

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.07.2016

Coram:

The Hon'ble Mr.Justice A.SELVAM
and
The Hon'ble Mr. Justice P.KALAIYARASAN

O.S.A.No.315 of 2010
and
M.P.No.1 of 2010

1. The Divisional Retail Sales Manager
Indian Oil Corporation Limited
Trichy Divisional Office
Women SIDCO Industrial Estate
Vazhavanthankottai
Trichy
2. The Chief Divisional Retail Sales Manager
Indian Oil Corporation Limited
Chennai Divisional Office
500, Anna Salai, Teynampet
Chennai 18

... Appellants

vs.

1. M/s.Babu Filling Station
Rep.by its Proprietor
Mr.N.N.Babu
1268, Cuddalore Road
Vridhachalam
Cuddalore District

2. Mr.A.S.Raveendran
Sole Arbitrator
State Institutional Sales Manager
(Lubes)
Indian Oil Corporation Ltd.,
Tamil Nadu State Office
No.139, Mahatma Gandhi Road
Chennai 34.

.. Respondents

This Appeal is preferred under Order XXXVI Rule 1 of O.S.Rules r/w Clause 15 of the Letters Patent Act against the order of this Court dated 15.2.2010 in O.P.No.585 of 2009.

O.P.No.585 of 2009:Petition Under Section 34 of the Arbitration and Conciliation Act 1996 to set aside the Award passed by the third Respondent in BFS/ARB dated 22/7/2009.

For Appellant : Mr.Abdul Hameed for
M/s.Anand Abdul

For Respondents : Mr.V.Raghavachari for R1
R2 - Arbitrator

JUDGMENT

(JUDGMENT OF THE COURT WAS DELIVERED
BY A.SELVAM, J.)

Challenge in this Original Side Appeal is to the order dated 15th day of February, 2010 passed in O.P.No.585 of 2009 by the learned Single Judge of this Court.

2. The appellants as well as the first respondent herein have entered into an agreement dated 27.3.2003, wherein, the first respondent has consented to lease out the premises mentioned therein on a monthly lease of Rs.3,500/- in favour of the appellants. On 27.6.2003, both the appellants and first respondent have entered into a dealership agreement and subsequently the appellants have supplied Petroleum. On 24.12.2005, a random check up has been conducted by the officials of the appellants in respect of Petroleum and accordingly proper samples have been taken and the same have been subjected to proper analysis and ultimately found that the first respondent has made adulteration, but alleged adulteration has been orally informed on 4.1.2006 and the written communication has been sent on 6.1.2006 and subsequently, dealership has been terminated and thereafter the dispute between the appellants and first respondent has been referred to an arbitrator. The arbitrator, after giving proper opportunities to both parties, has passed the impugned award dated 22.7.2009 and in order to set aside the same, the first respondent herein, as petitioner, has filed O.P.No.585 of 2009 on the file of this Court.

3. The learned Single Judge, after considering the rival submissions made on either side, has given a finding to the effect that the appellants have not complied with statutory formalities and ultimately allowed Original Petition No.585 of

2009 and thereby set aside the award dated 22.7.2009. Against the order passed by the learned Single Judge, the present Original Side Appeal has been preferred.

4. The learned counsel appearing for the appellant has raised the following points:

(i) It is an admitted fact that on 24.12.2005, necessary samples have been taken in the presence of the first respondent and the samples have been subjected to lab test and lab report has been received on 29.12.2005 and on 4.1.2006, an oral communication has been sent and on 6.1.2006, written communication has been sent to the first respondent and therefore, the question of limitation does not arise and the learned Single Judge has failed to look into the same.

(ii) As per the lab report, Research Octane Number Minimum is 88.0, whereas the samples contained only 85.1 and under such circumstances, the Court can easily infer that the first respondent herein has made adulteration in Petroleum and the learned Single Judge has failed to consider the same.

5. As a repartee to the contentions put forth on the side of the appellants, the learned counsel appearing for the first respondent has contended that even though lab report has been received by the appellants on 29.12.2005, the first respondent has received the same on 1.3.2006 along with the termination order and since the lab report has been sent beyond the period of limitation, the termination order itself is erroneous and the same has not been considered by the arbitrator and the learned Single Judge, after considering the legal infirmities found on the side of the appellants, has rightly set aside the award in question and therefore, the order passed by the learned Single Judge does not require any interference.

6. It is an admitted fact that on 27.3.2003, an agreement of lease has come into existence between the parties. It is also equally an admitted fact that on 27.6.2003, another agreement has become emanated with regard to dealership. It is also an admitted fact that on 24.12.2005, a random check up has been done in the presence of the first respondent and consequently, samples have been taken and the same have been subjected to analysis.

7. As per the contentions put forth on the side of the appellants, the lab report has been received on 29.12.2005. The specific case put forth on the side of the appellants is that on 4.1.2006, an oral communication has been sent to the first respondent, however, a written communication has been sent on 6.1.2006, but the said factual aspects have been clearly denied

on the side of the first respondent by way of saying that lab report along with the termination order has been sent only on 1.3.2006.

8. At this juncture, the Court has to look into Clause 8 (6) of the Notification dated 19.12.2005 issued by the Ministry of Petroleum and Natural Gas, published in Gazette of India, Extraordinary, wherein it is mentioned like thus:

"(6) The authorised officer shall communicate the test result to the dealer or transporter or concerned person and the oil company, as the case may be, within five days of receipt of test results from the laboratory for appropriate action."

9. Even a plain reading of Clause 8(6), it is made clear that within five days from the date of receipt of lab report, the same should be communicated to either of the persons mentioned therein.

10. In the instant case, it is an admitted fact that the lab report has been received on 29.12.2005. Even assuming without conceding that an oral communication has been sent on 4.1.2006, there is a clear delay of one day. The specific case put forth on the side of the appellants is that written communication has been sent to the first respondent on 6.1.2006. Even the date of 6.1.2006 has been taken into consideration, there is a delay of three days and no proper explanation has been given on the side of the appellants.

11. As adverted to earlier, as per Clause 8(6) of Notification dated 19.12.2005 issued by the Ministry of Petroleum and Natural Gas, published in Gazette of India, Extraordinary, Lab report should be communicated to the person concerned within a period of five days from the date of receipt of the same from the laboratory, but in the instant case, it has been belatedly done. Considering the said aspect, it is made clear that the appellants have not complied with the statutory obligation enjoined upon it.

12. The arbitrator has not considered the delay which occurred in sending the lab report. The learned Single Judge, after analyzing the Clause 8(6) of the Notification dated 19.12.2005, has rightly found that there is an unexplained delay on the part of the appellants and on that ground, set aside the award in question.

13. The second point urged on the side of the appellants is that the first respondent has done adulteration.

14. As rightly pointed out on the side of the appellants, in the lab report in Serial No.7, it is mentioned that Research Octane Number, Minimum is 88.0, but the samples have shown 85.1. Further, the samples taken from the Truck has shown 89.4. Therefore, this Court is of the view that lab report shows that the samples contained adulteration.

15. The learned counsel appearing for the appellants has also drawn the attention of the Court to Section 20 of Petroleum Act, 1934, wherein it is stated that if the owner of any petroleum or his agent is not satisfied with the result of test of petroleum, within seven days from the date of receipt of the same, he is empowered to take appropriate steps for conducting retest.

16. In the instant case, it has already been pointed out that even though the lab report has been received on 29.12.2005, the same has not been sent to the first respondent within the stipulated period and no explanation has been given on the side of the appellants. Since the appellants have not followed the statutory duty cast upon it, it is very clear that the award passed by the arbitrator is defective.

17. The learned Single Judge, after considering the period of limitation, has rightly set aside the award and in view of the discussions made earlier, this Court has not found any error nor illegality in the order passed by the learned Single Judge and altogether, the present Original Side Appeal deserves to be dismissed.

In fine, this Original Side Appeal is dismissed. The order dated 15.2.2010 passed in O.P.No.585 of 2009 by the learned Single Judge of this Court is confirmed. No costs. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ajr
To

The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to M/S.Anand Abdul & Vinoth, Associates, Advocate Sr.39509
+1cc to M/S.V.Raghavachari, Advocate Sr.39083

O.S.A.No.315 of 2010

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