

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **O.M.P. No.131/2010**

5th March, 2010

M/S A.A.U.I.SERVICE STATION & ANR.

...Petitioner

Through: Mr. Puneet Bajaj, Advocate.

VERSUS

M/S INDIAN OIL CORPORATION & ANR.

...Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

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JUDGMENT (ORAL)

VALMIKI J.MEHTA, J

I.A.2702/2010 (Exemption) in OMP No. 131/2010

Exemption sought is granted subject to all just exceptions.

Application is disposed of.

OMP No. 131/2010

1. By this petition under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner challenges the impugned Award dated 1.12.2009 passed by the sole arbitrator. The disputes which arose between the parties

were on account of the fact that the petitioner purchased various products/goods from the respondent Indian Oil Corporation and did not make the payment thereof for the sum of Rs.91,79,021/-. and only a part payment of Rs.10 lacs was made.

2. Before the Arbitrator, there were principally two issues. The first issue was the claim of the respondent/claimant for recovery of money for the value of the goods supplied and the second issue was with respect to the Counter-Claims of the present petitioner, respondent in the arbitration proceedings, claiming that since the respondent herein had failed to give an alternate site for the petrol pump after closure of the petrol pump in the Ridge Road, the petitioner was entitled to damages and losses which they suffered quantified at Rs.24 lacs.

3. By the impugned Award, the Arbitrator has allowed the claim of the claimant/respondent herein/Indian Oil Corporation with respect to the value of goods which were received by the petitioner. It is not disputed and it is borne out from the arbitration record that the present petitioner as buyer received petroleum products worth Rs.91,79,021/- from the respondent and did not pay for the same except an amount of Rs.10 lacs. Accordingly, the Arbitrator has awarded an amount of Rs.81,79,021/- to the petitioner.

4. The scope for hearing of objections under Section 34 is now well settled. An Award can be set aside if the Award is illegal i.e beyond the law

of the land, or is violative of the contractual provisions or the findings and conclusions are so perverse that it shocks the judicial conscience. In the present case, I do not see any illegality or perversity whatsoever because if the petitioner did take the petroleum products, it was therefore bound to pay for the same. The Arbitrator in this regard has held as under:

“IV. That the terms and conditions governing the contractual relationship between the parties is governed by the Dealership Agreement (“Agreement”). After careful consideration of the aforesaid, it is clear that provisions of Clauses 44 and 47 of the Agreement clearly impose a strict obligation on the respondents to make good the losses suffered by the claimants due to non-observance by the dealer of the provisions of the Agreement. Clause 47 specifically provides that the dealer shall be solely responsible to the corporation and indemnify the corporation for any loss suffered by it due to non observance and default by the dealer. This is also substantially supported by Clause 10 and 33 of the Agreement. Clause 10 of the Agreement provides that the corporation will make delivery of products to dealer against payment in cash or by demand draft and that the dealer shall settle all bills punctually within the credit period allowed without any deductions whatsoever. Clause 33 of the Agreement further provides that the grant of credit by the dealer to its customers shall be at dealer’s risk and shall in no way affect the dealer’s liability towards the Corporation i.e. the Claimant. Hence, a combined reading of these provisions makes it amply clear that the claimant is entitled to Claim No.1 as the amount for the products lifted by the respondents. As per submission on behalf of Respondents, the respondent No.2 has been missing for many years and is untraceable. It is for the aforesaid reason that he has not been represented in this arbitration and only respondent No.1 & 3 have been represented. However, Clause 45 of the Agreement stipulates that it shall be a paramount condition of the Agreement that the both partners shall take active part in the management and running of the retail outlet and shall personally supervise the same. Clause 7 & 8 of the Partnership Deed dated 8th January 1998 executed between respondents 2 & 3 also proves that they both are equal active partners of respondent no.1. Therefore, all respondents are equally, jointly and severally liable to the claimant. It is an admitted fact that the respondents placed various orders for supply of the products

with the claimant through various indents against which the claimant duly supplied and delivered the goods. During the month of Dec. 1999 and Jan. 2000, the respondents uplifted various quantities of lubricants from the claimant's supply locations at Shakur Basti and Bijwasan and against the same issued various post dated cheques amounting to Rs.91,79,021/- (Ninety one Lakhs seventy nine thousand twenty only), a fact which has not been denied by the respondents. It is also an admitted fact that the various cheques issued by the respondents against the aforesaid supplies were dishonored against which criminal proceedings were initiated by the claimant. However, no payments whatsoever have been made by the respondent's No. 1 & 3 till date, except a part installment of Rs.10 Lakhs. This also proves that the said amount as claimed by the claimant has been admitted by the respondents as being due and payable to the claimant. The aforesaid amount of Rs.10 Lakh is adjusted against the final amount payable to the claimant. Henceforth, the claimant is entitled to and the respondents are liable to pay an amount of Rs.81,79,021/- (Eighty one lakhs, seventy nine thousand twenty one) towards the cost of lubricants supplied by the claimant with compound interest @ 10% p.a. on the principal amount starting from 24.12.1999 till date of payment."

No fault can be found with the aforesaid reasoning in terms of the law under Section 34 because I fail to understand as to how a buyer can refuse to pay money for the products which he has purchased, and that too of a substantial amount. The Award for Rs.81,79,021/- being the balance payable, is therefore justified.

5. Another issue dealt with by the Arbitrator is with regard to the Counter-Claims of the present petitioner in the arbitration proceedings and which were with respect to alleged losses being caused to it on account of closure of the petrol pump. Once again, I fail to understand, how an issue of Counter-Claims can in any manner take away liability of the petitioner as

buyer of the goods and for which it was bound to make the payment. In fact, the Counter-Claims were totally baseless and have been rightly dismissed by the Arbitrator by holding as under:-

“IX. That the counter claims of the respondents have been considered very carefully by me. A perusal of the concise statement of facts filed by the respondents itself states that the claimant and the respondent for the last 38 years shared an extremely good financial as well as a working relationship. As a matter of fact which is stated in para 1 of the above statement, the respondent No.1 got an award for the highest All India Sales of lubricants in years 1997, 1998 and 1999. It is also important to note the respondents themselves are stating that Pump dealership was closed pursuant to the directions of the Hon’ble Supreme Court on 30.08.999. it is the respondent’s case that the immediate and sudden closure of the petrol pump resulted in huge losses to the respondents and due to the sudden closure the respondents lost all their valuable clientele. Against the background of facts admitted by respondents themselves that the closure of the pump was as per the directions of the Hon’ble Supreme Court’s decision in the matter of M.C.Mehta Vs. Union of India and ors, as a consequence to which they suffered losses of 24 Lakhs (which is claim No.a), I find it unreasonable and unwarranted to claim loss of expected income of 24 lakhs from the claimant who had no role whatsoever to pay in the closure of the pump. The contention of the respondents that the claimants were the cause of their misery and suffering because of the malicious attitude of the claimant in not allotting in alternate site is also not justified. It is to be appreciated that the allotment of an alternate site to the respondents is not entirely within the powers of the claimant. The said allotment is right and the prerogative of the L & DO against whom the respondents themselves have filed a writ petition in the Hon’ble High Court of Delhi which is pending. It may also be appreciated that the closure of the pump was not only against the business interests of the respondents but also the claimant. Therefore to hold the claimant responsible for the loss of income, which occurred due to the directions of the Hon’ble

Supreme Court is unreasonable and therefore respondents counter claim No.a stands rejected.

X. For the same reasons as detailed in Para IX above, I also reject respondents counter claims no.b, c, d, e, f, g and h. it is reiterated that the claimant can in no way be held responsible for the closure of the said petrol pump as it was ordered to be closed vide Hon'ble Supreme Court decision in the matter of M.C. Mehta Vs. Union of India, and ors. Therefore to hold the claimant liable in any way for the same is, in my opinion, patently unfair and unreasonable.”

6. In view of the above, I do not find any illegality or perversity or violation of the contractual provisions in the impugned Award. The present petition is therefore dismissed with costs of Rs.15,000/- payable by the petitioner to the Registrar General of this Court for being utilized towards Juvenile Justice.

7. No other issue or argument was argued or pressed by the counsel for the petitioner.

With the aforesaid observations, the petition stands disposed of.

I.A.2703/2010 (Stay) in OMP No. 131/2010

8. Since the petition has been disposed of, this application does not survive and is disposed of as such.

VALMIKI J. MEHTA, J

March 05, 2010

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