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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 5th February, 2019

+ **O.M.P. 505/2006**

M/S RULIA MAL AMAR CHAND Petitioner
Through: Mr. A. Maitri and Ms. Radhika
Chandrashekar, Advocates.
(M:9810504823)

versus

HINDUSTAN PETROLEUM CORP. LTD. Respondent
Through: Mr. Naveen Kumar Raheja,
Advocate. (M:9810129691) with Mr.
Nilesh Srivastava, Senior Manager,
Real Estate, HPCL. (M:9416207637)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. Present petition under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter the 'Act'*) has been filed challenging the award dated 17th July, 2006 passed by the Ld. Sole Arbitrator.
2. Background of the dispute is that the Petitioner - M/s Rulia Mal Amar Chand (*hereinafter the 'Dealer'*) entered into a dealership agreement with the Respondent - Hindustan Petroleum Corporation Limited (*hereinafter 'HPCL'*) dated 3rd June, 2002 for running a petrol pump. The petrol pump was to be run from a portion of the land in Khasra No.98/21 (4-13) and Khasra No.98/20/2 (2-17) of revenue estate in Village Agwar Gujran, Tehsil Jagraon, District Ludhiana, Punjab. Along with the dealership agreement, the Dealer, who was part owner of the said land, also entered into a lease agreement dated 27th March, 2002.
3. On the ground that there were several irregularities including the

contamination of petrol being sold from the dealership outlet, HPCL terminated the dealership agreement on 18th March, 2004. Immediately on the next day itself i.e. on 19th March, 2004, HPCL repossessed the petrol pump and the entire stock of petrol/diesel, which was in the petrol pump at that time, was also repossessed. It is the admitted position that HPCL continues to run the outlet from the said land, as on date.

4. Disputes arose out of the termination action taken by HPCL. The matter was referred to the Ld. Sole Arbitrator, who passed the impugned award.

5. Ld. Arbitrator framed the following issues:-

“(i) Whether Inspection on 22.08.2003 conducted by the respondent is illegal?”

“(ii) Whether termination letter dated 18.03.2004 is illegal?”

“(iii) Whether the claimants are entitled loss of Rs. 1 lac p.m. since 28.03.2003?”

“(iv) Whether the claimants are entitled for possession of petrol pump?”

“(v) Whether land on which petrol pump was operative had been leased to the Respondent Corporation?”

“(vi) Whether the respondents are entitled to get and claimant are liable to pay counter claim of respondent corporation?”

6. The Ld. Arbitrator held against the dealer on all the issues. The findings of the Ld. Arbitrator on each of the issues is set out hereinbelow:

“(i) Whether Inspection on 22.08.2003 conducted by the respondent is illegal?”

Inspection on 22.08.2003 was done by Sales Officer and samples were drawn. As per MS/HSD control order Sales Officer of the corporation is authorized to inspect retail outlets and draw samples. Inspection report is duly signed by Sales Officer and also signed

and stamped by dealer's representative. Claimant could not produce any guidelines, instructions or law staying that inspection cannot be done in the absence of dealer himself. I do not find any illegality in the inspection report. Accordingly, this issue is decided against the claimant and in favour of respondent.

(ii) Whether termination letter dated 18.03.2004 is illegal? Clause 3 of the Agreement provides that the agreement is of determinable nature. Clause 26 prohibits contamination/adulteration. It can lead to termination. Under clause 27 selling of products of other oil companies is prohibited. Clause 55 provides that in case of adulteration dealership agreement can be terminated. Sample drawn from the Retail Outlet have failed on two occasions. Firstly on 18.12.2000, HSD sample failed. This had been admitted by the claimant vide his letter dated 21.12.2000 which is record. Secondly on 22.08.2003 UPL and HSD samples drawn also failed. As per MDG panel action on second sample failure is termination. Corporation had issued more than one show cause notices. Replies received were considered and found unsatisfactory and dealership terminated. Action taken is as per the provisions of agreement, MDG 2000 and principle of natural justice had been met. Accordingly, I decide that termination of dealership agreement is legal and valid.

(iii) Whether the claimants are entitled of loss of Rs. 1 lac p.m since 28.03.2003?

(iv) Whether the claimants are entitled for the possession of the petrol pump?

Issue No. 3 and 4 are correlated and can be disposed of simultaneously.

In issue No. 2 above it has been decided that termination of agreement is valid. Possession of Retail outlet was taken by corporation in terms of lease agreement signed between claimant (Lessor) and HPCL (Leasee). Claimant cannot be rewarded for such

serious irregularities committed by him. Accordingly I decide issue No. 3 and 4 against the claimant.

(v) Whether the land on which the petrol pump was operative had been leased to the Respondent Corporation?

Vide dealership agreement dated 03.06.2002 the Retail Outlet has been converted into a company leased Retail Outlet. This was done on the basis of lease agreement executed between the claimant (Lessor) and the respondent (Lessee). The premises of Petrol pump had been leased to the corporation for period of 15 years from 01.01.2002 to 31.12.2017. In view of above lease agreement I decide that the Retail Outlet premises had been leased to the corporation?

(vi) Whether the respondents are entitled to get and claimant are liable to pay counter claim of Respondent Corporation?

I find that respondent is not entitled to get their counter claim as it has not been proved. Accordingly I decide this issue against the respondent and in favour of claimant.”

7. Ld. Counsel for the Dealer, challenging the impugned award, raises the following objections in respect of the award.

- 1) That the procedure required under the dealership agreement for doing the sampling was not followed i.e. requisite number of samples were not taken in accordance with the agreement and testing was not done in the manner prescribed in the agreement.
- 2) That the termination is illegal, inasmuch as, as per the dealership agreement three months' notice was to be given. Admittedly, no notice was given prior to the termination and hence, the same is not in accordance with the terms of the contract.
- 3) The Dealer is also entitled to damages and losses as also

possession of the petrol pump, inasmuch as HPCL is only the lessee of the land in question and is not the owner of the land.

8. On the other hand, Id. Counsel for HPCL submits that the Dealer was found to be in breach of various terms of the agreement and the termination was rightly held to be valid and legal. He further submits that the dealership agreement and the lease agreement are distinct and separate. Even if the dealership is terminated, under the lease, HPCL is entitled to run the petrol pump from the land in question. He further submits that the lease is for 20 years and is valid till 2022. Hence, no objection can be raised by the Dealer from HPCL running the petrol pump from the said land. He further submits that the lease amount, which initially was Rs.10,000/- per month and thereafter Rs.12,000/- per month, is being diligently paid by HPCL and has been cleared up till January, 2019. He further submits that it is not even the case of the Dealer that the lease was wrongly executed or that HPCL is not the lessee as per law.

9. Ld. Counsel for HPCL has also brought to the notice of the Court various orders passed by the Debt Recovery Tribunal - II, Chandigarh ('DRT') wherein proceedings were initiated by the bank with whom the subject land was mortgaged and in the said proceedings, the land has, in fact, been auctioned and the land is, currently, owned by a third party - Ms. Kiran Kapoor. Thus, he submits that the Dealer has no locus to even challenge the right of HPCL to run the petrol pump from the said land, as he is no longer the owner.

10. He further submits under instructions from Mr. Nilesh Srivastava, Senior Manager (Real Estate), HPCL, that the Dealer himself was a party to the said DRT proceedings and is well aware of the auction has already been

conducted by the DRT. Ld. Counsel for the HPCL further submits that petrol pump is now being run under a new dealership agreement entered into with another third party since 2008.

11. After hearing both the parties, it is clear that the arbitral reference was only under the dealership agreement dated 3rd June, 2002. The disputes under the lease agreement dated 27th March, 2002 were not the subject matter of the arbitral proceedings. Ld. Arbitrator framed a specific issue in respect of the possession of petrol pump i.e. as to whether the Dealer is entitled to be given possession. In respect of the said issue, Ld. Arbitrator observed as under:

“(iii) Whether the claimants are entitled loss of Rs. 1 lac p.m. since 28.03.2003?

(iv) Whether the claimants are entitled for the possession of the petrol pump?

Issue No. 3 and 4 are correlated and can be disposed of simultaneously .

In issue No. 2 above it has been decided that termination of agreement is valid. Possession of Retail outlet was taken by corporation in terms of lease agreement Signed between claimant (Lessor) and HPCL (Leasee). Claimant cannot be rewarded for such serious irregularities committed by him. Accordingly I decide issue No. 3 and 4 against the claimant.”

12. A perusal of the above findings shows that the Ld. Arbitrator has arrived at a conclusion that due to irregularities committed by the Dealer, possession of the petrol pump cannot be given back to the Dealer.

13. There is merit in the contention of ld. counsel for the Dealer that the lease agreement for the land being distinct and separate from the dealership agreement, the dealership agreement cannot be used by HPCL to claim ownership rights or continued possessory rights in the land. Rightly,
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therefore, Id. counsel for HPCL submits that the company does not claim any ownership rights but only claims rights as a lessee in the said land. Since the Dealer claimed delivery of possession of the petrol pump, Id. Arbitrator had to go into the said issue. The award having been passed only under the dealership agreement dated 3rd June, 2002 and the lease agreement and the terms thereof not being the subject matter of the arbitration, insofar as the land where the petrol pump is located and the lease agreement are concerned, the observations of the Id. Arbitrator cannot be treated as binding. Id. Arbitrator ought to have simply observed that the reference does not include the lease agreement dated 27th March, 2002 and any relief of possession was to be sought under the said agreement and not under the dealership agreement. The possession having not been handed over to the Dealer of the petrol pump and HPCL continuing to run the said petrol pump, the land has remained in the possession of HPCL for all these years i.e., since 2004 when the dealership was terminated.

14. The dealership having been terminated and the question of samples having been taken by HPCL and the same having been found to be unsatisfactory or being contaminated being factual issues, this Court under Section 34 of the Act is not inclined to interfere with the said findings. However, the termination of the dealership cannot in any manner result in the Dealer's rights in the land also being set at naught. The land on which the petrol pump was run which was leased to HPCL cannot be taken away by HPCL for the running of the petrol pump and that too for a sum of Rs. 10,000/- or Rs. 12,000/- per month, especially when the dealership agreement stood terminated.

15. The rights of the Dealer, if any, in the land in question deserve to be

protected. Just because the dealership agreement stood terminated, does not automatically mean that the dealer has to be deprived of his land. It is accordingly directed that the impugned award and the observations therein are to be read as relating to the Dealership agreement dated 3rd June 2002 and would have no bearing on any dispute that may be raised by the Dealer in respect of the Lease agreement dated 27th March 2002. Insofar as the lease agreement is concerned, the Dealer is left to avail his remedies in accordance with law, if he continues to have rights in the land in question. The findings of the Id. Arbitrator in the impugned award shall not have any bearing in any proceedings that may be filed by the Dealer. The impugned award shall also not bar the Dealer from exercising any remedies as may be available in law.

16. The observations of this Court, in giving liberty to the Dealer to avail of his remedies under the lease agreement dated 27th March 2002, are not to be construed as any declaration of ownership rights of the Dealer in the land. It is, thus, clarified that the award has been passed only under the dealership agreement dated 3rd June, 2002 and not under the lease agreement dated 27th March, 2002.

17. OMP is disposed of with these observations.

**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 05, 2019/dk