

Shantanu

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**ARBITRATION APPEAL NO. 4 OF 2018
WITH
CIVIL APPLICATION NO. 4 OF 2018
IN
ARBITRATION APPEAL NO. 4 OF 2018**

M/s. Shri Vighnaharta Petroleum & Anr. ...Applicants
Vs.
Hindustan Petroleum Corp. Ltd.& Anr. ...Respondents

**ARBITRATION APPEAL NO. 9 OF 2018
WITH
CIVIL APPLICATION (ST) NO. 738 OF 2018
IN
ARBITRATION APPEAL NO. 9 OF 2018**

M/s. Sai Petroleum Through its Proprietor
Sanjay Kumar Yadav ...Applicant
Vs.
The Chief Regional Manager and
duly Constituted Attorney Hindustan
Petroleum Corp. Ltd. ...Respondent

**ARBITRATION PETITION NO. 25 OF 2018
WITH
ARBITRATION APPEAL NO. 18 OF 2018
WITH
CIVIL APPLICATION NO. 9 OF 2018
IN
ARBITRATION APPEAL NO. 18 OF 2018**

M/s. K. E. Zojwalla & Co. HPCL
Dealership Thr. Partner ...Petitioner/Applicant
Vs.
Hindustan Petroleum Corp. Ltd. & Anr. ...Respondents

**ARBITRATION APPEAL NO. 17 OF 2018
WITH
CIVIL APPLICATION (St) No. 35038 OF 2017
IN
ARBITRATION APPEAL NO. 17 OF 2018**

M/s. Shree Ashtvinayak Petroleum
HPCL Ltd. & Anr.

...Applicants

Vs.

Hindustan Petroleum Corp. Ltd & Anr.

...Respondents

WITH
ARBITRATION APPEAL NO. 5 OF 2018
WITH
CIVIL APPLICATION NO. 5 OF 2018
IN
ARBITRATION APPEAL NO. 5 OF 2018
WITH
CIVIL APPLICATION (ST) NO. 1884 OF 2018
IN
ARBITRATION APPEAL NO. 5 OF 2018

Mr. Ratankumar S. Mishra Prop.
M/s Ratan Filling Station Dealer Hindustan
Petroleum Ltd.

...Applicant

Vs.

The Chief Regional Manager and
duly Constituted Attorney Hindustan
Petroleum Corp. Ltd.

...Respondent

WITH
ARBITRATION APPEAL NO. 6 OF 2018
WITH
CIVIL APPLICATION NO. 6 OF 2018
IN
ARBITRATION APPEAL NO. 6 OF 2018

Mr. Prashant Premshankar Dwivedi Prop.
M/s. Prathamesh Petroleum Dealer.
Hindustan Petroleum.

...Applicant

Vs.

The Chief Regional Manager and
duly Constituted Attorney Hindustan
Petroleum Corp. Ltd.

...Respondent

WITH
ARBITRATION APPEAL NO. 7 OF 2018
WITH
CIVIL APPLICATION NO. 7 OF 2018
IN

ARBITRATION APPEAL NO. 7 OF 2018

Mr. Krishna Petroleum Dealer of
Hindustan Petroleum Corp. Ltd. & Anr. ...Applicant

Vs.

The Chief Regional Manager and
duly Constituted Attorney Hindustan
Petroleum Corp. Ltd. ...Respondent

**WITH
ARBITRATION APPEAL NO. 8 OF 2018
WITH
CIVIL APPLICATION NO. 8 OF 2018
IN
ARBITRATION APPEAL NO. 8 OF 2018**

M/s. Shiv Petroleum ...Applicant

Vs.

The Chief Regional Manager and
duly Constituted Attorney Hindustan
Petroleum Corp. Ltd. ...Respondent

Mr. Sharad Suryawanshi a/w Rohit S. Hatkar i/b POL Legal Juris for the applicant in ARA 4 of 2018, ARP 25 of 2018, ARA 18 of 2018 with CAR 9 of 2018 with ARA 17 OF 2018 with CAR (st) 35038 of 2017.

Mr. Onam Hingorani i/b Themis Legal for the applicant in ARA 5 of 2018, ARA 6 of 2018, ARA 7 of 2018, ARA 8 of 2018, ARA 9 of 2018.

Mr. Shivprasad Rameshchandra Page for the respondent.

CORAM : G.S. KULKARNI, J.

DATE : 17 August, 2022.

PC.:

1. This is a batch of appeals filed under Section 37 of the Arbitration and Conciliation Act, 1996 whereby the appellants have challenged the common order dated 17 November, 2017 passed by the Learned Principal District Judge, Thane whereby the Civil Miscellaneous

Application filed by the petitioners under Section 9 of the Arbitration and Conciliation Act, 1996 came to be rejected. The present appeals are filed in the month of January 2018. On 8 January, 2018 this Court (S. J. Kathawalla J. as His Lordship then was) was passed the following order:-

“The Learned Senior Advocate appearing for the Appellant submits that action has been taken against them by the Hindustan Petroleum Corporation Limited (“HPCL”), on the basis of the raid carried out by the Inspector of Police of the Local Police Station. It is submitted that the Inspector of Police is not empowered to carry out any such raids. This Court therefore enquired from the Advocate appearing for the HPCL, whether the Inspector of Local Police Station is empowered to carry out raids on petrol pumps. Despite the Chief Legal Officer of HPCL being present, the Advocate for HPCL first stated that he is not aware of the same and thereafter, stated that the raids are conducted pursuant to the instructions from the Ministry. However, no such “instructions” are produced before the Court. Instead the Advocate appearing for the HPCL seeks time to file the Affidavit-in-reply on the ground that HPCL was served with the papers only on 6th January, 2018. In view thereof, HPCL is granted time to file its Affidavit-in-reply on or before 16th January, 2018. The Appellant shall file its Affidavit-in-rejoinder, if any, on or before 19th January, 2018. Stand over to 25th January, 2018 for admission. In the meantime, the impugned order is stayed.”

2. Thereafter, on 9 February, 2018 the following order came to be passed:-

- “1. Stand over to 1st March, 2018.
2. In the meantime, parties shall maintain status-quo as of today.”

3. It is argued at the bar that the effect of such order is that the respondent Hindustan Petroleum Corporation Limited has not proceeded to take further action against the appellants to terminate the Dealership Agreement, in respect of which show cause notices were already issued by the respondent to the petitioner. It is informed by Mr. Pande learned counsel for the respondent that in respect of two proceedings, i.e. Arbitration Petition No. (Stamp) No. 37347 of 2017 M/s. Shree Ashtvinayak Petroleum Ltd. & Anr) vs. Hindustan Petroleum & Anr. and

Ratan Kumarkumar S. Mishra vs. Hindustan Petroleum Corporation Limited Arbitration Petition (stamp) No. 4278 of 2018, the Agreement was already terminated.

4. It has also transpired that during the pendency of this petition arbitral proceedings have already commenced where the parties in all these proceedings are before the arbitral tribunal. It is also not in dispute that the order of the status quo as passed by this Court on 9 February 2018 has continued to operate. In my opinion, considering such complexion of the matter as also bearing in mind, the clear provision of such sub-section (3) of Section 9 of the Arbitration and Conciliation Act, 1996, it would be appropriate that the parties pursue the arbitral proceedings. However, considering the nature of the order passed by this Court, it would be also permissible for the respondent to seek further, reliefs before the arbitral tribunal by filing any application under Section 17 of the Act which would include taking any plea as available to the respondents under the Dealership Agreement. If such an application is made by the respondent the same be adjudicated by the arbitral tribunal on its own merits and without being influenced by the order dated 9 February, 2018 as passed by this Court. All contentions of the appellants in that regard are also expressly kept open.

5. Needless to clarify that the order dated 9 February, 2018 as passed by this Court shall continue to operate. Unless, modified by any order, which may be passed by the arbitral tribunal on any application which may be filed by the respondent under Section 17 of by the Act.

6. Insofar as Arbitration Petition No. 25 of 2018 is concerned, the learned counsel for the respondent would fairly state that he would not have any objection for the disputes and differences between the parties

has been referred to an arbitral tribunal. Such petition is accordingly allowed as there exist an arbitration agreement between the parties as also there is an appropriate invocation of the arbitration agreement. Accordingly, Mr. Kapil More advocate of this Court is appointed as a sole Arbitrator to adjudicate the disputes and differences between the parties in such proceedings. The learned arbitrator shall enter reference after making a declaration as per the provisions of Section 11 (8) read with Section 12(1) of the Arbitration and Conciliation Act, 1996. All contentions of the parties on the arbitral proceedings are expressly kept open. The fees of the learned arbitrator shall be borne by the parties in equal proportion as may be fixed by the arbitral tribunal.

7. All the above proceedings are disposed of in terms of the above order. No cost.

[G.S. KULKARNI, J.]