

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.P.No.362 of 2014

M/s. Om Sakthivel Agencies
Represented by its Proprietor
S. Vijayaraghavan,
No. 144, Medavakkam Main Road,
Adambakkam,/
Chennai-600 088.

...Petitioner

Vs.

1. M/s. Indian Oil Corporation Ltd.,
Represented by its Executive Director,
Southern Region,
“Indian Oil Bhavan”,
No. 139, Mahatma Gandhi Road,
Nungambakkam,
Chennai-600 034.

2. Mr. S. GaneshSole Arbitrator,
M/s. Indian Oil Corporation Limited,
Southern Region, “Indian Oil Bhavan”,
No. 139, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.

...Respondens

PRAYER: Petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 praying to

- i) Set aside the Arbitral Award dated 30.03.2012 passed by the learned Sole Arbitrator and consequently allow the Claim Petition filed by the Petitioner.
- ii) award the costs of this Petition.
- iii) Pass such further or other reliefs in favour of the Petitioner as this Honourable Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr. K. Selvaraj

For Respondent : Mr. Abdul Saleem for
M/s. AAV Partners for R1 & R2.

ORDER

The petitioner who is the claimant before the Arbitral Tribunal being aggrieved by the dismissal of their claim is before this Court under Section 34 of the Arbitration and Conciliation Act, 1996.

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2. The brief facts preceeding the filing of the above claim statement

are as follows:

The petitioner is a dealer under the first respondent and has been carrying on business for them for more than seventeen years. While so, on 13.09.2002 the team belonging to the Civil Supplies Department had inspected the petrol bunk of the petitioner and taken samples of both motor spirit and high speed diesel in water bottles without following the basic purity conditions. The samples were held to be contaminated and consequently a show cause notice dated 27.9.2002 came to be issued by the first respondent enclosing therewith the lab report and calling upon the petitioner to explain within ten days as to why the samples did not meet the specifications in respect of RON (Research Octane Number). The sale was suspended from 27.09.2002 till 26.10.2002 and the petitioner was made to pay a penalty of Rs.20,000/-. In fact, the suspension had taken place even before the expiry of the ten days period given under the show cause notice.

3. The petitioner had responded to the show-cause notice stating that the samples had been taken in water bottles that had not been rinsed and

further those bottled were sealed with ropes and therefore the procedure adopted in collecting the samples did not conform to the guidelines. The petitioner had also requested the first- respondent to take a retest of the samples, however the first respondent did not deem it fit to take out fresh samples by following the guidelines.

4. Even after 13.09.2002, the date on which the sample was taken, the first-respondent has been supplying motor spirit to the petitioner on 16.09.2002, 17.09.2002, 20.09.2002, 21.09.2002, 23.09.2002 and 26.09.2002 and several other dates. Thereafter, on 14.11.2002 the first-respondent had demanded that the petitioner should remove the entire stock and hand over the same to the supply point at Korukkupet. The petitioner had objected to the said arrangement but however due to the pressure of the first-respondent, the petitioner had ultimately handed over the same at the designated place. On the date on which the stocks were removed there was about 12,180 litres of motor spirit in stock, the value of which was Rs, 3,82,955.54. Since a dispute had arisen between the parties, the petitioner

has requested for the matter being referred to Arbitration as per the terms of the agreement between the petitioner and the respondent and accordingly the matter was referred to the sole Arbitrator. The petitioner had made a claim based on the above facts before the sole Arbitrator.

5. The defence to the said claim-statement was that the samples were taken following the prescribed protocols and the due procedure, in the presence of the representative of the petitioner. The samples were collected as contemplated under clause 27 of the Dealership Agreement. The further statement of the first-respondent is that the samples taken for the lab test had failed the RON test and therefore a show cause notice dated 27.09.2002 was issued to the petitioner seeking an explanation and the sales and supplies were suspended for a period of thirty days as per the marketing discipline guidelines. The first respondent would further contend that after the sample was taken, if the remaining stock was not removed, then it would contaminate the fresh product as well and for this reason the petitioner was asked to evacuate the tank before recommencing the sales. The further

defence-statement put forth by the first respondent is that only after following the procedure, the petitioner was directed to remove the remaining quantity of the fuel in the tank.

6. Pending the Arbitral proceedings, the petitioner had sought for the test report with reference to the samples taken on 25.10.2002 and 14.11.2002. Despite orders of the Arbitrator dated 1.07.2011 to produce the same, the first respondent had stated that they had received a letter from their lab at Korukkupet stating that they did not have the test report dated 25.10.2002 and 14.11.2002. It is rather surprising that when the said report is the base document for the first respondent-corporation upon which they rest their case, the counsel would come forward with such an evasive response to the genuine demand. This act is rather strange especially when the sales of the petitioner has been suspended on the ground that the Petitioner had been selling contaminated fuel. Though the said report on the samples was not produced, the sole Arbitrator has proceeded to hold that the respondent had followed the guidelines in letter and spirit and further as

per the guidelines of the Corporation if once there is an adulterated product which is not what was supplied, the same had to be completely removed and fresh stock induced into the fuel tanks.

7. It is challenging this order that the petitioner is before this Court.

8. The primary ground of challenge which has been put forth by the petitioner is that the Arbitrator has totally failed to consider the terms of agreement as well as the guidelines that have been prescribed for drawing samples for sending the same for test. The petitioner's case is that though the sample was drawn on 13.09.2002 and 25.10.2002, they were not directed to drain out the fuel available there. Later it was only the fuel that was available on 14.11.2002 that has been directed to be drained out and sent to the out let at Korukkupet. The Arbitrator has not taken note of the fact that no procedure has been followed taking samples. The Arbitrator has not appreciated the fact that the sample has been drawn in a bottle by the Civil Supplies Department which apparently is a contaminated bottle and

therefore the report given with regard to this sample may not be the true fact.

9. The learned counsel appearing on behalf of the petitioner would reiterate the above facts once again stating that the petitioner had suffered heavy loss since it was made to drain out the remaining stock which was not proved to be contaminated. The learned counsel would submit that from the dates of the drawing of the samples, the first respondent continued to supply fuel and the fuel was drained out only on 14.11.2002.

10. Per contra, learned counsel appearing on behalf of the first respondent would submit that the Corporation had only followed the procedure as contemplated in their regulations and that no exception can be taken to the same. However the respondent would submit that the claimant had been compensated and reimbursed by converting the fuel demand into one of furnace oil for the 12180 litres of contaminated stock received from the retail outlet.

11. Heard the counsels and perused the papers.

12. A perusal of the records would indicate that even before the expiry of the time given in the show cause notice, the respondent corporation had proceeded to suspend the sales of the petitioner for the period of 30 days and further levied penalty there on. That apart, on the date on which the fuel was removed from the under ground tank, there is nothing on record on the side of the respondent to show that the stock that was removed on 14.11.2002 was adulterated. The respondent has not directed removal of the remaining stock during the period when the sales were suspended but directed to remove the stock, long after the sales had resumed.

13. The Arbitrator has totally overlooked the same and further has failed to appreciate that the terms of the contract as well as their guidelines which clearly stipulate the mode to be adopted while drawing out the samples for

being sent for test. Admittedly the same has not been followed in this case and in these circumstances the petitioner cannot be made to suffer a loss.

14. The Arbitrator has not considered the case put forth by the petitioner and solely relied on the guidelines that have been produced without looking into the merits of case. The Award is also silent on the fact that on the date on which the stock had been removed there is no report to show that the quantity that was drained was contaminated. Though the first respondent has contended that the petitioner has been reimbursed the quantity of the furnace oil into which the fuel that was removed has been converted. There is nothing on record to show that the fuel oil that was removed on 14.11.2002 was contaminated and therefore had to be converted into furnace oil. The first respondent has not followed the agreed procedure in the instant case right from the drawing of samples to the conversion of the fuel removed into furnace oil

15. Taking note of the above, this Court is inclined to set aside the Award passed by the sole Arbitrator as the claimant/petitioner is entitled to the cost of the 12,180 litres of fuel which had been removed without any basis, less the amount that has been already reimbursed. With the above direction, the Original Petition is allowed.

13.02.2020

mrn

Index : Yes/No
Speaking order/non-speaking order



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To,

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