

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.3.2017

CORAM

THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

O.S.A.No.255 of 2012

M/s.Venus Agencies rep. by its
Partners Smt.S.Sarojini &
S.Muthukumar
1/27, Anna Nagar East,
Chennai 600 102.

Appellant

-vs-

1. Senior Regional Manager-Retail,
Hindustan Petroleum Corporation Ltd.,
Chennai Retail R.O.,
Thalamuthu Natarajan Building, 3rd Floor,
Gandhi Irwin Road, Egmore,
Chennai 600 008.
2. H.Kumar
The Arbitrator,
DGM-Retail (Upgradation),
Hindustan Petroleum Corporation Ltd.,
Thalamuthu Natarajan Building, IV Floor,
Gandhi Irwin Road, Egmore,
Chennai 600 008.

Respondents

Original Side Appeal filed under XXXVI, Rule 1 read
with clause 15 of the Letters Patent against the order dated
27.2.2008 made in O.P.No.606 of 2006.

For Appellant : Mrs.G.Thilakavathi,
Senior Counsel for Mr.R.Gopinath

For R1 : Mr.M.Vijayan for
Ms.King and Partridge

JUDGMENT

NOOTY.RAMAMOHANA RAO, J.

This Original Side Appeal is directed against the order and judgment rendered by the learned Single Judge dismissing O.P.No.606 of 2006 instituted by the appellant herein under section 34 (3) of the Arbitration and Conciliation Act, 1996, challenging the correctness of the Award rendered on 11th July 2005.

2. The facts lie in a very narrow compass. The appellant before us was granted the license to run a retail outlet to sell petrol, diesel and other petroleum products manufactured and supplied by Hindustan Petroleum Corporation Limited. It appears that the said licence/ dealership was renewed somewhere in the year 1985 for a period of fifteen years. Whiles, one of the partners, by name M.Sivalingam died on 22.5.2000, rendering the Partnership Firm as dissolved due to the death of one of the two partners of Firm. However, with a view to retrieve the monies due to the Firm from the market, permission was granted in a piecemeal fashion to the Firm to carry on with the vending operations of the products. It appears that on 31st January 2002, a surprise inspection took place and samples were drawn from the retail outlet and when the samples were tested in the laboratory, it failed with regard to one of the parameters where as against the minimum of 88 the product was found to have standard of 85. As a consequence of the sub-standard product, proceedings have been initiated and duly complying with the principles of natural justice by issuing show cause notice on 23 May 2002 and after considering the explanation offered in response thereof on 30th May 2002, final orders were passed on 5.6.2002, imposing a fine of Rs.20,000/- as well as stopping the supplies and sales for a period of 30 days. After the punishment period has elapsed, supplies have been restored from 8th July 2002. Again another set of samples were drawn on 27th August 2002 and this time also, the samples have failed with regard to the same parameter known as "RON" and this time around, the laboratory found the sample as so sub-standard that it has reflected the parameter value as 77 as against the minimum of 88. Hence, a show cause notice was issued on 23rd September 2002 proposing to cancel the dealership agreement. The appellant has submitted its reply to the said show cause notice on 7.10.2002. Finding the response to the show cause notice as not convincing, orders were passed on 22.11.2002, terminating the dealership agreement. It is only appropriate to notice that the following three reasons weighed with the competent authority for terminating the dealership agreement:

- i) Failure to reconstitute the partnership firm promptly.
- ii) Maintaining inadequate sales of the products/poor performance resulting in sometimes even keeping the outlet dry.

iii) For the failure of the sample drawn on 27th August 2012, for the second time.

3. Since the dealership agreement has provided for referring the disputes between the parties for resolution through the mechanism of arbitration. The Deputy General Manager-Retail (Upgradation), South Zone, Chennai was appointed as Arbitrator. The claim and resistance by way of counter claims alongwith the reply and also a further rejoinder filed by the Company have all been considered. The learned Arbitrator, by his award dated 11th July 2005, dismissed the claim by upholding the termination of the dealership agreement dated 16th February 1987, effected on 22.11.2002 as valid and legal. The other claim made by the claimant for payment of damages towards loss of business has been rejected. It is this award, which came to be challenged by instituting O.P.No.606 of 2006 as noticed already (supra). That O.P. was dismissed by the learned Single Judge of this court by judgment and order dated 27.2.2008 and hence this appeal.

4. Heard Mrs.G.Thilakavathi, learned Senior Counsel appearing on behalf of the appellant and Mr.M.Vijayan, learned counsel appearing for the Oil Company. The principal submission made by the learned Senior Counsel is pivoted around the violation of the principles of natural justice while terminating the dealership agreement on 22.11.2002. It is urged by the learned Senior Counsel that a sample has been drawn on 27th August 2002 and when it was tested in the laboratory, it was alleged that the said sample has failed and hence a show cause notice was drawn leading to the termination of the dealership agreement. The learned Senior Counsel has drawn our attention to the show cause notice dated 23rd September 2002 which is placed at Page 32 of the paper book filed alongwith this appeal.

5. The said show cause notice was drawn by the Senior Regional Manager- Retail, the competent authority. The show cause notice has drawn the attention to the fact that the dealership agreement entered into by and between the parties was renewed on 15th October 1985 by a period of 15 years and that the partnership was comprising of two partners viz., Shri.M.Sivalingam and Shri.S.Muthukumar. But, however, Shri.M.Sivalingam died on 22.5.2000 and thus rendering the partnership no longer to be a valid entity and inspite of reminders for reconstituting the partnership on 30th June 2000, 12th August 2000 and 23 May 2001, the partnership has not been reconstituted. Therefore, as per clause 55 (B)(II) of the dealership agreement, the Corporation/Oil Company is at liberty to terminate the dealership agreement.

6. The show cause notice has also drawn the attention to the poor sales performance of the dealer that had already been highlighted in the notices to the dealer issued on 22nd August

2000 and also on 23rd May 2001. It is alleged that there is no improved performance of sales and finally the show cause notice had adverted to the sample drawn on 31st January 2002, which has failed and consequently, an appropriate show cause notice was drawn and the reply furnished thereof on 23rd May 2002, which was found to be not satisfactory, resulted in the order passed on 5th June 2002, suspending the supplies and sales to the retail outlet for a period of 30 days apart from imposing a fine of Rs.20,000/- and that the fine amount was paid and thereafter the supplies were resumed only from 8th July 2002. Then, the show cause notice proceeded to draw the attention to the sample drawn on 27th August 2002 and that it has also failed when tested at the laboratory. The following sentence in the show cause notice has some bearing upon the controversies and hence we extract the same hereunder:-

"Copy of our lab report dated 3.9.2002 confirming the sample was off-spec. is enclosed."

7. As the dealer has furnished his detailed response to the said show cause notice on 7th October 2002 in paragraph 8 of the said reply, the specific reference to the findings of the laboratory with regard to the sample analysis has been adverted to, but, nonetheless no specific mention has been made that the copy of the analysis report of the laboratory has not been furnished to the dealer along with the show cause notice.

8. However, Mrs.G.Thilakavathi, learned Senior counsel for the appellant would contend that at the end of show cause notice dated 23rd September 2002, just above the place where the officer by name M.Selvakumar signed the proceedings, the following is found "encl.:...". This obviously refers to the enclosure referred to in the previous page of the said show cause notice viz., the Laboratory Report. But, as against the column meant for noting the details/particulars of the enclosure, it was kept blank. It is, thus, urged that a copy of the analysis report of the laboratory is only intended to be furnished to the claimant but in reality they forgot to enclose the same to the show cause notice.

9. On this issue, much can be said on both sides. The conduct of both the parties is not equivocal. While the column relating to enclosure is kept blank by the Corporation, leading to the possibility of not enclosing a copy of the analysis report furnished by the laboratory, the specific denial of non-enclosure of the Laboratory Report of the Sample was not adverted to in the detailed reply furnished by the dealer on 7th October 2002, it can amount to accepting receipt/knowledge of the sample analysis report of the laboratory. Either of these two possibilities cannot be ruled out completely.

10. However, in our opinion not much has turned out on this

issue for, the subsequent development which has taken place, is required to be taken note of by us. When proceedings have been initiated by the land owner for eviction of the dealer from the premises in question, the matter travelled right upto the Supreme Court and after remand, the learned Single Judge of this court, dealing with Civil Suit No.370 of 2002, by judgment dated 22nd March 2010, passed a decree that the defendant/dealer is entitled to be protected against eviction only till 8th March 2003 and not beyond thereafter and hence, while ordering eviction from the suit premises, this court has also declared that the plaintiffs are entitled to be paid damages at the rate of Rs.50,000/- per month for continued use and occupation of the suit premises. It should be noted that only the extent of quantum of damages fixed by the learned Single Judge at Rs.50,000/- per month was the subject matter of appeal preferred thereagainst, but, not the eviction order. The eviction was, in fact, ordered, in the first round of litigation, by this court. As a result thereof, on 6th January 2006, the Chief Regional Manager, acting on behalf of the Oil Company/lessee has handed over the suit schedule premises to the lessor/land owner/deed holder. Thus, with effect from 6th January 2006, the present appellant Firm is not in possession of the suit schedule premises.

11. As a consequence, even if we were to come to a firm decision that there was some justification behind the allegation that the copy of the analysis report of the sample drawn on 27th August 2002 was not made available alongwith the show cause notice dated on 23rd September 2002, it would not make a material difference inasmuch as the appellant cannot be restored to be a dealer/licensee of the Oil Company. For award of dealership/licence to vend the products of the respondent Oil Company, the premises must be a suitable one and it has got to be inspected by several other agencies including those who have to grant licence under the Explosives Substances Act as petrol and petroleum products are highly inflammable. Therefore when the appellant is not in possession of the premises in question, restoration of the dealership in its favour would not arise. In that view of the matter, we are of the opinion that this Original Side Appeal is not sustainable any longer and is liable to be dismissed.

12. However, since the request made by the dealer for sending the second sample for analysis, on 29th February 2002, that is one week after the dealership has been terminated, has been negatived on 3.12.2002, by the Oil Company only on the ground, such a request is made belatedly. When a request is made for analysis of the second sample such a request ought to have been considered more seriously and on merits rather than rejecting the same only on the ground that such a request has

been made after the dealership itself has been terminated.

13. We only hope and trust that the factum of termination of the dealership of the appellant may not be put against it, in case it seeks to apply for grant of dealership/licence for sale of any of the products of the respondent Oil Company at a future point of time.

14. In the result, the OSA is dismissed but, however, without cost.

Sd/-

Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

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

+1 cc to Mr.R.Gopinath, advocate,sr.15725

+1 cc to M/s.King & Partridge, Advocate,sr.15831.

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krd 3/4

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