



O.P.No. 403 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.11.2024

PRONOUNCED ON : 29.11.2024

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

O.P.No. 403 of 2016

Mrs.S.Karthiyayani

... Petitioner

Vs.

1. Hindustan Petroleum Corporation Limited
through its Chief Regional Manager
Chennai Retail Regional Office
II Floor, Petro Bhavan, No.82, TTK Road,
Alwarpet, Chennai – 600 018.

2. Mr.G.Hariharan
GM-Kegal, HPCL (Retd)
Sole Arbitrator
Flat No.402, “Residency”
Old Nos. 3, 4 & 5, New Nos. 58, 59 & 60
Sardar Patel Road, Opp CLRI
Taramani (Adyar), Chennai – 600 113.

... Respondents



O.P.No. 403 of 2016

WEB COPY

PRAYER: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, to set aside the Award dated 09.02.2016 passed by the second respondent and allow the above Original Petition.

For Petitioner : Mr. M.K.Kabeer
Senior Counsel
for Mr. L.Dhamodaran

For Respondents : Mr. M.Vijayan
for M/s. King and Partridge

ORDER

The learned Senior Counsel appearing for the petitioner placed his submissions on the jurisdiction of this Court to examine the issues raised in this petition filed under Section 34 of the Arbitration and Conciliation Act, 1996. Arguments had not been advanced on the merits of the petition but have been restricted only to the jurisdiction of the Court.

2. The petitioner had applied to operate the Madhavaram Permanent COCO Retail Outlet of the respondent, Hindustan Petroleum



O.P.No. 403 of 2016

Corporation Ltd., and was selected as the service provider by letter dated 02.08.2011. The petitioner was directed to furnish bank guarantee for a sum of Rs.22/- lakhs to be in force for the period of three years. The petitioner furnished such bank guarantee which was valid between 26.08.2011 and 25.11.2014. An agreement was executed by both the sides on 01.09.2011. The petitioner operated the outlet successfully and according to her, without any complaints between 07.09.2011 and 09.01.2015. The petitioner submitted an extension for the guarantee and also renewed the bank guarantee which was accepted and acknowledged by the respondent on 19.08.2014. A formal letter was also issued on 24.09.2014 to continue to operate the outlet till the completion of the agreement process. The petitioner issued a remainder on 03.12.2014 seeking necessary agreement to be executed by both the sides for the extended period.

3. On 05.12.2014, the Area Sales Officer and other employees of the respondent came over to the outlet and seized the stock. The petitioner lodged a police complaint. The respondent issued a notice of termination on 10.12.2014 giving one month notice to actually close the premise. The petitioner disputed the termination notice and sought to refer the dispute to



O.P.No. 403 of 2016

arbitration in terms of Clause 16 of the agreement dated 01.09.2011.

4. The petitioner filed a claim statement before the Arbitrator. The arbitration proceedings commenced and the petitioner was examined as CW-1 and also marked Exs. C-1 to C-28. The respondent did not adduce oral evidence. However, documents were marked as Exs. R-1 to R-21. The Arbitrator passed an award on 09.02.2016 holding that the petitioner was not entitled to any relief and rejecting the claim.

5. This Petition in O.P.No. 403 of 2016 has been filed under Section 34 of the Arbitration and Conciliation Act 1996 seeking to set aside the said award.

6. Even before examining the issues raised, it would only be appropriate to examine the clause relating to arbitration in the agreement entered into between the parties.

7. Clause 16 relates to referral to arbitration only dispute or difference between the parties. The clause is straight forward. It stipulates that all disputes and differences of any nature which arise on issues



O.P.No. 403 of 2016

concerning the agreement during or after the completion of the contract or before or after termination or breach shall be referred for adjudication to an Arbitrator. Thereafter, the procedure in which the Arbitrator is to be appointed had been stated and it had been provided that the respondent shall nominate the Arbitrator. It had thereafter been finally covenanted as follows:-

“The contract shall be governed by and constructed according to the laws in force in India. The parties hereby submit to the exclusive jurisdiction of the Courts situated at Mumbai for all purposes. The Arbitration shall be held at Mumbai and conducted in English language.”

8. It is an admitted fact that the arbitration was actually held at Chennai.

9. In that award one of the issues which was raised for consideration, namely, issue No.9 was whether the arbitral proceedings initiated by the respondent was in violation of clause 16 of the agreement.



O.P.No. 403 of 2016

WEB COPY

10. The contention of the petitioner before the learned Arbitrator was that the respondent had appointed an Arbitrator stationed at Chennai unilaterally, even though the arbitration clause stipulated that the arbitration shall be held in Mumbai.

11. The Arbitrator while answering that issue had pointed out the contention of the respondent that it was not the respondent, who proposed to conduct the arbitration in Chennai but that the Arbitrator had taken a decision to conduct the proceedings in Chennai. It was further observed that the petitioner had not raised any objection regarding the place of arbitration either in the claim statement or during the framing of issues. Such an issue was raised only during the arguments. The arbitrator further pointed out that it was only appropriate that the arbitration proceedings commenced and proceeded at Chennai since all the parties were residing at Chennai and no prejudice had been caused to any party by conducting the proceedings in Chennai. The Arbitrator had therefore answered the issue that there had been no violation in conducting the proceedings in Chennai.



WEB COPY

12. Among other grounds raised to set aside the award, the petitioner in this Petition had very specifically stated as follows:-

“ Issue No.9: The petitioner states that the Sole Arbitrator has erroneously held that the objection has no merit. The Sole Arbitrator has failed to take notice of the fact that para 10 in Clause 16 of the M & H Agreement specifically states that the arbitration shall be held in Mumbai. But HPCL had appointed Arbitrator in Chennai in violation of this arbitration clause. The appointment of Arbitrator in Chennai had been done by HPCL in a unilateral manner. The consent of the petitioner was also not obtained by HPCL for appointing Arbitrator in Chennai in violation of the arbitration clause.”

13. It is thus seen that the petitioner had questioned the conducting of the arbitration proceedings at Chennai and had also very specifically raised that as a ground to set aside the award.



O.P.No. 403 of 2016

WEB COPY

14. However, during arguments before this Court, the learned Senior Counsel for the petitioner made strenuous efforts to convince the Court that this Court / Madras High Court alone has jurisdiction to examine this petition filed under Section 34 of the Arbitration and Conciliation Act.

15. It is very clear that the petitioner is blowing hot and cold.

16. The petitioner had not raised the ground that the arbitration proceedings should be conducted only at Mumbai in their claim statement but however, during arguments before the arbitrator, urged that conducting the proceedings at Chennai was a procedural irregularity and that the proceedings should have been conducted only in Mumbai. That argument was rejected by the Arbitrator.

17. In the grounds questioning the arbitration award, once again the same issue had been raised, disputing the reasons given by the Arbitrator to over rule the argument advanced, that the proceedings should not have been conducted at Chennai.



O.P.No. 403 of 2016

WEB COPY

18. While arguing before this Court, the learned Senior Counsel took a total different stand by stating that this Court has jurisdiction to examine this petition filed under Section 34 of the Act.

19. In this connection, learned Senior Counsel placed reliance on the Judgement in **2020 4 SCC 234 [BGS SGS Soma JV Vs. NHPC Ltd.,]** wherein the Hon'ble Supreme Court had held as follows in paragraph 82:-

“82. On a conspectus of the aforesaid judgments, it may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as “tribunals are



O.P.No. 403 of 2016

to meet or have witnesses, experts or the parties” where only hearings are to take place in the “venue”, which may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other significant contrary indicia that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings. In an international context, if a supranational body of rules is to govern the arbitration, this would further be an indicia that “the venue”, so stated, would be the seat of the arbitral proceedings. In a national context, this would be replaced by the Arbitration Act, 1996 as applying to the “stated venue”, which then becomes the “seat” for the purposes of arbitration. ”



O.P.No. 403 of 2016

WEB COPY

20. The Hon'ble Supreme Court had further held as follows in paragraph Nos. 97 & 98:-

“97. Given the fact that if there were a dispute between NHPC Ltd. and a foreign contractor, Clause 67.3(vi) would have to be read as a clause designating the “seat” of arbitration, the same must follow even when sub-clause (vi) is to be read with sub-clause (i) of Clause 67.3, where the dispute between NHPC Ltd. would be with an Indian contractor. The arbitration clause in the present case states that “Arbitration proceedings shall be held at New Delhi/Faridabad, India...”, thereby signifying that all the hearings, including the making of the award, are to take place at one of the stated places. Negatively speaking, the clause does not state that the venue is so that some, or all, of the hearings take place at the venue; neither does it use language such as “the Tribunal may meet”, or “may hear witnesses, experts or parties”. The expression “shall be held” also indicates that the



WEB COPY



O.P.No. 403 of 2016

so-called “venue” is really the “seat” of the arbitral proceedings. The dispute is to be settled in accordance with the Arbitration Act, 1996 which, therefore, applies a national body of rules to the arbitration that is to be held either at New Delhi or Faridabad, given the fact that the present arbitration would be Indian and not international. It is clear, therefore, that even in such a scenario, New Delhi/Faridabad, India has been designated as the “seat” of the arbitration proceedings.

98. *However, the fact that in all the three appeals before us the proceedings were finally held at New Delhi, and the awards were signed in New Delhi, and not at Faridabad, would lead to the conclusion that both parties have chosen New Delhi as the “seat” of arbitration under Section 20(1) of the Arbitration Act, 1996. This being the case, both parties have, therefore, chosen that the courts at New Delhi alone would have exclusive jurisdiction over the arbitral proceedings. Therefore, the fact that a part of the cause of action may have arisen at Faridabad would not be relevant once the “seat” has been chosen, which would then amount to an exclusive*



WEB COPY



O.P.No. 403 of 2016

*jurisdiction clause so far as courts of the “seat”
are concerned. ”*

21. It must be stated that in the aforementioned case, the agreement between the parties provided that in case of a dispute with an Indian contractor, the Arbitral Proceedings shall be held at New Delhi / Faridabad. It was therefore held that either New Delhi or Faridabad was the designated seat under the agreement. Since the proceedings were finally held at New Delhi and the awards were signed in New Delhi and not at Faridabad, it was held that both the parties had chosen New Delhi as the seat of arbitration and therefore, the Courts at New Delhi alone would have exclusive jurisdiction over the arbitral proceedings.

22. It must also be kept in mind that the aforementioned Judgment was delivered with respect to a foreign award.

23. It was insisted by the learned Senior Counsel on behalf of the petitioner that this Court would have jurisdiction to examine this petition filed under Section 34 of the Act.



O.P.No. 403 of 2016

WEB COPY

24. The learned counsel for the respondent however pointed out the conduct of the petitioner. He pointed that the petitioner and was actually the claimant and had participated in the arbitral proceedings. The petitioner had not raised any objection regarding conducting the arbitral proceedings at Chennai. However, during arguments, it was raised as an issue and the Tribunal had answered it. The Tribunal was of the opinion that the proceedings were conducted at Chennai only owing to the convenience of the parties.

25. However, in the application filed under Section 34 of the Act, the petitioner had questioned that very finding, which would mean that the petitioner at the time of filing of the petition under Section 34 had challenged the award on the ground that the arbitral proceedings was conducted at Chennai.

26. The learned counsel for the respondent then pointed out the ground raised in that regard in the petition. He then pointed out dichotomy in the arguments now advanced by the learned Senior Counsel that the Court



O.P.No. 403 of 2016

in Chennai alone would have jurisdiction which was contrary to the stand taken in the grounds raised to set aside the award.

27. The learned counsel for the respondent placed reliance on the Judgment reported in **2013 9 SCC 32 [Swastik Gases Private Ltd., Vs. Indian Oil Corporation Ltd.,]** wherein one of the issues taken up for decision related to jurisdiction. Thereafter, reliance was placed on paragraph No.9 which was as follows:-

“9. The contention of the learned counsel for the appellant is that even though Clause 18 confers jurisdiction to entertain disputes inter se parties at Kolkata, it does not specifically bar jurisdiction of courts at Jaipur where also part of the cause of action has arisen. It is the submission of the learned counsel that except execution of the agreement, which was done at Kolkata, though it was signed at Jaipur, all other necessary bundle of facts forming “cause of action” have arisen at Jaipur. This is for the reason that:



O.P.No. 403 of 2016

- (i) the regional office of the respondent Company is situate at Jaipur;*
- (ii) the agreement was signed at Jaipur;*
- (iii) the consignment agency functioned from Jaipur;*
- (iv) all stock of lubricants was delivered by the Company to the appellant at Jaipur;*
- (v) all sales transactions took place at Jaipur;*
- (vi) the godown, showroom and office of the appellant were all situated in Jaipur;*
- (vii) various meetings were held between the parties at Jaipur;*
- (viii) the Company agreed to lift the stock and make payment in lieu thereof at a meeting held at Jaipur, and*
- (ix) the disputes arose at Jaipur.*

The learned counsel for the appellant would submit that since part of the cause of action has arisen within the jurisdiction of the courts at Jaipur and Clause 18 does not expressly oust the jurisdiction of other courts, the Rajasthan High Court had territorial jurisdiction to try and entertain the petition under Section 11 of the 1996 Act. He vehemently contended that Clause 18 of



O.P.No. 403 of 2016

the agreement cannot be construed as an ouster clause because the words like “alone”, “only”, “exclusive” and “exclusive jurisdiction” have not been used in the clause.”

28. The Supreme Court held in paragraph Nos. 36 & 37 which is as follows:-

“36. The clause in the agreement that is sought to be interpreted reads as follows:

“The agreement shall be subject to jurisdiction of the Courts at Kolkata.”

37. In my opinion, the very existence of the exclusion of jurisdiction clause in the agreement would be rendered meaningless were it not given its natural and plain meaning. The use of words like “only”, “exclusively”, “alone” and so on are not necessary to convey the intention of the parties in an exclusion of jurisdiction clause of an agreement. Therefore, I agree with the conclusion that jurisdiction in the subject-matter of the proceedings vested, by agreement, only in



WEB COPY



O.P.No. 403 of 2016

the courts in Kolkata. ”

29. It was thus contended that in the instant case also, the parties had agreed to abide with the jurisdiction of the Courts at Mumbai. It was therefore contended that this petition should be heard only by the Court in Mumbai and not by this Court.

30. I have carefully considered the arguments advanced and perused the materials available on records.

31. The petitioner had applied for dealership with the respondent and was also granted such dealership. But however the respondent had issued a termination notice. This termination notice was challenged by the petitioner in W.P.No. 668 of 2015 and an interim order was passed. The petitioner also filed Cont.P.No. 123 of 2015. A learned Single Judge of this Court had disposed W.P.No. 668 of 2015 on 23.03.2015 with a direction to the parties to approach the arbitrator to examine all issues.

32. The petitioner then filed W.A.No. 665 of 2015 which was also



O.P.No. 403 of 2016

disposed of on 24.04.2015 on the grounds that the dispute is pending before the arbitrator.

33. Thereafter, the petitioner had filed a claim statement. The petitioner participated in the arbitration proceedings. She was examined as a witness and she also marked documents.

34. Issue No.10 framed by the arbitrator was whether the proceedings was in violation of Clause 16 relating to reference of disputes to arbitration and more particularly that the Courts in Mumbai alone would have jurisdiction.

35. However, when arguments were advanced, the petitioner contended that the arbitration proceedings should not have been conducted at Chennai. That contention was correctly rejected by the learned Arbitrator. That portion of the order has also been challenged by the petitioner in this petition.

36. Therefore, during arguments before this Court, the arguments



O.P.No. 403 of 2016

that should have been advanced is that the arbitration award suffers from patent irregularity since the proceedings were conducted at Chennai.

37. On the other hand, the arguments advanced were that the arbitration proceedings were correctly conducted at Chennai. This goes in direct contradiction to the very agreement between the parties that the Courts in Mumbai alone will have jurisdiction.

38. The definition of a Court under the Arbitration and Conciliation Act is as follows:-

"Section 2(e) 'Court' means the principal Civil Court of original jurisdiction in a district, which shall include the court of the Additional District Judge where so assigned by the District Judge and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to the decide the questions forming the subject-matter of the arbitration if the same had been the subject-



O.P.No. 403 of 2016

matter of suit, or any Court of Small Causes."

39. It is seen that the Court would mean the Court which would have jurisdiction to examine the issues if it were a civil matter.

40. Merely because the arbitration was conducted at Chennai could not be taken as an indicator that the petitioner and the respondent had given up the jurisdiction of the Courts at Mumbai and had opted to abide with the jurisdiction of the Courts at Chennai.

41. As correctly stated by the learned Arbitrator, Chennai was a choice of convenience to both the parties particularly the petitioner herein. But it will be the Courts at Mumbai which still retains the jurisdiction to examine any dispute arising out of the agreement and also the award which had been passed owing to referral of disputes to arbitration.

42. The petitioner has consciously taken contrary stands. The petitioner is entitled to take so but not against their own statement.



O.P.No. 403 of 2016

WEB COPY

(i) the petitioner filed a claim statement and voluntarily participated in the arbitration proceedings which were held at Chennai to suit the convenience of the petitioner;

(ii) During arguments the petitioner raised the jurisdiction of the arbitrator to conduct the proceedings at Chennai;

(iii) That argument was rejected pointing out that arbitration proceedings were conducted at Chennai only to suit the convenience of the petitioner;

(iv) In the grounds raised in this petition, the petitioner had challenged those reasons and had contended that conducting the arbitral proceedings at Chennai was a violation of the agreement; and

(v) During arguments before this Court, it had been contended that this Court alone will have jurisdiction.



O.P.No. 403 of 2016

WEB COPY

43. I hold that there is total lack of bonafide in these contradictory stands taken.

44. The parties having agreed that the Courts in Mumbai would have jurisdiction, it is only appropriate that that the Courts in Mumbai examine the award passed by the Arbitrator and the challenge to the same in this Petition filed under Section 34 of the Arbitration and Conciliation Act, 1986.

45. In view of these reasonings, I hold that this Court has no jurisdiction to examine this petition. I direct the Registry to return the papers to the learned counsel for the petitioner after obtaining due and appropriate acknowledgment.

46. The petitioner may represent the papers in the Court at Mumbai having jurisdiction to examine the petition filed under Section 34 of the Arbitration and Conciliation Act, within a period of two weeks from the date of receipt of the records from the Registry.

47. The issue on jurisdiction is accordingly answered.

29.11.2024

vsg



O.P.No. 403 of 2016

Index: Yes/No

Neutral Citation: Yes/No

Speaking order : Yes/No

C.V.KARTHIKEYAN, J.

vsg

Pre Delivery Order made in

O.P.No. 403 of 2016