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(1995) 57 DLT 279

Delhi High Court

Case No: Suit No"s. 440 and 421A of 1988

Indian Oil Corporation Ltd.		APPELLANT
	Vs	
Shriram Gas Service Shriram Gas Service Vs Indian Oil Corporation Ltd.		RESPONDENT

Date of Decision: Jan. 1, 1995

Acts Referred:

- Arbitration Act, 1940 - Section 20
- Constitution of India, 1950 - Article 14
- Contract Act, 1872 - Section 23, 24

Citation: (1995) 57 DLT 279

Hon'ble Judges: R.C. Lahoti, J

Bench: Single Bench

Advocate: Ritu Bhalla, S.K. Singla and Ritu Bhalla, for the Appellant;

Judgement

R.C. Lahoti, J.

(1) This order shall govern the disposal of suits Nog.421-A/88 and 440A/88 both arising between the same parties out of the same transaction/cause of action.

(2) Indian Oil Corporation Ltd., the petitioner/objector is an Oil Company engaged in manufacturing, sale and distribution of liquified petrol gas and other products. By an agreement dated 6.4.77 entered into between it and the respondent M/s.Shri ram Gas Service, the latter was appointed as the distributor for certain areas.

(3) Here itself, it maybe relevant to extract and reproduce Clauses 27 and 28 of the contract between the parties. They are as under:

"27.Notwithstanding anything to the contrary herein contained, the Corporation shall also be at liberty at its entire discretion to terminate this Agreement for with upon or at any time after the happening of any of the following events namely:- (n) If the Distributor shall either by himself or by his servants or agents commit or suffer to be committed any act which, in the opinion of the Regional Manger of the Corporation for the time being at New DELHI whose decision in that behalf shall be final, is prejudicial to the interest or good name of the Corporation or its products, the Regional Manager shall not be bound to give reasons for such decision.28. Without prejudice to the foregoing provision or anything to the contrary here in contained, either of the parties hereto, namely, the Corporation or the Distributor, shall be entitled to terminate this Agreement by giving thirty days" notice to the other party without assigning any reason for such termination."

(4) Clause 37 of the agreement provides for adjudication by arbitration of any dispute or differences of any nature whatsoever arising between the parties out of the contract.

(5) On 13.2.1982, the claimant petitioner served the respondent with a notice to the following effect:

"REGD.AD/UPC/By hand No. LIG/114M/S Shri Ram Gas Service Indian Distributor, R. Market B-21/1 Kamachha Varanasi.Re: Indane Distributorship At VARANASI Dear Sirs, Reference may please be made to our Lpg distributorship agreement dated6.4.1977 executed between you and the Indian Oil Corporation Ltd. Clause 27of the distributorship agreement reads as under:"27. Notwithstanding anything to the contrary herein contained, the Corporation shall also be at liberty at its entire discretion to terminate this Agreement forth with upon or at nays time after the happening of any of the following events namely:-(n) If the Distributor shall either by. himself or by his servants or agents commit or suffer to be committed any act which, in the opinion of the Regional manager of the Corporation for the time being at New DELHI whose decision in that behalf shall be final, is prejudicial to the interest or good name of the Corporation or its products, the Regional Manager shall not be bound to give reasons for such decision. It has come to our knowledge that you or your servants/agents have committed the following: (i) that you are in the habit of giving ex showroom deliveries of refills, and out of turn supplies of refills to customers.(ii) on a surprise check shortage of 22 cylinders and 1237 pressure regulators was found.(iii) that you are neither weighing nor checking the leakage with soap solution before supplying the filled cylinders to the customers.(iv) that complaints have been received regarding leakage of cylinders .resulting in accidents. The above acts jointly and severally in my opinion are acts which are prejudicial to the interest and good name of the Corporation or its products and accordingly in exercising my right under the above noted clause, I here by order that the Lpg distributorship agreement stands forthwith terminated and canceled and you shall cease to be our Lpg distributor at Varanasi with immediate effect. You are hereby called upon to settle all you accounts with the Corporation and immediately handover, return and redeliver the entire stock of Lpg filled/empty cylinders/equipments lying with you. In this connection my duly authorised representative would be calling on you shortly. Yours faithfully, for & on behalf of Indian

Oil Corp LTD(J.S. OBEROI)GENERAL MANAGERb2

(6) Consequent to the service of the notice, the distributorship of the respondent stood terminated and the claimant-petitioner called upon the respondent to deliver the entire stock of Lrg filled or unfilled cylinders, equipment etc. lying with the respondent.

(7) Disputes arose between the parties. They were referred for adjudication by the Arbitrator in accordance with the Order 2.3.1984 passed by this Court on a petition u/s 20 of the Arbitration Act.

(8) The claimant had preferred a claim for Rs. 2,31,520.35 and interest at the rate of 18% p.a. by way of compensation for the value of the stock which was not delivered back by the respondent to the petitioner.

8.1The Arbitrator has adjudicated upon this .claim by awarding only Rs. 3297.15.8.2 This award is the subject matter of challenge by the petitioner in suit No.421-A/88. The petitioner claims enhancement of the amount and award of interest-previous, pendente lite and future.

(9) The respondent Sri Ram Gas Service has also preferred its claim and counterclaims, the only relevant out of which being - "Immediate restoration of my distributorship of Lpg at Varanasi".

9.1The Arbitrator has awarded "The Lpg distributorship of the claimants be restored by the respondent".9.2 This award is subject matter of challenge in Suit No. 440/88.

(10) The learned Counsel for the petitioner-objector has placed strong and singular reliance on the law laid down by the Supreme Court in Indian Oil Corporation Ltd. Vs. Amritsar Gas Service and Others, . It is submitted by the learned Counsel that the Arbitrator could not have awarded reinstatement of distributorship which tantamounts to specific performance of a terminable contract and runs counter to the law laid down by the Supreme Court in the above said case.

(11) The decision relied on by the learned Counsel for the petitioner applies on all the fours of the case at hand both on law and facts.

(12) In the case of Amritsar Gas Service (supra) there was distributorship agreement dated 1.4.1976 made between Ioc and Amritsar Gas Service appointing the latter as distributor of liquified petrol in cylinders for household consumption.

12.1Clause 27 of the Agreement provided for termination of the agreement by the Corporation forthwith on the happening of any of the certain specified events. Clause 28 permitted either party without prejudice to the provisions of clause 27 or anything to the contrary contained in the agreement to terminate the agreement by thirty days notice to the other party without assigning any reason for such termination. Clause 37 provided for

adjudication of any dispute or difference of any nature by arbitration. In short, the agreement between the parties in Amritsar Gas Service''s case was the same agreement as it is in the case at hand.12.2 By letter dated 11.3.1983, the distributorship was terminated under Clause 27 stating the reasons therefore.12.3 Termination was disputed by Amritsar Gas Service and the matter came to be referred for adjudication by the Arbitrator. The Arbitrator held the Corporation guilty of breach of contract and on that basis awarded the breach being remedied by restoration of distributorship and payment of compensation.12.4 Their Lordships of the Supreme Court have held that it was a case of breach of contract and remedies flowing there from. It was to be decided within the realm of private law rights governed by the general law relating to contract with reference to the provisions of the Specific Relief Act providing for non-enforceability of certain types of contracts and further the question of public law based on Article14 of the Constitution did not arise for decision. Vide para 12, their Lordships have held: "Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is a contract which is in its nature determinable''. In the present case, it is not necessary to refer to the other clauses of sub Section (1) of Section 14, which also may be attracted in the present case since clause (c) clearly applies on the finding read with reasons given in the award itself that the contract by its nature is determinable. This being so granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant Corporation is contrary to the mandate in Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to the law governing such cases''. The grant of this relief in the award cannot, Therefore, be sustained. "(underlying by me)12.5. Their Lordship then proceeded to examine that in spite of upholding the finding of the Arbitrator that distributorship was not validly terminated under Clause-27 of the Agreement, what was the relief to which the claimant was entitled. Their Lordship held vide para 14 :-"No doubt, the notice of termination of distributorship dated 11/03/1983specified the several acts of the distributor on which the termination was based and there were complaints to that effect made against the distributor which had the effect of prejudicing the reputation of the appellant Corporation; and such acts would permit exercise of the right of termination of distributorship under clause 27. However, the arbitrator having held that Clause 27 was not available to the appellant Corporation, the question of grant of relief on that finding has to proceed on that basis. In such a situation, the agreement being revocable by either party in accordance with clause 28 by giving 30 days'' notice, the only relief which could be granted was the award of compensation for the period of notice, that is, 30 days. The plaintiff-respondent 1 is, Therefore, entitled to compensation being the loss of earnings for the notice period of 30 days instead of restoration of the distributorship. The award has, Therefore, to be modified accordingly."

(13) In the case at hand also, the notice of termination specifies the ground for termination within the meaning of Clause 27 of the Agreement between the parties. Assuming that the reasons did not exist the only relief to which the respondent distributor would have been entitled to was compensation for the loss of earnings for the notice

period of 30 days, as the agreement was in any case terminable by either side subject to 30 days notice under Clause 28. In any case, the relief of restoration of distributorship could not have been awarded by the Arbitrator.

(14) 1 may also notice a single bench decision. of this Court in Sulochana Uppal Vs. Surinder Sheel Bhakri, . The arbitration clause was contained in an agreement to sell an immovable property and the prayer was to refer a claim seeking specific performance for adjudication by arbitrator. This Court has held:

"AN agreement to refer a dispute to arbitration, the effect of which would be to have an award directing specific performance of an agreement to sell, would have for its object to defeat the provisions of the Specific Relief Act, especially Sections 10 and 20 thereof. It is clearly intended by the aforesaid provisions that it is only Courts and Courts alone who would have jurisdiction to grant or refuse specific performance. In view of the provisions of Sections 10 and 20 of the Specific Relief Act read with Sections 23 and 24 of the Contract Act. I am of the view that it is not permissible to any arbitrator to give an award, directing specific performance of an agreement to sell. Such an award would go contrary to the terms and spirit of the Specific Relief Act. "Petition u/s 20 of the Arbitration Act for enforcement of an agreement to sell is not maintainable ."

(15) The objections filed in suit No. 440/88 deserve to be allowed and the award directing restoration of distributorship deserves to be set aside.

(16) In so far as suit No. 421A/88 is concerned, the learned Counsel for the claimant -petitioner has very fairly conceded during the course of hearing that in view of the conciliation statements drawn between the parties from time to time before the Arbitrator, the claimant is not justified in pressing for enhancement of compensation. However, she still maintained that interest on the quantum of compensation should been awarded by the Arbitrator. As there is no law or contractor any usage, permitting award of such interest, the petitioner"s contention cannot be accepted. The award in this regard has to be maintained as it is.

(17) For the foregoing reasons, the objection petition in suit No. 440/88 is allowed. The award dated 17.9.1987 directing the Lpg distributorship of the claimant to be restored by the respondent is set aside.

(18) The award dated 17.9.1987 awarding a sum of Rs.3297.15 to the claimant is up held and is directed to be made a rule of the Court. Let a decree be drawn accordingly. The award shall form part of the decree.

(19) Both the suits stand disposed of. One copy each of this order shall be placed on record of both the suits. Objection in 440/1988 allowed. Award in 421-A/88 maintained.