
(2015) 05 GAU CK 0046
In the Gauhati High Court
Case No : WP(C) 5869 of 2013

Raja Kakati

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 21

Citation : (2015) 05 GAU CK 0046

Hon'ble Judges : Manojit Bhuyan, J

Bench : Single Bench

Advocate : K.N. Choudhury, N. Bharali, M. Mahanta and P.J. Das, Learned Counsel, for the Appellant; H. Rahman, J. Huda and S. Sultana, Learned Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

Manojit Bhuyan, J—Heard Mr. K.N. Choudhury, learned senior counsel appearing for the petitioner assisted by Mr. N. Bharali, Advocate. Also heard Mr. H. Rahman, learned senior counsel representing respondent HPCL, assisted by Ms. Y. Saija, Advocate. Mr. K.C. Roy, learned counsel represents the Union of India.

2. Matter pertains to the Dealership Agreement dated 19.11.1997 and termination thereof in respect of the retail outlet of petroleum products, named and styled as M/s. Bani Service Station located at Barpeta, Assam. The genesis of the case relates to the explanation called for from the petitioner vide Letter dated 28.07.2006 issued under the hand of the Senior Regional Manager, Hindustan Petroleum Corporation Limited (herein after alluded as HPCL). By the said Letter dated 28.07.2006 and in view of the allegations levelled therein, the petitioner was asked to give suitable explanation. Reply was submitted by the petitioner on 09.08.2006 which, however, was not found satisfactory and eventually by Order dated 16.10.2006 the Dealership Agreement dated 19.11.1997 was terminated in terms of Clause 8, 9, 55(A), 55(I) and 55(K) of the Dealership Agreement.

3. The said Order of termination dated 16.10.2006 was put to test in WP(C) 6085/2006. After a detailed discussion on facts and in law the said WP(C) 6085/2006 was allowed vide Judgment and Order dated 09.04.2007 by setting aside the Order of termination dated 16.10.2006 and also by allowing the petitioner to operate the retail outlet, namely, M/s. Bani Service Station, making it clear that the petitioner shall fulfil all the requirements for running the retail outlet.

4. The order passed in WP(C) 6085/2006 was carried in appeal, being WA 271/2007, by HPCL Ltd. The Division Bench of this Court did not find any ground to interfere with the order of the learned Single Judge but at the same time granted liberty to HPCL Ltd. to pass a fresh order after giving due opportunity to the writ petitioner of being heard in the matter. The said liberty granted was valid for a period of 2 months from the date of the Judgment and Order dated 03.04.2013 passed in Writ Appeal 271/2007. A rider was also put that if within the said 2 months, as stipulated, no fresh order is passed, the order of the learned Single Judge would become enforceable.

5. The case having rested thus, the petitioner was served with a Notice/Letter dated 02.05.2013 requesting the petitioner to come for personal hearing on 10.05.2013 at the Regional Office and to reply and submit documents and thereby to explain as to why action under Clause 8, 9, 16, 36, 42 and 55(K) of the dealership agreement should not be taken by HPCL. This Notice dated 02.05.2013 being of utmost relevance for adjudicating upon the present writ petition, the same is extracted here under:

"Ref: GHRO/RET

Date: 02nd May 2013

To Shri Raja Kakati S/O Late Ratna Kanta Kakati House No. 9 Bani Kutir Piuali Phukan Road REhabari, Guwahati Pin: 781008

Ref: Order dated 03/04/2013 by the Division Bench of Hon''ble Gauhati High Court in the WA No. 271/2007 HPCL v. Shri Raja Kakati & Ors.

Dear Sir,

Please refer order dated 03.04.2013 passed by the Hon''ble Division Bench of Gauhati High Court in the Writ Appeal (WA) filed by the Corporation. Copy of the Order dated 03.04.2013 is attached for your ready reference.

In compliance of said order dated 03.04.2013, we propose to take a fresh decision in the matter which may even include termination of the retail outlet dealership agreement and, thus, you are requested to come for personal hearing on 10.05.2013 at 11 A.M. at our Regional Office address along with your reply and documents in support thereof as to why necessary action should not be taken by the Corporation inter alia under clauses 8, 9, 16, 36 & 42 and 55(K) of the said dealership agreement.

Thanking you,

Avijit Bhattacharjee Sr. Regional Manager"

6. While replying to the said notice dated 02.05.2013, the petitioner took a categorical stand that the said Notice/Letter dated 02.05.2013 was shorn of any factual and legal basis, inasmuch as, the said Notice dated 02.05.2013 does not specifically indicate as to what allegations and what charges are to be met. In other words, the stand taken was that the said Notice dated 02.05.2013 was absolutely vague. In this connection the petitioner does not dispute that his personal hearing was not afforded.

7. The impugned order dated 31.05.2013, pursuant to personal hearing, was issued under the hand of the Senior Regional Manager, HPCL Ltd. The said order indicated that the irregularities committed by the petitioner have brought disrepute to the good name of the Corporation and its product and in that view of the matter there is violation of Clause 8, 9, 16, 42 and 55(K) of the Dealership Agreement dated 19.11.1997. In view of the findings arrived at and discussed in the said impugned Order dated 31.05.2013, the termination of the Retail Outlet Dealership Agreement dated 19.11.1997, as passed earlier, was affirmed.

8. Mr. K.N. Choudhury, learned senior counsel contends that on the face of it, the impugned Order dated 31.05.2013 is non est and not sustainable in law. Further the same stood vitiated in view of the law laid down by the Apex Court in a catena of decisions on the point of natural justice. Referring to Clause 8, 9, 16, 42 and 55(K), Mr. K.N. Choudhury, learned senior counsel submits that these clauses basically relate to working conditions between the dealer and HPCL and in case if any violation thereof is attributed, specific allegations/charges have to be indicated in order that the petitioner gets a fair opportunity to adequately and effectively reply or rebut the same. Regarding the Notice dated 02.05.2013, as extracted above, learned senior counsel submits that save and except indicating the said clauses, the notice is absolutely silent or does not make any whisper about any specific charges against the petitioner for which it may be found liable for any consequential action.

9. To reinforce the arguments on the point of natural justice, learned senior counsel placed reliance in the case of Canara Bank and Others Vs. Shri Debasis Das and Others, AIR 2003 SC 2041 : (2003) 3 JT 183 : (2003) 2 LLJ 531 : (2003) 3 SCALE 220 : (2003) 4 SCC 557 : (2003) SCC(L&S) 507 : (2003) 2 SCR 968 : (2003) 2 SLJ 345 : (2003) 2 UJ 1129 : (2003) AIRSCW 1561 : (2003) 2 Supreme 793 and by referring to paragraph 15 thereof submits that notice being the first limb of the principles of audi alteram partem rule of Natural Justice, the same has to be precise and unambiguous so that the party is apprised determinatively of the case he has to meet. In no uncertain terms, the Apex Court has held that in the absence of a notice which is not precise and unambiguous, an order passed by ignoring the same becomes wholly vitiated. Reliance is also placed upon the case of Biecco Lawrie Ltd. and Another Vs. State

of West Bengal and Another, AIR 2010 SC 142 : (2010) 124 FLR 108 : (2009) 10 JT 340 : (2009) 4 LLJ 644 : (2009) 10 SCALE 334 : (2009) 10 SCC 32 : (2009) 2 SCC(L&S) 729 : (2009) 11 SCR 972 : (2010) 1 SLR 649 and by referring to paragraphs 24 and 25 thereof, learned senior counsel submits that the notice should be clear and precise so as to give the other party adequate information of the case he has to meet and to make an effective defence. In the same breadth, learned senior counsel submits that a notice to be adequate must contain statement of specific charges which a person has to meet.

10. Mr. K.N. Choudhury, learned senior counsel further submits that categorical pleading had been taken in the writ petition at paragraph 23 to say that neither any allegations nor charges had been levelled against the petitioner prior to taking of the fresh decision, which eventually culminated in the termination of the agreement. For better appreciation, the statement made by petitioner at paragraph 23 of the writ petition is extracted here under:

"That, the petitioner states that in fact the respondents themselves violated the terms and conditions of the dealership agreement dated 19.11.1997 by not affording any opportunity to the petitioner for taking remedial measure before termination of the dealership agreement, as aforesaid. Further by the notice/letter dated 02.05.2013, the petitioner was never asked to explain anything nor any allegations or charges were levelled against him prior to taking of fresh decision regarding the termination of the agreement. The fresh order of termination of the dealership agreement by communication dated 31.05.2013 came as a blot from the blue to the petitioner, which was never expected from state machinery like the respondents. The respondent No. 3 knowingly issued the notice/letter dated 02.05.2013 in a vague and uncertain manner so that the petitioner could not able to file a proper reply to the same. By notice/letter dated 02.05.2013 the petitioner was only asked to reply along with documents in support thereof as to why necessary action should not be taken by the corporation inter alia under clauses 8, 9, 16, 36, 42 and 55(K) without elaborating as to what are the charges, a allegation or accusations against the petitioner. The respondents without application of mind not only rejected the replies cum explanations of the petitioner (ANNEXURE-XVI AND XVII) but also reaffirmed and reiterated the earlier termination order dated 16.10.2006 with a premeditated mind. The respondents have passed the fresh order of termination in a most arbitrary, unreasonable and mechanical manner without any application of mind. The respondents by terminating the Dealership Agreement has violated the fundamental rights of the petitioner under article 14, 19(1)(g) and 21 of the Constitution of India and as such the termination order dated 31.05.2013 is liable to the set aside and quashed."

11. Mr. H. Rahman, learned senior counsel representing HPCL submits that the case put up by the petitioner on the point of natural justice as well as the Notice dated 02.05.2013 being without any specific charges, do not fall for consideration in view of the fact that the petitioner in the course of the

proceedings before the respondent authority was orally asked to reply to the allegations contained in the letter dated 28.07.2006.

12. Further, according to Mr. H. Rahman, learned senior counsel, the statement made in paragraph 23 of the writ petition has been duly answered and to that end, refers to the affidavit-in-opposition filed by HPCL. Paragraph 20 thereof is the rebuttal to paragraph 23 of the writ petition with an explanation that the charges and allegations were well known to the petitioner and from his reply the said fact is amply clear. In the understanding of the Court, the statement at paragraph 20 of the affidavit-in-opposition is hardly a rebuttal to the statements made in paragraph 23 of the writ petition.

13. There is no manner of doubt that the cancellation of a dealership agreement is a serious business and cannot be taken lightly, that too by referring to a presumption as indicated at paragraph 20 of the affidavit-in-opposition. The impugned Order dated 31.05.2013 has to stand or fall on its own merits. At the same time the Notice dated 02.05.2013 also gains utmost relevance in order to appreciate whether the decision making process suffered any legal setback or stood vitiated. A bare perusal of the Notice dated 02.05.2013 goes to show that no specific allegations or charges had been indicated therein in order that the petitioner could suitably reply or rebut the same. As held by the Apex Court in the case of Canara Bank & Others (supra) and Biecco Lawrie Limited and Another (supra) the said notice do not contain any statement of specific charges and is neither precise nor unambiguous. As held by the Apex Court in the aforesaid decisions, notice being the first limb of the principles of audi alteram partem rule of Natural Justice, the same must contain clear and precise statement of specific charges and the said requirement being squarely absent in the present case, there is no option but to hold that the consequential order arising out of the Notice dated 02.05.2013 cannot have judicial approval. As such, denial of a clear and precise notice with specific charges and denial of opportunity to adequately and effectively respond to any specific charges, the same renders the impugned decision as vitiated.

14. In view of the above and on the touch-stone of the principles of natural justice together with the law laid down by the Apex Court in the reported judgments, as above, the impugned order dated 31.05.2013 issued by HPCL Ltd. cannot stand the scrutiny of law and is accordingly set aside.

15. Resultantly, this writ petition is allowed. Parties are left to bear their own costs.