

(2018) 07 CAL CK 0082

In the Calcutta High Court

Case No : APO No. 42 of 2014, Writ Petition No.758 of 2010

Indian Oil Corporation Ltd. & Ors.

APPELLANT

Vs

Niwas Rammgopal & Ors.

RESPONDENT

Date of Decision : 04-07-2018

Acts Referred:

Indian Partnership Act, 1932 — Section 4
Constitution of India, 1950 — Article 12, 14

Citation : (2018) 07 CAL CK 0082

Hon'ble Judges : I. P. MUKERJI, J;AMRITA SINHA, J

Bench : Division Bench

Advocate : Ahin Choudhury, M. S. Yadav, Shaktinath Mukerji, Ram Anand Agarwal, Nivedita Pal, Ramesh Dhara, Ananda Gopal Mukherji

Final Decision : Disposed Of

Judgement

I. P. MUKERJI, J.

We are bound by the division bench judgment of our court in Indian Oil Corporation vs. Roy and company reported in 2018 (1) CHN (Cal) 199 with

which the facts of this case are very similar. In that case, this court had held that the subject clause in the dealership agreement was unfair.

Nonetheless in the purely private law domain, a party had the freedom to enter into a contract with another stipulating that it would only do so if the

other party was a partnership firm with a particular constitution. But the appellant in that case, being a statutory body had an obligation to be free from

arbitrariness, fair and reasonable. It need not enforce its stipulation if it found that it was doing business with the partnership firm for a long time and

uninterruptedly and that the organisation was rendering satisfactory service to it and its consumers. Under the circumstances, the corporation was

justified in terminating the agreement with the firm. Nevertheless, since the supply was being continued to the firm by virtue of the interim order in the

writ the supply was to be maintained temporarily for a period of one year from the date of the order. In the meantime the corporation was directed to

take a decision on the basis of the observations made in that judgement regarding permanent renewal of the dealership of the firm.

In this case also, the appellant being a statutory corporation, ought to act without arbitrariness, with fairness, reasonableness and in a just and equitable

way. In doing it should not insist in enforcing the subject clause in the dealership agreement. It should waive it, considering the fact that the

respondents have been doing business with the appellant for a long time, uninterruptedly and without any complaint. It should not act with the

ruthlessness of a party to a contract in the private law domain. This court cannot declare the termination of the dealership as illegal. Nevertheless

following the ratio in the case of Roy and co. supra, and considering the fact that the partnership dispute is in Court, and the appellant corporation is

continuing to supply the materials to the respondents by virtue of the interim order in the writ, this arrangement is to continue from year to year. After

every year the appellant is to take a reasoned decision whether to renew the dealership agreement with the respondent firm on a permanent or

temporary basis, taking into account the observations made by us. I am in agreement with the judgement and order, including the ordering part

proposed to be delivered by my sister Amrita Sinha, J.

The appeal is disposed of by modifying the impugned order dated 3rd July, 2012.

(I. P. MUKERJI, J) Amrita Sinha, J.:-

(1) This is an appeal filed against the judgment and order dated 3rd July, 2012, passed by a learned Single Judge in WP No. 758 of 2010 in the matter

of M/s. Shree Niwas Ramgopal & Ors. Vs. The Director of Consumer Good and Others.

(2) The writ petitioners being the respondent nos. 1, 2 and 3 herein filed the aforesaid writ petition challenging the impugned action of the Indian Oil

Corporation Ltd. in not renewing the licence and further refusing to supply kerosene oil in favour of the respondent no.1 on and from 14th June, 2010.

(3) By the impugned order, the learned trial judge allowed the writ petition holding that the Indian Oil Corporation Ltd. cannot refuse to renew the

license of the writ petitioner no. 1 issued under the 1968 Control Order, nor can they refuse to allow the reconstitution of the partnership firm of the petitioner no. 1.

(4) The learned Trial Judge directed Indian Oil Corporation Ltd. to allow the reconstitution of the partnership firm of the petitioner no. 1 subject to any order that may be passed either in the probate proceedings or subject to any order that may be passed by a competent Court of Civil jurisdiction.

(5) Being aggrieved Indian Oil Corporation Ltd. has filed the present appeal.

(6) The case made out by the writ petitioners being the respondent nos. 1, 2 and 3 herein is that initially respondent no. 1 was a proprietorship firm and one Kanhaiyalal Sonthalia was the sole proprietor. By a partnership deed dated 24th. November 1989 Kanhaiyalal Sonthalia reorganised his firm and along with himself he inducted his two sons Ramesh Sonthalia and Gobinda Sonthalia as partners.

(7) As per the recital of the partnership deed, the partnership business shall be agency in kerosene oil under Indian Oil Corporation Ltd. and distributorship of Reckitt and Coalman India Limited and/or such other business or businesses as the partners may determine from time to time.

Kanhaiyalal held 55%, Ramesh held 35% and Gobinda held 10% share in the said partnership business.

(8) As per Clause 18 of the deed of partnership, death of any of the partners shall not cause discontinuance of the partnership business and the survivor or survivors may continue the business. The interest of the deceased in the net assets of the firm shall not vest in his legal heirs and the surviving partners may admit any of the competent heirs of the deceased to the partnership on such terms and conditions as may then be agreed upon.

(9) The writ petitioner/respondent no. 1, firm entered into kerosene/LDO dealership agreement with Indian Oil Corporation Ltd. on 11th May, 1990. In terms of the said agreement, the Corporation appointed the firm as its dealer for the retail sales supply of kerosene for domestic purposes and light diesel oil to its customers in the area specified in the schedule in accordance with the terms thereof.

(10) Clause 13 of the said agreement dated 11th. May, 1990 mentioned that in the event of death of any of the partners of the partnership firm, the dealer shall immediately inform the Corporation giving the necessary particulars

of the heirs and legal representatives of the deceased partner and it shall be the option of the Corporation either to continue the dealership with the said firm or to have fresh agreement of dealership with any reconstituted firm or to terminate the dealership agreement and the decision of the Corporation in that behalf shall be final and binding on all the parties concerned.

(11) Clause 16(a) of the said agreement mentioned that the dealer undertakes faithfully and promptly to carry out, observe and perform all directions

and orders or rules made from time to time by the Corporation or its representatives for the proper carrying on of the dealership of the Corporation.

(12) The fact of reconstitution of the firm M/s. Shree Niwas Ramgopal from proprietorship to partnership was informed to Indian Oil Corporation Ltd.

and vide letter dated 8th June, 1990 the Regional Management of Indian Oil Corporation Ltd. approved the reconstitution of the sole proprietorship to

partnership firm with the three partners mentioned herein above.

(13) Kanhaiyalal Sonthalia expired on 29th November, 2009 leaving behind his wife, seven sons and four daughters as his heirs and legal

representatives. The fact of death of one of the partners of the firm was intimated to Indian Oil Corporation Ltd. vide letter dated 30th November,

2009 written by the surviving partners of the firm.

(14) After the death of Kanhaiyalal Sonthalia infighting between his heirs cropped up. The legal heirs claimed their stake in the 55% share held by the

deceased Kanhaiyalal Sonthalia. A registered will surfaced disposing of the absolute 55% share of the deceased. Due to rival claims in between the

parties, the firm would not be reconstituted. The surviving partners informed the Indian Oil Corporation Ltd. that they have taken over the business

with all assets and liabilities and they are in the process of acquiring necessary documents to be submitted to the Indian Oil Corporation Ltd. for

reconstitution of the firm. It was further informed that the two surviving partners will continue with the firm as before.

(15) The surviving partners also executed an indemnity bond to the above effect and they further undertook to discharge all the obligations towards

Indian Oil Corporation Ltd. and to keep the Indian Oil Corporation Ltd. harmless and indemnified against all losses, damages, suits and proceedings

arising from or in connection with the operation of the dealership. The surviving

partners prayed six monthsâ?? time for reconstituting the firm. The indemnity bond was forwarded to Indian Oil Corporation Ltd. by the respondent no. 3 herein under a covering letter dated 15th December, 2009.

(16) Though six monthsâ?? time was prayed for but the firm could not be reconstituted due to acrimony and rival claims of the parties.

(17) Vide a letter dated 2nd March, 2010, Indian Oil Corporation Ltd. informed the respondent no. 1 that they would follow their revised policy

guidelines dated 01.12.2008 for reconstitution of retail outlets/SK oil and LDO dealerships and forwarded the formats for reconstitution of the firm to

the respondent no. 1.

(18) As per Clause 1.1.5 of the revised policy guidelines, in case of death of the partner(s), the partnership shall be reconstituted with the legal heir(s)

of the deceased partner(s) and surviving partner(s). However, if there is no legal heir(s) or the legal heir(s) has expressed unwillingness then the

dealership/distributorship shall be reconstituted between the surviving partner(s).

(19) In the meantime a case was filed by the beneficiary for obtaining probate of the alleged will of Kanhaiyalal Sonthalia. As the probate case was

pending for disposal before the learned Court, accordingly, steps could not be taken for reconstitution of the firm.

(20) Indian Oil Corporation Ltd. vide letter dated 12th March, 2010 informed the respondent no. 1 that the management had approved continuation of

temporary operation of the firm till 14th June, 2010. The partners had been requested to submit all the requisite documents for the reconstitution of the

firm within the stipulated period.

(21) The respondent nos. 1, 2 and 3 vide letter dated 13th April, 2010 submitted the proposal for reconstitution of the partnership firm. The appellants

vide their letter dated 31st May, 2010 informed the respondents that since all the legal heirs of late Kanhaiyalal Sonthalia have not applied for

incorporating their names and/or have not accorded their no objection/ relinquishment of shares accordingly all the legal heirs have to apply for

respective share of dealership in prescribed format failing which it shall be construed that they are not interested in joining/claiming the dealership and

further necessary action of reconstituting the dealership excluding their names shall be taken.

(22) The respondent nos. 1, 2 and 3 vide their letter dated 9th June, 2010

requested the Joint Director, Directorate of Consumer Goods to extend the validity of the SK Oil token which was valid till 14th June, 2010. The respondents further informed that the process for reconstitution of the firm was continuing and prayed for time for completion of the said process.

(23) As the appellants did not take any steps to renew the license of the firm the writ petitioners/respondent nos. 1, 2 and 3 filed a writ petition before

this Honâ??ble Court being W.P. No. 578 of 2010 inter- alia praying for (a) declaration that the clause 1.5 of the policy guidelines dated 1st.

December 2008 of Indian Oil Corporation Ltd. is contrary to and dehors the 1932 Act, (b) writ of Mandamus commanding the respondent Indian Oil

Corporation Ltd. to allow reconstitution of the firm, (c) writ of Mandamus commanding the respondent Indian Oil Corporation Ltd. to renew the

license of the firm and other ancillary prayers.

(24) Vide order dated 15th June, 2010 the Ld. Single Judge passed an interim order directing the respondent authorities to extend the validity of the

token pending final decision. The writ petitioners were directed to keep an amount equivalent to the share of Kanhaiyalal Sonthalia since deceased in

the partnership business in a separate account. The writ petitioners were further directed to furnish the private respondents with the statement of

accounts of the business till the date of death of Kanhaiyalal Sonthalia.

(25) The case of the appellant Corporation was that they were following the prevalent guidelines adopted in case of reconstitution of retail outlet

dealership/kerosene oil dealership of public sector oil marketing companies on the death of the partner(s) in a partnership firm as framed by the

Ministry of Petroleum & Natural Gas, Government of India. The said guidelines had been framed for the purpose of induction of new partners and the

guidelines were very reasonable and followed throughout India. The appellants submit that by virtue of the order passed by the learned Single Judge,

the guidelines framed by the appellants being policy decision has been rendered infructuous and until and unless the said guidelines are declared ultra

vires and/or unconstitutional the appellants are duty bound to follow the same. There is no scope on the part of the appellants to act in any manner that

is contrary to the guidelines which had been framed as per their policy.

(26) Learned Counsel for the appellants rely on the case of Indian Oil Corporation Ltd. & Anr vs. Roy & Company & Ors. passed in APO no. 42 of

2013 arising out of WP No. 1240 of 2010. In the said case, the Court upheld the decision of the appellant to terminate the agreement. Learned

Counsel further refers to the case of Jayant Achyut Sathe vs. Joseph Baine Dâ?? Souza & Ors. reported in AIR 2008 SC (Supp.) 502, wherein the

Honâ??ble Supreme Court held that the Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. The Court

cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or

wiser or more scientific or logical.

(27) Relying upon the aforesaid decision learned Counsel further submits that the guidelines have been framed by the appellants pursuant to a policy

decision of the appellant and they ought not to be interfered with as the same are not arbitrary, unreasonable and/or mala fide. Learned Counsel prays

for allowing the appeal by setting aside the order passed by the learned Single Judge.

(28) The learned Advocate for the respondent nos. 1, 2 and 3 submits that the existing partnership firm of M/s. Shree Niwas Ramgopal is still

functioning as per the deed of partnership. Only the 55% share of late Kanhaiyalal Sonthalia is in dispute. The probate proceeding filed by one of the

sons is pending adjudication in the probate case being Misc. Case No. 11/2010 pending before the learned Junior Division, Jangipur and until and

unless an order is passed in the said case the share of the deceased Kanhaiyalal Sonthalia cannot be fixed and/or divided in between the parties.

(29) It is the further case of the respondents that the provision for exercising option of the Indian Oil Corporation Ltd. as indicated in Clause 13 of the

Dealership Agreement dated 11th May, 1990 has to be exercised in a fair and just manner. The said option ought not to be exercised arbitrarily

causing prejudice to the surviving partners.

(30) The learned Advocate appearing on behalf of the respondent nos. 1, 2 and 3 further submits that the Clause 18 of the Partnership Deed dealing in

case of death of the partner(s) been approved by the appellants vide their letter dated 8th June, 1990. Accordingly, the authorities are bound to renew

the license of the writ petitioners/respondent nos. 1, 2 and 3. The learned Advocate submits that the share of Kanhaiyalal Sonthalia (since deceased)

would be kept aside in a separate account till the decision is passed in the

pending probate proceeding.

(31) Learned Advocate relies upon the case of Mahavir Auto Store vs. Union of India reported in AIR 1990 SC 1031 wherein the Honâ??ble

Supreme Court held that in case any right conferred on the citizens 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.

(32) Learned Advocate appearing on behalf of the respondent nos. 1, 2 and 3 further refers to the case of Ramana Dayaram Shetty vs. The

International Airport Authority of India & Ors. reported in AIR 1979 SC 1628 wherein it has been held that where the Government is dealing with the

public whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess the Government cannot

act arbitrarily at its sweet will and like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norm

which is not arbitrary, irrational or irrelevant.

(33) Learned Advocate submits that the order passed by the learned trial judge is absolutely proper and not liable to be interfered with.

(34) On hearing the rival contentions made on behalf of both the parties it appears that the appellants have approved and accepted the partnership

deed of the partnership firm Clause 18 of which mentions that, death of any of the partners shall not cause discontinuance of the partnership business

and the survivor or survivors may continue the business. The interest of deceased in the net assets of the firm shall not vest in his legal heirs and the

surviving partner may admit any of the competent heirs of the deceased to the partnership on such terms and conditions as may then be agreed upon.

(35) In view of the above clause the respondent nos. 2 and 3 being the surviving partners are continuing with the business and only 55% share of one

of the deceased partner of the partnership firm is in dispute between the legal heirs of Kanhaiyalal Sonthalia (since deceased). By virtue of the order

passed by the learned trial judge the appellants are continuing with the supply of kerosene oil to the firm.

(36) A partnership firm is not a legal entity. As per section (4) of the Indian

Partnership Act, 1932, 'partnership' is the relation between persons who have agreed to share the profits of a business carried on by all or any one of them acting for all. In the instant case the partnership business is in operation since 1990. If the same is stopped all on a sudden the ultimate sufferers will be the consumers. The policy decision of the appellants ought not to be exercised in an unfair and unreasonable manner so as to create hardship to the public at large. Moreover the probate proceeding is pending adjudication before the Civil Court. Reconstitution of the partnership firm will only be possible after the probate proceeding is finally decided by the Civil Court.

(37) As held by the Honâ??ble Supreme Court in the case of Mahavir Auto Store (supra) the appellant Indian Oil Corporation Ltd. is an organ of the 'State' or an 'instrumentality of the State' as contemplated under Article 12 of the Constitution. 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 as in the instant case. 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 instant case.

(38) In the above circumstances and in tune with the judgment passed in the case of Indian Oil Corporation Ltd. & Anr. â?"vs- Roy & Co. & Ors.

(supra) it is held that the appellants being State authorities are not entitled to discontinue supply of kerosene oil to the partnership firm and act in an arbitrary manner violating the principles of natural justice, equity and fair play especially keeping in mind that the ultimate sufferers would be the consumers who are the common people. The appellants are directed to continue supply of kerosene oil to the writ petitioners /respondent nos. 1, 2 and 3 for a period of one year and thereafter review the same according to our observations on yearly basis till the partnership firm is reconstituted amongst the surviving partners and the incoming partner(s) according to the dealership agreement or if there is any change in circumstances.

(39) The appeal stands disposed of. No order as to costs.