

Indian Oil Corporation Ltd vs Amritsar Gas Service And Ors on 19 November, 1990

Equivalent citations: 1990 SCR, SUPL. (3) 196 1991 SCC (1) 533, AIR ONLINE 1990 SC 139, 1991 (1) SCC 533, (1991) 1 LJR 196, (1991) 1 CURCC 6, 1991 UJ(SC) 1 96, (1991) 1 ARBILR 97, (1990) 4 JT 601 (SC)

Author: Jagdish Saran Verma

Bench: Jagdish Saran Verma, M. Fathima Beevi

PETITIONER:
INDIAN OIL CORPORATION LTD.

Vs.

RESPONDENT:
AMRITSAR GAS SERVICE AND ORS.

DATE OF JUDGMENT 19/11/1990

BENCH:
VERMA, JAGDISH SARAN (J)
BENCH:
VERMA, JAGDISH SARAN (J)
RANGNATHAN, S.
FATHIMA BEEVI, M. (J)

CITATION:
1990 SCR Supl. (3) 196 1991 SCC (1) 533
JT 1990 (4) 601 1990 SCALE (2) 1056

ACT:
Arbitration Act, 1940 --Section 34--Termination of distributorship agreement--Granting of relief--Award of compensation for notice period.

Arbitration Act, 1940 --Section 30-Objection to award--Granting of relief on the finding of breach of contract contrary to Section 14(1) of the Specific Relief Act--An error of law apparent on the face of award.

Arbitration Act, 1940 --Section 30-Objection to award--Direction based on finding of fact--Not to be interfered with.

Arbitration Act, 1940 --Section 30-Objection to award--Reference to arbitrator by Supreme Court--Refusal to consider counter-Claim by arbitrator--An error of law apparent on the face of the award.

HEADNOTE:

A Distributorship Agreement was made between the appellant Corporation and the respondent No. 1, for sale of the Liquefied Petroleum Gas (LPG) Cylinders for the consumers as per the terms and conditions specified therein some of.

The appellant-Corporation received certain complaints about the working of respondent No. 1 which were acts prejudicial to the interest, reputation and products of the appellant-Corporation.

Invoking clause 27 of the Agreement the appellant-Corporation terminated the distributorship.

Aggrieved by the termination of the distributorship, respondent No. 1 filed a suit in the Court of Sub-Judge 1st Class, for a declaration that termination of the distributorship was illegal and void; and that the distributorship continued notwithstanding the said termination.

The appellant-Corporation filed an application under Section 3A

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of the Arbitration Act for staying the suit, which was rejected by the trial Court.

The appeal against that order and thereafter a revision to the High Court were also dismissed giving rise to the present appeal by special leave.

This Court referred the disputes to an arbitrator and appointed a retired Judge of the Court as arbitrator. Later this Court appointed a retired Judge of the High Court of Punjab & Haryana in the place of the earlier arbitrator.

The arbitrator, while making the award held that the appellant Corporation committed breach of contract and was liable to remedy the breach by restoration of the distributorship and also liable to pay compensation. The counter-claim made by the appellant-Corporation in the written statement was not decided by the arbitrator on the ground that it did not come within the scope of the reference.

Respondent No. 1 filed an application to direct the arbitrator to file the award and to make the award a rule of the Court and to pass a decree in terms thereof.

The appellant-Corporation filed objections under Section 30 of the Arbitration Act, contending that the validity of the award has to be tested on the principles of private law and the law of contracts, and not on the touchstone of constitutional limitations; that the relief of restoration of the contract granted by the arbitrator was contrary to the prohibition contained in Sections 14 and 16 of the Specific Relief Act.

Respondent No. 1 contended that there was a presumption of validity of award and the objections taken must be ignored; and that the termination of distributorship cast stigma on the partners of the firm; that counter-claim of the appellant-Corporation was rightly not considered since

it was not made before the order of reference; that the reference made being of all disputes in the suit, the nature of relief to be granted was also within the arbitrator's jurisdiction; and interest also must be awarded to the respondent.

This Court disposing of the application of the respondent No. 1 and the objections of the appellant,

HELD: 1. The finding in the award being that the Distributorship

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Agreement was revokable and the same being admittedly one for rendering personal service, the relevant provisions of the Specific Relief Act were automatically attracted. Sub-section (1) of Section 14 of the Specific Relief Act specifies the contracts which cannot be specifically enforced, one of which is 'a contract which is in its nature 'determinable'. [209C-E]

2. Agreement being revokable by either party in accordance with clause 28 by giving thirty days' notice, the only relief which could be granted was the award of compensation for the period of notice, that is 30 days. [210B-D]

3. Granting the relief of restoration of the distributorship even on the finding that the breach was committed by the appellant-Corporation is contrary to the mandate is Section 14(1) of the Specific Relief Act and there is an error of law apparent on the face of the award which is stated to be made according to 'the law governing such cases'. The grant of this relief in the award cannot be sustained. [209D-F]

4. The appellant-Corporation has also been directed in the award to return the amounts of two bank drafts on the ground that no supplies were made to the plaintiff-respondent No. 1 against the amounts. This direction was based on a finding of fact which cannot be gone into and the same cannot be interfered with. [209G-H]

Since the reference to the arbitrator was made by this Court in an appeal arising out of refusal to stay the suit under Section 34 of the Arbitration Act, and the reference was made of all disputes between the parties in the suit, the occasion to make a counter-claim in the written statement could arise only after the order of reference. The pleadings of the parties were filed before the arbitrator, and the reference covered all disputes between the parties in the suit. Accordingly, the counterclaim could not be made at any earlier stage. Refusal to consider the counter-claim disclosed an error of law apparent on the face of the award. [210E--G]

M/s. Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay, [1989] 3 SCC 293; Mahabir Auto Stores & Ors. v. Indian Oil Corporation & Ors., JT (1990) 1 SC 363; Km. Shrilekha Vidyarthi etc. etc. v. State of U. P. & Ors., JT (1990) 4 SC 211, referred.

[Decision based on private law rights alone referred since

the plaintiffs'

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claim was confined duly to private law rights and not based
on public law rights.]

JUDGMENT: