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## SWASTIK GASES V. INDIAN OIL CORPORATION: AN ANALYSIS OF EXCLUSIVE JURISDICTION

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### ABSTRACT

The aim of this paper is to investigate the complexities surrounding the case of Swastik Gases v. Indian Oil Corporation and to analyse the implications of the jurisdiction clause in the consignment agency agreement. The primary problem lies in determining whether the Calcutta High Court holds exclusive jurisdiction over the appellant's arbitration application under Section 11 of the Arbitration and Conciliation Act, 1996, given the jurisdiction clause specified in Clause 18 of the agreement. This case analysis employs a qualitative research method with a case study design, carefully examining the factual details, legal arguments, and court rulings. The analysis delves into the parties' contentions, focusing on the appellant's claim that Jaipur courts also have jurisdiction due to the cause of action arising partially in Jaipur. On the other hand, the respondent maintains that the jurisdiction clause grants exclusive jurisdiction to Kolkata courts. The major findings indicate that the absence of explicit terms like "alone" or "exclusive" does not diminish the jurisdiction clause's exclusivity. The court's ruling confirms Kolkata's exclusive jurisdiction, upholding the validity and enforceability of jurisdiction clauses in commercial agreements. Consequently, the paper concludes that precision and clarity in contract drafting are crucial to avoid potential disputes. It emphasizes the importance of interpreting jurisdiction clauses based on the parties' intentions and highlights the significance of such clauses in determining the appropriate forum for dispute resolution. The findings contribute to the broader understanding of jurisdictional issues in arbitration cases and underscore the need for unambiguous language in agreements to ensure efficient and fair resolution of conflicts between contracting parties.

**Keywords**– Arbitration and Conciliation Act, Cause of Action, Exclusive Jurisdiction, Expressio unius est exclusio alterius, Jurisdiction

GRASP - EDUCATE - EVOLVE

## INTRODUCTION

The case of *Swastik Gases v. Indian Oil Corporation* involves a complex legal dispute arising from a consignment agency agreement between two prominent entities. The appellant, M/s Swastik Gases (P) Ltd., was appointed by the respondent Company, Indian Oil Corporation, to act as its consignment agent for marketing lubricants in the city of Jaipur, Rajasthan. However, disagreements between the parties ensued when the appellant faced challenges in selling the lubricant stock as per the agreement. Unable to amicably resolve their differences, the appellant invoked arbitration proceedings under Section 11 of the Arbitration and Conciliation Act, 1996. The focal point of the case lies in determining whether the Calcutta High Court holds exclusive jurisdiction over the arbitration application, in light of the jurisdiction clause specified in Clause 18 of the consignment agency agreement.

## FACTS

In this case of *Swastik Gases v. Indian Oil Corporation*<sup>824</sup>, the respondent Company hired the appellant, M/s Swastik Gases (P) Ltd., located in Jaipur in Rajasthan, as the consignment agent. The respondent Company was in the business of storing, distributing, and manufacturing various types of lubricating oils, grease, fluid, and coolant.

The appellant was appointed the Company's consignment agent for marketing lubricants in Jaipur (Rajasthan) as a result of an agreement between the appellant and respondent. Regarding the location of the agreement's signing, the parties took opposing positions. While the appellant maintains that the agreement was signed in Jaipur, the respondent Company argued that it had been signed in Kolkata.

As a result of the appellant's inability to sell a sizable amount of its lubricant stock, disputes between the parties developed and were not

amicably resolved. Consequently, the appellant notified the respondent that it was seeking Rs 18,72,332 under a number of different headings. After receiving no answer, the appellant wrote the respondent a second notice using the arbitration clause, this time naming a retired judge from the High Court as the appellant's arbitrator. The appellant would be forced to continue in accordance with Section 11 of the 1996 Act if the respondent failed to designate their arbitrator within the allotted thirty-day period.

The appellant filed an application under Section 11 of the 1996 Act in the Rajasthan High Court for the appointment of the arbitrator in respect of the disputes arising out of the aforementioned agreement after the respondent failed to designate its arbitrator within thirty days of receiving the notice.

The respondent disputed the appellant's motion, among other things, by asserting that the Rajasthan High Court lacked territorial jurisdiction over the subject. Respondent argued that the Rajasthan High Court lacked geographical authority to hear the case under Section 11 since the agreement had been made subject to the jurisdiction of the courts in Kolkata.

The designated Judge dismissed the case under Section 11 and determined that the Rajasthan High Court lacked territorial authority to consider it, but allowed the appellant to submit the arbitration application in the Calcutta High Court. The current appeal by special leave was filed based on this order.

## ISSUES

- Whether the courts in Rajasthan have jurisdiction, as the cause of action also arose in Jaipur?
- Whether in respect of Clause 18 of the agreement signed between the parties, if any dispute arises the exclusive

<sup>824</sup> *Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd.*, (2013) 9 SCC 32.

jurisdiction lies with Kolkata courts or not?

### **CLAUSES OF THE CONTRACT IN DISPUTE**

- Clause 17

**"17. Arbitration**

If any dispute or difference(s) of any kind whatsoever shall arise between the parties hereto in connection with or arising out of this agreement, the parties hereto shall in good faith negotiate with a view to arriving at an amicable resolution and settlement. In the event no settlement is reached within a period of 30 days from the date of arising of the dispute(s)/difference(s), such dispute(s)/difference(s) shall be referred to 2 (two) arbitrators, appointed one each by the parties and the arbitrators, so appointed shall be entitled to appoint a third arbitrator who shall act as a presiding arbitrator and the proceedings thereof shall be in accordance with the Arbitration and Conciliation Act, 1996 or any statutory modification or re-enactment thereof in force. The existence of any dispute(s)/difference(s) or initiation/continuation of arbitration proceedings shall not permit the parties to postpone or delay the performance of or to abstain from performing their obligations pursuant to this agreement."

- Clause 18

**"18. Jurisdiction**

The agreement shall be subject to jurisdiction of the courts at Kolkata."

- Section 11 of the Arbitration and Conciliation Act, 1996<sup>825</sup>

*"11. Appointment of arbitrators.—(1) A person of any nationality may be an arbitrator, unless otherwise agreed by the parties.*

*(2) Subject to sub-section (6), the parties are free to agree on a procedure for appointing the arbitrator or arbitrators.*

*(3) Failing any agreement referred to in sub-section (2), in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two appointed arbitrators shall appoint the third arbitrator who shall act as the presiding arbitrator."*

- Section 11(12)(b) of the Arbitration and Conciliation Act, 1996<sup>826</sup>

*"11. (12)(b) Where the matters referred to in sub-sections (4), (5), (6), (7), (8) and sub-section (10) arise in any other arbitration, the reference to "the Supreme Court or, as the case may be, the High Court" in those sub-sections shall be construed as a reference to the "High Court" within whose local limits the principal Civil Court referred to in clause (e) of sub-section (1) of section 2 is situate, and where the High Court itself is the Court referred to in that clause, to that High Court."*

- Section 20 of the Arbitration and Conciliation Act, 1996<sup>827</sup>

*"20. Place of arbitration.—(1) The parties are free to agree on the place of arbitration.*

*(2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the*

### **LAWS USED**

<sup>825</sup> The Arbitration and Conciliation Act, § 11, No. 26, Acts of Parliament, 1996 (India).

<sup>826</sup> The Arbitration and Conciliation Act, § 11(12)(b), No. 26, Acts of Parliament, 1996 (India).

<sup>827</sup> The Arbitration and Conciliation Act, § 20, No. 26, Acts of Parliament, 1996 (India).

*circumstances of the case, including the convenience of the parties.*

*(3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property."*

### ANALYSIS AND FINDINGS

The learned counsel for the appellant claims that even though Clause 18 grants Kolkata power to adjudicate conflicts between parties, it does not expressly exclude Jaipur from that jurisdiction, where a portion of the cause of action also originated. Although the agreement was signed in Jaipur, the learned counsel contends that all other requisite events establishing the "cause of action" had materialised there, with the exception of the execution, which took place in Kolkata.

This is for the reason that:

- (i) the regional office of the respondent Company is situated at Jaipur;
- (ii) the agreement was signed at Jaipur;
- (iii) the consignment agency functioned from Jaipur;
- (iv) all stock of lubricants was delivered by the Company to the appellant at Jaipur;
- (v) all sales transactions took place at Jaipur;
- (vi) the godown, showroom and office of the appellant were all situated in Jaipur;
- (vii) various meetings were held between the parties at Jaipur;
- (viii) the Company agreed to lift the stock and make payment in lieu thereof at a meeting held at Jaipur, and
- (ix) the disputes arose at Jaipur.

The learned counsel for the appellant would submit that since part of the cause of action has arisen within the jurisdiction of the courts at Jaipur and Clause 18 does not expressly oust the jurisdiction of other courts, the Rajasthan High Court had territorial jurisdiction to try and entertain the petition under Section 11 of the 1996 Act. He vehemently contended that Clause 18 of the agreement cannot be construed as an ouster clause because the words like "alone", "only", "exclusive" and "exclusive jurisdiction" have not been used in the clause.<sup>828</sup>

The appellant in this instance does not contest the fact that Kolkata played a role in the development of the cause of action. According to the appellant, a portion of the claim was submitted in Jaipur as well, thus the Chief Justice of the Rajasthan High Court or the designated Judge has the authority to consider the request for the appointment of an arbitrator under Section 11.

There is no question that the Chief Justice or the designated Judge of the Rajasthan High Court has jurisdiction in the matter in light of Section 11(12)(b) and Section 2(e) of the 1996 Act read with Section 20(c) of the Code. The question is whether the parties have agreed to exclude the Jaipur courts' jurisdiction by virtue of Clause 18 of the agreement, or, to put it another way, if the Rajasthan High Court's Chief Justice's jurisdiction has been excluded in light of Clause 18 of the agreement.

### JUDGEMENT

The effect of the jurisdiction clause in the agreement had to be analysed which provides that the agreement shall be subject to jurisdiction of the courts at Kolkata.

It is true that the words "alone," "only," "exclusive," or "exclusive jurisdiction" have not been used in the agreement's jurisdiction section, but in the court's opinion this is not crucial and makes no significant difference. By including Clause 18 in the agreement, the

<sup>828</sup> Swastik Gases (P) Ltd. v. Indian Oil Corpn. Ltd., (2013) 9 SCC 32.



parties intended for the courts in Kolkata to have exclusive jurisdiction, which is what is meant when they say that only the courts in Kolkata shall have jurisdiction.

It is so because for construction of jurisdiction clause, like Clause 18 in the agreement, the maxim “expressio unius est exclusio alterius” comes into play as there is nothing to indicate to the contrary. This legal maxim means that expression of one is the exclusion of another.

The parties have implicitly disclaimed the jurisdiction of other courts by stating that the agreement is subject to the courts located in Kolkata. The court believes that an inference can be made that the parties meant to exclude all other courts when the contract specifies the jurisdiction of the courts at a specific location and those courts have the authority to handle the subject. This clause is not at all covered by Section 23<sup>829</sup> of the Contract Act. A clause like that is neither illegal nor against public policy. It in no way violates Section 28 of the Contract Act.

Justice **Madan B. Lokur** stated that:

“In my opinion, the very existence of the exclusion of jurisdiction clause in the agreement would be rendered meaningless were it not given its natural and plain meaning. The use of words like “only”, “exclusively”, “alone” and so on are not necessary to convey the intention of the parties in an exclusion of jurisdiction clause of an agreement. Therefore, I agree with the conclusion that jurisdiction in the subject-matter of the proceedings vested, by agreement, only in the courts in Kolkata.”

In the jurisdiction clause of an agreement, the absence of words like “alone”, “only”, “exclusive” or “exclusive jurisdiction” is neither decisive nor does it make any material difference in deciding the jurisdiction of a court. The very existence of a jurisdiction clause in an agreement makes the intention of the parties to an agreement quite clear and it is not advisable

to read such a clause in the agreement like a statute. In the present case, only the courts in Kolkata had jurisdiction to entertain the disputes between the parties.

## CONCLUSION

I believe that if the exclusive jurisdiction clause in the agreement had been more explicit and clear, the case might not have been filed in the first place. While the court ruled that words like “alone,” “only,” “exclusive,” or “exclusive jurisdiction” need not be present in such clauses, their inclusion would have eliminated the ambiguity and prevented the appellant from raising the issue of specificity. This is where I disagree with the judgment. If one of these words had been used in the disputed clause, there would likely have been no litigation.

In today’s evolving legal landscape, it is crucial for lawyers to draft contracts with more explicit and unambiguous language, reflecting the true intentions of the parties involved. Looking closely at the disputed clause, it is evident that the appellant’s contention regarding specificity has merit. The clause does not explicitly exclude the High Court of Rajasthan’s jurisdiction over the matter.

Despite this disagreement, the judgment, overall, can be deemed satisfactory. The appointed Judges meticulously and systematically provided reasoning and supported their arguments with relevant case laws. The judgment clarified the confusion surrounding exclusive jurisdiction clauses and territorial jurisdiction (Section 20). The bench’s professional analysis and comprehensive elaboration of every aspect make it a landmark judgment in this field.

<sup>829</sup> The Indian Contract Act, § 23, No. 09, Acts of Parliament, 1872 (India).