**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

204 FAO-2490-2018 (O&M)
Reserved on : 04.10.2023
Pronounced on : 11.10.2023

Hindustan Petroleum Corporation Limited .... Appellant

Versus

M/s Hari Ram Piara Lal and another .... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Mr. Raman Sharma, Advocate
for the appellant.

Mr. Neeraj Kumar Jain, Senior Advocate with
Mr. Sandeep Khunger, Advocate and
Mr. Saksham Khunger, Advocate
for respondent No.1.

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<u>JAGMOHAN BANSAL, J. (Oral)</u>

1. The appellant- Hindustan Petroleum Corporation Ltd. through instant appeal is seeking setting aside of order dated 10.10.2017 passed by Additional District Judge, Chandigarh whereby objection petition filed under Section 34 of Arbitration and Conciliation Act, 1996 (for short 'Arbitration Act') against award dated 29.08.2013 (Annexure A-1) has been dismissed.

2. The brief facts which are necessary for the adjudication of the present appeal are that the appellant is public sector undertaking and engaged in the business of manufacture and supply of petro products. The appellant, across the country, is selling its oil products through its authorized dealers/retail outlets. The appellant allotted retail outlet at Moonak, District Sangrur, pursuant to an advertisement, to M/s Hari Ram

Piara Lal i.e. respondent No.1. A dealership agreement dated 22.09.1987 was executed between appellant and respondent. The respondent re-constituted its entity in 2004 and accordingly agreement was executed between appellant and re-constituted firm.

3. The appellant has entered into an agreement with M/s SGS India Private Limited (for short 'SGS') whereby SGS has been authorized to conduct marker test with respect to oil sold by retail outlets of the appellant. On 11.07.2007, an official of SGS namely Mandeep Singh, to conduct inspection/test came at retail outlet of the respondent. Mandeep Singh conducted marker test and found adulteration. On the basis of report of marker test followed by another test at the premises of the appellant, a show cause notice dated 21.09.2007 came to be issued to respondent whereby respondent was called upon to show as to why dealership agreement should not be terminated. The respondent filed reply to aforesaid show cause notice. The appellant did not find reply of the respondent satisfactory and accordingly, dealership agreement came to be terminated vide order dated 30.04.2008.

4. The respondent invoked arbitration clause against the termination order. By order dated 25.05.2012 passed in Civil Appeal No.2253-2255 of 2010, Supreme Court appointed Justice R.V. Raveendran (Retd.) sole arbitrator to decide the dispute between the appellant and respondent.

5. The Arbitrator vide award dated 29.08.2013 decided the dispute. The Arbitrator formed an opinion that Mandeep Singh an employee of SGS could not conduct inspection in the absence of an official of HPCL appointed under Clause 7 of Motor Spirit and High Speed Diesel

(Regulation of Supply and Distribution and Prevention of Malpractices) order, 2005 (for short '2005 order'). The Arbitrator on the basis of evidence led by both sides concluded that official of SGS had conducted inspection and drawn samples in the absence of sales officer of appellant-Corporation, thus, sample was drawn by an unauthorized person. The test report of a sample, drawn by an unauthorized person cannot be relied upon. The Arbitrator further concluded that Marketing Discipline Guidelines, 2005 being merely guidelines issued by the Ministry cannot override or supersede or prevail over Clause 7 of 2005 Order which is a delegated legislation having statutory flavour. The conclusion drawn by Arbitrator reads as :

> *"54. In view of the above, the claims and counter-claims are decided and disposed of by this award, in the following manner:-*
> *(A) The termination of dealership of claimant, by respondent is declared to be illegal and invalid.*
>
> *(B) The claimant is not entitled to restoration of dealership, but only entitled for damages of Rs.45,000/- for wrongful termination equivalent to loss of earning for three months.*
>
> *(C) The claimant is entitled to Rs. 50,000/- as damages for injury to goodwill.*
>
> *(D) The claim of arrears of rent, made by the claimant, is held to be inarbitrable, without prejudice to the right of the lessors of the premises to claim any rent due or other relief in accordance with law.*
>
> *(E) The counter claim of respondent is allowed in part and the claimant is directed not to enter upon or use the retail outlet premises of the respondent. The claimant is*

further directed to remove its belongings, if any, from the respondent's retail outlet premises.

(F) The counter-claims of respondent for damages for loss of business and for loss of goodwill, are rejected.

(G) The amounts awarded (Rs.95,000/- in all) to the claimant shall carry interest at 15% per annum from date of the award to date of payment.

(H) The claimant is entitled to recover from HPCL, as arbitration costs, the entire 50% of Arbitrator's fee and DAC administrative costs deposited by it with DAC, plus Rs.25,000/-, as lawyer's fee. The respondent is directed to bear its own cost.

6. The appellant preferred objection petition under Section 34 of of Arbitration Act before District Judge, Chandigarh. The matter came up for consideration before Additional District Judge, Chandigarh who vide order dated 10.10.2017 dismissed objection petition of the appellant. The Learned ADJ concluded that Court under Section 34 of Arbitration Act cannot sit like appellate authority over the award passed by Arbitrator and cannot re-appreciate the evidence. The Arbitrator has properly appreciated the evidence, therefore, it has to be relied upon. The Objecting Court turned down plea of the appellant with respect to presence of sales officer of the appellant. With respect to judgment of Calcutta High Court in ***Ramesh Kejriwal vs. Union of India, 2011(33) RCR (Civil) 112***, cited by the appellant, it was held that in the said case, there was no dispute with respect to presence of sales officer.

7. Counsel for the appellant submits that every retail outlet is governed by statutory as well as marketing guidelines. As per marketing

guidelines, the appellant has right to authorize any person to inspect premises of the authorized dealer. The appellant had authorized SGS to conduct inspection. The official of SGS even in the absence of sales officer of the appellant was duly competent to draw samples and he had drawn samples from nozzle of the dispenser. The sample was drawn in the presence of representatives of the respondent and at that stage, no objection was raised by the respondent. The objection raised by respondent was an afterthought. The official of SGS followed prescribed procedure and during the marker test, he found that there was adulteration. 2005 Order is applicable where criminal liability is going to be fastened whereas marketing guidelines are applicable with respect to contractual obligations.

In support of his contention, the appellant relied upon judgment of Calcutta High Court in ***Ramesh Kejriwal's case (supra),*** Allahabad High Court in ***M/s Amba Filling Station and another vs. Union of India and others, 2012(91) ALR 729*** and Hon'ble Supreme Court in ***Indian Oil Corporation Limited & Ors. vs. M/s.R.M. Service Centre and Anr., 2019 (19) SCC 662.***

8. Per contra, learned counsel for the respondents submits that scope of interference at the appellate stage is very limited. The appellant, at the initial stage, was pleading that samples were drawn in the presence of sales officer of the appellant whereas during the course of proceedings before Arbitrator, it was proved that sample was drawn in the absence of sales officer. At this stage, sole ground of the appellant is that marketing guidelines are in addition to 2005 Order and official of SGS was duly competent to draw the samples and conduct test. The Arbitrator has duly considered statutory provisions as well as marketing guidelines and held

that marketing guidelines cannot run contrary to statutory provision. The Arbitrator has relied upon judgments available at that point of time. The judgment of Hon'ble Supreme Court in ***Indian Oil Corporation Ltd.'s case (supra)*** at the most can create basis for forming second opinion, however, it is settled proposition of law that if two views are possible, the Appellate Court should not set aside opinion of the Arbitrator.

In support of his contention, respondent relied upon judgment of Hon'ble Supreme Court in ***Associate Builders vs. Delhi Developmen Authority, (2015) 3 SCC 49*** and ***National Highways Authority of India vs. M. Hakeem and another, (2021) 9 SCC.***

9. I have heard the arguments of learned counsel for the parties and perused the record.

10. The appellant has primarily and principally assailed award as well as order passed by learned ADJ on the ground that an official of SGS was quite competent to draw the samples. Though sales officer of the appellant was not present at the time of drawing sample, however, sample drawn by authorized representative of appellant cannot be brushed aside. The respondent was bound by marketing guidelines and as per marketing guidelines, the authorized representative of appellant could draw the samples.

11. Clause 7 of 2005 Order empowers different officials to enter and search any place or premises of a dealer. Clause 8 prescribes manner of drawing sample. It further empowers to take samples of the product and seizure any of the stocks of the product. Clause 7 (I) and 8 (1A) of the 2005 Order read as :

> *7.(1)* ***Any Gazetted Officer of the Central Government or a State Government or any police officer not below***

the rank of Deputy Superintendent of Police duly authorised, by general or special order of the Central Government or a State Government, as the case may be, or any officer of the oil company, not below the rank of sales officer, *may with a view to securing compliance with the provisions of this Order, or for the purpose of satisfying himself that this Order or any order made thereunder has been complied with or there is reason to believe that all or any of the provisions of this Order have been and are being and are about to be contravened-*

(a) ***enter and search any place or premises of a dealer,*** *transporter, consumer or any other person who is an employee or agent of such dealer or transporter or consumer;*

(b) stop and search any person or vehicle or receptacle used or intended to be used for movement of the product;

(c) ***take samples of the product*** *and seize any of the stocks of the product and the vehicle or receptacle or any other conveyance used or suspected to be used for carrying such stocks and thereafter take or authorise the taking of all measures necessary for securing the production of stocks or items so seized before the Collector or District Magistrate having jurisdiction under the provisions of the Essential Commodities Act, 1955 and for their safe custody pending such production:*

(emphasis added)"

8(1A) ***The authorised officer under clause*** *7* ***shall draw the sample*** *from the tank, nozzle, vehicle or receptacle as the case may be, in the test kit and test the product with the aid of test kit, to check whether the product contains any traces of marker.* ***If such traces are found in the product, the authorised officer shall record the same*** *in triplicate which shall be jointly signed by him and the dealer or transporter or concerned person or his*

> *representative, as the case may be, and give one copy of such recording to the dealer or transporter or concerned person or his representative and another copy to the oil company concerned, as the case may be.*
>
> [emphasis supplied]

12. The appellant is primarily relying upon Clauses 1 and 4 of the marketing guidelines which are reproduced as below:

> *1. Introduction:The Central Government has decided to implement blending of Marker in potential adulterants with an objective of preventing their diversion or adulteration of MS/HSD. Accordingly, to begin with, blending of Marker in SKO has been implemented with effect from 01.10.2006. This process of blending of Marker in potential adulterants and testing for their presence in MS/HSD would be in addition to the existing measures and procedures to check adulteration and ensure sale of products (MS/HSD) meeting the specifications. Consequent to the introduction of Marker, following procedure is laid down for blending, distribution, testing etc.*
>
> *4. Testing for Marker at retail outlets by Inspecting Officials:**The Officials/Mobile labs of the Oil Companies and other agencies authorised/empowered to draw samples/ inspect the retail outlets will have the power to carry out the Marker test at retail outlets.** The Marker test can be carried out at any point of time and need not be only at the time of inspection.*
>
> *For carrying out the Marker test, the officials will draw samples from the nozzles of the dispensing pumps and Marker test will be carried out using the test kits. The results of the Market test will be duly recorded which should be signed by the dealer/his representative and the official. Refusal to sign by the dealer/his representative will be treated as an act of offence similar to refusal by*

dealer to allow drawl of sample and/or carrying out of inspection and appropriate penal action as provided for this offence in MDG 2005 will be imposed on the dealer. Marker test has to be carried out on samples drawn from all the tanks/products.

13. As per appellant, Clause 4 of the marketing guidelines is in addition to Clause 7 of 2005 Order and both the provisions are parallel and cannot be read in the exclusion of each other. Both the provisions are independent and equally applicable to a dealer.

14. The Arbitrator has concluded that marketing guidelines cannot override or supersede or prevail over Clause 7 of Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractices) Order, 2005.

15. It is true that Ministry of Petroleum can issue marketing guidelines in addition to statutory provisions. This Court is conscious of the fact that Ministry for the better administration of petroleum products can issue instructions to be adhered by oil companies as well as its dealers, however, it cannot be ignored that departmental instructions cannot override or supersede statutory provisions. The departmental instructions may be issued in the aid and addition of statutory provisions but instructions cannot run contrary to statutory provision. Clause 7 of 2005 Order specifically notifies officers who can inspect a retail outlet and can draw sample. Apart from police and gazetted officers of Central/State Government, sales officers of the oil companies have been authorized to draw sample. An oil company cannot delegate its power to a private organisation. Applying marketing guidelines, the appellant had authorized SGS to conduct inspection and draw sample. The Arbitrator has rightly concluded that instructions cannot override or supersede statutory provision. The appellant

by instructions had authorized a private agency which is not authorized by Clause 7 of 2005 Order. Drawing of sample and its test report entail civil as well as criminal consequences. On the basis of test report, dealership can be terminated which is one of the severe punishment. Drawing of sample cannot be treated as procedural formality, thus, a private person who is not authorized by statutory provisions, cannot be authorized to inspect a premises and draw samples.

16. It is settled proposition of law that scope of interference with award passed by an Arbitrator in exercise of power conferred by Sections 34 or 37 of Arbitration Act is very limited. Hon'ble Supreme Court in ***Associate Builders's case (supra)*** and ***M. Hakeem's case (supra)*** has adverted with the scope of interference at length and held that an award can be set aside on very limited grounds. The Courts are not supposed to weigh the evidence considered and appreciated by an Arbitrator. If two views are possible, the view expressed by Arbitrator should not be disturbed. A Court can set aside an award if it is contrary to public policy, law of land or principles of natural justice.

17. In the case in hand, the sole ground of the respondent is that as per marketing guidelines, an official of SGS was quite competent to inspect the retail outlet and drew samples. The Arbitrator has rightly returned the finding that in view of clause 7 of 2005 Order, an official of SGS in the absence of sales officer was not authorized to draw sample. The marketing guidelines issued by Ministry cannot override or supersede delegated statutory provisions. Order 2005 is a delegated statutory provision which cannot be overridden by marketing guidelines. It is apt to notice here that post 2008, appellant has not permitted officials of SGS to inspect retail

outlets and draw samples, in other words, the appellant has stopped practice of drawing samples through third agency. By withdrawing its marketing guidelines whereby third party was permitted to draw samples, the Ministry has agreed that sample should be drawn in accordance with Clause 7 read with 8 of 2005 Order. There seems no illegality in the opinion expressed by Arbitrator. The Arbitrator has correctly appreciated the factual and legal position. There is no violation of principles of natural justice and Arbitrator has expressed possible view.

18. In the wake of above facts and findings, this Court does not find any prima facie illegality or any finding contrary to public policy in the impugned order. Thus, this Court is of the considered opinion that the present appeal deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

11.10.2023
anju

Whether speaking/reasoned	Yes/No
Whether Reportable	*Yes/No*