2023 INSC 507

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.3533 OF 2023
(Arising out of SLP (C) No.5698 OF 2021)

INDIAN OIL CORPORATION LTD. AND ORS. …APPELLANT(S)

VERSUS

M/S. SATHYANARAYANA SERVICE STATION & ANR …RESPONDENT(S)

WITH

CIVIL APPEAL No.3534 OF 2023
(Arising out of SLP (C)No.5591 OF 2021)

M.P. PARVATHI …APPELLANT(S)

VERSUS

M/S. SATHYANARANA SERVICE STATION AND ORS. …RESPONDENT(S)

J U D G M E N T

K.M. JOSEPH, J.

1. Leave granted.

2. In Civil Appeal arising out of SLP(C) 5698 OF 2021, the appellants are the Indian Oil Corporation Ltd., (hereinafter referred to as "IOC", for short),

the Chief Divisional Retail Sales Manager of the first appellant, Bangalore and the Chief Divisional Retail Sales Manager of the Mangalore Division. The second respondent in the said appeal is one Smt. M.P. Parvati, referred to as new dealer, who is the appellant in the other appeal, namely, civil Appeal arising out of SLP(C) 5591 OF 2021.

THE FACTS

3. **On 31.10.2003, IOC entered into petrol/hsd pump dealer agreement with the first respondent. Clause (3) of the agreement read as follows:**

> **"(3) The Agreement shall remain in force for fifteen year from day of 13th Oct 2003 and continue thereafter for successive periods of five year each until determined by either party by giving three months notice in writing to the other of its intention to termination this agreement and upon the expiration of any such notice this Agreement and the Licence granted as aforesaid shall stand cancelled and revoked but without prejudice to such termination provided that nothing contained in this clause shall to the rights of either party against the other in respect of any matter or thing antecedent to such termination Provided that nothing contained in this clause shall to such prejudice the rights of the Corporation to terminate this Agreement earlier on the**

happening of the events mentioned in Clause 56 of this Agreement."

4. **On 25.09.2006, the first respondent addressed the following communication to the second appellant:**

"Date: - 25-09-2006

To,

The Chief Divisional Retail Sales Manager
Indian Oil Corporation Limited
Marketing Division, Bangalore Divisional Office,
Indian Oil Bhavan # 29,
P. Kalinga Rao Road, (Mission Road)
Bangalore - 560027.

Dear sir,

Sub : With drawl from R.O. Dealership
Ref: Your Letter No. BD0/242 dated 23rd Oct, 2003

With reference to the above subject we are very grateful to you and IOC family members for giving us support and cooperation for all these years for running the R.O.

I would like to bring to your kind notice, that we have shifted to Bangalore for our children's education. Hence, we are not able to look after the R.O.

Hence, kindly withdraw from R.O. dealership and appoint new R.O. dealers before three months as per our agreement Dt: 31st Oct. 2003.

Hope you will consider our humble request and do the needful.

Thanking you,

Yours faithfully,

For SRI SATYANARAYANA SWAMY SERVICE STATION

(P.S. SURESH) **(JYOTI SURESH)**
Partner **Partner**

CC To : The Sales Officer Mysore

//TRUE TYPED COPY//"

5. **It is not in dispute that on 30.09.2006 there was a physical interaction in the course of which IOC insisted that the request of the first respondent be notarised. There is also no dispute that a notarised version of letter dated 25.09.2006 was received on 16.11.2006. It was apparently notarised earlier on 3.10.2006. A reply was sent to the same dated 22.11.2006 by the second appellant. It reads as follows:**

"November 22, 2006

Regd. Post A.O.

Shri. P. S. Suresh & Smt Jyothi Suresh
Partners
Sri. Sathyanarayanaswamy Service Station
Mysore -Bantwal Road
Periyapatna 5 71107
MYSORE DISTRICT

Dear sir,

SUBJECT : Resignation from Dealership

This has reference to the notarized letter dated 3rd October 2006 received by our office on 16th November 2006 informing us of your intention to retire from our retail outlet dealership.

This notarized letter sent by you, with reference to the recognition letter sent by us to you vide reference BDO : 242 dated 23. 10.2003 along with the dealership agreement recognizing both of you as the dealers of our 'A' site retail outlet at periyapatna, run by you under the name and style M/s. Sathyanarayanaswamy Service Station.

As stated in your letter, we have taken note of your intention to resign from our dealership. We request you to continue operation till we make an alternative arrangement.

We thank you for your association with our organization and wish you both all the very best in your future endeavours.

Thanking you,

Yours faithfully,
For INDIAN OIL CORPORATION LIMITED

Samson Chacko
Chief Divisional Retail Sales Manager

//TRUE TYPED COPY//"

6. **Next, we must notice letter dated 11.12.2006 on behalf of the partners of the first respondent to the second appellant. It reads as follows:**

> **"Date: -11-12-2006**
>
> **To,**
>
> **The Chief Divisional Retail Sales Manager**
> **Indian Oil Corporation Limited**
> **Marketing Division, Bangalore Divisional Office,**
> **Indian Oil Bhavan # 29,**
> **P. Kalinga Rao Road, (Mission Road)**
> **Bangalore.**
>
> **Dear sir,**
>
> **I would like to bring to your kind Notice, that I have sent the R.O. Dealership withdrawal letter (Notarized) due to unavoidable circumstances.**
>
> **But I want to take back the withdrawal from the Dealership.**
>
> **I am extremely sorry for the trouble and inconvenience caused.**
>
> **But I will assure you sir, that in the future we will run the outlet smoothly without giving you any problems.**
>
> **Hope you will consider my humble request and do the needful.**
> **Thanking you,**
>
> **Yours faithfully**
>
> **CC :- To The Sales Officer,**

Mysore,

For Satyanarayana Swamy Service Station
PARTNERS
//TRUE TYPED COPY//"

7. **On 21.12.2006, we find the following communication addressed by the second appellant on behalf of the IOC to the first respondent:**

"BY RPAD

December 21st, 2006

MIS. **Sri Satyanarayanaswamy Service Station**
Indian Oil Dealer
Mysore - Bantwal Road
Periyapatna - 571107.
Mysore Dist.

Dear Sir,

Sub : Withdrawal of resignation

We have for reference your letter on the subject dated 18/12/2006, withdrawing your resignation from our Dealership.

You had initially tendered your resignation on 25/09/2006. This was once again confirmed with you by the undersigned on 30/09/2006. On your confirmation, you were asked to submit a notarized resignation letter. Thereafter, you withdrew your resignation, and once again on 16.11.2006, you submitted a resignation letter duly notarized on 03/1 0/2006.

On receipt of the above, we sent you a letter by RP AD accepting your resignation. Thereafter, you visited our office on

22/11/2016 along with your father, wherein you once again upheld your decision to resign as you were presently settled at Bangalore and you could not concentrate in your RO at Periyapatna. This was despite your father's opposition to your point of view.

Based on your notarized resignation and personal confirmations, we have obtained our Management's approval for accepting your resignation. We regret to inform you that your request to withdraw the resignation cannot be considered at this stage, due to the above-mentioned reasons.

Thanking you,

Yours faithfully,
For INDIAN OIL CORPORATION LIMITED

(Samson Chacko)
Chief Divisional Retail Sales Manager

//TRUE TYPED COPY//"

8. **IOC took possession of the Petroleum Outlet on 23.12.2006. Thereafter, the new dealer came to be awarded the dealership on 28.12.2006. An appeal was carried by the first respondent before the General Manager of the IOC, Karnataka. The appeal came to be dismissed on 02.04.2007. This led to matter being referred to arbitration. The Sole Arbitrator by award dated 15.01.2009 found inter *alia* that "inasmuch as the IOC and its officers had**

communicated the acceptance of the claimant's resignation of the dealership vide their letter dated 22.11.2006, which brings the contract between both parties to an end, their rejection of the claimant's subsequent request dated 11.12.2006 for withdrawing the resignation was in accordance with law". In regard to the question as to whether the action of the first respondent in withdrawing the resignation from the dealership by letter dated 11.12.2006 was in accordance with law, it was found that acceptance of the resignation having been conveyed on 22.11.2006, the action of the first respondent in withdrawing was not in accordance with law. In regard to the issue whether the first respondent had withdrawn the notice of resignation within the time as prescribed in clause (3) of the Memorandum of Agreement, it was found as follows:

> **"Clause 3 of the Memorandum of agreement does not specifically mention a time limit for withdrawal of resignation. The notice period of 3 months mentioned in the contract is only the outer limit by which time the party who gets the notice have to make their alternate arrangements. At any time during the notice period, the recipient party can convey**

acceptance thereby bringing the contract between the parties to an end. Moreover, Section 5 of the Indian Contracts Act states that a proposal may be revoked at any time before the communication of it's acceptance, but not afterwards. Since the Respondents have communicated their acceptance of the resignation of the Claimant vide their letter dated 22.11.2006, the Claimant's subsequent letter dated 11.12.2006 requesting for withdrawing the resignation letter is not in accordance with law. Hence the issue as to whether the Claimants have withdrawn their resignation within the time limit has no relevance."

(Emphasis supplied)

9. .**The arbitrator further found that the Letter of Intent being issued in favour of the new dealer was not flawed. Answering all other issues which need not detain us against the first respondent, the award was passed. The first respondent knocked at the doors of the Principal and Sessions Judge, Mysore under Section 34 of Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the Act"). The arbitration suit under Section 34 of the Act was dismissed.**

10. **By the impugned order in an appeal carried by the first respondent, the High Court has set aside the**

award as also the order passed by the court under Section 34. Still further, the High Court directed that the first respondent shall be restored the dealership within three months from the date of the receipt of the certified copy of the judgment failing which the first respondent was held entitled to seek execution of the judgment and also seek necessary damages from IOC and its officers.

11. It is this judgment which has led to the filing of the two appeals. Apart from the IOC and its officers, impugning the order of the High Court the new dealer, namely, M.P. Parvati has filed the other appeal.

12. We heard Shri Vikram Mehta, learned counsel appearing on behalf of the appeal filed by the IOC. We also heard Shri Devadatt Kamath, learned senior counsel appearing on behalf of the new Dealer. Next, we heard Shri Shailash Madiyal, learned counsel on behalf of the first respondent.

13. Shri Vikram Mehta, learned counsel for the IOC would submit that the High Court has overstepped the well settled limits set by a catena of decisions in

the matter of overturning an arbitration award. He took us to the correspondence and also the conduct of the first respondent to contend that the first respondent wanted to terminate the contract as is self-evident by sending the notice dated 25.09.2006. Upon being told that the communication must be notarised, it was got notarised on 03.10.2006 and it was received by the second appellant on 16.11.2006. The same was accepted on 18.11.2006. The Arbitrator has entered findings on the above lines. It is a plausible view. The District Judge in proceedings under Section 34 had found the award invulnerable. Therefore, even on a different view being possible, the High Court acted illegally in interfering with the award. He would, in fact, submit that the view taken by the arbitrator was in fact, the right view. The expression of words conveying the best wishes for the partners of the first respondent apart from the penultimate paragraph in letter 18.11.2006 is harped upon. The High Court, it is pointed out, has proceeded to apply principles of law which may not be apposite in the context. He would submit that the

findings of the arbitrator cannot certainly be described as perverse. He would also submit that the High Court has clearly acted illegally in not merely setting aside the award but even proceeding to modify the award which is wholly beyond its power. In other words, he would point out the direction by the High Court to restore the dealership to the first respondent as being palpably illegal.

14. Shri Devadatt Kamat, learned senior counsel appearing on behalf of the new dealer would submit that the conduct and correspondence resorted to by the first respondent would reveal that it was carefully thought out. In other words, it is not a case where there was any coercion or other vitiating element which drove the partners to invoke clause (3). He would refer to the judgment of this Court in *Ssangyong Engineering & Construction Company Limited v. National Highway Authority of India (NHAI)*[1], Therein, he emphasised the following statement:

[1] **(2019) 15 SCC 131**

"40. The change made in Section 28(3) by the Amendment Act really follows what is stated in paras 42.3 to 45 in Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , namely, that the construction of the terms of a contract is primarily for an arbitrator to decide, unless the arbitrator construes the contract in a manner that no fair-minded or reasonable person would; in short, that the arbitrator's view is not even a possible view to take. Also, if the arbitrator wanders outside the contract and deals with matters not allotted to him, he commits an error of jurisdiction. This ground of challenge will now fall within the new ground added under Section 34(2-A)."

15. Next, he drew our attention to the judgment of this Court in *Punjab State Civil Supplies Corporation Ltd. and Another Versus Ramesh Kumar and Company and Others*[2].

"12. In the present case, the High Court was required to determine as to whether the District Judge had acted contrary to the provisions of Section 34 of the 1996 Act in rejecting the challenge to the arbitral award. Apart from its failure to do so, the High Court went one step further while reversing the judgment of the District Judge in decreeing the claim in its entirety. This exercise was clearly impermissible. The arbitrator was entitled to draw relevant findings of fact on the basis of the evidence which was adduced by the parties. This was exactly what was done in the arbitral award.

[2] **2021 SCC ONLINE SC 1056**

> **The award of the arbitrator was challenged unsuccessfully by the respondents under Section 34 of the 1996 Act. In this backdrop, there was no basis in law for the High Court to interfere with the judgment of the District Judge and, as we have noted earlier, to even go a step further by decreeing the claim."**

16. **He also submitted that the purport of clause (3) of the agreement was to give a benefit to the party to whom the communication is sent terminating the contract. A construction of the contract by the Arbitrator is not open to interference on the score that the court finds the same incorrect. Yet this is precisely what has been done in the impugned judgment. He would point out that, in fact, the new dealer is the wife of a Martyr being the widow of a slain soldier.**

17. **Shri Shailash Madiyal, learned counsel sought to counter the appellants in the following manner: He would submit that actually, clause (3) of the agreement in question clearly contemplated that the dealership was to remain sacrosanct for a period of 15 years. This is subject only to an earlier termination as contemplated in clause (56). Clause**

(56), it is pointed out, provided for termination by IOC on certain acts and omissions by the dealer. He further contended that it is only after the expiry of first 15 years that the parties contemplated extension of the contract by 5 years at a time. The total period of the contract is 15 years to begin with and, by virtue of subsequent extension of 5 years each, could go upto 30 years. However, the facility of termination of the dealership by giving a three months' notice, in writing, was impermissible during the first 15 years. He would submit that such an interpretation is warranted having regard to the fact that a person who would have invested a huge sum would lose the dealership by the IOC being endowed with the power to terminate the contract by merely giving a notice of three months' duration. Since the notice was, in this case, admittedly sent within the first 15 years, clause (3) was inapplicable, and there was no termination in law. The learned counsel did agree that such a contention was never raised before the arbitrator, the District Judge or the High Court. Next, he contended that the alleged

acceptance dated 28.11.2006 was not unambiguous. He supported the view taken by the High Court. He pointed out that before the actual acceptance which, he points out, took place only on 07.12.2006 by the Management, the first respondent had withdrawn the earlier communication. He would submit that in the facts of the case there was no error committed by the High Court in interfering with the Award. In regard to the complaint of the appellants that the High Court has exceeded its authority acting under Section 36 of the Act by modifying the Award, he very fairly submits that there may be merit in the said contention having regard to the view taken by this Court.

ANALYSIS

18. The controversy revolves around clause (3) which we have set out earlier. We must proceed in the matter on the basis that we cannot permit the first respondent to contend that termination of the dealership cannot be brought about by giving a three months' notice during the first 15 years of the

dealership. Such an interpretation was not placed for the consideration of the Arbitrator. It is not even raised before the District Court or the High court. The first respondent is calling upon this Court in a case arising under the Act to place a wholly novel interpretation. It is not as if the contention canvassed is the only view possible. In fact, the conduct of the first respondent is premised on the interpretation which leaves it open to the parties to terminate the contract by giving three months' notice even within the first 15 years of the dealership.

19. On a perusal of clause (3), in fact, it occurred to this Court that here is a term in a contract which expressly does not require any acceptance of the other party for the premature termination of the contract by giving a notice of three months. We would break down the clause as meaning that it contemplated determination of the agreement by either party (words lifted from the contract as such) by giving three months notice to the other party with the intention to terminate the agreement.

Thereafter, the clause provides that upon the expiration of such notice, the agreement and the licence granted would stand cancelled and revoked. There are no words even faintly suggesting acceptance of a notice of intention to terminate the agreement as being indispensable for the determination of the agreement. The ball is set rolling by the issuance of the notice and the process appears to successfully culminate in the agreement and the licence granted under the agreement being cancelled or revoked.

20. Though such a view appears to be the correct construction of the agreement, Shri Shailash Madiyal the learned counsel, appearing for the first respondent would point out that IOC and what is more, even the arbitrator, and therefore the District Court and the High court have all proceeded on the basis that acceptance of the notice of termination alone suffices. In view of the fact that this appears to be the case, we would consider the matter on the basis that acceptance is necessary.

21. There is no dispute that the first respondent addressed communication dated 25.09.2006. It is also

indisputable that the officers of the IOC insisted that the first respondent must notarise the notice. A meeting in this regard did take place. The notice came to be notarised and what is more, received on 16.11.2006. A perusal of the notice dated 25.09.2006 clearly indicates that the first respondent has clearly indicated that it gave the version that they have shifted to Bangalore for their childrens education, and what is more, therefore, they were not able to look after the dealership. They wished to "withdraw from the dealership and appoint new R.O. dealers before three months as per our agreement Dt: 13th Oct. 2003." In other words, there cannot be even a shred of doubt that the first respondent indeed invoked clause (3). The words used may appear to be inelegant. However, the conduct as noticed leaves us in no doubt, and what is more, even the first respondent does not have a case that the action was not traceable to the provisions of clause (3). On the expiry of three months, the inexorable consequences provided in clause (3) would have ensued. However, since we are proceeding on the

basis that IOC must have signified its assent for the notice to bear fruit, on 18.11.2006, the second appellant in the appeal filed by IOC referred to the notarised letter dated 03.10.2006 which was received on 16.11.2006. IOC has taken note of the intention of the first respondent to resign from the dealership. Thereafter, we may note that the first respondent was requested to continue operation till arrangements were made. Lastly, the letter ends with expression of gratitude for the association of the first respondent with the IOC and wishing both the partners the very best in their future endeavours. From the terms and the tone of the letter and the circumstances, the arbitrator who is the chosen judge of the facts and the merits concluded that there was acceptance of the notice. It could be open to debate whether there was sufficient articulation of the acceptance. Words such as "we have taken note of your intention to resign from our dealership" could perhaps have been supplanted with the benefit of hindsight with different words. But the question which arises is when the letter is read in the

context of the facts as a whole, particularly, in the light of the jurisdiction of the Court to interfere with a finding of the arbitrator within his jurisdiction, we are of the view that the High Court has palpably erred. Clause (3) permits either party to bring about a premature termination of the contract. By giving a notice of three months, if the noticee is the IOC, IOC is enabled to make arrangements so that essential services provided by a dealer do not suffer abrupt disruption. In other words, alternate arrangements could be made. Likewise, a termination by IOC would put the dealer on alert and it can appropriately take steps towards arranging its affairs in a fair manner.

22. Proceeding, therefore, on the footing that in the above sense a premature termination of the agreement would need acceptance, we are unable to find that the view taken by the arbitrator in the facts, can be characterised as being perverse. It is undoubtedly a plausible view. It closes the door for the court to intervene. The finding of the arbitrator cannot be described as one betraying "a patent illegality".

23. **The High Court has proceeded by adverting to draw a distinction between "termination of the agreement" and "resignation from dealership". The High Court has also proceeded on the basis that since the agreement does not prohibit the first respondent from withdrawing the case, the case has to be tested on the anvil of the Contract Act. A merit review was undertaken to find that the offer of the first respondent to 'resign' was not accepted by letter dated 22.11.2006.**

24. **It may be true that the clause in question did not provide for resignation from dealership. Indeed, it provides only for termination of the agreement. What the first respondent has indicated in letter dated 25.09.2006, the contents of which have been reiterated in the notarised version dated 03.10.2006 and received on 16.11.2006 by the second appellant, is that the first respondent was 'withdrawing' from the dealership. We are unable to support the High Court on the basis that the clause in question did not contemplate resignation. In fact, though not in all cases, a resignation may assume effect only upon**

acceptance by the employer. What, on the other hand, is contemplated in clause (3) is a notice of three months terminating the contract by either party.

25. **Shri Shailash Madiyal pointed out that acceptance by the Management of IOC actually took place on 07.12.2006 and not on 22.11.2006. It is true that in the pleading (before the District Court in proceedings under Section 34), it is inter alia stated as follows:-**

> **"4. Subsequent to the submission of the resignation the defendants went ahead with the termination of the dealership on the receipt of the notorized letter from the claimants, which was approved by the Management of IOC on 07.12.06 and had to take action for making alternative arrangements to operate the retail outlet for protecting the commercial interest of the Corporation and also to keep in mind of the supply of petroleum product to the public at large."**
>
> **"5. The dealer have requested for withdrawal of dealership on 25.09.2006. As stated in the earlier para based on the notorized letter reinforcing what is stated in letter dated 25.09.2006. This defendant has obtained management approval for termination of the dealership on 07.12.2006 and have also replied through the letter dated 21.12.06 mentioning that the dealers request for withdrawal cannot be considered. There is no obligation on the part of Indian Oil corporation as per**

clause 3 of the dealership agreement to reject the letter of resignation submitted by the plaintiffs."

However, in the light of communication dated 18.11.2006, essentially recognizing and in substance conveying acceptance or approval; first respondent cannot draw strength from the same. IOC has a case that it was for taking the matter forward in the matter of re-awarding the dealership that the decision dated 07.12.2006 was made. More importantly, the communication purporting to take back the withdrawal was given by first respondent on 11.12.2006 which is after 07.12.2006.

26. Proceeding on the basis that acceptance is necessary, we are of the view that the High Court in a proceeding under Section 37 of the Act acted illegally in interfering with the finding of the Arbitrator and what is more, a finding found acceptable to the District Judge under Section 34 of the Act that there was acceptance vide letter dated 18.11.2006.

27. **The High Court also erred in proceeding to order restoration of the dealership to the first respondent after setting aside the award and going further by leaving it open to the first respondent to claim damages. It is beyond the pale of any doubt that the Court cannot, after setting aside the award, proceed to grant further relief by modifying the award. It must leave the parties to work out their remedies in a given case even where it justifiably interferes with the award [See in this behalf *Project Director, National Highways No. 45 E and 220 National Highways Authority of India v. M. Hakeem and another*[3]].**

28. **The appeals are allowed. The impugned judgement will stand set aside and the award restored. Parties are to bear their respective costs.**

…….J.
[K.M. JOSEPH]

……J.
[B.V NAGARATHNA]

NEW DELHI;
DATED: MAY 09, 2023.

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[3] **(2021) 9 SCC 1**