

(2013) 10 DEL CK 0302
In the Delhi High Court
Case No : F.A.O. No. 173 of 2012

Darshan Lal

APPELLANT

Vs

India Oil Corporation Ltd.

RESPONDENT

Date of Decision : 01-10-2013

Acts Referred:

Citation : (2013) 10 DEL CK 0302

Hon'ble Judges : V.K. Shali, J

Bench : Single Bench

Advocate : Ashish Mohan and Mr. Varun Garg, for the Appellant; Rajat Navet, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Shali, J.—This is an appeal u/s 37 of the Arbitration and Conciliation Act against the order dated 16.12.2011 passed by the learned Additional District Judge in Suit No. 129/2010 rejecting the objections filed by the appellant against the arbitration award dated 24.9.2008. The only question which has been raised by the learned counsel for the appellant is that before cancelling the dealership of the appellant, the respondent had not given any opportunity or a notice to the appellant in terms of Clause 56(a) of the agreement to rectify the alleged breach.

2. The learned counsel for the respondent has contended that only in a breach which can be condoned, an opportunity to rectify the said breach has to be given meaning thereby that no opportunity needs to be given in breaches which are non-condonable.

3. In the instant case, it was contended by the learned counsel for the respondent that the appellant was found to have tampered with the nuts which were put on the oil pump which clearly showed that he had thereby tried to tamper with the quantity of diesel/petrol which was being supplied to the consumers. In this case, if that be the position, the breach goes to the very root of the grant of dealership, which cannot be condoned. He has referred to

judgment of the single judge of this court in W.P. (C) No. 7587 of 2010 titled *Nirmala Kwatra vs. Indian Oil Corporation Ltd.* decided 20.4.2012 by virtue of which the writ of the petitioner was dismissed in a similar circumstance on account of the breach of the terms and conditions of the agreement.

4. Before dealing with the submission made by the learned counsel for the appellant, it may be pertinent here to mention that the appellant is admittedly a dealer of Indian Oil Corporation for dispensing the oil, petrol, diesel and other petroleum products in the area of Dwarka. An inspection of the said dealership was conducted and it was found that he had tampered with the seals which were high security seals known as HSZ-Z-line D11 and they were found with improper totaliser seals. Instead of hexagonal nuts, it was found that the same have been replaced with rectangular nuts which resulted in manipulation of the totaliser reading. Further, the rates of 2-T were not displayed at the retail outlet. Valid TT retention samples were available but the sample containers were found to be leaky for both the products. One Mr. Praveen Garg, who claimed himself to be the proprietor, was accordingly given a notice as he was found to be running the retail outlet in total violation of the agreement. The respondent, in terms of the Marketing Discipline Guidelines of 2005 and in terms of the agreement, appointed an arbitrator for adjudication of the dispute between the parties. The learned arbitrator in terms of the aforesaid Marketing Discipline Guidelines of 2005, Rule 6.1.4 imposed a penalty of termination of dealership on account of tampering with the seals. The appellant challenged the said imposition of penalty of termination of dealership on the ground that he ought to have been given a notice for the purpose of rectifying the breach.

5. I do not agree with the contention of the learned counsel for the appellant that he deserves to be granted an opportunity for rectification of the alleged breach of tampering with the seals. As a matter of fact the breach which is alleged against the appellant was of such a nature which goes to the very root of the matter itself. The dealership is granted to a person on the basis of trust for dispensing requisite and proper quantity and quality of the oil products. The reputation of the oil company is involved with the reputation of the dealer and in case, the dealer indulges in breach of trust by tampering with the seals in order to provide deficient quantity of petroleum products to the customers, this clearly shows that he is trying to not only spoil the reputation and the fair name of the oil company but is also cheating the consumers. This cannot be permitted to be done on this spacious ground which has been raised by the appellant before the objecting court or before this court that he ought to have been given an opportunity to rectify the breach. I feel that court's jurisdiction to review the order of the trial court rejecting the objections is very limited in terms of Section 34 of the Arbitration and Conciliation Act and since the learned counsel for the appellant has failed to point out any violation of policy by the respondent or any other infraction as stipulated u/s 34 of the Arbitration & Conciliation Act, therefore, the order passed by the trial court in respect of the award in question does not deserve any interference.

6. The judgment which has been relied upon by the appellant in Hindustan Petroleum Corpn. Ltd. and Others Vs. Super Highway Services and Another, is concerned, I have gone through the said judgment. I do not find that any help can be got from the said judgment because that was a case where a writ petition was filed and termination order was challenged on the ground of no proper show cause notice having been given and thus, there was alleged violation of principles of natural justice. In the instant case, there is no violation of principles of natural justice. All that the appellant is contending is that he ought to have been given an opportunity to rectify the breach and the nature of breach is that he had tampered with the seals. This cannot be permitted to be done. Accordingly, the appeal is dismissed.