

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2020

C O R A M

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.379 of 2020

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

...Petitioner

-V-

1.The Executive Director (TN &P),
Tamil Nadu State Office,
Indian Oil Corporation Limited,
Indian Oil Bhavan,
139, Mahatma Gandhi Road,
(Nungambakkam High Road),
Chennai-34.

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

...Respondents

Prayer: Original 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 24.08.2015.

For petitioner : Mr.S.Vijayakumar

For Respondents : M/s.AAV Partners

ORDER

The above petition is filed under Sections 11 (4) and (6) of the Arbitration and Conciliation Act for appointing an Arbitrator to hear the disputes between the parties arising out of the Dealership Agreement dated 24.08.2015.

2.The petitioner would submit that in the year 2010, the Ministry of Petroleum and Natural Gas, Government of India had evolved a Scheme known as the Rajiv Gandhi Gramin LPG Vitrak hereinafter refereed to as the RGGLV Scheme. Under the said Scheme, LPG Distributorship was given to the handicapped persons and persons with disability of Ex-

Servicemen. The petitioner being a physically handicapped person, as his right leg has been amputated in an accident in the year 1996, became eligible to apply for this LPG Distributorship. The petitioner would submit that he had made his application and ultimately, was appointed as a Distributor by the respondents and a Memorandum of Agreement dated 24.08.2011 was entered into with the petitioner firm and on this occasion the Letter of Appointment was given to the Partner of the petitioner firm. On account of the hard work the Partner of the petitioner firm, the petitioner firm had earned a good name amongst the general public and 21000 consumers on its role.

3.Mr.Sathyaraj, a partner of the petitioner firm had reconstituted the business as a Partnership firm and he inducted his wife as a Partner and thereafter, the 2nd Memorandum of Agreement dated 24.08.2015 was entered into between the petitioner firm and the 2nd respondent. All of a sudden in the year 2017, disputes arose between the petitioner and the respondents with reference to certain irregularities and the petitioner firm was served with the Show Cause Notice dated 09.08.2017, 11.12.2017,

13.06.2018 and 21.09.2018. The petitioner firm therefore requested the respondents to decide the disputes among the parties for which purpose they had sought for an appointment of an Arbitrator.

4. Since there was no response the petitioner firm was constrained to approach this Court by filing a petition under Section 11 (4) and (6) of the Act, in O.P.No.1119 of 2018. This petition was allowed by order dated 01.02.2019 and a retired Judge of this Court Justice M.Thanikachalam was appointed as the Arbitrator. The Arbitrator had also heard the matter and passed an Award on 31.12.2019. The same is yet to be implemented. In the meanwhile, the respondents have credited a sum of Rs.2,28,213.20 towards Distributor's Load Account (PAD Account) and the same is not the subject matter of the Award. That apart, a further sum of Rs.5,06,125/- towards Commission of 250 LPG Gas connections issued under the PMUY Scheme in the last week of September 2018. Therefore, in all a sum of Rs.7,34,338.30 was due and payable by the respondents to the petitioner .

5.The petitioner would submit that they had sent a letter dated 10.09.2019 calling upon the petitioner to pay the said amount and since the Distributorship has been suspended there is no necessity for the delivery of the LGP Cylinder.

6.In these circumstances, the petitioner would submit that the respondents were not entitled to hold the amount unauthorizedly. The petitioner was therefore left with no other option but to invoke the arbitration clause in the Agreement dated 24.08.2015. Though this letter was received by the respondent on 03.06.2020 they did not come forward to comply with the request and therefore, the present application has been filed.

7.When the matter had come up for hearing the respondents had entered appearance and this Court by order dated 29.09.2020 had observed that since the dispute is only with reference to a sum of Rs.7 lakhs, the learned counsel could advise his client and revert with his instructions.

8.Today when the matter was called the learned counsel for the respondents would submit that since there was serious dispute between the parties there is no possibility of arriving at a Settlement. Therefore, the learned counsels have made their submissions.

9.A perusal of the documents would indicate that the petitioner firm had entered into an Agreement dated 24.08.2015 with the respondents for LPG Distributorship both for the domestic as well as commercial supply. The said Agreement contains an arbitration clause which is elaborated in Clauses 37(a) and (b) which is morefully set out in the Agreement. It is further seen that although the petitioner had addressed two letters calling upon the respondents to pay their unutilized amounts there is no response to the same. Reminder dated 03.04.2020 has also been filed. Thereafter, the respondents had vide letter dated 24.04.2020 informed the petitioner that since the respondents had been suspended the amounts cannot be released till the matter attains finality. The question of refund of unutilized amount would have to await the final decision in the matter. By letter dated 20.05.2020, the petitioner firm had requested the respondents to take

appropriate steps to appoint an Arbitrator. The said letter has also been received by the respondents and they have not taken any steps in this regard. A perusal of the papers would clearly indicate that there is a dispute between the petitioner and the respondents. Therefore, taking into account the fact that the parties had agreed to settle all the disputes through arbitration, it would be in the interest of justice to have an Arbitrator appointed. Both the learned counsels appearing for the parties have no objection to the appointment of Mr.S.Sounthar, Advocate No.84/6, Aditya Enclave, 6th Main Road, Mogappair, Eri Scheme, Chennai-37 Ph:9840225978 as the Hon'ble Arbitrator.

10. Accordingly, it is ordered as follows:

i) Mr.S.Sounthar, Advocate No.84/6, Aditya Enclave, 6th Main Road, Mogappair, Eri Scheme, Chennai-37 Ph:9840225978, is appointed as the Arbitrator to enter upon reference and adjudicate the disputes *inter se* the parties.

ii) The learned Arbitrator 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. It is open to the respondents to raise all legal objections as to the validity of contract.

iii) The learned Arbitrator is at liberty to fix his remuneration and other incidental expenses as per law.

iv) 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.

The Original Petition is accordingly allowed, leaving the parties to bear their own costs.

05.10.2020

Internet : Yes/No

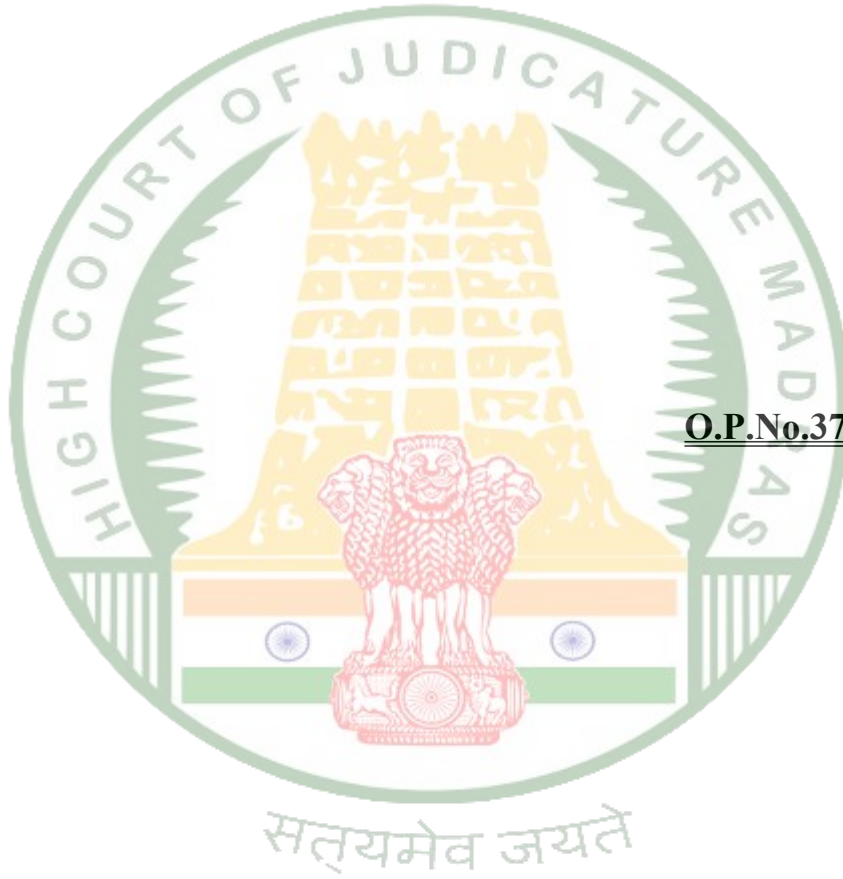
Index : Yes/No

Speaking / Non-Speaking
mps सत्यमेव जयते

WEB COPY

P.T. ASHA. J.

mps



O.P.No.379 of 2020

WEB COPY

05.10.2020