SUPREME COURT OF INDIA

Indian Oil Corporation Ltd.

Vs.

T.Natarajan

C.A.No.6748 of 2018

(Abhay Manohar Sapre and Uday Umesh Lalit,JJ.,)

17.07.2018

JUDGMENT

Abhay Manohar Sapre,J.,

SLP(C)No.33100 of 2015

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 08.10.2015 passed by the High Court of Judicature at Madras in W.A. No.589 of 2015 whereby the Division Bench of the High Court allowed the writ appeal filed by the respondent herein and set aside the order dated 17.04.2014 passed by the Single Judge of the High Court in Writ Petition No. 10026 of 2013 by which the writ petition filed by the respondent herein was dismissed.

3. In order to appreciate the issues involved in the appeal, it is necessary to set out the facts in detail. The facts are taken from the SLP paper book.

4. The appellants herein were respondent Nos.1 and 2 and the sole respondent herein was the writ petitioner in the writ petition before the High Court out of which this appeal arises.

5. Appellant No.1 is the Government Company called Indian Oil Corporation Ltd. (hereinafter referred to as "the IOC"). The IOC is engaged in the business of manufacturing and sale of several petroleum products such as petrol, High-Speed Diesel (HSD), lubricants etc. The IOC has set up several retail outlets all over the country for sale of their products through their retail dealers.

6. On 31.08.1989, the IOC appointed respondent as its retail dealer for sale of petroleum products. A dealership agreement (Annexure P-12) was accordingly executed between the IOC and the respondent in this regard.

7. The respondent had to carry on the business as per the terms and conditions of the dealership agreement. The respondent accordingly set up his petrol pump in the name and style of M/s Lakshmi Service Station at GST Road, Kooteripattu Town (Tamil Nadu) and started selling petroleum products of IOC.

8. On 01.08.2008, Deputy Inspector of Labour (Weights & Measures) carried out an inspection of the respondent's petrol pump. It was followed by another inspection carried out by the Sales Officer of the IOC on 02.08.2008. In these two inspections, it was noticed that " totalizer wires of L&T Line DU in petrol pump model serial No.1578 used at MS 2 pump was found cut'. In other words, in these inspections, " no totalizer seal' was found in place.

9. It is these inspections, which gave rise to issuance of show cause notice by the IOC to the respondent on 27.08.2008. The show cause notice, after setting out the details of the inspections, proceeded that why the dealership agreement of the respondent dated 31.08.1989 be not terminated for the alleged breaches noticed in the inspections. The respondent was called upon to file his reply. The respondent filed his reply.

10. Not satisfied with the reply filed by the respondent, the IOC, vide letter dated 11.03.2009 terminated the respondent's dealership agreement.

11. The respondent felt aggrieved by the termination of his dealership agreement and invoked clause 69 of the dealership agreement which provided for resolution of disputes by the Arbitrator arising in relation to the dealership agreement and he requested the IOC to refer the matter to the Arbitrator for his decision. The IOC acceded to the respondent's request and accordingly referred the matter relating to termination of his dealership to the sole Arbitrator.

12. The Arbitrator then embarked upon the reference and passed his reasoned award dated 14.10.2011. The operative part of the award reads as under:

> "The act of continuing the sales even after the breakage of Totalizer Seal committed by the claimant, in question, calls for stern action. However, it is noted that there was no variation in the quality and quantity. Again, the petitioner has already suffered substantially for more than two (2) years for the closed status of the retail outlets. Therefore, a lenient view may be considered by the respondent, bearing in mind the element of benefit of doubt.

13. The IOC, felt aggrieved by the award of the Arbitrator, questioned its legality by filing an application (OP No.358 of 2012) under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "the Act") whereas the respondent filed an interim application No.447/2012 seeking resumption of supply of fuel to him before the High Court.

14. By order dated 23.11.2012, the High Court dismissed the application and upheld the award. The operative part of the order reads as under:

"In the result, the arbitral award dated 14.10.2011 made by the third respondent is confirmed with liberty given to the dealer to approach IOC with request in writing for continuation of distributorship and for supply and sale and with further direction issued to IOC to duly consider such request of the first respondent/dealer within one week from the date of receipt of such written request. The OP filed by the IOC and the application filed by the dealer are accordingly disposed of."

15. The aforesaid order attained finality, as neither of the parties filed any appeal against the aforesaid order.

16. The respondent then on 20.02.2013 filed a representation to the appellant (IOC) requesting them for resumption of the supply of fuel to him pursuant to the directions of the award. By letter dated 13.03.2013, the IOC rejected the representation assigning the reasons for rejection of the respondent's representation.

17.The respondent felt aggrieved by the rejection of his representation, filed writ petition before the Madras High Court under Article 226/227 of the Constitution of India. The appellant (IOC) contested the writ petition and defended their order of rejection of the respondent's representation.

18. By order dated 17.04.2014, the Single Judge (writ Court) dismissed the writ petition finding no merit to the challenge made to the rejection of the respondent's representation and upheld the same as being just and proper calling no interference. The respondent felt aggrieved and filed intra court appeal before the Division Bench.

19. By impugned order, the Division Bench allowed the respondent's appeal and while setting aside the order of the Single Judge issued a mandamus to the IOC to restore the respondent's dealership and resume the supply of fuel to his fuel station. The operative part of the order of the Division Bench contained in Para 21 and 22 reads as under:

"21. The application filed by the Corporation to set aside the award has already been dismissed by the learned Single Judge. The Corporation is now taking advantage of the liberty granted by the learned Single Judge while confirming the award to consider the representation. There is absolutely no need to submit a representation and passing orders thereon by the Corporation in view of the conclusiveness reached to the award setting aside the order of termination. Since the supply was stopped only on account of the order of termination of dealership, naturally supplies should resume immediately after the award and upholding the said award by the learned Single Judge. This aspect was not considered by the learned Single Judge. We are therefore of the view that the appellant must succeed.

22. In the result, the order dated 13 March 2013 on the file of the second respondent is set aside. The writ petition filed by the appellant is allowed. The first respondent is directed to pass a consequential order pursuant to the award dated 14 October 2011 restoring the dealership of the appellant and resume supplies to the fuel station. Such

exercise shall be completed within a period of one week from the date of receipt or production of a copy of this judgment."

20. It is against this aforementioned order, the IOC felt aggrieved and filed this appeal by way of special leave before this Court.

21. Heard Mr. Huzefa Ahmadi, learned senior counsel for the appellants and Mr. Mohan Parasaran, learned senior counsel for the respondent.

22. Mr. Huzefa Ahmadi, learned senior counsel while assailing the legality and correctness of the impugned order mainly urged three submissions.

23. In the first place, learned senior counsel urged that the well reasoned order passed by the Single Judge (writ Court), which rightly resulted in upholding of the respondent's termination letter of dealership should have been upheld by the Division Bench. According to learned counsel, there was no case made out for any interference by the Division Bench in the order of the Single Judge, who rightly dismissed the respondent's writ petition.

24. In the second place, learned counsel urged that the approach of the Division Bench in dealing with the issue in question itself was faulty inasmuch as it wrongly proceeded on the assumption that the award dated 14.10.2011 had set aside the termination letter dated 13.03.2013 and restored the respondent's dealership in his favour.

25. Learned counsel pointed out that on proper interpretation of the reasoning and the operative part of the award, it is clear that the Arbitrator recorded a categorical finding against the respondent that breaches alleged by the appellants against the respondent on the basis of inspection were held made out requiring stern action.

26. Learned counsel further pointed out that the award followed by the observations of the Single Judge at best gave liberty to the respondent to file a representation for re-consideration of his case for restoration of his dealership by the IOC but not beyond it. Indeed, according to learned counsel, if the award had been in favour of the respondent, then in such case, there was no need for the Arbitrator and Single Judge to give liberty to the respondent to apply for re-consideration of his case.

27. In the third place, learned counsel urged that once the IOC considered the case of the respondent and found no case to grant him any relief much less the benefit of restoration of his dealership, the issue attained finality between the parties.

28. It was his submission that the Division Bench, in this circumstance, in its writ jurisdiction had no power to sit as an Appellate Court over the decision of the IOC and direct restoration of the respondent's dealership.

29. It is mainly these three submissions, the learned senior counsel elaborated his submissions by referring to various documents on record.

30. In reply, Mr. Mohan Parasaran, learned senior counsel, supported the impugned order and contended that the impugned order does not call for any interference and, therefore, the appeal deserves dismissal.

31. Having heard the learned counsel for the parties and on perusal of the record of the case, we find force in the submissions urged by the learned senior counsel for the appellant.

32. The short question, which arises for consideration in this appeal, is whether the Division Bench was right in reversing the decision of the Single Judge (writ court). In other words, the question, which arises for consideration is whether the Division Bench was right in setting aside the letter dated 13.03.2013 of IOC which terminated the respondent's dealership and was, therefore, justified in issuing a mandamus against the IOC to restore the dealership of the respondent herein and resume supply of fuel to his fuel station.

33. In our considered opinion, the Division Bench was not justified in doing so and this we say for the following reasons.

34. Coming first to the question as to what is the proper interpretation of the award dated 14.10.2011 and the order of the Single Judge which upheld the award and what it actually decide, in our opinion, a plain reading of these orders indicates that the Arbitrator, in clear terms, held against the respondent that he committed breaches of the dealership agreement and as a result of this categorical finding, the Arbitrator, in substance, upheld the letter of termination of dealership calling for stern action against the respondent. Indeed, once the breaches were held made out, the only consequence that ensued from such finding was to uphold the letter of termination of dealership agreement. Since arbitration clause 69 (c) empowers the Arbitrator to pass any order in the arbitration proceedings, the Arbitrator and so also the Single Judge while upholding the award considered it proper to grant liberty to the respondent to file a representation to the IOC for re-consideration of his case for restoration of his dealership. Such liberty could never be construed to mean that the Arbitrator had either set aside the letter of termination of the respondent's dealership or directed to restore the supply of fuel to the respondent.

35. The respondent, pursuant to the liberty granted, filed his representation to the IOC but the IOC, in their discretion, rejected the same with reasons.

36. In our opinion, reconsideration of the respondent's case as to whether his dealership should be restored or not was an independent cause of action between the parties and the same arose after the award was passed and upheld by the Single Judge. It has, therefore, nothing to do with the award and nor it could be linked with the arbitration proceedings.

37. In our opinion, it was solely within the discretion of the IOC - they being the principal to decide as to whether the respondent's dealership should be restored or not and, if so, on what grounds. The IOC considered the case of the respondent and after taking into account all the facts and circumstances appearing in the respondent's working, came to a conclusion that it

was not possible for them to restore his dealership. It was accordingly informed to the respondent vide letter dated 13.03.2013.

38. In our opinion, the writ Court (Single Judge) was, therefore, justified in dismissing the respondent's writ petition and upholding the rejection on the ground that the High Court cannot interfere in the administrative decision of IOC and nor it can substitute its decision by acting as an Appellate Court over such decision in exercise of writ jurisdiction. It is more so when such decision is based on reasons involving no arbitrariness of any nature therein which may call for any interference by the High Court.

39. The Division Bench, in our opinion, committed an error in interpreting the award. The Division Bench proceeded on entirely wrong assumption that since the award was in respondent's favour, the IOC had to simply issue a consequential order in compliance thereof directing the IOC to revive the respondent's dealership and restore the supply of fuel to the respondent. As held supra, this approach of the Division Bench was erroneous and is, therefore, legally unsustainable.

40. In the light of what is discussed above, we are of the considered view that the reasoning and conclusion arrived at by the Single Judge is just and proper, whereas the reasoning and conclusion arrived at by the Division Bench is not proper and hence deserves to be set aside.

41. Learned senior counsel for the respondent then argued that the IOC has issued certain circulars providing therein as to how the cases of terminated dealership of any dealer is to be re-considered. This submission, in our opinion, has no merit and we do not consider it proper to go into this aspect of the case in the light of what is held above.

42. In view of the foregoing discussion, we allow the appeal, set aside the impugned order of the Division Bench and restore the order of the Single Judge (writ Court) and, in consequence, dismiss the writ petition filed by the respondent.