

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.11.2017

DELIVERED ON : 21.11.2017

CORAM :

The Hon'ble Mr.Justice M.M.SUNDRESH

AND

The Hon'ble Mr.Justice M.SUNDAR

O.S.A.No.306 of 2013

and

M.P.No.1 of 2013

1.M/s.Indian Oil Corporation Ltd.,
(Marketing Division),
represented by its Chief Divisional Sales Manager,
Chennai Divisional Office,
500, Anna Salai, Teynampet,
Chennai-600 018.

2.Senior Manager (Retail Sales),
representing Indian Oil Corporation Ltd.,
(Marketing Division),
Chennai Divisional Office,
500, Anna Salai, Teynampet,
Chennai-600 018.

.. Appellants

Vs.

1.M/s.Bhagawan Balasai Enterprises,
rep by its Proprietrix,
S.Nirmala Sai,
No.137, Velacherry Main Road,
Next to Gurunanak College,
Chennai-600 042.

2.Mr.A.S.Sundaraman,
Sole Arbitrator,
Chief Information Systems Manager,
Southern Regional Officer,
Indian Oil Corporation Ltd. (Marketing Division),
139, Nungambakkam High Road,
Chennai-600 034.

.. Respondents

O.S.A.No.306 of 2013 has been filed under Order XXXVI Rule 1 of Original Side Rules read with Clause 15 of Letters Patent against the order made in O.P.No.206 of 2008 dated 22.4.2013.

For Appellants : Mr.A.Abdul Hameed
for M/s.AAV Partners

For Respondents : Mr.N.S.Nanda Kumar
Mr.N.Krishnakumar for R-1

R-2 Arbitrator.

JUDGMENT

M.SUNDAR, J.

This intra-court appeal arises out of an Arbitral Award passed by an Arbitral Tribunal and negating a challenge to the Arbitral Award under Section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'A and C Act' for brevity) by a learned Single Judge of this Court.

2 Considering the nature and scope of this intra-court appeal arising out of a challenge to an Arbitral Award, it would suffice if a thumbnail sketch of facts necessary for understanding and appreciating this judgment is given. We give a thumbnail sketch of facts under the caption 'Factual Matrix' infra.

3 FACTUAL MATRIX :

3(a) Indian Oil Corporation Limited (hereinafter referred to as 'IOC' for brevity) is an entity wholly owned by the Government of India and is an instrumentality of State within the meaning of Article 12 of the Constitution of India ('COI' for brevity).

3(b) IOC embarked upon an exercise of appointing retail outlet dealers to women under a Special Scheme, which we are informed is intended to promote and encourage women entrepreneurs.

3(c) In the light of the aforesaid exercise of IOC, one Smt.S.Nirmala Sai made an application on 17.01.2004 to IOC for award of retail outlet dealership at a location which is described as Velacherry in Kancheepuram District in Tamil Nadu. After scrutiny of the application, IOC held an interview on 19.02.2004 and thereafter sent an offer letter dated 07.04.2004 to Smt.S.Nirmala Sai.

3(d) To be noted, in the instant case, Smt.S.Nirmala Sai had to arrange for a place where the intended retail outlet was to be set up. To be noted, in the instant case, Smt.S.Nirmala Sai

owned the place. To be precise, the land owned by Smt.S.Nirmala Sai where the retail outlet was to be set up is land admeasuring 7200 square feet (3 grounds) or thereabouts in Velacherry Main Road at No.137, Velacherry village, Mambalam-Guindy Taluk, Chennai-600 042 and comprised in T.S.Nos.8/9, 8/10, 8/11, 8/12 and 8/13 (Old S.No.14/2), which is hereinafter referred to as 'demised land' for the sake of convenience.

3(e) A lease deed came to be executed between Smt.S.Nirmala Sai and IOC, wherein and whereby IOC took on lease the demised land for a period of 20 years. In other words, IOC became a lessee under Smt.S.Nirmala Sai qua the demised land for a period of 20 years. To be noted, the lease deed is dated 12.01.2005.

3(f) Thereafter, IOC entered into a dealership agreement dated 25.01.2005 Mrs. S.Nirmalai Sai, carrying on business in the name and style 'Bhagawan Balasai Enterprises' as its sole Proprietrix. Therefore, Smt.S.Nirmala Sai carrying on business in the name and style of 'Bhagawan Balasai Enterprises' as its sole proprietrix, shall hereinafter be referred to as 'dealer' for the sake of convenience and clarity.

3(g) In and by the aforesaid 25.01.2005 dealership agreement, IOC appointed the dealer as its authorised dealer for selling Petrol, High Speed Diesel and other lubricants as a retail outlet. To be noted, this dealership agreement was for a period of 15 years from 25.01.2005. In other words, the dealership agreement was from 25.1.2005 to 24.1.2020.

3(h) To encapsulate the arrangement between IOC and the dealer in one sentence, it can be said that IOC took on lease the demised land from the dealer for a period of 20 years and appointed the dealer as its authorised retail dealer to carry on the retail outlet in the demised land for Petrol, Diesel and other lubricants.

3(i) Retail outlet started functioning under the aforesaid arrangement.

3(j) Over a year and half later, a Multi Disciplinary Team of IOC carried out an inspection in the retail outlet of the dealer. The inspection was on 21.09.2006 to be precise.

3(k) It is averred that during the said inspection, petrol and diesel samples were taken from the retail outlet of the dealer and the same were sent to the Laboratory of IOC for testing. It is further averred that the test report showed that the petrol drawn from the retail outlet of the dealer failed to meet the specifications pointing towards the possible adulteration. Therefore, IOC issued a show cause notice dated 29.09.2006 calling upon the dealer to show cause within seven days as to why dealership agreement should not be terminated for breach of terms and conditions of the dealership agreement.

3(l) The dealer sent a reply dated 16.10.2006. In the reply dated 16.10.2006, the dealer had stated that the Pump Assistants had inadvertently unloaded diesel into Petrol tank and that the

same had led to contamination resulting in failure of samples drawn on 21.9.2006. IOC did not accept the explanation given by the dealer and IOC terminated the dealership agreement in and by a letter dated 18.1.2007, which is hereinafter referred to as 'termination letter' for the sake of clarity. In the termination letter, IOC alleged violation of Marketing Discipline Guidelines 2005 and breach of Clauses 17, 21, 42, 46(a), 46(k) and 46(l) of dealership agreement.

3(m) Aggrieved, the dealer invoked the arbitration clause in the dealership agreement.

3(n) To be noted, the arbitration agreement between the parties, i.e., between IOC and dealer in the instant case, is in the form of a clause in the dealership agreement and the said clause is clause 61 containing as many as 13 sub-clauses, i.e., clause 61(a) to clause 61(m). We shall deal with this later in this judgment.

3(o) A Sole Arbitrator was appointed. We are informed that the sole arbitrator one Shri A.S.Sundaraman is a high ranking IOC official and that at the relevant point of time, he was serving as Deputy General Manager in IOC. This sole arbitrator is hereinafter referred to as 'arbitral tribunal' for the sake of convenience and clarity.

3(p) After full contest and elaborate trial, wherein as many as 40 exhibits (C-1 to C-40) were marked on behalf of the dealer (claimant before the arbitral tribunal) and as many as 18 documents were marked on behalf of IOC being Exs.R.1 to R.18 (IOC was obviously the sole respondent before the arbitral tribunal), the arbitral tribunal, inter-alia returned a finding that it was an inadvertent mix up and that there is no deliberate adulteration. On this basis, the arbitral tribunal passed an award, directing IOC to restore the dealership with immediate effect and also held that in the event of delay in doing so, the dealer should be compensated at the rate of Rs.1 lakh per month and that the same is to be paid by IOC at the end of every month till the date of restoration. However, the arbitral tribunal disallowed and negatived the claim of dealer for compensation during the period of award.

3(q) The above is by way of an award dated 27.2.2008. Both IOC and the dealer laid challenge to the award by way of two individual petitions before a learned Single Judge of this Court. While challenge to the award by IOC was taken on file as O.P.No.206 of 2008, the dealer's challenge to the award was taken on file as O.P.No.653 of 2008.

3(r) The learned Single Judge of this Court heard both original petitions, i.e., O.P.Nos.206 of 2008 and 653 of 2008 and passed a common order dismissing both the petitions. This was by common order dated 22.4.2013. We are informed that the dealer has accepted the dismissal of her challenge to the award and has given legal quietus to the same, but IOC, aggrieved by

the dismissal of its challenge to the award, has filed the instant intra-court appeal.

3(s) We now proceed to discuss the submissions made before us at the hearing and papers placed before us under the caption 'Discussion' infra.

4 DISCUSSION :

4(a) Submissions of Mr.A.Abdul Hameed, learned counsel for IOC (appellants before us) can be summarized as four neat points and they are as follows :

(i) Dealership agreement between IOC and the dealer dated 25.1.2005, by its very nature is determinable within the meaning of Section 14(1)(c) of the Specific Relief Act, 1963 and therefore, restoration of dealership which is in the nature of specific performance ought not to have been ordered;

(ii) The arbitration tribunal exceeded its jurisdiction in going into whether the adulteration is deliberate and therefore, erred in returning a finding that the adulteration is not deliberate. In other words, once there is adulteration, arbitration tribunal should not have gone any further;

(iii) As per the Marketing Discipline Guidelines of IOC, which governs the dealership arrangement between IOC and the dealer, the samples taken from the retail outlet of the dealer on 21.9.2006 alone should have been taken into account and the earlier sample dated 19.9.2006 should not have been looked into;

(iv) The arbitral tribunal fell in error in granting damages at the rate of Rs.1 lakh per month till the date of restoration of dealership.

4(b) Submissions of Mr.N.S.Nanda Kumar, learned counsel appearing for the dealer can also be summarized as four neat points and they are as follows :

(i) Notwithstanding Section 14(1)(c) of the Specific Relief Act, an arbitration clause in the instant case being Clause 61 of dealership agreement is very wide / all pervasive and therefore, the arbitral tribunal had all the powers and did not fall in error in ordering restoration of dealership;

(ii) As the question of adulteration is tested in trial before the arbitral tribunal, there was no infirmity or illegality in the arbitral tribunal embarking upon a course of finding an answer to the issue as to whether adulteration was deliberate or not;

(iii) As a corollary to the preceding ground, to decide whether the adulteration was deliberate, it was necessary to look into the prior sample dated

19.9.2006 and therefore, that does not become breach of marketing discipline guidelines which in any case is only a set of guidelines and not a covenant in the contract between the parties;

(iv)Arbitral Tribunal was right in awarding damages of Rs.1 lakh per month till restoration, but till date restoration has not been done and the retail outlet is being run by an another adhoc dealer appointed by IOC and that the restoration should be done forthwith as per the award of the arbitral tribunal, as the challenge to which has been negatived by the learned Single Judge.

4(c) In the light of the rival submissions advanced before us, the question that arises is as to which of the slots under Section 34 of the A and C Act, does IOC's challenge to the award fall? To be noted, a petition under Section 34 of A and C Act is not an appeal, review or revision, but is merely 'challenge to an award' as reiterated by the Division Bench of this Court in V.S.Ekambaram Vs. Sri Krishna Tiles and Potteries [Madras] Pvt. Ltd., reported in [2017 (5) CTC 420 = (2017) 6 MLJ 385], which was authored by one of us (M.Sundar, J.). This is articulated in Paragaraph 6(xii) of the said judgment and we deem it appropriate to extract relevant portion of the said paragraph. It reads as follows:

"6(xii).....The principle is a petition under Section 34 of A and C Act is not a traditional appeal against an arbitral award. Law as it is obtaining today, is very clear that a petition under Section 34 of the A and C Act is only a challenge to an award (on limited grounds adumbrated in Section 34) and not an appeal, review or revision."

4(d) Mr.A.Abdul Hameed, learned counsel, very fairly submitted that IOC's challenge to the award can fit into only Section 34(2)(b)(ii) read with clause (ii) of Explanation 1 of A and C Act. To our mind, only the first of the four points urged by Mr.A.Abdul Hameed,, i.e., point pertaining to Section 14(1)(c) of the Specific Relief Act can (if at all) be brought under the sweep of the aforesaid sub-section (and the said clause therein) of Section 34. However, it was urged by learned counsel for IOC that the other three points urged by him will fall under the category of patent illegality in the arbitral award and therefore, his challenge to an award on the aforesaid grounds is permissible in law. To be noted, a challenge to an award under Section 34 of A and C Act should strictly perambulate within the four corners of Section 34 and now, we are in an intra-court appeal (under Section 37 of A and C Act) arising out of a challenge to the award.

4(e) In this backdrop, we proceed to discuss further.

4(f) Before discussion on core issues, there is one aspect of the matter which needs to be looked into. The memorandum of grounds of intra-court appeal placed before us shows that this intra-court appeal has been filed by IOC under Order 36 Rule 1 of Original Side Rules of the Madras High Court read with clause 15 of the Letters Patent. Placing reliance upon a judgment of the Supreme Court rendered in Fuerst Day Lawson Limited Vs. Jindal Exports Limited [(2011) 8 SCC 333], which was followed by a Division Bench of this court in the aforementioned judgment reported in [2017 (5) CTC 420 = (2017) 6 MLJ 385], we wanted to know as to how this intra-court appeal is maintainable.

4(g) To this, learned counsel for IOC Mr.A.Abdul Hameed made an oral plea / prayer that this intra-court appeal may please be treated as a statutory appeal under Section 37 of A and C Act and he submitted that he would strictly perambulate within the four corners of Section 37 of the A and C Act. Mr.N.S.Nanda Kumar, learned counsel for the respondent in his usual fairness did not have any serious objection to adopting such a course. However, we acceded to this request of the learned counsel for the appellant IOC, by drawing inspiration from a recent judgment of the Hon'ble Supreme Court of India being Arun Dev Upadhyaya v. Integrated Sales Service Ltd., [(2016) 9 SCC 524] wherein the Hon'ble Supreme Court intra-alia held that a letters patent appeal shall be treated as an appeal under Section 50(1)(b) of the 1996 Act and has to be adjudicated within the said parameters. To be noted, Arun Dev Upadhyaya's case was not cited at the Bar, but we have noticed and followed the same in an effort to make our judgment complete in this aspect of the matter.

4(h) While respectfully following the judgment of the Hon'ble Supreme Court of India, we clarify that we have acceded to the request of the appellant IOC to treat the appeal as one under Section 37 of A and C Act as this appeal would clearly fit into the four corners of Section 37 of A and C Act. We therefore allow the matter to rest there and proceed with the discussion of the core issues.

4(i) Though a compilation of judgments containing 14 judgments was placed before us by the appellant IOC, learned counsel pressed into service only two judgments. They are : (1) Indian Oil Corporation Ltd. Vs. Amritsar Gas Service reported in (1991) 1 SCC 533 and (2) E.Venkatakrishna Vs. Indian Oil Corporation reported in 2000 (3) Raj 63 (SC).

4(j) Placing reliance on the aforesaid two judgments, learned counsel for IOC argued that in identical contracts with more or less identical factual matrix, wherein the dealership agreement was terminated by the oil company concerned, the

Supreme Court has held that a direction for restoration of dealership is impermissible.

4(k) Per contra, Mr.N.S.Nanda Kumar, learned counsel for the dealer took us through the judgment of the learned Single Judge that has been called in question before us and submitted that Amritsar Gas Service case has been referred to by the learned Single Judge. It was further argued that the learned Single Judge has held that the ratio in Amritsar Gas Service does not help IOC in the case on hand in the light of the very wide amplitude of the arbitration clause in the instant case. Relevant paragraph in the judgment of the learned Single Judge is paragraph 29 and we deem it appropriate to extract the same. Paragraph 29 of the judgment of the learned Single Judge reads as follows :

"29.In the decision rendered in Indian Oil Corporation Ltd., Vs. Amritsar Gas Service and others (referred supra) too, same clause 37 was interpreted and it has been held that the Arbitrator has no power to order restoration of distributorship. But, in the present case, the clause relating to arbitration and the power given to Arbitrator are different and it is incorporated in clause 61 (a) and (h) of the Dealership Agreement, which reads as follows:-

"i) 61(a) Any dispute or difference of any nature whatsoever, any claim, cross claim, counter-claim, or set off or regarding any right, liability, act omission or 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, who may either himself act as the Arbitrator or nominate some other officer of the Corporation to act as the Arbitrator. The dealer will not be entitled to raise any objection to any such Arbitrator on the ground that the Arbitrator is an officer of the Corporation.

ii) 61 (h) The Arbitrator shall have power to order and direct either of the parties to abide by, observe and perform all such directions as the Arbitrator may think fit, having regard to the matters in difference. i.e., the dispute before him. The Arbitrator shall have all summary powers and may take such evidence oral and/or documentary as the Arbitrator in his absolute discretion thinks fit, and shall be entitled to exercise

all powers under the Indian Arbitration Act, 1940, including admission of any affidavit as evidence concerning the matter in difference, i.e., dispute before him."

4(1) As only sub clauses (a) and (h) have been extracted by the learned Single Judge, we deem it appropriate to extract the entire arbitration clause being 61(a) to 61(m) and the same read as follows :

"61(a) Any dispute or difference of any nature whatsoever, any claim, cross claim, counter-claim or set-off or regarding any right, liability, act omission or 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 who may either himself act as the Arbitrator or nominee some other officer of the Corporation to act as the Arbitrator. The dealer will not be entitled to raise any objection to any such Arbitrator on the ground that the Arbitrator is an officer of the Corporation.

(b) In the event of the Arbitrator to whom the matter is originally referred being transferred, he shall be entitled to continue the arbitration proceedings notwithstanding his transfer unless the Director (Marketing) at the time of such transfer or at any time thereafter, designates another person to act as Arbitrator in his place in accordance with the terms of this Agreement.

(c) In the event of the Arbitrator, to whom the matter is originally referred vacating his office or being unable or refusing to act for any reason, the Director (Marketing) at the time of vacation of office or inability or refusal to act, shall designate another person to act as Arbitrator in accordance with the terms of this Agreement.

(d) The Arbitrator newly nominated by the Director (marketing) under clause (b) or under clause (c) above, shall be entitled to proceed with the reference from the point at which it was left by his predecessor.

(e) It is an express term of this contract 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. If for any reason, Director (marketing) is unable or unwilling or refused or fails to act as Arbitrator or nominate in Arbitrator matter shall not be referred to arbitration at all.

(f) The award of the Arbitrator so appointed shall be final conclusive and binding on all parties to the agreement subject to the provisions of the Arbitration Act, 1940 or any statutory modification or reenactment thereof and the rules made thereunder for the time being in force shall apply to the arbitration proceedings under this clause.

(g) The award shall be made in writing and published by the Arbitrator within two years after entering upon the reference or within such extended time not exceeding one further year as the parties shall by writing agree. The parties hereto shall be deemed to have irrevocably given their consent to the Arbitrator to make and publish the award within the period referred to hereinabove and shall not be entitled to raise any objection or protest there to under any circumstances whatsoever.

(h) The Arbitrator shall have power to order and direct either of the parties to abide by, observe and perform all such directions as the arbitrator may think fit having regard to the matters in difference i.e. dispute before him. The arbitrator shall have all summary powers and may take such evidence oral and/or documentary as the arbitrator in his absolute discretion thinks fit, and shall be entitled to exercise all powers under the Indian Arbitration Act, 1940, including admission of any affidavit as evidence concerning the matter in difference i.e. dispute before him.

(i) It is hereby expressly agreed that the powers of the Arbitrator nominated in the mater hereinabove mentioned shall include the power to make interim order/orders as the circumstances of the case may justify, to appoint a receiver, commissioner or custodian by whatsoever name called to take possession of the property in dispute during the pendency of the proceeding and subject to such final order as may be passed by the Arbitrator and shall also have the power to issue such further orders from time to time as he may

deem fit, on an application being made to him by any of the parties to the dispute where it is apprehended that the property to which it relates is in danger of being wasted, damaged, deteriorated or parted with or rights of other third parties are likely to be created thereon.

(j) The parties against who the arbitration proceedings have been initiated that is to say, the Respondents in the proceedings shall be entitled to prefer a cross-claim, counter-claim or set off before the Arbitrator in respect of any matter in issue arising out of or in relation to the agreement without seeking a formal reference of arbitration to the Director (Marketing) for such counter-claim, cross-claim or set off and the arbitrator shall be entitled to consider and deal with the same as if the matter arising there from have been referred to him originally and deemed to form part of the reference made by the Director (Marketing)

(k) The Arbitrator shall be at liberty to appoint, if necessary, any Accountant or Engineer or other technical person to assist him and to act on the opinion taken from such person.

(l) The Arbitrator shall have power to make one or more awards/whether interim or otherwise in respect of the dispute and difference and in particular, will be entitled to make separate awards in respect of claims or cross-claims of the parties.

(m) The Arbitrator shall be entitled to direct anyone of the parties to pay the costs of the other party in such manner and to such extent as the Arbitrator may in his discretion determine and shall also be entitled to required one or both the parties to deposit funds in such proportion to meet the Arbitrator's fees and expenses as and when called upon to do so."

4(m) Learned Single Judge held that the arbitration clause / arbitration agreement between the parties in the instant case is very wide and the width / amplitude of the said clause is so wide that it certainly empowers the arbitral tribunal to order restoration of dealership. The learned Single Judge has also relied on the principle that the arbitration is always a creature of contract and once the parties agree that the arbitral tribunal will have the power to order restoration of

dealership, no fetters can be placed on the same.

4(n) However difficulty for the dealer arises in a different dimension of the matter i.e., in Amritsar Gas Service, wherein the Hon'ble Supreme Court had held that restoration of contract granted by the arbitral tribunal is contrary to law as it is against the express prohibition in Sections 14 and 16 of the Specific Relief Act. This has been articulated by the Supreme Court in paragraphs 9,11 and 12 of its judgment. We deem it appropriate to extract paragraphs 9, 11 and a portion of paragraph 12 of Amritsar Gas Service, which read as follows :

"9. The arguments advanced by Shri Harish Salve on behalf of the appellant-Corporation to the validity of the award are these. The first contention is that the validity of the award has to be tested on the principles of private law and the law of contracts and not on the touchstone of constitutional limitations to which the Indian Oil Corporation Ltd., as an instrumentality of the State may be subject since the suit was based on breach of contract alone and the arbitrator also proceeded only on that basis to grant the reliefs. It is urged that for this reason the further questions of public law do not arise on the facts of the present case. The next contention is that the relief of restoration of the contract granted by the arbitrator is contrary to law being against the express prohibition in Sections 14 and 16 of the Specific Relief Act. It is urged that the contract being admittedly revokable at the instance of either party in accordance with clause 28 of the agreement, the only relief which can be granted on the finding of breach of contract by the appellant-Corporation is damages for the notice period of 30 days and no more. It was then urged that the reasons given in the award for granting the relief of restoration of the distributorship are untenable, being contrary to law. Shri Salve contended that the propositions of law indicated in the award and applied for granting the reliefs disclose an error of law apparent on the face of the award. It was also urged that the onus of proving valid termination of the contract was wrongly placed by the arbitrator on the appellant-Corporation instead of requiring the plaintiff-respondent 1 to prove that the termination was invalid. It was also contended that the failure of the arbitrator to consider and decide the appellant-Corporation's counter-claim when the whole suit was referred for decision constitute legal misconduct.

x x x x x x x

11. We may at the outset mention that it is not necessary in the present case to go into the constitutional limitations of Article 14 of the Constitution to which the appellant-Corporation as an instrumentality of the State would be subject particularly in view of the recent decisions of this Court in *Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay* [(1989) 3 SCC 293], *Mahabir Auto Stores v. Indian Oil Corporation* [(1990) 3 SCC 752 : JT (1990) 1 SC 363] and *Shrilekha Vidyarthi v. State of U.P.* [(1991) 1 SCC 212 : JT (1990) 4 SC 211]. This is on account of the fact that the suit was based only on breach of contract and remedies flowing therefrom and it is on this basis alone that the arbitrator has given his award. Shri Salve is, therefore, right in contending that the further questions of public law based on Article 14 of the Constitution do not arise for decision in the present case and the matter must be decided strictly in the realm of private law rights governed by the general law relating to contracts with reference to the provisions of the Specific Relief Act providing for non-enforceability of certain types of contracts. It is, therefore, in this background that we proceed to consider and decide the contentions raised before us.

12.....This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the agreement dated April 1, 1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revokable in accordance with clauses 27 and 28 of the agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the

other clauses of sub-section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases'. The grant of this relief in the award cannot, therefore, be sustained. "

(Underlining made by us to supply emphasis and highlight those portions of paragraphs which are most relevant for deciding the instant appeal)"

4(o) We have to therefore examine what would be a contract which by its very nature 'determinable' within the meaning of Section 14(1)(c) of the Specific Relief Act. We found a Delhi High Court judgment in Turnaround Logistics (P) Ltd. Vs. Jet Airways (India) Ltd., wherein the Delhi High Court held that the term 'determinable' would mean a contract which can be put to an end and therefore, all revocable deeds and voidable contracts will fall within determinable contracts and the principle on which specific performance of an agreement would not be granted is that the Court shall not go through the idle ceremony of ordering execution of a deed or instrument which is revocable and ultimately cannot be enforced as specific performance. This judgment was rendered by a single Judge of the Delhi High Court. Even independent of /dehors Turnaround Logistics case, our understanding of a contract which is by its nature determinable is not any different.

4(p) Applying the above principle, we find that the instant contract is certainly one in the nature of being determinable within the meaning of Section 14(1)(c) of the Specific Relief Act, which is evident from Clauses 49 and 50 of the dealership agreement. To be noted, the Turnaround Logistics case of the Delhi High Court was not placed before us, but we have referred to the same as in our opinion it is relevant for the instant discussion.

4(q) Mr.N.S.Nanda Kumar, learned counsel appearing for the dealer circulated a compilation of citations containing the following judgments :

"(i) Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and others [(1991) 1 SCC 533],

(ii) Hindustan Petroleum Corporation Limited and others Vs. Super Highway Services and another [(2010) 3 SCC 321],

(iii) Bharat Petroleum Corporation Limited Vs. Jagannath and Company and others [(2013) 12 SCC 278],
(iv) Coast Lines Ltd. Vs. Hudig & Veder Chartering N.V. {[1972] 1 All ER 451 : [1972] 2 Q.B. 34}"

4(r) In this compilation, the learned counsel has also annexed what according to him are meanings of the term 'determinable' and expression 'in the nature of things'. To our mind, these judgments do not help or further the case of the dealer in the light of the express covenant in the instant contract which provides for determination of / exit from the contract without assigning reasons. More over, the expression 'which is in its nature determinable' occurring in Section 14(1) (c) of the Specific Relief Act, 1963 came up for consideration before the Supreme Court of India in cases arising out of similar / identical dealership agreement with an oil company. The Supreme Court of India in Amritsar Gas Service referred to supra, has held that covenants of this nature in contracts of this kind (oil company dealerships) would be contracts which are by its nature determinable falling within the rigor of the expression as occurring in the said provision of law. As a siquitur, the Supreme Court held that restoration of dealership which is in the nature of specific performance cannot be granted in disputes arising out of such contracts. Therefore, in the light of the express interpretation and authoritative pronouncement of law by the Supreme Court in Amritsar Gas Service, the dictionary meaning of the expression or judgments arising in different factual matrix does not help the learned counsel for the dealer, owing to time honoured principle that a ratio is only to be read in the context of the factual matrices of that case. This has been elucidatively articulated by a Constitution Bench of the Supreme Court in its celebrated judgment in Padma Sundara Rao Vs. State of Tamil Nadu reported in (2002) 3 SCC 533 and we deem it appropriate to extract paragraph 9 of the said judgment, which reads as follows :

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world

of difference between conclusions in two cases."

4(s) To be noted, Amritsar Gas Service case turns on the expression 'by its nature determinable' occurring in Section 14 (1)(c) of the Specific Relief Act, in a case where the factual matrix is an identical / similar oil company dealership agreement. Further to be noted, in the aforesaid citations circulated by Mr.N.S.Nanda Kumar, two of the judgments do deal with oil company dealership, i.e., Hindustan Petroleum Corporation Limited and others Vs. Super Highway Services and another [(2010) 3 SCC 321] and Bharat Petroleum Corporation Limited Vs. Jagannath and Company and others [(2013) 12 SCC 278], but they do not deal with the expression 'by its nature determinable'. More importantly, these judgments arose out of writ proceedings assailing termination of contract, whereas the instant case arose out of arbitration proceedings, wherein the issues were tested in a full-fledged trial unlike a writ petition which is tested on the basis of affidavits and counter affidavits.

4(t) This takes the discussion to the next aspect of the matter. Now that the dealership agreement between IOC and the dealer is by its very nature determinable and therefore, not specifically enforceable in the light of Section 14(1)(c) of the Specific Relief Act, the question arises as to whether this by itself will become a bar to fetter the right of the arbitral tribunal which is extremely wide and amplified, i.e., clause 61 of the dealership agreement which has been extracted supra. Answer lies in the ratio in Amritsar Gas Service.

4(u) To be noted, it is not clear as to whether the arbitration clause in Amritsar Gas Service is of such width and amplitude as in the instant case, but restoration of dealership limb of Award will still be hit by the rigor of Section 14(1)(c) of the Specific Relief Act. One reason is the ratio laid down by the Supreme Court, particularly in paragraph 12 in Amritsar Gas Service. The factual matrix is similar and is not distinguishable. We deem it pertinent to extract Paragraph 12 which reads as follows: सतयमेव जयते

"12.The arbitrator recorded finding on Issue No.1 that termination of distributorship by the appellant-Corporation was not validly made under Clause 27. Thereafter, he proceeded to record the finding on Issue No.2 relating to grant of relief and held that the plaintiff respondent 1 was entitled to compensation flowing from the breach of contract till the breach was remedied by restoration of distributorship. Restoration of distributorship was granted in view of the peculiar facts of the case on the basis of which it was treated to be an exceptional case for the reasons given. The reasons given state that the Distributorship Agreement was for an indefinite period till terminated in

accordance with the terms of the agreement and, therefore, the plaintiff-respondent 1 was entitled to continuance of the distributorship till it was terminated in accordance with the agreed terms. The award further says as under:

"This award will, however, not fetter the right of the defendant Corporation to terminate the distributorship of the plaintiff in accordance with the terms of the agreement dated April 1, 1976, if and when an occasion arises."

This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the agreement dated April 1, 1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revokable in accordance with clauses 27 and 28 of the agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is 'a contract which is in its nature determinable'. In the present case, it is not necessary to refer to the other clauses of subsection (1) of Section 14, which also may be attracted in the present case since clause © clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is a contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases.' The grant of this relief in the award cannot, therefore, be sustained."

The other reason is even from a practical point of view, in our opinion, ordering restoration of dealership would be only an idle ceremony as the dealership can be restored and determined by IOC the very next day. Therefore, the specific performance would only be a paper decree which cannot be enforced.

4(v) As far as the other judgment of the Supreme Court placed before us by the learned counsel for the appellants being

E.Venkatakrishna case, it also proceeds on the basis that in a contract of this nature, only damages can be awarded and specific performance cannot be granted.

4(w) In the light of Amritsar Gas Service, we have noticed that the Hon'ble Supreme Court in a recent judgment in Indian Oil Corporation Limited Vs. Nilofer Siddiqui [(2015) 16 SCC 125] held that the judgment in Amritsar Gas Service which arose under the arbitration law will not apply to contracts which are not revocable. Equally, to be noted, in another judgment, the Supreme Court of India in Olympus Superstructures Vs. Meena Vijay Khetan [(1999) 5 SCC 651], upheld the specific performance award passed by the arbitral tribunal. However, Olympus Superstructures relates to immovable property and that was a case where the contract provided for determination only in the event of breach.

4(x) Owing to all that we have stated supra, we have no option other than to set aside the views of the learned Single Judge expressed in paragraph 29 of his judgment, which is the basis for coming to the conclusion that a specific performance award in the instant case is permissible.

4(y) We make it clear that the question whether the instant contract is one which is a contract of personal service is left open. To be noted, even in Amritsar Gas Service case, the Hon'ble Supreme Court did not delve into it and the matter was decided within the ambit of Section 14(1)(c) of the Specific Relief Act (by nature determinable) alone.

4(z) Now that we are holding in favour of the appellant IOC on the first point urged, i.e., Section 14(1)(c) of the Specific Relief Act, we are of the considered view that it is not necessary to deal with the other three submissions.

4(aa) With regard to other three submissions, suffice to state that in the light of the vast width and amplitude of the arbitration clause in the instant case, the arbitral tribunal was certainly entitled to go into whether adulteration was deliberate and for that purpose look into the last but one sample too. The question of examining the correctness or otherwise both in terms of principle and quantum qua damages until restoration which was ordered by the arbitral tribunal will arise only if we have held in favour of the dealer with regard to specific performance limb of the award is concerned. With this, we conclude the discussion of all issues raised before us.

5 CONCLUSION :

Owing to all that have been stated supra, we set aside the order of the learned Single Judge negating IOC's challenge to the arbitral award dated 27.02.2008 passed by the arbitral tribunal.

6 DECISION :

The order dated 22.04.2013 made in O.P.No.206 of 2008 is set

aside and consequently, the award dated 27.02.2008 made by the sole arbitrator / arbitral tribunal is set aside. This Original Side Appeal is allowed. Considering the nature of the matter and trajectory of the litigation, we leave the parties to bear their respective costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

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Sub Assistant Registrar

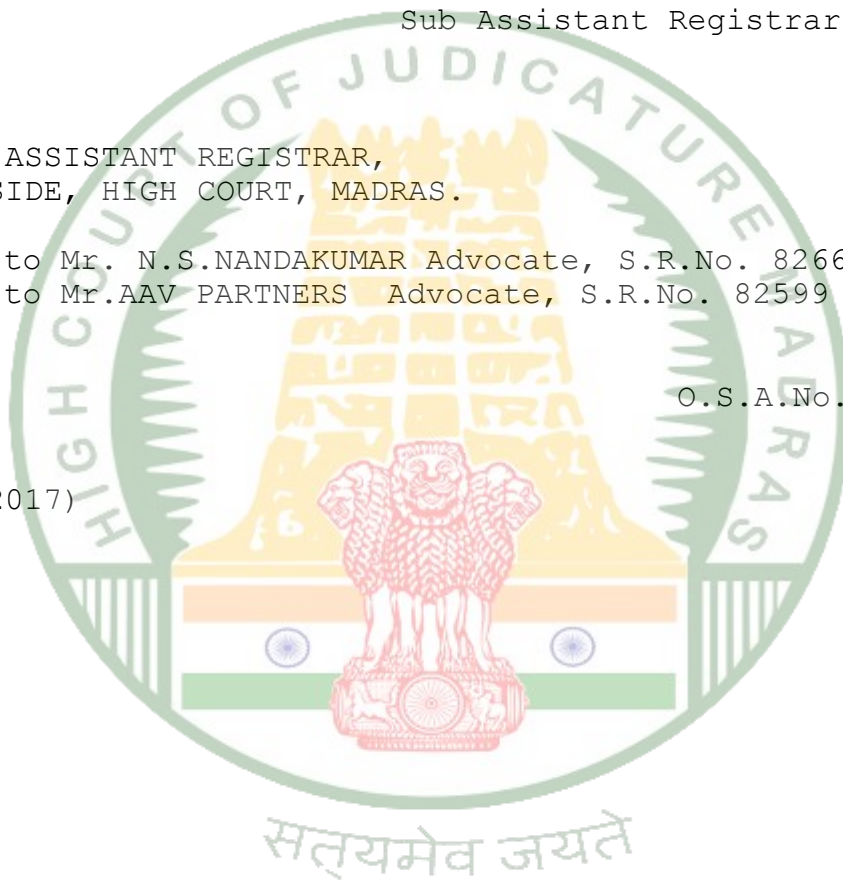
vvk

1)THE SUB ASSISTANT REGISTRAR,
ORIGINAL SIDE, HIGH COURT, MADRAS.

+1cc to Mr. N.S.NANDAKUMAR Advocate, S.R.No. 82666
+1cc to Mr.AAV PARTNERS Advocate, S.R.No. 82599

Judgment in
O.S.A.No.306 of 2013

CNR(CO)
TR(21/12/2017)



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