

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

% *Judgment pronounced on: 15th February, 2016*

+ **OMP No.478/2015 & I.A. No.19179/2015**

CAPTAIN GUMAN SINGH & SONS Petitioner
Through Mr.Kapil Joshi, Adv. with
Mr.Arun S.Bhati, Adv.

versus

INDIAN OIL CORPORATION LTD Respondent
Through Mr.Divjyot Singh, Adv. with
Mr.Anand Sree, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the objections under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the “Act”) for seeking setting aside of the impugned Arbitral Award dated 11th March, 2015. Along with the objections, the petitioner also filed two applications; one being I.A. No.19179/2015 under Section 151 CPC for stay and another being I.A. No.19180/2015 under Section 151 CPC for condonation of delay of 46 days in refiling the petition.

2. Both the parties have made their submissions on merit.

3. Brief facts of the case are that on 18th November, 1982 a dealership agreement (hereinafter referred to as “Agreement”) was executed between late Sh. Guman Singh who was the original allottee and proprietor of M/s Captain Guman Singh and Sons and the respondent, pursuant to which the

petitioner firm was appointed as the respondent's authorized dealer at Pali, Rajasthan for the retail sales/supply of kerosene for domestic purposes and light diesel oil.

4. In the year 2004, the proprietor of M/s Guman Singh and Sons, Sh.Guman Singh expired. In January, 2012 while investigating, certain alleged malpractices were found to be committed by the legal representatives of Guman Singh, one of whom is the petitioner herein, with regard to illegal sale of Blue Kerosene to Granite Industries in Jalore District, Rajasthan. As per the case of the respondent, it was discovered that after the death of Sh. Guman Singh, the dealership was operated *benami* without any prior approval or notice of reconstitution being served on the respondent, which was in gross violation of the terms of the Agreement.

5. Accordingly, a show-cause notice dated 10th January, 2012 was served on the petitioner directing him to address the aforementioned violations of the Agreement. The reply dated 13th February, 2012 of the petitioner was found to be unsatisfactory and the dealership in the name of M/s Guman Singh and Sons was terminated by letter dated 28th May, 2012.

6. Aggrieved by the said termination of the dealership, the petitioner referred the dispute to arbitration through sole Arbitrator, Sh. Premananda Jena (hereinafter referred to as "Tribunal"). Having heard both the parties, the Tribunal by award dated 11th March, 2015 dismissed the claim filed by the petitioner and upheld the termination of the Agreement.

7. The Tribunal observed that the dealership was managed by the legal heirs of late Sh. Mr. Guman Singh without reconstituting the firm or/and without receiving prior approval from the respondent. The respondent had

therefore rightfully terminated the Agreement as the said conduct was in gross violation of Clauses 13 and 16 of the Agreement.

8. Aggrieved by the award of the Tribunal, the petitioner has approached this Court under Section 34 of the Act for setting aside the award.

9. The contention of the petitioner is that the dealership be reinstated to the petitioner which was rejected by the Arbitral Tribunal. After termination, the petitioner is not getting the supply from the respondent.

10. The Tribunal had found that the Agreement is determinable in nature in terms of Clause 21, which entitles either party to terminate the Agreement by giving 30 days' notice in writing and without assigning any reason. Additionally, the Tribunal had held the termination to be lawful in view of the petitioner having contravened the terms of the Agreement.

11. Learned counsel for the respondent submits that under the dealership agreement it was the option of the respondent to authorize the petitioner, now coming through legal representatives of the deceased proprietor Sh.Guman Singh in the year 2004, to continue with the dealership. It is also stated that on investigation certain malpractices were found which are mentioned in the award of the Arbitral Tribunal. He submits that even otherwise, in view of the option, which lies with the respondent, the contract was validly terminated by it on 28th May, 2012. The petitioner is not enjoying any facility after the said date in terms of the dealership agreement dated 18th November, 1982. The said agreement now cannot be enforced under the law in order to restore the dealership as sought by the petitioner. Even if the termination of the agreement was found to be unlawful, the only relief which could have been granted in view of the issues raised by the

petitioner is damages/compensation for the period of notice as per the contract.

12. In *Manohar Lal (D) by LRs. v. Ugrasen (D) by LRs. and Ors.* (2010) 11 SCC 557, the Supreme Court held that the "Court cannot grant a relief which has not been specifically prayed by the parties". In *Bharat Amratlal Kothari v. Dosukhan Samadkhan Sindhi and Ors.* AIR 2010 SC 475, the Supreme Court held that, "Though the Court has very wide discretion in granting relief, the court, however, cannot, ignoring and keeping aside the norms and principles governing grant of relief, grant a relief not even prayed for by the petitioner".

13. I have considered the entire gamut of the matter and heard the learned counsel for the parties as well as gone through the award passed in the matter. The Tribunal has already referred various judgments in the said Award. The same are read as under:

- i. In the decision of the Supreme Court of India in *IOC v. Amritsar Gas Service*, (1991) 1 SCC 533, wherein it has been held that a dealership agreement containing a clause entitling either party to terminate the agreement with thirty (30) days' notice was determinable in nature, and therefore, in terms of Section 14(1) of the Specific Relief Act, 1963 (hereinafter referred to as "Specific Relief Act") a relief of restoration of dealership cannot be sustained. Section 14(1) (c) of the Specific Relief Act states that a **contract which is in its nature determinable cannot be specifically enforced**. It was further held that even if the termination of the agreement was illegal, the only relief which could be granted was the award of compensation for the period of notice.
- ii. A similar view was espoused by the Supreme Court in *E. Venkatakrishna v. Indian Oil Corporation and Ors.*, (2000) 7 SCC 764 wherein it was held that "all the arbitrator could do,

if he found the termination of the distributorship to be unlawful was to award damages, as any civil court would have done in a suit". The Appellant therein was appointed as a dealer of the first respondent to distribute liquefied petroleum gas and the dealership agreement therein contained a termination clause that the distributorship could be terminated if the dealer did any act which was prejudicial to the interests of the Respondent.

- iii. Further, even the relief of injunction sought by the Petitioner could not be granted as per the provisions of Section 14(1)(c) read with Section 41 (e) of the Specific Relief Act. The Division Bench of this Court in *Rajasthan Breweries Ltd v. The Stroh Brewery Company* AIR 2000 Delhi 450, held that "if it is found that a contract by its very nature is determinable, the same not only cannot be enforced but in respect of such a contract no injunction could also be granted and that is mandate of law". The aforementioned decision was followed by this Court in the later decisions of *Mittal Services v. Escotel Mobile Communications Ltd* AIR 2003 Delhi 410 and *Indian Railways Catering and Tourism and Corp. Ltd v. Cox and Kings India Ltd & Anr.* 2012 (1) ARBLR184 (Delhi)"

14. Under these circumstances, the relief of restoration of the dealership cannot be granted as it is rightly observed in the Award. As far as claiming of damages and compensation as provided in the contract is concerned, the petitioner has not pleaded or proved the same before the Arbitral Tribunal. Therefore, the said relief as pressed by the learned counsel for the petitioner cannot be allowed in view of the decisions of the Supreme Court in *Manohar Lal* (supra) and *Bharat Amrat Lal Kothari* (supra).

15. The objections filed by the petitioner are not sustainable on merit. The petition is accordingly dismissed.

16. Pending applications stands disposed of.

(MANMOHAN SINGH)
JUDGE

FEBRUARY 15, 2016

