
(2006) 05 DEL CK 0078

In the Delhi High Court

Case No : WP (C) No. 14343 of 2004 and CCP No. 762 of 2004

Dharam Chand Gupta

APPELLANT

Vs

Indian Oil Corporation Ltd. and Others

RESPONDENT

Date of Decision : 16-05-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226, 298

Citation : (2006) 130 DLT 102

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : R.P. Bansal and Sunil Goel, for the Appellant; Chetan Sharma Rajpreet Kaur and Monika Garg, for the Respondent

Judgement

S. Ravindra Bhat, J.—The Petitioner, claiming to be a reputed dealer, distributor and stockist of petroleum products, has approached this Court in writ proceedings; it seeks directions to quash two orders dated 5-5-2003 and 19.5.2003 issued by the respondent Indian Oil Corporation Ltd, (hereafter called the IOC), terminating two agreements entered into with it.

2. Petitioner's proprietorship firm M/s. Nav Bharat Trading Co. was registered with Sales Tax Authorities in 1971. It is claimed that in 1994, IOC was impressed with the name and ability of petitioner, appointed it as marketing agent for its Servo branch lubricants. On 7.11.1996 IOC appointed petitioner as Distributor by agreement dated 7.11.96 (hereafter called "the distributor agreement"). Apart from other stipulations, this agreement contained an arbitration clause, and also the following condition:

28. The Distributorship granted by the corporation to the distributor under this agreement may be terminated without assigning any reasons whatsoever by either party upon giving to the other not less than 30 years notice in writing and upon the expiration of any such notice period, this Agreement shall stand automatically canceled and revoked but without prejudice to the rights of either party against the other in respect of any matter or thing antecedent to such

termination.

The above is without prejudice to the rights and remedies provided elsewhere in the Agreement or otherwise in law and in the event of any such termination the corporation will not be liable for compensation, damage, or otherwise howsoever.

3. In June-July 2002, IOC invited applications for appointment of Stockists for Automotive lubes. After necessary formalities including interview, the petitioner was appointed as Stockist (referred as SSA-lube) for North and West Delhi. On 14.10.2002 an Agreement dated was executed in respect of the stockist arrangement. This agreement (hereafter called the "Stockiest-ship Agreement" inter alia, contained an arbitration clause, and also the following stipulation:

Termination of Agreement

1.3 The agreement can be terminated by either party without assigning any reason and without liability to pay any compensation upon giving the other party three months notice in writing and upon expiry of the said notice the agreement shall stand automatically terminated and expire, but without prejudice to the rights of either party against the other in respect of any matter or thing or acts or omissions antecedent to such termination.

1.4 Termination in case of non performance

SSA will be given sales targets for a period of one year based on the potential assessed jointly by SSA and our filed officers in his assigned operating area. If the Servo Stockist is not able to achieve the set target, a review will be conducted by the State Retail Sales Manager after a period of 3 months and the revised targets set.

This will be monitored for a further period of 3 months. Still the SSA is not able to achieve the Sales target he will be served notice for termination by giving one months notice only.

1.5 Once SSA terminates agreements he will not deal with any other competitors lubricants brand for the same areas from the same premises.

4. It is the common case of parties that on 18-12-2002, IOC issued a show cause notice to the petitioner asking it to show cause why the distributorship agreement should not be terminated. It was alleged that a quantity of Hyundai Genuine Oils in excess of what was lifted by the petitioner from IOC was supplied between April-September, 2002, which constituted a breach of condition of the agreement. The petitioner replied, by its letters dated 25-12-2002 and 16-2-2003. On 5.05.2003, the distributorship Agreement dated 7.11.96 was terminated by IOC. It is averred that repeated representations were made by petitioner, but to no avail.

5. It is alleged that on 9.5.2003, supplies of lube products were abruptly suspended by IOC to the petitioner, under the Stockiest-ship agreement. The petitioner requested on 11.5.2003 the IOC to resume the supplies under the

stockistship agreement stating inter-alia that there was no reason to suspend supplies under agreement dated 14.10.2002, which was entirely different from and independent of, the distributorship agreement. It is alleged that the supplies were stopped by IOC arbitrarily without any prior information/notice and without any reason and without affording any opportunity to the petitioner. It is alleged that this sudden and unexpected suspension of supplies caught the petitioner unawares and led to utter chaos and confusion in the minds of its customers whom the petitioner after so much of pains was able to shift to using IOC products from other products.

6. On 19.5.2003, the Stockist-ship Agreement dated 14.10.2002 was terminated by IOC. The letter reads as follows:

DSO/L./R/HMIL Regd. A.D. UPC/Courier

Dated May 19, 2003

Nav Bharat Trading Co.

Through its Proprietor

C-5. Shivaji Park,

New Delhi 110 026

Re : Termination notice of the Servo stockists Auto Agreement dated 14.10.2002 executed between Indian Oil Corporation Ltd. And Nav Bharat Trading Co.

Dear Sir,

This is in reference to the above agreement dated 14.10.2002 (for short the "agreement" executed by and between Indian Oil Corporation Ltd. Having its Delhi State Office at World Trade Centre, Babar Lane, Barakhmba Road, New Delhi 110 001, (for short "IOC") and Dharma Chand Gupta, Proprietor, Nav Bharat Trading Co. having its office at C-5, Shivaji Park, New Delhi 110 026 (for short "SSA"))

We hereby give you notice for the termination of the said agreement as per the provisions contained in Clause 1.3 of the above Agreement. In accordance with the above clause, you are hereby given three months notice in writing and upon expiry of the said period, the Agreement shall stand automatically terminated but without prejudice to IOC's rights against you in respect of any matter or thing or acts or omissions antecedent to the terminator.

Thanking you

Yours sincerely

F/Indian Oil Corporation Ltd.,

(Y. Sahai)

General Manager.

7. The petitioner alleges that the two orders, terminating the distributorship and Stockist-ship agreements were arbitrary, contrary to Articles 14, 19 and 21 of the Constitution of India. It is alleged that officials of IOC (Mr. Sanjay Gaur) conspired with Stockists for South Delhi and East Delhi and first terminated Distributorship agreement on false and extraneous grounds, then stopped the supplies in stockistship agreement and then terminated the stockistship agreement also. All this was done to confer monetary benefit upon the other two stockists. It is further alleged that this is apparent from the fact that immediately after suspension of supplies to petitioner, the IOC, directed all purchasers in North and West Delhi to purchase from two stockists.

8. Between May 2003 May 2004, representations, requests and reminders were made by the petitioner to restore his stockistship and to resume the supplies, but unavailingly. It is alleged that false and bogus complaints were initiated against the petitioner at the instance of the said two stockists, and the complaints were ultimately found to be false by respondents. The petitioner relies on a letter dated 17.05.2004 by which the Ministry of Petroleum and Natural Gas, Govt of India (Respondent No. 2) directed IOC, to restore the stockistship of petitioner after putting some conditions. The said letter reads as follows:

To,

The Director (Marketing) Indian Oil Corporation Ltd., Mumbai

Subject : Request from M/s. Nav Bharat Trading Co. New Delhi, for restoration of Stockist-ship for Servo Lube Oils.

Sir,

I am directed to refer to this Ministry letters of even No. 1 dated 20.02.2004, 26.03.2004, and 29.04.2004 and IOCL letters No. LS/Retail/15 dated 17.03.2004 5.04.2004, 3.05.2004 No. GM (RS) / 19 dated 30.04.2004 on the subject noted above.

2. The matter has been considered in this Ministry. IOC is advised to restore the SSA ship to M/s. Nav Bharat Trading Company and M/s. Nav Nirman and keep them under watch for atleast one year and also stipulate that they should not make direct supplies to HMIL authorised dealers without prior intimation to IOC.

Yours faithfully,

(Tarun Shridhar) Director

9. The petitioner alleges that IOC failed to comply with Ministry's directives, and even failed to consider the representations of the petitioner for the obvious reasons. It relies upon several representations dated 30.06.2004, and 13.08.2004

10. S/Shri R.P. Bansal and Sunil Goel, appearing on behalf of the petitioner, initially attacked the termination of both the dealership and stockistship

agreements, on the ground that they are ex-facie arbitrary and void, as not being preceded by a show cause notice, or opportunity. However, during the course of hearing, in view of the admitted position that the IOC did issue show cause notice to the petitioner, before terminating the dealership agreement, the relief claimed in the writ petition was confined to a direction quashing the termination of the stockistship agreement.

11. It was submitted that the action of the respondent No. 1 IOC in terminating the agreement dated 14.10.2002 is liable to be struck down as violative of Article 14 of the Constitution. The further inaction of the respondent No. 1 in not restoring the stockistship to the petitioner despite passing of order dated 17.05.2004 by the respondent No. 2 and despite being apprised about the illegal benefit being showered upon the other two concerns, and despite the excellent sales performance of the petitioner, it was submitted, is mala fide and unconstitutional.

12. It was submitted that the petitioner's stockistship is his bread and butter and is the only source of income. Counsel submitted that the 40 year old firm of the petitioner is on the brink of closure. The petitioner has incurred heavy losses in terms of revenues and reputation, apart from mental agony. All this has taken its toll on the health of the petitioner and he had to undergo Bypass surgery on 4th August 2004. It was contended that the right to livelihood is a fundamental right, being an integral facet of right to life guaranteed under Article 21 of the Constitution of India; reliance was placed on *Narendra Kumar Chandla Vs. State of Haryana and others*, . The petitioner's fundamental rights are thus seriously impaired first by wrongful action of IOC, terminating the stockistship and later by its failure to compassionately consider the representations of the petitioner and by not taking any action to restore the stockistship and supplies.

13. It was contended that in a similar case as the present one, involving termination of dealership by Indian Oil Corporation on irrelevant and non-existent causes, the Supreme Court, quashed the termination order of IOC in *Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others*, . Reliance was also placed upon the judgment in *Bharat Filling Station v. Indian Oil Corporation* 2003 (iii) AD (Del) 394.

14. The respondent's justification for termination of the stockistship agreement, is that as per clause 1.3, the IOC had absolute discretion, following commercial considerations, to take appropriate action, in the best interests of the company. The stipulations in the agreements, it was submitted, did not oblige the IOC to issue any notice, or grant opportunity or any hearing as was claimed by the petitioner. The IOC averred that as per the conditions of the agreement, particularly the Servo Stockist agreement, the petitioner was under an obligation to use its best endeavors to increase the sales of the IOC products in order to achieve the sales targets.

15. It was submitted that the rationale for determination of the stockistship

contract was the same as in the case of the distributorship agreement, viz that the petitioner had sold products of the IOC in excess of what it had procured for the relevant period. If the petitioner had any grievance, it could always seek recourse to arbitration proceedings.

16. Mr. Chetan Sharma, learned senior counsel, submitted that as per clauses 1.3 to 1.5 of the agreement, the IOC had full discretion to take a commercial decision, to terminate the relationship. This action was not required, as per provisions of law, or the contract, to be preceded by any show cause notice, or a reasoned order. Counsel submitted that the contract was entered into between two willing parties, with equal bargaining power, and the petitioner having voluntarily agreed to the stipulation regarding termination without notice, could not complain about alleged ill effects.

17. Counsel submitted that a three judge decision of the Supreme Court, in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, had settled that the executive, or the Government, could not be called to account for its action, in the contractual sphere, where the action was taken in accordance with provisions of the mutually agreed stipulation. It was also submitted that the court, in exercise of its jurisdiction under Article 226 should not interdict the respondent's actions, in the present case, since they did not involve any public law element. It was also submitted that the petitioner could not take advantage of the letter issued by the Central Government, in May, 2004, because that communication was withdrawn/ cancelled on 2-8-2004 Counsel submitted that the present action is also belated, since the petitioner approached the court in September 2004, impugning the actions of May, 2003.

18. The admitted facts show that the distributorship agreement was cancelled after issuance of a show cause notice, and clarifications received from the petitioner. As far as the obligation to grant hearing is concerned, it is apparent that the relevant stipulations (Clause 28 in the distributorship agreement, and clause 1.3-1.5 of the Stockiest-ship agreement) do not obligate IOC to issue any show cause notice, or grant a hearing. Yet, in the case of the former agreement, cancellation was effected after following the procedure of issuance of a show cause notice, and in the case of the second agreement, no such procedure was followed. Significantly, no Explanation is significantly forthcoming as to why IOC deemed it appropriate not to follow the procedure followed in respect of the distributorship agreement, in the case of the Stockiest-ship agreement.

19. In recent years, the question as to whether state action, in all its manifold activities, including the commercial sphere has to be preceded by standards imposed by Article 14, and be informed by reason, has engaged continued attention of the courts. In Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , the Supreme Court explained the position as follows:

It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate

cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in *Radhakrishna Agarwal and Others Vs. State of Bihar and Others*, . It appears to us, at the outset, that in the facts and circumstances of the case, the respondent-company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See *M/s. Radha Krishna Agarwal v. State of Bihar* at p. 462 (at SCC) (supra), but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration, it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is "arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a Governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reason- ableness, the same-would be unreasonable. In this connection reference may be made to *E.P. Royappa Vs. State of Tamil Nadu and Another*, ; *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, , *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, ; *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and also *Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay*, . It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.

20. Earlier in *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, the Court had, while adjudicating the complaint of a contractor whose firm had been blacklisted, without notice, held as follows:

The State need not enter into any contract with any one but if it does so, it must do so fairly without discrimination and without unfair procedure. Reputation is a part of a person's character and personality. Blacklisting tarnishes one's reputation.

Exclusion of a member of the public from dealing with a State in sales transactions has the effect of preventing him from purchasing and doing a lawful trade in the goods in discriminating against him in favor of other people.

Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

The above decision was followed, later, in *Raghunath Thakur Vs. State of Bihar and Others*, where the Supreme Court observed:

Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order."` The same view found acceptance in AIR 2002 SC 2423 .

21. In *Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries*, a different dimension was put to the issue, when the Supreme Court underscored the importance of non-arbitrariness in action by public authorities. It was observed thus:

In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to article 14 of the Constitution of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law. A public authority possesses powers only to use them for public good. This imposes the duty to act fairly and to adopt a procedure which is "fairplay in action".

22. In the decision reported as *Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others*, the Supreme Court dealt with a somewhat similar situation, where the dealership of Indian Oil Corporation was terminated. It turned down the plea of availability of a contractually agreed dispute resolving

mechanism, viz arbitration, set up as an objection to maintainability of writ proceedings, in the following terms:

So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and Therefore the writ petition filed by the appellants was liable to be dismissed, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies; (i) where the writ petition seeks enforcement of any of the Fundamental Rights; (ii) where there is failure of principles of natural justice or, (iii) where the orders or proceedings are wholly without jurisdiction or the virus of an Act and is challenged. [Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors. (1998) 8 SCC 11 1998 AIR SCW 3345 : AIR 1998 SC 22. The present case attracts applicability of first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings.

23. All the issues, regarding the maintainability of proceedings under Article 226 of the Constitution of India, in the context of an oil dealership cancellation order, were examined elaborately by this Court in Bharat Filling Station's case. There, the dealership was cancelled on the ground of objectionable conduct which was also subject matter of criminal investigations. The Court held that:

23. Thus the Supreme Court held in the aforesaid cases that there may be circumstances where immediate action is required and in such cases pre-decisional natural justice may not be contemplated and purpose can be served by giving post-decisional hearing. However, going by the facts and circumstances it cannot be said that the alleged offence was so grave that it was necessary for the respondent No. 2 to dispense with the provisions of requirement of observance of show-cause notice before taking drastic action of terminating the dealership agency. Even if the respondent No. 2, in such circumstances, it was of the opinion that the kind of irregularity committed by the petitioner is serious, was not remediless and could have resorted to suspension of the dealership pending enquiry by serving show cause notice. However, the respondent No. 2, going by the allegations contained in First Information Report, took the impugned action thereby presuming that whatever is stated in the First Information Report or whatever is the Report of inspection is gospel truth and has to be believed without giving any chance to the petitioner to rebut the same. It cannot be treated as fair play or in consonance with the sense of justice. After all, even as per the procedure prescribed by the respondent No. 2 show cause notice only of seven days was required to be given. Thus even if the respondent No. 2 had followed the procedure prescribed it would not have taken much time

before concluding the hearing and taking action. I may point out at this stage that I am not going into the issue as to whether allegations contained in the inspection Report and First Information Report are correct inasmuch as learned Counsel for the petitioner has also tried to argue that the allegations made against the petitioner are not correct. It would be a matter for the respondent No. 2 to decide after giving proper opportunity to the petitioner. Any observation made by this Court at this stage may have an adverse effect on the petitioner and/or the respondent and that is why I am refraining from making any such observations. I am only concerned with the manner in which action is taken by the respondent No. 2. Once it is found that principles of natural justice were required to be complied with for taking such action and admittedly that is not done the impugned notice/decision dated 13th June, 2001 terminating the dealership of the petitioner cannot be sustained and is hereby set aside.

24. The view which I have taken as aforesaid, other judgments cited by the learned Counsel for the respondent No. 2 shall be of no avail. On the other hand judgment of Supreme Court in the case of Harbans Lal (supra) which was a case of termination of dealership by IOC itself, would squarely apply to the facts and circumstances of this case. In fact this judgment answers both the contentions raised by learned Counsel for the respondent No. 2 to the maintainability of the writ petition. In this case, the Supreme Court negated the contention of IOC to the effect that writ petition was not maintainable as relationship between the parties was contractual and further the Dealership Agreement contained an arbitration clause. In that case for certain alleged irregularities committed by the dealer show cause notice was given which was however not persuaded. But thereafter dealership was terminated. The Supreme Court set aside the termination Order. One may also make mention of the judgments of the Supreme Court in the cases of Kumari Shrilekha Vidyarthi and Others Vs. State of U.P. and Others, and Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, .

25. The result of the aforesaid discussion is that this writ petition is allowed. Rule is made absolute. Termination Order dated 13th June, 2001 is hereby quashed.

26. It may be mentioned at this stage that before this writ petition could be filed the respondents had taken over the possession of the petrol pump. It is being run by the respondent No. 2 at present. Since the Termination Order dated 13th June, 2001 is quashed, the respondent No. 2 shall restore the possession of this petrol pump to the petitioner. The respondent No. 2 shall be at liberty to take appropriate action after complying with principles of natural justice and in accordance with Marketing Disciplines Guidelines.

27. In the facts and circumstances of this case there shall be no Order as to costs.

24. The facts presented in these proceedings are a fortiori on sounder footing than in the above case; there are no separate allegations pertaining to the

Stockiest-ship agreement. If the statement of the IOC were to be considered, its opinion is based on commercial truancy of the petitioner. In any case, no features were brought to the notice of the court, to inhibit the grant of a fair opportunity before the decision was taken.

25. Fairness and non-arbitrariness are the hallmarks of equality; indeed they are the bedrock of democratic governance. They were sacrificed for no apparent reason in this case. Therefore, following the decisions in Harbans Lal Sahnia (supra) and Bharat Filling Station (supra) I hold that the decision or letter communicating cancellation of the Stockiest-ship contract, on 19-5-2003 was arbitrary. The same is hereby quashed. As a consequence the respondents shall resume the supplies to the petitioner under the agreement; however liberty to take such action as the IOC wishes to, is permitted to it, provided the petitioner is issued a show cause notice, and given opportunity to present its point of view, in an appropriate manner, in answer to the allegations. Since the decision dated 5-5-2003 cancelling the distributorship agreement is not being interfered with, liberty is reserved to the petitioner to proceed in accordance with law, as per remedies available to it, for claiming damages or compensation, if he chooses to do so.

26. The writ petition is allowed to extent indicated above. Rule made absolute in the said terms. No costs.

CCP NO. 762/2004

By this petition the contempt proceedings are sought to be initiated for alleged willful non-compliance with the orders of this Court. In the main judgment, writ petition has been partly allowed. Having regard to the final order in the writ proceeding, I am of the opinion that no separate orders are called for in these proceedings. The contempt petition is accordingly dismissed. No costs.