

Srinivas and Company by Sole Proprietor

Vs

C. Rajagopalan V. Inden Biselers

Civil Appeal No. 110 of 1967

(G. K. Mitter, A. N. Ray JJ)

08.02.1971

JUDGMENT

RAY, J. -

1. This is an appeal by certificate against the judgment and decree, dated January 12, 1962, of the Madras High Court dismissing the suit filed by the appellant and setting aside the decree passed by the City Civil Court.
2. The appellant filed the suit against the respondent and claimed a decree for Rs. 22,500/- by way of damages for breach of agreement or in the alternative compensation for the benefit derived by the respondent as a result of surrender by the appellant to the respondent of a certificate of maintenance by the appellant of after-sales service for diesel oil engines.
3. The appellant's case was as follows : There was on November 14, 1950, an agreement between the appellant and the respondent that whatever diesel engines were imported by the respondent under the licence granted to the respondent by virtue of the appellant surrendering their certificate for after-sales service of diesel engines would be distributed only through the agency of the appellant. The respondent was included in the approved list of importers. The respondent was granted licence to import oil engines, up to certain values. The respondent was granted in the month of May, 1951, what is called the "Blanket Licence" permitting the importation of diesel oil engines unrestricted both as regards quantities as well as categories or brands or makes of engines and of country of origin.
4. The respondent is said to have suppressed from the appellant the fact of having been granted a blanket licence for appropriating profits and advantages derived from the same. The respondent thus committed breach of agreement by depriving the appellant of distribution of 317 diesel oil engines of the total value of Rs. 6 lakhs imported by the respondent under the blanket licence between the months of May, 1951, and June, 1953. By reason of breach of agreement, dated November 14, 1950, the appellant was deprived of the earning of profits. The alternative case of the appellant was that the respondent was bound to pay to the appellant adequate and reasonable compensation for the benefit that the respondent deprived and enjoyed by reason of the surrender of the after-sales certificate which enabled the respondent to be included in the approved list of importers and to be granted a blanket licence.
5. The respondent denied the agreement alleged by the appellant. The respondent stated that the only agreement between the appellant and the respondent related to Schluter engines. The respondent particularly denied that there was any agreement to sell other brands of diesel engines

through the appellant.

6. The principal question which arose at the trial was whether the respondent agreed to distribute and sell oil engines through the appellant in consideration of the appellant surrendering their servicing certificate to the respondent and secondly whether the respondent was liable to compensate the appellant. The High Court held that there was no agreement in or about the month of November, 1950, whereunder the respondent agreed to give sole distributorship to the appellant's firm of all oil engines which the respondent would be able to import under licence to be obtained by coming into the approved list of importers.

7. The oral evidence on behalf of the appellant is that three documents marked Exhibits A-1, A-5 and A-2 represent the terms of agreement alleged by the appellant. Exhibit A-1 is a letter, dated October 14, 1950, written by the respondent to the appellant. Exhibit A-2 is the letter, dated November 14, 1950, written by the respondent to the Director General of Industries and Supplies, Development Division (Mechanical), New Delhi. Exhibit A-5 is a letter, dated November 15, 1950, written by the appellant to the Director General of Industries and Supplies, Development Division (Mechanical), New Delhi. In Exhibit A-1 the respondent on October 14, 1950, wrote to the appellant enclosing a copy of a letter of the Government of India, dated October 15, 1950, (sic) (Exhibit A-14) and asked the appellant to approach the Agricultural Department in Madras to obtain a certificate and forward the same to the respondent to enable the latter to transmit the same to the relevant authorities to avail of the opportunity of the proposed scheme of the Government to enlist the bona fide importers in the list of approved importers. The Government of India by a notification, dated September 11, 1950, stated that the Government had decided to allow import of diesel oil engines to established importers. The established importers were divided into two classes, (a) approved importers, and (b) others. The approved importers were those having an after-sales service organisation of a standard approved by the Director General of Industries and Supplies, whose names were attached to the notice. The Government letter, dated October 15, 1950, (Exhibit A-14) was addressed to the respondent to give an opportunity to importers who were not on the approved list to be enlisted by submitting a certificate by October 31, 1950, from the Director of Agriculture of the State in which the diesel engines were used to the effect that the importer maintained proper service arrangements for the diesel engines sold by them. The respondent's letter Exhibit A-1 was addressed to the appellant for the specific purpose of obtaining a certificate to the effect that the respondent was the exclusive representative for imported Schluter engines and the respondent distributed the same through the appellant and the appellant maintained a requisite service station for servicing the engines supplied by the respondent.

8. It is in this background that the appellant on October 24, 1950, wrote to the Director of Agriculture, Madras, (Exhibit A-16) that the appellant imported 12 Schluter diesel engines up to April, 1950 and the engines were supplied to consumers in the State of Madras and the appellant maintained a service station for servicing the diesel engines sold. On October 24, 1950, the appellant wrote another letter to the Joint Director of Agriculture, Government of Madras, that the appellant imported from Germany through the respondent, the exclusive distributor of Schluter engines in South India, 12 Schluter oil engines. The appellant stated that in addition to Schluter engines the appellant sold other oil engines in the State. Those oil engines of other types were described as "Petter", "Yanmar", "Witte", "Claye", "Lorez", "Skoda" and "Bukh". The Director of Agriculture by a letter, dated October 27, 1950, regretted to grant a certificate to the appellant. On November 1, 1950, the appellant wrote to the respondent that the appellant was not granted a certificate on the ground that the appellant had not imported the engines on the appellant's own licence and the respondent was an indenting agency and the respondent did not possess a service

station of their own. The appellant asked the respondent to obtain from their principal in Germany a letter appointing the appellant as the sole distributor in South India to facilitate the grant of certificate. The respondent obtained from the German manufacturers a letter that the respondent was nominated as the sole representative of Schluter diesel engines manufactured by them. On November 13, 1950, the respondent sent to the appellant the letter of appointment granted by the German manufacturers. The respondent asked the appellant whether the latter had obtained the certificate from the department of agriculture.

9. On November 14, 1950, the respondent wrote to the Director General of Industries and Supplies (Exhibit A-2) that the respondent was the exclusive South India distributor for the diesel engines and that the respondent had appointed the appellant as the distributor and the appellant maintained a service organisation for the diesel engines. The respondent enclosed the letter granted by the German manufacturers appointing the respondent as the sole distributor. The respondent asked for enlistment of their name in the list of approved importers. The respondent enclosed a certificate, dated November 14, 1950, granted by the Director of Agriculture in the area under the jurisdiction of the Director of Agriculture, Madras, that the appellant maintained a service organisation. The appellant on November 15, 1950, wrote a letter to the Director General of Industries and Supplies that the certificate granted by the Director of Agriculture, Madras, had been sent through the respondent to the Director General of Industries and Supplies because the respondent was handling all correspondence in establishment for importing oil engines and the appellant had not applied for inclusion of the appellant's name in the list of approved importers.

10. On November 25, 1950, the respondent wrote to the Director General of Industries and Supplies enclosing the original agency contract of the manufacturers of Schluter diesel engines for appointment of the respondent as the exclusive representative in South India for the engines and the respondent further stated that the engines imported by the respondent were distributed by the appellant who maintained an after-sales organisation. On December 26, 1950, the respondent wrote to the appellant (Exhibit B-12) appointing the appellant as the sole distributor in Madras for the sale and distribution of Schluter diesel engines of German origin for a period of 2 years commencing January, 1951. The letter of appointment mentioned that it was on the express understanding that the appellant would maintain an after-sales service for servicing the Schluter engines and do all the sales campaign necessary to make Schluter engines very familiar in the territory covered by the appointment.

11. The respondent obtained on April 6, 1951, licence for import of diesel engines from soft currency area. On April 6, 1951, the respondent obtained another licence for import of diesel engines from Japan. On April 21, 1951, the respondent obtained another licence for import of diesel engines from dollar and soft currency areas. Each licence was valid for 12 months from the date of issue. The value of the licence for import from Japan was Rs. 12,345/- and other two licences were of the value of Rs. 3,624/- and Rs. 13,768/- respectively.

12. On May 17, 1951, the respondent obtained a licence for import of diesel engines from dollar and soft currency area for a period commencing April 21, 1951 to December 31, 1951, and the value of the import was without any limit.

13. The appellant alleged an agreement whereby the respondent appointed the appellant distributor of all diesel oil engines imported by the respondent. The letter, dated December 26, 1950, totally nullifies the appellant's case. The appellant was appointed the sole distributor of Schluter oil engines for a period of two years. The High Court rightly noticed the distinction between the appointment of

the appellant as the sole distributor for two years and the distribution and sale of diesel oil engines by the appellant prior to the said appointment. The Trial Court fell into the error of considering the letter Exhibit B-12 as a mere surplusage. The High Court correctly cleared that confusion caused by the Trial Court. The entire correspondence also indicates that the respondent wrote to the Government that the appellant maintained an after-sales servicing organisation in respect of diesel oil engines imported by the respondent and sole through the appellant. The appellant was not in a position to be in the list of approved importers because the appellant was neither an established importer nor the sole representative of a foreign manufacturers of diesel oil engines. The respondent, on the other hand, filled both the capacities and sent to the Government the special contract of agency between the respondent and the German manufacturers of Schluter oil engines appointing the respondent as the sole agent for import and sale of Schluter oil engines in South India. The appellant was not granted a certificate as the beginning because the appellant was not an importer. The appellant procured the orders for sale and all such orders had to be executed through the import of diesel oil engines by the respondent. That is how the appellant and the respondent dealt with each other prior to the appointment of the appellant as the sole distributor by the respondent in the month of December, 1950. The appellant after refusal of grant of certificate again approached the Government and in no uncertain terms stated that the respondent was the importer and the certificate was therefore required by the respondent.

14. The documents establish beyond any measure of doubt that the appellant was appointed the sole distributor of Schluter oil engines for a period of two years. In case of disputed oral versions it is safer to rely on documents. That is more so in the case of contemporaneous documents considered in the light of rival contentions. If the appointment of the appellant as distributor of Schluter engines had not been the correct state of affairs between the parties the appellant would have been the first to cavil at the appointment of sole distributor for Schluter oil engines for two years. The significant silence of the appellant in that behalf strengthens the respondent's case. It is equally noticeable that the appellant throughout the years when the respondent sold other oil engines in the area never raised any objection or preferred any claim.

15. The correspondence between the parties in the month of November, 1950, and the appointment of the appellant as the sole distributor of Schluter engines in the month of December, 1950, was at the time when the respondent was applying for only Schluter oil engines. The blanket licence that was obtained by the respondent in the month of May, 1951, was pursuant to a new import policy. The respondent by letter, dated April 30, 1951, (Exhibit B-24) applied to the Deputy Chief Controller of Imports for the issue of a blanket licence in accordance with I. T. C. Notification No. 81 (P/N) 51. That refers to the import trade control notification of the year 1951. The notification is Exhibit B-23. It is manifest that the blanket licence was not in the contemplation of parties in the months of November and December, 1950. It was a new policy of the Government. The respondent of its own applied for the blanket licence. The appellant had no concern with it.

16. The alternative case of the appellant under Section 70 of the Contract Act was that the appellant surrendered the certificate and the respondent obtained the benefits thereof and therefore the respondent was liable to compensate the appellant. The appellant was appointed the sole distributor for two years in respect of Schluter oil engines. The certificate which the appellant surrendered to the respondent resulted in the appointment of the appellant as the sole distributor for Schluter engines. The issue of blanket licence by the Government to the respondent was because of change in import trade policy. The respondent of its own applied for the blanket licence. The grant of the blanket licence was not any act done by the appellant. The respondent did not receive the blanket licence as a benefit from the appellant.

17. The High Court correctly dismissed the appellant's suit. The appeal fails and is dismissed with costs.

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