

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 837-838 OF 2022
[Arising out of Special Leave Petition (Civil) Nos.35970-71 of 2016]

Indian Oil Corporation Ltd.
Through its Senior Manager

Appellant (s)

Versus

M/s Shree Ganesh Petroleum Rajgurunagar
Through its Proprietor Mr. Laxman Dagdu Thite

Respondent (s)

J U D G M E N T

Indira Banerjee, J.

Leave granted.

2. These appeals are filed by Indian Oil Corporation Limited against a judgment and order dated 11th September 2015 passed by the High Court of Judicature at Bombay partly allowing Arbitration Appeal No.19 of 2013 filed by the Respondent and dismissing Arbitration Appeal No.39 of 2013 filed by the Appellant.

3. The facts giving rise to these appeals are stated very briefly hereinafter.

4. The Appellant took a plot of land, hereinafter referred to as “the said premises”, on lease from the Respondent for a term of 29 years, pursuant to a deed of lease dated 20th September 2005 which was duly registered, in order to set up a retail outlet for sale of its petroleum products.

5. The recital of the deed of lease, *inter alia*, records:-

“1).....The abovementioned Property is owned by SHRI. LAXMAN DAGDU THITTE. The said leased Property is more particularly described in the Schedule hereinbelow given together with the Structures and Building now standing thereon or that may be hereafter erected thereon by the LESSEE TO BOLD the premises hereby demised I hereinafter for the sake of brevity referred to as the (“DEMISED PREMISES”) unto the LESSEE for a term of 29 (TWENTY NINE years, commencing from the 20th day of SEPTEMBER 2005 renewable and determinable as hereinafter provided yielding and paying thereof during the said term monthly and the proportionately for any part of a month the rent of Rs. 1750 /- (RUPEES ONE THOUSAND SEVEN HUNDRED AND FIFTY only) to be paid without any deduct on or before the 15th day of each and every calendar month.”

6. The deed of lease, hereinafter referred to as “the lease agreement” contained, *inter alia*, the following terms and conditions:-

“2) THE LESSEE DOETH HEREBY COVENANT WITH THE LESSOR/S AS FOLLOWS:

*i) **Lease Rent will be Rs. 1750 /-** (RUPEES ONE THOUSAND SEVEN HUNDRED AND FIFTY Only) per month.*

3) Lease Period will be 29 years from 15/04/2005 with further renewal by mutual consent.

...

4.) (e) To use or permit to be used the BUILDINGS AND STRUCTURES to be constructed on the DEMISED PREMISES for any and all lawful purposes as may be permitted by the Authorities from time to time including for storing, selling or otherwise carrying on business in Petrol, Diesel, Petroleum Products, oil and

kindred motor Accessories, Petrol Filling Service and Lubricating Station etc.

...

(i) Subject to the LESSOR/S covenant hereinafter contained (and the Rights of the LESSEE/S interest in the said DEMISED PREMISES as mentioned hereinafter), to deliver and yield up the DEMISED PREMISES at the expiration or sooner determination of the said term as herein provided together --- all the LESSOR/S fixtures and fittings in such state and condition as the same were in, when the possession was taken of by the LESSEE at the commencement of the said Term (fair wear and tear and loss and/ or damage/s by fire, fluid, earthquake, tempest, lightning, violence of any army, mob or irresistible fierce or accident expected). All additions, alteration, installations, (fittings and fixtures which during the said term or any renewal thereof belong to and revert to the LESSEE who shall be entitled to take away the same provided the DEMISED PREMISES are restored to their original state and conditions and the LESSOR/S will not have any right, title and interest thereon nor shall he/she/they be entitled to retain or appropriate any part thereof.

...

3) (b) That on the LESSEE paying the rent hereby reserved and observing and performing all the several Covenants, conditions and Agreements hereinbefore contained and on its part to be observed and performed the LESSEE shall peaceably hold and enjoy the DEMISED PREMISES during the said and any renewal/s thereof without any let or interruption by the LESSOR/S or by any persons lawfully or equitably claiming through, under or in trust for the LESSOR/S.

...

4)(a) If the Rent hereby reserved or any part thereof shall be in arrears for a period of one year after becoming payable and after being demanded or if the LESSEE to be observed and performed their and in that event it shall be lawful for the LESSOR at any time thereafter to re-enter upon the said premises or any part thereof in the name of the whole and to take action to possess and enjoy as in all their former state and interest Provided always and it is hereby agreed and declared that the Power of Re-entry hereinabove contained shall not be exercised unless and until the LESSOR/S shall have first given to the LESSEES 90 days' Notice in writing pointing out the Breach in respect of which the right to Re-Entry is exercised and the LESSEE shall have failed to remedy the breach within a reasonable period of not less than 90 days thereafter.

...

(e) The LESSEE shall be entitled to ASSIGN, TRANSFER, SUBLET, UNDERLET or part with the Possession of the DEMISED PREMISES or any part thereof to any person

above name whomsoever it chooses without the consent of the LESSOR.

(f) The LESSEE shall be entitled to appoint, remove, reappoint, change and substitute any dealers, agents, licensees and other authorized representatives on and in respect of the DEMISED PREMISES without the consent OF THE LESSOR.

.....

(n) PROVIDED ALWAYS AND IT IS AGREED AND DECLARED that at the expiration of the said Term of 30 years this LEASE will be renewed for a further term by mutual consent. The renewed lease will be on the rents, conveyance, conditions and Agreements to be mutually agreed upon between the Parties.

...

5. Any dispute or difference of any nature whatsoever regarding any Right, liability, act, omission on account of any of the parties hereto arising out of or in rein-tion to these **shall be referred to the sole Arbitrator of the Managing Director of the LESSEE and if the Managing Director is unable or unwilling to act as a sole Arbitrator then the matter will be referred to the sole Arbitrator of any other person designated or nominated by such Managing Director in his place** and state writing to act as an Arbitrator and the LESSOR/S will not be entitled to raise any objection to any such arbitration on the ground that, the Arbitrator so appointed is an officer of the LESSEE of that as such officer he had dealt with the matters to which the disputes relates or had expressed his views thereon, the Arbitrator to whom the matter originally referred being transferred or vacating in his office being unable to act for any reason such Managing Director as aforesaid at the time of such transfer vacation of office or on his inability to act shall nominate as designate another person to act as an Arbitrator pursuant to this clause and such other person shall be entitled to proceed with the reference from the point at which it was left by his predecessor. **It is expressly agreed that no person other than the Managing Director of the LESSEE as aforesaid shall act as an Arbitrator and if for any reason that is not possible, the matter shall not be referred to Arbitration at all.** The Award of the Arbitrator so appointed as herein provided shall be final, conclusive and binding on both the Parties and such the Arbitration shall be held subject to and in accordance with the Provisions of the ARBITRATION ACT 1940, and any Statutory Modification -----enactment thereof."

7. The Appellant set up an A site retail outlet at the said premises making an investment of around Rs.50 lakhs. The Respondent was

appointed a dealer of the said retail outlet and a dealership agreement dated 15th November 2006 was executed by and between the Appellant and the Respondent.

8. The dealership agreement, *inter alia*, provided:-

"AND WHEREAS the Corporation carries on the business of refining and sale of petroleum products and more particularly of Motor Spirit (MS) and High Speed Diesel Oil (HSD):

Recitals

AND WHEREAS the Corporation is the Owner/Lessee/Tenant/licensee of a Plot of land and is the Owner/Lessee/Tenant/licensee of the superstructures thereon more particularly described in the First Schedule hereunder written and of the structures thereon (Hereinafter collectively referred to as "the Premises") and has installed and/or is about to install at and under the said premises the apparatus and equipment described in the Second Schedule hereto (hereinafter called "the Outlet")

1st Schedule

WHEREAS at the request of the Dealer, the Corporation has agreed to appoint the Dealer as its Dealer for the retail sale or supply at the said premises of certain petroleum products on the terms and conditions hereinafter contained.

2nd Schedule

....

2. This agreement shall remain in force for a period of fifteen years from 15th day of Nov' 2006 and continue thereafter for successive periods of one year each until determined by either party by giving three months' notice in writing to the other of its intention to terminate this agreement and upon the expiration of any such notice, this agreement shall stand cancelled revoked, provided that nothing contained in this clause and prejudice the rights of either of the parties hereto to terminates this agreement earlier in exercise of their rights under any of the provisions contained in this agreement and/or the rights of the Corporation to stop and/or suspend and/or restrict the supplies to the Dealer and/or the sales from the premises by the Dealer pursuant to the provisions contained in that behalf in this Agreement.

Period

...

4. *The Corporation reserves the right without reference to or consent of the Dealer to appoint one or more additional Dealer/s in the same town/area or location and such additional Dealer/s shall be entitled to make sales of the products without any objection from the Dealer and the Dealer shall not be entitled to make any claim for remuneration, commission or allowance whatsoever in respect of the sales made by such additional Dealer/s and/or sales made by the Corporation through such additional Dealer/s.*

Corporation's right to appoint additional Dealer/s

...

7.(a) *The Dealer undertakes that he and his servants and agents will observe and perform the provisions of the Petroleum Act, 1934 and the Explosives Act, 1884 and any statutory re-enactment or modification thereof for the time being force and all rules and regulations made thereunder and all other Government or Municipal Local or similar Acts, Laws, Regulations and bye-laws, as may be in force from time to time relating to the Dealer's business in the said products and to the storage, receipt and transportation and other related matters as contemplated under this Agreement and all requisitions and requirements of all authorities appointed under the foregoing enactment, rules or regulations. If there is any violation on the part of the Dealer, his servants and agents of the aforesaid provisions or statutory rules and regulations, the Corporation will have the absolute right to discontinue the supplies and take any other action including the termination of this Agreement as the Corporation may at its absolute discretion think fit.*

The Petroleum Act

(b) *The Dealer shall also be solely responsible for any breach or contravention by himself, his employees, agents of any Acts, rules, regulation or bye-laws of the central and/or State Government and/or Municipal Local and/ or other authorities as may be applicable to the business including without prejudice to the generality of the foregoing, the concerned authorities respectively appointed under the Petroleum Act, Payment of Wages Act, Shops and Establishments Act, Factories Act and the Workmen's compensation Act. The Explosives Act, 1884 or any other Act or Statutory Rules, Regulations or Bye-Laws made thereunder and/ or applicable from time to time to the business of storage and sale of products and servants, workmen and persons engaged in connection therewith and the corporation shall not be*

responsible in any manner for any liabilities arising out of non-compliance by the Dealer with the same.

...

8(e) For the use of the said premises including the construction thereon and outfit, the Dealer shall pay to the Corporation a licence fee as may be fixed and recovered or deducted in the manner as may be decided by the Corporation, at its sole discretion and without any previous notice to the Dealer shall from time to time and at all times be entitled to increase or revise or modify the said licence fee. ...

Licence Fee

...

8(j) It is understood by the Dealer that the premises mentioned in the First Schedule hereunder writer are Public Premises within the meaning of the provisions of the Public Premises (Eviction of Unauthorized Occupants).

Dealer to safeguard Corporation right in the premises

...

10. It is specifically agreed and declared that the basic condition of the grant of the Dealership rights by the Corporation to the Dealer herein is that the 'Dealer hereby agreed, undertakes and covenant to uplift and pay for the following minimum quantities of the product per month as specified hereunder.

Minimum quantity/sale Targets

<i>PRODUCTS</i>	<i>QUANTITY</i>
<i>MS (Petrol)</i>	<i>30 KLS</i>
<i>HSD</i>	<i>150 KLS</i>
<i>MOTOR OIL/GREASE</i>	<i>KL/KG</i>

Other Products viz.

The Corporation shall have the absolute right to revise the aforesaid minimum quantities/sale targets from time to time by notice in writing and on every such revision this clause shall be read and construed as if such revised figures had been mentioned herein instead of those hereinabove setout. It is also specifically agreed that in the event of the Dealer not achieving the aforesaid minimum quantities at any time during three out of six consecutive months during the currency of this Agreement, the Corporation shall be entitled, notwithstanding any acquiescence or waiver of this condition in respect of anyone or more months and notwithstanding any other provision herein contained, to terminate this Agreement by giving 30 days' notice in writing to the Dealer.

...

15. Notwithstanding anything to the contrary herein contained the Corporation shall be at liberty upon breach by the Dealer of any covenant in this Agreement to stop and/or suspend forthwith all supplies to the Dealer and/ or sales from the premises by the Dealer for such period or periods as the Corporation may think fit, and such right of stoppage and/or suspension of supplies shall be in addition to and/or without prejudice to any other right or remedy of the Corporation under this Agreement or Law. For the purpose of this clause, the General Manager of the Corporation for the time being at Mumbai shall be the Sole Judge as to whether a breach of any covenant of this agreement has been committed by the Dealer. The Dealer shall not be entitled to claim any compensation or damage from the Corporation on account of any such stoppage and/ or suspension of supplies.

Corporation's right to suspend supplies

...

17.The Corporation shall have the right to exercise at its discretion at any time and from time to time quality control measures for products marketed by the Corporation and lying with Dealer. The opinion of the General Manager of the Corporation for the time being at Mumbai as to whether any product of the corporation has been contaminated and/or adulterated shall be final and binding upon the Dealer.

Product Specification/Contamination/adulteration

In the event of the said General Manager finding that the contamination and/or adulteration of product has been due to any act or default or negligence of the Dealer or of his servants or agents, the Corporation shall have the right, without being bound to do so, to remove the contaminated/ adulterated product and to destroy or otherwise deal with the same without making any payment therefor to the Dealer and without prejudice to the Corporation a right to terminate this Agreement forthwith.

Terms of payment

...

21. It shall be a paramount condition of this Agreement that the Dealer himself (if he be an individual) or both partners of the Dealer firm (if the Dealer is a partnership firm consisting of two partners only) or the majority of the partners of the Dealer firm (if the Dealer is a firm consisting of more than two partners) or the majority of the office bearers / elected members of the Dealer Co-operative Society (if the Dealer is a Co-operative Society) or the Managing/whole time

Working Dealer

Directors (if the Dealer is a Private Limited Company), as the case may be shall ordinarily be resident in India and shall take an active part in the management and running of the Dealership and shall personally supervise the same and shall not under any circumstances do so through any other person firm or body either as 'Benami' or through any 'Power of Attorney' or otherwise .

...

42. The Dealer shall at all times faithfully, promptly and diligently observe and perform and carry out at all times all directions, instructions, guidelines and orders given or as may be given from time to time by the Corporation or its representative(s) on safe practices and marketing discipline and/or for the proper carrying on of the Dealership of the Corporation. The Dealer shall also scrupulously observe and comply with all laws, rules, regulations and requisitions of the Central/State Government and of all authorities appointed by them or either of them including in particular the Chief Controller of Explosives, Government of India and/or any other local authority with regard to the safe practices.

Dealer to comply with Corporation's directives

43. The Corporation by its officers, representatives or servants will be entitled at all times to enter upon the premises and inspect the management of the retail outlet by the Dealer in all respects and the Dealer shall be bound to render all assistance and give all information to the Corporation and its duly authorized representatives in that behalf and produce to the Corporation and/or its duly authorized representatives in that behalf whenever required to do so Invoices/Cash Memos for all purchases and receipts for all payments which it is the Dealer's duty to make whether under the terms of this Agreement or otherwise.

Corporation's right to inspect management of dealership

...

45. Notwithstanding anything to the contrary herein contained, the Corporation shall be at liberty at its entire discretion to terminate this Agreement forthwith upon or at any time after the happening of any of the following events namely:-

Forthwith Termination

a) If the Dealer shall commit a breach or default of any of the terms, conditions,

covenants and stipulations contained in this Agreement,...

...

61.(a) Any dispute or difference of any nature whatsoever, any claim, cross-claim, counter-claim or set-off or regarding any right, liability, act, omission or account of any of the parties hereto arising out of or in relation to this agreement **shall be referred to the sole arbitration of the Director (Marketing) of the Corporation who may either himself act as the Arbitrator or nominate some other officer of the Corporation to act as the Arbitrator.** The Dealer will not be entitled to raise any objection to any such Arbitrator on the ground that the Arbitrator is an Officer of the Corporation.”

Arbitration

9. There can be no dispute that the Lease Agreement and Dealership Agreement are distinct agreements independent of each other. This is evident from the terms and conditions of the respective agreements. While the lease agreement was for a fixed period of 29 years from 15th April 2005, after which the lease could be extended by mutual agreement on mutually agreed terms and conditions, the dealership agreement was for a period of 15 years from 15th November 2006 and to continue thereafter for successive periods of one year each, until determined by the other party.

10. Furthermore, the lease agreement specifically authorized the Appellant to sublet, underlet, assign or transfer possession of the said premises to any person. The lease agreement also reserved on the Appellant the right to appoint, remove, reappoint, change or substitute any dealers, agents, licensees or other authorized representatives of

the Appellant on and in respect of the said premises, without the consent of the lessor, that is, the Respondent.

11. The dealership agreement was inherently terminable whereas the lease agreement as stated above was for a fixed period of 29 years from the date of execution thereof. Clause 3(b) of the lease agreement specifically provided that, on the lessee paying the rent as per the lease agreement and performing its conditions, it would be entitled to peaceably hold and enjoy the said premises without any interruption by the lessor/s or any person claiming through the lessor/s.

12. Distinctness of the dealership agreement from the lease agreement is also apparent from the obligation imposed by the dealership agreement on the Respondent to pay a licence fee for use of the said premises demised by the Respondent to the Appellant.

13. While the lease agreement provided for reference of disputes to the Managing Director of the Appellant for arbitration and if the Managing Director was unable or unwilling to act as a sole Arbitrator, then the sole arbitration of any other person designated or nominated by the Managing Director, the dealership agreement provided for reference of disputes to the sole arbitration of the Director (Marketing) of the Corporation who might either himself act as the Arbitrator or nominate some other officer of the Corporation to act as the Arbitrator.

14. The lease agreement expressly provided that disputes under the said agreement were not to be referred to any person other than the Managing Director of the Appellant, and if for any reason that was not

possible, the matter was not to be referred to arbitration at all. On the other hand, as stated above, disputes under the dealership agreement were referable to the Director (Marketing) of the Appellant who was debarred from entertaining any reference of dispute under the lease agreement.

15. The learned Additional Solicitor General, Ms. Madhavi Diwan, appearing on behalf of the Appellant referred to a judgment of this Court in ***Rahul Yadav and Another v. Indian Oil Corporation Limited and others***¹, where this Court clearly held that a dealership agreement by which the lessor of a land was appointed a dealer was distinct and independent from the lease agreement by which the land on which the outlet was installed, had been demised to the Appellant.

16. In ***Rahul Yadav v. Indian Oil Corporation*** (supra), this Court held:-

“18. We have referred to the clauses in extenso to highlight that the lessee had entered into an agreement of lease with the appellant with immense liberty and the lease deed does lay down that the lessee has the freedom to sublet and appoint another dealer. The lease would remain in force till the dealership of the appellant continued and the licence remained in vogue. At this juncture, it is pertinent to reproduce certain clauses of the dealership agreement which would clearly spell out the purpose. They read as follows:

“2. The Corporation do hereby grant to the Dealer leave and licence and permission for the duration of this Agreement to enter on the said premises and to use the premises and outfit for the sole and exclusive purpose of storing, selling and handling the products purchased by the Dealer from the Corporation, save as aforesaid, the Dealer shall have no right, title or interest in the said premises or outfit and shall not be entitled to claim

1 (2015) 9 SCC 447

the right of lessee, sub-lessee, tenant or any other interest in the premises or outfit, is being specifically agreed and declared in particular that the Dealer shall not be deemed to be in exclusive possession of the premises.

3. This Agreement shall remain in force for five years from 14th day of May, 2002 and continue thereafter for successive periods of one year each until determined by either party by giving three months' notice in writing to the other of its intention to terminate this Agreement, and upon the expiration of any such notice this Agreement and the licence granted as aforesaid shall stand cancelled and revoked but without prejudice to the rights of either party against the other in respect of any matter or thing antecedent to such termination provided that nothing contained in this clause shall prejudice the rights of the Corporation to terminate this Agreement earlier on the happening of the events mentioned in Clause 56 of this Agreement.

7. Nothing contained in this Agreement shall be construed to prohibit the Corporation from making direct and/or indirect sales to any person whomsoever or from appointing other dealers for the purpose of direct or indirect sales at such places as the Corporation may think fit. The dealer shall not be entitled to any claim or allowance for such direct or indirect sales."

19. It is appropriate to mention here that Clause 56 of the said agreement stipulates that notwithstanding anything to the contrary containing before the said clause, the Corporation would be at liberty to terminate the agreement forthwith upon any time after happening of certain events. The conditions are manifold. We may, for the sake of completeness, reproduce two conditions:

"(h) If the Dealer does not adhere to the instructions issued from time to time by the Corporation in connection with safe practices to be followed by him in the supply/storage of the Corporation's products or otherwise.

(i) If the Dealer shall deliberately contaminate or temper with the quality of any of the Corporation's products."

20. On a plain reading of the aforesaid agreement, it is clear as noon day that it has no connection whatsoever with the lease agreement. Both the agreements are independent of each other. The appellant was a dealer under the lessee, that is, the Corporation. The dealership is liable to be cancelled on many a ground. In case there is a termination, dealership is bound to be cancelled and at that juncture, if the lease deed is treated to have been terminated along with the dealership, it will lead to a situation which does not flow from the interpretation of the instruments. The dealership agreement has been terminated because of the decision rendered by this Court in Mukund Swarup Mishra [(2007) 2 SCC 536]. The consequence of cancellation of the dealership is a sequitur of the judgment. The inevitable consequence of that is that the appellant has to vacate the premises and the Corporation has the liberty to operate either independently or through another dealer. The appellant cannot be allowed to cause obstruction or create an impediment. The submission that the appellant entered into the lease agreement at a monthly rent of Rs 10,000 as it was given the dealership is a mercurial plea, only to be noted to be rejected. The dealership was availed of as has been held by this Court in an inapposite manner. In such a situation, consequences are to be faced by the appellant."

17. It appears that during a routine inspection on 17th April 2008 certain irregularities were noticed with regard to functioning of the retail outlet of which the Respondent had been appointed dealer.

18. By a letter dated 17th April 2008, the Appellant directed the Respondent not to carry on further sales from the said outlet. Thereafter, a notice dated 18th April 2008 was issued to the Respondent calling upon the Respondent to show cause why action should not be taken against the Respondent for irregularities which amounted to violation of the Marketing Discipline Guidelines (MDG) 2005 issued by the Ministry of Petroleum and Natural Gas, Government of India and Public Sector Oil Marketing Companies.

19. The Appellant also suspended the sale and supplies to the retail outlet run by the Respondent. By a letter dated 21st April 2008, the Respondent replied to the show cause notice admitting the irregularities alleged.

20. By a letter dated 20th August 2008, the Appellant terminated the dealership of the Respondent, called upon the Respondent to vacate the retail outlet and hand over peaceful possession thereof to the Appellant and also to settle accounts with the Appellant.

21. The Respondent appealed to the Appellate Authority of the Appellant against the order of termination dated 20th August 2008. By an order dated 17th July 2009, the Appellate Authority of the Appellant dismissed the appeal of the Respondent.

22. By a letter dated 24th August 2009, the Respondent invoked the arbitration clause in the dealership agreement and requested the Director (Marketing) of the Appellant to appoint an Arbitrator.

23. The Director (Marketing) of the Appellant appointed Mr. B.L Parihar as Arbitrator in terms of the dealership agreement, by an order dated 9th November 2009.

24. The Respondent filed its Statement of Claims before the learned Arbitrator challenging the order of termination of the dealership agreement. In addition to the prayer for setting aside of the order of termination of the dealership agreement and the prayer for damages, the Respondent made an alternative prayer for amendment of the lease agreement to enhance the monthly rent of the said premises to Rs.35,000/- with a 20% increase after every three years.

25. The Appellant filed its Written Statement to the Statement of Claim. In its Written Statement, the Appellant contended: -

*"2. The Claimant alternatively claimed a sum of Rs.45,28,000/- with interest at the rate of Rs.15% per annum and further claimed increase in lease rent to Rs.35,000/- per month with 20% increase after every three years. **The said alternative prayers of the Claimant are outside the ambit of this arbitration proceedings and hence not maintainable and are liable to be rejected.***

xxx

xxx

xxx

9. ... The rent was fixed after the Claimant had negotiated with the Committee of Officials of the Respondent and had agreed to the amount of rent. As such the Rent was fixed mutually between the parties. The Respondent further submits that the Claimant has been regularly accepting the monthly rent of Rs.1750/- from 2005 till date and has never raised any objection to the amount of the said Rent till filing of this Statement of Claim. As such the Claimant has raised this issue of monthly rent as purely an afterthought in this Statement of Claim."

xxx

xxx

xxx

29. The alternative prayers of the Claimant at para 34(b)(I)(II) are not within the ambit of the Arbitration proceedings and hence not maintainable and not admitted by the Respondent.** The Claimant has no ground whatsoever to call upon the Arbitrator to Order the Respondent to pay to the Claimant the sum of Rs.45,28,000/- with interest at the rate of 15% per annum from the date of filing the claim till the payment by the Claimant. **Without challenging the registered Lease Deed executed by the Claimant the Claimant cannot seek Order of the Hon'ble Arbitrator to modify the terms of the Lease Deed. Therefore the alternative prayers of the Claimant are also be liable to be rejected in toto.

26. The main issues which arose for determination before the learned Arbitrator were:-

"...

3. Whether the Claimant committed breaches of MDG Guideline and Dealership Agreement dated 15.11.2006 and whether the claimant is entitled for restoration?

4. Whether the Termination letter dated 20.08.2009 is legal, valid and subsisting?

5. Whether the Claimant proves that the Claimant is entitled for Order/Decree against the Respondent for the sum of Rs.45,28,000/-?

6. Whether this Arbitral Tribunal has jurisdiction to increase monthly Lease Rent from Rs.1750/- per month to Rs.35,000/- per month with 20% increase after every three years?

7. Whether the Claimant proves that the Claimant is entitled for increase in monthly lease rent from Rs.1,750/- per month to Rs.35,000/- per month with 20% increase after every three years?"

27. The learned Arbitrator made and published an award dated 04.11.2010 holding :-

"FINDINGS AS TO ISSUE NO.2, 3 & 4

...I hold that the Claimant has committed the breaches of terms and conditions of the Dealership Agreement dated 15.11.2006 and MDG 2001 and therefore Termination Letter dated 20.08.2008 issued by the Respondent is legal & valid. I therefore find that the Claimant therefore is not entitled for any restoration.

FINDINGS AS TO ISSUE NO.5

I find that the Claimant has made investment of Rs.45,28,000/- whereas the Respondent has also made investment of Rs.57,00,000/- for construction of Retail Outlet and allied expenditures. The Claimant has committed the serious irregularities which are not at all permitted as per the said Dealership agreement & MDG and provision penalties are also made thereof, which has caused the serious loss of goodwill and reputation to the Respondent Company. Due to the serious irregularities, the Claimant's dealership was terminated. The Claimant therefore is not entitled for sum of Rs.45,28,000/- and interest thereon.

FINDINGS AS TO ISSUE NO.6 & 7

*The Claimant had raised an Appeal before Executive Director (Retail Sales) of the Respondent to revoke the termination of Dealership on humanitarian ground since lease rent of the land is too low to survive. The Claimant submitted that the Claimant offered and agreed to let out his Land on Long Lease for monthly rent of Rs.1,750/- only because the Respondent agreed to allot the dealership of petrol pump as his plot of land and the monthly income from the said dealership was assured. **I have perused the Government Valuation Report of the Land of the Claimant (Exhibit "O") and instance of one***

Mr. Bajirao Jadhav relied upon the Claimant (Exhibit "P") to prove the market rate of the vicinity of the Land of the Claimant. Both the documents are registered documents. The Lease Agreements executed by Mr. Bajirao Jadhav and the Claimant are altogether different with different terms and conditions and negotiations between the parties. The Claimant and Respondent are bound by terms and conditions of Lease Agreement dated 20.09.2005 and this Arbitral Tribunal cannot go beyond the Lease Agreement dated 20.09.2005 have provided and determined the rates of rent and increases in the rent and the same are binding upon the parties. I find that since the Dealership of petrol pump is already terminated there shall be no income of the dealership to the claimant other than the lease rent which is too low to survive and claimant had agreed to let out his Land on Long Lease for monthly rent of Rs.1,750/- only because the Respondent agreed to allot the dealership of petrol pump as his plot of land therefore the Claimant is entitled to get some reasonable increase in the monthly lease rent of the said land for survival but increase not to the tune of Rs.35000/- from Rs.1750/- as submitted by the Claimant.

Award

1. The Termination of dealership order dated 20.08.2008 is valid, legal and binding upon the Claimant and the Respondent. The Claimant is not entitled for restoration of dealership.

2. The claimant is not entitled, for claim of Rs.45,28,000/- and interest thereon.

3. The monthly lease rent of the said land to be increased from Rs.1750/- to Rs.10000/- with 10% increase after every three years w.e.f. the date of the termination of the dealership and period of lease deed to be kept as per period mentioned in the advertisement published in the News Paper on 6.7.2005.

With the above award, I have concluded the arbitration proceedings and published this award on 4.11.2010."

28. The Appellant filed an application being Civil Misc. Application No. 115 of 2011 under Section 34 of the Arbitration and Conciliation Act, 1996, hereinafter referred to as "the 1996 Act" for setting aside of

the said award in the Court of the District Judge, Pune. The Respondent filed its cross objection to the impugned award and also filed a counter claim in the Court of the District Judge, Pune.

29. The counter claim filed by the Respondent was apparently misconceived. There could be no question of any counter claim to an application for setting aside of an award.

30. Section 5 of the 1996 Act provides that notwithstanding anything contained in any other law for the time being in force, in matters governed by Part I of the 1996 Act, no judicial authority shall intervene except where so provided in Part I.

31. Section 34 in Part I of the 1996 Act as it is stood at the material time provided as follows:

"34. Application for setting aside arbitral award.—(1)
Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the Court only if—

(a) the party making the application furnishes proof that

(i) a party was under some incapacity; or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or

(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted,

only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of Section 75 or Section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2-A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappraisal of evidence.]”

32. As observed above, the lease agreement and the dealership agreement are distinct agreements, independent of each other. Disputes under the lease agreement were referable to the arbitration

of the Managing Director of the Appellant who was to be the sole Arbitrator, and only if the Managing Director was unable or unwilling to act as sole Arbitrator the disputes were to be referred to the sole Arbitrator designated or nominated by the Managing Director in his place. If the disputes could not be referred to the Managing Director for any reason, the matter was not to be referred to arbitration at all.

33. In the instant case, the Respondent invoked the Arbitration Clause under the Dealership Agreement and approached the Director (Marketing) of the Appellant who appointed Mr. B.L. Parihar as the sole Arbitrator. The Arbitrator, Mr. B.L. Parihar, nominated by the Director (Marketing) of the Appellant had no authority and/or jurisdiction to adjudicate any dispute pertaining to the lease agreement.

34. The Arbitral Award is liable to be set aside in so far as the same deals with disputes with regard to the Lease Agreement which are not contemplated by the Arbitration Clause in the dealership agreement and/or in other words, do not fall within the terms of the submission to Arbitration. The Arbitral award is thus liable to be set aside under Section 34(2)(a)(iv) of the 1996 Act. The decision enhancing the lease rent is patently beyond the scope of the submission to arbitration. Moreover, the composition of the Arbitral Tribunal or the arbitral procedure was not in accordance with the lease agreement dated 20th September, 2005.

35. By a judgment and order dated 29th January 2013, the District Judge-3, Pune allowed the Counter Objection of the Respondent to the

award in part and modified the award by deleting the last clause, that is, *“and the period of Lease Deed to be kept as per the period mentioned in the advertisement published in the newspapers on 6.7.2005”* with the observation that the term of agreement if wholly prejudicial or capable of causing grave injustice to one of the parties, could certainly be overlooked not only by Court of Justice, but also by the Arbitrator. The District Judge held that the learned Arbitrator had rightly enhanced the rent to Rs. 10,000/- with 10% increase after every three years. However, the learned Court held that it was not within the province of the Arbitrator to decrease the lease period to 19 years and 11 months as per the advertisement given in the newspapers.

36. Both the Respondent and Appellant appealed to the Bombay High Court under Section 37 of the 1996 Act challenging the judgment and order of the District Judge-3, Pune.

37. By a judgment and order dated 11th September 2015, the High Court partly allowed the Arbitration Appeal No.19 of 2013 filed by the Respondent and dismissed Arbitration Appeal No.39 of 2013 filed by the Appellant observing that there was no scope for the District Court to interfere with the impugned award. The High Court held:-

“10. Coming to the interference by the appellate court with the award on the dispute under the lease agreement, it is patent from the impugned order that the interference with the same was beyond the provision of Section 34 of the Arbitration Act. The learned Judge on the one hand permitted enhancement of the lease rent but denied the reduction of the lease period. The learned Judge lost sight of the fact that the claimant had contended before the learned Arbitrator that he was compelled by the respondent to agree for the lease of 29 years and 11 months, though the advertisement permitted him dealership for only 19 years and 11 months. It is nobody’s

case that the lease rent of Rs.1,750/- per month was at the market rate at the relevant time. It is obvious that the claimant had agreed for the extended period of the lease only because the same was coupled with the dealership agreement. In the circumstances, there was no scope for the District Court to interfere with the impugned award. To that extent, the appeal of the claimant must be allowed and the directions contained in the impugned order at paragraph "2" be set aside. Hence, Arbitration Appeal No.39 of 2013 is dismissed. Arbitration Appeal No.19 of 2013 is partly allowed. The direction at para 2 of the impugned order is set aside."

38. In the High Court, learned senior counsel appearing for the Appellant had submitted that adjudication of the dispute under the lease agreement was beyond the jurisdiction of the learned Arbitrator. It was pointed out that the lease agreement provided for a specified Arbitrator that is the Managing Director of the Appellant or any other person designated or nominated by the Managing Director. The Arbitrator in the instant case, Mr. B.L. Parihar, had been appointed pursuant to the Dealership Agreement by the Director (Marketing) of the Appellant. The High Court rejected the aforesaid contention with the observation:-

*"9. Perusal of the record however shows that **no such contention was taken before the Arbitrator as also in the application filed under Section 34** of the Arbitration Act. Therefore, the appellant cannot be allowed to raise it for the first time before this court. Because it would mean that the claimant has accepted Mr. B.L. Parihar as the Arbitrator for the dispute under the lease agreement."*

39. In so far as disputes with regard to lease rent and/or any other conditions of the deed of lease were concerned, the High Court proceeded on the patently erroneous basis that the Appellant had not objected to the competence or the authority or jurisdiction of the

learned Arbitrator to entertain and decide disputes with regard to lease agreement, ignoring the specific averments made by the Appellant in its counter statement, which have been extracted hereinabove.

40. In its counter statement, the Appellant had specifically averred that the alternate prayer of the Respondent claiming increase in lease rent to Rs.35,000/- per month with 20% increase in every three years was outside the ambit of the arbitration proceedings. The Appellant also asserted categorically that, without challenging the registered lease deed executed by it, the Respondent could not seek an order of the Arbitrator, modifying the terms of the lease deed.

41. The High Court also apparently overlooked the fact that the jurisdiction of the Arbitral Tribunal to increase the monthly lease rent from Rs.1750/- per month to Rs.35,000/- per month was specifically in issue before the learned Arbitrator (Issue No.6) as evident from the impugned award.

42. As held by this Court in ***Associate Builders v. Delhi Development Authority***², cited by Mr. Prasenjit Keswani, learned counsel appearing on behalf of the Respondent, Section 34 in conjunction with Section 5 of the 1996 Act makes it clear that an arbitral award that is governed by Part I of the 1996 Act, can only be set aside on grounds mentioned under Sections 34(2) and (3) of the said Act and not otherwise. The Court considering an application for setting aside an award, under Section 34 of the 1996 Act cannot look

² (2015) 3 SCC 49

into the merits of the award except when the award is in conflict with the public policy of India as provided in Section 34(2)(b)(ii) of the 1996 Act.

43. In ***Associate Builders*** (supra), this Court held that an award could be said to be against the public policy of India in, inter alia, the following circumstances: -

- (i) When an award is, on its face, in patent violation of a statutory provision.
- (ii) When the Arbitrator/Arbitral Tribunal has failed to adopt a judicial approach in deciding the dispute.
- (iii) When an award is in violation of the principles of natural justice.
- (iv) When an award is unreasonable or perverse.
- (v) When an award is patently illegal, which would include an award in patent contravention of any substantive law of India or in patent breach of the 1996 Act.
- (vi) When an award is contrary to the interest of India, or against justice or morality, in the sense that it shocks the conscience of the Court.

44. An Arbitral Tribunal being a creature of contract, is bound to act in terms of the contract under which it is constituted. An award can be said to be patently illegal where the Arbitral Tribunal has failed to act in terms of the contract or has ignored the specific terms of a contract.

45. However, a distinction has to be drawn between failure to act in terms of a contract and an erroneous interpretation of the terms of a contract. An Arbitral Tribunal is entitled to interpret the terms and

conditions of a contract, while adjudicating a dispute. An error in interpretation of a contract in a case where there is valid and lawful submission of arbitral disputes to an Arbitral Tribunal is an error within jurisdiction.

46. The Court does not sit in appeal over the award made by an Arbitral Tribunal. The Court does not ordinarily interfere with interpretation made by the Arbitral Tribunal of a contractual provision, unless such interpretation is patently unreasonable or perverse. Where a contractual provision is ambiguous or is capable of being interpreted in more ways than one, the Court cannot interfere with the arbitral award, only because the Court is of the opinion that another possible interpretation would have been a better one.

47. In ***Associate Builders*** (supra), this Court held that an award ignoring the terms of a contract would not be in public interest. In the instant case, the award in respect of the lease rent and the lease term is in patent disregard of the terms and conditions of the lease agreement and thus against public policy. Furthermore, in ***Associate Builders*** (supra) the jurisdiction of the Arbitral Tribunal to adjudicate a dispute itself was not in issue. The Court was dealing with the circumstances in which a Court could look into the merits of an award.

48. In this case, as observed above, the impugned award insofar as it pertains to lease rent and lease period is patently beyond the scope of the competence of the Arbitrator appointed in terms of the dealership agreement by the Director (Marketing) of the Appellant.

49. The lease agreement which was in force for a period of 29 years with effect from 15th April, 2005 specifically provided for monthly lease rent of Rs.1750 per month for the said plot of land on which the retail outlet had been set up. It is well settled that an Arbitral Tribunal, or for that matter, the Court cannot alter the terms and conditions of a valid contract executed between the parties with their eyes open.

50. In ***Ssangyong Engineering and Construction Company Limited v. National Highways Authority of India (NHAI)***³, this Court held:

“76. However, when it comes to the public policy of India, argument based upon “most basic notions of justice”, it is clear that this ground can be attracted only in very exceptional circumstances when the conscience of the Court is shocked by infraction of fundamental notions or principles of justice. It can be seen that the formula that was applied by the agreement continued to be applied till February 2013 — in short, it is not correct to say that the formula under the agreement could not be applied in view of the Ministry's change in the base indices from 1993-1994 to 2004-2005. Further, in order to apply a linking factor, a Circular, unilaterally issued by one party, cannot possibly bind the other party to the agreement without that other party's consent. Indeed, the Circular itself expressly stipulates that it cannot apply unless the contractors furnish an undertaking/affidavit that the price adjustment under the Circular is acceptable to them. We have seen how the appellant gave such undertaking only conditionally and without prejudice to its argument that the Circular does not and cannot apply. This being the case, it is clear that the majority award has created a new contract for the parties by applying the said unilateral Circular and by substituting a workable formula under the agreement by another formula de hors the agreement. This being the case, a fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract can never be foisted upon an unwilling party, nor can a party to the agreement be liable to perform a bargain not entered into with the other party. Clearly, such a course of conduct would be contrary to fundamental principles of justice as followed in this

3 . (2019) 15 SCC 131

country, and shocks the conscience of this Court. However, we repeat that this ground is available only in very exceptional circumstances, such as the fact situation in the present case. Under no circumstance can any court interfere with an arbitral award on the ground that justice has not been done in the opinion of the Court. That would be an entry into the merits of the dispute which, as we have seen, is contrary to the ethos of Section 34 of the 1996 Act, as has been noted earlier in this judgment.”

51. In **PSA SICAL Terminals Pvt. Ltd. v. Board of Trustees of V.O. Chidambranar Port Trust Tuticorin and Others**⁴ this Court referred to and relied upon **SSangyong Engineering and Construction Company Limited (supra)** and held:

“87. As such, as held by this Court in Ssangyong Engineering and Construction Company Limited (supra), the fundamental principle of justice has been breached, namely, that a unilateral addition or alteration of a contract has been foisted upon an unwilling party. This Court has further held that a party to the Agreement cannot be made liable to perform something for which it has not entered into a contract. In our view, re-writing a contract for the parties would be breach of fundamental principles of justice entitling a Court to interfere since such case would be one which shocks the conscience of the Court and as such, would fall in the exceptional category.”

52. In **PSA SICAL Terminals Pvt. Ltd. (supra)** this Court clearly held that the role of the Arbitrator was to arbitrate within the terms of the contract. He had no power apart from what the parties had given him under the contract. If he has travelled beyond the contract, he would be acting without jurisdiction.

53. In **PSA SICAL Terminals Pvt. Ltd. (supra)** this Court referred to and relied upon the earlier judgment of this Court in **MD. Army**

4 . (2021) SCC Online SC 508

Welfare Housing Organization v. Sumangal Service (P) Ltd.⁵ and held that an Arbitral Tribunal is not a court of law. It cannot exercise its power *ex debito justitiae*.

54. In ***Satyanarayana Construction Company v. Union of India and Others***⁶, a Bench of this Court of coordinate strength held that once a rate had been fixed in a contract, it was not open to the Arbitrator to rewrite the terms of the contract and award a higher rate. Where an Arbitrator had in effect rewritten the contract and awarded a rate, higher than that agreed in the contract, the High Court was held not to commit any error in setting aside the award.

55. There can be no dispute with the proposition of law enunciated by this Court in ***Central Inland Water Transport Corporation Limited and Another v. Brojo Nath Ganguly and Another***⁷, cited by Mr. Keswani. The judgment, however, has no application in this case.

56. In ***Brojo Nath Ganguly*** (supra), this Court held that a term in a contract of employment as also service rules of a Government company providing for termination of services of permanent employees without assigning reasons, on three months' notice, or pay in lieu thereof was unconscionable, arbitrary and opposed to public policy. This Court was not concerned with any lease agreement or any dealership agreement in the aforesaid case.

5 . (2004) 9 SCC 619

6 (2011) 15 SCC 101

7 (1986) 3 SCC 156

57. In this case, there is no finding by the Arbitral Tribunal that any condition of the dealership agreement was unconscionable and the Arbitral Tribunal has not interfered with termination of the dealership agreement.

58. The Appellant and the Respondent entered into the lease agreement in this case with their eyes open. The Respondent had the option not to lease out its property to the Appellant. The situation of an owner of property, executing a lease agreement in respect of his property cannot be equated with a contract of employment executed by and between an employee and a mighty employer, where the employee has little option but to accept the terms and conditions offered by the employer.

59. It is well settled that a judgment of a Court is precedent for the issue of law which is raised and decided. Words and phrases used in a judgment cannot be read in isolation, out of context. To quote the distinguished author *V. Sudhish Pai* "*Judgments and observations in judgments are not to be read as Euclid's theorems or as provisions of statute. Judicial utterances/pronouncements are in the setting of the facts of a particular case. To interpret words and provisions of a statute it may become necessary for judges to embark upon lengthy discussions, but such discussion is meant to explain not define. Judges interpret statutes, their words are not be interpreted as statutes. Thus, precedents are not to be read as statutes.*"⁸

8 . Constitutional Supremacy-A Revisit, Essays on Constitutionalism, Rule of Law & Constitutional Adjudication by Mr. V. Sudhish Pai

60. For the reasons discussed above, the appeal is allowed. The impugned judgment of High Court is set aside. The impugned judgment of the District Court insofar as the same pertains to lease rent and lease period is also set aside.

61. The impugned award dated 04.11.2010 is set aside to the extent that the Arbitrator has increased the monthly lease rent of the land in question from Rs.1750/- to Rs.10000/- with 10% increase after every three years w.e.f. the date of the termination of the dealership and to the extent the Arbitrator has reduced the period of lease from 29 years to 19 years and 11 months.

.....J.
[**INDIRA BANERJEE**]

.....J.
[**ABHAY S. OKA**]

**NEW DELHI;
FEBRUARY 01, 2022**