2025:CHC-OS:271

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

BEFORE:
The Hon'ble JUSTICE RAVI KRISHAN KAPUR

AP-COM/160/2024

INDIAN OIL CORPORATION LTD.
VS
TAPAS KUMAR DAS

For the petitioner	: Mr. Jishnu Saha, Senior Advocate Mr. Manwendra Singh Yadav, Advocate Ms. Saswati Chatterjee, Advocate Mrs. Satabdi Naskar (Kundu), Adv.
For the respondent	: Mr. Debjyoti Datta, Senior Advocate Mr. Subhasis Bandopadhyay, Advocate
Heard on	: 11.12.2025
Judgment on	: 23.12.2025

Ravi Krishan Kapur, J.:

1. This is an application under section 34 of the Arbitration and Conciliation Act 1996 challenging an award dated 30 July, 2018. By the award, in addition to damages, the respondent has been directed to operate and run a retail outlet and in effect, been granted specific performance of the dealership agreement dated 8 March 2004.
2. Briefly, under an agreement dated 8 March, 2004 (the dealership agreement), the petitioner had appointed the respondent as a distributor to run a retail outlet at village Kanchanpur, Jalpai, NH-41 in the District of Purba Medinipur for operating a petrol pump under the name and style of Mahisadal Filling Station.

3. The dealership agreement was governed by the Marketing Discipline Guidelines, 2005 which relates to oil companies. Subsequently, on 9 February 2011, the respondent's outlet was inspected by a joint industry team. On being tested, the samples of the products being sold at the outlet failed to meet the prescribed specifications. The finding of such inspection was recorded in an inspection report dated 9 February, 2011. By a communication dated 24 February, 2011, the respondent was directed to show cause as to why action should not be taken against him in terms of the Marketing Discipline Guidelines, 2005. Pursuant to the Guidelines, the petitioner issued a show cause notice dated 18 July, 2011 calling upon the respondent to show cause as to why the dealership agreement should not be terminated for violation of essential terms and conditions, malpractices and criminal acts stated therein with specific reference to tampering of seals of the sample containers. The respondent replied to the said notice and ultimately invoked the arbitration clause referring the disputes to arbitration.

4. This is the second round of arbitration proceedings between the parties. In an earlier round, the award passed by the Arbitrator dated 30 August, 2012 was set aside under section 34 of the Act. Thereafter, in an application filed under section 11 of the Act, an order was passed appointing a Sole Arbitrator. Before such Arbitrator, the parties filed their pleadings and adduced their respective evidence which culminated in the impugned award.

5. On behalf of the petitioner, it is contended that the impugned award has been passed in violation of section 34 read with section 28 of the Act. The

award has been passed on the touchstone of constitutional principles whereas the parties had entered into a purely contractual relationship. There was no relevance of Articles 12, 14 or 16 or any other provision of the Constitution. As such, the Arbitrator erred in taking into consideration issues of public law which were not germane in the facts of this case.

6. The next contention is directed towards the relief of restoration of the contract in awarding specific performance which is in violation of the provisions of sections 14 and 16 of the Specific Relief Act, 1963. This was also contrary to the law laid down in *Indian Oil Corporation vs. Amritsar Gas Services and Ors. 1991(1) SCC 533* and a catena of decisions. The agreement between the parties being expressly terminable the only relief which could have been granted on the finding of breach of contract was one for damages. In such circumstances, the direction for restoration of distributorship was contrary to well-established principles. Moreover, damages have been awarded without any evidence and purely on the submissions made on behalf of the respondent. In particular, the entire claim for damages of Rs.50 lakhs which has been awarded is unreasoned and without any basis whatsoever. In such circumstances, the award is liable to be set aside under section 34(2)(b)(ii) and also on the ground of patent illegality under section 34(2A) of the Act. In support of such contentions, the petitioner relies on the decisions in *Indian Oil Corpn. Ltd. v. Amritsar Gas Service (1991) 1 SCC 533, E. Venkatakrishna v. Indian Oil Corpn. (2000)7 SCC 764, Indian Oil Corporation Limited & Another – Vs- M/s. Bhagawan Balasai Enterprises and Another, 2017 SCC Online Mad 37266, Ssangyong Engg. & Construction Co. Ltd. v. NHAI (2019) 15 SCC*

131, Delhi Airport Metro Express Pvt Limited Vs. DMRC Limited (2022) 1 SCC 131, Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd. (2024) 2 SCC 375 and *OPG Power Generation Pvt Limited Vs. Enexio Power Cooling Solutions India Pvt Ltd. (2025) 2 SCC 417.*

7. On behalf of the respondent it is submitted that, a mere error of law in terms of the proviso to section 34(2A) of the Act is not a ground which warrants setting aside of the award. The claim for damages in the award has been adequately reasoned and deserves no interference. In such circumstances, the application is liable to be dismissed. Insofar as the relief of specific performance of the agreement has been granted by the Sole Arbitrator, the same is legally tenable in view of the decisions in *Allied Motros vs. Bharat Petroleum 2012 (2) SCC 1, Harbanslal Sahnia vs. Indian Oil Corpn (2023) 2 SCC 107, and Indian Oil Corporation Ltd. vs. Nilofer Siddiqui (2015) 16 SCC 125.*

8. At the outset, it was fairly conceded on behalf of the petitioner that they do not wish to press the jurisdictional objection *vis-a-vis* the Marketing Discipline Guidelines, 2005.

9. The primary contention on behalf of the petitioner is that in directing restoration of dealership to the respondent, the Arbitrator disregarded both the terms of the dealership agreement and the established law on the subject. Clause 3 of the dealership agreement provided as follows:

> *"This Agreement shall remain in force for five years from 8 day of March 2004 and continue thereafter for successive periods of one year each until determined by either party by giving three months' notice in writing to the other of its intention to terminate 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 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 prejudice the rights of the Corporation to terminate this agreement earlier on the happening of the events mentioned in clause 56 of this Agreement".

10. On a reading of the above clause, the dealership agreement was expressly determinable at the option of the parties even without any event of default on their part. In this context, sections 14 and 16 of the Specific Relief Act, 1963 provides as follows:

> *14. Contracts not specifically enforceable.—The following contracts cannot be specifically enforced, namely:— (a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20; (b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise; (c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and (d) a contract which is in its nature determinable.*
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> *16. Personal bars to relief.—Specific performance of a contract cannot be enforced in favour of a person—*
> *[(a) who has obtained substituted performance of contract under section 20; or]*
> *(b) who has become incapable of performing, or violates any essential term of, the contract that on his part remains to be performed, or acts in fraud of the contract, or wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or*
> *(c) 3 [who fails to prove] that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.*
> *Explanation.—For the purposes of clause (c),— (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court; (ii) the plaintiff 4 [must prove] performance of, or readiness and willingness to perform, the contract according to its true construction.*

11. In view of a conjoint reading of the above sections, a contract which is determinable by nature cannot be specifically enforced. In, *Indian Oil Corporation Limited vs. Amritsar Gas Service and Ors. (1991) 1 SCC 533* it has been held as follows:

> *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 30 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 30 days instead of restoration of the distributorship. The award has, therefore, to be modified accordingly. The compensation for 30 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.*

Similar views are to be found in the decisions in *E. Venkatakrishna vs. The Indian Oil Corporation Limited & Anr. (2000) 7 SCC 764 para 5, 6 & 7, Oil and Natural Gas Corporation Ltd. vs. Streamline Shipping Company Private Limited AIR 2002 Bombay 420 para 10; Indian Oil Corporation Limited and Anr. vs. M/s. Bhagawan Bala Sai Enterprises, (2018) MLJ 275 and Abp Network Private Limited vs. Malika Malhotra (2021) SCC OnLine Del.4733 para 41*. In view of the above settled position of law, the direction in the award that the distribution agreement be specifically enforced despite the termination clause in the dealership agreement is in disregard of both the terms of the contract and the established precedent law on the subject. In this context, the decisions in the case of *Allied Motor vs. Bharat Petroleum (2012) 2 SCC 1; Harbanslal Sahania vs. Indian Oil (2003) 2 SCC 107; and Nilofer Siddique vs. Indian Oil (2015) 16 SCC 125* cited by the respondent are distinguishable and inapposite. Each of those decisions was passed in petitions filed under Article 226 of the Constitution of India and in the peculiar facts of each case. A contravention of the substantive

law of India would result in the death knell of an arbitral award. This must be understood in the sense that such illegality must go to the root of the matter and cannot be of a trivial nature. [*Associate Builders vs. Delhi Development Authority (2015) 3 SCC 49*].

12. Secondly, in passing the impugned award the Arbitrator has embarked on a discussion on how the respondent Corporation is a State within the meaning of Article 12 of the Constitution of India and all their actions must be free from arbitrariness and fair. In going down this road, the Sole Arbitrator has painfully dwelled on the scope and ambit of Articles 12, 14, 16 and 19 of the Constitution and held that the action of the petitioner infringed the constitutional rights of the respondent both under Article 19 of the Constitution and on the ground of natural justice. The disputes between the parties were purely contractual in nature and had arisen out of a private dealership agreement. In this context, the Arbitrator has held that *"in the instant case suspension and termination orders have been made as a penal action and on an allegation of adulteration which attaches stigma to the respondent who carries on his business as a petroleum dealer and has right to do so under Article 19 of the Constitution".* The parties were dealing at arm's length and had equal bargaining power. This was a pure and simple commercial arrangement voluntarily undertaken between the parties and governed by contract. In such circumstances, there was no scope to enter into the arena of infringement of constitutional rights and the approach followed by the Arbitrator vitiates the entire award and can only be described as patently illegal. In *Delhi Airport Metro Express Private Limited vs. Delhi Metro Rail Corporation Limited (2022 1 SC 131* it has been held as follows:

> *29. Patent illegality should be illegality which goes to the root of the matter. In other words, every error of law committed by the Arbitral Tribunal would not fall within the expression "patent illegality". Likewise, erroneous application of law cannot be categorised as patent illegality. In addition, contravention of law not linked to public policy or public interest is beyond the scope of the expression "patent illegality". What is prohibited is for Courts to reappreciate evidence to conclude that the award suffers from patent illegality appearing on the face of the award, as Courts do not sit in appeal against the arbitral award. The permissible grounds for interference with a domestic award under Section 34(2-A) on the ground of patent illegality is when the arbitrator takes a view which is not even a possible one, or interprets a clause in the contract in such a manner which no fair-minded or reasonable person would, or if the arbitrator commits an error of jurisdiction by wandering outside the contract and dealing with matters not allotted to them. An arbitral award stating no reasons for its findings would make itself susceptible to challenge on this account. The conclusions of the arbitrator which are based on no evidence or have been arrived at by ignoring vital evidence are perverse and can be set aside on the ground of patent illegality. Also, consideration of documents which are not supplied to the other party is a facet of perversity falling within the expression "patent illegality".*

13. Next, the entire claim on account of damages is also vitiated. On a perusal of the award, it is amply clear that the Arbitrator has not only reproduced the arguments of the respondent verbatim but also adjudicated upon a claim of Rs.50 lakhs on account of loss of business reputation and goodwill without any evidence in support thereof. In this context, the Arbitral Tribunal has held that *"The claim of Rs. 50,00,000/- (Rupees Fifty Lakhs) only in paragraph 68 of the Statement of Claim that the claimant was suffering huge loss of business reputation and Goodwill for the stoppage of supply of the respondent Corporation is wholly justified. The claimant admittedly had a business relation with the respondent Corporation for 25 years and there was no allegation of malpractice against him even before. Suspension of supply and termination of dealership undoubtedly seriously harmed his business reputation and seriously damaged his goodwill. The assessment of compensation for such damage at Rs.50,00,000 (Rupees fifty lakhs) is quite reasonable and justified and is allowed."*

14. The above assessment of compensation is not based on any evidence and has been granted at the *ipse dixit* of the respondent. It is well settled that a claim on account of damages cannot be awarded without any proof of the same. In this case, the Sole Arbitrator has awarded damages even for the period subsequent to the determination of the distributorship agreement. Damages have also been awarded on account of loss of reputation and goodwill without any evidence being adduced by the respondent. The entire award for damages in unreasoned and without any evidence. There must be some proof of actual damages. (*McDermott International Inc. v. Burn Standard Co. Ltd., (2006) 11 SCC 181).* In *Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd., (2024) 2 SCC 375* it has been held as follows*:*

> *16. "….. However, the computation of damages should not be whimsical and absurd resulting in a windfall and bounty for one party at the expense of the other. The computation of damages should not be disingenuous. The damages should commensurate with the loss sustained. In a claim for loss on account of delay in work attributable to the employer, the contractor is entitled to the loss sustained by the breach of contract to the extent and so far as money can compensate. The party should to be placed in the same situation, with the damages, as if the contract had been performed. The principle is that the sum of money awarded to the party who has suffered the injury, should be the same quantum as s/he would have earned or made, if s/he had not sustained the wrong for which s/he is getting compensated."*

15. Section 28(3) of the Act is as follows:

> *"28. Rules applicable to substance of dispute.—*
> ***(3) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction."*

16. The obligation under section 28(3) of the Act is mandatory in nature. An Arbitral Tribunal does not enjoy any latitude in re-writing the contract, ignoring

determinative clauses, or supplanting contractual stipulations on the notions of equity, fairness, constitutional morality or public law principles. Any departure from the express terms of the contract or from substantive Indian law constitutes a jurisdictional transgression and falls within the available grounds warranting setting aside of the award. Section 34(2A), which specifically applies to domestic awards, provides that an award may be set aside if it is vitiated by "patent illegality appearing on the face of the award" subject to the proviso that erroneous application of law or re-appreciation of evidence is impermissible. In this context, the relevant portion of section 34 of the Act reads as follows:

> *"Explanation 1 to Section 34(2)(b)(ii) further elucidates the contours of "public policy of India" and reads as follows:*
> *"Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if—*
> *(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or*
> *(ii) it is in contravention with the fundamental policy of Indian law; or*
> *(iii) it is in conflict with the most basic notions of morality or justice."*
> *Explanation 2 thereto clarifies the limits of judicial review in the following terms:*
> *"Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute."*

17. Thus, while merits are immune from review, an award which disregards the terms of the contract, binding statutory provisions, or settled judicial precedent falls squarely within the mischief of patent illegality and in contravention of the fundamental policy of Indian law. The caveat in section 34(2A) of the Act makes it abundantly clear that while an arbitral award arising out of a domestic arbitration may be set aside on the ground of patent illegality appearing on the face of the award, the Court is cautioned not to interfere merely on account of an erroneous application of law or by re-appreciating evidence. In *OPG Power*

Generation (P) Ltd. v. Enexio Power Cooling Solutions (India) (P) Ltd., (2025) 2 SCC 417 it has been held as follows:

> *55. The legal position which emerges from the aforesaid discussion is that after "the 2015 Amendments" in Section 34(2)(b)(ii) and Section 48(2)(b) of the 1996 Act, the phrase "in conflict with the public policy of India" must be accorded a restricted meaning in terms of Explanation 1. The expression "in contravention with the fundamental policy of Indian law" by use of the word "fundamental" before the phrase "policy of Indian law" makes the expression narrower in its application than the phrase "in contravention with the policy of Indian law", which means mere contravention of law is not enough to make an award vulnerable. To bring the contravention within the fold of fundamental policy of Indian law, the award must contravene all or any of such fundamental principles that provide a basis for administration of justice and enforcement of law in this country.*
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> *56. Without intending to exhaustively enumerate instances of such contravention, by way of illustration, it could be said that:*
> *(a) violation of the principles of natural justice;*
> *(b) disregarding orders of superior courts in India or the binding effect of the judgment of a superior court; and*
> *(c) violating law of India linked to public good or public interest, are considered contravention of the fundamental policy of Indian law.*
> *However, while assessing whether there has been a contravention of the fundamental policy of Indian law, the extent of judicial scrutiny must not exceed the limit as set out in Explanation 2 to Section 34(2)(b)(ii).*

18. In *Ssangyong Engineering and Construction Company Limited vs. National Highway Authority of India (NHAI) (2019) 15 SCC 131*, it has been held as follows:

> *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).*
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> *41. What is important to note is that a decision which is perverse, as understood in paras 31 and 32 of Associate Builders [Associate Builders v. DDA, (2015) 3 SCC 49 : (2015) 2 SCC (Civ) 204] , while no longer being a ground for challenge under "public policy of India", would certainly amount to a patent illegality appearing on the face of the award. Thus, a finding based on no evidence at all or an award which ignores vital evidence in arriving at its decision would be perverse and liable to be set aside on the ground of patent illegality. Additionally, a finding based on documents taken*

> *behind the back of the parties by the arbitrator would also qualify as a decision based on no evidence inasmuch as such decision is not based on evidence led by the parties, and therefore, would also have to be characterised as perverse."*

19. It is true that a challenge to the impugned award does not permit this Court to sit in appeal over the findings of the Arbitrator on facts or to re-appreciate the evidence. The conclusion drawn by the Sole Arbitrator that the petitioner had failed to establish the respondent's responsibility for adulteration is contrary to the documentary evidence on record and ignores vital evidence which was relied on by the petitioner. The test results clearly demonstrate that adulteration had occurred at the subject retail outlet level and not at the terminal of the arranged transportation. This fact of the matter has not been adverted to in the award and goes to the root on the aspect of breach of the contract. This was an indispensable aspect of the matter and crucial to the case of the petitioner. Similarly, any adjudication as to the breach on the touchstone of the principles of natural justice is a departure and *dehors* the dealership agreement. In doing so the Arbitrator has also travelled outside the contract. In this context, the Arbitrator committed a patent illegality by disregarding the evidence, misapplying the settled principles of burden of proof and overlooking the fact that adulteration stood conclusively proved.

20. The Arbitrator has failed to adhere to the express terms of the contract and has granted relief in disregard thereof, particularly by directing specific performance of a determinable dealership agreement by importing considerations alien to the contract. The issue being not whether the law has been erroneously applied or evidence improperly appreciated, but also whether the Arbitrator has complied with the mandatory obligation under section 28(3) of the Act, which obliges the

Arbitral Tribunal to decide strictly in accordance with the terms of the contract. This is a case where the approach of the Arbitrator in adjudicating upon the claim is arbitrary, capricious and shocks the conscience of the Court. The patent illegality in the instant case arises from such non-adherence of the contract and the substantive law governing it which squarely attracts the jurisdiction of this Court under sections 34(2A) of the Act and falls outside the exception carved out therein. Perversity or irrationality of a decision is tested on the touchstone of Wednesbury principle of reasonableness. If on facts proved before them, the Arbitrators fail to draw an inference which ought to have been drawn or if they have drawn an inference which on the face of it is untenable resulting in injustice, the adjudication made by an Arbitral Tribunal that enjoys considerable latitude and play at the joints in making awards, is liable to be challenged and set aside. [*Associate Builders vs. Delhi Development Authority (2015) 3 SCC 49*].

21. In such circumstances, the impugned order is unsustainable and set aside. AP COM 160 of 2024 stands allowed. Liberty is granted to the parties to take necessary steps in accordance with law, if so advised.

(RAVI KRISHAN KAPUR, J.)

Later:

After pronouncement of the judgement, the respondent prays for stay of operation of the order. The prayer for stay is considered and rejected.

(RAVI KRISHAN KAPUR, J.)

S.Bag