

(1981) 12 CAL CK 0011

In the Calcutta High Court

Case No : Appeal No. 266 of 1981 (Matter No. 806 of 1981)

Indian Oil Corporation Ltd.

APPELLANT

Vs

Premier Road Carriers Ltd.

RESPONDENT

Date of Decision : 14-12-1981

Acts Referred:

Arbitration Act, 1940 — Section 34
Constitution of India, 1950 — Article 14

Citation : AIR 1983 Cal 445

Hon'ble Judges : Suhas Chandra Sen, J; Sabyasachi Mukharji, J

Bench : Division Bench

Advocate : R.C. Deb, S.K. Gupta and B.K. Saraf, for the Appellant; Dipankar Gupta and R. Pal, for the Respondent

Final Decision : Dismissed

Judgement

Sabyasachi Mukharji, J.—This appeal arises out of an order and judgment of Mr. Justice Deb. Dt. June 11. 1981, refusing to stay a suit u/s 34 of the Arbitration Act, 1940. The learned Judge has recorded several points which were urged before him. He, however, did not find it necessary to deal with all those points but rested his decision on two points, viz.. that there were certain allegations in the nature of fraud which should better be tried in a public forum instead of private forum. He has also held that a substantial difficult question of law in the facts and circumstances of the case arises and according to the learned Judge, it should better be tried in a Court of law rather than by arbitration. It appears that the respondent carried certain quantity of lubricating oil under an agreement between the parties, to which we shall presently refer. It was alleged in the petition, which the respondent had denied, that out of this certain quantities of oil were contaminated during transit. It was, further, the case of the respondent that at the instance of the petitioner, that is to say, by the Indian Oil Corporation C.B.I. had started proceedings relating to the aforesaid allegation made by the appellant against the respondent. The learned Judge, therefore, felt that substantial question of law would be involved in the said proceedings and he felt

that this point should better be adjudicated in a public forum rather than to leave it to be decided in a private forum.

2. There was another claim made by the respondent, that is to say that the respondent was entitled to escalation charges which had been granted to an other contractor in respect of the same type of carriage contract and the said charges were not allowed, to the respondent. In the premises, the respondent contended that there was violation of the equality clause and breach of Article 14 of the Constitution because, according to the respondent the Indian Oil Corporation was an instrumentality of the State in respect of contract entered into with dealers and all dealers of this type of contract with the Indian Oil Corporation were entitled to equal treatment and in not rendering such equal treatment to the respondent, according to the respondent, the Indian, Oil Corporation had discriminated against the respondent. The learned Judge, therefore, felt this would also involve substantial question of law which should better be investigated in a public forum. On these two grounds, the learned Judge was pleased to refuse to stay the suit in exercise of his discretion u/s 34 of the Arbitration Act.

3. In the appeal, before us on behalf of the appellant it was urged that the points upon which the learned Judge had exercised his discretion were not the proper grounds for exercising his discretion in not granting stay u/s 34 of the Arbitration Act. The respondent while trying to uphold the decision of the learned Judge in respect of those two contentions submitted that the learned Judge having exercised his discretion in a particular manner it was not proper for the Appellate Court to interfere with that exercise of discretion unless it was demonstrated that the learned Judge had proceeded on wrong principles in exercising such discretion. Apart from the two points upon which the learned Judge had exercised his discretion, it was urged on behalf of the respondent that the arbitration clause was vague in the sense that it provided that the Chairman or any officer of the Indian Oil Corporation nominated by its Chairman would act as arbitrator. It was submitted that such a clause was vague and as such there was no valid arbitration agreement. It was further submitted that in view of the conduct of the parties, the petitioner appellant was not ready and willing to go to arbitration in terms of Section 34 of the Arbitration Act and as such was not entitled to any order in its favour. The appellant therefore submitted that the order of the learned Judge should therefore be set aside on these two grounds. So far as the vagueness of the arbitration agreement is concerned, it is true that it may depend upon the particular clause and it may be a question of law. But, it appears no such point had ever been taken in the affidavit in opposition nor was attention drawn of the learned Judge, to this aspect of the matter at least nothing appears from the decision of the learned Judge. Whether a particular clause is vague or uncertain would depend on certain circumstances and not having specifically pleaded this plea and nothing having been urged on this point before the learned trial Judge, we are of the opinion that it will not be Proper for us to rest our decision on this additional point urged on behalf of the respondent.

So far as the second aspect is concerned, that is to say whether there has been delay and as such whether it indicated absence of readiness and willingness on the part of the appellant to go to arbitration in terms of Section 34 of the Arbitration Act, 1940 and in view of the fact that the appellant being the Indian Oil Corporation, the time taken by the appellant to make an application, in the facts and circumstances of the case, is of not such duration as to disentitle itself for the exercise of discretion in its favour if it was otherwise entitled to. Therefore, in our opinion, it will also not be proper to rest our decision on this aspect of the matter. We will have to confine ourselves to two aspects of the matter dealt with by the learned trial Judge.

4. We may refer to the letter dated 27th Feb., 1979 containing the terms of the contract. This letter along with other letters stipulated that the contractors would have to deposit Rs. 30,000 as security deposit. The contract would be subject to two years and certain phased payments. The rate schedule was also given. The contract form also contains the arbitration clause and it is not necessary for us to refer to that portion as we have already dealt with it. The relevant portion upon which the present dispute centres round is as follows:--

"11 (a). The contractors shall also be responsible for safe conduct of supplies in transit. If, at any time, the product found contaminated during the transit and/or the time of delivery to the consignees, the Corporation shall have absolute discretion to take back the product or to refuse taking back of such products and in case of such contaminated stock, the Corporation shall be at liberty to debit the contractor the cost of product plus a sum equivalent to the cost of product as damage. That is to say that the contractor shall be responsible to pay to the Corporation a sum equivalent to the double of the cost of such product.

11 (b) The the contractors will have comprehensive insurance policy from an established Insurance Company for each vehicle and to keep such policy in force at all times to cover all risks of whatever nature inclusive of any damage caused by the State truck to the Corporation's property. The contractors will produce for the perusal of the Corporation the original Insurance policy and proof of all insurance premiums and charges in respect thereof as and when demanded by the Corporation."

In the letter to which our attention was drawn written on behalf of CBI to the petitioner, it has been stated that it was alleged by the Indian Oil Corporation that the goods consigned through the respondent has been contaminated in transit. On behalf of the respondent, it was contended that contamination might have been done by others or might have been caused by general factors of leakage or water getting into it. But we are not concerned with that. If there was an element of contamination being done by the respondent or its employees then of course, there is an element of charge of fraudulent conduct against the respondent and if on this pleading the learned Judge takes the view that there was a charge of fraud which the respondent desired it to be investigated in a public forum and not to be adjudicated by the Chairman or any officer

nominated, by him of the appellant company, then it cannot be said that the learned Judge has acted on wrong principle of law or has exercised his discretion improperly because it is well settled principle that a person charged with fraud is entitled to have the charges investigated in a public forum. It was contended on behalf of the appellant, however, that it was not necessary for the appellant to prove the fraud. What was necessary for it was only to prove that the goods delivered were contaminated. And that would require to prove as to how this contamination took place and at whose custody this contamination happened. Therefore, if the learned Judge, in the facts of this case, has taken the view and exercised his discretion on that ground that the charge of fraud was involved against the present respondent and as it wanted a trial in the public forum we cannot say that the discretion exercised by the learned Judge was improper or without any ground.

5. There was another aspect upon which the learned Judge has exercised his discretion, which was urged, before us. Our attention was drawn to a letter dated 12th Feb., 1981 written by the Indian Oil Corporation to M/s. Best and Safe Transport where it was contended that in respect of transportation against Public Tender No. 1/80 certain escalation rates would be given. The present contract between the appellant and the respondent it is contended, was also in respect of that tender. The case of the respondent is that if one of the contractors was given the benefit of this escalated rate then the respondent should also be entitled to such rates and not having given that rate to the respondent, there had been violation of the principles of equality embodied under Article 14 of the Constitution. It was contended on behalf of the appellant that, first, there was no question of law involved in it and it involved only the question of fact because it was contended that the appellant, admittedly being a statutory Corporation established by the Government was bound by the principles of Article 14 and therefore it was urged whether in a particular case similar people had been treated dissimilarly or not would be a question of fact and no question of law, as such, would arise. It was secondly contended that the calculation rate was claimed as counter-claim. So far as the first aspect was concerned, it is difficult to accent this contention. It is true that Article 14 enjoins that the people similarly situated should be treated similarly but what amount of dissimilarity would make the people disentitled to be treated equally as enjoined in Article 14 is a complex and vexed question of law and the Courts have expressed diverse views in the context of particular facts and circumstances of the case on this aspect. So, we cannot say that it is simply a question of fact. Secondly both the claims of the respondent as the plaintiff in this suit as well as their counter-claims made under the escalation clause against the claim of the appellant are inter-linked. If, Therefore, the learned Judge has felt that the nature of question involved was such that it should better be adjudicated in the Court of law rather than it being decided in a private forum we cannot say that the learned Judge has exercised his discretion in an improper way on a wrong principle of law.

6. In that view of the matter and having considered the facts and circumstances

of the case under which, the learned Judge had exercised his discretion, we do not, feel inclined to interfere with the discretion exercised by the learned Judge. The appeal, therefore, fails and is accordingly dismissed.

7. In order that the suit may be expedited, we direct, that the appellant would have time, if they so wish or if they are so advised, to file the written statement by 18th February. 1982.

8. Cost of this appeal would be the costs in the suit.

Suhas Chandra Sen, J.

I agree.