
(2016) 07 SC CK 0135

In the Supreme Court Of India

Case No : Civil Appeal No. 8717 of 2010

Indian Oil Corp. Ltd. & Others

APPELLANT

Vs

M/s Atma Ram Banarasi Dass

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 11(6)
Constitution of India, 1950 — Article 133

Citation : (2016) 07 SC CK 0135

Hon'ble Judges : Shiva Kirti Singh and R. Banumathi, JJ.

Bench : Division Bench

Advocate : Tushar Mehta, ASG, D. Moitra, Ms. Surchi Mittal, T. Mahipal,
Advocates, for the Appellant;

Final Decision : Allowed

Judgement

1. Despite service of notice, nobody appeared on behalf of the sole respondent.
2. Heard learned counsel for the appellants.
3. By the order under appeal dated 20th March, 2009 the judge designated by the Chief Justice of Punjab and Haryana High Court has allowed an application filed by the respondent under Section 11(6) of the Arbitration and Conciliation Act 1996 (hereinafter referred to as an "Act") and appointed a retired District and Sessions Judge at Panchkula, to act as the sole Arbitrator.
4. From the narration of facts, it transpires that the respondent had the privilege of selling Petrol and HSD(Diesel) as a pump dealer and pursuant to an inspection, an allegation appears to have been made against him of selling adulterated petrol/diesel. On that account his licence for selling petrol/HSD (Diesel) was suspended. It led to filing of a Civil Suit in December, 2006. The suit was resisted by the appellants by filing an application under Section 8 of the Act on the ground that the parties were bound by an Agreement which contains an arbitration clause. The Civil Court stayed the suit by an order passed on

24.02.2007 holding that the plaintiff/respondent could raise his grievance in terms of the Agreement. Thereafter, the respondent did not demand redressal of his grievance or give any notice to the appellants for invoking Arbitration Clause which is clause 69 in the agreement and reads as follows:-

"Any dispute or difference of any nature whatsoever 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, or of some officer of the Corporation who may be nominated by the Director Marketing. 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 or that he has to deal with the matters to which the contract relates or that in the course of his duties or differences. In the event of the arbitrator to whom the matter is originally referred being transferred or vacating his office or being unable to act for any reason the Director Marketing as aforesaid at the time of such transfer, vacation of office or inability to act, shall designate another person to act as arbitrator in accordance with the terms of the Agreement. Such persons shall be entitled to proceed with the reference from, the point at which it was left by his predecessor. It is also at terms of this contract that no person other than the Director Marketing to a person nominated by such Director Marketing of the Corporation as aforesaid shall act as arbitration hereunder. The award of the arbitrator so appointed shall be final, conclusive and binding on all parties to the Agreement, subject to the provisions of the Arbitration Act, 1940, or any statutory modification of re-enactment thereof and the rules made there under and for the time being in force shall apply to the arbitration proceedings under this clause".

5. The respondent straightaway filed application under Section 11 of the Act seeking appointment of Arbitrator by the Court. The appellants resisted the same but the Court has allowed the application by the order under appeal as noted above.

6. Learned counsel for the appellants appears to be correct in submitting that if such a procedure as adopted by the respondent is held to be valid and acceptable, the special provisions and qualifications in respect of Arbitrator as per Clause 69 would be rendered meaningless and a dealer, like in the present case, can avoid such provision in the Agreement by directly approaching the Court under Section 11.

7. The law requires that after expiry of the period contemplated under the Agreement or in absence thereof, after the expiry of 30 days from the receipt of the notice for appointment of Arbitrator, the aggrieved party may move the Court under Section 11 of the Act and thereupon the right to make appointment in terms of the Arbitration Agreement stands forfeited. In that view of the matter, the requirement of a notice/demand invoking the Arbitration Agreement assumes significance and cannot be treated to be a mere technicality or formality as has been done by the High Court. Clearly, a valuable right of the appellants was lost

for no fault of theirs.

8. In that view of the matter, the impugned judgment is set aside. Since nobody appeared on behalf of the respondent, therefore, no costs. It is made clear that if the respondent is still interested in invoking the Arbitration Clause, it is open for him to make a demand upon the appellant-Corporation. Mr. Tushar Mehta, learned Additional Solicitor General has assured that Corporation will have no difficulty in appointing Arbitrator in terms of the Agreement if situation so demands and in case the appellant-Corporation is served with notice/demand.

9. The appeal is allowed to the aforesaid extent.