

In the High Court of Judicature at Madras

Dated : 25.10.2016

Coram :

The Hon'ble Mr.Sanjay Kishan Kaul, Chief Justice

O.P.No.628 of 2016

Bharat Petroleum Corporation Ltd.
Rep. by its Territory Manager (Retail)
Shri V.Arul Muthunathan.

.. Petitioner

-VS-

1.Bharat Petroleum Corporation Ltd.,
Rep. by its Director (Marketing),
Mr.S.Ramesh.

2.Commissioner,
Udumalpet Municipality,
Udumalpet, Tiruppur District.

.. Respondents

Petition filed under Section 11 (4) of the Arbitration and Conciliation Act, 1996, to appoint an Arbitrator to hear and decide the dispute between the parties arising out of the lease deed dated 19.01.2011.

For Petitioner : Mr.O.R.Santhanakrishnan

For Respondents : Mr.A.S.Thambuswamy

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ORDER

A Lease Deed was executed on 19.01.2011 between the Municipal Council of Udumalpet / second respondent and the petitioner in respect of a land measuring 1262 sq.mts. situated in T.S.No.3, Ward D, Block No.4 Municipal Ward No.11 (Kanakampalayam Village) S.F.No.245H Part of Udumalpet Municipality, Udumalpet Taluk, Tiruppur District, for a period of nine years at the rate of rents specified for a three sets of three years each. In the currency of the lease, a letter was sent by the second respondent to the petitioner dated 04.03.2016 alleging that the second respondent was incompetent to create the lease for nine years and thus, the lease of the land to run one retail outlet, two pumps, was not competent and it should be treated as if the lease expired on 31.03.2013 on the expiry of the first three years period and that no steps were taken to renew the lease. This was replied to by the petitioner-Corporation as they had a registered lease deed in their favour for a period till 31.03.2019. The second respondent replied to vide letter dated 23.03.2016 not accepting the position.

2.The petitioner-Corporation then filed W.P.No.13585 of 2016 under Article 226 of the Constitution of India seeking quashing of the

impugned order dated 23.03.2016 and obtained an interim protection by the order dated 12.04.2016. The writ petition was partly allowed on 15.06.2016, with liberty to the second respondent-Municipality that if the land in question is required for a public interest, fresh notice could be issued.

3.Fresh show cause notice was issued by the second respondent-Municipality dated 20.06.2016 as to why the land cannot be resumed for public purpose. It was disputed by the Corporation, but a final adverse order was passed on 05.07.2016 by the second respondent.

4.The aforesaid lease deed contains an arbitration clause, which reads as under:

"III. (d) Any dispute and/or difference of any nature what so ever or regarding any right or liability act, omission on account of any of the parties hereto arising out of or in relation to this agreement shall be referred to the sole arbitration of the Director (Marketing) of the Corporation, or of some officer of the corporation who may be nominated by the Director (Marketing). It is known to the parties to the Agreement that the Arbitrator so nominated is an employee of the corporation and may be a shareholder of the corporation. In the event of the Arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable act for any

reason, the Director (Marketing) as aforesaid at the time of such transfer or vacation of office or inability to act, may designate another officer of the corporation to act as Arbitrator in accordance with the terms of the Agreement. Such person shall be entitled to proceed with the reference from the point at which it was left by his predecessor. It is also a term of this agreement that no person other than the director (marketing) or a person nominated by such director (marketing) of the corporation as aforesaid shall act as Arbitrator hereunder. The award of the arbitrator as appointed shall be final, conclusive and binding on all parties to the agreement, subject to the provisions of Arbitration and Conciliation Act, 1996 or any other statutory modification of or re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause."

5. The petitioner-Corporation, however, realised that in view of the amendments to the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the said Act'), dated 23.10.2015, the Designated Arbitrator could not act as an Arbitrator and thus, invoked the arbitration clause vide letter dated 06.07.2016 for appointment of an Arbitrator, whereafter the present petition under Section 11 (4) of the said Act has been filed.

6.The principal contention of the second respondent in so far as the jurisdiction of this Court is concerned is that the invocation is not in terms of the arbitration clause and in fact, the learned counsel states that the petitioner should first have nominated their Arbitrator. The other matters on merits are not to be examined by this Court.

7.I am of the view that the defence raised to the reference of disputes to arbitration is not sustainable as the petitioner acted as such in view of the amendment to the said Act. Thus, the disputes are liable to be referred to arbitration.

8.Learned counsel for the second respondent did seek to raise the issue of where the arbitration should be and that it should be conducted at Udumalpet, but then it is pointed out that the Designated Arbitrator was based in Chennai and thus, the second respondent can hardly have any objection to the arbitration proceedings being conducted at Chennai. In fact, the first respondent impleaded by the petitioner is superfluous, as it is the petitioner entity itself which has been impleaded through its Director (Marketing) because he was the Designated Arbitrator.

9.I am, thus, of the view that the Arbitrator has to be appointed by this Court in the aforesaid facts and circumstances, as disputes have arisen inter se the parties, the disputes are governed by an arbitration clause and the jurisdiction is of this Court.

10.I, thus, appoint, as proposed and agreed, **Mrs.Justice Chitra Venkataraman, a retired Judge of this Court**, as the Sole Arbitrator to enter upon the reference and adjudicate the disputes inter se the parties. As requested, 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.

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

(S.K.K., CJ.)
25.10.2016

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Note: Mark a copy to

(i) The Addl. Registrar-Vigilance
Madras High Court Arbitration Centre,
Madras High Court Campus, Chennai.

(ii) The Arbitrator, as referred above.

The Hon'ble Chief Justice

(sra)

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