Ossein and Gelatine Manufacturers' Association of India

Vs

Modi Alkalies and Chemicals Limited and Another

Civil Appeal No. 27(NM) of 1989

(Sabyasachi Kukharji, S. Ranganathan JJ)

10.08.1989

JUDGMENT

RANGANATHAN, J. -

1. This appeal has been preferred under Section 55 of the Monopolies and Restrictive Trade Practices Act ('the Act') from an order of the Central Government (CG) dated September 20, 1988. By the said order the CG granted an application made by respondent 1 (hereinafter referred to as 'the Modis') under Section 22 of the Act for permission to establish an undertaking for the manufacture of ossein and gelatine in the State of Rajasthan. The petitioner, which claims to be an association of ossein and gelatine manufactures in India, made representations before the CG objecting to the grant of the application by the Modis. These objections having been rejected and the application granted by the said order, the aggrieved petitioner has preferred this appeal. We admit the appeal and, having heard counsel on both sides, proceed to dispose of the appeal finally.

2. The following contentions have been urged by Sri Divan in support of the appeal :

(a) The order dated September 20, 1988 is vitiated as it merely sets out the bald conclusions of the officer concerned. It is not a reasoned or well considered order.

(b) The appellant had pointed out that the grant of permission to Modis would be against public interest. It would completely cripple the small scale business of the members of the appellant association which, even earlier, had been functioning far below capacity due to insufficient supply of crushed bones. These objections had not been properly dealt with in the order.

(c) The order has been passed by one Sri Vijayaraghavan whereas a person oral hearing in the matter had been given by one Sri S. S. Khosla. This has resulted in the violation of the fundamental rule of natural justice that "he who hears must decide".

(d) The hearing had taken place on January 23, 1986 while the final order was passed more than two and half years later. This, coupled with the change in personnel referred to above, has resulted in the denial of natural justice to the petitioner.

(e) Modis had stated in their application that bonemeal would be the raw material used by them but, later, they changed it into "crushed bones". The appellant had no opportunity of meeting the new case.

(f) The representative of Modis had presented certain documents at the person hearing but copies thereof had not been supplied to the appellant despite a grievance made by it the very next day.

3. The appellant's contentions broadly fall under two heads : one, the denial of natural justice and two, the failure to pass a reasoned order. It will be convenient to deal with the latter objection first.

4. We are unable to accept the appellant's contention that the impugned order is bald, unreasoned or cryptic and violates the requirements for such an order enunciated in the Oramco case (Oramco Chemicals (P) Ltd. v. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd., (1987) 2 SCC 620 : 1987 SCC (Tax) 225) where this Court reaffirmed the following observations made in the Bombay Oil case (Bombay Oil Industries v. Union of India, (1984) 1 SCC 141 : (1984) 1 SCR 815) (SCC p. 142, para 1 quoted at p. 622, para 2)

> "We must however, impress upon the government that while disposing of applications under Section 21, 22 and 23 of the Monopolies and Restrictive Trade Practices Act, 1969 it must give good reasons in support of its order and not merely state its bald conclusion. The faith of the people in administrative tribunals can be sustained only if the tribunals act fairly and dispute of matters before them by well considered orders."

The order of the government is a detailed and elaborate one. It sets out the contentions and deals with them seriatim. The point made that existing units were already functioning below capacity due to insufficient supply of crushed bones and that the entry of the Modis into the arena would drive them out of business has not been overlooked. Only, as against this the government has considered to be more weighty the economic advantages in granting the application of the Modis arising out of the circumstances : (a) that they would be setting up the industry in a backward area; (b) that they had categorically undertaken to export at least 60 per cent of their proposed production; (c) that since they would be producing their own hydrochloric acid, the availability of such acid to others will not be affected; and (d) that the short supply of the raw material (crushed bones) may not be a constraint for permitting the manufacture of value-added products like ossein and gelatine. The order bears testimony to the fact that the pros and cons have been fully considered and a decision taken. It is not within the province of the courts to appraise the evidence or review the conclusion of the government. The first branch of the argument of the counsel for the appellant, therefore, fails.

5. On the issue of natural justice, we are satisfied that no prejudice has been caused to the appellant by any of the circumstances pointed out by the appellant. It is true that the order has been passed by an officer different from the one who heard the parties. However, the proceedings were not in the nature of formal judicial hearings. They were in the nature of meetings and full minutes were recorded of all the points discussed at each meetings. It has not been brought to our notice that any salient point urged by the petitioners has been missed. On the contrary, the order itself summarises and deals with all the important objections of the petitioners. This circumstances has not, therefore caused any prejudice to the petitioners. The delay in the passing of the order also does not, in the above circumstances, vitiate the order in the absence of any suggestion that there has been a change of circumstances in the interregnum brought to the notice of the authorities or that the authority passing the order has forgotten to deal with any particular aspect by reason of such delay. The argument that the application of the Modis had referred to bonemeal as the raw material used and this was later changed to "crushed bones" is pointless because it is not disputed that all along the petitioners were aware that the reference to bonemeal was incorrect and that the Modis were going

to use crushed bones in their project. The last contention that some documents were produced at the hearing by the Modis which the petitioners could not deal with effectively is also without force as, admittedly, the assessee's representatives were shown those documents but did not seek any time for considering them and countering their effect. There has, therefore, been, if fact, no prejudice to the petitioners. They have had a fair hearing and the government's decision has been reached after considering all the pros and cons. We are unable to find any ground to interfere therewith.

6. There was some discussion before us on a larger question as to whether the requirements of natural justice can be said to have been complied with where the objections of parties are heard by one officer but the order is passed by another. Sri Salve, referring to certain passages in Local Government Board v. Alridge (1915 AC 120 : 84 LJKB 72), Ridge v. Baldwin (1964 AC 40 : (1963) 2 All ER 66 : (1963) 2 WLR 3), Regina v. Race Relations Board, Ex parte Selvarajan ((1975) 1 WLR 1686) and in de Simth's Judicial Review of Administrative Action (4th edn., pp. 219-220) submitted that this was not necessarily so and that the contents of natural justice will vary with the nature of the enquiry, the object of the proceeding and whether the decision involved is an "institutional" decision or one taken by an officer specially empowered to do it. Sri Gullappalli Nageswara Rao v. APSRTC (1959 Supp 1 SCR 319 : AIR 1959 SC 308) has disapproved of Alridge case (1915 AC 120 : 84 LJKB 72) and natural justice demands that the hearing and order should be by the same officer. This is a very interesting question and Alridge case (1915 AC 120 : 84 LJKB 72) has been dealt with by Wade (Administrative Law, 6th edn., p. 507 et seq). We are of opinion that it is unnecessary to enter into a decision (sic discussion) of this issue for the purposes of the present case. Here the issue is one of grant of approval by the government and not any particular officer statutorily designated. It is also perfectly clear on the records that the officer who passed the order has taken full note of all the objections put forward by the petitioners. We are fully satisfied, therefore, that the requirements of natural justice have been fulfilled in the present case.

7. For the reasons stated above, the appeal stands dismissed. No costs.

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