

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED 01.02.2019****CORAM****THE HONOURABLE MR. JUSTICE M.GOVINDARAJ****O.P.No.1119 of 2018 &
A.No.9710 of 2019**

M/s. Shri Vijaya RGGLV Indane Gas Services,
represented by its Partner J.Sahtyaraj,
Indane distributor,
2/216 East Street,
Mugaiyur,
Villupuram District

... Petitioner

Vs

1. The Chief General Manager (LPG)
Tamil Nadu State Office,
Indian Oil Corporation Ltd.,
Marketing Division, Southern Region,
Indian Oil Bhavan,
139 Mahatma Gandhi Road,
(Nungambakkam High Road)
Chennai-34.

2. The Chief Area Manager,
Indian Oil Corporation Ltd.,
Marketing Division,
Indane Area Office,
Triveni, IIInd Floor, B.35 Sastri Road,
Thillai Nagar, Trichy-18

... Respondents

Prayer: Petition filed under section 11(4) and (6) of the arbitration and Conciliation Act, 1996 praying to appoint an arbitrator to hear and decide the disputes between the parties arising out of the dealership agreement dated 24.8.2015.

For Petitioner : Mr.S. Vijayakumar

For Respondents : Mr.PAbdul Saleem

ORDER

The petitioner was appointed as a LPG Distributor by the 2nd respondent herein vide letter of intent dated 30.09.2010 for marketing LPG cylinders. Pursuant to the letter of intent issued by the IOCL Area Office, Trichy, a Memorandum of Agreement dated 24.8.2015 was entered into between the parties for LPG Distributorship.

2. During the month of July 2017 to June 2018, inspections were conducted, followed by which, show cause notices on 13.6.2017, 9.8.2017 and 11.12.2017 were issued for the irregularities allegedly committed by the petitioner. The 2nd respondent issued another show cause notice again on 21.9.2018 seeking explanations for various alleged irregularities found in the inspection conducted on 9.9.2018 and 19.9.2018 respectively. Subsequently on 25.9.2018, the petitioner was issued with an order of suspension of distributorship

3. The Agreement dated 24.8.2015 consist of an arbitration clause at clause 37(a) which reads as under;

' 37.(a) All questions, disputes and differences arising under or in relation to this Agreement shall be referred to the sole arbitration of the Director (Marketing) of the Corporation. If such Director

(Marketing) is unable or unwilling to act as the sole arbitrator, the matter shall be referred to the sole arbitration or some other office of the Corporation by such Director (Marketing) in his place, who is willing to act as such sole arbitrator. It is known to the parties herein that the Arbitrator appointed hereunder is an employee of the Corporation and may be Shareholder of the Corporation. The arbitrator to whom the matter is originally referred, whether the Director (Marketing) or Officer, as the case may be on his being transferred or vacating his office or being unable to act, for any reason, the Director (Marketing) shall designate any other person to act as arbitrator in accordance with the terms of the agreement and such person shall be entitled to proceed with the reference from the stage at which it was left by his predecessor. It is also the term of this Agreement that no person other than the Director (Marketing) or the person designated by the Director (Marketing) as aforesaid shall act as arbitrator. The award of the arbitrator so appointed shall be final, conclusive and binding on all the parties to the Agreement and provisions of the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof and the Rules made thereunder and for the time being in force shall apply to the arbitration proceedings under this clause.

(b) The parties hereby agree that the court in city of Trichy alone shall have jurisdiction to entertain

any application or other proceedings in respect of anything arising under this agreement and any awards made by the sole arbitrator or other proceedings in respect of anything arising under this Agreement.'

4. According to the petitioner, as per clause 37(a) of the Agreement dated 24.8.2015, all the disputes have to be resolved by appointing an arbitrator, but the respondents, in violation of terms of Agreement, issued a show cause notice to the petitioner followed by a suspension of distributorship and also imposed penalty against him. There are several other averments with regard to which, other disputes were also raised.

5. The petitioner issued a letter dated 24.10.2018 to the respondent invoking arbitration clause expressing their wish to appoint an arbitrator. However, the respondent does not take any steps to resolve the dispute through arbitration proceedings and proceeded to pass orders as per the terms of the dealership agreement. Since the respondent has not appointed any arbitrator, the petitioner is before this Court seeking for appointment of arbitrator.

6. It is an admitted fact that the Dealership Agreement dated

24.8.2015 contains an arbitration clause. On a perusal of typed set of papers, it is seen that the petitioner has sent a notice invoking arbitration clause to resolve the dispute as contemplated under law. Since the respondents have not come forward to use their right to appoint an arbitrator, the petitioner is before this Court seeking for appointment of an arbitrator to adjudicate the disputes inter se the parties.

8. The Honourable Supreme Court in the case of **M/s. Duro Felguera, S.A, Vs. M/s.Gangavaram Port Limited**, reported in (2017) 9SCC 729, wherein, the Apex Court has quoted the case **National Insurance Company Limited v. Boghara Polyfab Private Limited**, wherein it has been laid down that after the amendment of the Act all that the Courts need to see is whether an arbitration agreement exists - nothing more, nothing less. In the instant case also, taking note of the dictum of the Hon'ble Apex Court as well as the fact that the Agreement dated 24.8.2015 contains arbitration clause enabling the parties to adjudicate the disputes through arbitration proceedings, this court do not want to go into other issues and as such inclined to appoint a retired High Court Judge as an Arbitrator.

9. Accordingly, I thus appoint Mr. Justice M. Thanikachalam, Former Judge of this Court, residing at Plot No.27, M.G.R. Salai, Niyayalayam, (Near Vishranthi), Palavakkam, Chennai-41 (Mobile: 9445072737) as the sole Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties. He may, after issuing notice to the parties and upon hearing them, pass an award as expeditiously as possible, preferably within a period of six months from the date of receipt of the order. The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses. The proceedings may be conducted under the aegis of the Madras High Court Arbitration Centre and in accordance with the Madras High Court Arbitration Rules.

10. The Original Petition is, accordingly, allowed, leaving the parties to bear their own costs. Consequently connected A.No.9710 of 2018 is closed.

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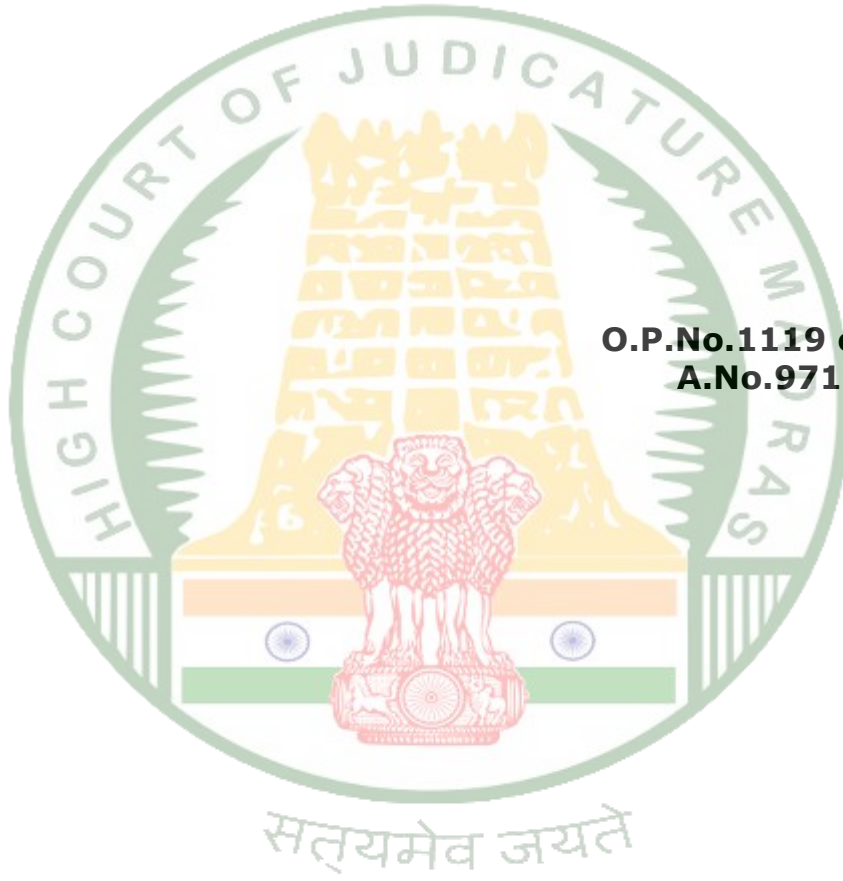
Index:Yes/No

Internet:Yes/No

speaking order/non speaking order

M.GOVINDARAJ, J.

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