IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.02.2018

CORAM

THE HONOURABLE MR.**JUSTICE M.M.SUNDRESH**

**O.P.No.164 of 2014**

V.Kalarani,
SP 20, III Street, Ist Sector,
K.K.Nagar, Chennai-600 078. ..Petitioner

Vs.

1.M/s Hindustan Petroleum Corporation Ltd.,
Rep., by Senior Regional Manager -Retail,
Chennai Retail Regional Office,
II Floor, Petro Bhavan, No.82, TTK Road,
Alwarpet, Chennai-600 018.

2.Mr.G.Hariharan,
Sole Arbitrator,
Flat No.402, "Residency",
Old Nos.3, 4 & 5, New Nos,58, 59 & 60,
Sardar Patel Road, Chennai-600 113. .. Respondents



Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award dated 29.11.2013 passed by the second respondent in Arbitration dispute between the petitioner and the first respondent and direct the respondents to pay the costs.



For Petitioner : Mr.V.Srikanth

For respondents : Mr.O.R.Santhanakrishnan for R1

**ORDER**

The petitioner is a dealer of the first respondent in pursuant to the Dealership Agreement dated 22.02.2007. Two agreements have been entered into. One for the land and another for supply of petroleum products. Clauses 25, 26, 41 and 55(i) and (k) of the Dealership Agreement makes the petitioner to take care of the products, maintain them and to prevent any malpractice. On inspection, two irregularities were found by the first respondent. One is with respect to the quality of the diesel supplied and other is the stock variation. The petitioner replied stating that she was sick and thus, entrusted the administration with the Manager. Therefore, she prayed for mercy. On consideration of the reply given, an order of termination was given and prayed for invoking arbitration clause.



2. The was pleased to hold that the two agreements are distinct and different. Samples of the product drawn in the presence of the petitioner would show that it did not conform to the specification. The stock variation has been proved by the first respondent. Accordingly, the claim petition was rejected.

3. The learned counsel appearing for the petitioner would primarily contend that it is not a case of adulteration or otherwise fraud committed by the petitioner. The deviation is very small. Apart from being a fractional one, the variation in the stock is also very negligible. Therefore, the ought to have exercised the discretion in favour of the petitioner.

4. The learned counsel appearing for the first respondent would submit that inasmuch as the adjudication was on fact, no interference is required.

5. A perusal of the award would show that all the contentions have been considered at length. The Arbitrator did not agree with the petitioner that a technical interpretation has been given to the word "sabotage". Even assuming that the contention of the petitioner is true, it is her liability to see to it that the quality is maintained without any stock variation. Therefore, when these violations are made out and the petitioner was unable to prove to the contrary, the consequence would automatically follow. Even otherwise, the agreement being determinable in nature, the petitioner is not entitled for any relief. This Court does not find anything wrong in the termination order, which was specified by a notice. The order was a

speaking one. Thus, no interference is required in the award exercising power under Section 34 of the Arbitration and Conciliation Act, 1996. Accordingly, the original petition stands dismissed. No costs.

**02.02.2018**

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**M.M.SUNDRESH,J.**

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