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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 20TH DAY OF JULY 2021

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

O.P. No.419 of 2017

In the matter of the Arbitration and
Conciliation Act, 1996

And

In the matter of Agt No:0927 dated
01.11.2011 in respect of transportation
of Bulk LPG with IOCL.

M/s Jasmitha Transports,
Rep by its Proprietor, S.Sukumar,
No:6/948-B, Paramathi Road,
Velumurugan Towers,
Opp. DSP Office,
Namakkal – 637 001.

. . . Petitioner/Claimant

Versus

M/s Indian Oil Corporation Limited,
Rep by its Dy.General Mgr (LPG-S & D),
Indian Oil Corporation Limited,
Tamil Nadu State Office, “Indian Oil Bhavan”,
No:139, Nungambakkam High Road,
Chennai – 34.

... Respondents/Respondents

Original Petition praying that this Hon'ble Court be pleased to set
aside the award dated 30.10.2015 passed in Arb No.1 of 2014 by the Sole
Arbitrator Mr.V.Ramasamy and consequently direct the respondent release
the amounts so recovered.



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This Original Petition coming on this day before this court for hearing in the presence of Mr.M.Udhaya Kumar, advocate for the petitioner herein and Mr.V.Anantha Natarajan, advocate for the respondent herein, and upon reading the petition and the award dated 30.10.2015 filed herein and this court having observed that the Arbitrator has failed to consider the relevant clause and simply agreed the reply statement without deciding the merits of the case on the basis of the contractual premises and the award suffers from patent illegality and the same can be interfered under section 34 of the Act, and it is ordered as follows:-

That the award dated 30.10.2015 passed by the learned Arbitrator be and is hereby set aside.

2. That the parties hereto shall be at liberty to go for fresh Arbitration by consent or if no consensus is arrived at, it is open to the applicant to approach the court under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of the fresh Arbitrator in this matter.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
20th DAY OF JULY 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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30.09.2021

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O.P. No.419 of 2017

ORDER:-

DATED: 20.07.2021

THE HON'BLE MR. JUSTICE

N.SATHISH KUMAR

FOR APPROVAL: 01.10.2021

APPROVED ON : 01.10.2021



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 20.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

O.P.No. 419 of 2017

M/s.Jasmitha Transports,
Rep. By its Proprietor, S.Sukumar,
No:6/948-B, Paramathi Road,
Velmurugan Towers,
Opp. DSP Office,
Namakkal – 637 001

. . . Petitioner

Versus

M/s.Indian Oil Corporation Limited,
Rep by its Dy.General Mgr (LPG-S&D)
Indian Oil Corporation Limited,
Tamil Nadu State Office, “Indian Oil Bhavan”
No:139, Nungambakkam High Road,
Chennai – 34.

. . . Respondent

PRAYER : Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 to set aside the award dated 30.10.2015 passed in Arb.No.1 of 2014 by the Sole Arbitrator Mr.V.Ramasamy and consequently direct the respondent to release the amounts so recovered.

For Petitioner : Mr.M.Udhaya Kumar

For Respondent : Mr.V.Anantha Nataraja

ORDER

<https://hcservices.ecourts.gov.in/hcservices/> This original petition has been filed to set aside the award



dated 30.10.2015 passed in Arb.No.1 of 2014 by the Sole Arbitrator Mr.V.Ramasamy and consequently direct the respondent to release the amounts so recovered.

2. For the sake of convenience, the parties are referred to by the rank in the Arbitral proceedings.

3. The claimant is the Transporter of Liquefied Petroleum Gas (hereinafter called as LPG). He was awarded the contract, viz., LPG/LOGS/TT(SR) 2011 floated by the respondent Corporation, to transport LPG, and an agreement also came to be executed between the claimant and the respondent on 01.11.2011.

4. The claimant was carrying LPG weighing about 17860 kgs from Mangalore to Cochin. The invoice was issued on 13.01.2014. In the invoice, it was made clear that he is a stock Transporter. The Transport was done through roadway. The rate per kg was agreed upon in the invoices as Rs.26.17 per kg. Accordingly, the total value of the consignment was Rs.4,67,473/-. On 14.01.2014, when the truck was crossing Kalliassery, Kerala State, met with an accident. As a result, the entire LPG gas got fired and truck got damaged, as well as LPG gas were totally destroyed and an FIR has been lodged in this regard. It is also stated that as per the clause agreed between the parties particularly, Clause 30(a) it is stated as in the event of loss of LPG partially or fully due to leakage or



fire during or because of accident, the recovery for the product loss will be made at the prevailing rate applicable for domestic sales at the loading source, provided FIR has been lodged for the accident or for the leakage and due report has been submitted to CCE and the proof of acquittal of case from Police and decision on settlement by the concerned Insurance Company have been submitted to the satisfaction of the Corporation. Otherwise the corporation shall recover the cost of the loss at the basic rate of Rs.70/- per kg or the prevailing rate of the Corporation applicable for non-domestic use at the loading base whichever is higher.

5. In view of the above Clause, Corporation has issued debit note on 16.01.2014 within two days from the date of accident for a sum of Rs.19,42,742/- by claiming Rs.109 per kg.

6. Accordingly, the claimant has raised the dispute and the claimant made the following claim to declare the Debit Note dated 16.01.2014 as arbitrary, illegal against law, without application of mind, unsustainable and premature and to withdraw the illegal show cause notice issued on 15.01.2014; the claimant is not liable to pay any damages, since as per Common Carrier, the fire has taken place due to the act of State by omission in not maintaining a road and act of God and also sought compensation for a sum of Rs.2,00,000/- and to pay interest at the rate of



the claimant is entitled to pay only a sum of Rs.4,67,473/- as per the invoice.

7. Admittedly, there was a fire accident and it is the case of the respondent that, as per the Clause in the contract, particularly, in the case of accidents involving tank trucks while in transit or at any other stage, it shall be the sole responsibility of the Transporters :

(i) To intimate the nearest Bolting Plant of the Corporation or of any other Oil Company establishment, immediately of the occurrence of the accident.

(ii) To inform the local Police and District Administration of the occurrence of the accident;

(iii) To inform the State/Regional/Zonal Office of the Corporation by telegram/e-mail/SMS and by telephone of the occurrence of the accident.

8. It is their contention that they are entitled to issue debit note.

9. The learned Arbitrator after analysing the materials, particularly, the contract governing the parties, had dismissed the claim petition. Challenging the same, this original petition is filed.

10. Learned counsel for the petitioner contented that the award suffers from patent illegality, and the contract governing the parties has not been considered properly and the relevant Clause governing the parties has



been ignored by the learned Arbitrator. The learned counsel would further contend that the learned Arbitrator has failed to consider the fact that the Debit Note has been issued even before providing opportunity to the claimant to produce the documents as envisaged in Clause 30(a) of the Contract. Hence, it is his contention that the award suffers from patent illegality which goes to the root of the case. The Debit Note has been issued for a huge sum, which is against the very contract between the parties, since, what was agreed between the parties was to compensate the loss at the domestic rates and not as claimed by the Corporation, and this has been omitted to be considered by the learned Arbitrator. Hence, the learned counsel prayed for allowing this original petition.

11. Learned counsel for the respondent submitted that the learned Arbitrator has considered the contract and found that the FIR has not been lodged by the claimant, as per the contract. Similarly, the service of schedule was also not been issued. In the event of failure to produce the documents to claim the domestic rate as per the contract, the Corporation is certainly entitled to the prevailing rate @ Rs.70 per kg whichever is higher. Accordingly, the Debit Note has been issued. Hence, the learned counsel prayed for dismissal of the original petition as there is no ground made out to interfere with the award under Section 34 of the Arbitration and



12. I have perused the materials available on record.

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13. There is no dispute with regard to the contract for Transport of Liquefied Petroleum Gas (LPG) and an invoice dated 13.01.2014 was issued for Transporting 17.86 metric tons at the rate of Rs.26.17 per kg and the invoice was issued on 13.01.2014. The consignment was to be transported from Mangalore to Ernakulam. While the vehicle was in transit, it met with an accident. As a result, the entire LPG including the truck was completely destroyed, and this fact is not disputed. As per the contract, if any consignments or goods were lost, the transporters are liable to make the loss good. Clause 30(a) of the Contract is extracted below:

“30(a) In the event of loss of LPG partially or fully due to leakage or fire during or because of accident, the recovery for the product loss will be made at the prevailing rate applicable for domestic sales at the loading source, provided FIR has been lodged for the accident or for the leakage and due report has been submitted to CCE and the proof of acquittal of case from Police and decision on settlement by the concerned Insurance Company have been submitted to the satisfaction of the Corporation. Otherwise the corporation shall recover the cost of the loss at the basic rate of Rs.70 per kg or the prevailing rate of the Corporation applicable for non-domestic use at the loading base whichever is higher. The basis for the calculation of recovery shall be the consigned quantity.



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Prevailing rate means the rate prevailing plus applicable taxes on the date of despatch of the cargo from the loading source/nearest loading source.”

14. On a perusal of the above, it makes it clear that once FIR is lodged and other documents have been provided as required in the above clause, the product loss will be at the prevailing rate applicable for domestic as well as at the loading sources. Only in case the documents required by the Corporation is not submitted, the rate will be higher than the domestic sale i.e. rate at Rs.70/- per kg or prevailing rate of the Corporation would be calculated to recover the money towards the product loss.

15. It is the contention of the counsel for the petitioner herein that all the documents have been submitted. It is to be noted that the Debit Note has been issued in this case on 16.01.2014 without any opportunity being granted to the parties or without waiting for some time to produce those documents. When the Clause indicates that proof of acquittal of the case from Police also to be submitted for calculating the rate, the proof of acquittal cannot be given without providing sufficient time. Only after proper trial, whether the driver will be acquitted or not, will be known. Without giving sufficient time in this regard, the Debit Note has been issued.

<https://hcservices.ecourts.gov.in/hcservices/> 16. Be that as it may, Clause 30(a) does not stipulate that FIR should be lodged only by the Driver of the truck. However, the learned



Arbitrator contented that the Clause stipulates that FIR is to be lodged only by the Driver, which is in fact beyond the scope of contract. Such a finding would go into root of the matter. Such interpretation is not at all possible or even probable. For instance, let us take an example, if the truck driver got severe injury or dies in an accident, in such scenario, it cannot be said that FIR should be lodged only by the Driver of the Truck. Therefore, the said contention of the learned Arbitrator is beyond the contract and suffers from patent illegality. When the contract itself stipulates that the nature of payment is to be made on satisfaction of certain conditions or production of certain documents itself, it is the obligation of the Corporation to wait till such documents are produced in reasonable time. This has also not been taken note by the learned Arbitral Tribunal. In fact, the learned Arbitrator's finding interpreting the contract particularly under Section 30(a) suffers from the patent illegality which will go to the root of the matter.

17. It is now well settled that the award can be interfered only when the grounds set out under Section 34 of the Arbitration Act is made out. Scope of interference under Section 34 of the Arbitration and Conciliation Act 1996 is discussed in ***Oil and Natural Gas Corporation Ltd., v. Saw Pipes Ltd., [2003 (5) SCC 705]***, wherein the Honourable Apex Court has held that an Award can be set aside if it is contrary to:



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- b) the interest of India; or
- c) justice or morality; or
- d) if it is patently illegal

Award could also be set aside if it is so unfair and unreasonable that it shocks the conscience of the Court.

18. Considering the well settled position of law, the Arbitrator has failed to consider the relevant clause and simply agreed the reply statement without deciding the merits of the case on the basis of the contractual premises. The award suffers from patent illegality and the same can be interfered under Section 34 of the Act.

19. Accordingly, the award passed by the learned Arbitrator is set aside. It is well open to the parties to go for fresh Arbitration by consent or if no consensus is arrived at, it is open to the applicant to approach the Court under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of the fresh Arbitrator in this matter.

Sd./-N.S.K.J.
20.07.2021

//Certified to be true copy//

Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)