

(1980) 10 MP CK 0012

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 881 of 1978

Manohar Singh and Another

APPELLANT

Vs

Caltex Oil Refining (India) Ltd., Bombay and Others

RESPONDENT

Date of Decision : 07-10-1980

Acts Referred:

Caltex Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited Act, 1977 — Section 7(3)
Companies Act, 1956 — Section 396, 637
Constitution of India, 1950 — Article 14, 19(1), 31C, 9(3)
General Clauses Act, 1897 — Section 24

Citation : AIR 1981 MP 123 : (1981) 26 MPLJ 202 : (1981) MPLJ 202

Hon'ble Judges : G.P. Singh, C.J.; J.S. Verma, J

Bench : Division Bench

Advocate : S.R. Phadnis, for the Appellant; S.L. Garg and K.K. Adhikari, for the Respondent

Final Decision : Dismissed

Judgement

G.P. Singh, C.J.

The Caltex Petroleum Corporation is a foreign company incorporated in the State of Delaware in the United States of America. One of its subsidiaries, namely, the Caltex Oil Refining (India) Limited (an Indian Company), hereinafter referred to as the Caltex Oil Refining, was carrying on the business of refining crude oil and producing petroleum products in India. Another subsidiary of the Caltex Petroleum Corporation, namely, the Caltex (India) Limited (a foreign company) incorporated in Bahamas Islands, hereinafter referred to as the Caltex (India), was carrying on through its undertakings in India the business of marketing and distributing petroleum products. The President of India, on 30th Dec. 1976 promulgated the Caltex (Acquisition of Shares of Caltex Oil Refining (India) Limited and of the Undertakings in India of Caltex (India) Limited) Ordinance, 1976. The Ordinance was replaced by an Act (Act No. 17 of 1977) bearing the same name. The Act was enacted on 23rd Jan. 1977 but was given retrospective

effect from 30th Dec. 1976. By Section 3 of the Ordinance and the Act all the shares in the capital of Caltex Oil Refining stood transferred to and vested in the Central Government from 30th Dec. 1976.

The Caltex Oil Refining thus became a Government Company. Section 5 of the Ordinance and the Act had also the effect of transferring and vesting in the Central Government with effect from 30th Dec. 1976 the right, title and interest of Caltex (India) in relation to its undertakings. In India the effect of vesting of the undertakings of Caltex (India) in the Central Govt. is dealt with in Sections 6 and 7. Briefly stated, all rights and liabilities of the Caltex (India) in relation to its undertakings in India vested in the Central Government. Section 7 made it clear that the rights vested in the Central Government included the right under any lease. Power was also conferred on the Central Government to renew or continue a lease on the same terms and conditions by Sub-section (3) of Section 7. Section 9 of the Ordinance and the Act conferred power on the Central Government to direct vesting of the undertakings of the Caltex (India) in a Government company. The provisions of Sections 5 to 7 are to apply in relation to such Government company as they apply in relation to the Central Government. Sections 7 and 9 are material for our purposes and they read as follows :

"7. Special provisions as to certain rights and interests held by Caltex (India) before the appointed day.-- (1) Every right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or any right under any arrangements to secure any premises for any purpose) which Caltex (India) held immediately before the appointed day, shall, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, vest in, and be held by, the Central Government on and after the appointed day on the same terms and conditions on which Caltex (India) would have held it, if no negotiations had taken place for the acquisition by the Central Government of the undertakings of Caltex (India) in India or, as the case may be, if this Act had not been passed.

(2) If at any time after the 2nd Feb., 1974 (being the date on which the Central Government's policy for acquiring undertakings engaged in the production, marketing or distribution of petroleum products was made known) and before the commencement of this Act, Caltex (India) surrendered or otherwise relinquished any right or interest in respect of any property in India (including a right under any lease or under any right of tenancy or a right under any arrangement to secure any premises for any purpose), then, for the purposes of this Act, notwithstanding anything contained in any other law or in any agreement or instrument relating to such right or interest, the Central Government shall, on and after the appointed day, be entitled to such right or interest on the same terms and conditions on which Caltex (India) would have been entitled to such right or interest if it had not surrendered or otherwise relinquished such right or interest and this Act had not been passed:

Provided that nothing in this sub-section shall apply to any right or interest surrendered or otherwise relinquished by Caltex (India) before the commencement of this Act for sufficient monetary consideration.

(3) On the expiry of the term of any lease, tenancy or arrangement referred to in Sub-section (1) or Sub-section (2), such lease or tenancy or arrangement shall, if so desired by the Central Government, be renewed or continued, so far as may be, on the same terms and conditions on which the lease or tenancy or arrangement was originally granted or entered into."

"9. Power of Central Government to direct vesting of the undertakings of Caltex (India) in a Government company.-- (1) Notwithstanding anything contained in Sections 5, 6 and 7, the Central Government may, if it is satisfied that a Government company is willing to comply, or has complied, with such terms and conditions as that Government may think fit to impose, direct by notification, that the right, title and interest and the liabilities of Caltex (India) in relation to any of its undertakings in India shall, instead of continuing to vest in the Central Government, vest in the Government company either on the date of the notification or on such earlier or later date (not being a date earlier than the appointed day) as may be specified in the notification,

(2) When the right, title and interest and the liabilities of Caltex (India) in relation to its undertakings in India vest in a Government company under Sub-section (1), all the rights and liabilities of the Central Government in relation to such undertakings shall on and from the date of such vesting, be deemed to have become the rights and liabilities respectively, of the Government company.

(3) The provisions of Sections 5, 6 and 7 shall, so far as may be, apply in relation to such Government company as they apply in relation to the Central Government and for this purpose reference therein to the "Central Government" shall be construed as references to such Government company,"

On 30th Dec., 1976, the Central Government acting u/s 9 (1) of the Ordinance issued a notification that the right, title and interest and the liabilities of the Caltex (India) in relation to its undertakings in India shall instead of continuing to vest in the Central Government vest with effect from 30th Dec., 1976 in the Caltex Oil Refining. It may here be mentioned that the Caltex Oil Refining because of acquisition of its shares by the Central Government from 30th Dec., 1976 became a Government company.

The petitioners are owners of a plot of land measuring 6500 sq. ft. situated in Raj Mohalla, Indore. In 1958 this plot was leased out by the petitioners' predecessors in favour of the Caltex (India) for installation of a petrol pump for a period of ten years with a renewal clause for another ten years. The lease was to expire on 1st Nov., 1968 and as there was refusal to renew the lease by the lessors a suit was instituted by the Caltex (India) for specific performance as a result of which the lease was renewed up to 31st Oct., 1978. By letter dated 24th April, 1978 the Caltex Oil Refining expressed its desire for further renewal or

continuance of the lease for a period of ten years from 1st Nov., 1978 in exercise of its powers u/s 7 (3) of the Act. The petitioners did not agree to the renewal.

The Company Law Board in exercise of its powers u/s 396 of the Companies Act, 1956 (read with the notification of the Central Government issued u/s 637 delegating that power) on 9th May, 1978 notified the Caltex Oil Refining and the Hindustan Petroleum Corporation Limited Amalgamation Order, 1978. By this order the undertakings of the Caltex Oil Refining stood transferred and vested in the Hindustan Petroleum Corporation Limited (hereinafter referred to as the Hindustan Petroleum). Section 3 of this Order reads as follows:--

"3. Amalgamation of the Companies.--On the appointed day, the undertaking of CORIL shall stand transferred to, and vested in HPCL, which Company shall, immediately on such transfer be deemed to be the company resulting from the amalgamation.

Explanation-- The undertaking of CORIL referred to above shall be deemed to include all assets, rights, leases, tenancies, powers, authorities and privileges, trade marks, trade names, patent rights and licences for the use of patents and all property, movable and immovable, tangible or intangible (including cash and bank balances), reserve funds, book debts, outstandings, reserves, balances on revenue accounts, investments and all other rights and interests in, or arising out of such property and rights as were, immediately before the appointed day, in the ownership, possession, power or control of CORIL in relation to its undertaking and all books, accounts, registers, records and all other documents of whatever nature relating thereto, and shall also be deemed to include all borrowings, debts and other liabilities (including the liability for the payment of any pension and other pensionary benefits to the person's employed in relation to its undertaking) and obligations of whatever kind then subsisting of CORIL in relation to its undertaking." (N. B. CORIL means Caltex Oil Refining (India) Limited, and HPCL means Hindustan Petroleum Corporation Limited).

The petitioners on 18th Dec., 1978 filed this petition under Article 226 of the Constitution for declaring Sections 7 (3) and 9 (3) of the Act invalid and for quashing the notification dated 30th December 1976 issued u/s 9 (3) in favour of the Caltex Oil Refining and for directing the respondents to deliver possession of the plot to the petitioners.

The first contention raised by the learned counsel for the petitioners is that Section 7 (3) of the Act is unconstitutional being violative of the petitioners' fundamental rights under Article 19(1)(f) and Article 14 of the Constitution. The learned counsel submits that the right to evict a person whose lease has come to an end is a right to hold property under Article 19(1)(f) and that this right has been unreasonably affected or taken away u/s 1 (3) for the benefit of the Central Government or the Government Company, as the case may be. It is also submitted that there are no guidelines for exercise of the power u/s 7 (3) and the section as it confers unguided powers is arbitrary and discriminatory.

By Sub-section (1) of Section 7 of the Act every right or interest in respect of any property in India including a right under any lease or under any right of tenancy or any right under any arrangement to secure any premises for any purpose which the Caltex (India) held immediately before 30th Dec., 1976 became vested in and held by the Central Government from that date on the same terms and conditions on which Caltex (India) would have held it. The Central Government by this provision only gets that right under a lease which the Caltex (India) had under it. So if the Caltex (India) had the right to renew the lease, the Central Government could have renewed it. In the instant case, however, the lease provided for only one renewal which right had already been exercised by the Caltex (India) and it was this renewal which was to expire on 30th Oct. 1978. The lease, therefore, could not have been renewed under this provision. Sub-section (3) of Section 7, however, confers an additional power on the Central Government to renew or continue a lease on its expiry.

The sub-section provides that if so desired by the Central Government, the lease or tenancy or arrangement referred to in Sub-sections. (1) and (2) shall be renewed or continued so far as may be on the same terms and conditions on which the lease or tenancy or arrangement was originally granted or introduced. It is true that the words "if so desired by the Central Government" as used herein are prima facie wide but they should be construed in the context that Sub-section (3) is an ancillary provision to enable the Central Government to continue the business of the undertakings of the Caltex (India) after their vesting. The words "if so desired" in our opinion read in the context mean "if so needed". It is quite likely that immediately after the undertakings of the Caltex (India) were taken over by the Central Government it could not be possible to obtain suitable alternative premises for continuing the business activities of the undertakings of the Caltex (India) and, therefore, the Central Government had to be armed with the power to get the leases and tenancies renewed or continued after their expiry under Sub-section (3).

So the power under Sub-section (3) for renewing or continuing a lease or tenancy can be exercised if the subject matter of the lease or tenancy is really needed for continuing the business. Read in this way, the power conferred by Sub-section (3) cannot be held to be arbitrary as it can be used only for subserving the purpose for which it is conferred. It must be conceded that the right to evict a person is a right to hold property under Article 19(1)(f) but, in our opinion, Sub-section (3) does not lay down any unreasonable restriction if understood in the sense indicated by us above. The restriction is in the interest of the general public for continuation of the business of the undertakings of the Caltex (India) nationalised under the Act is in national interest and for benefit of the country as a whole. Section 7 (3), in our opinion, would, therefore, be protected under Clause (5) of Article 19. We have already stated that on a proper construction the power conferred is not arbitrary and, therefore, there can be no violation of Article 14.

Apart from these considerations, we are of opinion that the Act in general is protected by Article 31C of the Constitution as contended by the learned counsel for the respondents.

The Statement of Objects and Reasons goes to show that the Act was enacted in implementation of the policy for progressively securing that the ownership and control of the products of the nation's petroleum resources are vested in the State and thereby so distributed as best to subserve the common good. The preamble of the Act which also contains that declaration reads as follows:

"Whereas the Caltex Petroleum Corporation (a foreign company) has at present the ownership of, and control over a significant portion of the petroleum products produced, marketed and distributed in India by reason of the fact that one of its subsidiaries, namely, the Caltex Oil Refining (India) Limited (an Indian company), is carrying on the business of refining crude oil and producing petroleum products in India and another of its subsidiaries, namely, the Caltex (India) Limited (a foreign company), is carrying on through its undertakings in India the business of marketing and distributing petroleum products;

And whereas it is expedient in the public interest that the shares of the said Caltex Oil Refining (India) Limited and the undertakings in India of the said Caltex (India) Limited should be acquired;

And whereas such acquisition is for giving effect to the policy of the State towards securing the principle specified in Clause (b) of Article 39 of the Constitution as the ownership and control of the material resources of the community, to wit the petroleum products produced by the said Caltex Oil Refining (India) Limited, in India, would by reason of such acquisition become vested in the State and thereby so distributed as best to subserve the common good."

Article 31C as enacted by the Constitution (25th Amendment) Act, 1971 and to the extent held to be valid in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, and *Waman Rao v. Union of India*, W. P. Nos. 656-660 of 1977, decided on 9th May, 1980 : (Reported in *Waman Rao and Others Vs. Union of India (UOI) and Others*, and omitting the amendment introduced by the Constitution (42nd Amendment) Act, 1976 which was held invalid in *Minerva Mills Ltd. v. Union of India*, W. P. Nos. 356-361 of 1977, decided on 9th May, 1980 : (Reported in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, provides that notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31. The directive principle of State Policy that the State has to apply in making laws as contained in Article 39(b) is that the ownership and control of the material resources" of the community are so distributed as best to subserve the common good. Referring to Article 39(b),

Krishna Iyer J. speaking for himself and on behalf of Bhagwati and Jaswant Singh, JJ., in *The State of Karnataka and Another Vs. Shri Ranganatha Reddy and Another*, observed that the expression "material resources of the community" in the context "embraces all the national wealth, not merely the natural resources, all the private and public sources of meeting material needs, not merely public possessions."

It was further observed that "distribution" will include nationalisation "as a distributive process for the good of the community." Article 39(b) as construed in *Ranganath Reddy's* case clearly brings in within its fold nationalisation of the products of the nation's petroleum resources which was the object behind the Act in acquiring the shares of the Caltex Oil Refining and the undertakings of the Caltex (India) in India. The statement in the preamble that the Act has been passed with a view to give effect to the policy of the State towards securing the principle specified in Clause (b) of Article 39 is not conclusive as held by the Supreme Court in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, but then it raises a presumption that was the object of the Act. The provisions of the Act dealing with acquisition of the shares of Caltex Oil Refining and acquisition of the undertakings of the Caltex (India) in India support that statement contained in the preamble. We have, therefore, no hesitation in holding that the Act is protected by Article 31C. The provision made in Section 7 (3) is an ancillary provision to enable the Central Government to carry out the object of nationalisation as explained by us earlier. After the undertakings of the Caltex (India) are taken over under the Act the business of the undertakings has to be continued.

The Central Government may immediately after the undertakings are taken over find difficulty in searching out alternative premises for carrying on the business of the undertakings and in this background Parliament thought it necessary to confer power on the Central Government to renew or continue the leases or tenancy under which the Caltex (India) had obtained the premises that were needed. While dealing with Article 31A(1)(a) it has been held that that Article's protection is not limited to the provisions in an Act which are directly related to the acquisition by the State of any estate or of any rights therein or the extinguishment or modification of any such rights and that the protection also extends to the ancillary provisions enacted for the purposes of carrying out the object of the Act (*Thakur Raghubir Singh and Others Vs. The State of Ajmer (Now Rajasthan) and Others*, , The same principle must apply in the application of Article 31C. Although Section 7 (3) does not directly deal with nationalisation and although the petitioner's property has not been nationalised, yet Section 7 (3) must be held to have come within the protective umbrella of Article 31C because it is an ancillary or incidental provision for carrying out the object of nationalisation of the undertakings of the Caltex (India).

The second contention raised by the learned counsel for the petitioners is that the notification u/s 9 (3) vesting the undertakings of the Caltex (India) in the

Caltex Oil Refining was issued u/s 9 (3) of the Ordinance on 30th Dec., 1976 and that it cannot be taken to be effective u/s 9 (3) of the Act which was given retrospective effect from 30th Dec., 1976. In our opinion, there is no merit whatsoever in this contention, The argument is entirely covered by Section 24 of the General Clauses Act. 1897.

The notification issued u/s 9 (3) of the Ordinance which was repealed and replaced by the Act will continue in force and must be deemed to have been issued u/s 9 (3) of the Act. This is the effect of Section 24. The fact that the Act was given a retrospective effect from 30th Dec., 1976 does not make Section 24 of the General Clauses Act inapplicable.

It was then contended that the Caltex Oil Refining in which the undertakings of the Caltex (India) got vested by the notification issued u/s 9 (3) of the Act could not transfer its rights in favour of the Hindustan Petroleum. In our opinion, this argument proceeds upon a misconception. The rights of the Caltex Oil Refining stand transferred to the Hindustan Petroleum not by any voluntary transfer but by the Amalgamation Order issued u/s 306 of the Companies Act. We have already quoted Clause (3) of the Amalgamation Order. The Explanation contained in Clause (3) makes it clear that all assets, rights, leases, tenancies, powers, authorities and privileges etc. stand transferred to and vested in the Hindustan Petroleum. Section 9 of the Act does not say that a Government company in which has vested the undertaking of the Caltex (India) cannot be amalgamated with any other Government company. As a result of the amalgamation order the Hindustan Petroleum automatically takes the place of the Caltex Oil Refining.

It was lastly submitted that the exercise of the power u/s 7 (3) by the Caltex (India) was premature as the letter dated 24th April, 1978 was issued before the expiry of the lease. This contention assumes that the Central Government or the Government company, as the case may be, should express its desire for renewal or continuation of a lease or tenancy after expiry of the lease or tenancy. The language used in Section 7 (3) does not support this construction. The desire expressed by the letter dated 24th April, 1978 issued by the Caltex (India) cannot, therefore, be taken to be premature. Indeed it is desirable that there should be reasonable notice to the lessor by the Central Government or the Government company that it is going to exercise its power for renewal or continuation of the lease u/s 7 (3). The notice should normally, therefore, be issued before the expiry of the lease. The notice issued in this case cannot be said to be premature.

The petition fails and is dismissed but without any order as to costs. The security amount be refunded to the petitioner.