IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

Case No: AA No.15/2020,
CM No.8215/2020,
CM No.4505/2024,
CM No.7630/2020
CM No.7631/2020,
CM No.7632/2020
c/w
Arb P. No. 38/2020,
CM No. 7462/2020

Reserved on: 13.02.2026
Pronounced on: 12.05.2026
Uploaded on: 12.05.2026

Whether the operative part or full Judgment is pronounced ***: Full***

Kanta Devi, age 50 years
W/O Shri Tara Chand,
appointed as Authorised Temporary Dealer M/s Adhoc Chak Malal Filling Station, HPCL Petrol Pump,
Ward No.1, Sungal Morh,
Tehsil Akhnoor, District Jammu.

…Petitioner(s)/Appellant(s)

Through: Mr. K.S.Johal, Sr. Advocate with Mr. Karman Singh Johal, Advocate.

Vs.

1. Union of India through Secretary Ministry of Petroleum, Government of India, A-Wing, Shastri Bhawan, Dr. Rajendra Prasad Road, New Delhi-110 001.
2. Hindustan Petroleum Corporation Ltd., Through its Chairman/ Managing Director,
Regd. Office 17, Jamshedji Tata Road, Mumbai-400 020

…. Respondent(s)

Through: Mr. R.P.Sharma, Sr. Advocate with Mr. Rohit Gupta, Advocate for R- 1 to 4

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Mr. Vishal Goel, Advocate for R-5

CORAM: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

Arb. Pet No. 38/2020.

1. Arb. Pet. No. 38/2020 has been filed by the petitioner under Section 11(6) of the Arbitration and Conciliation Act, 1996, seeking appointment of an Arbitrator for adjudication of the disputes and claims raised by the petitioner through reference to arbitration.

2. Briefly stated, it is averred by the petitioner that upon termination of retail outlet dealership of M/s Gupta Filling Station, Sungal Morh, Tehsil Akhnoor, District Jammu, the respondent-HPCL appointed M/s Jhandu Filling Station as an *ad hoc* dealer on 15.01.2016 to operate the Petrol Pump at Sungal Morh, Akhnoor. After the tenure of M/s Jhandu Filling Station came to an end on 16.04.2018, the petitioner was called for interview on 18.04.2018 for a temporary arrangement to operate the said retail outlet. Vide communication No. JKRO/PS/ADHOC dated 18.04.2018, the retail outlet owned by the respondent-HPCL at Sungal Morh, Akhnoor, District Jammu, was allowed to be run by the petitioner. The arrangement was to remain in force for a period of one year commencing from 15.05.2018, or till the appointment of a regular dealer, or until earlier termination by the respondent-HPCL. If necessary, the said arrangement could have been renewed at the sole-discretion of respondent-HPCL in terms of Clause-7. Upon expiry of the initial term on 14.05.2019, by operation of Clause 7 of the communication dated 18.04.2018, the petitioner's

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ad hoc arrangement was extended for another year with effect from 15.05.2019, to remain in force up to 14.05.2020, or till the appointment of a regular dealer, or till earlier termination by the Corporation-HPCL.

3. In para-9 of the petition, it is stated by the petitioner that as per the policy issued by the respondent-HPCL on 03.12.2003, the tenure of an *ad hoc* dealership, under no circumstances, shall exceed two years. In the event the retail outlet needs to be operated beyond the said period, a fresh selection of a dealer, strictly in accordance with the procedure prescribed in the policy, is required to be undertaken.

4. Vide communication dated 27.04.2020, the respondent-HPCL informed the petitioner that in view of the COVID-19 pandemic, the temporary arrangement for operation of the retail outlet stood extended up to 30.06.2020. It was clarified that the extension would remain operative till 30.06.2020 or till appointment of a regular dealer or till earlier termination by the respondent-HPCL. Thereafter, vide order dated 19.06.2020, the tenure of the petitioner was further extended up to 30.09.2020.

5. The petitioner contends that despite the prevailing abnormal circumstances due to the pandemic as on 19.06.2020, when the last extension was granted in her favour, the respondent-HPCL initiated the process for selection of a new *ad hoc* dealer by issuing communication No. J&KRRPS dated 08.05.2020. Subsequently, vide communication No. JKRO/PS/ADHOC dated 11.09.2020, the respondent-HPCL made a temporary arrangement for a period of one year for operation of the retail outlet at Sungal Morh with Shri Ajay

Mahajan, Proprietor of M/s Ravinder Kumar and Bros. Further, vide communication No. JKRO/PS/Adhoc/Chakmalal dated 11.09.2020, the petitioner was directed to hand over the possession of the retail outlet along with HPCL assets to the Area Sales Manager of the Corporation, Shri Sunil Kumar Digra.

6. It is contended by the petitioner in paragraph 11 of the petition that the respondents were under an obligation to continue the *ad hoc* arrangement with her until the appointment of a regular dealer, notwithstanding that the tenure had been extended up to 30.09.2020. According to the petitioner, she could have been replaced only by appointment of a regular dealer or upon lawful termination of her *ad hoc* arrangement in accordance with the governing terms and policy.

7. It is further averred that the petitioner had approached the Court of learned Additional District Judge, Jammu (Commercial Court) by filing a petition under Section 9 of the Arbitration and Conciliation Act, 1996, and vide order dated 02.09.2020, the parties were directed to maintain status quo. Thereafter, through her counsel, the petitioner issued a notice dated 03.10.2020 invoking arbitration and seeking reference of the disputes to an Arbitrator in terms of Clause 66 of the Standard Dealership Agreement read with Clause 13 of the order of appointment issued vide communication dated 18.04.2018. It is also stated that the said legal notice dated 03.10.2020 was responded to by the respondent-HPCL through their counsel vide reply dated 21.11.2020.

8. Precisely, it is the contention of the petitioner that in terms of the policy, the tenure of two years was capable of further extension and that, in view of Clause 7 of the communication dated 18.04.2020, the *ad hoc* arrangement, once made, was to continue till the selection and appointment of a regular dealer or till earlier termination by the Corporation. According to the petitioner, in the present case, no valid termination of her arrangement has taken place.

9. The respondent-HPCL has filed its response contending, inter alia, that no arbitration agreement exists between the petitioner and the respondent, so as to warrant appointment of an Arbitrator through the present application and, in the absence of any such arbitration agreement, the petition is misconceived and not maintainable. It is, however, admitted that the petitioner was appointed as an *ad hoc* dealer and that her tenure was extended beyond two years on account of the COVID-19 pandemic. The respondent submits that the license granted to the petitioner to operate the retail outlet stood revoked/cancelled/terminated upon the appointment of Mr. Ajay Mahajan as temporary *ad hoc* dealer for a period of one year with effect from 01.10.2020. It is further stated that the appointment of an *ad hoc* dealer by the Corporation is governed by the policy relating to appointment of *ad hoc* dealers against terminated dealerships for company-owned retail outlets where no regular dealers are in place. As per the said policy, the tenure of an *ad hoc* dealership shall be one year or till selection of a regular dealer, whichever is earlier, and may be renewed for a further period of one year. Under no circumstances, the said arrangement can continue beyond two years. If, for any

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reason, the retail outlet is required to be operated beyond two years, a fresh selection of a dealer is to be undertaken in accordance with the prescribed procedure. The earlier arrangement automatically terminates upon selection of a regular dealer. According to the respondent, upon expiry of the petitioner's tenure by efflux of time and appointment of a new *ad hoc* dealer, the petitioner's license stood terminated and her continued possession, if any, became unauthorized and illegal. It is, thus, contended that the petitioner has no subsisting legal right, nor has there been any invasion of such right, so as to entitle her to seek any relief in the present proceedings. It is further stated that, prior to filing the present petition, the petitioner had instituted a civil suit seeking a declaration that communication dated 08.05.2020 issued by defendant No. 3 therein was null and void. However, the said suit came to be dismissed vide order dated 25.09.2020 on the ground of lack of jurisdiction. It is also averred that the petition filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996 has been dismissed by the Court of learned Additional District Judge, Jammu, vide order dated 14.12.2020, with an observation that no arbitration clause existed between the parties. It is stated that, assailing the aforesaid order, the petitioner has filed an appeal, being AA No. 15/2020, which stands clubbed with this petition and is presently pending consideration before this Court.

10. Mr. Karman Singh Johal, learned counsel appearing for the petitioner, submits that in terms of Clause 7 of the communication dated 18.04.2018, the petitioner was entitled to continue as *ad hoc* dealer

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until appointment of regular dealer. It is contended that the respondent-HPCL has arbitrarily refused renewal of the petitioner's arrangement, thereby giving rise to the disputes between the parties. According to learned counsel, the said disputes fall within the ambit of Clause 66 of the Standard Dealership Agreement and are, therefore, required to be adjudicated by an Arbitrator in accordance with the terms and conditions governing the Standard Dealership Agreement. He has relied upon the judgment of the Hon'ble Supreme Court of India in **"M/s Inox Wind Ltd. vs. M/s Thermocables Ltd., 2018 INSC 4"**.

11. *Per contra*, Mr. R.P. Sharma, learned Senior counsel appearing for the respondent-HPCL, has submitted that the petitioner herself has admitted, in paragraph 9 of the petition, the applicability of the governing policy. He contends that Clause 9 of the said policy categorically stipulates that, under no circumstances, can an *ad hoc* dealership continue for more than two years. He has further submitted that with the appointment of a new *ad hoc* dealer, the petitioner's *ad hoc* dealership stood automatically terminated in terms of Clause 9 of the policy. Learned Senior counsel has further argued that, despite the clear mandate restricting the tenure of an *ad hoc* arrangement to a maximum period of two years, the petitioner continued to operate the retail outlet for more than five and a half months, beyond the stipulated period and, therefore, cannot claim any subsisting right to continue or seek renewal of the arrangement. It is further submitted that the terms and conditions contained in the standard dealership agreement are applicable only for the purpose of operation of the said

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outlet and only to the extent that they are not inconsistent with the temporary nature of the petitioner's appointment on *ad hoc* basis.

12. Heard learned counsel appearing for the parties and perused the record.

13. The petitioner, in paragraph 9 of the petition, has reproduced Clause 9 of the policy dated 03.12.2003. The same is extracted hereunder:-

> "**9. Tenure:**
>
> **Tenure of the *ad hoc* dealership will be one year or till a regular dealer is selected whichever is earlier, to be renewed for a period of another one year. Under no circumstances, the contract can be for more than two years. If for any reason, the RO needs to be operated beyond two years fresh selection of dealer as per the procedure stipulated above will be followed.** The contract will automatically be terminated on selection of a regular dealer."

14. A bare perusal of the aforesaid clause makes it manifestly clear that the tenure of an *ad hoc* dealership is for a period of one year or till selection of a regular dealer, whichever is earlier. The *ad hoc* arrangement may be renewed for a further period of one year; however, under no circumstances can such arrangement continue beyond a maximum period of two years. It further provides that if, for any reason, the retail outlet is required to be operated beyond the period of two years, a fresh selection of a dealer, in accordance with the prescribed procedure, is mandatory, and the contract stands automatically terminated upon selection of a regular dealer.

15. The communication dated 18.04.2018 was issued to the petitioner in terms of the aforesaid policy only. Clause-7 of the communication dated 18.04.2018 is extracted as under:

> "7. The said arrangement shall remain in force for a period of one year commencing from May 15,2018 or till appointment of a regular dealer or till terminated earlier by the Corporation as hereinafter stated. If felt necessary, the said agreement can be renewed at the sole discretion of the Corporation for a period of another one year."

16. The Clause 7 of the communication dated 18.04.2018 aligns squarely with Clause 9 of the Corporation's policy. In terms of these clear stipulations, the petitioner's tenure as an *ad hoc* dealer was strictly capped at a maximum period of two years. Any continuation of operation of the retail outlet beyond the said period necessarily required a fresh selection process in accordance with the prescribed procedure.

17. The petitioner acknowledges that respondent-HPCL initiated a new appointment process, resulting in the appointment of Shri Ajay Mahajan as an *ad hoc* dealer effective from 01.10.2020. Clause 7 of the communication dated 18.04.2018, allows for a one-year renewal at the Corporation's sole discretion following the initial term; this provision is entirely consistent with the aforementioned policy.

18. The issue that arises for consideration is whether any arbitration agreement exists between the parties or not.

19. It is evident that the communication dated 18.04.2018 does not contain any arbitration clause. While Clause 13 incorporates the terms

and conditions of the Standard Dealership Agreement, such incorporation is only for the purpose of operation of the said outlet and only to the extent that such terms and conditions are not inconsistent with the petitioner's appointment as a temporary dealer.

20. Learned counsel for the petitioner has, however, relied upon the terms and conditions of the Standard Dealership Agreement to contend that an arbitration clause i.e. Clause 66 of the Standard Dealership Agreement is incorporated in communication dated 18.04.2018. In **M/S Inox Winds Ltd**. (supra), the purchase order was issued by the appellant in which it was categorically mentioned that the supply would be as per the terms mentioned therein and in the attached standard terms and conditions. The Hon'ble Supreme Court of India concurred with the earlier judgment in case titled M/s **M.R.Engineers & Contractors Pvt. Ltd. Vs. Som Datt Builders Ltd.** reported in **(2009) 7 SCC 696** with the modification that a general reference to standard form of contract of one party along with those of trade associations and professional bodies will be sufficient to incorporate the arbitration clause. In this context, it would be apposite to take note of **M.R Engineers'** case (supra) and the relevant paras are extracted as under:

> **24.** The scope and intent of Section 7(5) of the Act may therefore be summarised thus:
> (*i*) An arbitration clause in another document, would get incorporated into a contract by reference, if the following conditions are fulfilled:
> (*1*) the contract should contain a clear reference to the documents containing arbitration clause,
> (*2*) **the reference to the other document should clearly indicate an intention to incorporate the arbitration clause into the contract**,
> (*3*) **the arbitration clause should be appropriate, that is capable of application in respect of disputes under the contract and should not be repugnant to any term of the contract.**

(*ii*) When the parties enter into a contract, making a general reference to another contract, such general reference would not have the effect of incorporating the arbitration clause from the referred document into the contract between the parties. **The arbitration clause from another contract can be incorporated into the contract (where such reference is made), only by a specific reference to arbitration clause.**
(*iii*) **Where a contract between the parties provides that the execution or performance of that contract shall be in terms of another contract (which contains the terms and conditions relating to performance and a provision for settlement of disputes by arbitration), then, the terms of the referred contract in regard to execution/performance alone will apply, and not the arbitration agreement in the referred contract, unless there is special reference to the arbitration clause also**.
(*iv*) Where the contract provides that the standard form of terms and conditions of an independent trade or professional institution (as for example the standard terms and conditions of a trade association or architects association) will bind them or apply to the contract, such standard form of terms and conditions including any provision for arbitration in such standard terms and conditions, shall be deemed to be incorporated by reference. Sometimes the contract may also say that the parties are familiar with those terms and conditions or that the parties have read and understood the said terms and conditions.
(*v*) Where the contract between the parties stipulates that the conditions of contract of one of the parties to the contract shall form a part of their contract (as for example the general conditions of contract of the Government where the Government is a party), the arbitration clause forming part of such general conditions of contract will apply to the contract between the parties."

(**emphasis added**)

21. It would also be apt to take note of the judgment of the Hon'ble Supreme Court of India in **Maharashtra State Electricity Distribution Co. Ltd. v. R Z Malpani,** reported in **2026 SCC OnLine SC 553** and the relevant para is extracted as under:

"38. Reference in this respect has also been made to the judgment of this Court in *NBCC (India) Ltd.* (Supra). In the said judgment, this Court dealt with facts which are somewhat similar to the instant appeal; the arbitration clause was contained in the 'Request for Proposal' in the tender documents and the contract was awarded to the Respondent therein by means of issuance of a letter of intent which made the terms and conditions of the said tender documents applicable to the letter of intent as well. This Court drew a distinction between 'reference' and 'incorporation' of an arbitration clause, and after discussing the decisions in *M.R. Engineers & Contractors (P) Ltd.* v. *Som Datt Builders Ltd.*, and *Inox Wind Ltd.* v. *Thermocables Ltd.*, **found that the arbitration clause contained in some document may be incorporated in the contract between the parties only by a specific reference to the arbitration clause. The intent of the parties to incorporate the arbitration clause has to be explicitly clear and a mere general 'reference' to the tender conditions would not suffice**."

(emphasis added)

22. In view of the law laid down by the Hon'ble Supreme Court of India, this Court has no hesitation in holding that the terms and conditions of the Standard Dealership Agreement were not ipso facto incorporated into the communication dated 18.04.2018; rather, they were made applicable solely for the purpose of the outlet's operation. Consequently, the arbitration clause contained in Clause 66 of the Standard Dealership Agreement did not form part of the communication dated 18.04.2018. Had the parties intended to settle disputes through arbitration, they would have explicitly stated so in the 18.04.2018 communication. Instead, by limiting the application of the Standard Agreement to operational matters, the parties indicated a clear intent to exclude the arbitration clause. This leads to the inescapable conclusion that no arbitration agreement exists between the parties and, therefore, no Arbitrator can be appointed under Section 11(6) of the Arbitration and Conciliation Act, 1996.

23. Accordingly, the present petition is found to be misconceived and is, therefore, **dismissed** along with all connected CM(s).

24. A copy of this judgement be placed on the file of AA No.15/2020.

AA No.15/2020

Registry to list this appeal before the Commercial Appellate Division of this court on **15.05.2026**.

(Rajnesh Oswal)
Judge

Jammu
12.05.2026
Madan Verma-Secy

Whether order is speaking? **Yes.**
Whether order is reportable**?** **Yes.**

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