

(1989) 02 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Petition No. 1904 of 1983

Mahabir Auto Stores and Others

APPELLANT

Vs

Indian Oil Corporation Ltd.

RESPONDENT

Date of Decision : 09-02-1989

Acts Referred:

Citation : AIR 1989 Delhi 315 : (1989) 1 ILR Delhi 255

Hon'ble Judges : S.S. Chadha, J;P.N. Nag, J

Bench : Division Bench

Advocate : Dinkar Goswami, Sanjeev Seth and P.S. Shroff, for the Appellant;

Judgement

P.N. Nag, J.

(1) The petitioners in the present writ petition seek issuance of a writ of mandamus against the respondent directing it to desist from denying or discontinuing the supply of all kinds of lubricants to the petitioner No. I and from ousting, black-listing, coercing or pressurizing them from the business of dealing with all kinds of lubricants supplied: by the respondent to them and to continue to supply of all kinds of lubricants to the petitioner No. I firm as was done in the past and for the maintenance of status quo as existed on 27th May, 1983 and for payment of necessary damages for the period from 28th May, 1983, till the date of the filing of the writ petition or till the decision of the writ petition.

(2) The relevant facts set out in the pleadings briefly are that the petitioner No. I, M/s Mahabir Auto Stores (hereinafter referred to as "the firm") is a partnership firm duly registered with the Registrar of Firms at Delhi having its office/shop at C-69, Shivaji Park, New Delhi-110026 and petitioners 2 to 5 are the partners of the firm. The firm has been carrying on the distribution and sale of all kinds of lubricants and is registered under the Sales Tax Act vide Registration No. 1636 dated 22nd October, 1951 and has a goodwill of its own in the entire region of Northern India with expertise and knowledge in the distribution and sales of all kinds of lubricants. In the past 32 years, the firm has acquired a very good

reputation and earned enviable goodwill in the said trade.

(3) The respondent Indian Oil Corporation Ltd. (hereinafter referred to as "the Company") is a statutory body incorporated under the Indian Companies Act, 1956 having its registered office at 254-C, Dr. Annie Basant Road, Worli, Bombay-25 and having one of its Regional Offices at Indian Oil Bhawan, Janpath, New Delhi-110001 and has been dealing throughout with the firm since 1965 when the firm became its distributor. While appointing the firm as Lube Distributor permanent customer Code No. 63-01-3115-1022-9-X was assigned in due course. First supply of the lubricants was released by the Company to the firm on 25th February, 1965 vide Invoice No. 146668 and thereafter the firm has promoted the sales of the products of the Company successfully inasmuch as from February, 1965 to 27th May, 1983 the firm has received and uplifted the supply of lubricants/goods each year and the total quantity of lubricants/goods such lifted has gone to the extent of 1,11,34,854 Ltrs./Kgs (Annexure A referred to). Today as a result of tireless and sincere efforts and resourceful enterprise and improvisation of the firm, it is one of the Company's leading Lube Distributors in Northern India.

(4) The petitioners have tried to demonstrate with reference to the various documents/annexure filed by them that the firm has always been carrying business as Lube Distributor of the Company and has been selling all kinds of lubricants. The Company has recognised the firm during all this period as authorised dealer/distributor/agent. Annexures A-2 to A-14 are copies of letters written by the Company directing various customers to contact the firm as an authorised Lube Distributor. Annexure A-15 is an advertisement inserted in a specially published souvenir on the occasion of All India Highway Motor Rally held in 1972 sponsored by the Company in which the firm was referred to as the Company's authorised Lube Distributor. Annexures A-16 to A-35 are copies of the letters written by the Company to petitioners in relation to the dealings of petitioners as Lube Distributor. Vide Annexure A-36 the Company has sent greetings for a happy and prosperous New Year and addressed the firm as a "Lube Distributor". Annexures A-37 to A-56 are the various Cash Memos pertaining to different periods from February, 1965 to May, 1983 to indicate the dealings with the Company as Lube Distributor. Copies of Annexures P-1 to P-24 filed by the petitioners with Rejoinder are the Cash Memos bearing computerised Code No. 63-01-3115-1022-9-X for the different periods from February, 1965 to May, 1983. Annexure P-25 is the Explanatory Note on Customer Code of petitioners. Annexures P-26 and P-27 are the copies of the letters which indicate the change of policy of Corporation Ltd.

THE Company in the year 1972 and the supply of lubricants was stopped to those Associations and Dealers to whom ad hoc supplies were given, who were merely re-sellers/traders and who did not have written contract with the Company. However, the same was continued to the petitioner firm being a dealer and distributor of the Company. Annexures P-28 to P-34 are the Product Indent-

cum-Delivery Order for various periods issued by the Company to the firm. In this Product Indent-cum- Delivery Order there is a note "FOR Conditions Of Supply Please TURNOVER....". However, in the copies filed with the rejoinder affidavit, there are no terms on the reverse side of the Product Indent-cum-Delivery Order. Although the firm has been receiving continuous supply of lubricants from the Company, it was suddenly stopped on 27th May, 1983 by the Company, such an action of the Company will have the effect of blacklisting the firm and is arbitrary" and against the principles of natural justice besides being hit by the doctrine of promissory estoppel. The firm made representations against such action but of no use. With these observations the petitioners seek relief mentioned above.

(5) The Company has raised various objections to the maintainability of the writ petition inasmuch as that the Company is not a State within the meaning of Article 12 of the Constitution as the Company is registered under the Companies Act of 1956. Even otherwise the writ petition is not maintainable as Bo writ to enforce alleged contract is maintainable and the appropriate remedy for the petitioners is to claim damages or relief for specific performance of contract. The firm has not established any contract and "are seeking to rely on an irregular course of conduct and on an ad hoc arrangement which the Company cannot perpetuate in view of the prevailing guidelines and/or directions received from the Ministry of Energy in the Department of Petroleum. Further the Company's contractual relationship with its distributors where in fact there is an actual written agreement is also capable of termination forthwith and are only subject to the normal contractual laws and decisions in the realm of contract and are not subject to any writ proceedings for enforcement of any rights contained therein. The petitioners' case is on a much lower footing.

(6) The Company has further denied that the firm has ever been blacklisted or that it has acted in a mala fide, capricious and arbitrary manner and on extraneous oblique and irrelevant considerations and such averments are totally without substance and/or basis and is not remediable under the provisions of Article 14 and 19(1)(f) of the Constitution of India. The provisions of Article 19(1) (g) are non-existent as the said Fundamental Right has been deleted from the Constitution. The Company further stated that the petitioners were dealing with the Company's lube products like industrial oils and greases, secondary oils, fuel oil, diesel oil, mineral turpentine for release to private parties on an ad hoc arrangement. Several types of arrangements had been entered into by the Company with other persons including, inter alia, quantum contracts where in specified amounts of lube oils were supplied to such traders. In some cases the supplies were made when requests were received on indent to indent basis or an invoice to invoice basis. There was no commitment to supply a fixed quantity nor any commitment to supply regularly at any stage, whatsoever, as the production and supply of lube oil was not a steady figure but was variable and dependant upon the availability.

(7) The procedure adopted for the supply of lube oil products was that the party requiring supply would write a letter to the Company whereupon the Divisional Office through the Lube Section would process the same and would intimate as to how much supply was possible. Thereupon the requisition slip would be processed and a delivery challan/order would be made out. The conditions of the Product-Indent-cum-Delivery Order, inter alia, categorically provided that "IOC also reserves the right to cancel your order without any intimation or assigning any reason". It further provided that 10C takes no responsibility of dispatches/releases of stocks shall be on the basis of availability of stocks". The Product-Indent-cum-Delivery Order Delivery Challan made. on the basis of the requisition slip would be endorsed to the person placing the order upon the Company. The said Delivery Order was made in triplicate. The original Delivery Order is forwarded by the Company to the supply point/supply depot whereupon the order is internally processed by the Company. After the party receiving one of the three parts of the Delivery Order approaches the supply depot, the supply is made on payment of cash/draft for which the delivery order is processed which is given to the customer and on which basis the internal record is also made of the supplies .This is the final part of the transaction,

(8) There is no other contract in the facts and circumstances of the present case. The letter making the requisitions, the Product Indent-cum-Delivery Order, the Delivery Challan as also the payment are the only documents Constituting the contracts between the parties. The Company has categorically reserved its right to refuse and/or cancel the order without any intimation or assigning any reason and it is perfectly within us right to discontinue the said. arrangement. Without prejudice to the aforesaid contentions the Company states that the Company has well defined contractual arrangements with its distributors duly appointed in accordance with the standard forms, e.g., In the case of Associated Trading Company, Delhi, the Company has entered into an agreement entitled "Lubricating Products Dealership/Distributorship Agreement", a copy whereof is annexed as Annexure A. Under the said dealership agreement it is categorically provided that a Dealer/Distributor shall not during the currency of the agreement buy or sell or be in any way concerned in buying or selling the lubricating products or any other similar products of any company or producer without the previous consent in writing of the Company (Clause 10). Several obligations have been provided under the contract including, inter alia, price controls, minimum off-take of stocks, safeguards against contamination, right to the inspection and/or unrestricted access, right of account etc. The contract also, inter alia, provides that "the agreement may be terminated by the Company on the failure of the Dealer/Distributor in carrying out of this agreement". The Company may or may not give notice of the intention to terminate it, however, when a notice is given, upon the. expiration of any such notice, the agreement stands cancelled and revoked. Termination of the agreement by the Company, for whatever reasons, shall be without prejudice to the rights of the Company against the Dealer/Distributor may be permitted by the Company to terminate this agreement upon

giving not less than 90 days" notice in writing of his intention to terminate it. Upon the expiration of such notice the agreement shall stand cancelled and revoked, but without prejudice to the rights of either party against the other in respect of any matter or any antecedent to such termination. Ever. under the contractual formation as entered into with the Associated Trading Company, the Company has a right of termination forthwith for any reason whatsoever and the Company's right to terminate is not fettered with the doctrine of reasonableness and/or doctrine of natural justice and/or rights of hearing etc. as sought to be put forward by the petitioners. What is not even contractually recognised cannot be artificially given higher status in the facts and circumstances of the present case as the petitioners are seeking to invoke an inchoate right flowing from an alter irregularity specially when the Company has been made publicly accountable especially when the Company does not set unless through a written contract as also when duly authorised.

(9) The Company has further stated that it is subjected to distribution policies; and/or guidelines of the Department of Petroleum in the Ministry of Energy. They are also bound by the directive of the Ministry of Energy to the effect that lubricants are to be sold only to consumers to those parties who will not sell directly or indirectly to foreign oil companies and no sale should take place to old agent or distributor of foreign oil companies. All sales of lubricants must take place to actual consumers or to such small parties who will sell actually to consumers and not to foreign oil company. Besides this the Ministry of Energy by their letter bearing reference No. P-17011/7/82-SUP, dated 21st December, 1982 has communicated to all oil companies that no new distributor is to be appointed for distribution of lubricating oils and there is a ban on such appointments. In the facts and circumstances of the present case the Company is, thus, prevented by the directive/instruction/guideline of the Ministry of Energy to appoint new dealers/distributors or to formalize any agreement which would constitute a dealership/distributorship. In fact right since 1972, 24 parties who had ad hoc arrangement of supply of lube oils were discontinued.

(10) The Company has further stated that presently in dealing with the judicial decisions of free, fair and unbiased appointments of Distributorships of Lpg etc. (the policy is not presently applicable to lube) a high-powered Committee is constituted which is consisting of Ex-High Court Judges like Ex-Justice Prithvi Raj of Delhi High Court, Ex-Justice Janki Uma etc. to select persons from out of a list for appointment as Distributor of several oil companies on the basis of assessed needs. The allocation of a Distributor by the Company may be awarded to Bharat Petroleum or the Hindustan Petroleum of the Indo Burma Petroleum instead of the Indian Oil Corporation and, vice versa. A requisition made by the other oil companies may be awarded to the Indian Oil Corporation. The selection is on a strict national basis and is in accordance with the nouns prescribed by the High Powered Committee. In the prevent case, however, in view of the ban imposed by the Ministry no fresh distributors are being appointed and are the oil companies empowered to regularise and/or appoint and/or contract afresh for

Dealers/Distributors in lubricant oils.

(11) The Company has further stated in the affidavit that there was no assurance, whatsoever nor any promise, nor any contract or nor any prescribed schedule to supply any quantity of lubricants as alleged or at all.

(12) The Company has denied that the allotment of customer code number is given to authorised distributor/dealers only. The position has been explained that the mode and manner of computerisation of accounts set out in Annexure P-25 and the allotment of customer code number is only for the purpose of ready identification and not for any other purpose nor to designate the firm as an authorised Lube Distributor. The Company denies that the Code 01 is allotted only to Dealers/ Agents as alleged or at all. The Code 01 is applicable to all re-sellers, i.e., where a further sale is a necessary co commitment of the first sale.

(13) The Company has further stated that upon a perusal of the annexures filed by the petitioners and in particular annexure P-53 it is evident that the firm has introduced new partners, namely, Shri Sat Pal Vij, Shri Dharam Pal Vij, Shri Shashi Bhushan Vij and it is the standard practice, policy and contractual provision of the Company that without their consent and approval no new partners may be introduced and this ground itself is a ground for termination of the Dealership. In fact the Company has in the following cases terminated the dealerships of persons/firms introducing new partners without the consent and approval of the Company :

(A)M/s. Dhoot Brothers. (b) Century Lubes. (c) Naseem Filling Station. (d) Ludhiana Gas Service.

(14) Counsel for the petitioners, Shri Seth, and counsel for the respondent Ms. Shroff, at the time of the hearing raised substantially the same contentions as they have set up in their pleadings. Shri Seth vehemently contended, on the basis of various documents/ annexure ,, already referred to and explained in the facts of the case, which need not be repeated, that the firm has always been carrying business as Lube Distributor/ dealer/agent of the Company from February 1965 to 27th May, 1983 and the Company has recognised and acknowledged, the firm, as such any sudden and abrupt, stoppage, "and suspension of supply of lubricant oils to the firm has the effect of black- listing the firm and is arbitrary and against the principles of natural justice, apart from being hit by the doctrine of promissory estoppel. The long dealing of firm in business with the Company for more than 18 years creates a contract in its favor and confers every right to receive the supply of lubricating oils as it was receiving on the same lines "and pattern before 27th May, 1983. Counsel for the Company, on the other hand, equally vehemently contended that the writ petition deserves dismissal in view of what they have already pleaded and stated in the facts of the case. Counsel for the respondent did not seriously raise the objection that the respondent Company is not a State within the meaning of Article 12 of the Constitution and the writ petition is not maintainable on this

account. Therefore, we have proceeded to decide the matter on the basis that the respondent Company is a State within the meaning of Article 12 and the writ petition is maintainable against them on this ground.

(15) In order to appreciate the rival contentions of the parties, the first question that requires consideration is whether the arrangement of dealing by the Company with the firm for supply of lubricants for more than 18 years is only an ad hoc arrangement and that sale is on Indent to Indent and Invoice to Invoice basis. Does this sale of Invoice to Invoice basis only in respect of the goods specified and mentioned therein or does it confer and vest in the firm any right to get this supply indefinitely ? What are the terms and conditions of sale even on Invoice to Invoice basis ? Does it constitute a regular contract of supply of lubricants to the firm indefinitely merely because the firm has dealt with the Company for more than 18 years? Can the firm be put on a higher footing than the other companies/bodies who have been made distributors/dealers/agents by the Company on the basis of a written agreement as contract involves both rights and obligations between the parties, which contracts can be terminated at will of the Company without assigning "any reason or notice ? Is customer Code No. 63-01-3115-1022-9-X assigned to the firm as dealer/distributor establishes any right of the firm to get supplies as authorised dealer and distributor and for indefinite period ? In case it is assumed that such dealings constitute contract, what is the nature of contract, what are its terms and whether it is binding, what is the nature of the contract-whether it is certain and capable of being enforced ? What is the nature of the contract-whether such goods are specified, quantified or vague or uncertain ? All these questions are intricate questions of facts which cannot be gone into in the proceedings under Article 226 of the Constitution of India and the appropriate remedy for the firm is to go to civil court to get the matter adjudicated upon.

(16) Although it is not necessary to determine the question in these proceedings whether or not any contract of supply between the firm and the Company of lubricating oils indefinitely stands established but since counsel for the petitioners, Mr. Seth., has insisted on his arguments that the firm's dealing for more than 18 years for the supply of lubricants by the Company constituted the formation of the contract and from such dealings right accrues to it to get the supply in future also indefinitely and uninterruptedly on the same basis as it was getting earlier, we have further examined various documents in order to determine whether or not any such contract was established. This is for a limited purpose for construing any promissory estoppel. It appears that the supply of lubricants to the firm has been on the basis of ad hoc arrangement and for Indent to indent and Invoice to Invoice basis there was no commitment to supply regularly at any stage by the Company to the firm. Ms. Shroff learned counsel for the respondent has drawn our attention to the Product Indent-cum-Delivery Order, copy of which has been given by her in Court and has been placed on record. The supplies were made on Indent to Indent basis or on Invoice to Invoice basis. There was no commitment to supply regularly at any stage,

whatsoever, "as the production and supply of lube oil was not a steady figure but was variable and dependent upon the availability. The procedure has already been explained by the Company in the reply and need not be repeated. The relevant conditions of supply on the reverse of Product Indent-cum- Delivery Order are:

"1.It is just an acknowledgement of order. Corporation Ltd.

3.The dispatches/releases of stock shall be subject to the availability of stocks.

4.ICC takes on responsibility of dispatches/releases as per your schedule.

5.ICC also reserves the right to cancel your order without any intimation or assigning any reason."

On Annexures P-28 to P-33, as already pointed out, reference has been made to turn over the page but there are no such conditions on the reverse page and hence the correct copy of Invoice has been placed on record.

(17) The letter making the requests, the Product Indent-cum- Delivery Order, the Delivery Challan etc. are the only documents which, prima facie, constitute the contract between the firm and the Company. From this it is clear that it was only an ad hoc arrangement and there was no commitment to supply the same to the firm for an indefinite period nor any right has been given to them to receive the supplies indefinitely.

(18) From 1972 there has been a change in the policy of the respondent for the supply of lubricants and the same was supplied to dealers with the written contract and ad hoc supplies were discontinued to traders and re-sellers who did not have the written contracts with the Company. The Company had since then defined contractual arrangements with its distributors duly appointed in accordance with the standard forms, e.g.. in the case of Associated Trading Company, Delhi, a copy of the specimen agreement is annexed as Annexure-B. Therefore, the petitioners cannot be put on a better footing. Under both the terms of the Product Indent-cum-Delivery Order/Invoice that the Company reserves the right to cancel the order, without any intimation or assigning any reason. In written agreement entered into" with the authorised distributors/dealers various provisions have been made for the termination of such agreement on certain situations which need not be re-iterated here.

(19) From the above it appears that the supply of lubricants to the petitioner is only on ad hoc arrangement and from Indent to Indent and Invoice to Invoice basis and on the conditions laid down on the Invoice. As already referred to, this arrangement can be terminated by the Company at any time without intimation or "assigning any reason and the supply is subject to availability of the stock. By no stretch of imagination there is any promise or representation for the future supply of lubricants to the firm subject to the condition, particularly in view of Condition No. 5 indefinitely or uninterruptedly and even the supply of goods on Invoice basis was only in respect of goods mentioned therein and subject to

certain conditions stipulated.

(20) Even if any contract could possibly be spelt out because of the long dealings the firm did not acquire absolute right for future supply because of the power reserved by the Company in the Invoice on the reverse page to terminate the contract without any intimation or assigning any reason. I am fully fortified by the Supreme Court in C.K. Achuthan Vs. The State of Kerala and Others, . (1) In that case the petitioner had supplied milk to Government hospitals for long and as usual has succeeded in securing contract for supply of milk. However, the same was cancelled and given to Co-operative Milk Supply Society. In paragraph 7 of the judgment, the Supreme Court held:

" NO doubt ,the petitioner claims to have succeeded in obtaining the contract from the Government, and the third respondent failed to do so. But even if he held the contract, the petitioner did not acquire an absolute right to be continued in that contract, because power was reserved by the Government under Clause 20 to terminate the contract after giving a month's notice. Whether the exercise of that power in the present case was regular or legal, is not a matter on which we are called upon to pronounce, because adjudication of such dispute can appropriately take place only before the ordinary Civil Courts, where evidence can be gone into and examined at length."

Reference in this connection is also made to a case reported as Republic Stores (Trade) v. Jagajit Industries Ltd. (1976-77 Calcutta Weekly Notes-Vol. 81-page 646) (2) where it has been held that no injunction can be granted for the specific performance of a contract which is determinable at the will of parties. If a mandatory injunction cannot be granted ,no temporary injunction can be granted in aid of the main relief which cannot be granted. In the present case, it goes without saying that in substance what the petitioners want is the specific performance of alleged whole contract. "

(21) Even if it is assumed for the sake of arguments that the long dealing of the firm with the Company for the supply of lubricants and other goods constitute the contract and confers a right on the firm to get the supply indefinitely and uninterruptedly on the same terms and conditions as they were getting prior to 28th May, 1983 and the denial of supply by the Company to the firm on 28th May, 1983 results in breach of the terms of the contract. The question then requires for consideration is whether the breach of the terms of the contract can be a subject matter of the writ petition. Learned counsel for the petitioner, Mr. Seth, again vehemently submitted that even the terms of the contract can be subject matter of writ petition as this law is still in process of evaluation and this concept is last changing, and relied on Ram Ratan Gupta v. Union of India and others (AIR 1984 Del. 224) (3) and In Re: Om Prakash Pariwal and Another, . (4) in Ram Ratan's case AIR 1984 Del. 224 R. L. Jain, J. has held :

"THE availability of other remedy by way of a suit or an arbitration does not deprive the High Court of its jurisdiction under Article 226, but it is, only a self-

imposed restriction upon the exercise by it of its discretion to exercise its extraordinary jurisdiction. Where the grant by the State was revoked and the revocation was challenged by filing writ petition on the ground that there was no breach of covenants of the grant and yet grant is being revoked in an arbitrary manner, the petition would not be barred for existence of remedy of suit or arbitration. Any arbitrariness of State can be challenged by way of writ petition even in case of contracts and leases. The power of the State is confined and structured by rational, relevant and non-discriminatory standard or norm and if the Government departs from such standard or norm in any particular case or cases, the action of the State would be liable to be struck down unless it can be shown that the action was not arbitrary and was based upon some valid principle which in itself was not irrational, unreasonable or discriminatory."

This view has been over-ruled by the Division Bench of the Delhi High Court in Civil Miscellaneous Mancat Ram Vs. Delhi Development Authority and Others, wherein it has been held:

".....cancellation for breach of the term of the lease deed would purely be a contractual action and not a statutory one and hence it would not be open to the lessee to challenge the cancellation or in other words to enforce the contractual rights by a writ petition."

Similarly the view expressed by the Calcutta High Court in In Re: Om Prakash Pariwal and Another, in which the order of termination of the contract of agency by the Food Corporation of India under the clauses of agreement without assigning any reason and without notice was held illegal also cannot be accepted, as such a view is contrary to the view expressed by the Supreme Court in various cases which is being discussed in subsequent paragraphs that in commercial contracts the breach of the contract can be properly adjudicated upon in the civil suit and not in the writ petition.

(22) In this connection reference may be made to Radhakrishna Agarwal and Others Vs. State of Bihar and Others, where it has been held that once the contract is made the parties are governed only by the terms of the contract and Article 14 and principles of natural justice are not attracted. The relevant paragraphs of the judgment of the Supreme Court are reproduced below:

"..." AFTER the State or its agents have entered into the field of ordinary contract, the relations are no longer governed by the constitutional provisions but by the legally valid contract which determines rights and obligations of the parties inter se. No question arises of violation of Art. 14 or of any other constitutional provision when the State or its agents purporting to act within this field perform any act. In this sphere, they can only claim rights conferred upon them by contract and are bound by the terms of the contract only unless some statute steps in and confers some special statutory power or obligation on the State in the contractual field which is apart from contract."

"THE Patna High Court had very rightly, divided the types of cases in which

breaches of alleged obligation by the State or its agents can be set up into three types. These were stated as follows:-

(I)Where a petitioner makes a grievance of breach of promise on the part of the State in cases where on assurance or promise made by the State lie has acted to his prejudice and predicament but the agreement is short of a contract within the meaning of Art. 299 of the Constitution.

(II)Where the contract entered into between the person aggrieved" and the State is in exercise of a statutory power under certain Act or Rules framed there under and the petitioner alleges a breach on the part of the State; and

(III)Where the contract entered into between the State and the person aggrieved is non-statutory and purely contractual and the rights and liabilities of the parties are governed by the terms of the contract, and the petitioner complains about breach of such contract by the State." "

IT then ,very rightly, held that the cases now before us should be placed in the third category where questions of pure alleged breaches of contract are involved. It held, upon the strength of Dr. Umakant Saran Vs. State of Bihar and Others, and Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, and B.K. Sinha Vs. State of Bihar and Others, that no writ or order can issue under Art. 226 of the Constitution in such cases "to compel the authorities to remedy a breach of contract pure and simple."

"A rather desperate argument which has been addressed to us on behalf of the appellants is that they were entitled to an opportunity to show cause against the cancellation of the leases. It was urged, on the strength of A.K. Kraipak and Others Vs. Union of India (UOI) and Others, that the distinction made between administrative and quasijudicial action is thin and a vanishing one. This argument appears to us to be wholly irrelevant inasmuch as a question of the distinction between an administrative and quasi-judicial decision can only arise in the exercise of powers under statutory provisions. Rules of natural justice arc attached to the performance of certain functions regulated by statutes or rules made there under involving decisions affecting rights of parties. When a contract is sought to be terminated by the Officers of the State, purporting to act under the terms of an agreement between parties, such action is not taken in purported exercise of a statutory power at all."

REFERENCE may also be made to the observations extracted below in Life Insurance Corporation of India Vs. Escorts Ltd. and Others,

" FOR example ,if the action of the State is political or sovereign in character, the Court will keep away from it. The Court will not debate academic matters or concern itself with the intricacies of trade and commerce. If the action of the State is related to contractual obligation or obligations arising out of the Court, the Court may not ordinarily examine it unless the action has some public law character attached to it. Broadly speaking, the Court will examine actions of

State if they pertain to the public law domain and refrain from examining them if they pertain to the private law field. The difficulty will lie in demarcating the frontier between the public law domain and the private law field. It is impossible to draw the line with precision and we do not want to attempt it. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the action and a host of other relevant circumstances. When the State or an instrumentality of the State ventures into the corporate world and purchases the shares of a company, it assumes to itself the ordinary role of a shareholder. and dons the robes of a shareholder, with all the rights available to such a shareholder. There is no reason why the State as a shareholder should be expected to state its reasons when it seeks to change the management ,by a resolution of the Company, like any other shareholder."

Therefore, is settled law that the Governmental action at the threshold or at the time of entering into the field of contract can be challenged being arbitrary discriminatory but the moment the commercial contracts are entered into then parties are governed purely by the terms of the contract, the breach thereof cannot be the subject matter of the writ petition and the appropriate remedy is the civil suit, as this involves determination of so many disputed questions of facts as well. Therefore, the contention of the learned counsel for the petitioners is not sustainable in the eyes of law.

(23) Having found this ground slippery Mr. Seth raised an. alternative argument that the impugned action of the respondent for not supplying the lubricants to the firm is at the threshold or at the time of entering into agreement with the Company and this can always be challenged by the firm in the form of writ petition.

(24) According to him, since the firm has been excluded from the consideration for the supply of lubricants from 28th May, 1983 and the supply was suspended/denied arbitrarily this action of the Company is discriminatory and arbitrary and deserves to be struck down by this Court. Further the supply has been discontinued without any notice and without compliance with the principles of natural justice and non-supply of lubricants will have the effect of black-listing the firm. In support of his submission he has heavily reeled on Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, . (8) The following observations of the Supreme Court may be referred:

".. .when the Government is trading with the public, "the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions... ...The activities of the Government have a public element and, Therefore, there should be fairness and equality. The State need not enter into any contract with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure". This proposition would hold good in all cases of dealing by the Government with the public, where the interest sought

to be protected is a privileged. It must, Therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licenses 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. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts quotas, licenses etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

IT may be recalled the stand of the Company is that the ad hoc supply had to be discontinued in view of the prevalent policy, guidelines and directions of the Government of India, Department of Petroleum, Ministry of Energy with which it is bound under the Articles , Association. Admittedly, the President and the Government of India have been empowered to issue directions, guidelines in the matter and to formulate a policy in the matter of distribution of the lube products. The copy of such guidelines, directions have been placed by the respondent as annexure A at page 201 of the file and the relevant portion is extracted below:

"(1)As a rule, the oil industry may not appoint new distributors and shall meet the requirements with 278 the existing net work of lube distributors/SKO-LDO dealers/retail outlet dealers and the Lube SKO/ Ldo dealers and retail outlet dealers likely to be appointed in future. However, to meet the requirements of small scale industries or due to the special circumstances of any area, if an oil company feels that there is need for appointing any lube oil distributor, a case may be made out with full facts to this Department for relaxation of this ban."

(25) It is no doubt true that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quota or licenses or granting other forms of largess, the Government cannot act arbitrarily at the sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with the standard or norm which is not arbitrary, irrational or irrelevant.

(26) However, in the present case, as have been explained that there is no agreement to supply lubricants to the firm indefinitely but was made on Indent to Indent and Invoice to Invoice basis and that could be terminated at any time without assigning any reason by the Company and further from 1972 there was a change in the policy of the Company for the appointment of new distributor and dealers and the dealers could be appointed on the basis of the written contracts which lays down both rights and obligations between the parties. In the present

case there was no written contract between the firm and the Company. Keeping this background in view and the policy of the Government which is formulated by the letter (Annexure A) it has been decided, that the oil industry may not appoint any new distributors and shall meet the requirements with the existing network of lube distributors/SKO-LDO dealers/retail outlet dealers and the Lube SKO/LDO dealers and retail outlets dealers likely to be appointed in future and in accordance with this policy which is a rational policy, the Company had to discontinue the supply of the lubricants to the firm" as it was never the distributor or dealer but only supply was given to it on ad hoc arrangement and Invoice to Invoice basis which could be terminated at will. This policy has been uniformly applied to all persons similarly situated and the persons who were neither dealers nor distributors earlier to 21st December, 1982 like the petitioners have been discontinued the supply and, Therefore, there is no question of violation of Article 14 or any discriminatory treatment being meted to the petitioners in the facts and circumstances of the case.

(27) Since the petitioner firm had no right to receive the supply of lubricants under the terms of the contract or otherwise as it was not a disrupt torn under a written contract, Therefore, it was not entitled to get the supply of the lubricants as before as such the supply had to be stopped keeping in view the directions of the Government. In view of this *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, is of no help to the petitioners.

(28) Next reliance has been placed upon *Erusian Equipment and Chemicals Ltd. Vs. State of West Bengal and Another*, . (9) In that case the petitioners were engaged in the business of purchase and export of Cinchona products between the years 1966 and 1971. They submitted tender for purchase of Cinchona. Their tender was accepted. They entered into contracts with the State Government during those years for purchase of Cinchona for large sums of money. Later on they discovered that the firm was indulging in malpractices and the firm was, on investigation, black-listed. In passing the order of black-listing the State Government acted under standardised Code in which the department maintained list of approved suppliers after taking into account the financial standard of the firm. In that context the Supreme Court observed :-

" UNDER Article ,298 of the Constitution the Executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without awaking a law. The exercise of such powers and functions in trade by the State is subject to Part Iii of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of black-listing has the effect of depriving a person of equality of opportunity in

the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of black-listing. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality."

"BLACK-LISTING has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of black-listing indicates that the relevant authority is to have an objective satisfaction. 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 case cited by the learned counsel for the petitioners is clearly distinguishable inasmuch as there is no order of black-listing in the present case and it does not cause a slur on the firm. Mere dealing of the firm with the Company for more than 18 years do not create any right in the firm to be approved distributor / dealer.

(29) The next reliance has been placed on *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, The question which fell for consideration before the Supreme Court was whether or not for the purpose of impounding the passport the principles of natural justice should have been complied with as the power conferred on the Passport Authority is to impound a passport and the consequence of impounding a passport would be to impair the constitutional right of the holder of the passport to go abroad during the time that the passport is impounded. It has further been observed :

"ALTHOUGH there are no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature. The principle of *audi alteram partem*, which mandates that on one shall be condemned one should be given to the person affected?"

"NATURAL justice is a great humanizing principle intended to invest law with fairness and to secure justice and over the years it has grown into a widely pervasive rule affecting large areas of administrative action. The inquiry must, always be : does fairness in action demand that an opportunity to be heard should be given to the person affected ?"

This case cited by the learned counsel for the petitioners is also distinguishable as in the present case no right has accrued to the firm and matter involves only contractual obligations and on such the principles of natural justice are wholly inapplicable.

(30) The next submission by the learned counsel for the petitioners was made on the same basis that the long and continuous dealing of the firm with the Company of the supply of lubricating oils establishes clearly a contract of regular supply of such oil to the firm indefinitely and on the same pattern on the same

lines as the firm was receiving prior to 28th May, 1983. Although there is no formal written contract between the firm and the Company urges the counsel, but such a conduct raises a presumption of representation being given to the firm for continuing their supply of lubricating oils to the firm In daintily and that the Company has acted on this representation to its detriment and invested lot of money for carrying on this business and in Tact such a business carried out for so long and on the basis of promissory estoppel the Company is bound to supply the lubricating oils to the firm.

(31) Ms. Shroft, learned counsel for the respondent. on the other hand, has pointed out that there is no representation ever made or held out to the firm to supply a regular quantity of oil products indefinitely. In fact the supply was made on ad hoc basis or from Indent to Indent basis or from Invoice to Invoice basis and on certain conditions which already are referred. to in the earlier paragraphs and are not repeated here. Suffice, it is to say, that even the ad hoc arrangement could be terminated at will. Further the firm is a dealer of products of caster oil and is never dealing with the products of Company alone as the case of Associated Trade Company and the petitioners" case that they are deprived of their livelihood is misconceived and is factually incorrect. As a matter of fact from 1972 onwards the firm was not entitled to have supply of Lube Products for the reason that it did not have any written contract with the Company which is entered into thereafter with the recognised dealers and distributors. No contract has been entered into by the firm with the Company. The respondents were under factual mistake that the Company had written contract with the firm otherwise the supply would have been discontinued after 1972 and now they are within their right to rectify that mistake Moreover, the firm has changed its constitution after 1965 and the present firm is not the same firm to whom the lube products were supplied by the Company from 1965 onwards, concludes the counsel.

(32) Strong reliance is placed by the learned counsel for the petitioners on Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, which is a leading judgment on the primary estoppel. However, it has been held in that case that :

"DOCTRINE of promissory estoppel has been variously called "promissory estoppel", "requisite estoppel", "quasi estoppel" and "new estoppel". It is a principle evolved by equity to avoid injustice and though commonly named "promissory estoppel", it is neither in the realm of contract nor in the realm of estoppel The true principle of promissory estoppel seems to be that where, one party has by his words or conduct made to the other a clear and unequivocal promise which is intended to create legal .relations or effect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the primes is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so

having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not. The doctrine of promissory estoppel need not be inhibited by the same limitation as estoppel in the strict sense of the term. It is an equitable principle evolved by the courts for doing justice and there is no reason why it should be given only a limited application by way of defense. There is no reason in logic or principle why promissory estoppel should also not be available as a cause of action if necessary to satisfy the equity. It is not necessary, in order to attract the applicability of the doctrine of promissory estoppel that the promisee, acting in reliance on the promise, should suffer any detriment. What is necessary is only that the promise should have altered his position in reliance on the promise. But if by detriment we mean in justice to the promise which would result if the promisor were to recede from his promise, then detriment would certainly come in as a necessary ingredient. The detriment ill. such a case is not some prejudice suffered by the promisee by acting on the promise, but the prejudice which would be caused to the promisee, if the promisor were allowed to go back on the promise."

In the present case, as has already been analysed earlier, no promise or representation was held out by the Company to the firm to continue the supply of the lube products to it indefinitely uninterruptedly on the same pattern on the same lines as was made prior to 28th May, 1983 and the supply was made on the basis of ad hoc arrangements or Indent to Indent or Invoice to Invoice basis or Product Indent-cum-Delivery Order. Therefore, no legal relationship has been created with the firm and the Company for supply of products in future. So, the promissory estoppel cannot be invoked. In fact no right arises out of the dealings by the firm with the Company and, Therefore, the doctrine of promissory estoppel is wholly inapplicable in the present case. Apart from that in order to invoke doctrine of promissory estoppel, again, the examination of disputed questions of facts are involved whether or not any representation was made in the facts and circumstances of the case and the firm has acted in its detriment which has resulted in injustice to it and that it has suffered huge losses because of the representation. This authority, Therefore, is also of no consequence to the petitioners.

(33) Viewed from different angles, the petitioners substantially seek the specific performance of the alleged contract. As already discussed, the alleged contract is neither precise, definite nor certain, nor is capable of being made certain. How much goods are required and for how long are these required and at what consideration/price are all uncertain and vague terms. Even if a suit is filed for specific performance of alleged contract, it may fail on such grounds. I am fortified by the judgment of Allahabad High Court in Smt. Phuljhari Devi v. Mithai Lal and others MR 1971 All. 494 (12). Therefore, no writ petition would be sustainable.

(34) It is settled principle of law for a writ of mandamus that the petitioners

must have a legal right to enforce the performance of alleged duty by the respondent Rai Shivendra Bahadur Vs. The Governing Body of the Nalanda College, -and The Praga Tools Corporation Vs. Shri C.A. Imanual and Others, . Since no right has been shown to exist by the petitioners turn receiving the continuous supply of the lubricants and lube products from the Company in any form whatsoever indefinitely for future and no corresponding legal duty has been imposed on the respondent to supply such products to the firm under contract, promissory estoppel or otherwise the writ of mandamus is not maintainable.

(35) .ANY expression of any opinion on the contractual rights of the parties is tentative and will not prejudice either of the parties in a suit or in any other proceedings.

(36) In view of the above discussion, the writ petition fails and is dismissed as not maintainable. In the circumstances of the case there will be no order as to costs. Interim order granted on 25th October, 1983 is vacated.