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Arb O.P(COM.DIV.) No. 234 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 03.12.2025
Pronouncing orders on : 08.12.2025

CORAM

THE HONOURABLE MR JUSTICE N. ANAND VENKATESH

Arb O.P(COM.DIV.) No. 234 of 2021

M/s Bharat Petroleum Corporation Ltd,
Rep by its Territory Manager (Chennai)
No.35, Vaidyanathan Street,
Tondiarpet, Chennai 600081

Petitioner(s)

Vs

1. M/s Sree Ramajeyam Service Station,
Rep. by its Managing Partner Mr.R.Vasudevan
No.245, Royapettah High Road,
Royapettah, Chennai 600014

Respondent(s)

PRAYER Petition filed under Section 34 of the Arbitration and Conciliation Act, praying to set aside the Award dated 12.07.2021 to the extent that it holds that Section 14(1)(d) of the Specific Relief Act is not a bar and that the termination is illegal and in violation of the principals of natural justice and for costs.

For Petitioner(s): Mr.Krishna Srinivasan
Senior Counsel for
Mr.S.Ramasubramaniam and Associates

For Respondent(s): Mr.N.Muralikumaran for
Mr.S.Sathish Rajan

**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 dated 12.07.2021, passed by the Sole Arbitrator.

2.The petitioner markets its petroleum products through its dealers. The respondent was one such dealer appointed for dispensing and sale of Motor Spirit (Petroleum), High Speed Diesel and other petroleum products under a Dispensing Pump and Selling License (DPSL) renewed on 20.01.2017 for a period of five years. The respondent has been a dealer of the petitioner for over six decades.

3.On 04.09.2020, the respondent placed an indent for 4000 litres of motor spirit and 8000 litres of high-speed diesel, which were despatched on the same day and unloaded into the underground tanks at the respondent's retail outlet. The petitioner's executives drew samples for testing in accordance with the Marketing and Discipline Guidelines (MDG). Six samples of one litre each were drawn from the underground tank located in the retail outlet, out of which two samples were given to the respondent and two samples were given to the laboratory for testing.



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4.The Laboratory Report of the samples failed to meet the parameters prescribed with respect to the Final Boiling Point (FBP) and Research Octane Number (RON). The report, dated 19.09.2020, stated that the retail outlet sample did not confirm to IS2796:2017 Specification for Motor Gasoline BS VI with respect to Final Boiling Point, which was 220°C instead of maximum 210°C and the RON was 90.6 instead of 91.

5.On receipt of this report, the petitioner initiated action for adulteration in terms of Chapter 5 of MDG against the respondent and stopped the supply and sale of petrol and diesel in the retail outlet with immediate effect.

6.The Show Cause Notice dated 24.09.2020 was issued by the petitioner to the respondent to initiate action for adulteration under DPSL Clause 10(g) and in terms of Chapter 5 of the MDG. The respondent issued a reply denying the allegations made in the Show Cause Notice and sought for withdrawal of the suspension of supply.

7.The respondent filed O.A.No.538 & 539 of 2020 under Section 9 of the Act ,seeking for an order of interim junction against the decision taken by the petitioner to suspend the supply of petrol and diesel to the petitioner. An order



was passed on 21.02.2020, granting interim injunction and directed the petitioner to resume the supply of diesel and conduct an enquiry on the Show Cause Notice after hearing the respondent. Accordingly, the petitioner resumed the supply of diesel.

8. On 05.11.2020, the interim order was made absolute and directed the petitioner to complete the enquiry within 15 days and restrained the petitioner from terminating the dealership until the enquiry is concluded.

9. In compliance with the order passed by this Court, the petitioner conducted a hearing before the Regional Head of Southern Region and the termination was also approved by a Three Member Committee on 18.11.2020. Pursuant to the same, an Ad hoc dealer was appointed on 25.11.2020. The Termination Order was issued on 27.11.2020, and the next day, the retail outlet was handed over to the Ad hoc dealer.

10. The respondent filed O.A.No.635 of 2020 for an interim injunction restraining the petitioner from enforcing the Termination Order. An interim order was passed on 28.11.2020. Since the order was not complied with, Cont.P.No.1114 of 2020 was filed by the respondent.



11. A common order came to be passed on 19.02.2021 and a direction was given to the petitioner to handover the retail outlet to the respondent and to recommence the supply on the same day. Apart from that, the Sole Arbitrator was appointed to decide the disputes between the parties.

12. Pursuant to the above order, the respondent filed the statement of claim and sought for the following reliefs:

(a) To set aside the order of termination dated 27.10.2020 received on 28.10.2020 as illegal as the same being one passed contrary to the orders of the Hon'ble High Court, Madras and also being contrary to the statutory rules/Orders MDG guidelines as also on the ground that the entire proceeding is tainted with fraud/malafides and illegal motives

(b) To direct the respondent to pay a sum of Rs.1,89,000/- pm from 19.09.2020 to 19.02.2021 towards loss of business during the said period, which due to the conduct of the respondent, the claimant could not earn. Thus, the respondent may be directed to pay a sum of Rs.9,45,000/- (ie., 19.09.2020 to 19.02.2021) with interest at 21% p.a. from 19.02.2021 till the date of payment

(c) To direct the respondent to pay a sum of Rs.1,00,000/- pm of salary which the claimant had to pay to the employees without extra to any work. Thus in all a sum of Rs.6,00,000/- (viz., 19.09.2020 to 19.02.2021) along with interest at 21%p.a. from 19.09.2020 to 19.02.2021 till the date of actual payment.

(d) To direct the respondent to pay interest of 21% p.a. on illegally



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utilised stock of the claimant worth Rs.13,07,426.22p from 19.09.2020 upto 19.02.2021 when the respondent tendered the said payment

e) To direct the respondent to pay the claimant a sum of Rs. 15,00,000/- as damages towards their illegal, arbitray, wrongful, highhanded conduct of termination of the claimant's dealership vide order dated 27.10.2020 which has resulted in tarnishing the goodwill, earned by the claimant over the last 50 years and also towards mental agony or torture suffered by the claimant

13.The petitioner filed a statement of defence justifying the Termination Order. The petitioner also raised a legal ground that the relief sought for by the respondent, challenging only the Termination Order without seeking any consequential relief for damage is not sustainable in law. The Sole Arbitrator, on considering the pleadings, framed the following issues:

1. Whether Respondent has violated Sec 8 of the Motor Spirit and High Speed Diesel (Regulation of Supply, Distribution and Prevention of Malpractices) Control Order in sending the samples collected from the Claimant's retail outlet to the laboratory for test?
2. Whether the impugned order of termination dated 27-11-2020 is in violation of Chapter 8 of the Marketing Discipline guidelines/
3. Whether the impugned order of termination dated 27-11-2020 is in violation of principles of natural justice?
4. Whether the impugned order of termination dated 27.11.2020 is illegal and liable to be set aside?



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5. Whether Sec 14 (b) & (d) of the Specific Relief Act as amended by Act 18 of 2018 would be a bar for the grant of the relief of setting aside the order of termination?

6. Whether the Claimant is entitled for a sum of Rs.9, 45,000/= along with interest @21% per annum towards loss of profit on account of the illegal order of termination of dealership by the Respondent?

7. Whether the Claimant is entitled for a sum of Rs.6, 00,000/= along with interest @21% per annum towards financial loss towards payment of salary for the employees from 19-09-2020 to 19-02-2021 on account of the illegal order of termination of dealership by the Respondent?

8. Whether the Respondent is liable to pay interest @21% per annum on the sum of Rs. 13, 07,426/= that was refunded belatedly by the Respondent?

9. Whether the Claimant is entitled for a sum of Rs. 15, 00,000/= as damages towards wrongful order of termination and loss of business on account of illegal order of termination of dealership by the Respondent?

10. To what relief the parties are entitled to?

14.Ex.C1 to Ex.C41 were marked on the side of the respondent and Ex.R1 to Ex.R19 were marked on the side of the petitioner.

15.The Sole Arbitrator on considering the facts and circumstances of the case and on appreciation of evidence held issues 2, 3, 4 and 5 in favour of the claimant, held the other issues against the claimant and ultimately, the



Termination Order dated 27.11.2020, was set aside. Aggrieved by the said Award, the petitioner has knocked the doors of this Court by filing the petition under Section 34 of the Act.

16.Heard Mr.Krishna Srinivasan, learned Senior Counsel appearing on behalf of the petitioner and Mr.N.Murali Kumaran, learned counsel appearing on behalf of the respondent.

17.The main grounds that were raised on the side of the petitioner are as follows:

A)The Sole Arbitrator went wrong in rendering a finding that the petitioner did not substantiate their allegation that there was adulteration and that this finding was rendered in total disregard to the Motor Gasoline Specification, BIS 2017, which specifically sets out the RON which was expected to have the value of 91 and whereas, the test report showed that the value was 90.6 and this deviation clearly pointed out to the fact that there was adulteration as defined under Chapter 5 of the MDG.

B)The Sole Arbitrator went wrong in holding that the entire action taken by the petitioner is tainted with malafides.



C)The Sole Arbitrator went wrong in holding that there was violation of principles of natural justice and

D)The Sole Arbitrator went wrong in rejecting the legal ground taken on the side of the petitioner to the effect that the respondent/claimant merely challenged the Termination Order without seeking for a consequential prayer for damages and that the same is not permissible under Section 14(d) of the Specific Relief Act.

18.Insofar as the first ground is concerned, it touches upon the RON value as per the Motor Gasoline Specification adopted by BIS, IS 2796:2017, where the permissible level of RON for motor spirit should be 91. The Test Report dated 19.09.2020 revealed the fact that the RON value was 90.6.

19.The relevant guideline is extracted hereunder:

12 Expression of results

Report the calculated research octane number in accordance with the requirements of Table 5. When the calculated RON value ends in exactly 5 in the place just beyond that to which it is to be reported, round to the nearest even digit.



EXAMPLE 67,50 and 68,50 would be rounded to 68 as the nearest integer;
93.55 and 93.65 would be rounded to 93.6 as the nearest tenth.

Table 5 - Significant digits for reporting research octane number

Research octane number range	Report to
Below 72.0	nearest integer
72.0 to 103.05	nearest tenth
Above 103.05	nearest integer

20.The above Clause deals with the requirement of the Octane Number that should be specified and how it has to be reported when the Octane value is expressed in terms of decimal number.

21.In the case in hand, the Test Report came out with a finding that the RON was 90.06 instead of 91 for the Motor Gasoline. As per Table 5, when the range of RON is between 72.0 to 103.5, it has to be reported to the nearest tenth.

22.Rounding to the nearest tenth means to write the given decimal number up to one decimal place. This is done in such a way that after rounding off, there is one digit after the decimal point. In order to rounding to the nearest tenth, one has to look for the digit on the tenths place and observe the digit towards its right in the given number. The position of the first digit after the decimal point is considered as the tens place. If the above formula is applied to 90.6, it is seen that the digit in the tens place is 9. The digit to the right of the



tens place is zero. Since the digit to the right of the tens place zero is less than 5, it has to be round down which means a tens digit must be kept the same and the ones digit must be made as zero. Thus, rounding 90.6 to the nearest ten will be 90.0.

23.The Sole Arbitrator, while dealing with the above issue committed two errors. The first error is that the Sole Arbitrator relied upon judgement of the Gujarat High Court in *M/s.Bharat Petroleum Corporation Limited vs. Meghal R. Thakkar*, where RON 87.6 was rounded off to 88 and this was done by following Clause 13 of the 1960 IS Standard. It is an admitted case that the case in hand falls under BIS 2017 and therefore, the 1960 Standard cannot be applied for the 2017 Standard and the very judgement that was relied upon by the Sole Arbitrator will have no application to the present case.

24.The second error was committed by the Sole Arbitrator by rounding off 90.6 to 91 and rendering a finding that the required limit has been satisfied by the respondent. After having rendered such finding, the Sole Arbitrator also goes on to render a consequential finding that the difference of 0.4 does not automatically make the product adulterated.

25.The Sole Arbitrator has applied an irrelevant BIS Standard and has



relied upon a judgement which does not apply to the facts of the present case and has disregarded the standard prescribed under BIS 2017. In view of the same, the finding rendered by Sole Arbitrator certainly suffers from patent illegality.

26.As per Clause 5.1 under Chapter 5 of MDG, adulteration of a product has been defined as a product that does not conform to the requirements of BIS Specification for Motor Spirit and High Speed Diesel respectively and the amendments brought thereon. Thus, where the product does not fall within the permissible limits of the test method for which the samples are examined, it automatically becomes an adulterated product.

27.The Test Report dated 19.09.2020 shows that the samples of Motor Spirit drawn from the retail outlet of the petitioner failed to meet the parameters prescribed in respect of the FBP and RON. The FBP was 220°C instead of a maximum of 210°C and the RON was 90.6 instead of 91. When a specialised agency submits a report to that effect and there is no material available to show that the Report is flawed, it has to be necessarily acted upon and there is no scope for any discretion available to an Arbitrator to assume that the difference of 0.4, by itself will not make the product adulterated.



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28. In the light of the above discussion, this Court holds that the finding of the Sole Arbitrator on the issue of RON value and the consequential finding on the adulterated product suffers from perversity and patent illegality and the same requires the interference of this Court.

29. Clause 13 of the DPSL provides for the Company to terminate the Agreement under different situations, including any act of the licensee which is prejudicial to the petitioner Company or if the licensee is guilty of a breach of the Agreement. Clause 12 of DPSL also provides for termination without assigning any reasons by the petitioner Company by issuing notice of not less than ninety days in writing.

30. The Sole Arbitrator has rendered a finding that the Termination Order is tainted with malafides. In order to reach this conclusion, the Sole Arbitrator has placed strong reliance upon the orders passed by this Court in O.A.No.635 of 2020 dated 28.11.2020 and also the order passed in Cont.P.No.1114 of 2020 and O.A.No.635 of 2020 dated 19.02.2021.

31. The above orders relied upon by the Sole Arbitrator have certainly rendered findings that the entire action of the petitioner smacks of malafides and



the reasons given at Paragraph No.12 in O.A.No.635 of 2020, are extracted hereunder:

12. The entire action of the respondent prima facie smacks of malafides for the following reasons:

(i) The committee appointed by the respondent to investigate the cause of sample failure after inspecting the premises and perusing the sample analysis report has clearly concluded that they were not in a position to assign any particular reason for the product failure.

(ii) Though the sample for diesel had conformed to specification even the supply of diesel had been stopped and the dealership terminated for diesel as well.

(iii) The impugned order has terminated the dealership even with reference to diesel when the enquiry was only restricted to petrol.

(iv) Even before the impugned order could be passed the respondents have lined up a new dealer which process could not have happened over night. Therefore, the enquiry was a mere empty formality.

(v) The respondent has overlooked the fact that the applicant has been their dealer for over 5 decades.

32.The subsequent order passed in Cont.P.No.1114 of 2020 is even more scathing, since this Court found that the conduct of the petitioner Company was not only contumacious but also an affront to the dignity of the Court.

33.It is under these circumstances, this Court directed that the respondent must be permitted to run the retail outlet and the petitioner was directed to supply the petrol and diesel.



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34.It was also made clear by this Court that in the event of the Sole Arbitrator upholding the termination against the respondent, the respondent must hand over the retail outlet to the petitioner on the day they receive a copy of the Award of the Arbitrator.

35.The overall effect of the above orders passed by this Court makes it abundantly clear that the Sole Arbitrator was expected to independently deal with the issue of legality or otherwise of the Termination Order and should not be swayed by the observations made by this Court in the above orders. If the orders passed by this Court in the above applications can be a ground to hold that the action taken by the petitioner Company is tainted with malafides, there is no reason as to why any further enquiry must be conducted to decide as to whether the termination order is illegal. Hence, the Sole Arbitrator was expected to independently apply his mind and render an independent finding on the legality or otherwise of the Termination Order dated 27.11.2020.

36.The Sole Arbitrator has also rendered a finding that an Ad hoc dealer was permitted to run the retail outlet and that he also utilized the same product which is said to be adulterated and therefore, that was one more ground put against the petitioner to hold that the termination is tainted with malafides.



37.The petitioner has taken the stand that the test results were made known on 19.09.2020 and during this period, the petitioner had supplied fresh loads of Motor Spirit, which were sold to the public. Once again, fresh samples were drawn from the retail outlet on 28.11.2020 and it was tested and found that it was within the permissible limits. According to the petitioner, the Ad hoc dealer was appointed on 25.11.2020 and the retail outlet was handed over only on 28.11.2020 and by then fresh loads of Motor Spirit was supplied to the retail outlet.

38.To counter the above claim made by the petitioner, the learned Senior Counsel appearing on behalf of the respondent pointed out to Paragraph 29 of the statement of defense filed by the petitioner, wherein there is no indication of any supply of new stock.

39.In the considered view of this Court, it is not very clear as to whether any fresh loads were supplied by the time the Ad hoc dealer was handed over the operations on 28.11.2020. Thus, the finding of the Sole Arbitrator in this regard is based on a mere assumption.

40.The Sole Arbitrator has also rendered a finding that the petitioner could not have passed an order terminating the entire license when the so-called



adulteration was ascertained only for Motor Spirit and not with respect to High Speed Diesel. But however, the entire license was cancelled.

41.It is seen from records and even from the findings of the Sole Arbitrator, that it was a composite license which covers both Motor Spirit and High Speed Diesel. Therefore, if the license is to be cancelled, it will be cancelled in its entirety and there is no question of partial cancellation of the license. The Sole Arbitrator has held that such cancellation/termination of the license, by including High Speed Diesel, is in violation of the orders passed by the Court and without getting any clarification/modification from the Court, the license ought not to have been cancelled.

42.The Sole Arbitrator was once again swayed by the orders passed by this Court in the above applications. As held *supra*, if the Termination Order was bad and it is tainted with malafides, there was no need for referring the dispute to the Sole Arbitrator to decide on the legality of the Termination Order. Straight away this Court would have said that the Termination Order passed in the teeth of the orders passed by this Court under Section 9 of the Act, is illegal. However, no such finding was rendered by this Court and in any event, interim orders passed under Section 9 of the Act will not have a binding effect nor will have any bearing when the dispute is finally decided by the Sole Arbitrator.



43. In the light of the above discussion, this Court holds that there was a valid ground available for the petitioner to terminate the license and which decision was also approved by a Three Member Committee on 18.11.2020 and therefore, it cannot be held that the orders passed in the applications by itself will vitiate the Termination Order. In view of the same, the findings of the Sole Arbitrator to the effect that the Termination Order is tainted with malafides also suffers from perversity and manifest illegality.

44. The third issue pertains to the finding of the Sole Arbitrator to the effect that the Termination Order was issued in violation of the principles of natural justice.

45. The Sole Arbitrator came to the conclusion that there is a violation of principles of natural justice, since the so-called personal hearing that was given to the respondent was a mere eye wash and the petitioner was pre-determined in issuing the Termination Order. Apart from that, no opportunity was given to the respondent before the Three Member Committee which approved the Termination Order. For this purpose, the Sole Arbitrator has relied upon Clause 8.6 of MDG.

46. It must be borne in mind that the Termination Notice was issued only



on the ground that the samples of petroleum drawn from the retail outlet did not meet the specifications prescribed by BIS. If the respondent really wanted to avail an opportunity, they must have sought for the re-test from the samples that were retained at the retail outlet from a Government Laboratory. This valuable opportunity that is available for the respondent was not utilised by the respondent. Therefore, in the light of a Test Report issued by a specialised agency, it has to be necessarily acted upon, since the product was found to be adulterated. Any number of opportunities that is given to the respondent, the respondent must be able to establish that the finding rendered in the report is incorrect or flawed and cannot be acted upon. The only way in which the respondent could have established this is by sending the sample retained in the outlet for re-test to a Government Laboratory. The Test Report cannot be negated or falsified by mere denials and assumptions. Therefore, the finding rendered by the Sole Arbitrator as if no opportunity was given to the respondent, is a finding which suffers from perversity and patent illegality.

47.The last issue pertains to the relief sought for by the respondent by merely questioning the Termination Order and without seeking for any consequential relief. This issue pales into insignificance in view of the finding rendered by this Court that the Termination Order dated 27.11.2020, is valid. Hence, it is not necessary for this Court to render any finding on this issue.



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48.The conspectus of the above discussion leads to the only conclusion that the Award passed by the Sole Arbitrator dated 12.07.2021, is liable to be interfered by this Court and accordingly, the same is hereby set aside.

49.In the result, this Original Petition stands allowed and there shall be a direction to the respondent to pay cost of a sum of Rupees One Lakh and Fifty Thousand to the petitioner.

08-12-2025

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

1.Mr.R.Vasudevan
The Managing Partner
M/s Sree Ramajeyam Service Station,
No.245, Royapettah High Road,
Royapettah, Chennai 600014

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N.ANAND VENKATESH J.

SSR

Pre-Delivery Order in
Arb O.P(COM.DIV.) No. 234 of 2021

08-12-2025