IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-11-2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P(COM.DIV.) No. 13 of 2022
and A.No.117 of 2022

1.Indian Oil Corporation Limited,
Rep. by its Executive Director,
Marketing Division, Southern Region,
Tamil Nadu State Office,
Indian Oil Bhavan,
No.139, Nungambakkam High Road,
Chennai 600034.

2. Indian Oil Corporation Limited,
Rep. by its Deputy General Manager
Marketing Division, Salem Divisional
Office, No.234, First Floor,
NH-7, Salem Bangalore Bypass
Road, Kondalampatti, Salem 636010.

..Petitioner(s)

Vs

1. M/s. Captain Palanisamy Service Station,
A Registered Partnership Firm,
Rep. by Mr.S.Kuppannan,
Managing Partner, No.323,
Omalur Main Road, Salem 636007.

2.K.P.Manoharan

..Respondent(s)

PRAYER Petition filed under Section 34(2)(B)(ii) Explanation 1(ii) and (iii) and 2(A) and (B)(2) of the Arbitration and Conciliation Act, 1996 as amended in 2019, to set aside the Arbitration Award dated 20.03.2020 passed by the Learned Arbitrator which had arisen out of the dispute between the Petitioner and the Respondent, besides directing the Respondent to pay the costs of the Petition.

For Petitioner(s): Mr.M.Vijayamehanath

For Respondent(s): Mr.S.Senthil

ORDER

This petition has been filed under Section 34 of the Arbitration and Conciliation Act, 1996 (for the sake of brevity, hereinafter referred to as ' the Act') challenging the Award passed by the Sole Arbitrator dated 20.03.2020.

2.The 1st respondent is a Partnership Firm which had four partners viz., Kuppannan, Palanisamy, Amaravathy and Manoharan. This partnership was reconstituted through a Deed dated 12.01.1999. Pursuant to the reconstitution of the of the Partnership Firm, a Dealership Agreement was executed by the petitioner Corporation on 12.01.1999 and the change in the Partnership Firm was approved by the Corporation vide letter dated 22.01.1999.

3.On 07.07.2017, one of the partner viz., Manoharan who is the 2nd respondent in this petition, gave a complaint to the petitioner Corporation and made a claim for allotment in his favour, since he has the major share in the retail outlet. The petitioner Corporation called for the relevant documents and found that one of the partner, Palanisamy had executed an Agreement on 05.05.2003, in favour of the 2nd respondent for sale of his share of 34% in the Firm. A general Power of Attorney dated 05.05.2003, was executed by the said Palanisamy and the Power of Attorney was appointed to take care of day-to-day activities of the dealership on his behalf. A Business Trading Agreement was also executed by Palanisamy by conveying his investment and interest in the dealership in favour of the 2nd respondent. Ultimately, a Sale Deed dated 01.08.2013 was executed by the Power of Attorney of Palanisamy in favour of one Selvam conveying his share.

4.The petitioner Corporation, on going through the above documents found that there is a violation of terms and conditions of the Dealership Agreement and hence, a Show Cause Notice dated 09.10.2017 was issued to the partnership Firm calling for an explanation. An explanation was submitted by the managing partner Kuppannan and another partner

Amaravathy. The said Palanisamy also submitted an explanation stating that he has not sold any shares in the dealership.

5.The petitioner Corporation ultimately terminated the Dealership Agreement by order dated 03.09.2018 and the 1st respondent was directed to handover the retail outlet.

6.Initially a writ petition was filed and this Court directed the parties to agitate the dispute before the Arbitral Tribunal. Accordingly, the petition was filed before this Court in O.P.No.336 of 2019 and an order was passed on 31.07.2019 appointing a Sole Arbitrator.

7.The 1st respondent initiated arbitral proceedings and filed the claim statement before the Sole Arbitrator challenging the termination order and for a direction to the Corporation to restore the Dealership Agreement dated 12.01.1999.

8.The petitioner Corporation filed a detailed reply and explained as to how the partnership Firm had violated the terms of the Agreement and justified the order passed terminating the Agreement.

9.The Sole Arbitrator, on considering the pleadings, framed the following issues:

1. Whether the transaction between the partners of the Claimant's firm is in contravention of the Dealership Agreement dated 12.01.1999?

2. Whether the transaction by one of the Claimant Firm's Partner Palanisamy can be construed as a contravention of the Dealership Agreement dated 12.01.1999?

3. Whether the order of termination dated 03.09.2018 is in tune with the Dealership Agreement dated 12.01.1999

10.Ex.C1 to Ex.C30 were marked on the side of the claimant and Ex.R1 to Ex.R15 were marked on the side of the petitioner Corporation.

11.The Sole Arbitrator on considering the facts and circumstances of the case and on appreciation of evidence, came to a conclusion that the termination order is illegal and hence, directed the petitioner Corporation to permit the 1st respondent Firm to function in accordance with the Dealership Agreement dated 12.01.1999. Aggrieved by the same, the present petition has been filed before this Court.

12.This Court entertained the petition and also granted an order of interim stay and issued notice to the respondents. On 04.08.2023, the learned counsel appearing on behalf of the 1st respondent Firm informed this Court that the managing partner had died and as on that date, there is only one partner and therefore, the partnership Firm has to be reconstituted. On this premise, the matter was adjourned from time to time from August 2023 up to September 2025. Even when the matter was taken up for hearing today, the learned counsel for the 1st respondent submitted that the partnership Firm has not been reconstituted and once again sought for time. He further submitted that since the managing partner has died and he has no instructions from the other partners, he does not have a vakalat for appearing for the other partners, since the partnership Firm has not been reconstituted.

13.The learned counsel for the 2nd respondent submitted that he maintained the same stand that was taken before the Sole Arbitrator and he does not have any independent claim in this case.

14.In the light of the fact that the matter has been adjourned for more than two years and the partnership firm has not been reconstituted till date, this Court proceeded to hear the learned counsel for the petitioner and perused the materials available on record and carefully went through the Award passed by the Sole Arbitrator.

15.The primordial issue that was raised by the learned counsel for the petitioner is that the relief that has been sought for by the 1st respondent is unsustainable in the light of Section 14(1)(c) of the Specific Relief Act, 1963, since the grievance expressed by the 1st respondent can be compensated in terms of money. To substantiate this submission, the learned counsel relied upon the judgement of the Apex Court in ***Indian Oil Corporation Ltd., vs. Amristar Gas Service and Others*** reported in ***1991 1 SCC 533***, ***Indian Oil Corporation Ltd., and Another vs. Bhagawan Balasai Enterprises and Another*** reported in ***2018 2 MLJ 275***, ***A.Murugan and Others vs. Rainbow Foundation Ltd., and Others*** reported in ***2020 3 MLJ 47*** and ***Indian Oil Corporation Ltd., vs. S.N.Sridharan*** reported in ***2021 7 MLJ 15***.

16.The other submission that was made by the learned counsel for the petitioner is that Clause 10 of the Deed of Partnership dated 12.01.1999 clearly provided that the partners agreed that they would not, during the currency of the Dealership Agreement, change the constitution of the Firm in any manner without the consent and concurrence of Indian Oil Corporation Limited. In spite of such specific clause incorporated in the Deed in order to get the dealership, the same was violated since one of the partners Palanisamy had executed agreements in favour of the 2nd respondent for sale of his share and had also appointed a Power Agent for executing a Sale Deed in favour of a third party to convey his shares and ultimately, the same was also sold through a Sale Deed dated 01.08.2013 in favour of one Selvam. While so, the Sole Arbitrator erred in finding that it was a personal dealing between Palanisamy and the 2nd respondent and it has nothing to do with the running of the Firm.

17.In view of the above, it is contended that the Award passed by the Sole Arbitrator suffers from perversity and patent illegality.

18.The Sole Arbitrator at Paragraph No.10.2 has rendered a finding that Palanisamy, who was a partner, had not authorized for the sale of shares and authorization was only to look after the administration along with the other partners. This finding was rendered in the teeth of the Sale Deed dated 01.08.2013 which was produced by the 2nd respondent before the Sole

Arbitrator. This sale of share in favour of the third party and handing over the administration in favour of the 2nd respondent is a clear violation of the undertaking given by the Firm in the reconstitution of Partnership Deed dated 12.01.1999. Therefore, the petitioner Corporation was fully justified in terminating the Dealership Agreement.

19.The finding has been rendered by the Sole Arbitrator in total disregard of the evidence available on record and therefore, it results in patent illegality. Useful reference can be made to the judgement of the Apex Court in ***OPG Power Generation Private Limited vs. Enexio Power Cooling Solutions India Private Limited and Ors.*** reported in ***2025 2 SCC 417***.

20.The next issue is regarding the relief that was sought for by the 1st respondent. The 1st respondent had challenged the termination order and sought for the restoration of the Dealership Agreement. The petitioner Corporation had specifically raised the ground that such relief cannot be sought for in the light of Section 14(1)(c) of the Specific Relief Act, 1963.

21.The Sole Arbitrator, while dealing with this ground, has come to a conclusion that since the cancellation of the Dealership Agreement is illegal, the Tribunal can interfere with the termination order and direct the restoration of the Dealership Agreement.

22.The above finding rendered by the Sole Arbitrator is in total disregard of a substantive law that governs the field. The Specific Relief Act provides that wherever a party can be compensated in terms of money, specific relief should not be granted and compensation can be fixed for the damage suffered by a party. Unfortunately, the 1st respondent has not sought for any compensation/damages. It has been repeatedly held by the Apex Court and this Court that in a case of this nature, specific performance should not be granted and a party can always be compensated for the damages suffered. This is so even in a case where, the cancellation of agreement is found to be unsustainable.

23.The Sole Arbitrator, after rendering a finding that the cancellation order is illegal, went ahead and granted the relief by disregarding a substantive provision of law. The same will tantamount to contravening the fundamental policy of Indian Law and will also result in the Award suffering from patent illegality.

24.In the light of the above discussion, this Court interferes with the Award passed by the Sole Arbitrator and accordingly, the Award dated 20.03.2020, is hereby set aside and this original petition stands allowed. No Costs. Consequently, the connected application is also closed.

26-11-2025

Index:Yes/No
Speaking/Non-speaking order
Internet:Yes
Neutral Citation:Yes/No
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To

1.M/s. Captain Palanisamy Service Station,
A Registered Partnership Firm,
Rep. by Mr.S.Kuppannan,
Managing Partner, No.323, Omalur
Main Road, Salem 636007.

2.K.P.Manoharan, S/o.Periyasamy,
No.174,, Prakasa, Nagar, 1st Avenue,
Judges Road, Ayanthirumaligai, Salem
636008.

N.ANAND VENKATESH J.

ssr

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