

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

913. ARBITRATION APPEAL NO.4 OF 2018
WITH
CIVIL APPLICATION No. 7938 of 2018
IN
ARBITRATION APPEAL NO.4 OF 2018

Hindustan Petroleum Corporation Ltd.
Through its authorized representative George Thomas,
age 47 years occup. business, Retail Regional Office,
G-39, Town Centre, CIDC O, Aurangabad 431003 ...Appellant

VERSUS

Santosh S/o Abasaheb Bhapkar,
age 31 years occup. business,
Survey No. 152, village Jategaon Phata,
Ahmednagar Pune Highway road,
Taluka Parner Dist. Ahmednagar 414302 ...Respondent

*Miss Anjali Bajpai-Dube, Adv., with Mr. Amol Joshi, Adv. for appellant
Mr. Rajendra Agrawal, Adv.,h/f. Mr. G.J. Pahilwan, Adv.for respondent*

CORAM : ROHIT B. DEO, J.

DATE : 22nd January, 2020

J U D G M E N T :

1. Appellant Hindustan Petroleum Corporation Limited (for short "HPCL") is assailing the judgment dated 19th April 2018, whereby and whereunder the District Judge-1, Aurangabad, rejected

the application preferred by the HPCL under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "1996 Act") objecting to award made by learned Arbitrator Shri S.Y. Narvekar.

2. At the very threshold, the learned Counsel for the appellant would submit that the learned District Judge-1, Aurangabad, was *coram non-judice* and the judgment impugned is, therefore, vitiated by the jurisdictional error.

3. In view of the submission bringing to the fore the issue of jurisdiction, I passed the following order on 9th January 2020:

" At the very threshold the issue which arose for consideration is whether the learned District Judge-1, Aurangabad could have decided the application under Section 34 of the Arbitration and Conciliation Act.

2. I have heard learned Counsel at length.

3. List the Arbitration Appeal for order on issue of jurisdiction on 15th January 2020. "

4. The learned Counsel for the appellant-HPCL, Miss Anjali Dube and the learned Counsel for the claimant, Shri Rajendra Agrawal, have been heard at length on the issue of jurisdiction.

5. It would be apposite to note the order dated 11th November 2016 rendered by the Principal District Judge,

Aurangabad, whereby Section 34 application preferred by the HPCL came to be assigned to the District Judge-1, Aurangabad. The said order reads thus:

" The subject matter of the agreement is about dealership of petrol pump. The Ld. Counsel has valued this case of Rs. 1000/- for court fees.

As per directions in the Govt. Gazette the matters having valuation above one crore have to be filed in Special Court.

A question was put to Ld. Counsel Adv. Amol Joshi as to what loss would be caused to the party if the dealership is terminated. He submitted that this aspect cannot be assessed in terms of money.

Considering this submission and the fact that, the matter is relating to dealership of a petrol pump, the valuation of subject matter for jurisdiction as per provision mentioned as above gazette seems to be not assessed in terms of money that is above one crore. Therefore, in order to see that, this matter is tried by the proper court it is assigned to the Special Court. "

6. The Principal District Judge was alive to the statutory scheme of the Commercial Courts Act, 2015 (for short "2015 Act"). In view of Section 2(1)(i), specified value in relation to a commercial dispute would be the value of the subject matter in

respect of a suit as determined in accordance with Section 12 of the 2015 Act, which shall not be less than one crore rupees or such higher value, as may be notified by the Central Government (as the provision stood then). The order of assigning the section 34 application notes that a commercial dispute of valuation of more than Rs. one crore has to be dealt with by the Commercial Court. The said order further records that in response to a court query to the learned Counsel Shri Amol Joshi, who represented the HPCL, the answer was that the loss caused to the claimant due to the termination of the dealership would not be susceptible to monetary valuation. Having recorded thus, the Principal District Judge nonetheless assigned the hearing of Section 34 application to the District Judge-1, on the premise that the Section 34 application will have to be heard by the Commercial Court.

7. It would be necessary to note the provisions of Section 10 of the 2015 Act, which reads thus:

" 10. Jurisdiction in respect of arbitration matters.

— Where the subject-matter of an arbitration is a commercial dispute of a Specified Value and--

(1) If such arbitration is an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act,

1996 (26 of 1996) that have been filed in a High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(2) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that have been filed on the original side of the High Court, shall be heard and disposed of by the Commercial Division where such Commercial Division has been constituted in such High Court.

(3) If such arbitration is other than an international commercial arbitration, all applications or appeals arising out of such arbitration under the provisions of the Arbitration and Conciliation Act, 1996 (26 of 1996) that would ordinarily lie before any principal civil court of original jurisdiction in a district (not being a High Court) shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted. "

8. Perusal of Section 10(3) would show that an application or appeal arising out of an arbitration other than an international commercial arbitration, which application or appeal would ordinarily

lie before any Principal Civil Court of original jurisdiction, shall be filed in, and heard and disposed of by the Commercial Court exercising territorial jurisdiction over such arbitration where such Commercial Court has been constituted.

However, Section 10(3) would come into play only where the subject matter of the arbitration is a commercial dispute of a specified value.

9. It is too well settled, for this Court to make a reference to the plethora of the decisions holding the field that the Court as defined in section 2(1)(e) of the 1996 Act would be the Principal Civil Court of original jurisdiction in a district, and in the context of Aurangabad, such Court would be the Principal District Judge, Aurangabad. Ordinarily, an application U/s. 34 of the 1996 Act would lie only before the Principal District Judge, the only exception would be, if section 10(3) of the 2015 Act is applicable.

10. I am satisfied that the Section 34 application could not have been assigned to the Court of District Judge-1, Aurangabad. The decision rendered by the District Judge-1, Aurangabad, is by *coram non judice* and, therefore, is a nullity. Perusal of the Arbitral Award reveals that the only relief granted to the claimant is declaration that the termination of the agency is illegal. The award

does not suggest that the said relief is susceptible to monetary valuation and, indeed, the claimant did not make any attempt to contend otherwise. The HPCL, which preferred the Section 34 application, valued the application at Rs. 1000/- on the premise that the dispute is not susceptible to monetary valuation and the response of the learned Counsel, who appeared on behalf of the HPCL to the Court query, is already noted supra. In the situation obtaining, it defies the statutory scheme, if not logic, how the learned Principal District Judge could have assigned the hearing of Section 34 application to the Commercial Court since the Commercial Court was District Judge-1 and not the Principal Civil Court of original jurisdiction in the district, as is envisaged U/S. 2(1) (e) of the 1996 Act.

11. I am fortified in the view, which I have taken by the decision rendered by the learned Single Judge (Shri R.V. Ghuge, J.) in broadly similar facts in Arbitration Appeal No. 9/2017 with the only difference that the objector, who preferred section 34 application, was the Indian Oil Corporation.

12. In the light of the discussion supra, the judgment impugned is set aside and Section 34 application is remitted to the Principal District Judge, Aurangabad, for decision afresh in

accordance with law.

13. The parties shall appear before the learned Principal District Judge, Aurangabad, on 11th February 2020. Separate notice shall not be necessary.

14. The learned Principal District Judge, Aurangabad, shall endeavour to decide the section 34 application finally as soon as possible and in any event, within four months.

15. It is clarified that since the matter is remitted, the order dated 29th August 2017 rendered by the District Judge-1, Aurangabad, shall continue to operate till the disposal of the Section 34 application.

16. Pending Civil Application is disposed of.

(ROHIT B. DEO)
JUDGE