(2000) 08 SC CK 0108

Supreme Court of India

Case No: Civil Appeal No''s. 4553-54 of 1999

E. Venkatakrishna		APPELLANT
	Vs	
Indian Oil Corporation and Another		RESPONDENT

Date of Decision: Aug. 17, 2000

Acts Referred:

- Arbitration Act, 1940 - Section 30

Citation: (2000) 10 JT 558 : (2000) 7 SCC 764

Hon'ble Judges: Y. K. Sabharwal, J; S. P. Bharucha, J; S. N. Variava, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The appellant was appointed a dealer of the first respondent to distribute liquified petroleum gas. The contract in this behalf contained a Clause by reason of which the distributorship could be terminated if the dealer did anything which was prejudicial to the interests of good name of the principal of its products. It was the case of the respondent that the appellant had stored spurious gas cylinders; therefore, the dealership of the appellant was terminated under the terms of the said Clause.

2. The appellant filed a writ petition in the High Court of Karnataka seeking restoration of the distributorship. The writ petition was dismissed because the learned Single Judge found that there was an arbitration Clause in the contract between the parties. He said:

In this behalf, all that is necessary to observe is that it is open for the petitioner to raise these points in the dispute and plead before the Arbitrator that the termination of distributorship agreement was arbitrary and that the material on the basis of which the opinion was formed did not exist or did not justify the formation

of such an opinion. If such a plea is raised, the Arbitrator is duty bound to consider as to whether the opinion formed was based on sufficient material and if not to give appropriate relief to the petitioner."

No appeal against the order of dismissal was filed.

3. The appellant wrote to the Director (Marketing) of the respondent invoking the arbitration Clause. The Director (Marketing) was called upon to act as an Arbitrator or to appoint a sole Arbitrator to determine the following issues:

(i) Issue of Termination of distributorship of Habbal, Yalahanka and adjacent areas of Bangalore City.

(ii) Issue of Restoration of the distributorship, and

(iii) Consequential damages and pendentalite interest."

On 10th December, 1987 the Director (Marketing) declined to act as Arbitrator, but he appointed an Arbitrator "to adjudicate upon the disputes and differences arising between you and the Corporation and to give his Award/s thereon." The appellant filed a Statement of Claim before the Arbitrator so appointed and prayed for setting aside the termination, for damages, for a direction to the respondent "to restore distributorship to the claimant" and for incidental reliefs. The Arbitrator raised issues, thus:

(1) Whether the claimant or his servants or agents committed/suffered to be committed the act mentioned in the termination letter dated 11/8/87 issued by the respondent and whether or not the termination of the Indane distributorship of the claimant by the respondent is justified.

(2) Whether the order of termination dt. 11 /8/87 of the distributorship of the claim ant valid or liable to be set aside.

(3) Whether the claimant is entitled to the various monetary claims made in the statement of claim dt. 28/1/1988. If so, to what extent?

(4) Whether the respondent is entitled to the monetary claim made in its writ ten statement dt. 28/3/88. If so, to what extent?

(5) Whether the respondent is entitled to any interest as claimed in its written statement dt. 28/3/88 If so, to what extent?

(6) To what reliefs are the parties entitled?"

The Arbitrator made an award thus:

I award and hold that with a view to meet the ends of justice the claimant, Shri E. Venkatakrishna, doing business under the name and style of M/s. Poornashree Gas shall be restored with the Indane distributorship at Habbal, Bangalore forthwith each of the parties in entitled to the monetary benefits as awarded above. In the

circumstances of the case, I award and hold that the parties shall bear their respective costs."

4. The award was challenged by the respondent in proceedings u/s 30 of the Arbitration Act taken before a learned Single Judge of the Madras High Court. The learned Single Judge rejected the challenge. The respondent preferred an appeal and the Division Bench, in the judgment and order that is impugned be fore us, upheld the challenge. It said, "There is considerable force in the contention of the appellant that what is arbitrable under Clause 37 is only the dispute or difference in relation to the agreement. The question of restoration of distributorship would not arise under the agreement. Therefore, we have no hesitation in holding that the Arbitrator was in error and in fact had no jurisdiction to direct restoration of distributorship to the 1st respondent."

5. In our view, the Division Bench was right. All that the Arbitrator could do, if he found that the termination of the distributorship was unlawful, was to award damages, as any civil court would have done in a suit.

6. We find it difficult to accept the contention on behalf of the appellant that what was referred to the Arbitrator was the issue of restoration of distributorship in the sense that the Arbitrator could direct, upon holding that the termination was unlawful, that the distributorship should be restored. We think that the reference itself contemplated consequential damages for wrongful termination. In any event and assuming that there is any error in so reading the reference, it is difficult to hold that the Arbitrator was thereby vested with jurisdiction to award restoration.

7. It was contended that the appellant had invoked the arbitration Clause only because of the order of the learned Single Judge of the Karnataka High Court on the writ petition that he had filed and that that order contemplated that the Arbitrator, acting on the arbitration Clause in the agreement, would have the authority to award restoration. In the first place, we do not find any such observation in the judgment of the learned Single Judge. In any event, such observation, even if it were there, would not vest the Arbitrator with a jurisdiction that he did not otherwise possess in law.

8. Learned Counsel for the appellant submitted that the appellant would move the respondent for continuation of the distributorship, which he continued to hold till date by reason of orders of the courts. The respondent shall, if the appellant makes such application, consider and decide it on its merits.

9. The appeals are dismissed. The judgment and order under challenge is up held. Thus the relief given in the award in respect of issue No. 6 shall stand deleted and the relief''s given under issues 1 to 5 shall stand.

10. No order as to costs.