IN THE COURT OF THE ADDITIONAL DISTRICT JUDGE
1ST COURT AT ALIPORE, SOUTH 24-PARGANAS

MISC. CASE NO. 402 OF 2016

Present : Sri Rajesh Chakraborty (JO Code-WB00764) Additional District Judge, 1st Court, South 24 Pgs at Alipore

IN THE MATTER OF:

ASHIS KUMAR MALLICK Proprietor of M/s. Maa Durga Filling Station situated at Narayangarh, P.O. -Nrayangarh, P.S. Narayangarh, NH-60 By Pass, District Paschim Medinipur, Pin - 721 437.

... Claimant/Petitioner

-Versus-

M/S. INDIAN OIL CORPORATION LTD, Marketing Division, West Bengal State Office of Indian Oil Bhaban, situated at 2, Gariahat Road (South), Dhakuria, Kolkata – 700068.

...Respondent

Date for Delivery of Judgment: 28.08.2026

JUDGMENT

This Miscellaneous Case has been instituted by the petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 calling in question the legality and validity of the arbitral award dated 21st January, 2016 passed by the Learned Sole Arbitrator in connection with the disputes arising out of termination of the petitioner's dealership for retail sale and supply of petroleum products under the Petrol/HSD Pump Dealer Agreement dated 30th March, 1999.

The petitioner seeks setting aside of the award principally on two broad classes of grounds. The first class of objections goes to the constitution and competence of the Arbitral Tribunal. It is contended that the appointment of the substitute Arbitrator, Shri P. Rajendran, was without authority; that the mandate of the original Arbitrator, Shri R.K. Ghosh, had never lawfully terminated; that the substitute Arbitrator was an employee of the respondent Corporation and therefore lacked the requisite independence and impartiality; that statutory disclosure requirements were not complied with; and that Section 12(5) read with the Seventh Schedule to the Arbitration and Conciliation Act, 1996, as introduced by the Arbitration and Conciliation (Amendment) Act, 2015, rendered the Learned Arbitrator ineligible to continue with the reference.

The second class of objections attacks the award on merits. The petitioner contends that the Learned Arbitrator failed to consider vital documentary and oral evidence relating to the HSD-II dispensing unit, the totalizer reading, alleged malfunction of the machine, stock variation detected during inspection, presence of water in the tank, sampling procedure, laboratory reports, Marketing Discipline Guidelines and alleged irregularities committed by the Anti Adulteration Cell. According to the petitioner, the cumulative effect of those defects renders the award perverse, patently illegal and contrary to the public policy of India.

The respondent, Indian Oil Corporation Limited, has contested the application and supported the award. The respondent contends that the arbitration commenced long before the Arbitration and Conciliation (Amendment) Act, 2015 came into force; that the arbitration was governed by the unamended Act; that the appointment and substitution of the departmental Arbitrator were expressly contemplated by Clause 67 of the dealership agreement; that the petitioner himself invoked arbitration and participated in the proceedings; and that the Learned Arbitrator considered the rival cases and evidence and rendered a reasoned award. According to the respondent, the present proceeding is in substance an attempt to secure a rehearing on facts under the guise of a proceeding under Section 34, which the statute does not permit.

I have carefully considered the application under Section 34, the written arguments and additional written arguments advanced on behalf of the petitioner, the written arguments of the respondent, the arbitral award, the materials referred to by the parties and the decisions cited at the Bar.

The controversy has to be approached keeping in mind the fundamental character of jurisdiction under Section 34 of the Arbitration and Conciliation Act, 1996. A Court exercising jurisdiction under Section 34 does not sit as a Court of appeal over an arbitral award. The arbitral process is founded upon party autonomy and the statutory policy of minimal judicial intervention. Consequently, the Court cannot undertake a fresh adjudication of the dispute merely because one party is dissatisfied with the manner in which the Arbitrator appreciated the evidence or interpreted the contractual relationship.

The distinction between an appeal and an application under Section 34 is fundamental. In an appeal, subject to the governing statute, the appellate Court may reconsider facts and law and substitute its own conclusion. Section 34 confers no such general authority. The Court is concerned with the legality of the award within the grounds recognised by the statute and not with whether the Court itself, if constituted as the original adjudicating authority, would have arrived at precisely the same conclusion.

The Supreme Court in Associate Builders v. Delhi Development Authority, (2015) 3 SCC 49, and thereafter in Ssangyong Engineering and Construction Co. Ltd. v. National

Highways Authority of India, (2019) 15 SCC 131, has repeatedly emphasised the narrow nature of judicial intervention with an arbitral award. A finding may become vulnerable where it is based on no evidence, proceeds upon matters wholly extraneous to the dispute, ignores vital evidence in such a manner as to render the conclusion perverse, or where patent illegality appears on the face of the award within the meaning of the statute. But the jurisdiction does not extend to reassessing the relative weight of evidence or substituting the Court's preferred inference for a possible inference drawn by the Arbitrator.

This principle assumes considerable importance in the present case because a substantial part of the petitioner's challenge requires this Court to reopen factual controversies regarding the inspection, the totalizer reading, stock reconciliation, functioning of HSD-II, sampling procedure and the evidentiary value of the documents and witnesses examined before the Learned Arbitrator.

Before dealing with those objections, however, the challenge to the constitution and competence of the Arbitral Tribunal requires consideration.

The dealership relationship originated in the Petrol/HSD Pump Dealer Agreement dated 30th March, 1999. The arbitration agreement is contained in Clause 67 thereof. The material part of the clause contemplated reference of disputes to the sole arbitration of the Director (Marketing) of the Corporation or an officer of the Corporation nominated by the Director (Marketing). The clause further contemplated the situation where the Arbitrator originally appointed was transferred, vacated office or became unable to act for any reason and authorised the Director (Marketing) to designate another person as Arbitrator, with the substitute being entitled to continue the reference from the stage at which it had been left by the predecessor.

The contractual architecture is therefore important. This was not an arbitration agreement which became silent upon the original Arbitrator ceasing to be available. On the contrary, substitution formed part of the agreed arbitral mechanism itself.

The record further indicates that the petitioner himself sought invocation of the arbitration clause. In the communication dated 6th April, 2012 issued on his behalf, reference of the dispute to arbitration was demanded. The subsequent order dated 11th June, 2012 passed by the Hon'ble High Court at Calcutta in FMAT No.532 of 2012 also contemplated that if an adverse order were passed against the petitioner, the dispute would be placed before the Arbitrator.

Thereafter Shri R.K. Ghosh, then Director (Refineries), IOCL, was appointed as Arbitrator and entered upon the reference in February, 2014. Upon his superannuation, Shri P. Rajendran was appointed as substitute Arbitrator under the contractual mechanism.

The petitioner's contention is that superannuation of Shri R.K. Ghosh from the service of IOCL did not terminate his mandate as Arbitrator and that he could have continued with the arbitration notwithstanding retirement. From that premise it is argued that there was no vacancy which could lawfully be filled by appointing Shri P. Rajendran.

The proposition cannot be accepted in the manner in which it has been advanced.

The question is not whether an arbitrator can, in every conceivable circumstance, continue an arbitration after retirement from employment. The relevant question is what the arbitration agreement between these parties contemplated and whether the substitution was made according to the agreed procedure.

Section 15(2) of the Arbitration and Conciliation Act embodies the principle that where the mandate of an arbitrator terminates, a substitute arbitrator is to be appointed according to the rules applicable to the appointment of the arbitrator being replaced. Therefore, the contractual appointment machinery assumes primary significance.

In Yashwith Constructions (P) Ltd. v. Simplex Concrete Piles India Ltd., (2006) 6 SCC 204, the Supreme Court recognised that the expression "rules" in Section 15(2) refers to the procedure or provision applicable to the original appointment and that substitution in accordance with the contractual machinery is permissible.

Similarly, in ACC Ltd. v. Global Cements Ltd., (2012) 7 SCC 71, the principle that the substitute arbitrator is to be appointed according to the procedure applicable to the appointment of the original arbitrator was reiterated.

In the present case, Clause 67 expressly conferred upon the Director (Marketing) authority to nominate an officer of the Corporation as sole Arbitrator and expressly contemplated substitution where the original Arbitrator ceased to be available in the circumstances contemplated by the agreement. The nomination of Shri P. Rajendran was therefore not an exercise outside the arbitration agreement but an exercise under the agreed arbitral machinery.

The petitioner's argument that the original appointment of Shri R.K. Ghosh was by name and therefore incapable of substitution is also inconsistent with the contractual scheme. Shri R.K. Ghosh was nominated pursuant to an arbitration clause which expressly contemplated nomination of an officer of the Corporation and replacement of an arbitrator. The identity of the individual initially nominated cannot be isolated from the source of his authority, namely Clause 67.

The reliance upon Himalayan Construction Co. v. Executive Engineer, Irrigation Division, J&K, (2001) 9 SCC 359 does not advance the petitioner's case to the extent suggested. Whether an arbitral appointment is personal to a named individual or forms part of an institutional or contractual appointment mechanism must ultimately be gathered from the language of the arbitration agreement. Here the agreement itself contains an express substitution mechanism. It would therefore be contrary to the contractual text to treat the first nomination as extinguishing the power of substitution expressly reserved under Clause 67.

The subsequent decision relied upon by the petitioner in Laxmi Continental Construction Co. v. State of U.P. also does not establish that retirement invariably prevents substitution or compels continuance of the retired arbitrator. The permissibility of continuation by a retired arbitrator cannot be converted into a proposition that a contractual substitution validly made under the arbitration clause is necessarily void.

The contention that the Director (Marketing) had become functus officio after making the first appointment is equally untenable. Such argument overlooks the continuing authority conferred by Clause 67 itself. The appointing authority's power did not originate from an isolated administrative act exhausted upon first exercise. It arose from the arbitration agreement, which expressly contemplated the appointment of another person upon the original Arbitrator ceasing to act in the circumstances specified therein.

The challenge to the appointment of Shri P. Rajendran as being void ab initio therefore fails.

The next and more substantial contention concerns the effect of the Arbitration and Conciliation (Amendment) Act, 2015, particularly Section 12(5) read with the Seventh Schedule.

The petitioner contends that even if the appointment of a serving officer of IOCL was permissible when the arbitral proceedings commenced, Shri P. Rajendran became statutorily ineligible to continue after the Amendment Act came into force on 23rd October, 2015 because an employee relationship with a party falls within the Seventh Schedule.

The chronology is decisive.

The arbitration had commenced substantially before 23rd October, 2015. The original Arbitrator had been appointed in January, 2014 and entered upon the reference in February, 2014. The petitioner's Statement of Claim had also been filed in 2014. The proceedings were thus not merely contemplated but were actually pending before the Arbitral Tribunal long before commencement of the Amendment Act.

Section 26 of the Arbitration and Conciliation (Amendment) Act, 2015, as applicable to the controversy, expressly provided that nothing contained in the Amendment Act would apply to arbitral proceedings commenced, in accordance with Section 21 of the principal Act, before commencement of the Amendment Act unless the parties otherwise agreed.

The significance of this legislative stipulation cannot be avoided by characterising Section 12(5) merely as procedural.

The legislature itself supplied the temporal rule governing application of the amendments. Once the statute expressly determines the class of arbitral proceedings to which the amended provisions apply, a general presumption concerning retrospective operation of procedural law cannot override that express legislative scheme.

In Board of Control for Cricket in India v. Kochi Cricket Pvt. Ltd., (2018) 6 SCC 287, the Supreme Court examined Section 26 and explained the distinction between arbitral proceedings commenced before the Amendment Act and court proceedings in relation thereto. The statutory scheme recognises commencement under Section 21 as the material point for determining applicability of the amended regime to the arbitral proceedings themselves.

In the present matter, arbitral proceedings had commenced much before 23rd October, 2015. There is no material showing an agreement between the parties that the amendments introduced in 2015 would govern the pending arbitral reference.

The petitioner's argument that Section 12(5) automatically intervened on 23rd October, 2015 and terminated the mandate of an Arbitrator validly functioning in a pre-amendment arbitration cannot therefore be accepted.

The decisions in TRF Ltd. v. Energo Engineering Projects Ltd., (2017) 8 SCC 377, Bharat Broadband Network Ltd. v. United Telecoms Ltd., (2019) 5 SCC 755, and Perkins Eastman Architects DPC v. HSCC (India) Ltd., (2020) 20 SCC 760 undoubtedly represent the important post-amendment jurisprudence relating to neutrality and ineligibility of arbitrators. Their principles cannot, however, be detached from the statutory temporal framework and mechanically transplanted into an arbitral proceeding which commenced under the unamended regime.

The petitioner's reliance upon Ellora Paper Mills Ltd. v. State of Madhya Pradesh, (2022) 3 SCC 1 has also been considered. The decision cannot be read as obliterating the statutory distinction created by the commencement provisions and as making Section 12(5) retrospectively applicable to every arbitral proceeding irrespective of the date and circumstances of commencement. Judicial precedents must be applied in their factual and statutory context.

The petitioner's contention that Section 12(5) is merely procedural and therefore necessarily retrospective is, for the same reason, unacceptable. The general proposition that procedural amendments may operate retrospectively is subject to contrary legislative intention. Here the legislature enacted an express transition provision. The Court cannot circumvent that provision by resorting to a general rule of interpretation.

It follows that the legality of the departmental Arbitrator in the present case must be tested by the law governing the arbitral proceeding when it commenced and by the arbitration agreement between the parties.

Under the pre-amendment statutory regime, mere employment of an arbitrator by one of the contracting parties did not, without more, render the appointment void.

Indian Oil Corporation Ltd. v. Raja Transport (P) Ltd., (2009) 8 SCC 520 is directly significant in this regard. The Supreme Court recognised that where parties, with knowledge of the contractual provision, agree to arbitration by an employee or officer of one party, mere employment by itself does not automatically establish bias or invalidate the appointment. Something more than the bare employer-employee relationship is required to establish a real and justifiable apprehension affecting impartiality under the then prevailing law.

Clause 67 in the present case expressly contemplated arbitration by the Director (Marketing) or another officer of IOCL nominated by him. The petitioner entered into the dealership agreement containing that provision and himself demanded reference to arbitration. The contractual provision even specifically recorded that the dealer would not be entitled to object merely because the Arbitrator was an officer of the Corporation.

That contractual stipulation cannot override a statutory disqualification where such disqualification applies. But once it is found that the amended Section 12(5) did not govern this pre-amendment arbitral proceeding, the contractual mechanism has to be assessed under the law then applicable. Under that regime, the appointment cannot be invalidated merely by establishing that the Arbitrator was an officer of IOCL.

The principle nemo judex in causa sua invoked by the petitioner is fundamental to adjudicatory fairness, but it cannot be applied mechanically. An employee Arbitrator contemplated by a pre-amendment arbitration agreement was not automatically to be equated with a party adjudicating his own cause. Actual bias or circumstances giving rise to a legally sustainable apprehension of bias had to be demonstrated.

No material has been shown from the award or the proceedings establishing that Shri P. Rajendran had any personal involvement in the inspection, the disciplinary decision or the termination of the dealership, or that he possessed any personal pecuniary interest in the outcome distinct from his institutional relationship with IOCL.

A general allegation that an officer of a Corporation must necessarily decide in favour of his employer cannot substitute for proof of circumstances giving rise to a legally cognisable apprehension of bias under the regime applicable to the reference.

The petitioner's objection regarding disclosure under Section 12 must also be viewed in that context. The absence or alleged inadequacy of disclosure cannot automatically render the entire award a nullity unless the statutory consequences claimed by the petitioner are attracted and the circumstances disclose a ground recognised under Section 34. The Court is not satisfied that the petitioner has established such jurisdictional invalidity.

The petitioner's contention that the Learned Arbitrator was coram non judice and that the entire proceeding was non est is therefore rejected.

I now turn to the challenge directed against the merits of the award.

The dispute arose from the inspection of the petitioner's retail outlet by the Anti Adulteration Cell. According to the petitioner, the HSD-II dispensing unit had remained inoperative for a substantial period. Reliance has been placed upon Retail Outlet Performance and Analysis Reports dated 25th May, 2011, 1st July, 2011 and 28th September, 2011 and upon the service report dated 14th October, 2011 of Gilbarco Veeder-Root, which, according to the petitioner, showed the HSD-II totalizer reading as 175462.

The petitioner contends that on 24th October, 2011, at or about 11:15/11:30 a.m., the same totalizer reading of 175462 was reflected in the DSR and that the AAC officials signed the DSR. Subsequently, however, the inspection report recorded a reading of 223910. According to the petitioner, the difference of 48,448 litres within a span of approximately two hours was physically impossible and could only be explained by malfunctioning of the totalizer or manipulation during inspection.

The argument has been elaborately advanced before this Court by referring to the capacity of the underground tanks and the volume of fuel which would theoretically have to be sold to account for the difference.

At first sight the numerical disparity is substantial. But the jurisdiction of this Court is not to determine afresh which of the competing factual explanations is more persuasive. The question is whether the Learned Arbitrator's conclusion was one which no reasonable adjudicator could have reached on the materials before him, or whether vital evidence was ignored so completely that the award became perverse within the meaning of Section 34.

The respondent's case is that the petitioner's argument proceeds upon a misconception regarding the nature of the positive stock variation. The respondent has contended that the positive variation did not mean that more than 52 kilolitres of product was physically present in tanks having a lesser storage capacity at a single point of time. Rather, stock variation resulted from reconciliation between recorded sales, stock movement and physical stock, raising the question as to the source of petroleum product sold or accounted for outside the expected stock records.

The distinction is material.

The petitioner's argument that a tank of 20 KL capacity could not contain 52 KL at one time does not by itself answer an allegation based upon cumulative stock reconciliation. Tank capacity and stock variation are not necessarily identical concepts.

The respondent has further contended that the DSR was maintained by the dealer and that the AAC officials did not themselves record the figure of 175462 in the manner alleged by the petitioner. It has also been contended that no contemporaneous complaint regarding malfunctioning of the totalizer had been made before the irregularity was detected.

The Learned Arbitrator was therefore faced with competing factual narratives. The petitioner's case was one of malfunction or improper inspection. The respondent's case was one of irregular stock accounting disclosed upon inspection. The Arbitrator had the advantage of considering the evidence placed by both sides and the examination of witnesses during the reference.

Section 34 does not authorise this Court to conduct a second trial of that controversy.

The fact that a document is relevant does not mean that the Arbitrator must expressly reproduce and separately discuss every entry in it. Nor does an award become perverse merely because one party believes that greater weight should have been assigned to a particular document.

The test is whether the award discloses a rational consideration of the controversy and arrives at a possible conclusion on the material before the Tribunal.

The petitioner's argument that the totalizer must have malfunctioned is itself an inference. Evidence that a mechanical totalizer is capable of malfunctioning does not establish that it actually malfunctioned at the material time. Possibility is not proof of occurrence.

Similarly, the fact that the totalizer reading remained unchanged on earlier dates may support the petitioner's contention that the unit was inactive during that period, but it does not compel the conclusion that every subsequent reading was mechanically impossible or manipulated.

The Court cannot convert a competing factual hypothesis into patent illegality merely because it is plausible.

The allegation of manipulation by AAC officers is particularly serious and required convincing evidentiary foundation. An arithmetical discrepancy, even if unexplained to the petitioner's satisfaction, cannot by itself justify a judicial finding that officials manipulated the machinery or inspection records.

The petitioner's further contention that the inspection was conducted in his absence and in the presence of a guard also does not by itself invalidate the inspection. The material question is whether the contractual guidelines required the personal physical presence of the proprietor as a condition precedent to every inspection and whether absence of the petitioner caused such prejudice as would render the subsequent adjudication fundamentally unfair.

The petitioner was thereafter given opportunity to submit his explanation, which he did. The matter travelled through show-cause proceedings, the decision of the competent authority and ultimately a full arbitral reference in which the petitioner had the opportunity to place documents, examine witnesses, cross-examine the respondent's witnesses and advance his contentions.

The allegation that refusal to conduct an immediate re-inspection by itself violated natural justice cannot therefore be accepted.

Natural justice does not prescribe one inflexible procedure applicable to every factual investigation. The question is whether a party had a fair opportunity to meet the case against him. The petitioner had extensive opportunity to challenge the inspection and the consequential action before the Arbitrator. The record indicates that the arbitration extended through numerous sittings and specific issues were formulated for adjudication.

Those issues included whether the AAC inspection had been conducted according to the applicable norms, whether the petitioner's contention regarding malfunctioning of the totalizer was correct, whether HSD-II contained water at the time of inspection, whether the penalty imposed on 13th December, 2011 was justified, whether the show-cause notice dated 22nd March, 2012 was proper, whether the termination decision dated 17th September, 2013 was legally sustainable, and whether the claimant was entitled to any other relief.

This itself demonstrates that the Tribunal addressed the core controversies rather than bypassing them.

The challenge relating to the alleged presence of water in HSD-II is likewise essentially evidentiary. The petitioner contends that water-detecting paste was not properly used and that the inspecting team failed to measure water in the tank in accordance with the Marketing Discipline Guidelines.

Even assuming that disputes existed regarding the precise method of inspection, the Court under Section 34 cannot set aside the award merely because another factual conclusion might have been drawn. The alleged procedural departure must be of such nature as to bring the award within a statutory ground for setting aside.

No such consequence has been established.

The petitioner has also criticised the sampling procedure and laboratory test reports. It is contended that seal or sample numbers appearing in the inspection report and test report did not correspond and that the respondent's witness could not satisfactorily explain the discrepancies.

Again, these matters were capable of being, and were, raised before the Arbitral Tribunal.

An arbitral award does not become patently illegal merely because an evidentiary discrepancy exists. The discrepancy must be shown to have been so fundamental that the conclusion rests on no evidence or becomes one which no reasonable adjudicator could have reached.

Section 34 does not permit this Court to reopen every inconsistency in documentary evidence and determine which witness should have been believed.

The petitioner's argument concerning the affidavit of evidence of the respondent's witness has also been considered. It is urged that the affidavit was defective because the witness had allegedly not appeared before the Notary Public and therefore the evidence should have been discarded altogether.

The contention places excessive reliance upon the procedural requirements applicable to a civil trial.

Section 19 of the Arbitration and Conciliation Act expressly provides that an Arbitral Tribunal is not bound by the Code of Civil Procedure, 1908 or the Indian Evidence Act, 1872. The Tribunal possesses considerable flexibility in determining the admissibility, relevance, materiality and weight of evidence, subject always to equality of treatment and reasonable opportunity under Section 18.

The Court cannot import the entire technical apparatus of Order XVIII of the Code of Civil Procedure into an arbitration and thereafter invalidate the award because evidence may not have been presented in precisely the manner required in an ordinary civil suit.

The authorities relied upon by the petitioner regarding affidavits in civil proceedings do not alter the statutory procedural autonomy conferred upon an Arbitral Tribunal.

What is material is whether the petitioner knew the case made by the respondent and had a fair opportunity to challenge the witness and the evidence relied upon. No case of evidence being secretly introduced behind the petitioner's back or of denial of an opportunity to meet the respondent's case has been established.

The allegation regarding non-compliance with Clause 2.10 of the Marketing Discipline Guidelines, 2005 and delay or failure in communication of laboratory results has also been considered.

The petitioner contends that samples were required to reach the laboratory within a prescribed period, testing had to be completed within the stipulated time and the result communicated within the further period prescribed by the Guidelines. According to the petitioner, the test report was not timely communicated and reliance upon it was therefore impermissible.

The Court cannot treat every alleged breach of an internal procedural guideline as automatically constituting patent illegality under Section 34.

The materiality of a procedural requirement depends upon its nature, the consequence prescribed for non-compliance, the prejudice caused, and the manner in which the issue was considered by the adjudicating authority. Unless the departure goes to the root of the arbitral adjudication or results in denial of a fair opportunity, it cannot by itself justify setting aside the award.

The petitioner had the opportunity during arbitration to dispute the laboratory report, the identity of the samples, the alleged mismatch of seal numbers and the evidentiary value of the test results. The Arbitrator considered the competing positions and rendered his decision.

Section 34 cannot be invoked to conduct a fresh forensic scrutiny of each sample number merely to ascertain whether this Court would have accorded the same evidentiary weight as the Arbitrator.

The petitioner's submission that the award is unreasoned is also contrary to the record.

A reasoned award does not mean an award which answers every argument with the detail expected of an appellate judgment. Reasons are sufficient where the award discloses the basis upon which the Tribunal reached its conclusion on the material issues.

The award in the present case followed a substantial arbitral process involving numerous sittings, formulation of specific issues, evidence and rival submissions. The award dealt with the central disputes relating to inspection, totalizer malfunction, HSD-II, disciplinary action and termination.

The fact that the petitioner considers the reasoning inadequate or disagrees with the conclusions cannot convert a reasoned award into an unreasoned one.

There is a significant difference between absence of reasons and reasons which do not persuade the unsuccessful party. Section 34 is concerned with the former where the statutory requirement is violated; it does not authorise the Court to set aside an award merely because the reasons could have been expressed differently or more elaborately.

The petitioner's repeated contention that "vital evidence" was ignored must also be examined with caution. The expression cannot become a formula by which every Section 34 applicant obtains a rehearing of the factual dispute.

Evidence is "vital", for the purpose of a perversity challenge, where its omission is so fundamental that the conclusion becomes unsustainable or one based effectively on no evidence. The mere existence of documents favourable to the losing party does not establish that the award ignored vital evidence. In virtually every contested arbitration, both parties possess materials supporting their respective cases.

If Section 34 permitted an award to be reopened merely because the losing party identified documents from which a different inference could be drawn, the statutory distinction between arbitration and appeal would disappear.

The Court must examine the award as a whole and ask whether the Arbitrator considered the substance of the controversy and adopted a possible view on the evidence. The answer in the present case is in the affirmative.

The petitioner's reliance upon Delhi Metro Rail Corporation Ltd. v. Delhi Airport Metro Express Pvt. Ltd. and other authorities explaining perversity and patent illegality does not assist him on the facts. Those decisions reaffirm the power of the Court to interfere where an award transgresses the statutory limits, but equally emphasise that the jurisdiction is not appellate and cannot be used for reappreciation of evidence.

The principle stated in those decisions has to be applied, not merely cited.

Upon applying that principle, this Court does not find that the impugned award is founded on no evidence, that it takes into account wholly irrelevant considerations to the exclusion of the actual dispute, or that its conclusions are such that no reasonable adjudicator could have reached them.

The petitioner's challenge, when stripped of its terminology of "perversity", "patent illegality", "public policy" and "natural justice", substantially asks this Court to reconsider the evidentiary controversy concerning the retail outlet and arrive at a conclusion different from that reached by the Learned Arbitrator.

That exercise is beyond the jurisdiction conferred by Section 34.

The petitioner chose arbitration pursuant to the dealership agreement. Indeed, the record indicates that reference to arbitration was demanded on his behalf. The dispute thereafter underwent a full adjudicatory process. An award rendered against the petitioner cannot be transformed into an appellate controversy merely because the petitioner continues to dispute the factual conclusions reached by the Tribunal.

The doctrine of minimal judicial intervention embodied in Section 5 of the Arbitration and Conciliation Act is not a mere statement of legislative preference. It informs the interpretation of Section 34. Arbitration is intended to culminate in a binding adjudication subject to limited statutory review. Courts must therefore guard against converting Section 34 into a conventional first appeal.

It is equally necessary to clarify that judicial restraint does not mean judicial abdication. Where an award is genuinely vitiated by lack of jurisdiction, denial of natural justice, prohibited composition of the Tribunal, conflict with the statutorily defined public policy of India or patent illegality within the statutory meaning, the Court must intervene.

The present case, however, does not disclose any such infirmity.

The appointment of the substitute Arbitrator was supported by the contractual machinery contained in Clause 67. The arbitral proceedings commenced before 23rd October, 2015 and were governed, so far as constitution of the Tribunal was concerned, by the pre-amendment statutory regime. The subsequent introduction of Section 12(5) and the Seventh Schedule did not retrospectively nullify the pending reference in the absence of an agreement attracting the amended provisions.

Under the legal regime applicable to the reference, the mere fact that the Arbitrator was an officer of IOCL did not render him de jure ineligible. The arbitration agreement expressly contemplated such an appointment, and the petitioner himself invoked the arbitral mechanism. No independent circumstance establishing actual bias or a legally sustainable disqualification has been proved.

The objection concerning absence or inadequacy of disclosure under Section 12 does not, in the circumstances of this case, establish that the entire proceeding was void or that the award was rendered by a Tribunal lacking jurisdiction.

On merits, the disputes concerning the totalizer reading, stock variation, mechanical malfunction, tank capacity, water content, sampling procedure, laboratory reports, DSR entries, Marketing Discipline Guidelines and inspection methodology were matters within the adjudicatory domain of the Learned Arbitrator. The petitioner has demonstrated that alternative factual inferences were possible; he has not demonstrated that the inference adopted by the Arbitrator was legally impossible.

That distinction is decisive.

A possible view does not become a patently illegal view merely because another possible view appears more attractive to the party challenging the award.

Nor does the Court find any material establishing that the making of the award was induced or affected by fraud or corruption, that it violates the fundamental policy of Indian law, or that it conflicts with the most basic notions of morality or justice.

The award cannot be characterised as one which shocks the conscience of the Court.

The contention that the award is patently illegal is also without substance. Patent illegality must appear on the face of the award. It cannot be manufactured by an elaborate reappreciation of evidence and reconstruction of factual calculations which would effectively require this Court to adjudicate the underlying dispute afresh.

The petitioner's argument regarding the jump in the totalizer reading illustrates this difficulty. To accept the petitioner's conclusion as the only permissible conclusion, this Court would have to determine the evidentiary authenticity of the DSR entry, decide who recorded the entry, reassess the significance of signatures of AAC officials, determine whether the totalizer actually malfunctioned, reassess the stock-reconciliation methodology, evaluate the testimony concerning machine malfunction and substitute its factual conclusions for those of the Tribunal.

That is precisely the appellate exercise which Section 34 prohibits.

Similarly, adjudicating afresh upon the sample numbers would require the Court to examine inspection records, laboratory documents, explanations of witnesses and the relative evidentiary weight of discrepancies. The existence of such disputes demonstrates why the parties went to arbitration; it does not establish why the arbitral award must be set aside.

The Court therefore finds no merit in the contention that the Arbitrator ignored vital evidence in a manner rendering the award perverse.

The award reflects consideration of the substantive controversy and gives reasons for the conclusions reached. It is neither a non-speaking award nor an award founded upon a proposition wholly disconnected from the evidence and contractual framework.

The petitioner has sought to place reliance upon several decisions dealing with nullity of judicial orders, including Sunder Dass v. Ram Prakash, Urban Improvement Trust v. Gokul Narain and Sarwan Kumar v. Madan Lal Aggarwal. The principle that a decree or order passed by an authority inherently lacking jurisdiction may be treated as a nullity is unquestionable. But the principle becomes relevant only after lack of jurisdiction is established.

In the present case the foundational premise itself fails. Shri P. Rajendran was appointed under the agreed arbitration machinery; the arbitral proceedings were governed by the pre-amendment regime; and the statutory disqualification under Section 12(5) invoked by the petitioner has not been shown to invalidate this pending pre-amendment reference.

The doctrine of nullity therefore does not assist the petitioner.

The petitioner has also invoked the fundamental rule against bias expressed in the maxim nemo judex in causa sua. The Court has no disagreement with the principle. But a maxim of natural justice cannot be applied in abstraction from the statutory and contractual setting. Under the pre-amendment law, departmental arbitration pursuant to a freely accepted arbitration clause was recognised, subject to challenge upon proof of circumstances giving rise to justifiable doubts about impartiality.

The petitioner has not shown that the Learned Arbitrator personally participated in the impugned inspection, initiated the disciplinary proceeding, made the termination decision, or otherwise acquired such involvement in the dispute as would make him judge of his own prior decision.

Institutional employment alone, in the legal regime governing this arbitration, is insufficient.

The Court must therefore resist the invitation to apply post-amendment standards retrospectively to invalidate a reference which commenced and was constituted under the earlier statutory regime.

Having considered the challenge from every angle urged by the petitioner, I am unable to identify any ground falling within Section 34 which warrants setting aside the award.

The petitioner has undoubtedly articulated substantial disagreement with the award. But substantial disagreement is not a statutory ground for setting aside an arbitral award.

The distinction between an erroneous award and an award liable to be set aside under Section 34 must be maintained. Even an error of fact, an arguable interpretation or a conclusion with which the Court might disagree does not necessarily cross the statutory threshold. The Court intervenes only when the award suffers from one of the defects recognised by Section 34.

No such defect has been established here.

The challenge to the substitution of the Arbitrator fails because the substitution was made under the agreed contractual mechanism.

The challenge founded upon Section 12(5) and the Seventh Schedule fails because the arbitral proceedings had commenced prior to the coming into force of the 2015 Amendment and the amended disqualification cannot be applied in the manner suggested to retrospectively invalidate the pending reference.

The challenge based upon the departmental status of the Arbitrator fails under the pre-amendment law and the contractual terms governing the parties.

The allegation of bias remains unsupported by circumstances beyond the institutional employment relationship.

The objections concerning the totalizer, stock variation, sampling, water content, inspection procedure, laboratory reports and Marketing Discipline Guidelines essentially invite reappreciation of evidence and do not demonstrate perversity or patent illegality on the face of the award.

The contention that the award is unreasoned is contradicted by the award itself.

The allegation of violation of natural justice is also not established, the petitioner having had sufficient opportunity to present his claim, produce materials, challenge the respondent's evidence and advance his case before the Tribunal.

Consequently, the award dated 21st January, 2016 cannot be said to be contrary to the fundamental policy of Indian law, opposed to the most basic notions of morality or justice, patently illegal on its face, or otherwise liable to be set aside under Section 34 of the Arbitration and Conciliation Act, 1996.

The legislative policy underlying arbitration requires finality to be accorded to an arbitral determination once it survives the limited scrutiny contemplated under Section 34. A Court cannot prolong the underlying commercial dispute merely because extensive arguments can be formulated against the factual conclusions of the Arbitrator.

The Court accordingly holds that the petitioner has failed to make out any legally sustainable ground for interference with the arbitral award dated 21st January, 2016.

The Miscellaneous Case is liable to be dismissed.

Hence, it is

ORDERED

that Misc. Case No. 402 of 2016 under Section 34 of the Arbitration and Conciliation Act, 1996 be and the same is hereby dismissed on contest.

The prayer of the petitioner, Ashis Kumar Mallick, Proprietor of M/s. Maa Durga Filling Station, for setting aside the arbitral award dated 21^{st} January, 2016 is rejected.

The arbitral award dated 21^{st} January, 2016 passed by the Learned Sole Arbitrator in the disputes between the petitioner and Indian Oil Corporation Limited is left undisturbed and shall remain binding upon the parties in accordance with law.

It is made clear that the observations contained herein concerning the factual controversies between the parties have been made only for the purpose of examining the grounds urged under Section 34 of the Arbitration and Conciliation Act, 1996 and shall not be understood as this Court undertaking an independent appellate adjudication of the merits of the dispute.

Considering the nature and long pendency of the proceeding, the parties shall bear their own costs.

Any interim order, if subsisting in connection with this Miscellaneous Case, stands vacated.

Let the necessary record be consigned to the Record Room after due compliance.

The instant Misc. Case (Arbitration) is, thus, disposed of.

Note in the relevant Register and CIS.

Dictated & Corrected by me

Additional District Judge,
1st Court, Alipore

Additional District Judge,
1st Court, Alipore