

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM:

THE HON'BLE Mr.JUSTICE ABDUL QUDDHOSE

O.P. No.555 of 2013

M/s.T.Chinnasamy Chettiar & Sons,  
 HPCL Dealer (Terminated),  
 Rep. by its Managing Partner Mr.C.Natarajan,  
 124, Palani Road,  
 Udumalpet-642 126, Coimbatore District.  
 Also at No.51, Chathiram Street,  
 Udumalpet - 642 126, Coimbatore District. ... Petitioner

Versus

1. The Chief Regional Manager,  
 Retail and Constituted Attorney,  
 Hindustan Petroleum Corporation Ltd.,  
 No.18/3, Big Bazaar Street,  
 Coimbatore-641 001.
2. Mr.G.Hariharan (Sole Arbitrator)  
 Flat No.402 RESIDENCY Old No.3, 4 & 5,  
 New No.58, 59 & 60 (Opp.CLRI)  
 Sardar Patel Road, Chennai-600 113. ... Respondents

PRAYER: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 18.07.2011 passed by the Sole Arbitrator, the second respondent herein in the matter of arbitration between the petitioner and the first respondent corporation.

|                 |     |                                                |
|-----------------|-----|------------------------------------------------|
| For Petitioner  | ... | Dr.Ravichandran<br>for S.Satham                |
| For Respondents | ... | Mr.Vijayan for<br>M/s.Kingh & Partridge for R1 |
|                 | ... | No appearance for R2                           |

ORDER

The instant petition has been filed by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996, challenging the Award dated 18.07.2011, passed by the second respondent against the petitioner. The petitioner was a dealer with the first respondent Corporation and the dealership was terminated by the first respondent by its notice dated 20.07.2007.

2. Due to the termination of the dealership, disputes arose and the said dispute was referred to Arbitration. The claim made by the petitioner before the Arbitration was only for restoration of dealership. The learned Arbitrator after considering the materials available on record and after hearing the submissions of both the parties, passed an Award dated 18.07.2011, dismissing the claim of the petitioner.

3. Aggrieved by the Award dated 18.07.2011, the instant petition has been filed. The learned Counsel for the petitioner drew the attention of this Court to the findings of the learned Arbitrator in the impugned Award and submitted that the learned Arbitrator has not properly considered the expert opinion given by a Government Authority appointed by this Court pursuant to orders passed by this Court in an application filed by the petitioner under Section 26 of the Arbitration and Conciliation Act.

4. According to the learned Counsel for the petitioner, there was no tampering of the totalizer seal, whereas only a cut was found in the totalizer seal which happened accidentally without the knowledge of the petitioner. Therefore, according to the learned Counsel for the petitioner, the termination of the dealership is bad in law.

5. The learned Counsel for the petitioner drew the attention of this Court to the judgment of the Hon'ble Supreme Court in the case of ***Bharat Petroleum Corporation Vs. Jagannath and Company and others*** reported in ***(2013) 12 Supreme Court Cases 278***. He referred to the head note found in the said judgment and submitted that the restoration of dealership can be granted when the termination of dealership is illegal.

6. The learned Counsel for the respondent submitted that it is settled law that in a case of termination of dealership, no claim can be made for restoration of the dealership. He relied upon the two judgments of the Hon'ble Supreme Court namely ***Indian Oil Corporation Ltd Vs. Amritsar Gas Service and Others*** reported in ***1991 (1) SSC 533*** and ***E. Venkatakrishna Vs. Indian Oil Corporation limited*** reported in ***(2000) 7 SCC 764***. Both the judgments were also considered by the learned Arbitrator under the impugned Award. In both the cases, the Hon'ble Supreme Court has held that in case of termination of dealership, no claim for restoration of dealership can be made.

7. The learned Arbitrator has also considered each and every defence raised by the petitioner under the impugned Award. The grounds raised by the petitioner for challenge in the instant petition were duly considered by the learned Arbitrator. The issue regarding the totalizer seal was duly considered by the learned Arbitrator. The learned Arbitrator has given a categorical finding that the totalizer seal found in a cut condition is also a ground for termination of dealership. The learned Arbitrator has referred to clause 16 and clause 22 of the dealership agreement for arriving at the finding that cutting of the totalizer seal is also a ground for termination of dealership. Clause 16 of the dealership agreement reads as follows:

*“No repairs to the outfit shall be done by the dealer unless previously authorized by the Corporation in writing. The dealers shall not interfere with or attempt to adjust the outfit or any part thereof but shall notify the corporation immediately of necessity of any repairs or adjustment and thereby ensure that the outfit is in proper working order and delivery full and proper measure at all times. The dealer shall not operate the outfit while it is out of order.”*

Clause 22 of the dealership agreement reads as follows:

*“The dealer shall not add to or alter the premises layout or outfit in any manner whatsoever or place in or attach to any part of the said premises or the outfit any signature, pictures, handrails, advertisements or things of a similar nature, except*

*with the prior written approval of the corporation. If the dealer shall commit a breach of this clause, the corporation shall have the right without previous notice forthwith to terminate the agreement and/or to reinstate the premises layout and/or outfit to its/their former condition in all respects and the dealer shall pay the cost of such reinstatement to the corporation on demand, failing which the corporation may treat such amount as an arrear of a bail preferred by the corporation in terms of clause 10 of this agreement”.*

8. The learned Arbitrator has passed a reasoned Award and the decisions of the Hon'ble Supreme Court namely ***Indian Oil Corporation Ltd Vs. Amritsar Gas Service and Others*** reported in **1991 (1) SSC 533** and ***E.Venkatakrishna Vs. Indian Oil Corporation limited*** reported in **(2000) 7 SCC 764** cited supra, also do not permit restoration of dealership when it has been terminated. The learned Arbitrator has rightly rejected the claim of the petitioner since the termination was found to be valid and not arbitrary. The judgment relied upon by the learned Counsel for the petitioner in the case of ***Bharat Petroleum Corporation Vs. Jagannath and Company and others*** reported in **(2013) 12 Supreme Court Cases 278** cited supra is not applicable for the facts of the instant case since in that case the Hon'ble Supreme Court clearly held the termination of dealership to be arbitrary. But in the instant case the materials available on record do not lead to the inference that the

termination was arbitrary. The scope for challenge under Section 34 of the Arbitration and Conciliation Act is limited.

9. The Hon'ble Supreme Court in a Catena of decisions starting from ***Renusagar Power Company Ltd vs. General Electric Company 1994 Supp (1) SCC 644*** to the recent ***Associated Builders Vs DDA (2015) 3 SCC 49*** has held only under the following grounds the Arbitrator Award can be challenged under Section 34 of the Arbitration and Conciliation Act:

(a) *Procedure contemplated under Arbitration and Conciliation Act was not followed by the Arbitrator.*

(b) *The Arbitral Award is a non speaking Award.*

(c) *The Arbitrator has transgressed his jurisdiction.*

(d) *The Arbitral Award is in conflict with the public policy of India.*

(iii) *An award would be regarded as conflicting with the public policy of India if:-*

(a) *it is contrary to the fundamental policy of Indian law, or*

(b) *it is contrary to the interests of India,*

(c) *it is contrary to justice or morality,*

(d) *it is patently illegal, or*

(e) *it is so perverse, irrational, unfair or unreasonable that it shocks the conscience of the court.*

(iv) An award would be liable to be regarded as contrary to the fundamental policy of Indian law, for example, if

(a) it disregards orders passed by superior courts, or the binding effect thereof, or

(b) it is patently violative of statutory provisions, or

(c) it is not in public interest, or

(d) the arbitrator has not adopted a "judicial approach", i.e. has not acted in a fair, reasonable and objective approach, or has acted arbitrarily, capriciously or whimsically, or

(e) the arbitrator has failed to draw an inference which, on the face of the facts, ought to have been drawn, or

(f) the arbitrator has drawn an inference, from the facts, which, on the face of it, is unreasonable, or

(g) the principles of natural justice have been violated.

(v) Insofar the "patent illegality" has to go to the root of the matter. Trivial illegalities are inconsequential.

(vi) Additionally, an award could be set aside if

(a) either party was under some incapacity, or

(b) the arbitration agreement is invalid under the law,

Or

(c) the applicant was not given proper notice of appointment of the arbitrator, or of the arbitral proceedings, or was otherwise unable to present his case, or

(d) the award deals with a dispute not submitted to arbitration, or decides issues outside the scope of the dispute

*submitted to arbitration, or*

*(e) the composition of the Arbitral Tribunal was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or*

*(f) the arbitral procedure was not in accordance with the agreement of the parties, or in accordance with Part I of the Act, or*

*(g) the award contravenes the Act, or*

*(h) the award is contrary to the contract between the parties.*

*(vii) "Perversity", as a ground for setting aside an arbitral award, has to be examined on the touchstone of the Wednesbury principle of reasonableness. It would include a case in which*

*(a) the findings, in the award, are based on no evidence, or*

*(b) the Arbitral Tribunal takes into account something irrelevant to the decision arrived at, or*

*(c) the Arbitral Tribunal ignores vital evidence in arriving at its decision.*

*(viii) At the same time,*

*(a) a decision which is founded on some evidence, which could be relied upon, howsoever compendious, cannot be treated as "perverse",*

*(b) if the view adopted by the arbitrator is a plausible view, it has to pass muster,*

*(c) neither quantity, nor quality, of evidence is open to re-assessment in judicial review over the award.*

*(ix) "Morality" would imply enforceability, of the agreement, given the prevailing mores of the day. "Immorality", however, can constitute a ground for interfering with an arbitral award only if it shocks the judicial conscience.*

10. The grounds raised by the petitioner does not come within the scope of any of the above mentioned grounds. Therefore, this Court is of the considered view that there is no merit in the petition filed by the petitioner under Section 34 of the Arbitration and Conciliation Act. Accordingly the Original Petition shall stand dismissed. However, there shall no order as to costs.

Internet: Yes  
Index : Yes  
Speaking orders

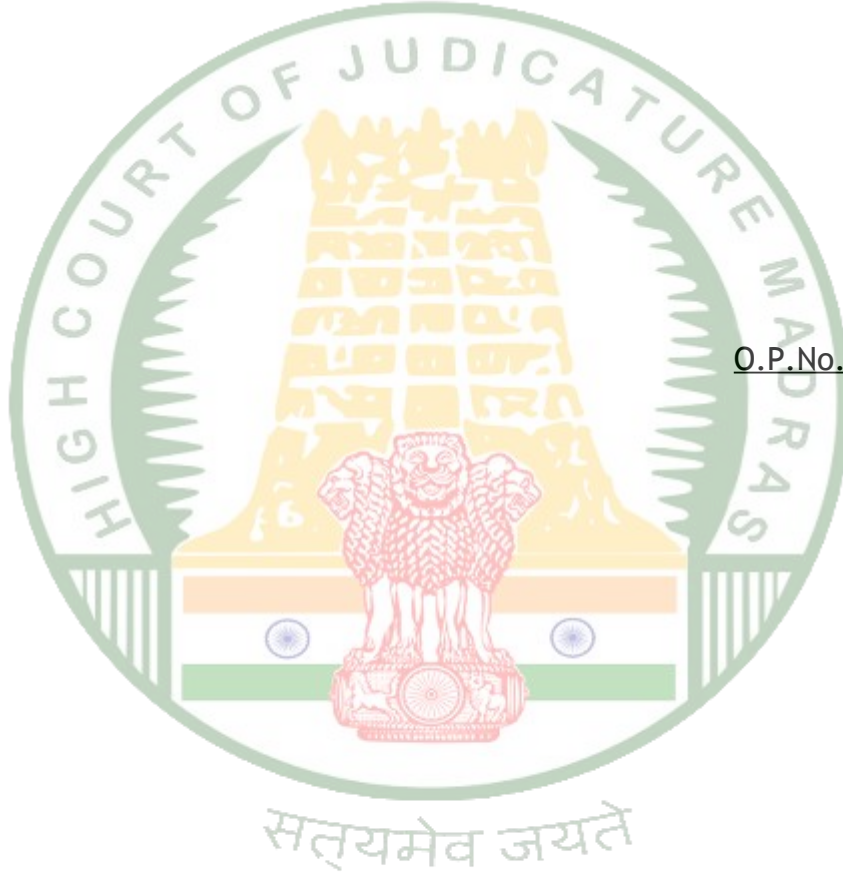
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ABDUL QUDDHOSE. J,  
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O.P.No.555 of 2013

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20.06.2018