(1995) 06 KL CK 0047

In the High Court Of Kerala

Case No : O.P. No. 7578 of 1995

Mohanan, K.P. APPELLANT

Vs

Indain Oil Corporation Ltd. and Others RESPONDENT

Date of Decision : 06-06-1995

Acts Referred:
Constitution of India, 1950 — Article 12, 14, 226, 32

Citation : (1995) 06 KL CK 0047

Hon'ble Judges : P.A. Mohammed, J

Bench : Single Bench

Advocate : T.P. Kelu Nambiar, S.M. Prem and K.P. Santhi, for the Appellant; P. Santhalingam, for the Respondent

Final Decision : Allowed

Judgement

P.A. Mohammed, J.—The Petitioner in this case is a ''dealer'' appointed by the Indian Oil Corporation (for short the ''Corporation'') for the retail sale and supply of petrol, high speed diesel, lubricating oils, etc. (hereinafter referred to as ''petroleum products''). He was doing this business ever since he was so appointed in the year 1969. In this petition he seeks to quash Ext. P-3 order dated 13th April 1995 issued by the third Respondent, Senior Divisional Manager, I.O.C. suspending supplies to the Petitioner''s retail outlet at Ramanattukara. In fact the supply was suspended even before the issue of Ext. P-3, that is to say, with, effect from 9th April 1995, which fact is not contradicted by the Corporation.

2. In order to bringforth the crux of this case, it would be profitable to read the relevant portion of Ext. P-3, which is extracted hereunder:

We have received information that your representatives Sri Deepachan and Sri Mohanan have assaulted our official Sri J.T. Kurian, Sr. Depot Manager. It is also learnt that your representatives used abusive language to abuse him inside the depot premises. In view of this, we seek your explanation regarding the misbehaviour and creating a scene in our depot. Your explanation should reach us within three days from the receipt of this letter. Till such time the investigation is completed, we are suspending the supplies of MS and HSD to your retail outlet forthwith.

What would reveal from Ext. P-3 is that the supply of petfoleum products was suspended for the alleged incident involving misbehaviour. On the other hand, it could be seen that the Petitioner had denied the said incident hand and foot and he had a different tale altogether that it was the officer who misbehaved towards the dealer.

3. The petroleum products is an essential commodity and its supply and distribution through the retail outlet is intended to benefit a section of the general public. Therefore, it is essential to bear in mind that the discontinuance of the supply of petroleum products to the Petitioner''s outlet had adversely affected the interest of a section of the public.

4. The supply of petroleum products to the Petitioner for retail sale is regulated by the terms of contract executed between the Petitioner and the Corporation on 31st December 1971.

5. Before suspending the supply on 9th April 1995 no notice was issued to the Petitioner calling for his explanation. Thus Ext. P-3 can be termed to be a post-decisional notice in contractual field. The question that manifestly arises is how far the decision of the Corporation to suspend the supply of petroleum products to the Petitioner, is amenable to judicial review in a proceeding under Article 226 of the Constitution. This question is no longer re integra in view of the decision of the Supreme Court in Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, there it has been laid down that the Indian Oil Corporation (I.O.C.) is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. "It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason, may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution."

6. Ext. P-3 did not refer to any violation of the provisions of the contract by the Petitioner. Clause 58 of the contract enumerates certain circumstances under which the Corporation shall have the liberty to terminate an agreement. The counsel for the Corporation relies on Sub-clause (m) of Clause 58 in his bid to sustain the issue of Ext. P-3. What Sub-clause (m) authorises the Corporation is to terminate the agreement in case the dealer commits any act which in the opinion of the Regional Manager is prejudicial to the interest or good name of the Corporation. The case of the Petitioner is that the disputed allegation of misbehaviour would not by itself constitute an act within meaning of the above clause. Even assuming it to be so, the action under the said clause would enable the Corporation to terminate the dealership and not to suspend the supply. Ostensibly the action under Ext. P-3 was not for termination of dealership, but

for suspension of supply. At any rate, the action contemplated under Clause 58(m) can be invoked only by the Regional Manager of the Corporation, Madras after satisfying himself that the action of the dealer is prejudicial to the interest or good name of the Corporation. Admittedly, in this case it was the third Respondent, Senior Divisional Manager, who suspended the supply of petroleum products and issued Ext. P-3 notice. Thus the entire proceedings relating to suspension of supply and Ext. P-3 notice are incompetent and without jurisdiction. Even admitting that Sub-clause (m) of Clause 58 will apply as contended by the Corporation, the terms of the said clause have been violated by the Respondents. Thus the entire action is invalid.

7. The supply of petroleum products was discontinued with effect from 9th April 1995 abruptly without disclosing any reason. Ext. P-3 was however, issued on 13th April 1995 suspending the supply and calling for explanation regarding the alleged misbehaviour. Pursuant to Ext. P-3, the Petitioner has filed Ext. P-4 reply dated 23rd April 1995 explaining his case. As stated, Ext. P-3 is a post-decisional notice inasmuch as the decision to suspend the supply was taken prior to 9th April 1995 the day on which the supply was discontinued. It is apt to consider in this context the nature and magnitude of the injury caused to the Petitioner as a result of the suspension of the supply of petroleum products. He was appointed as a dealer of the Corporation in the year 1969. It is thus evident that for the last twenty-five years he was continuously transacting business as a dealer appointed by the Corporation. During the aforesaid period there were no complaints against him and corporation has not pointed out anywhere that the dealer had committed any misbehaviour or irregularity in the course of its business transaction. Therefore, as far as the Petitioner is concerned the injury suffered by him is enormous. He claims to be a reputed dealer in the locality where the retail outlet is stationed. When a running establishment is closed abruptly it will definitely affect the reputation of the dealer and the good name he had in the business field. Besides, the public of the locality were seriously subjected to inconvenience and his regular customers were found themselves in precarious situation due to the sudden closure of the retail outlet. Thus suspension of the supply of the petroleum products has really resulted in grave injury, damage, loss and reputation. "Reputation is a part of a person''s character and personality". Thus the Petitioner is highly aggrieved in this case.

8. When the action of the Corporation, an instrumentality of a State causes such serious injuries Mid damages to the Petitioner can it be sustained by this Court in the absence of a pre-decisional notice? Of course, it is not a statutory or a contractual requirement in this case but a requirement in the observance of the principles of natural justice. In Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, the Supreme Court said:

Having regard to the nature of the transaction, we are of the opinion that it would be appropriate to state that in cases where the instrumentality of the State enters the contractual field it should be governed by the incidence of the contract. It is true that it may not be necessary to give reasons but, in our opinion, in the field of this nature fairness must be there to the parties concerned, and having regard to the large number or the long period and the nature of the dealings between the parties, the Appellant should have been taken into confidence. Equality and fairness at least demands this much from an instrumentality of the State dealing with a right of the State not to treat the contract as subsisting. We must, however, evolve such process which will work.

Though the action is ''governed by the incidence of the contract'' the person to whom the injury to be caused by such action should be ''taken into confidence''. This requirement in the observance of ''equality and fairness'' could not be treated to be an empty formality. The efficacy of such a requirement can be attained only when a notice prior to the proposed action is given to the person concerned. The counsel for the Corporation brings to my notice the recent decision of the Supreme Court in Tata Cellular Vs. Union of India, where the scope of judicial review in relation to the exercise of contractual powers by Government bodies is profoundly discussed. Placing reliance on this decision counsel Sri P. Santhalingam maintains that the modern trend points judicial restraint in administrative action. I am inclined to agree with the above proposition but at the same time I am fully conscious of the striking difference between the facts of the present case and that of the Supreme Court. However, it has been emphatically laid down by the Supreme Court: "It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism." In Sterling Computers Limited and Others Vs. M and N Publications Limited and Others, the Supreme Court held that while exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the court is concerned primarily as to whether there has been any infirmity in the "decision making process". The court has power to examine whether such "decision making process" is reasonable, rational, not arbitrary and violative of Article 14. In view of the nature of the injury caused to the Petitioner as set out herein before, the issue of the pre-decisional notice cannot be dispensed with though the parties are primarily governed by the incidence of contract. The following observation of Lord Bridge of Harwich in Lloyd and Ors. v. Mcmahon (1987) 1. A.C. 625 is very relevant in this context:

My Lords, the so-called rules of natural justice are not engraved on tablets of stone. To use the phrase which better expresses the underlying concept, what the requirements of fairness demand when any body, domestic, administrative or judicial, has to make a decision which will affect the rights of individuals depends on the character of the decision-making body, the kind of decision it has to make and the statutory or other framework in which it operates.

9. In the aforesaid background it is difficult to say that the post decisional notice evidenced by Ext. P-3 would be sufficient. I am of the firm view that this was a case where a pre-decisional notice should haye issued to the Petitioner before

suspending the supply. For that reason, I am inclined to declare that the proceedings of the third Respondent suspending the supply of petroleum products to the Petitioner with effect from 9th April 1995 and Ext. P-3 notice are unauthorised.

10. As far as the alleged manhandling incident, there is a conflicting and contradictory versions. The Petitioner''s case is that there was a discord between the Petitioner and Sri. J.T. Kurien, the Senior Depot Manager of the Corporation as existed from the year 1993. Exts. P-1 and P-2 sufficiently authenticate the said position. Ext. P-4 is the explanation submitted by the Petitioner pursuant to Ext. P-3. Manhandling incident and misbehavior alleged has been denied as above said. According to the Petitioner, Sri J.T. Kurien had misbehaved him asking him and his son to get out of the cabin. Along with the counter affidavit Exts. R-3(a) and R-3(b) were produced by the third Respondent. Ext. R-3(a) is a copy of the complaint before the S.I. of Police filed by Sri J.T. Kurien and Ext. R-3(b) is the F.I.R. Ext. R-3(a) reveals that the Petitioner and others assaulted Mr. Kurien threatening that they would kill him. In Ext. P-3 such an assuault has been totally denied by the Petitioner. Now the police has registered a F.I.R. and investigation is pending. Thus it is too early to say that the manhandling incident alleged by the third Respondent is true and real. That being so, no action can be taken against the Petitioner on the basis of the aforesaid misbehaviour.

11. In view of the reasons discussed herein before, the proceedings for suspension of the supply of petroleum products and the consequent issue of Ext. P-3 notice to the Petitioner are set aside. Accordingly, the Respondents are directed to the restore the supply of the petroleum products to the Petitioner as before, in terms of the existing memorandum of agreement, if not already restored. The Original Petition is allowed. No order as to costs.

*A reproduction from ILR (Kerala Series).