



W.A.(MD)No.1050 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 09.07.2024

CORAM:

THE HONOURABLE **MR.JUSTICE R.SURESH KUMAR**

AND

THE HONOURABLE **MR.JUSTICE G.ARUL MURUGAN**

W.A.(MD)No.1050 of 2024

and

C.M.P.(MD)No.7732 of 2024

1.The Chief Regional Manager,
Hindustan Petroleum Corporation Limited,
Madurai LPG Regional Office,
No.171-172, SIDCO Industrial Estate,
Kappalur, Madurai-625 008.

2.The Deputy General Manager-LPG,
Hindustan Petroleum Corporation Limited,
Madurai LPG Regional Office,
No.171-172, SIDCO Industrial Estate,
Kappalur, Madurai-625 008.

... Appellants

-Vs-

M/s.Guna HP Gas Gramin Vitrak,
Rep. by its Proprietor, J.Prakash Pandian

... Respondent

PRAYER: Appeal filed under Clause 15 of Letters Patent, praying this Court to set aside the order dated 09.10.2023 made in W.P.(MD)No.24334 of 2023 on the file of this Court.

Page 1 of 7



For Appellants : Mr.M.Sridher

For Respondent : Mr.K.K.Udaya Kumar

JUDGMENT

[Judgment of the Court was delivered by *R.SURESH KUMAR, J.*]

This Writ Appeal has been directed against the order dated 09.10.2023 made in W.P.(MD)No.24334 of 2023.

2.The respondent is the dealer under the appellants with regard to the supply of gas cylinder, where pursuant to the alleged inspection of the appellants at the respondent's premises, they found out certain deficiencies. Pursuant to which, a show cause notice had been issued, seeking explanation from the respondent. Thereafter, penalty also had been imposed by the appellants to the respondent. Challenging the same, the Writ Petition had been filed by the respondent / writ petitioner, where the Writ Court, after having found that there has been a clause available in the lease agreement between the appellants and the respondent, where the Managing Director of the Corporation or any other officer nominated by him can be nominated as a sole arbitrator, the said clause, according to the learned Single Judge, cannot be acted upon, as that kind of practice is frowned by the Hon'ble Supreme Court in number of cases.



W.A.(MD)No.1050 of 2024

3. Therefore, the learned Single Judge, in order to resolve the issue by an arbitrator, was pleased to nominate a practising Advocate of this Court as arbitrator. He was directed to complete the arbitration proceedings within a period of four months by receiving nominal amount, which also had been quantified in the order impugned by the learned Single Judge.

4. Accordingly, the learned Single Judge directed to keep the order impugned before the Writ Court, that was the penalty imposed against the respondent, in abeyance, till a decision is taken by the arbitrator by passing an arbitration award. Aggrieved over the same, the present Writ Appeal has been filed.

5. Heard the learned counsel for the appellants, who would submit that the major dispute between the parties relates to 138 numbers of cylinders, which had been supplied by the appellant Department to the respondent, where there has been no document to prove that those cylinders have not been diverted. Therefore, it become necessitated for the appellants to impose penalty. Hence, if the respondent comes forward to resolve the issue, most of the issues would amicably be settled and at that juncture, it cannot be referred to the arbitrator, he contended.



W.A.(MD)No.1050 of 2024

WEB COPY

6. However, the learned counsel for the respondent would submit that it is not an issue relating to 138 or 278 cylinders, that was the charge made against the respondent by the appellant Department as if those cylinders had been diverted, but factually, that number of cylinders had not been supplied to the respondent. Therefore, he would submit that the major penalty to the extent of Rs.18,54,022/- (Rupees Eighteen Lakhs Fifty Four Thousand and Twenty Two Only) since has been imposed through the order impugned before the Writ Court, only on the basis of that number of cylinders allegedly diverted by the respondent, the issue has to be resolved by the arbitrator. Therefore, there could not have been any infirmity in the said approach of the learned Single Judge to nominate the practising Advocate of this Court as arbitrator, before whom, already claim petition has been filed and the written statement since has not been filed by the appellant Department, next date of hearing is yet to be fixed. Therefore, once the date is fixed by the arbitrator, let the appellants file their counter statement before the arbitrator and thereafter, the arbitrator certainly would hear the matter and decide it within the reasonable time. Therefore, such a direction given by the learned Single Judge through the order impugned does not warrant any interference from this Court.



W.A.(MD)No.1050 of 2024

WEB COPY

7.We have considered the said submissions made by the learned counsel for both sides and perused the materials available on record.

8.It is a fact that there has been a clause in the agreement between the parties, where the Managing Director or his nominee can be appointed or nominated as sole arbitrator. That kind of practice, normally, would not be permitted. Therefore, a common man legally known person if is appointed by the Court, that cannot be found fault with. Therefore, the nomination made by the learned Single Judge through the order impugned appointing the practising Advocate of this Court as arbitrator is a proper exercise.

9.However, the direction also had been given by the learned Single Judge, where within four months, the arbitrator was directed to complete the arbitration proceedings and pass award by receiving very nominal amount, which has also been fixed by the learned Single Judge for entire arbitration. Therefore, the order passed by the learned Single Judge cannot be found fault with and moreover, whether it is 138 cylinders or 278 cylinders or whatever the conflict between the parties cannot be resolved by the Writ Court or by this Bench. Therefore, that kind of issues can be gone into only by the arbitrator, before



W.A.(MD)No.1050 of 2024

whom, the statement and counter statement in respect of letting evidence would be inevitable and after having gone through these evidences only, the arbitrator can pass an award.

10. When that being the position, the order passed by the learned Single Judge, which is impugned herein, cannot be said to be infirm and therefore, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[R.S.K., J.] & [G.A.M., J.]
09.07.2024

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W.A.(MD)No.1050 of 2024

R.SURESH KUMAR, J.

AND

G.ARUL MURUGAN, J.

Yuva

W.A.(MD)No.1050 of 2024

09.07.2024