

IN THE HIGH COURT OF BOMBAY AT GOA**Appeal Under Arbitration No.4 of 2012**

Shri Kamalakant M. Tendulkar,
Age 66 years,
R/o H. No.1610, Torla,
Shiroda, Ponda,
Goa 403401.

.... Appellant

V e r s u s

1. Sr. Regional Manager,
Vasco Retail Region,
Hindustan Petroleum Corporation Ltd.
P.O. Box 48, FL Gomes Road,
Vac-a-Gama, Goa 403802.

2. Smt. Laxmibai V. Salkar,
C/o Premabai Nagarsenkar,
“Vishwambhai”,
Opp. St Joseph's Institute,
Vasco-da-Gama, Goa.

..... Respondents

Shri Rohit Bras De Sa, Advocate for the Appellant.

Shri A. D. Bhobe, Advocate for the Respondent no.1.

Shri Shivan Desai, Advocate for the Respondent no.2.

CORAM: C. V. BHADANG, J.

Date : 20th August, 2019.

Judgment:

The challenge in this appeal under section 37 of the Arbitration and Conciliation Act, 1996 (Act, for short) is to the judgment and order dated 7/5/2011 passed by the learned District Judge, South Goa, at Margao in

Arbitration Application no.15/2019. By the impugned judgment, the learned District Judge, while dismissing the arbitration petition filed by the appellant has confirmed the award dated 9/7/2009 passed by the sole arbitrator.

2. The brief facts are that the aforesaid arbitration was initiated by the first respondent in which the appellant was the claimant no.1, while the second respondent was the claimant no.2. The first respondent had entered into a dealership agreement with Mr. Vishwamber K. Salkar (since deceased) who was appointed as retail outlet dealer from 1/12/1970 to 31/10/1986 to run a dealership in the name and style as M/s. Uma Service Centre, Vasco. Subsequently, the dealership was reconstituted by inducting the appellant as a minority partner holding 49% share and Vishwamber Salkar continued as a majority shareholder having a share holding of 51%. It appears that a dealership agreement was executed on 1/11/1987 between the parties. Mr. Vishwamber V. Salkar expired on 5/7/1997 and pending reconstitution of the dealership the supply to the retail outlet was continued purely on adhoc basis on the request of the appellant. According to the first respondent during the period of such ad hoc operation of the dealership there were several irregularities which were committed and on account of which there was no formal proposal for reconstitution submitted to the first respondent.

3. It appears that the first respondent issued a show cause notice to both the appellant and the second respondent on 5/4/2006 for breach of the various terms and conditions of the dealership agreement. After considering the reply, the first respondent terminated the dealership by letter dated 1/6/2006 which dispute was referred to the sole arbitrator. The appellant made a claim for restoration of the dealership and he being recognized as a sole proprietor/dealer of M/s. Uma Service Centre and for compensation etc.

4. The sole arbitrator placing reliance on the decision of the Supreme Court in the case of **Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and others (1991) SCC 533** and **E. Venkatakrishna Vs. Indian Oil Corporation and anr. (2000) 7 SCC 764** found that the dealership agreement being a contract of commercial nature is terminable and it is not within the jurisdiction of the sole arbitrator to restore such dealership. The learned arbitrator after considering the reply as well as several inspection reports showing a number of irregularities in the operation of the dealership found that the termination of the dealership was legal and proper and rejected the claim for restoration which was unsuccessfully challenged by the appellant before the learned District Judge.

5. I have heard Shri De Sa, the learned counsel for the appellant, Shri

Bhobe, the learned counsel for the first respondent and Shri Desai, the learned counsel for the second respondent. Perused record.

6. Shri De Sa, the learned counsel for the appellant has placed reliance on the decision of the Supreme Court in the case of **Allied Motors Ltd. Vs. Bharat Petroleum Corporation Ltd. (2012) 2 SCC 1**, in order to submit that in an appropriate case, the arbitrator can restore a dealership and the arbitrator was not justified in holding that he has no jurisdiction to restore the dealership. It is submitted that in any event there was also a claim for compensation which ought to have been considered by the learned arbitrator. It is submitted that the learned District Judge failed to exercise jurisdiction under section 34 of the Act in refusing to interfere with the award.

7. Shri Bhobe, the learned counsel for the first respondent as well as Shri Desai, the learned counsel for the second respondent have supported the impugned judgment. Shri Bhobe, the learned counsel for the first respondent has submitted that there were several irregularities noticed during the course of the inspection and therefore the termination of dealership has rightly been held to be legal and proper.

8. I have considered the circumstances and the submissions made and I

do not find that any case for interference is made out. The Supreme Court in the case of **Amritsar Gas Service (supra) and Indian Oil Corporation (supra)** has held that the dealership agreement by itself is a contract of commercial nature which is terminable and it is not within the jurisdiction of the sole arbitrator to restore such a contract. The reliance placed by the learned counsel for the appellant in the case of **Allied Motors (supra)** to my mind is misplaced for more reasons than one. Firstly, it does not appear that it was a case arising out of an award passed by the arbitrator and secondly, on facts it was found that the termination of the dealership agreement was clearly arbitrary and on extraneous considerations. In the present case, the record discloses that there were several inspection reports from the year 2001 to 2006 which have been referred to by the learned arbitrator in para 3 of the award in which there were number of irregularities noticed indicating violation of the terms and conditions of the dealership agreement. It appears that both the claimants i.e. the appellant as well as the second respondent attributed the irregularities to each other, as there was a dispute between them. Be that as it may, the appellant did not dispute the irregularities as such but attributed them to the claimant no.2. The first respondent was only concerned with proper operation of the dealership and has no concern with the inter se dispute between the two claimants. There is enough material on record in the form of inspection reports to show that there were irregularities

committed in the operation of dealership. Thus the termination of the dealership is legal and proper. Thus the arbitrator was within his bounds to refuse restoration of the dealership as well as compensation. I have carefully gone through the award passed by the arbitrator as well as the impugned judgment of the learned District Judge and no case for interference is made out. The appeal is without any merit and is accordingly dismissed with no order as to costs.

C. V. BHADANG, J.

Ap/