
(2006) 08 DEL CK 0005
In the Delhi High Court
Case No : LPA No. 1144 of 2006

Indian Oil Corporation Ltd.

APPELLANT

Vs

Dharam Chand Gupta

RESPONDENT

Date of Decision : 03-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 1 CTLJ 318

Hon'ble Judges : V.K. Jain, Acting C.J.; Kailash Gambhir, J

Bench : Division Bench

Advocate : Chetan Sharma and Debasish Mishra, for the Appellant; Sunil Goel, for the Respondent

Final Decision : Dismissed

Judgement

Vijender Jain, A.C.J.

1. Aggrieved by the order passed by the learned Single Judge, the appellant has filed the present appeal. Mr. Chetan Sharma, learned Counsel appearing for the appellant has contended that it is well settled that in contractual sphere where the action was taken in accordance with provisions of the mutually agreed stipulations, the court in exercise of its jurisdiction under Article 226 of the Constitution of India should not interdict it with the action. It was contended before us that the learned Single Judge has not followed the dictum laid down by the Supreme Court in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, It was also contended that in terms of Stockist Agreement between the parties and in terms of Clause 1.3 of the said agreement three months" notice in writing was given to the respondent and the clause itself has inbuilt mechanism of principle of natural justice. Clause 1.3 of the agreement is referred below:

1.3. Termination of Agreement?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.

2. Our attention has also been drawn to the notice which is at page 107 of the paper book dated 19th May, 2003 sent to the respondent pursuant to Clause 1.3 of the agreement. Mr. Chetan Sharma, learned senior Counsel appearing for the appellant has also placed reliance on *Hindustan Petroleum Corpn. Ltd. Vs. Pinkcity Midway Petroleums*, to support his argument that due to existence of arbitration clause in the Stockistship Agreement this Court should not interfere by exercising its jurisdiction under Article 226 of the Constitution of India. Assailing the findings of the learned Single Judge, learned Counsel for the appellant has contended that the learned Single Judge failed to notice that under the Lube Distributorship Agreement it was incumbent upon the appellant to give a show cause notice before terminating the Distributorship Agreement and, Therefore, the same analogy of serving a show cause notice could not have been imported in the Stockistship Agreement where no such clause of serving a prior show cause notice before terminating the Distributorship Agreement exists. Mr. Sharma also submitted that the appellant had duly complied with the said clause existing in Lube Distributorship Agreement before terminating the said agreement and since no such clause existed in the Stockist Agreement, Therefore, no prior show cause notice was required to be served upon the respondent before terminating the Distributorship Agreement.

3. On the other hand, learned Counsel for the respondent has contended that if there is a manifest injustice or the principle of natural justice has been violated, the writ court is not without jurisdiction. Learned Counsel has placed reliance on the judgments of *Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others*, and *Bharat Filling Station v. Indian Oil Corporation 2003 (III) AD (Delhi) 394*, wherein the Supreme Court held:

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, 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 notice 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.

4. Learned Counsel for the respondent has further contended that the notice dated 19th May, 2003 was a mere camouflage as prior to this notice itself the appellant had already stopped the supplies on 9th May, 2003. Therefore, the argument advanced by the learned Counsel for the respondent is that the notice dated 19th May, 2003 was sent merely to perpetuate its illegal action and was an empty formality on the part of appellant to camouflage its earlier action of suspending the supplies w.e.f. 9th May, 2003.

5. The present case is glaring example where the appellant has blatantly violated the principles of natural justice by suspending the supplies and that too without assigning any reason w.e.f. 09.05.2003. The appellant attempted to legalise the said illegal action by sending a notice dated 19.05.2003. The learned Single Judge has correctly observed that fairness and non-arbitrariness are the hallmarks of equality and action of the appellant in suspending the supplies to the respondent is clearly arbitrary action and totally unfair. The powers of the High Court under Article 226 of the Constitution of India are very wide and the same are to be exercised to effectuate the regime of law and not to abrogate it. The Article 226 is couched in a comprehensive phraseology and it ex facie confers a very wide power on the High Courts to reach injustice wherever it is found. The present case is squarely covered with the dictum of law as laid down in Raghunath Thakur relied upon by the learned Single Judge which spells out three contingencies where the High Court may exercise its jurisdiction in an appropriate case in spite of the availability of an alternative remedy and one of which is non-observance of principles of natural justice. A case of Radhakrishna Agarwal v. State of Bihar (supra) relied upon by the appellant is of no help as the said judgment has been duly discussed in the later judgment reported in Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, . The learned Single Judge has duly taken into consideration the exact import of the said judgment of Radhakrishna Agarwal. Another judgment which has been relied upon by the appellant is Hindustan Petroleum Corporation Ltd., but the facts of the said case are not applicable here as the Hon''ble Supreme Court of India has discussed the jurisdiction of the civil court to entertain a suit after reference of some dispute to the arbitrator pursuant to arbitration clause which is not the case here.

6. We have given our careful consideration to the arguments advanced by learned Counsel for both the parties. Going by the facts and circumstances of the case and after perusing the letter which is at page 130 of the paper book we are in agreement with the arguments advanced by learned Counsel for the

respondent. Letter dated 12th May, 2003 addressed to M/s. D.D. Motors, copy of which was sent to M/s. Nav Bharat Trading Company clearly mentioned that due to unforeseen circumstances, the supplies of M/s. Nav Bharat Trading Company, SSA, North-West Delhi, has been suspended effective from 9th May, 2003. No reason has been assigned for suspending the supplies to the respondent. The show cause notice on which much reliance has been placed by the appellant which is stated to be pursuant to Clause 1.3 of the Servo Stockists Auto Agreement is dated 19th May, 2003, that means when the notice dated 19th May, 2003 was given in terms of the said clause, supplies to the respondent have already been suspended. This clearly demonstrates that the notice which was sent by the appellant on 19th May, 2003 was merely a camouflage and device and the same cannot be considered to be a notice in terms of Clause 1.3 of the agreement nor the notice complied with the requirement of principle of natural justice. Another important feature which has been brought to our notice was that allegations were made against one Mr. Sanjay Gaur, SRSM (Lubes), who was harassing the respondent and was instrumental behind these illegal terminations of Distributorship and Stockistship Agreements and in this regard, the respondent took the matter to the Government of India, Ministry of Petroleum and Natural Gas dated 17th May, 2004 to the following extent:

No. P-19026/1/2004-Distt.

GOVERNMENT OF INDIA

MINISTRY OF PETROLEUM AND NATURAL GAS

Shastri Bhawan

New Delhi.

the 17th May, 2004

To,

The Director (Marketing)

Indian Oil Corporation Limited,

Mumbai.

Subject: Request from M/s. Nav Bharat Trading Co., New Delhi, for Restoration of Stockistship for Servo Lube Oils.

Sir,

I am directed to refer to this Ministry letters of even No. dt. 20.02.2004, 26.03.2004 and 29.04.2004 and IOCL letters No. LS/Retail/15 dt. 17.03.2004, 05.04.2004, 03.05.2004, No. GM(RS)/19 dt. 30.04.2004 on the subject noted above.

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 at least one year and also stipulate that they should not make direct supplies to HMIL authorized dealers without prior intimation to IOC.

Yours faithfully,

Tarun Shridhar

Director

Tel. 23387404

7. In this letter, the Government of India directed the appellant to restore the SSA ship to the respondent but the bad luck of the respondent is that, in the meanwhile, the government had changed, a new Minister came and he overturned the decision of the Ministry dated 17th May, 2004. All these circumstances go to show that the termination of the Stock Distributorship Agreement was not in consonance either with the terms of the agreement or with the principle of natural justice. We are conscious of the fact that the rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not of compulsion. In an appropriate case, in spite of the availability of an alternative remedy in exercise of the writ jurisdiction in cases where there is a failure of principle of natural justice, the court may issue an appropriate order or direction. We are, Therefore, not impressed by any of the submissions made by the appellant. The order passed by the learned Single Judge is well reasoned order and the same does not require any interference in the present appeal. Therefore, there is no merit in the appeal. The same is hereby dismissed.