

(1991) 12 CAL CK 0018
In the Calcutta High Court
Case No : C.O. No. 17466 (W) of 1988

M/s. B.K. Roy Private Limited and others	APPELLANT
Vs	
State of West Bengal and others	RESPONDENT

Date of Decision : 05-12-1991

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 298, 32
Essential Commodities Act, 1955 — Section 3
West Bengal Kerosene Control Order, 1968 — Section 10, 3, 4, 5, 6

Citation : AIR 1993 Cal 18 : (1992) 2 CALLT 185 : 97 CWN 217 : (1992) 1 ILR (Cal) 173

Hon'ble Judges : Paritosh K. Mukherjee, J

Bench : Single Bench

Advocate : Mr. Amal Kr. Basu Chowdhury and Mrs. Banani Mukherjee, Mr. Dhruba Kumar Mukherjee, Mr. Kedareswar Chakraborty and Mr. Sabyasachi Mukherjee, for the Appellant; Mr. Mukul Prokash Banerjee and Mr. Sanat Kumar Seal, for the Respondent

Judgement

1. This writ petition was originally moved on behalf of M/ s. B. K. Roy (P) Limited, challenging a communication issued by Manager Sales, Hindusthan Petroleum Corporation Ltd. (hereinafter referred to as Corporation), refusing the request of the writ petitioner to transfer the Kerosene Oil dealer-ship, in favour of the petitioner's sister concern M/s. Hooghly Petroleum Products Trading Company (P) Ltd. and on August 2, 1988, this Court having heard Mr. Dhruba Kumar Mukherjee for the writ petitioner directed the petitioner to serve the copies of the writ petition upon the District Magistrate, Hooghly being respondent No. 4A and the District Controller of Food and Supplies, Hooghly being respondent No. 5 and respondents Nos. 7 and 8, as well as in the office of the Government Pleader.

2. In view of urgency, after dispensing requirement under Rule 27A of the Rules framed under Art. 226, this Court further passed an interim order that pending licence in favour of the writ petitioner, in respect of the West Bengal Kerosene

Control Order, 1968 (hereinafter referred to as the said Order), should not be cancelled, in the mean time.

3. Thereafter, the writ petition appeared in the presence of Amal Kr. Basu Chowdhury, learned Advocate appearing for the State Respondents on September 20, 1988 and necessary directions for Affidavit had been passed by this Court and Affidavit of service was filed which was kept on record. Subsequently, on March 2, 1989, the matter was taken up for orders for consideration of grant of appropriate directions and/or order pending final decision of the writ petition, as in Paragraph 19 of the writ petition, the petitioner had categorically stated that during recent discussions, the District Controller, Food and Supplies, Hooghly, having expressed the view that they were ready and willing to renew the licence now held by the petitioner company M/s. B. K. Roy Private Limited, for the next year because the management remains the same. But as M/s. Hindusthan Petroleum Corporation Limited, respondents Nos. 6 to 8, has raised an objection, the District Controller, Food and Supplies, Hooghly, expressed the view that at any rate the District Authorities, Hooghly have the authority to grant licence de novo in favour of the subsidiary company of the petitioner No. 1 company, if and when such application in form C is filed, provided, no objection is raised by the said Corporation, being respondent No. 6.

4. On that date attention of the Court had drawn to the impugned letter of the Manager, Sales of Hindusthan Petroleum Corporation Limited dated July 22, 1987, whereby the writ petitioner was informed that as regards requesting transfer of kerosene dealership in favour of the petitioner No. 1 's sister concern, viz., Hooghly Petroleum Products Trading Company Private Limited, they have regretted as they were unable to accede to the request as such transfer of dealership was not permitted, which has been challenged in the present writ petition.

5. As according to this Court, the said communication was devoid of any reasons and, under the estimation of this Court was arbitrary and accordingly decided the District Controller, Food and Supplies to consider the renewal application of the writ petitioner, in favour of the sister concern.

6. During the hearing, specific objections have been made by Mr. Mukul Prokash Banerjee appearing on behalf of the said Corporation that, in any event, the prayer made in the instant writ petition by the writ petitioner could not be allowed, as it appears that the original writ petitioner has prayed for issue of a writ in the nature of Mandamus, commanding the respondents Nos. 1 to 5 to act, in accordance with law, and consider and decide the petitioner's prayer for renewal of the existing Dealership Licence standing in the name of the petitioner No. 1, by a written order giving reasons and renew the same in the name of M/s. Hooghly Petroleum Products Trading Company Private Limited, which is a subsidiary company of the petitioner No. 1 company, as no application has been made by the subsidiary company for grant of Dealership.

7. On the basis of the aforesaid objections, an application for addition of party having been made on behalf of M/ s. Hooghly Petroleum Products Trading Company Private Limited on July 12, 1991, this Court allowed the said application and the subsidiary company was added as party petitioner, On the same date an application for amendment of prayer "A" of the writ petition which was also being filed for incorporating the following words after the prayer "A" being "and/or issue Dealership licence under the West Bengal Kerosene Control Order 1968 in the name of M/s. Hooghly Petroleum Products Trading Company (P) Ltd. for Tarakeswar area and issue a writ of Mandamus against respondents Nos. 6 to 8, their agents and subordinates to make bulk supply of kerosene oil to the petitioner No. 5 for retail distribution against the Dealership licence, as aforesaid", was also heard and was also allowed.

8. Thus, the writ petition was further heard on the basis of the amended prayers and after addition of party, whereby M/s. Hooghly Petroleum Products Trading Company (P) Ltd., was also added as a party petitioner, who has been represented by Mr. Sabyasachi Mukherjee, advocate.

9. Mr. Dhruba Kumar Mukherjee, learned Advocate appearing for the original writ petitioner submitted that since the writ petitioner M/s. B. K. Roy Private Limited has been functioning as an agent of kerosene oil in Tarakeswar area for more than 20 years past, having been granted a licence to that effect, under the said Order of 1968, the said company is at present engaged in various other types of wholesale business in seeds, fertilisers etc. and for administrative convenience the members of the said company wanted to canalise business in kerosene oil, cooking gas and other petroleum products, in a particular branch and with that end in view, they formed another private limited Company namely M/s. Hooghly Petroleum Products Trading Company Private Limited, being the sister concern of the petitioner company, of which the shareholders as well as the directors are exactly the same.

10. Thereafter, the petitioner No. 1 company requested the Food and Supply Department of West Bengal that the existing agent's licence standing in the name of M/s. B. K. Roy Private Limited be renewed, in the name of the newly formed company, i.e., M/s. Hooghly Petroleum Products Trading Company Private Limited, which is a subsidiary of the holding company M/s. B. K. Roy (P) Limited.

11. Mr. Mukherjee further submitted that the State Government not having opposed the proposal for renewing the licence now in the name of the said subsidiary company and not filed any affidavit opposing the writ petition and in fact the State Government had issued a fresh "Token" on renewal of the Agent's licence in the name of the subsidiary company.

12. Unfortunately, the respondent Corporation, which is an "Oil Distributing Company" within the meaning of S. 3(h) of the West Bengal Kerosene Control Order, 1968 operating in the area, and which Corporation is engaged in bulk supply of kerosene oil to the agents and dealers, without disclosing any reasons,

has refused to give their assent to the request of petitioner No. 1 company made to the State Government that the agency licence of M/s. B. K. Roy Private Limited be renewed in the name of the said subsidiary company.

13. According to Mr. Mukherjee, the impugned communication dated July 22, 1987, is devoid of any reasons and under the estimation of this Court, is arbitrary and should not be given effect to which has been pointed out by the order passed by this Court on March 2, 1989.

14. Mr. Mukherjee further submitted that earlier application for variation and vacating the interim order having been rejected by this Court by the order dated July 4, 1989, the respondents are duty bound to act on the basis of the amended prayers of the writ petition quoted hereinabove.

15. According to Mr. Mukherjee, more than one year and ten months having been elapsed after the said order was passed and no appeal having been preferred against the said order for vacating the interim order it will appear before this Court that there was no material available to the respondent Corporation upon which it can be argued that an oil distributing company is competent under S. 3(h) of the West Bengal Kerosene Control Order, 1968, to compel the State Government not to grant or renew any licence under the said order at the caprice of the said oil distributing company.

16. Mr. Mukherjee further added that the position in law as laid down under the Essential Commodities Act, 1955 as well as under the provisions of the said order of 1968, is that the State Government has exclusive power to grant licence to an agent for wholesale distribution of kerosene oil under clause (5) of the said order of 1968, to grant licence to a dealer under clause (6) of the said Order and/or renew a licence under cl. (7) of the said Order in any manner the State Government thinks fit and proper. Such power of the State Government cannot be fettered or controlled by any other authority and the oil distributing company is under an obligation to make bulk supply of kerosene oil to a licence holder after completing the paraphernalia of formal agreement about payment of prices etc. Such oil distributing company cannot arbitrarily refused to enter into such formal agreement and/or refuse to supply kerosene oil in bulk to the licence holder, as it has been done in the present case.

17. He further submitted that there could not be any lawful reasons on the part of the respondent Corporation to refuse to give effect to the licence already issued in favour of the said subsidiary company and the said Corporation has not been able to put forward any tenable reasons for its refusal, as the State Government is the official authority in this regard.

18. He further added that assuming without admitting that the said Corporation has any say under the law in the matter of giving effect to a licence lawfully issued under the Kerosene Control Order, such Corporation is not permitted to act capriciously, arbitrarily and unreasonably, as has been done in the present case.

19. In fact the said Corporation is an instrumentality of the "State" being a Government company and it is under an obligation to act reasonably and not arbitrarily. Such Corporation is under an obligation to state the reasons, why it refuses to enter into a formal agreement with Hooghly Petroleum Products Trading Company Private Limited, a subsidiary company of the original licence holder when in fact the same persons are the shareholders and directors.

20. In this context, Mr. Mukherjee has strongly placed reliance on the observations made by the Hon^{ble} Mr. Justice Sabyasachi Mukharjee, C.J. (as His Lordship then was), in the case of Mahabir Auto Stores and others Vs. Indian Oil Corporation and others, , wherein at para 12 it has been observed as follows :

"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 Art, 226 or Art. 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in Radhakrishna Agarwal and Others Vs. State of Bihar and Others, It appears to us at the outset, that in the facts and circumstances of the case, the respondent company IOC is an organ of the State or an instrumentality of the State as contemplated under Art. 12 of the Constitution. The State acts in its executive power under Art. 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Art. 14 can be checked. See M/s. Radha Krishna Agarwal v. State of Bihar at p. 462 (at SCC) : (at p. 1499-1500 of AIR) (supra), but Article 14 of the Constitution cannot and has not been construed as a charter for judicial review of state action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Art. 12 of the Constitution may be in certain circumstances subject to Art. 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration, it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Art. 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, Arts. 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority in such monopoly or semi-monopoly dealings, it should meet the test of Art. 14 of the Constitution. If a Government action even in the matters of entering or not entering into contracts fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to E.P. Royappa Vs. State of Tamil Nadu and Another, , Mrs.

Maneka Gandhi Vs. Union of India (UOI) and Another, , Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others, ; Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, and also Dwarkadas Marfatia and Sons Vs. Board of Trustees of the Port of Bombay, . It appears to us that 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 the present one. 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 present case."

21. Lastly, Mr. Mukherjee submitted that the State Government not having raised any objection because there are same Board of Directors in the subsidiary company as in the Holding Company, the Corporation is legally duty bound to transfer the kerosene dealership to its sister concern and in support of this branch of submission he has placed reliance in the case of S.N. Mukherjee Vs. Union of India, wherein it has been further held "in view of the expanding horizon of the principles of Natural Justice the requirement to record reason can be regarded as one of the principles of Natural Justice, which governs exercise of power by Administrative Authority".

22. On the other hand, Mr. Mukul Prokash Banerjee, appearing for the respondent Oil Company, submitted on April 2, 1991 that during the pendency of the writ petition an application for addition of parties was filed by the M/s. Hooghly Petroleum Products Trading Company Private Limited and the said application has not yet been disposed of. In the estimation of this Court this is not correct, in view of the order passed by this Court on July 12, 1991 as on that date the said application for addition of parties was allowed.

23. According to Mr. Banerjee under the provisions of the West Bengal Kerosene Control Order, 1968 the respondent No. 6 being an agent in terms of S. 3(a) and (h) and under S. 4, none else than an oil distributing company shall carry on trade of kerosene and the oil distributing company shall sell, supply to a dealer who is a holder of a licence in terms of S. 5 of the Kerosene Control Order and under S. 6 licence is granted to a Dealer and S. 7 provides for renewal of licence and if for any reason there is refusal to grant or renew of licence, an appeal lies under S. 10 of the Control Order.

24. According to Mr. Banerjee, the original writ petitioner in the present writ petition, M/ s. B. K. Roy Private Limited, was a dealer under the Kerosene Control Order and in terms of a contract in writing with the respondent No. 6, the respondent No. 6 assured to supply kerosene to the petitioner No. 1. The writ petitioner by letter dated July 1, 1985, being Annexure "A" to the writ petition requested the respondent No. 6 to transfer the dealership standing in the name of the writ petitioner No. I in favour of its sister concern M/s. Hooghly Petroleum

Products Trading Company Private Limited, on the ground that the kerosene business of the writ petitioner No. 1 had been segregated from the writ petitioner No. 1 by formation of a new private Limited Company M/s. Hooghly Petroleum Products Trading Company Private Limited, although the newly formed company M/s. Hooghly Petroleum Products Trading Company Private Limited has not made any application to the respondent No. 6 for supply of kerosene nor intimated that it has been appointed as a dealer under the Kerosene Control Order.

25. The said contention of Mr. Banerjee appears to have been cured by filing formal application by the subsidiary company, i.e. M/s. Hooghly Petroleum Products Trading Company Private Limited, and as such, the said contention of Mr. Banerjee cannot be upheld. In my view, Hooghly Petroleum Products Trading Company Private Limited is entitled to apply formally before respondent Corporation, and such renewal has to be made as a matter of course.

26. Mr. Banerjee further submitted that although by the application dated July 1, 1985 the petitioner No. 1 had prayed for transfer of dealership to the sister concern, but in the writ petition the claim of the writ petitioner No. 1 is renewal of the existing licence regarding dealership in the name of the sister concern of the petitioner No. 1 as appears from paras 7, 13, 14, 18, 21 and in Prayers "A" and "B" are for renewal of the licence etc. which is not possible under the law.

27. As this Court has already pointed out that the objections raised being a mere technical objection and the said objection having been cured by allowing the application for being added as party petitioner by the sister concern and by amendment of prayers, there is no substance in the objections of Mr. Banerjee which has been made as far back on April 2, 1991 by reason of subsequent order allowing addition of party and amendment of prayers, which has been effected by order dated July 12, 1991.

28. Therefore, it has become necessary for this Court to decide as to whether the amended prayers made in the writ petition on behalf of the subsidiary company should be allowed or not.

29. On the basis of the aforesaid pleadings and on the basis of the fact that the State Government having put forward no objection, in the matter of transfer of dealership and/or licence in favour of the subsidiary company, the respondent Corporation has no jurisdiction to refuse to transfer the dealership in the name of the subsidiary company.

30. Further, in my view, as the impugned communication dated July 22, 1987 is not "informed by any reasons", the said communication is liable to be set aside, on the basis of the observations of the Supreme Court made in the case of Mahabir Auto Stores v. Indian Oil Corporation (Supra).

31. In the result, the writ petition is entitled to succeed and the respondents Nos. 1 to 5 are directed to issue dealership and/or licence in kerosene oil in favour of the M/s. Hooghly Petroleum Products Trading company Private Limited

if any formal application is made in the said regard, within one week from the date of this judgment and the respondents Nos. 6 to 8 are also directed to make a bulk supply of kerosene oil to the applicant against such dealership/licence forthwith and preferably within a period of one month from receipt of such application for added petitioner.

32. The writ petition is allowed, as above.

33. There will be no order as to costs.

34. Let xerox copies of this judgment and order be given to the learned Advocates for the parties on their usual undertaking to apply for certified copy of the judgment and order.

35. Petition allowed.