

In the High Court of Judicature at Madras

Dated: 26.06.2015

Coram:

The Honourable Mr. SANJAY KISHAN KAUL, Chief Justice

Original Petition No. 222 of 2010

Jeevan Indane Gas Agency
Shop No.6, Door No. 32
Reddy Street, Villivakkam
Chennai 600 049
rep. by its Proprietor
Mr. G. Gengavarajan ... Petitioner

vs.

Chief Area Manager
Indian Oil Corporation Limited
Indane Area Office
500, Anna Salai
Teynampet, Chennai 600 018. ... Respondent

PRAYER : Petition filed under Section 11 of the Arbitration and Conciliation Act, 1996, for appointment of an Arbitrator to resolve the dispute between the parties arising out of Distributorship Agreement dated 27.05.2005.

For Petitioner : Mr. S. Thanka Sivan
For Respondent : No Appearance

O R D E R

The petitioner, a sole proprietorship concern, was given distribution rights of Indane Gas by the respondent under the Distributorship Agreement dated 27.05.2005. This

<https://hcservices.ecourts.gov.in/hcservices/Agreement> contains an Arbitration Clause 37(a), which reads as under:

" All questions, disputes and differences arising under or in relation to this Agreement shall be referred to the sole arbitration of the Director (Marketing) of the Corporation. If such Director (Marketing) is unable or unwilling to act as the sole arbitrator, the matter shall be referred to the sole arbitration or some other Officer of the Corporation by such Director (Marketing) in his place, who is willing to act as such sole arbitrator. It is known to the parties herein that the Arbitrator appointed hereunder is an employee of the Corporation and may be shareholder of the Corporation. The Arbitrator to whom the matter is originally referred, whether the Director (Marketing) or Officer, as the case may be, on his being transferred or vacating his office or being unable to act for any reason, the Director (Marketing) shall designate any other person to act as arbitrator in accordance with the terms of the Agreement and such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also the term of this Agreement that no person other than the Director (Marketing) or the person designated by the Director (Marketing) as aforesaid shall act as Arbitrator. The award of the Arbitrator so appointed shall be final, conclusive and binding on all the parties to the Agreement and provisions of the

Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the Rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause."

2. It is the case of the petitioner that there was a mass transfer of 13990 LPG consumer connections, who were earlier enlisted with the earlier distributor M/s. Engineering Enterprises. The respondent took disciplinary action against the earlier distributor. This required verification of all the data, but despite the fact that the genuineness of the customers was sought to be questioned, against which the petitioner made a representation on 21.07.2009, the respondent vide a letter dated 11.09.2009 imposed penalty on the petitioner and the subsequent communications did not sort out the issue.

3. The petitioner invoked the jurisdiction under Section 9 of the Arbitration and Conciliation Act, 1996 by filing a petition in O.A.No.1011 of 2009, wherein interim relief enured for the benefit of the petitioner.

4. The petitioner, in order to resolve the disputes, invoked the arbitration clause vide letter dated 21.09.2009, but there is stated to be no reply to the same.

It is, thereafter, that the present petition was filed under Section 11 of the said Act.

5. The matter is quite old, being admitted on 19.03.2010, but no counter has been filed. On notice being issued, the respondent had entered appearance and the parties obtained instructions to resolve the disputes through mediation, for which they were asked to appear before the Mediator on 18.08.2014. Two sittings of mediation were held. On 05.06.2015, it was noticed that there was no reply of the Mediator available. That Mediation Report is now available, which says that the parties absented themselves from the mediation proceedings and thus, the mediation was a non-starter. The respondent remained unrepresented before this Court on 05.06.2015 and the name of the respondent has now been printed in the cause list.

6. On hearing the learned counsel for the petitioner and perusing the petition and the documents on record, it is apparent that the parties had decided to resolve the disputes through arbitration vide arbitration clause in the Distributorship Agreement, disputes have arisen inter se the parties and the jurisdiction is that of the High Court of Madras. The allegations in the petition remain unrebutted.

7. In view of the aforesaid, I appoint **Mr. Murali Sundaram**, retired District Judge, residing at Door No.14-A/20, Balaji Colony Main Road, Velacheri, Chennai 600042
<https://hcservices.ecourts.gov.in/hcservices/>
(Cell no.9894392240), as the Sole Arbitrator, to enter upon

the reference and adjudicate the disputes inter se the parties. As agreed by the learned counsel for the petitioner, the arbitration proceedings will be conducted under the aegis of the Madras High Court Arbitration Centre and the parties will be governed by the Rules of the Centre.

8. The original petition is, accordingly, allowed, leaving the parties to bear their own costs.

Sd/ (S.K.K., CJ.)
26.06.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/05.08.2015

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.

WEB COPY