Mahabir Auto Stores and Others

Vs

Indian Oil Corporation and Others

Civil Appeal No. 1350 of 1990

(CJI Sabyasachi Mukharji, B. C. Ray JJ)

06.03.1990

JUDGMENT

SABYASACHI MUKHARJI, C.J. -

1. Having heard counsel for the parties and having considered the facts, circumstances and the contentions involved herein, we grant special leave and dispose of the appeal by judgment herein.

2. This appeal arises out of the judgment and order of the High Court of Delhi dated February 9, 1989. Appellant 1 is a partnership firm. The other four appellants are the partners of the said firm. The respondent is a company incorporated under the Companies Act, 1956 and having, inter alia, one of its regional offices at Janpath, New Delhi. The appellants sought in the writ petition filed under Article 226 of the Constitution before the High Court a writ mandamus against the respondent directing it the desist from denying or discontinuing the supply of all kinds of lubricants to appellant 1 and from ousting, black-listing, coercing or pressurising appellant 1 from the business of dealing with all kings of lubricants supplied by the respondent company to have and to continue to supply all kinds of lubricants to the appellant firm as was done in the past and for the maintenance of status quo existing on May 27, 1983 and for payment of necessary damages for the period from May 28, 1983 till the date of the filing of the writ petition before the High Court or till the decision of the writ petition.

3. Appellant 1, herein referred to as the firm, is a partnership firm duly registered with the Registrar of Firms, Delhi. The said firm had been carrying on the distribution and sale of all kinds of lubricants and was registered under Sales Tax Act vide Registration No. 1636 dated October 22, 1951 and has a goodwill of its own, according to the said appellants, in the entire region of Northern India with expertise and knowledge in the distribution and sale of all kinds of lubricants. The appellants, in the entire region of Northern India with expertise and knowledge in the distribution and sale of all kinds of lubricants. The appellants contend that in the past 32 years the appellant firm had required a very good reputation and has earned enviable goodwill in the trade.

4. As stated hereinbefore, the respondent company is a statutory body incorporated under the Companies Act, 1956 and have been dealing throughout with the appellant firm since 1965 when the firm became, according to the appellants, its distributor. The appellants claim that the said firm had been appointed as Lube Distributor and the appellant firm have been given the Permanent Customer Code No. 63-01-3115-1022-9-K, according to the appellant. The appellants contend that this was done in due course. It is the further case of the appellants that the lubricants were released by the respondent company to the said appellant firm on January 25, 1965 by Invoice No. 146668 and thereafter the firm had promoted the sales of the products of the company successfully

inasmuch as from February 1965 to May 27, 1983 and the firm had received and uplifted the supply of lubricants/goods each year and the total quantity of lubricants/goods so lifted had gone up to the extent of 1,11,34,854 litres or kgs. The appellants claimed that the said firm is one of the respondent company's Lube distributor in Northern India. It was the case of the appellants before the High Court and also before this Court that the said firm had been carrying on business as the Lube distributor of the respondent company and had been selling all kinds of lubricants. The appellants contend that the respondent company had recognized the appellant firm during all this period as authorised dealer and a distributor and an agent.

5. It was the case of the appellants before the High Court and they had tried to demonstrate with reference to the various documents, annexures etc. filed by them that the firm had been always carrying business as Lube distributor of the company, and has been selling all kinds of lubricants. The appellants further contended that the company had recognised the firm during all this period as authorised dealer, distributor and agent. Certain letters were written by the company directing various customers to contact the firm as an authorised Lube distributor. This contention was stated before the High Court as well as before us. It is stated that Annexures A-2 to A-14 were copies of letters written by the company directing various customers to contact the firm as an authorised Lube Distributor. Annexure A-15 is and advertisement issued in a specially published souvenir on the occasion of All India Highway Motor Rally held in 1972 sponsored by the Company in which the firm was referred to as the Company's authorised Lube Distributor. Annexures A-16 to A-35 are copies of the letters written by the company to the appellants in relation to the dealing of the appellants as Lube Distributor. There are several other documents on which reliance was placed on behalf of the appellants. The firm was treated as authorised dealer and agent of the respondent company. It was contended that there was a change of policy by the respondent company, and certain documents of the year 1972 were relied upon to indicate that the supply of lubricants was stopped to those Associations and Dealers to whom ad hoc supplies were given, who were merely re-sellers, traders and who did not have written contracts with the Company. That was the case of the appellant's firm. However, the appellants asserted, that the supply was continued to the appellant firm being a dealer and distributor of the Company. Reliance was placed on Annexures P-28 to P-34 which are the Product Indent-cum-Delivery Orders for various periods issued by the Company to the firm. It is stated that in the said Product Indent-cum-Delivery Order there was a note indicating "For conditions of supply please turn over ...". However, in the copies filed with the rejoinder affidavit, there are no terms on the reverse side of the Product Indent-cum-Delivery Order. Although the firm has been receiving continuous supply of lubricants from the Company, it was suddenly stopped on May 27, 1983 by the Company, and it was contended that such an action of the Company will have the effect of black-listing the firm and is arbitrary and against the principles of natural justice besides being hit by the doctrine of promissory estoppel. The appellant firm. It was contended, had made representations against the aforesaid action of the respondent company but to no use. In that back-ground the reliefs mentioned hereinbefore were sought from the High Court in the application filed under Article 226 of the Constitution.

6. The respondent company had raised various objections to the maintainability of the writ petition, namely, inter alia, that the company was not State within the meaning of Article 12 of the Constitution as the company is registered under he Companies Act, 1956, the writ petition was not maintainable as no writ to enforce alleged supply, according to the respondent company, was maintainable and the appropriate remedy for the appellants was to claim damages for breach of contract or relief for specific performance of contract, if any. It was submitted, further, that the firm had not any contract and was seeking to rely on an irregular course of conduct and on an ad hoc arrangement which the company cannot perpetuate in view of the prevailing guidelines and/or

directions received from the Ministry of Energy in the Department of Petroleum. Where in fact there was an actual written agreement the company's contractual relationship with its distributors was also capable of termination forthwith and was only subject to the normal contractual laws and decisions in the realm of contract could not be the subject matter of proceedings under Article 226 of the Constitution, it was submitted. The appellant's case, it was urged by the respondent company, was at much lower footing. The company however denied that the firm had even been black-listed and it had never acted in a mala fide, or capricious or arbitrary manner or on any extraneous, or oblique or irrelevant consideration. There was no commitment, it was suggested, to supply a fixed quantity regularly, made to the appellant firm at any stage.

7. It appears that the procedure adopted for the supply of lube oil products was that the party requiring supply would write a letter to the company whereupon the Divisional Office through the Lube Section would process the same and would intimate as to how much supply was possible. Thereupon the requisition slip would be processed and a delivery challan/order would be made out. The conditions of the Product Indent-cum-Delivery Order, inter alia, categorically provided that "IOC also reserves the right to cancel your order without any intimation or assigning any reason". It further provided that "IOC took no responsibility of despatches/releases of stocks shall be on the basis of availability of stocks". There was no other contract in the facts and circumstances of the case, it was urged. The letters making the requisitions the Product Indent-cum-Delivery Orders, the Delivery Challans as also the payment are the only documents constituting the dealing or transactions between the parties. The company had categorically reserved its right to refuse and/or cancel the order without any intimation or assigning any reason and it was perfectly within its right to discontinue the said arrangement. Several obligations have been provided under the arrangement including, inter alia, price controls, minimum off-take of stocks, safeguards against contamination, right to the inspection and/or the unrestricted access, right of account etc. It was asserted that even under the contractual transaction as entered into with the Associated Trading Company, the respondent company had right of termination forthwith for any reason whatsoever and the company's right to terminate was not fettered by the doctrine of reasonableness or doctrine of natural justice and rights of hearing etc. as sought to be put forward on behalf of the appellants. It is, therefore, suggested that what was not even contractually recognised should not be artificially given higher status, in the facts and circumstances of the case, as the appellants were seeking to invoke the right flowing from an utter irregularity specially when the company had been made publically accountable especially when the company does not act unless through a written contract as also when only authorised.

8. It was further the case of the respondent that the company was subjected to distribution policies and guidelines of the Department of Petroleum in the Ministry of Energy, Government of India. They are also bound by the directives to the effect that lubricants are to be sold only to consumers, to those parties who will not sell directly or indirectly to foreign oil companies and no sale should take place to old agents or distributor of foreign oil companies. All sales of lubricants must take place to actual consumers or to such small parties who will sell actually to consumers and not to foreign oil company. Besides this, the Ministry letter bearing reference No. P-17011/82-SUP dated December 21, 1982 under policy No. 201 had communicated to all oil companies that no new distributor was to be appointed for distribution of lubricating oils and there is a ban on such appointments. In the facts and the circumstances of the case the company was, thus, according to the respondent, prevented by the directive/instruction/guidelines of the Ministry of Energy to appoint new dealer and distributors or to formalise any agreement constituting the dealership or distributorship. In fact, right since 1972, 24 parties who had ad hoc arrangement of supply of lube oils were discontinued, according to the respondent. There was no assurance, whatsoever, nor any

promise nor any contract nor any prescribed schedule to supply any quantity of lubricants, as alleged, to the appellant or to anybody else. It was further asserted in the present case that in view of the ban imposed, no fresh distributors could be appointed nor the oil companies empowered to regularise and contract afresh for dealer/distributors in lubricant oils. It was further the case of the respondent that the customer code number is given to authorised distributors/dealers only. The position was explained that the mode and manner of computerisation of accounts set out in Annexure P-25 and the allotment of customer code number is only for the purpose of identification and not for any other purpose nor to designate the firm as an authorised Lube Distributor. The Company had denied that the Code 01 was allotted only to dealer/agents as alleged. The Code 01 was applicable to all re-sellers, where a further sale is a necessary concomitant of the first sale. Certain particulars were given how 01 is given and it was stated in the case of four parties the parties the partnership was terminated because of the new policy.

9. The High Court after exhaustively dealing with the rival contentions came to the conclusions that viewed from diverse angles, the appellants had sought the specific performance of certain alleged contract. It was also held that the said alleged contract was neither precise, not definite nor certain nor was capable of being made certain. It was not certain, in this case, as to how much goods were required and for how long were these required and at what consideration, these were all uncertain and vague, it was submitted. It was held by the High Court that for a writ of mandamus the appellants should have a legal right to enforce the performance of alleged duty by the respondent and since no right was shown to exit by the appellant for selling the continuous supply of the lubricants whatsoever indefinitely for future and no corresponding legal duty was imposed on the respondent to supply, the writ of mandamus was not maintainable. In those circumstances the writ application was dismissed as not maintainable.

10. Aggrieved thereby the appellants have come up to this Court, as mentioned hereinbefore.

11. We have heard learned counsel Dr. L. M. Singhvi as well as Mr. Salve exhaustively. Further affidavits were filed and documents produced before us. It was sought to be urged by Dr. Singhvi that the respondent was an instrumentality of State and as such the question involved was whether an instrumentality of State can suddenly, arbitrarily, unreasonably, without any relevant factors and without any notice and determination or proceeding stop supplies of products which, according to him, had been supplied more than 1 crore 11 lakhs litres/kg of product continuously and uninterruptedly over a period of more than 18 years. Dr. Singhvi suggested that the respondent IOC is an instrumentality of State under Article 12 of the Constitution. From the nature of the business carried on by the appellants, it was manifest to us that the supply of the lubricants of the type with which the respondent had a monopoly, could be carried on by the appellants only as the supplier from the respondent. That business was not possible otherwise. The respondent had monopoly in that respect. This aspect is important. The respondent company was supplying from 1965 to 1883 large quantities of lubricant oil and from 1983 onwards till 1989 supplies were stopped suddenly on May 27, 1983. There is no dispute that no intimation was given, no notice was given, no query or clarification sought for and there was no adjudication as such. It was held that the appellant firm was not entitled to supply; the stoppage of supply in May 1983 was (sic not), therefore, bad. The appellant further contended that the case of the respondent company IOC was never made known or revealed prior to the counter-affidavit in the High Court of the appellants. The contention urged on behalf of the appellants was that this is patent violation of all canons of natural justice, fair play and reasonableness. It is submitted that natural justice and reasonableness of the procedure are enshrined under Article 14 of the Constitution.

12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observation of this Court in Radha Krishna Agarwal v. State of Bihar ((1977) 3 SCC 457). It appears to us, at the outset, that in the facts and circumstances of the case, the respondent company IOC is an organ of the State or an instrumentality of the State as contemplated under Article 12 of the Constitution. The State acts in its executive power under Article 298 of the Constitution in entering or not entering in contracts with individual parties. Article 14 of the Constitution would be applicable to those exercises of power. Therefore, the action of State organ under Article 14 can be checked. See Radha Krishan Agarwal v. State of Bihar ((1977) 3 SCC 457) at p. 462, but Article 14 of the Court Constitution cannot and has not been construed as a charter for judicial review of State action after the contract has been entered into, to call upon the State to account for its actions in its manifold activities by stating reasons for such actions. In a situation of this nature certain activities of the respondent company which constituted State under Article 12 of the Constitution may be in certain circumstances subject to Article 14 of the Constitution in entering or not entering into contracts and must be reasonable and taken only upon lawful and relevant consideration; it depends upon facts and circumstances of a particular transaction whether hearing is necessary and reasons have to be stated. In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in the State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. In this connection reference may be made to E. P. Royappa v. State of Tamil Nadu ((1974) 4 SCC 3 : 1974 SCC (L&S) 165), Maneka Gandhi v. Union of India ((1978) 1 SCC 248), Ajay Hasia v. Khalid Mujib Sehravardi ((1981) 1 SCC 722 : 1981 SCC (L&S) 258), R. D. Shetty v. International Airport Authority of India ((1979) 3 SCC 489) and also Dwarkadas Marfatia and Sons v. Board of Trustees of the Port of Bombay ((1989) 3 SCC 293). It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.

13. The existence of the power of judicial review however depends upon the nature and right involved in the facts and circumstances of the particular case. It is well settled that there can be "malice in law". Existence of such "malice in law" is part of the critical apparatus of a particular action in administrative law. Indeed "malice in law" is part of the dimension of the rule of relevance and reason as well as the rule of fair play in action.

14. It was submitted that the respondent had continuously, uninterruptedly, consistently and repeatedly dealt with the appellant and recognised the appellant, and had treated it as a dealer. On that basis the appellants and his family had acted for 19 years. To substantiate these assertions, certain documents and samples were referred to by the appellants. Our attention was drawn to large

number of invoices, cash memos and to the Customer Code No. 013115 allotted to the appellant. It was submitted that the prefix 01 applied only to dealers, distributors etc. The defence of the respondent was the absence of written contract which was the standard form and not appointment letters. The appellant contended that the appellants were selling IOC products without written contract. It was further asserted that the IOC has sought to change its stand and say that it does not deal with person without contract but according to the appellants, has issued letters of appointment to some of them and these persons, according to the appellants, sell lubes. It was submitted that this change of stand was an afterthought. It was further stated that letters, in some cases, cannot lead to an exclusion of all others to whom letters of appointment had not been issued. It is submitted that in fairness IOC could have and should have issued such letter of appointment to appellant 1 also and should have considered the case of the appellant-firm. It was submitted that IOC has always treated lube and non-lube products of the same basis, without distinction. This distinction which was sought to be urged before us, it was submitted, was an afterthought and not justified. The appellant contended that the IOC's purported reliance upon the guidelines, was not justified. Furthermore, the guidelines were not mandatory or binding. These use directory words like "may". More importantly, these exclude all those who are part of the existing network and apply for fresh appointment of new distributors. The appellant was part of the existing network and was not to be inducted as a new distributor and the appellant-firm falls within the existing network and has always been so treated continuously and uninterruptedly from 1965 to 1983, it was the case of the appellants. It was contended that the appellant-firm was entitled to relief, inter alia, on grounds of promissory estoppel, unreasonable and arbitrary exclusion, and discriminatory treatment under Article 14 of the Constitution.

15. Mr. Salve on behalf of the respondent sought to urge that the appellant-firm had never been appointed as a Lube Distributor. There is no letter of intent, letter of appointment, much less letter at all. Ad-hoc supplies of lube products alone had been made to the appellant from 1965 onwards. The procedure adopted for the supply of lube products was that the appellant would writ a letter to the company whereupon the Divisional Office, Lube Section would process the same. The policy decision in December 1982 indicated that no new distributor for lube products would be appointed and no new products would be distributed either through the existing network, of existing Lube Distributors or to authorised dealers of other products such as, petrol, SKO, LDO and HSD. It was submitted that as a result of the policy it was not the appellant alone to whom the supplies were discontinued. There was similar discontinuance of supplies to 24 other parties whose names were given in the counter-affidavit.

16. Mr. Salve submitted that in private law field there was no scope for applying the doctrine of arbitrariness or mala fides. The validity of the action of the parties to be tested, it was urged on behalf of the respondent, on the basis of "right" and not "power". A plea of arbitrariness/mala fides as being so gross cannot shift a matter falling in private law field to public law field. According to Mr. Salve to permit the same would result in anomalous situation that whenever State is involved it would always be public law field, this would mean all redress against the State would fall in the writ jurisdiction and not in suits before civil courts.

17. We are of the opinion that in all such cases whether public law or private law rights are involved, depends upon the facts and circumstances of the case. The dichotomy between rights and remedies cannot be obliterated by any strait-jacket formula. It has to be examined in each particular case. Mr. Salve sought to urge that there are certain cases under Article 14 of arbitrary exercise of such "power" and not cases of exercise of a "right" arising either under a contract or under a statute. We are of the opinion that that would depend upon the factual matrix.

18. Having considered the facts and circumstances of the case and the nature of the contentions and the dealing between the parties and in view of the present state of law, we are of the opinion that decision of the State/public authority under Article 298 of the Constitution, is an administrative decision and can be impeached on the grounds available in public law field. It appears to us that in respect of corporation like IOC when without informing the parties concerned, as in the case of the appellant-firm herein on alleged change of policy and on that basis action to seek to bring to an end to course of transaction over 18 years involving large amounts of money is not fair action, especially in view of the monopolistic nature of the power of the respondent in this field. Therefore, it is necessary to reiterate that even in the field of public law, the relevant persons concerned or to be affected, should be taken into confidence. Whether and in what circumstances that confidence should be taken into consideration cannot be laid down on any strait-jacket basis. It depends on the nature of the right involved and nature of the power sought to be exercised in a particular situation. It is true that there is instrumentality of a State has the right to function in public field or private field is a matter which, in our opinion, depends upon the facts and circumstances of the situation, but such exercise of power cannot be dealt with by the State or the instrumentality of the State without informing and taking into confidence, the party whose rights and powers are affected or sought to be affected, into confidence. In such situations most often people feel aggrieved by exclusion of knowledge if not taken into confidence.

19. Such transaction should continue as an administrative decision with the organ of the State. It may be contractual or statutory but in a situation between the parties for nearly two decades, such procedure should be followed which will be reasonable, fair and just, that is, the process which normally be accepted (sic is expected) to be followed by an organ of the State and that process must be conscious and all those affected should be taken into confidence.

20. Having regard to the nature of the transaction, we are of the opinion that it would be appropriate to state that in cases where the instrumentality of the state enters the contractual field, it should be governed by the incidence of the contract. It is true that it may not be necessary to give reasons but, in our opinion, in the field of this nature fairness must be there to the parties concerned, and having regard to the large number or the long period and the nature of the dealings between the parties, the appellant should have been taken into confidence. Equality and fairness at least demands this much from an instrumentality of the State dealing with a right of the State not to treat the contract as subsisting. We must, however, evolve such process which will work.

21. Therefore, we direct that the case of the appellants be put to the respondents and let the respondent authorities consider afresh the submissions made by the appellant-firm, namely, that the existing arrangement amounts to a contract by which the distributorship was continued in case of the appellant-firm without any formal contract and further that the new policy of the government introduced in December 1982 would not cover the appellant firm and as such the appellant should continue. It will be sufficient, having regard to the nature of the claims, for the respondent authority to consider this aspect after taking the appellant-firm into confidence on this aspect. Nothing further need be stated or required to be done and we give no direction as to whether reasons should be recorded or hereinafter should be given. In the facts and circumstance, it is not necessary to give oral hearing or record the reasons should be recorded or hereinafter to give oral hearing or record the reasons as such for the decision. The decision should be based on fair play, equity and consideration by an institution like IOC. It must act fairly.

22. We direct accordingly that the present arrangement to continue until the respondent company gives the consideration on the lines indicated above and makes the decision.

23. It is not our decision which is important but a decision on the above basis should be arrived at which should be fair, just and reasonable - and consistent with good government - which will be arrived at fairly and should be taken after taking the persons concerned whose rights/obligations are affected, into confidence. Fairness in such action should be perceptible, if not transparent.

24. The judgment and the order of the High Court are, therefore, set aside and the direction and order as aforesaid are substituted and the application made to the High Court is disposed of on the aforesaid terms. In the facts and circumstances of the case, there will be no order as to costs.

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