissed but without cost.

20. Pronounced in open Court on this day i.e. 11th day of May, 2023.

21. Urgent Photostat certified copy of this Judgement, if applied for, be given to the parties on completion of usual formalities.

I agree.

(Partha Sarathi Sen, J.)

(Chitta Ranjan Dash, J.)