

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :11.12.2019

Coram

THE HONOURABLE Ms. JUSTICE P.T.ASHA

O.P.No.617 of 2018

M/s.Murali Narasimha Gas Agency (Indane Distributors),
Represented by its Sole Proprietor Mr.T.N.Suresh,
No.2-12A, Division Road,
Polur, Thiruvannamalai District – 606 803. ... Petitioner

vs.

Indian Oil Corporation Limited,
Rep. by its Executive Director,
Marketing Division, Southern Region,
Tamil Nadu State office,
Indian Oil Bhavan,
No.139, Nungambakkam High Road,
Chennai – 600 034. ... Respondent

Prayer: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the exparte award dated 14.12.2017, passed by the sole Arbitrator in reference of dispute between Mr.T.N.Suresh, Sole Proprietor of M/s.Murali Narasimha Gas Agency and M/s.Indian Oil Corporation, arising out of Distribution Agreement entered on 29.03.1987.

For Petitioners : Mr.G.Ashokapathy
for M/s.Pass Associates

For Respondent : Mr.Faiz Ali

ORDER

The claimant before the Tribunal is the petitioner before this Court challenging the award dated 14.12.2017 passed by the Sole Arbitrator.

2. The parties are referred to as per their respective ranks before the Aribtral Tribunal, for the sake of convenience.

3. The claimant was selected as the distributor of the respondent vide a letter of appointment dated 29.03.1987, to distribute Indane gas in the area of Polur. The claimant would submit that in recognition of his work he was decorated with several awards by the respondent Corporation. During the year 2006 and 2009, the claimant firm ran into financial problems, as a result of which he was forced to borrow money from one P.Kothandan and as a security for the said borrowing, he had mortgaged his personal property. He had borrowed money from said P.Kothandan and his brother

P.Karunamurthy. In addition to the mortgage deed, the borrower had got signature of the claimant in several blank papers, stamp papers, pronote forms, cheques and power of attorney, in the name of P.Kothandan and P.Karunamurthy, with reference to the immovable property.

4. It is the case of the claimant that, substantial repayment has been made by them, despite which, the lenders were claiming more money at exorbitant rates of interest. As a result, the claimant was put to a great deal of pressure and a suggestion was mooted by P.Kothandan for inducting his son as the partner in the claimant's gas agency viz., Murali Narasimha Gas Agency. The petitioner left with no other alternate, had made a request to the respondent Corporation, to reconstitute the distributorship vide letter dated 16.04.2010. Pursuant to the said letter, the respondent Corporation vide letter dated 23.10.2010 called K.Suresh Kumar to attend an interview on 31.08.2010 in respect of the Reconstitution of Distributorship.

5. Meanwhile, the claimant came to know that taking advantage of the power of attorney, the said P.Karunamurthy had fraudulently alienated the properties belonging to the claimant. Therefore, the

claimant decided not to go ahead with the Reconstitution of Distributorship. Aggrieved by the same, the said K.Suresh Kumar approached this Court in W.P.No.4210 of 2012 for a direction to the respondent Corporation to accept the proposal of partnership on the basis of the agreement dated 04.11.2008.

6. The claimant further submits that he had challenged the alienation of his property by said P.Kodhandan and his family members in a suit in O.S.No.89 of 2013 on the file of the District Munsif, Walajapet and in O.P.No.1 of 2013 on the file of the District Judge, Thiruvannamalai.

7. Meanwhile, it appears that P.Kondhandan created another document making use of the blank papers, stamp papers, signed and handed over by the claimant in and by which he has created a Memorandum of Understanding dated 12.04.2007, as if the claimant had agreed to induct his another son K.Baskar in the claimant's gas agency. The respondent issued a show cause notice dated 25.10.2012. After the receipt of the show cause notice, the claimant has sent a detailed reply to the respondent explaining that there was no such Memorandum of Understanding dated 12.4.2007. The respondent

taking into account the fabricated Memorandum of Understanding dated 12.07.2007 with K.Baskar and also due to certain alleged irregularities in the part of the claimant, suspended the distributorship of the claimant by letter dated 23.02.2013. In response to the above decision, the claimant sent a letter dated 09.03.2013. However, the respondent failed to consider the explanation given by the claimant. In spite of valid and legal reasons assigned by the claimant, the respondent terminated the distributorship of the claimant vide letter dated 12.04.2007. The dealership cannot be terminated since it is a violation of clause No.21 and 23 (c) of the agreement dated 29.03.1987. The claimant has immediately responded to the said show cause notice informing the respondent corporation that he has not inducted any third person as partner and that the distributorship was only been run by him. The claimant also denied the said Memorandum of Understanding alleged to have been entered into between him and the said P.Kothandan. Despite the above explanation, the respondent Corporation had terminated the distributorship of the claimant vide order dated 19.12.2013. Therefore, the claimant was constrained to refer the dispute to the Arbitrator for resolution, by invoking the arbitration clause in the agreement dated 20.03.2014 as per clause 37 of the Distributorship Agreement dated 29.03.1987 and this was

violated by the respondent.

8. The learned counsel appearing for the respondent submits that though the claimant would contend that the letter of appointment dated 23.03.1987 and the distributorship agreement dated 29.03.1987 entered into between the claimant and the respondent Corporation, clearly stipulated that there shall not be any assignment/sale/ mortgage etc of the distributorship in favour of any third party without the written consent of the corporation. There was also a stipulation that the distributor shall not enter into any arrangement, contract or understanding whereby the operations of the distributor is controlled/carried out and / or financed by any other firm or Company, whether directly or indirectly and whether in whole or in part. The respondent Corporation would submit that these conditions have been violated by the claimant. Though the claimant has submitted the application for inducting one K.Suresh Kumar as partner however all the requisite documents had not been submitted. The respondent Corporation therefore asked for further documents and called the parties for a meeting to discuss the reconstitution on 31.08.2010. After the meeting, the claimant sent a letter dated 05.05.2011, to keep on hold the proposal for induction of K.Suresh Kumar, son of

Kodhandan as a partner. Since the agreement was not given effect to the said K.Suresh Kumar has moved to this Court by filing writ petition. When the petition filed by K.Suresh Kumar is pending before this Court, his brother K.Baskar has approached the respondent Corporation contending that there is an agreement between him and the claimant dated 12.04.2007 in and by which the claimant has requested the said K.Baskar for financial help to run the Gas Agency and in compliance of this request he has extended financial help to the claimant. The claimant promised to take him as partner in the Gas Agency. The said agreement forwarded by K.Baskar to the respondent corporation under a cover of letter dated 03.09.2012 is witnessed by the claimant wife. It is only on account of these letters inducing third parties interest into the distributorship that the show cause notice has issued.

9. In addition to this, several materials have also been produced during inspection. It is in these circumstances, that the respondent Corporation decided not to go ahead with the distributorship.

10. The Arbitrator, by his award dated 14.12.2017, was pleased to dismiss the claim petition, taking note of the agreement dated 12.04.2007, entered into between K.Baskar and the claimant, which was marked as Ex.C5. The reading of the agreement would, according to the arbitrator, prove that the claimant has handed over the distributorship to said K.Baskar. The arbitrator had also taken note of the fact that although the claimant had stated that the Memorandum of Understanding dated 12.04.2007, is fabricated by using the signature affixed by him in the blank papers, stamp papers, however he has admitted his signature and his wife's signature in the document. Further, the claimant has not taken any action against the respondent for such fabricated documents, therefore the arbitrator took the view that the petitioner's contention is baseless.

11. Challenging the said award the claimant is before this Court.

12. Mr.G.Ashokapathy, learned counsel appearing for the claimant submits that the respondent Corporation had not given a copy of the agreement dated 12.04.2007 to the claimant and further the said K.Baskar or K.Suresh Kumar were not examined as witnesses by

the respondent Corporation. Had the said persons been brought in as witnesses, the claimant would have established that the entire agreement dated 12.04.2007 was a fabricated one. If the claimant is able to establish that the said document is a fabricated one, the award should automatically be dismissed. He would further submit that the distributorship was being conducted only by the claimant despite the fabricated agreement and therefore, there is no violation of clause 21 of the distributorship agreement. He would therefore submit that the termination is totally illegal.

13. Per contra, Mr.Faiz Ali, learned counsel appearing on behalf of the respondent Corporation would submit that there is a clear violation of the condition prescribed in the clause 23(c) of the distributorship agreement entered into between the claimant and the respondent. Further the claimant has accepted his irregularities. He submitted that the claimant sent a letter apologising for the mistake committed by him and had contended that he had suffered the punishment for the wrong doings and therefore requested the corporation to consider his request for revocation of termination. He would further submit that as there is a violation of the terms of the distributorship agreement and exercising the right granted under the

distributorship agreement, the agency has been terminated and therefore the award of the Sole Arbitrator cannot be called in question and this original petition should be dismissed.

14. Heard both sides counsel and perused the papers.

15. Though the claimant would submit that the agreement dated 12.04.2007 was created by the said K.Baskar, no steps had been taken or the evidence let in, to show that the contents of the document has been subsequently created. In fact, though the argument was taken that the agreement had not been made available to the claimant, in the reply given to the show cause notice, the claimant has not stated that the agreement dated 12.04.2007 was not given to him. On the contrary, the contents of the reply notice would indicate that the claimant was very much aware of the contents of the agreement which was said to have been entered into between him and the said K.Baskar. It is also seen that, apart from the said K.Baskar the claimant has also tried to induct his brother K.Suresh Kumar, for which he has made a written request to the respondent Corporation. The contents of the MOU dated 12.04.2007 would read that the financial management of the agency had been entrusted to the said

Baskar and what remained was only the execution of the partnership deed, this is a clear violation of the provision of clause 23(c) of the distributorship agreement and therefore, the termination has been rightly exercised. The petitioner has not made out any ground for interference by this Court under section 34 of the Arbitration and Conciliation Act, 1996. The Original Petition, therefore stands dismissed.

16. It is needless to state that in the event of the claimant ultimately succeeding in the suit, it is open to them to make a fresh application to the respondent Corporation who shall consider the same taking into consideration the earlier association of the claimant with the respondent Corporation.

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11.12.2019

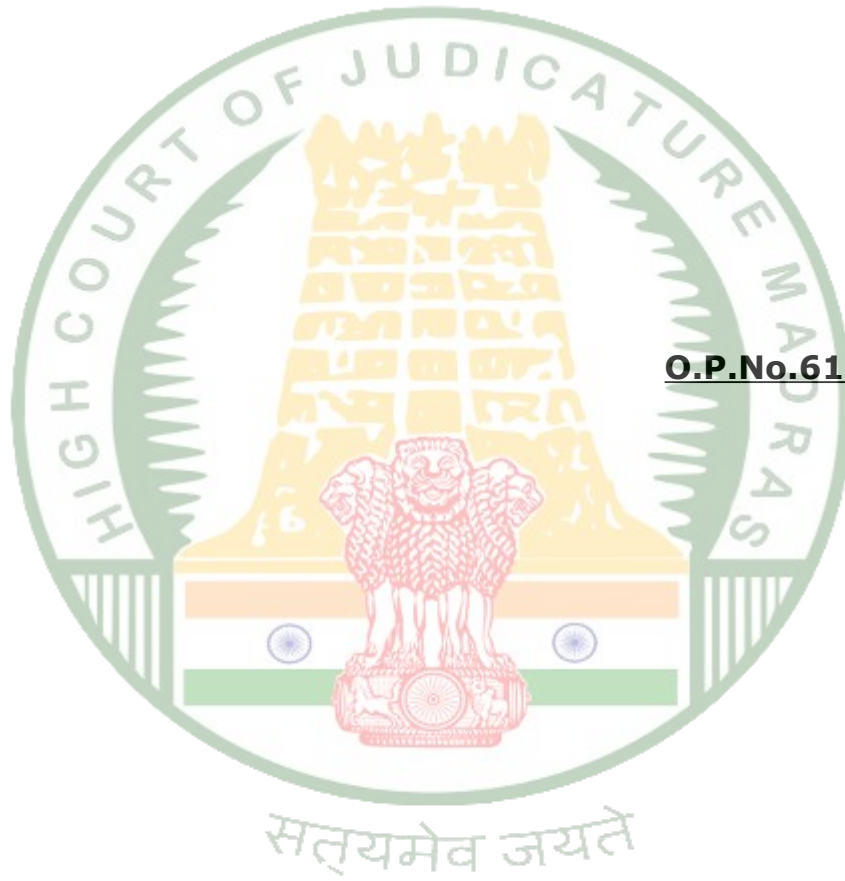
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Speaking Order: Yes/No

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P.T. ASHA.J.,

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