IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.09.2015

DELIVERED ON : 08.10.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.589 of 2015
&
M.P.Nos.1 and 2 of 2015

T. Natarajan ...Appellant

vs.

1. Indian Oil Corporation Limited
rep. by its Managing Director
G-9, Ali Yavar Jung Marg
Bandra East
Mumbai-400 051.

2. Senior Divisional Retail Sales Manager
Indian Oil Corporation Ltd.,
Marketing Division Office
"Trichy", 3rd Floor,
B-35, Shastri Road
Thillai Nagar
Trichy-620 018. ...Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 17 April 2014 made in W.P.No.10026 of 2013 on the file of this Court.

W.P.No.10026 of 2013 :

Writ petition praying to writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in ref: TCHDO/VLP12/CORDER dated 13.3.2013 and quash the same and consequently direct the respondents to continue the dealership and sales and supply of the petitioner.

For Appellant : Mr. Sathish Parasaran

For Respondents : Mr.T.R.Rajagopalan
Senior Counsel
for Mr. R. Ravi

JUDGMENT

K.K.SASIDHARAN, J

Introductory:

Though the appellant succeeded before the Arbitrator and got an award setting aside the order terminating his petroleum dealership, the failure to pass a consequential order in express terms directing resumption of supply and the direction given by the learned Single Judge in O.P.No.358 of 2012, while confirming the award to consider the question of continuation of dealership and resumption of supplies, appears to have been taken advantage of by the respondents which culminated in passing an order rejecting the representation submitted by the appellant to restore dealership and resume supply of petroleum products not withstanding the fact that he is entitled to continue the outlet and resumption of supplies consequent to the award, without any formal permission from the Corporation.

The facts:

2. The appellant along with another person constituted a partnership by name M/s. Lakshmi Service Station. The first respondent (hereinafter referred to as "the Corporation") appointed M/s. Lakshmi Service Station as its retail dealer at Kotteripattu in the District of Tindivanam. Subsequent to the death of the other partner, the Corporation recognised the appellant as the sole proprietor of the retail dealership.

3. While the appellant was running the outlet, the Deputy Inspector of Labour (Weight and Measures) inspected the retail outlet and found that totalizer seal was broken. The statutory authority made an endorsement on 1 August 2008 directing the appellant to re-stamp immediately. The appellant appears to have continued the sale even after such endorsement made by the Deputy Inspector of Labour (Weight and Measures). Thereafter the petroleum outlet was inspected by the sales officer of the

Corporation. Since the appellant failed to stop the sale of petroleum products even after the direction given by the Deputy Inspector of Labour, the sales officer discontinued the supply to the outlet. It was followed by a show cause notice dated 27 August 2008 calling upon the appellant to show cause as to why action should not be taken on account of the violation of Marketing Discipline Guidelines, 2005. The appellant in his explanation narrated the true facts and requested not to proceed further. The Corporation after giving reasonable opportunity to the appellant, passed an order on 11 March 2009 terminating the dealership.

4. The appellant by invoking clause 67 of the dealership agreement moved the High Court for appointment of Arbitrator. The Honourable The Chief Justice by order dated 13 November 2009 directed the Corporation to appoint an Arbitrator. The Corporation in turn appointed the Arbitrator. The sole Arbitrator passed an award on 14 October 2011 upholding the claim made by the appellant.

5. The award dated 14 October 2011 was challenged by the Corporation before this Court in O.P.No.358 of 2012. During the currency of the Original Petition, the appellant filed an interim application to resume supply. The said application was not taken up immediately and it was heard along with the original petition.

6. The learned Single Judge while dismissing the original petition and upholding the award, granted liberty to the appellant to approach the Corporation with a request to continue the dealership and for supply of petroleum products. The representation submitted by the appellant was considered by the Corporation in the light of the award dated 14 October 2011 and the order dated 23 November 2012 in O.P.No.358 of 2012 and Application No.447 of 2012.

7. The Corporation passed an order dated 13 March 2013 rejecting the request primarily on the ground that there was no mention in the award or order passed by the High Court that the termination was illegal.

8. The order dated 13 March 2013 was challenged before the Writ Court in W.P.No.10026 of 2013.

9. The learned Single Judge arrived at a conclusion that there is no illegality in the order passed by the Corporation.

Feeling aggrieved by the order dated 17 April, 2014 in W.P.No.10026 of 2013, the unsuccessful writ petitioner is before this Court.

Submissions:

10. The learned counsel for the appellant contended that the Arbitrator has already absolved the appellant of the charge of tampering the totalizer seal and as such the Corporation erred in rejecting the representation to restore the dealership and resumption of supplies. According to the learned counsel, in view of the dismissal of the application filed by the Corporation to set aside the award, there was no other alternative than to resume supply to the appellant. It was further contended that the learned Single Judge without considering the background facts, dismissed the writ petition with a simple observation that there is no illegality in the order under challenge.

11. The learned Senior Counsel for the Corporation submitted that there was no consequential order passed by the Arbitrator while allowing the claim made by the appellant. The learned Senior Counsel contended that the learned Single Judge by order dated 23 November 2012 in O.P.No.358 of 2012 called upon the Corporation to take a decision in the matter of continuation of dealership. The Corporation took a decision taking into account the award and the order passed by the learned Single Judge. In view of the absence of a specific direction either by Arbitrator or by the learned Single Judge, it cannot be said that the Corporation erred in passing the order impugned in the writ petition.

Analysis:

12. The appellant has been running the petroleum outlet as the Authorised dealer of the Corporation with effect from 31 August 1989 without any adverse records.

13. The documents available on record would show that the charge of tampering with the totalizer seal made the Corporation to initiate disciplinary action against the appellant by invoking the Marketing Discipline Guidelines 2005. The order terminating the dealership was passed on 11 March 2009. Since the dealership agreement contained a provision for Arbitration, the matter was referred to the Arbitrator pursuant to the order dated 13 November 2009 in O.P.No.282 of 2009.

14. The only issue before the Arbitrator was as to whether

the Corporation was correct in terminating the dealership of the appellant.

15. The Arbitrator arrived at a finding that the breakage of totalizer seal calls for stern action. However, the Arbitrator was of the view that the appellant has already suffered substantially for more than two years on account of the closure of the retail outlet and therefore a lenient view should be taken in the matter. The benefit of doubt was given to the appellant. The Arbitrator upheld the claim made by the appellant. In short, the termination of the dealership was set aside.

16. The Corporation challenged the award passed by the Arbitrator before this Court by invoking the provisions of the Arbitration and Conciliation Act. While the Original Petition filed by the Corporation under Section 34 of the Arbitration and Conciliation Act 1996 was pending before the Original Side of this Court, the appellant moved an interlocutory application to resume supplies. The application was for the purpose of granting interim relief so as to enable the appellant to run the outlet during the currency of the original petition. It so happened that the interim application was taken up immediately and it was considered along with the main application challenging the award. The learned Single Judge while confirming the award, instead of passing a consequential order to the Corporation to resume supplies granted liberty to the appellant to submit a representation for continuation of dealership and resumption of supplies. The Corporation was directed to consider the representation and pass appropriate orders.

17. The Corporation considered the direction given by the learned Single Judge as an opportunity to pass a fresh order not withstanding the confirmation of award.

18. It is true that neither the Arbitrator nor the learned Single Judge passed a consequential order directing the Corporation to resume supplies to the appellant. There is no need for such a direction in view of the award setting aside the order of termination. Since the order terminating the dealership was set aside, the Corporation has no other alternative than to resume supply. There is no need for a further request to be made by the appellant either for continuation of dealership or resumption of supplies. The supply was initially stopped on account of the order passed by the Sales Officer. Thereafter supply was permanently stopped pursuant to the order dated 11

March 2009 terminating the dealership. The moment the order terminating the dealership is set aside, the appellant is entitled to the supply of petroleum products.

19. The Corporation in impugned order took a position that though the Arbitrator was pleased to accept the claim made by the dealer, there was no specific finding that the termination was illegal. Even if there is no such finding, still the Corporation has no authority to pass an order of this nature more particularly on account of the dismissal of application to set aside the award by this Court.

20. The Corporation was well aware of the consequences of the award setting aside the order of termination. The memorandum of grounds in O.P.No.358 of 2012 would show that the Corporation clearly understood the nature of the award passed by the Arbitrator and its implications. The pleadings proceeds as if the Arbitrator erred in setting aside the order of termination. Such being the case, the Corporation cannot be heard to say that the termination would stand even after passing the award by the Arbitrator and the decree in O.P.No.358 of 2012 confirming the award. The fact that the Arbitrator has not given a finding that the termination is illegal would be a ground to file an application under Section 34 of the Arbitration and Conciliation Act but not a valid ground to pass an order afresh reiterating the earlier order of termination.

21. The application filed by the Corporation to set aside the award has already been dismissed by the learned Single Judge. The Corporation is now taking advantage of the liberty granted by the learned Single Judge while confirming the award to consider the representation. There is absolutely no need to submit a representation and passing orders thereon by the Corporation in view of the conclusiveness reached to the award setting aside the order of termination. Since the supply was stopped only on account of the order of termination of dealership, naturally supplies should resume immediately after the award and upholding the said award by the learned Single Judge. This aspect was not considered by the learned Single Judge. We are therefore of the view that the appellant must succeed.

Disposition:

22. In the result, the order dated 13 March 2013 on the file of the second respondent is set aside. The writ petition filed by the appellant is allowed. The first respondent is

directed to pass a consequential order pursuant to the award dated 14 October 2011 restoring the dealership of the appellant and resume supplies to the fuel station. Such exercise shall be completed within a period of one week from the date of receipt or production of a copy of this judgment.

23. In the upshot, we allow the intra court appeal. Consequently, the connected MPs are closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Tr/

To

1. Indian Oil Corporation Limited
rep. by its Managing Director
G-9, Ali Yavar Jung Marg
Bandra East
Mumbai-400 051.

2. Senior Divisional Retail Sales Manager
Indian Oil Corporation Ltd.,
Marketing Division Office
"Trichy, 3rd Floor, B-35, Shastri Road
Thillai Nagar, Trichy-620 018.

1 CC to Mr. R. Ravi, Advocate SR.No. 54665
+1cc to M/s.Satish Parasaran, Advocate Sr.55765 [4/11/2015]

W.A.No.589 of 2015

MG (CO)
PSI (03.11.2015)