

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2018

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

O.P.No.96 of 2013

M/s Rose Gas Agencies
No.73 Medavakkam Main Road,
Adambakkam, Chennai-600 088.

..Petitioner

Vs.

1.M/s Indian Oil Corporation Ltd.,
Rep. by Chief Area Manager,
Indane Area Manager,
500, Anna Salai, Chennai.

2.S.Gunasekaran,
Sole Arbitrator, Chief A & W Manager,
(Marketing Division), Southern Region,
'Indian Oil Bhavan', III Floor,
No.139, Nungambakkam High Road,
Chennai-600 034.

.. Respondents

Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the Award passed by the second respondent dated 14.09.2012 and for costs.

For Petitioner : Mr.M.Ganesan

For Respondents : Mr.R.Ravi for R1

ORDER

The petitioner herein was a dealer of the respondent. The dealership is with respect to the supply of LPG Gas Cylinders. A show cause notice was issued to the petitioner inter alia alleging that despite existence of the clear records indicating that number of customers have been issued with the Temporary Transfer Vouchers meaning thereby they are ceased to be the customers due to their change of address despite the area of dealership of the petitioner, they have been shown as such and records have been created, as if, refilling were done by them. The petitioner also did not produce the subscription vouchers to show that they are continued to be as customers. The petitioner did give a reply. Not satisfying with the reply, it was given one more opportunity. After considering the reply given a detailed order was passed which is obviously a speaking one holding that from the records of the petitioner, it is clear that for the consumers, who have been issued with Transfer Vouchers/Temporary Transfer Vouchers(hereinafter referred as "TV/TTV"), which were the vouchers given on transfer, they were continued as the customers and supplies made.

2. Accordingly, a sum of Rs.7,32,014/- towards manipulation of mandatory records and recovery of differential RSP for 904 refills. Challenging the same, the petitioner invoked the arbitration clause.

3. The arbitration proceeding was initiated on the request of the petitioner. A representative of the petitioner was entered, by letter dated 23.09.2011, before the learned Arbitrator and sought for time by seeking longer intervals. The learned Arbitrator showed sufficient leniency to the petitioner. On the fifth hearing, neither the petitioner nor its authorised representative appeared. On the sixth hearing, though the petitioner was not present, it was represented by an Advocate, by name, V.P.Parivallal.

4. Adjourment continued freely thereafter till the ninth hearing. Issues were framed after affording opportunity to the parties. Once again the petitioner sought for adjournments on several occasions. When pushed to the corner, the petitioner filed an affidavit seeking cross examination of the party, who filed the

proof affidavit on behalf of the first respondent. This was done after the learned Arbitrator indicated that the evidence was over and case was ready for argument. Once again, the learned Arbitrator indicated that the dilatory tactics will not be accepted, especially, after recording the statement of the petitioner, the arguments shall go on. When the matter is posted for final hearing and for filing the written arguments, once again, a counsel was engaged and time was sought for. Having exhausted with the continuous attempt of the petitioner, the learned Arbitrator reserved the matter to pass orders noting the fact that the petitioner also made a futile attempt to change the Presiding Officer.

5. The learned Arbitrator, thereafter, passed a speaking order after taking into consideration of the relevant materials. The records with respect to the transfer vouchers and temporary transfer vouchers as against the subscription vouchers, which the petitioner did not produce to show the currency of the customers list were taken into consideration. In fact, the very basis of the allegation made was based upon the records of the petitioner

itself. Therefore, after considering all, an Award was passed by the learned Arbitrator, the second respondent herein, upholding the orders passed by the first respondent.

6. The learned counsel for the petitioner primarily would contend that the request of the petitioner to engage the counsel was not favourably considered by the learned Arbitrator. The petitioner was not given sufficient opportunity to put forth its case. It is factually incorrect to state that the petitioner showed in its list of customers, those who ceased to be so after change of residence. There is an element of bias involved with respect to the passing of the order by the first respondent as well as the learned Arbitrator. Thus, the award requires interference.

7. The learned counsel appearing for the first respondent would submit that the recording made by the Tribunal would be sufficient enough to understand the background of the case. Not only before passing the impugned order but also before the Tribunal, numerous opportunities were given. As the Tribunal came to the conclusion that the attempt was only to drag on, no

more opportunity was given and the award was passed. Merely because the first respondent's counsel did not have an objection for the adjournment, the Tribunal is not bound to consider it. On merit, the Tribunal has rightly held that there is no interference with the order passed by the first respondent. After all, the findings rendered by the first respondent in passing the order and as held by the learned Arbitrator are based upon records and facts. Thus, no interference is required.

8. The narration of the above would clearly show that the petitioner has been adopting dilatory tactics from the day one. The mere allegation of bias would not be sufficient for holding the existence of the likelihood of the bias. The onus is on the one, who raises it to be substantiated with sufficient materials. These elements are absolutely lacking. The Officer against whom the bias was raised was not the one, who issued the show cause notice. The aforesaid Officer as well as the Presiding Officer of the Tribunal have discharged their respective duties. There is no material to hold that there is personal bias. On the contrary, it is the petitioner, who was seeking time on frivolous grounds.

9. It is not as if the Tribunal did not accede to the request of the petitioner for adjournments. From the records it is seen that except on one occasion, all the adjournments took place at the instance of the petitioner alone. Being the claimant it is for the petitioner to make sure an award is passed at the earliest point of time. This Court does not find any error in the order passed.

10. Opportunity was given not once but twice to the petitioner. In fact, the reply of the petitioner was considered and thereafter, once again with the open mind, a further opportunity was given before passing the order asking it to make the payment. The adjudication was protracted, as seen from the facts and records. It is a simple case of supply made in the name of the customers, who were no longer residing within the area allotted to the petitioner covered by the distributorship. As rightly submitted by the first respondent, even the subsequent vouchers were not produced to show that such persons continued to be in the list of the petitioner. The entire list of the customers,

who have been shown allegedly in the subscription list was furnished to the petitioner. The conclusion was arrived at on the records maintained by the petitioner. Therefore, the learned Arbitrator has considered these aspects on merit and gave an adjudication on facts. Merely because, the learned counsel appearing for the first respondent gave no objection, the learned Arbitrator was not expected to wait for the parties endlessly. The request made for cross examination was nothing but an after thought. The petitioner, after having agreed to argue the matter was rightly not allowed to cross examine the person thereafter who filed an affidavit on behalf of the first respondent.

11. After the dictation, the learned counsel appearing for the petitioner would submit that the interest awarded is excessive. It is only a claim made by the petitioner. Therefore, there is no counter claim. This Court finds the aforesaid contention deserves to be considered. Hence, the awarding of the interest of the Tribunal stands set aside.

12. One more submission has been made to the effect that if the subscription vouchers are produced, the first respondent may reconsider it.

13. This is the matter between the petitioner and the first respondent. If the petitioner produces subscription vouchers within a period of six weeks from the date of receipt of a copy of this order, it is well open to the first respondent to consider it. Even the award could not stand in the way of fresh adjudication on merit. After all the award merely confirms the decision made by the first respondent.

14. The original petition stands disposed of accordingly.
No costs.

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M.M.SUNDRESH,J.



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