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O.P. No.482 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-02-2026

CORAM

THE HON'BLE MR JUSTICE N.ANAND VENKATESH

O.P. No.482 of 2017

and

A. No.697 of 2026

M/s.Sree Agencies
Rep. By its Proprietor Shri T.Dinesh,
Res. Plot No.2239, AF Block, 6th Street,
11th Main Road, Anna Nagar, Chennai-600 040.

..Petitioner(s)

Vs

1. The Chief Law Manager
Tamilnadu State Office,
Indian Oil Corporation Ltd.,
No.139, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.
2. The Chairman,
Indian Oil Corporation Ltd.,
Plot 3079/3, Sadiq Nagar,
J.B.Tito Marg, New Delhi-110 049.
3. Mr.B.S.Giridhar,
Internal Sole Arbitrator,
Executive Director (Health, Safety &
Environment), Indian Oil Corporation Limited,
G-9, Ali Yavar Marg, Bandra (E),
Mumbai-400 051.

..Respondent(s)

PRAYER: Original Petition filed under Section 34 of the Arbitration and Conciliation Act, 1996, praying to set aside the award passed by the 3rd respondent dated 26.07.2016.



For Petitioner(s):

Mr.Aasim Shehzad
for BFS Legal

For Respondent(s):

Mr.M.Vijayamehanath (for R1 & R2)

ORDER

This petition has been filed assailing the award passed by the Arbitral Tribunal dated 26.07.2016 under Section 34 of the Arbitration and Conciliation Act, 1996 (for brevity hereinafter referred to as "the Act").

2. The brief facts of the case is that the respondent Corporation called for dealership for retail outlet and the petitioner applied for the same and the petitioner was allotted with the dealership at Uthiramerur(SC) and Letter of Indent (LOI) was issued on 05.09.2005.

3. The necessary licenses and other no objection certificates were also granted in favour of the respondent for running the retail outlet.

4. The lease deed dated 30.06.2006 was also entered into with the land owner and the lease agreement was registered in the concerned Sub-Registrar Office as Document No.1157 of 2006. After the lease deed was registered, subsequent permissions were also granted. Ultimately, work order dated 20.11.2006 was issued with an altered design of two diesel tanks by changing the SAP CODE 4808 instead of SAP CODE 4804 which is a Mat raft



Foundation.

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5. The retail outlet was commissioned on 31.07.2007 and the petitioner was appointed as the dealer vide dealership agreement dated 13.08.2007. The retail outlet was made operational from 10.08.2007. The further case of the petitioner is that they started facing problems and the same was intimated to the respondent Corporation and on verification, it was found that there was leakage in the pipeline and this problem was solved only on 16.08.2007. As a result of this leakage, the petitioner also faced loss of stock.

6. The problems of the petitioner persisted and the petitioner stopped the operation of the retail outlet from 08.12.2008. As a result of the dispute between the parties, the petitioner requested the respondent to refer the dispute to the arbitrator by a communication dated 16.12.2008. A sole arbitrator was appointed but however the arbitral tribunal terminated the proceedings through order dated 10.08.2009.

7. The respondent Corporation thereafter issued a Show Cause Notice dated 16.11.2011 calling upon the petitioner to show cause as to why the Pump Dealership Agreement dated 13.08.2007 should not be terminated as per the provisions of the dealership agreement clauses.



8. A reply was given by the petitioner on 26.11.2011, however, the reply did not satisfy the Corporation and hence it resulted in the termination of dealership through a notice dated 08.01.2013.

9. Pursuant to the termination of the dealership agreement, the petitioner issued a notice dated 06.02.2013 for appointment of an arbitrator. While issuing this notice, the petitioner specifically took a stand that only a third party arbitrator should be appointed in this case since the petitioner does not have any confidence in having the officials of the respondent Corporation as the arbitrator.

10. In spite of the objections raised by the petitioner, one of the official belonging to the respondent Corporation, namely, the Director of Pipeline, IOCL was appointed as the Sole Arbitrator. Left with no other alternative, the petitioner filed the claim statement before the sole arbitrator by making the following claims:

“i) Directing the respondent herein to cancel the termination order dated 08.01.2013 and consequently direct the respondent to allot New retail outlet with all facilities as per law within a time frame fixed by this Hon’ble Internal Arbitrator.

ii) Directing the respondent to pay damages and compensation amounting to a sum of Rs.7,45,65,297/- (Rupees Seven Crores Forty Five Lakhs Sixty Five Thousand Two Hundred



and Ninety Seven) along with interest at the rate of 18% per annum from the date it was due for payment till the actual date of payment.

iii) To direct the respondent to provide the Original Inspector Report of the inspection conducted at the Retail Outlet on 10.07.2008.

iv) To take stringent action against the following corrupt officials and also make them financially accountable who caused substantial damage to me personally and also swindled the public money of the Public Sector Company by unofficially partnering with the Contractors through gross negligence and deviating from the norms specified by the statutory and government bodies, suppressing the facts before various courts and government authorities:

a) Mr.V.K.Jeyachandran, Executive Director, IOCL.

b) Mr.V.Ramaswamy, Chief Manager, IOCL.

c) Mr.T.Varaprasada Rao, former Chief Divisional Retail Sales Manager, IOCL.

d) Mr.A.S.R.Sekar, Former Sales Officer, IOCL.

v) To frame the corrective measures within the guidelines of the Policy of IOCL to prevent recurrence of the lacuna happened in this case henceforth.

vi) To Direct the respondents to pay the cost of this arbitration.”

11. The respondent also filed their statement of defense and ultimately the sole Arbitrator passed an award on 26.07.2016, the same has been put to



challenge in the present petition.

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12. Heard Mr.Aasim Shehzab, learned counsel for the petitioner and Mr.M.Vijayamehanath, learned counsel for the respondents.

13. The main ground that was argued by the learned counsel for the petitioner is that the petitioner never consented or waived his right for appointment of an independent Arbitrator in this case and in fact, a specific request was made by the petitioner in this regard while issuing the notice dated 06.02.2013 to the respondent Corporation. In spite of the same, one of the official working with the respondent Corporation was appointed as a Sole Arbitrator and that the award passed by the Sole Arbitrator is in violation of Section 12(5) of the Act and the award is liable to be interfered by this Court on this sole ground. To substantiate this submission, the learned counsel relied upon the latest judgment of this Court in ***RPN Engineers Chennai Private Limited vs. The General Manager and others*** in Arb.O.P.(Com.Div.)No.503 of 2022 dated 20.01.2026.

14. The learned counsel for the respondent Corporation submitted that the award passed by the Sole Arbitrator is much before the judgment of the Apex Court in Central Organisation for ***Railway Electrification (CORE) vs. ECI-SPIC-SMO-MCML (JV)*** reported in ***2024 SCC Online SC 3219*** and that the



judgment will have only a prospective effect and therefore, the petitioner cannot question the award on the ground that the Arbitrator has been appointed by the Corporation without the consent of the petitioner. The learned counsel further submitted that there are absolutely no case on merits and the petitioner has not even taken a ground in the petition under Section 34 of the Act questioning the award passed by the Sole Arbitrator as being violative of Section 12(5) of the Act.

15. I have carefully considered the submissions made on either side and perused the materials placed on record.

16. This Court has carefully considered the Award passed by the Sole Arbitrator. It is seen from the record that the petitioner had specifically raised objections regarding appointment of any official belonging to the respondent Corporation as the sole Arbitrator. The same is evident from the notice dated 06.02.2013, issued by the petitioner.

17. The judgment relied upon by the learned counsel for the respondent in CORE-2 made it clear that the judgment will only have a prospective effect. Therefore, insofar as the preliminary objection raised by the learned counsel for the petitioner on the validity of the award passed, it must be seen if the award is tainted for non-compliance of the mandate under Section 12(5) of the Act.



18. The above issue is no longer *res-integra* and the earlier judgment passed by this Court in ***RPN Engineering Chennai Private Limited*** (referred *supra*) will squarely apply to the facts of the present case. The relevant portions are extracted hereunder:

“14. The Apex Court in the judgment in Central Organisation for Railway Electrification v. ECI SPIC SMO MCML (JV) A Joint Venture Company [2024 SCC OnLine SC 3219] [CORE 2] made it clear that the judgment will only have a prospective effect. In the said judgment, the Apex Court rendered the following conclusions:

“169. In view of the above discussion, we conclude that:

a. The principle of equal treatment of parties applies to all stages of arbitration proceedings, including the stage of appointment of arbitrators;

..

c. A clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrators;

d. In the appointment of a three~member panel, mandating the other party to select its arbitrator from a curated panel of potential arbitrators is against the principle of equal treatment of parties. In this situation, there is no effective counterbalance because parties do not participate equally in the process of



appointing arbitrators. The process of appointing arbitrators in CORE (supra) is unequal and prejudiced in favour of the Railways;

e. Unilateral appointment clauses in public~private contracts are violative of Article 14 of the Constitution;

f. The principle of express waiver contained under the proviso to Section 12(5) also applies to situations where the parties seek to waive the allegation of bias against an arbitrator appointed unilaterally by one of the parties. After the disputes have arisen, the parties can determine whether there is a necessity to waive the nemo judex rule; and

g. The law laid down in the present reference will apply prospectively to arbitrator appointments to be made after the date of this judgment. This direction applies to three~member tribunals.”

15. For the purposes of this case, the conclusion in paragraph No.169 (d) assumes a lot of significance. It was held that in the appointment of a three~member panel, mandating the other party to select its arbitrator from a curated panel of potential arbitrators, goes against the principal of equal treatment of parties. It was, therefore, held that the process of appointing arbitrators in this fashion is unequal and prejudiced in favour of the Railways. In the case in hand, this Court has already recorded the fact that the curated panel of potential arbitrators was supplied to the petitioner and the petitioner neither waived their right nor consented for appointment of any arbitrator on their side from among the panel of arbitrators provided by the respondents.



16. *At this juncture, in the latest judgment of the Apex Court in Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India [Civil Appeal Nos.37~38 of 2026 dated 05.01.2026], it was made abundantly clear that Section 12(5) of the Act is mandatory and it was pointed out that the ineligibility of any of the categories specified in the Seventh Schedule stems from the operation of law and hence, the very appointment will be rendered ex facie invalid. In such an event, when an award is passed by such a Tribunal, the same can be raised as an issue by the aggrieved party while filing the petition under Section 34 of the Act. It was further held that where the Arbitral Tribunal lacks jurisdiction, passing the award on merits does not wipe away the inherent lack of jurisdiction and hence, this ground can be taken at any stage of the proceedings.*

17. *It is also relevant to take note of the judgment of the Delhi High Court in Daulat Ram Brake Mfg. Co. v. Union of India [2025 SCC OnLine Del 5106]. The Delhi High Court has taken into consideration all the earlier judgments, more particularly, the law laid down in Perkins Eastman Architects DPC v. HSCC (India) Ltd. [(2020) 20 SCC 760] and Voestalpine Schienen GmbH v. DMRC [(2017) 4 SCC 665] and concluded that these judgments read along with CORE 2 judgment of the Apex Court crystallise the law of neutrality. Adding to that, this Court also takes into consideration the judgment of the Apex Court in Bhadra's case [supra]. In such a scenario, the Delhi High Court has held that where the party has not waived the right or given consent for the constitution of the Arbitral Tribunal and the same has been unilaterally appointed by the respondent, such an Arbitral Tribunal*



lacks inherent jurisdiction and therefore, all these judgments can be cumulatively applied to set aside the award passed by such an Arbitral Tribunal. I am in complete agreement with the above judgment rendered by the Delhi High Court.”

19. One of the ground that was raised by the learned counsel for the respondent is that the petitioner did not raise this issue as a ground in the petition filed under Section 34 of the Act.

20. The Apex Court has held in more than one judgment that where the question raised goes to the root of the matter touching upon the very jurisdiction of the arbitral Tribunal and the same can be ascertained on the face of the award passed by the Tribunal, the Court can always go into the issue of jurisdiction even if no specific ground has been raised in the petition filed under Section 34 of the Act.

21. In the case in hand, the petitioner has neither consented nor waived his right for appointment of an independent Arbitrator as per the test laid down by the Apex Court in ***Bhadra International (India) Pvt. Ltd. & Ors. v. Airports Authority of India [Civil Appeal Nos.37-38 of 2026 dated 05.01.2026*** and therefore the above judgment will squarely apply to the facts of the case. Where the party has not waived the right or given consent for the arbitral Tribunal, such arbitral Tribunal lacks inherent jurisdiction and therefore it will stand



vitiated in the light of the earlier judgments of the Apex Court in *Perkins Eastman Architects DPC v. HSCC (India) Ltd.* reported in (2020) 20 SCC 760 and *Voestalpine Schienen GmbH v. DMRC* reported in (2017) 4 SCC 665.

22. In the light of the above discussion, the award passed by the sole Arbitrator dated 26.07.2016 is liable to be interfered by this Court on the ground of lack of jurisdiction and accordingly the same is hereby set aside. It is left open to the parties to take fresh steps for appointment of sole Arbitrator in accordance with law and refer the dispute to the newly constituted arbitral tribunal.

23. In the result, the Original Petition is allowed. Consequently, the connected application is closed. There shall be no order as to costs.

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Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To:

1. The Chief Law Manager,
Tamilnadu State Office, Indian Oil Corporation Ltd.,
No.139, Mahatma Gandhi Road,
Nungambakkam, Chennai-600 034.
2. The Chairman,
Indian Oil Corporation Ltd., Plot 3079/3,
Sadiq Nagar, J.B.Tito Marg, New Delhi-110 049.
3. Mr.B.S.Giridhar
Internal Sole Arbitrator, Executive Director,
Indian Oil Corporation Ltd.,
G-9, Ali Yavar Marg, Bandra (E),
Mumbai-400 051.



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N. ANAND VENKATESH J.

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