

(1990) 07 CAL CK 0026
In the Calcutta High Court
Case No : Matter 3194 of 87

Ashok Vandhan Bhagat

APPELLANT

Vs

West Bengal Essential Commodity Supply Corporation Ltd.
and others

RESPONDENT

Date of Decision : 20-07-1990

Acts Referred:

Contract Act, 1872 — Section 17, 70

Citation : AIR 1992 Cal 135

Hon'ble Judges : Bhagabati Prasad Banerjee, J

Bench : Single Bench

Judgement

1. In this writ application the petitioner prayed for an order upon the respondents to deliver 750 quintals of split over recessed oil or in the alternative to refund a sum of Rs. 2,86,000/- together with interest thereon at the prevailing bank rate.

2. The fact of this case in short is that the West Bengal Essential Commodity Supply Corporation Limited issued a tender notice dated 25th February, 1986 for sale of split over stocks of refined oil and R.S.D. palm oil (packed in tins). The quantity of such oil was 1693 quintals kept in several godowns. It was submitted that the tender on the basis of the said notice on 11th March, 1986 after inspection of the goods offered for sale. The bid offered by the petitioner was the highest but the same was not accepted. Thereafter a fresh tender notice was issued on 13th August, 1986 in continuation of previous tender notice asking for fresh offer. In the subsequent tender notice dated 13th August, 1986 it was mentioned that the places at which the materials offered for sale were shifted at 300, Rai Bahadur Road, Calcutta-53 and at 22/C, Dum Dum Road, Calcutta-2. The terms and conditions of the said subsequent tender notice remained unchanged. The petitioner inspected the materials offered for sale by the said subsequent tender notice on 25th August, 1986 at the places mentioned in the subsequent tender notice. It was stated that at the time of inspection the

material was found to be inconsistent with the description thereof in the tender notice, the colour of oil was hazy and of deep colour. At this time also the petitioner submitted a tender in sealed envelope. After long gap by the letter dated 11th February, 1987 the petitioner was informed that his tender rate of Rs. 353/- per quintal for spilt over oil had been accepted by the said Corporation. On such basis the petitioner was asked to deposit Rs. 2,85,930 towards the cost of 750 quintals spilt over oil at the rate of 353/- per quintal + 8% sales tax by means of a Bank Draft/ Pay Order drawn at any nationalised bank in favour of the Corporation within seven days from the date of the receipt of the said letter. By the said letter the petitioner was informed that on failure to comply with the said terms the stocks would be disposed off at the risk and cost of the petitioner without any further notice. On receipt of the said letter the petitioner asked for extension of time till 28th February, 1987 by the letter dated 18th February, 1987 for deposit of necessary pay order. By the letter dated 23rd February, 1987 the time to deposit bank draft/Pay Order was extended till 28th February, 1987. By the said letter also the respondent repeated the threat of disposal of the stock at the risk and cost of the petitioner without further notice in the event of his failure to deposit the said amount within the extended time. The petitioner deposited a Pay Order for Rs. 2,86,000/- along with a forwarding letter dated 28th February, 1987 i.e. within the time extended by the respondents in this behalf. After the petitioner paid the said sum, the respondent-Corporation issued a delivery order in respect of 750 quintals of spilt over oil on 2nd March, 1987 in favour of the petitioner on the godown at 22/C, Dum Dum, Calcutta-22 where the same were stored by the respondent-corporation. By the letter dated 26th March, 1987 the petitioner asked for extension of time to take delivery of the said material and such extension was granted by the respondent-Corporation till 7th April, 1987. Such extension was valid on the delivery order issued in this behalf. On 2nd April, 1987 the petitioner went to the godown at 22/C, Dum Dum, Calcutta-22 for the purpose of taking steps for lifting the said materials. The petitioner was shown one godown where a part of the materials was lying and the rest of the materials were then shifted by the respondents to another godown belonging to M/s. G. S. Bakshi. On inspection of the materials the petitioner found that instead of spilt over oil was not more than 10%. This fact was immediately brought to the notice of the Commercial Inspector of the respondent-Corporation, namely Sri Swapan Mistri who on inspection admitted such position. The aforesaid fact was also placed on record in the form of letter addressed to the respondent No. 2 on 3rd April, 1987 whereby the request was made for supply of spilt over oil within seven days from the date of receipt or in the alternative to refund the entire amount of Rs. 2,86,000/- within seven days. The said letter dated 3rd April, 1987 was neither replied to nor the petitioner was given delivery of split over oil. The respondents had not also refunded the said sum of Rupees 2,86,000/- which was paid by the petitioner by way of Pay Order on 28-2-87. As the respondents sat tight over the matter and did not either deliver the goods or refund the money, the petitioner moved this writ application before this Court. On 23rd July, 1987 this Court on the prayer made by the

respondents granted two weeks" time to file affidavit-in-opposition. No affidavit-in-opposition has been filed by the respondents. Thereafter, again a direction was given on 28-10-87 for filing affidavit-in-opposition within two weeks but no affidavit-in-opposition was filed by the respondents controverting any of the allegations made in the writ application. On 28-10-87 this Court in order to ascertain the correctness of state of affairs as disclosed in the application appointed Mr. H. L. Prama-nik, learned Advocate of this Court as Special Officer who was directed to inspect the materials lying in the godown of Mr. G. S. Bakshy at 22/C, Dum Dum, Calcutta-22 for ascertaining the quality of stock and whether the tins contained water or some other material and for collecting samples therefrom. For analysis the said order was passed only but ascertained whether the allegation of the petitioner that after the money was realised by the corporation, the petitioner was offered tins full of water containing of 10% spilt over oil instead of 100% oil. The learned Special Officer appointed by this Court submitted a report before this Court. The learned Special Officer reported in this Court that he intimated the parties including the West Bengal Essential Commodity Supply Corporation Ltd. at 11 A, Mirza Galib Street, Calcutta-16 and M/s. G. S. Bakshi of 52/9B, B. B. Ganguly Street, Caicutta-12, intimating that he would visit the godown of M/s. G. S. Bakshi at premises No. 22C, Dum Dum Road, Calcutta on 18th June, 1988 at 10 a.m. in the morning for the purpose of carrying out the order of this Court. In the said letter it was pointed out that after completion of inspection at 22C, Dum Dum Road, Calcutta if necessary, the Special Officer shall proceed to the other godown of M/ s. G. S. Bakshi at premises No. 300, Rai Bahadur Road, Calcutta and requested the parties to make all arrangements and to provide all assistances to him for the purpose of carrying out the order of this Court. It was further stated that the letter addressed to Sri G. S. Bakshi at 52/9B, B. B. Ganguly Street, Calcutta, could not be delivered, inasmuch as, no one could specify whether the office of M/s. G. S. Bakshi still exists or not. On 18th June, 1988 the Special Officer reached the premises No. 22/ C, Dum Dum Road, Calcutta which is the godown of M/s. G. S. Bakshi at 10a.m. where the materials in question stated to have been stored. The said Special Officer found that the main door of the said godown was lying closed and nobody was present either on behalf of the West Bengal Essential Commodity Supply Corporation Ltd. or M/s. G. S. Bakshi at the site. The Special Officer met one Sri Badri Narayan Prosad who introduced himself as the Manager of the landlord of the property where the godown is situated and he identified that the godown belongs to M/s. G. S. Bakshi wherein various materials of West Bengal Essential Commodity Supply Corporation Ltd. were stored. The Special Officer waited in front of the main door of the said godown at premises No. 22/C, Dum Dum Road, Calcutta from 10.15a.m. till 11.30a.m. along with Sri Arun Chatterjee, Advocate appearing on behalf of the petitioner and the representative of the petitioner. But unfortunately nobody on behalf of the Corporation turned up and as a result thereof the order passed by this Court on 28-10-87 could not be complied with by the Special Officer. Consequently, the serious allegation that was made by the petitioner against the said Corporation

cannot be verified by the said Special Officer, This case disclosed a very hostile state of affairs as to the administration of West Bengal Essential Commodity Supply Corporation Ltd., Government undertaken which is entrusted with public duties set up at the costs of the public exchequer. The allegation made in the writ application remained uncontroverted, in view of the uncontroverted allegation this Court has no hesitation in holding that the matter was very fishy. The petitioner inspected spilt over oil on the said godown before deposit of money and found spilt over oil was hazy and of deep colour. But after the petitioner paid a sum of Rupees 2,86,000/- and when the petitioner went to take delivery of the goods, the petitioner found that the said oil has been replaced by water which the petitioner refused to take and which the petitioner brought a notice to the respondent, the respondent-Corporation remained significantly silent and further the officer of the Corporation did not give any reply to the allegation made by the petitioner. This fact clearly indicates that the officers of the Corporation were afraid of allowing any inspection of the goods. For the simple reason when the goods were allowed to be inspected by the Special Officer, in that event, the allegation made by the petitioner in the affidavit had to be admitted by them. The question is that when the petitioner brought a notice to the respondents, the respondents did not give any reply. It is well established principle of law that under certain conditions silence and inaction constitute the representation inasmuch as positive language of conduct. When the petitioner had made allegation it was the duty on the part of the respondents to give a reply either admitting or denying the allegation but they remained significantly silent. The serious allegation is made against the Corporation which is in substance that the Corporation had realised a sum of Rs. 2,86,000/- from the petitioner on showing the same goods, but after taking money the oil was replaced by water and there was no denial to this fact and under such circumstances it must be held that a fraud has been practised by the Corporation upon the petitioner. The said Corporation is an instrumentality of the State. The said Corporation has been established for the purpose of discharging duties namely the distribution of essential commodity to the public distribution system, or in other words, the Corporation has been entrusted with the duty to supply essential commodities to the people of this State. The allegation made against the Corporation is very serious and in the instant case, when serious allegation has been made against the Corporation, the Corporation did not file any affidavit. Under such circumstances, I have no hesitation in holding that the Corporation could not deny the allegation made against the Corporation and as such it has chosen not to affirm an affidavit. This is a clear case where the officers of the Corporation were guilty of committing a fraud by taking a sum of Rs. 2,86,000/- it cannot be said within the domain of contract of public authorities discharging public duties to cheat the people when the Corporation has taken money on the basis of declaration on showing the goods that the goods were spilt over oil but at the time of delivery it was found that the oil has been removed and replaced by water. These facts are really ugly. It is a mischievous act on the part of the officers of the Corporation. The officers of the Corporation should act honestly and

diligently but the fact disclosed clearly indicates that they are not acting as such. In view of the peculiar facts and circumstances of the case, the respondents are bound to refund the said sum of Rupees 2,86,000/- to the petitioner with interest at the rate of 12% per annum. Public authorities are not entitled to be unjustly enriched at the cost of the people. They are required to act honestly and diligently. This case discloses that the officers of the corporation fail to maintain honesty and they have acted in the manner which is highly derogatory to the Corporation. The Corporation is bound to act in public interest, but in the instant case they have acted for the purpose of making some unlawful grounds by abusing some powers and positions. This is a clear case where after taking the money, the corporation had failed to discharge its duty in not delivering the goods. The Corporation have no authority to retain the money obtained by practising fraud.

3. In the result, the writ petition succeeds. The respondent are directed to refund the sum of Rs. 2,86,000/- with interest at the rate of 12% per annum from the date of the receipt of delivery date of payment within a period of two weeks from today.

4. On the oral prayer of the learned Advocate, Mr. Mukul Prakash Banerjee, appearing for the Respondent, let there be a stay of operation of this order for a period of six weeks from date.

5. All parties to act on a signed copy of the operative part of this judgment on the usual undertaking.

6. Petition allowed.