

(1994) 11 DEL CK 0052
In the Delhi High Court
Case No : S. No. 1371 of 1981

Wipro Products Ltd.

APPELLANT

Vs

State Trading Corpn. of India

RESPONDENT

Date of Decision : 02-11-1994

Acts Referred:

Citation : (1994) 4 AD 822 : (1994) 56 DLT 641

Hon'ble Judges : P.K. Bahri, J

Bench : Single Bench

Advocate : S.K. Chachra, for the Appellant; Adarsh B. Dial and Sumati Anand, for the Respondent

Judgement

Mr. P.K. Bahri, J.—This is a suit for recovery of Rs. 7,88,425.16 paise. The defendant, State Trading Corporation of India, a Government company is admittedly a canalising agent for the import of raw vegetable oils. The plaintiff is carrying on business inter-alia as manufacturer of vanaspati and refined vegetable oils. Such manufacturers of vanaspati and refined vegetable oils are allotted raw vegetable oil imported by the defendant on the basis of the quota fixed by the Government of India from time to time for each manufacturer.

2. The case of the plaintiff, in brief, is that defendant had issued a circular dated May 17, 1975 which provided that the FFA percentage calculated as Palmitic acid) of palm oil delivered shall be normally less than 5% and samples of palm oil from the storage tank shall be drawn by independent Surveyors appointed by the defendant every fortnight and the said FFA percentage shall be determined by them and result thereof shall hold good for the next fortnight and for the deliveries of palm oil made during this fortnight, if the FFA percentage is above 5%, the compensation shall be paid by the defendant to the vanaspati factories @ 1% of the sale value for every 1% in excess of 5% of FFA (on pro rate basis for fractions).

3. It is also the case of the plaintiff that defendant had also agreed to supply the

palm oil on the basis of international specifications and in case of poor quality of oil supplied, the manufacturers were to be given rebate on the scales provided in the international contracts. So, it is averred that the defendant is also liable to compensate the plaintiff for the poor quality of oil supplied to the plaintiff in respect of moisture and impurity (MIV). It is averred that plaintiff has been from time to time purchasing imported palm oil from the defendant in accordance with the above policy and procedure and during the period November 16, 1978 to November 19, 1980, the plaintiff purchased from the defendant an aggregate quantity of 4478.62 MT of imported palm oil from the various depots of the defendant, details of which are said to be mentioned in Annexure "B" of the plaint. It is averred by the plaintiff that FFA contents of the said crude palm oil supplied to the plaintiff was above 5%, as contemplated by the aforesaid circular by the independent Surveyors of the defendant which is also indicated in Annexure "B" filed with the plaint. So, it is averred by the plaintiff that in view of the FFA percentage being higher in respect of the 5 lots of supplies made to the plaintiff, the plaintiff is entitled to the recovery of Rs. 7,13,023.32 paise in view of the aforesaid circular of the defendant and is also entitled to have Rs. 58,401.84 paise as interest @ 18% per annum on the said amount from the defendant.

4. The suit has been contested by the defendant. It is pleaded that plaint has not been signed, verified or suit instituted by any duly authorised person on behalf of the plaintiff. It is alleged in the written statement that until 1974-75, the sale of imported raw/crude vegetable oils including raw/crude palm oil was regulated by the Government of India and the defendant was permitted to import the same for sale to industrial users according to the allocations made by the Government of India from time to time at prices fixed by the Government of India from time to time and the defendant had no control either on the allocations made by the Government of India or on the price fixed by the Government of India.

5. However, it is disclosed that in the year 1975-76, the Government of India changed its policy and withdrew the requirement for compulsory uses of imported vegetable oil in the manufacture of vanaspati, instead permitted the defendant to directly undertake sale of such oils on a commercial basis to the manufacturers of vanaspati. So, the defendant sold imported raw/crude vegetable oil on commercial basis according to its own trade policy formulated by the defendant from time to time.

6. It is averred that w.e.f. 1st January 1977, the Government of India again revised its policy and prescribed compulsory use of imported vegetable oil in the manufacture of vanaspati and reverted to the previous procedure that of allocating quotas to the various manufacturers and also fixing the price on which the oil was to be supplied to the manufacturers and the defendant had been left with no control either on the allocation to be made or on the prices to be fixed in respect of such supplies being made to the various manufacturers.

7. So, it is averred that in respect of the period November 16, 1978 to November

19, 1980, to which the present suit relates, the new Government policy did not permit the defendant to deal with the supplies of the oils on commercial basis, rather it was the Government which fixed the prices and the quotas.

8. In view of the above change in the policy of the Government, it is averred by the defendant that the circular in question, which is the basis for filing the present suit, pertains to the period when the defendant had complete freedom to fix the prices of the crude palm oil to be supplied to the manufacturers on commercial basis but with the change of policy occurring from January 1977, the defendant had no control over the allocations or the prices. Thus, the said circular lapsed and was not enforceable in the changed circumstances and changed policy of the Government. Hence, the claim of the plaintiff for having any refund of the cost paid for the supplies made was repudiated. It was pleaded that in the delivery orders, it has been specifically mentioned that no claim would be entertained in respect of any inferior quality of raw palm oil being supplied.

9. In replication, the plaintiff reiterated its pleas and controverted the pleas of the defendant and asserted that the defendant is bound by the circular in question on the basis of which the plaintiff has made the purchases of palm oil from the defendant. On the pleadings of the parties, following issues were framed:--

1. Was the suit filed and the plaint signed and verified by a duly authorised person?
2. Was the circular dated 7th May, 1975 mentioned in para 5 of the plaint effective only up to December 1976 and not afterwards ?
3. Did the defendant supply defective or impure oil, as alleged by the plaintiff in the plaint ? If so, is the plaintiff entitled to any rebate and if so, how much ?
4. To what amount, if any, is the plaintiff entitled ?
5. Is the plaintiff entitled to interest and if so at what rate ?
6. Relief. Issue No. 1

10. PW-1, Sh. Mitesh R. Parekh, who is working as General Manager with the plaintiff-Company, proved on record a copy of the resolution passed by the Board of Directors of the plaintiff-Company which is Ex. PW1/1 which authorises Sh. B.R. Jaju, then Company Secretary of the plaintiff, for filing the present suit and in pursuance to the said resolution, a power of attorney was also executed in favor of Sh. B.R. Jaju, copy of which is Ex. PW1/2. This witness identified the signatures of the Managing Director of the plaintiff-Company on the original power of attorney. PW1/61 is the Certificate of Incorporation showing that plaintiff is a duly incorporated company under the Indian Companies Act. The plaint has been signed, verified and suit instituted by Sh. B.R. Jaju, whose signatures on the plaint have been identified by this witness as this witness has seen Sh. Jaju signing and writing during the course of his duties.

11. So, it is proved that the plaint has been signed and verified and the suit has

been instituted on behalf of the plaintiff-Company by a duly authorised person. The issue is decided in favor of the plaintiff.

Issues Nos. 2 & 3

12. These two issues are interconnected and, hence, are being dealt with together.

13. Exs. PW1/31 to PW1/55 are the copies of the delivery challans issued by defendant, by virtue of which the supplies were made to the plaintiff, as claimed in the plaint. Ex. D-1 is the circular dated May 17, 1975 issued by the defendant. PW-1 deposed that independent Surveyors appointed by the defendant had been, during the said period, testing the purity of the oil being supplied by the defendant to the plaintiff and such reports of the Surveyors were being sent to the Association of Manufacturers of Vanaspati of which the plaintiff was also one of the members. He deposed that the percentage of the impurities found in the oil supplied to the plaintiff stand indicated in Annexure "B".

14. In cross-examination, this witness admitted the facts pertaining to the change in Government policy taking place for the relevant period. It was suggested to the witness that the Surveyors appointed by the defendant were testing the oil and submitting the reports so that the manufacturers could place the orders for supply of oil so tested by the surveyors but he denied this suggestion and stated that in fact such reports of the surveyors were being made available only after the supplies were being effected.

15. PW2 is a Secretary of the Vanaspati Manufacturers Association of India. He proved on record Ex. PW2/1 and PW2/10, the letters written by the defendant to the said Association. He admitted in cross-examination that for the period May 1975 to December 1976, the defendant imported the raw edible oil and sold the same on commercial basis on the allocation being made by the Government but the prices were fixed by the State Trading Corporation but in January 1977 onwards, the Government changed the policy and started fixing the prices of the oil.

16. Mr. G.R. Saxena, who worked with the defendant for the period 1956 to January 1989 coming as DW-1 deposed about the Government policy with regard to allocating the quotas and the fixing of price being in existence prior to 1975 and then for the period 1975-76, the defendant being given liberty to fix any commercial prices and then from January 1977 onwards, again the Government reverting back to its old policy of fixing the prices itself. He deposed that on the basis of the said circular of 1975, no rebate has been given to any purchaser of the raw oil from the defendant from January 1977 onwards when change of policy took place which disabled the defendant from fixing the price of the raw/crude oil on commercial basis.

17. Facts of the case are not, indeed, in dispute. In the year 1974-75, the Government policy did not permit the defendant to fix price of the crude palm oil

on commercial basis, it was the Government which was fixing the price. But this policy was changed in the year 1975-76 by which the defendant was given the liberty to fix the price of the crude palm oil to be supplied to the manufacturers on commercial basis. During this period of 1975-76, the circular Ex. D-1 came to be issued which entitled the purchasers of the raw oil from the defendant to claim rebate in case the Surveyors of defendant were to find the quality of the oil not up to the mark, as mentioned in the circular indicated above. It is a fact that the policy again changed w.e.f. 1-1-1977 by which the defendant was disabled from fixing the price of the crude palm oil on commercial basis, the defendant had not issued any corrigendum for withdrawing the circular issued in 1975.

18. The learned Counsel for defendant has, however, vehemently argued that the aforesaid circular Ex. D-1 was issued in the circumstances prevalent in the year 1975-76 when the defendant had full freedom to fix the price of crude palm oil on commercial basis but the said circular automatically lapsed with effect from 1st January, 1977 when the Government took away the freedom from the defendant for fixing the prices commercially and Government itself fixed the prices of the said crude palm oil to be supplied to the manufacturers by the defendant.

19. Learned Counsel for the plaintiff, on the other hand, has argued that on an equitable principle of promissory estoppel, the defendant is not entitled to take the plea that the said circular had lapsed when the defendant had made the purchases of the crude palm oil from the defendant on the basis of the aforesaid circular. He has argued that in case the defendant was not to act upon the aforesaid circular, the defendant could have easily withdrawn that circular when the new policy of the Government came into force with effect from 1st January, 1977.

20. The principles which are applicable with regard to the doctrine of equitable promissory estoppel have been culled out in a recent judgment of this Court in case of Dr. R.K. Deka and Others Vs. Union of India and Others, from the various judgments of the Supreme Court. There are well recognised exceptions to the applicability of the aforesaid doctrine of promissory estoppel. Those exceptions have been highlighted in Malu Khan Vs. State of Rajasthan and Another, which have been endorsed by this Court in the said judgment and one of the exception is to the following effect:--

"That the doctrine of promissory estoppel being an equitable doctrine, it must yield when the equity so requires. If it can be shown by the Government that having regard to the facts as they have subsequently transpired it would be inequitable to hold the Government to the promise made by it, the Court would not raise an equity in favor of the promise and enforce the promise against the Government."

21. The principle of promissory estoppel comes into play where one party has, by his words or conduct, made to the other a clear and unequivocal promise which

is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective whether there is any pre-existing relationship between the parties or not.

22. In the present case, the facts are clear that this particular circular which is being relied upon by the plaintiff was issued in totally different fact situation. A circular which was to remain in force in particular facts and circumstances cannot be taken advantage of when the facts and circumstances have changed. Even though this circular was not specifically withdrawn by the defendant, even then the circular which was primarily meant to cover different facts and circumstances would not remain applicable when there occurred vital change in the facts and circumstances. The defendant had full control over fixing of the price of the imported crude palm oil when the aforesaid circular was issued for giving rebate to the purchasers of the crude palm oil from the defendant if certain impurities were to be found in the quality of the oil so supplied because at that time, while fixing the prices, the defendant had full liberty and could fix the prices keeping in view such impurities coming into the supplied oil. But when the defendant had lost control over the fixing of price, it is evident that defendant cannot remain bound to give rebate in the oil supplied which had been imported by the defendant and price of which had been fixed by the Government.

23. One of the general conditions mentioned in the delivery challans is to the following effect:--

"Buyer should depute representative to supervise the weighment and to satisfy about the quality/quantity at the time of delivery/dispatch of the goods ex-tank/jetty, ex godown. No claim for quality / quantity for any reason whatsoever, will be entertained by the Corporation once goods leave storage tank and Corporation's Surveyors' weight and quality report shall be binding and acceptable to the buyer."

It is evident that the purchaser of the oil has to satisfy itself regarding the quality and weight of the oil at the time the delivery is taken. The quality of oil obviously has to be on the basis of the Corporation's Surveyors' meaning thereby that such reports of the Surveyors would be available to the purchaser at the time the delivery is taken and in case such reports of the Surveyors were not available at the time the delivery is taken, the purchaser was not bound to take the delivery because after taking delivery, this particular clause contemplated that no claim will be entertained with regard to the quality and quantity of the goods so delivered. By this special contract coming into existence between the parties, the effect of the circular, which was issued in different facts and circumstances in the year 1975, stood totally superseded.

24. In view of the above discussion, I hold that the plaintiff is not entitled to have any rebate on the basis of the circular, copy of which is Ex.D-1, which stood lapsed with effect from 1st January 1977 when new policy of the Government came into force.

25. These issues are, hence, decided against the plaintiff. Issues Nos. 4 & 5

26. In view of the decision in Issues Nos. 2 and 3, plaintiff is not entitled to recover any amount from the defendant or entitled to recover any interest from the defendant. These Issues are decided against the plaintiff.

Issue No. 6

27. The suit is liable to be dismissed. I dismiss the suit but in view of the peculiar circumstances of the case, I leave the parties to bear their own costs.