

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **OMP No. 58/2002**

13th January, 2010

SH. BRIJBIR SINGH AHLAWAT ...Petitioner

Through: Mr. Sandeep Sharma, Advocate.

VERSUS

INDIAN OIL CORPORATION LTD.Respondent

Through: Mr. M.K. Kalra, Advocate with Mr.
Kunal Kalra, Advocate

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

% **JUDGMENT (ORAL)**

VALMIKI J.MEHTA, J

1. By this petition under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner who was given the dealership of retail outlet of petroleum products, by the respondent, seeks to challenge the Award dated 7.1.2002 passed by the sole Arbitrator, and as per which Award, the petitioner who was the claimant in the arbitration proceedings, was denied the relief of restoration of dealership and other reliefs as prayed for by him.

2. The petitioner was appointed as a dealer by the respondent under the Agreement dated 25.3.1972. Clause 35 of this agreement is relevant and the same reads as under:

“35. The Dealer shall not sell, assign, sub-let, mortgage, charge or part with or otherwise transfer the premises or any part thereof his interest in the dealership or any right or interest or benefit conferred by this Agreement or grant any licence in connection with the said premises and/or outfit or any part thereof to any person firm or company nor allow any other person, firm, or company to use the premises or the outfit or any part thereof except to the extent necessary under the terms of this Agreement and specifically permitted in writing by the Corporation”

3. Disputes and differences arose between the parties and the respondent terminated the dealership of the petitioner on the ground that the petitioner had in effect sub-letted the dealership by entering into in the partnership agreement dated 27.7.1994 with one Ms. Anju Gupta.

4. By the impugned Award, the Arbitrator framed following issues:

1. Whether the termination of the claimant's dealership is valid or not?
2. Whether the claimant is entitled to Rs.1,20,000/- as claimed?
3. If not, whether the dealership of the claimant is liable to be restored or not?
4. Whether the claimant is entitled to a sum of Rs.15,000/- per month as claimed?
5. Whether the claimant is entitled to interest @ 2% as claimed?
6. Cost of arbitration proceedings?”

5. The basic issue was therefore issue No.1 and with respect to which the following findings are given in the Award:

“Issue No.1 On the basis of documents on record particularly the deed of partnership executed between claimant and Smt. Anju Gupta (partnership deed dtd. 27/07/94), the documents from income tax deptt. showing the claimant Sh. Brijvir Singh Ahlawat and Smt. Anju Gupta as partners, the agreement to sale executed between Sh. Brijvir Singh and Sh. Pankaj Gupta and the revenue records, it is clearly established that the claimant has executed and entered in to the sale transaction with Sh. Pankaj Gupta in respect of the land on which the

RO is situation and that the claimant has also entered into a partnership deed with Smt. Anju Gupta as partner and as such the claimant has violated the terms and conditions of the dealership agreement dtd.25/03/72.

I therefore award that the termination of the claimant's dealership is valid and this issue is decided against the claimants."

In my opinion no fault at all can be found with these findings. The Arbitrator was entitled to interpret the documents which were filed before him including the partnership agreement and the income tax record, and by doing so he has arrived at a conclusion that there was in effect a breach of the Clause 35 of the Agreement. Mr. Kalra, on behalf of the respondent, has drawn my attention to the income tax documents relied upon by the Arbitrator in the arbitration record and which shows that the Partnership Deed was acted upon by sharing of the profits and losses between the petitioner and the said Ms. Anju Gupta and which relationship continued at least till 31.3.1996. In this view of the matter, I find no substance in the objection raised by the counsel for the petitioner, which was urged by him by referring to the reply to the show cause notice, that the partnership agreement was in fact immediately suspended in August 1994 after entering into the same in April, 1994.

6. Once the Arbitrator arrives at a finding of fact by reference to the documents and interpreting the same, such conclusion in my opinion cannot in any manner be contended to be either illegal or perverse so as to entitle this Court to interfere with such finding under Section 34. In my opinion therefore the objection to decision of issue No.1 cannot be sustained.

7. The second argument which was strongly canvassed by the counsel for the petitioner was that the petitioner was not ‘properly heard’.

8. Before I consider this aspect I may note that as per Section 19 of the Arbitration and Conciliation Act, 1996 the provisions of the Code of Civil Procedure, 1908 and the Evidence Act, 1872 strictly speaking do not apply to the arbitration proceedings. On a query being put by the Court to the counsel for the petitioner that how has the petitioner not been “heard”, the counsel for the petitioner referred to para 2 of the reply to the show cause notice which referred to suspension of partnership in August, 1994. This aspect has already been considered by me above and rejected. I may state that the counsel for the petitioner sought to buttress his arguments by reference to a letter dated 12.10.01 and addressed to the Arbitrator that he has not been heard. In my opinion a general averment of not having been heard is clearly unacceptable. This is for the reason that Mr. Kalra, on behalf of the respondent has drawn my attention to the proceedings held on 16.12.2000 which in four pages records the various submissions and contentions of the parties. Further unless and until an issue, which is allegedly not allowed to be addressed, can have effect in overturning the decision of the Arbitrator, a generalised stand that hearing has not been given is not in any manner acceptable.

9. The fact of the matter is that the petitioner after having taken the dealership and being bound by the terms and conditions of the agreement violated the same by sub-letting the benefits of the dealership. In fact the stand

that the partnership agreement was suspended in August, 1994 is shown to be ex-facie false by virtue to the income tax documents which show the partnership's continuance at least till March, 1996 and which thus was not suspended in August, 1994 as contended by the counsel for the petitioner.

10. In view of the aforesaid, there is no merit in these objections which are dismissed with costs of Rs.25,000/-.

VALMIKI J.MEHTA, J

January 13, 2010

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