



2026:AHC-LKO:35076-DB

Reserved On : 16.02.2026

Delivered On : 15.05.2026

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

**APPEAL UNDER SECTION 37 OF ARBITRATION AND
CONCILIATION ACT 1996 No. - 41 of 2023**

Indian Oil Corporation Ltd. through Chief Manager (Retail Sales)
.....Appellant(s)

Versus

M/s Kumar Filling Station through Prop. Balendra Singh
.....Respondent(s)

Counsel for Appellant(s) : Surya Mani Singh Royekwar
Counsel for Respondent(s) : Adnan Ahmad

Chief Justice's Court

**HON'BLE ARUN BHANSALI, CHIEF JUSTICE
HON'BLE JASPREET SINGH, J.**

(Per : Arun Bhansali, CJ)

1. This appeal under Section 37 of the Arbitration and Conciliation Act, 1996 ('Act') is directed against judgment and order dated 23.02.2023, passed by Commercial Court No. 2, Lucknow whereby the application filed by the appellants under Section 34 of the Act for setting aside the arbitral award dated 27.01.2020 has been dismissed.

2. The respondent firm was appointed as a dealer of retail outlet at Gehra Street, District-Unnao, U.P. vide Petrol/HSD Pump Dealer Agreement dated 27.07.2008, executed between the Indian Oil Corporation Limited ('OMC') and the respondent firm. Clause 3 of the Dealer Agreement provided that the same would remain in force for a period of five years from 07.07.2008 and would continue

thereafter for successive periods of one year each until determined by either party by giving three months' notice in writing and upon expiration of such notice the Agreement shall stand cancelled and revoked.

3. An investigation was conducted at the retail outlet of the respondent firm on 09.05.2017 by a joint team consisting of Sub Divisional Magistrate, District Supply Officer, Supply Inspector, Inspector, Weights and Measures Department and officers of OMC along with technician of the dispensing unit manufacturing company. It was alleged that during the inspection, a pulsar card from the dispensing unit was found tampered. The card was sealed and forwarded for lab testing. The disputed nozzle dispensing unit was also sealed.

4. A notice was sent to the respondent to witness opening of the sealed pulsar unit at MIDCO, however, the respondent firm did not appear. In the meanwhile, the Legal Metrology Department also filed a complaint against the respondent firm, wherein the respondent firm admitted its guilt and deposited a fine of Rs. 30,000/-. Subsequent thereto, the appellant issued a show cause notice to the respondent firm qua the irregularities found at the retail outlet in question during the investigation along with test report of MIDCO, wherein it was indicated that 'pulsar assembly sealed from the retail outlet in question is not found in conformance with MIDCO standard design as per visual inspection test and delivery test'.

5. A reply was submitted by the respondent firm. In the meanwhile the respondent firm filed application under Section 11(6) of the Act praying for appointment of Arbitrator.

6. This Court, by its order dated 31.02.2019, appointed a retired Judge of this Court as an Arbitrator.

7. The appellant terminated the dealership by order dated 09.04.2019, which was challenged in writ petition, which was disposed of on account of pendency of arbitration proceedings.

8. Before the Arbitrator, claim was filed seeking setting aside of order of termination dated 09.04.2019, restoration of license and supply at the retail outlet and an award to pay a sum of Rs. 17,47,452/- for loss of profit from 09.05.2017, the date of inspection and for the loss of profit from 09.04.2019, the date of termination till the enforcement of award along with interest. Before the Arbitrator, reply and rejoinder were filed.

9. The Arbitrator framed issues, evidence was led by the parties, whereafter award dated 27.01.2020 was passed partly allowing the claim. The Arbitrator set aside the order dated 09.04.2019 terminating the Dealership Agreement and directed the appellant to restore the supply of petrol/diesel forthwith and awarded cost of Rs. 50,000/-. Feeling aggrieved, an application under Section 34 of the Act was filed by the appellant.

10. The Commercial Court, after hearing the parties, came to the conclusion that the appellant failed to prove that the pulsar card, which was seized and sealed from the retail outlet was tampered with, as such, the termination order, based on report of MIDCO, was rightly set aside by the Arbitral Tribunal and the respondent was entitled to restoration of the supply and consequently, dismissed the application. Feeling aggrieved, the present appeal has been filed.

11. Learned counsel for the appellant made vehement submissions that the award passed by the Arbitrator is patently illegal and against the fundamental policy of India inasmuch as the Arbitrator has failed to act in terms of the contract and in ignorance of Clause 3 of the Dealership Agreement while granting relief of restoration.

12. Submissions were made that the award is against the substantive law of India, i.e., Specific Relief Act, Indian Contract Act as well as the law laid down by Hon'ble Supreme Court.

13. It was submitted that the Dealership Agreement is determinable in nature and therefore, the same could not be enforced. Reliance was placed on judgment in **Indian Oil Corporation Limited Vs. Amritsar Gas Service and other : (1991) 1 SCC 533**. Further submissions were

made that the finding of the Arbitral Tribunal in respect of the fact that the pulsar unit was not tampered with had no substance inasmuch as the finding has been recorded ignoring the material available before it.

14. Learned counsel emphasized that the very fact that the respondent firm got compounded the proceedings under the Legal Metrology Act, necessarily means that it admitted the guilt and as such, the finding of the Arbitrator in the context cannot be sustained.

15. Learned counsel attempted to take us through the material placed on record to question the validity of the finding recorded by the Arbitrator. It was vehemently submitted that irrespective of the finding on merits, the award restoring the dealership could not have been passed, which is contrary to the law laid down in this regard and therefore, the award as well as the judgment passed by the Commercial Court deserve to be quashed and set aside. Reliance was placed on judgment in the case of **Amritsar Gas Service (supra)** and **E.Venkatakrishna Vs. Indian Oil Corporation Limited and another : (2000) 7 SCC 764**.

16. Counsel for the respondent vehemently opposed the submissions. It was submitted that the challenge laid to the findings recorded by the Arbitral Tribunal, as upheld by the Commercial Court, is not maintainable in view of the limited scope under Section 34 and 37 of the Act and therefore, the appeal deserves dismissal.

17. Submissions were made that once the Tribunal has recorded a categorical finding that the action of holding the pulsar unit as tampered cannot be sustained, the consequences including the setting aside of termination and restoration was bound to follow and therefore, the award impugned does not call for any interference. Submissions were made that against termination, writ petition was filed, when the same was decided disposing of the writ petition with the direction that the grievances, which have been raised in the writ petition, may be raised before the learned Arbitrator in pending arbitration proceedings under Section 9 of the Act and therefore, the Arbitral Tribunal had the jurisdiction to restore dealership and consequently, the appeal deserves dismissal.

18. We have considered the submissions made and have perused the material available on record.

19. As noticed hereinbefore, the dispute arose on account of the termination of dealership, the claim was filed before the Arbitral Tribunal, wherein, based on pleading of the parties, the Tribunal framed four issues, which read as under :

“(1) Whether the order dated 9.4.2019, passed by the respondents terminating the RO dealership and dealership agreement of the claimant suffers from any infirmity?

(2) Whether the claimant is entitled for restoration of supply in case the termination order is found to be illegal?

(3) Whether the claimant is entitled for damages/compensation as claimed by it in the claim petition?

(4) To what relief, if any, is the claimant entitled for?”

20. The Tribunal, after evidence was led and parties were heard, came to the conclusion on issue No. 1 that the termination of Dealership Agreement was arbitrary, illegal, without application of mind and in violation of fair play and justice and the claimant was entitled for restoration of supply. On the aspect of compensation, as sought on account of the sealing of one nozzle and thereafter, termination of dealership for absence of cogent material and satisfactory assessment of loss occasioned, the Tribunal indicated that it was not in a position to workout and assess their actual loss and consequently, decided the issue against the respondent-claimant and passed the following award :

“AWARD

Thus, in the ultimate analysis the claim is allowed with costs. The order dated 9.4.2019 terminating the retail outlet dealership of the claimant and the dealership agreement is hereby set-aside. The supply of petrol/diesel to the claimant’s outlet shall be restored forthwith.

The cost awarded is quantified as Rs.50,000/- (Fifty Thousand) and the same shall be paid within six weeks from the date of award failing which it will carry interest at the rate of 9% per annum till paid.”

21. So far as the challenge laid by the appellant to the finding on issue pertaining to the termination, based on the pulsar unit of one dispensing unit having not been tampered with is concerned, the Arbitral Tribunal, after taking into consideration the various aspects and test report and other deficiencies, came to a categorical conclusion that the termination

was arbitrary, illegal and without application of mind and in violation of fair play and justice.

22. The Commercial Court, after reappreciating the material, upheld the said finding.

23. Going by the limited jurisdiction conferred under Section 37 of the Act, the appellants have failed to make out any case of patent illegality in the finding recorded by the Arbitral Tribunal on the said aspect so as to require interference by this Court.

24. So far as the power of the Arbitral Tribunal to order restoration of the dealership is concerned, we find that though issue No. 2 was specifically framed and judgment in the case of **Amritsar Gas Service (supra)** was cited and has been noted in the award impugned, the Arbitral Tribunal failed to discuss anything under Issue No. 2 rather there is no mention even of issue No. 2 in course of determination of issues by the Tribunal, however, after decision on issue No. 1, it has been indicated as under :

“In view of the findings arrived at under Issue No. 1, the claimant is entitled for restoration of supply. The Issue is decided accordingly.”

25. The Arbitral Tribunal, apparently failed to take into consideration the plea and law with regard to the power to order restoration. The Commercial Court, in a wholly cursory manner, came to the conclusion that the judgment in the case of **Amritsar Gas Service (supra)** related to Arbitration Act, 1940 and in view of Section 5 of the Act, the judicial control of Commercial disputes are no longer in the exclusive jurisdiction of the courts. However, nothing further was indicated or decided on the said aspect and the application was dismissed.

26. Clause 3 of the Dealer Agreement reads as under :

“3. This agreement shall remain in force for five years from day of 200 by giving three months’s notice in writing to the outhur of its intention to terminate the agreement without prejudice to the right of either party against the order in respect of any matter or thing antecedent to such termination provided that nothing contained in this clause shall prejudice the rights of the corporation to terminate the agreement earlier on the happening of the events mentioned in clause 56 of this agreement.”

27. A perusal of the above would reveal that the same provides for termination of Agreement by giving three months’ notice in writing.

28. Hon'ble Supreme Court, in the case of **Amritsar Gas Service (supra)**, while dealing with the aspect of grant of relief even in cases where termination was found to be not legal, referring to the provisions of Section 14 of the Specific Relief Act, came to the following conclusion:

“12. The arbitrator recorded finding on Issue No. 1 that termination of distributorship by the appellant-Corporation was not validly made under Clause 27. Thereafter, he proceeded to record the finding on Issue No. 2 relating to grant of relief and held that the plaintiff-respondent 1 was entitled to compensation flowing from the breach of contract till the breach was remedied by restoration of distributorship. Restoration of distributorship was granted in view of the peculiar facts of the case on the basis of which it was treated to be an exceptional case for the reasons given. The reasons given state that the Distributorship Agreement was for an indefinite period till terminated in accordance with the terms of the agreement and, therefore, the plaintiff-respondent 1 was entitled to continuance of the distributorship till it was terminated in accordance with the agreed terms. The award further says as under:

“This award will, however, not fetter the right of the defendant Corporation to terminate the distributorship of the plaintiff in accordance with the terms of the agreement dated April 1, 1976, if and when an occasion arises.”

This finding read along with the reasons given in the award clearly accepts that the distributorship could be terminated in accordance with the terms of the Agreement dated April 1, 1976, which contains the aforesaid clauses 27 and 28. Having said so in the award itself, it is obvious that the arbitrator held the distributorship to be revokable in accordance with Clauses 27 and 28 of the Agreement. It is in this sense that the award describes the Distributorship Agreement as one for an indefinite period, that is, till terminated in accordance with Clauses 27 and 28. The finding in the award being that the Distributorship Agreement was revokable and the same being admittedly 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'. In the present case, it is not necessary to refer to the other clauses of sub-section (1) of Section 14, which also may be attracted in the present case since Clause (c) clearly applies on the finding read with the reasons given in the award itself that the contract by its nature is determinable. This being so 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 in 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, therefore, be sustained.

... ..

14. The question now is of the relief which could be granted by the arbitrator on its finding that termination of the distributorship was not validly made under Clause 27 of the agreement. No doubt, the notice of

termination of distributorship dated March 11, 1983 specified the several acts of the distributor on which the termination was based and there were complaints to that effect made against the distributor which had the effect of prejudicing the reputation of the appellant-Corporation; and such acts would permit exercise of the right of termination of distributorship under clause 27. However, the arbitrator having held that clause 27 was not available to the appellant-Corporation, the question of grant of relief on that finding has to proceed on that basis. In such a situation, the 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. The plaintiff-respondent 1 is, therefore, entitled to compensation being the loss of earnings for the notice period of thirty days instead of restoration of the distributorship. The award has, therefore, to be modified accordingly. The compensation for thirty days notice period from March 11, 1983 is to be calculated on the basis of earnings during that period disclosed from the records of the Indian Oil Corporation Ltd."

29. Similar observations have been made in the case of **E.Venkatakrishna (supra)** and in fact is a complete answer to the plea raised by the respondent based on the fact that in the writ petition filed by the respondent, the observations were made that all the issues could be raised before the Arbitrator and therefore, the Arbitrator had the jurisdiction to order restoration. The relevant part of the judgment relating to the above aspect reads as under:

"6. In our view, the Division Bench was right. All that the Arbitrator could do, if he found that the termination of the distributorship was unlawful, was to award damages, as any civil court would have done in a suit.

7. We find it difficult to accept the contention on behalf of the appellant that what was referred to the arbitrator was the issue of restoration of distributorship in the sense that the arbitrator could direct, upon holding that the termination was unlawful, that the distributorship should be restored. We think that the reference itself contemplated consequential damages for wrongful termination. In any event and assuming that there is any error in so reading the reference, it is difficult to hold that the arbitrator was thereby vested with jurisdiction to award restoration.

8. It was contended that the appellant had invoked the arbitration clause only because of the order of the learned Single Judge of the Karnataka High Court on the writ petition that he had filed and that that order contemplated that the Arbitrator, acting on the arbitration clause in the agreement, would have the authority to award restoration. In the first place, we do not find any such observation in the judgment of the learned Single Judge. In any event, such observation, even if it were there, would not vest the arbitrator with a jurisdiction that he did not otherwise possess in law."

30. In view of the above fact situation, the award passed by the Arbitral Tribunal as upheld by the Commercial Court is *ex-facie* and patently illegal being against the provisions of the Specific Relief Act as well as the law laid down by Hon'ble Supreme Court, besides the fact that the

Arbitral Tribunal failed to deal with the said aspect and therefore, the award, as passed by the Tribunal, ordering for restoration of the dealership/supply, cannot be sustained.

31. Consequently, the appeal is allowed. The award dated 27.01.2020 passed by Arbitral Tribunal and the order dated 23.02.2023 passed by Commercial Court upholding the same are quashed and set aside. Parties would be free to take steps in accordance with law, if so advised.

32. No order as to costs.

(Jaspreet Singh,J.) (Arun Bhansali,CJ.)

May 15, 2026
Mukesh Pal