

(1983) 12 GUJ CK 0005
In the Gujarat High Court

M.S. Desai and Co. (Nadiadwala)

APPELLANT

Vs

Hindustan Petroleum Corporation

RESPONDENT

Date of Decision : 21-12-1983

Acts Referred:

Constitution of India, 1950 — Article 12, 136, 226, 226

Citation : (1984) GLH 864 : (1984) 1 GLR 267

Hon'ble Judges : N.H. Bhatt, J

Bench : Single Bench

Judgement

N.H. Bhatt, J.—This is a petition by one firm, which was dealers appointed by the Hindustan Petroleum Corporation Ltd., the sole respondent in this petition. The grievance in this petition, after it was amended, was that a writ of mandamus be issued directing the respondent-Corporation to resume the supplies of petroleum products to the petitioner-firm and also directing the respondent-Corporation not to terminate the arrangement with the petitioner-firm and also for a writ directing cancellation of the impugned decision of the respondent-Corporation dated 24-11-1982 (passed during the pendency of this petition) and for other reliefs.

2. In order to understand the controversy, a few facts are required to be noted carefully. The petitioner-firm consists of one Desai and his brother's wife. The respondent is a Corporation wholly owned by the Central Government and, therefore, it is a "State" within the meaning of Article 12 of the Constitution of India and as it was discharging the Governmental functions, which were initially being discharged by the Department of the Government, namely, Petroleum Ministry, the respondent-Corporation is nothing but a limb of the Central Government. The say of the petitioner is that the respondent-Corporation wanted to instal a petrol pump on the outskirts of village Bareja on the National Highway and had, therefore, taken on lease a parcel of land on which the petrol pump in question is situated. Then the petitioner was asked to construct the rooms and necessary structures thereon, after levelling the land and the petitioner firm had

incurred substantial expenditure in putting up the said construction suitable for the purpose of the petrol pump. All this was between the year 1964 to 1966 and because of the active interest taken by the lady-partner of this firm, the special facility of establishing a multipurpose departmental distribution centre also was established there, which was also run by this petitioner-firm. This was in the year 1980 and the petitioner-firm had substantially contributed towards the construction of the asphalt road there. It is the say of the petitioner that when the petition was filed, there was taken a decision in respect of some alleged adulteration of petrol having been detected there on 22-7-1981 by the so-called Officers of the respondent-Corporation, which, after getting the said samples duly tested, had allegedly found the petrol, etc. at the outlet to be adulterated. Because of this finding, the respondent-Corporation had stopped the supplies in the month of November 1981, after some notice was issued to the petitioner by the respondent-Corporation. After waiting for some months, the petitioner moved this Court initially for a mandatory injunction of the supply of petroleum products. My Brother Ahmadi J. had passed an interim order because of Annexure A, the alleged guidelines, assumedly issued by the Petroleum Ministry directing that the full enquiry may be conducted and a speaking order be passed. The final decision was required to be sent to this Court and the same is produced on the file of this Court by the respondent-Corporation. The petition thereafter had come to be amended and the petition, as it stands in the form of the prayers set out above, is to be dealt with by me.

3. Affidavit-in-reply has been filed on behalf of the respondent-Corporation wherein a number of preliminary objections has been taken. They inter alia are: (i) that the petitioner had not come with clean hands and, therefore, was not entitled to the discretionary relief under Article 226 of the Constitution of India; (ii) that the petitioner's supplies had been suspended as far back as on 10-11-1981 whereas the petition had come to be tiled on 21-9-1982 and, therefore, there was gross delay which disentitled them to the discretionary relief; (iii) that the respondent-Corporation was not a "State"; and (iv) that the relationship between the parties was that of pure contracting parties and, therefore, this court's writ jurisdiction was not attracted.

4. As far as the preliminary objection about the respondent-Corporation being not a "State" is concerned, there is little merit in the contention in view of the settled legal position. Equally unmeritorious is the preliminary objection about the petitioner having belatedly approached this Court with any uncleaned hands. I do not think it necessary to elaborate this point in any manner whatsoever.

5. This brings me to last preliminary objection pertaining to the relations between the parties being purely contractual and, therefore, this court's writ jurisdiction having been not ordinarily attracted. In this connection reliance has been placed by Mr. Shelat for the respondent-Corporation on a number of authorities, some of which I am required to refer to.

6. The first is the judgment of the Supreme Court in the case of Radhakrishna

Agarwal and Others Vs. State of Bihar and Others, There the three Judges of the Supreme Court held very clearly that at the threshold of or at the time of entering into the field of consideration of persons with whom the Government could contract at all, the State, no doubt, acts purely in its executive capacity and is bound by the obligations which dealings of the State with the individual citizens import into every transaction entered into in exercise of its constitutional powers. The Supreme Court then proceeded to state as follows:

But, 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 obligation of the parties inter se. No question arises of violation of Article 14 or of any other constitutional provision when the State or its agents, purporting to act within this field (of contract) 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.

That view was reiterated by the two Judges of the Supreme Court in the case of Divisional Forest Officer Vs. Bishwanath Tea Co. Ltd., . There the Supreme Court clearly held that no contractual right could be enforced in a writ petition.

7. As far as this High Court is concerned, there is a judgment of my Brother R.C. Mankad, J. in the Special Civil Application No. 4757 of 1982 decided by him on 22-12-1982. Incidentally, it was a case between a partnership firm like the present petitioner carrying on business in petroleum products and the Indian Oil Corporation, another statutory Corporation. The dispute also was akin in the more or less similar circumstances. The Indian Oil Corporation there had given a notice to the petitioner calling upon him to show cause why his dealership agreement be not put an end to and ultimately it was terminated. The learned Judge in that case referred to the above-mentioned two judgements of the Supreme Court and ultimately concluded as follows:

In view of the aforesaid decisions, the questions raised in this petition which arise as a result of alleged breach of contract committed by the Corporation. cannot be decided in a petition under Article 226 of the Constitution of India. In other words, the jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked and the petition must be held to be not maintainable.

8. Mr. B.J. Shelat for the respondent told me that this conclusion of the learned single Judge had come to be confirmed by the Division Bench of this Court in the Letters Patent Appeal No. 467 of 1982 which had come to be summarily rejected. It is the judgment of M.P. Thakkar, C.J. (as he then was) and D.H. Shukla, J. The learned Judges inter alia observed "we agree... with the reasoning and conclusion of the learned single Judge". Mr. Shelat also told me that against the said decision of the Division Bench, the matter was carried to the Supreme Court through a SLP under Article 136 of the Constitution of India, being Spl. L.P. No.

92 of 1982, which had also been summarily turned down by the Supreme Court on 24-1-1983 as per the judgment of their Lordships D.A. Desai & A.N. Sen, JJ. Our Brother P.D. Desai, J., as he then was, had also followed the same principles while dealing with the cases of cancellation of authorisations for running private shops.

9. Relying upon the aforesaid judgments, Mr. Shelat urged that this court's jurisdiction had not stood in any way attracted. On the other hand, Mr. G.N. Desai, the learned advocate for the petitioner-firm, invited my pointed attention to the judgment of the Supreme Court in the case of Gujarat State Financial Corporation v. Lotus Hotels Pvt. Ltd. (2) G.L.R. 1352. He in particular invited my pointed attention to the following paragraph from the reported judgments:

Such a Corporation dealing with the public whether by way of giving jobs or entering into contracts or otherwise cannot act arbitrarily and its action must be in conformity with some principle which meets the test of reason and relevance. If the appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory Corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct to the respondent. In such a situation, the court is no powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. The petition under Article 226 will certainly lie to direct performance of a statutory duty by "other authority" as envisaged by Article 12.

Heavily relying upon the aforesaid observation of the Supreme Court, Mr. Desai submitted that even if the contracts were entered into, Corporation dealing with public could not act arbitrarily and its action must be in conformity with some principles, which meet the test of reason and relevance. Mr. Desai's emphasis was that the term "otherwise" occurring in the first sentence in the above-quoted extract clearly widened the scope of the court's powers of judicial review even in the post-contract period and he elaborated by submitting that the fact of the case clearly revealed that this State's agency had in the matter of exercising its contractual powers violated flagrantly the guarantee of Article 14 of the Constitution of India. Elaborating his argument, he submitted that the Union of India having the overall administrative control over the affairs of this Corporation, had issued clear directives to all such companies, including this respondent, how they should act even while exercising their contractual powers. The said directives are to be found at page 23 of the petition and as most of the arguments on this score were resting on these directives, I think it necessary to incorporate the same hereinbelow:

1. Individual oil company/Joint Inspection Teams should carry out filter paper checks at the Retail outlets.
2. xx xx xx 3. If the sample fails in the laboratory test, the dealer should be issued a caution letter and supplies of all products to the concerned Retail outlet

should be suspended for 15 days.

4. xx xx xx 5. If the repeat or any subsequent sample also fails in the laboratory test, supplies of all petroleum products should immediately be suspended and a show-cause notice issued to the dealer. Action (which may include even termination of dealership) should be taken based on investigations.

10. Mr. Shelat in this connection tried to get away from this argument by pleading that Annexure "A" did not contain the directive issued by the Central Government, but they were only a decision reached at a common meeting of the representative of various oil companies wherein a decision inter alia to the very effect of those alleged directives had been reached. In this connection, Mr. Shelat invited my pointed attention to paragraph 15 of the affidavit-in-reply filed in this petition. The words to which my attention was invited are:

I say that on the contrary the purported Government directive in Exhibit "A" is only a suggestion made by Oil companies other than the respondent-Corporation in the matter of enforcing discipline in marketing of petroleum products. Such recommendations are entirely formulated by the oil companies with a view to adopt a uniform procedure inter alia with regard to cases of adulteration and other malpractices indulged by the dealers. Any such internal guidelines formulated by the Oil Industry are purely private in character and they are privileged communications inter se oil companies and the petitioner is not entitled to refer or rely on any such internal guidelines.

Had the matter rested with this aforesaid assertion, Mr. Shelat would have been right, but pursuant to the interim direction issued by Ahmadi J., a decision on the ultimate outcome of the alleged enquiry against the petitioner had been reached and as per the direction of Ahmadi J., the said communication has been produced before the Court. In paragraph 2 of that final decision of the competent authority of the respondent, an ingenious attempt is made to wriggle out of the aforesaid position, but the overall reading of the said paragraph once for all convinces me that though initially those guidelines might have been mooted at the common meeting of the representatives of the various State-owned Corporations, some directives were issued by the Central Government. The words from that communication are reproduced below:

With reference to paragraph 4 of your petition, the Ministry of Petroleum has issued Guidelines dated 18th February (it should be 8th February) and 1st March 1982 to oil companies being Annexure "A" to your petition. The true nature and import of this document (Annexure A) has been discussed in para 15 - page 10 of our affidavit-in-reply filed before the Hon"ble High Court (already referred to above). Without prejudice to the rights and contentions raised by us in the said proceedings before the High Court, it is reiterated that the Guidelines issued from time to time have been modified taking into account the representations made by us and the final Guidelines issued by the Ministry of Petroleum is as per Annexure T to this communication. Annexure "A" to your petition forms only a

part of the total set of Guidelines (Chapter V) issued and do not indicate the true and full intention of the Government in this regard....

I am really surprised, and would say to some extent pained also, that when even such public-Corporations come to a court of law, they try to prevaricate in this fashion. There is no escape from the conclusion in view of what is quoted just now above that the Petroleum Ministry had issued those Guidelines and to the knowledge of the Corporation, they were so issued by the Ministry of Petroleum. What its effect is a different matter. That yet remains to be examined.

11. As the superior authority of the contracting party, the Union Government might have issued administrative directions to its subordinates, but nevertheless they shall be the directions or decisions of the contracting party itself and they cannot partake of any directives issued by the Central Government in exercise of its general, executive or administrative powers. Say for example, a formula is floated by so many shareholders, the majority of which are held by say Mr. X. Said Mr. X might be having considerable influence over the affairs of the company and he may issue certain guidelines to the company. If the company has to follow those guidelines while discharging its contracting obligations or exercising its contractual rights, the basic structure of the action remains per se under the contract and cannot be arrogated to the level of that action being taken de hors the contract or in exercise of the general administrative powers of the Union of India in exercise of which certainly all the inhibitions contained in Chapter III of the Constitution relating to the fundamental rights stand attracted.

12. In that view of the matter, it is to be held that this termination of the contract on the part of the Corporation prima facie, strongly appears to be an action in the exercise of the contractual rights. I refrain from expressing any decisive opinion on the merits of the matter because if the dispute is ultimately carried to a civil forum, any observation made by me one way or the other, might affect either of the parties. I rest content with saying that the relationship between the parties essentially, to all pith and substance is contractual in character and the contractual and administrative or executive power of the Union of India as the overall master of these companies figures in the picture only incidentally by way of general supervisory character of these companies, which are ultimately the companies of the Union of India for all practical purposes.

13. Mr. Desai's argument, however, resting on the Lotus Hotel's case (supra) calls for examination, it is an accidental feature of that case that the original judgment in that case was delivered by me and the ratio of that decision is that if the State Govt, in exercise of the statutory duty undertakes any contractual jobs and if that contractual assignment is also for the purpose of fulfilling the statutory obligations and while in the course of exercising those contractual powers, the State, as a mighty organ, makes a particular representation to a citizen, another contracting party, to the extent of making that party alter its position, that might be the body like the State or the Union of India will not be permitted to back out from its statutory obligation under the spacious plea that

the parties" relationships are governed exclusively by contract and in no other manner. Another distinct principle of promissory estoppel steps into the picture. As far as the facts on hand are concerned, there is no such averment that after entering into the contract, the Union Government or the respondent-Corporation had held out any such lures or promises to the petitioner and that acting on those lures or promises, the petitioner had in any way materially altered their position, retracing of steps from which was either not possible or not practicable looking to the course of human conduct. It is only in this set of circumstances that the judgment of the Supreme Court in the above-mentioned Lotus Hotel's case (supra) is to be understood. It is to be remembered that earlier judgment of the Supreme Court in Radhakrishna 's case (supra) has not been in any way deviated from. It is the judgment of the three Judges of the the Supreme Court, where the legal position is made crystal clear and the judgment in the Lotus Hotel's case does not in any way strike any departure as far as those clearly enunciated principles are concerned. I find no difficulty in finding a harmony between the two judgments and I have already stated what I feel about.

14. In above view of the matter and despite sympathising with the petitioner, who might have a good case in the realm of contract or its breach or resultant cause of inconvenience, I reject this petition. Rule is discharged with no order as to costs.

Interim relief shall continue to operate for a period of two months from today to enable the petitioner to have further recourse, in accordance with law, if any.