

(2004) 08 CAL CK 0002

Calcutta High Court

Case No: G.A. No. 147 of 2004 and W.P. No. 1461 of 2003

Hindustan Detergent
Corporation and Another

APPELLANT

Vs

West Bengal Small Industries
Development Corporation Ltd.
and Others

RESPONDENT

Date of Decision: Aug. 30, 2004

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 19, 21, 226

Citation: AIR 2005 Cal 129 : (2005) 1 CALLT 29

Hon'ble Judges: Subhro Kamal Mukherjee, J

Bench: Single Bench

Advocate: Hirak Mitra, Dhruba Ghosh and Rajesh Kumar Ganguly, for the Appellant;
Jaydeep Kar and Satyabrata Chakraborty for Respondent Nos. 1 to 4 and Parimal Nath, for
the Respondent

Judgement

S.K. Mukherjee, J.

I am considering an application under Article 226 of the Constitution of India {"the writ petition" in short) along with an application for further reliefs filed by the writ petitioners.

2.1. Propose to state the relevant facts for the purpose of deciding the said applications:

- The writ petitioner No. 1 is a registered partnership firm and it runs a small-scale industrial unit. The writ petitioner No. 1 is manufacturing detergent powder.
- The Department of Cottage and Small Scale Industries, Government of West Bengal, adopted decision to market the products manufactured by diverse detergent manufacturers by the West Bengal Small Industries Corporation Limited ("the said Corporation in short) through the public distribution system of the

Department of Food and Supply, Government of West Bengal. It was that the detergent would be sold under a common brand name "WEBSI".

(c) The petitioner No. 1 applied for its enlistment under the said scheme and the said Corporation accepted the offer of the petitioner No. 1 and enlisted the name of the petitioner No. 1 as Websi manufacturer.

(d) The capacity of the petitioner No. 1 is 250 M.T. and the petitioner was always ready and willing to manufacture 50 M.T. Websi per month. However, the respondent No. 1 did not lift 50 M.T. of Websi detergent powders per month from the petitioner No. 1.

(e) The petitioners noticed, in course of time, that the respondent No. 1 began to lift less and less quantity of Websi detergent powder from the petitioner No. 1 although the capacity of the petitioner was all through 50 M.T. per month. It is alleged that there is no reasonable justification by the respondent No. 1 for not lifting the registered Websi capacity of 50 M.T. from the petitioner.

(f) The petitioner was appointed as the agent of the respondent No. 1 initially for the district of Midnapore, but subsequently, the petitioner No. 1 was, also, appointed as the agent for the districts of Bankura, Birbhum, Purulia and entire North Bengal excepting the district of Malda.

(g) In a meeting held in the chamber of Managing Director of the respondent No. 1 it was decided, on July 3, 2001, that each Websi manufacturing unit would have the target of 7 M.T. per month to bring equality amongst the manufacturers instead of fixing the targets according to the capacity of units pro rata linking with the sale of the detergent powders. Since the petitioner had the capacity to manufacture 250 M.T. per month and as the initial registered target for the petitioner No. 1 was 50 M.T., the petitioners approached this Court with this writ petition.

(h) This matter was listed before Pinaki Chandra Ghosh, J. on April 10, 2002 when the respondents submitted before His Lordship that the policy, as challenged by the writ petitioners before this Court, had not been given effect to. In view of such concessions, His Lordship, inter cilia, observed that it was not necessary for His Lordship to deal with the matter at that stage. It is alleged by the petitioners that although it was submitted before this Court that the respondent No. 1 did not give effect to the policy as challenged by the petitioners, but in fact such policy had been given effect to even before passing of the said order dated April 10, 2002.

(i) It is, further, alleged that between the period April 2002 and March 2003 total 85.5 M.T. Websi powders have been lifted from the petitioner No. 1 the petitioner No. 1, in the meantime, manufactured 40.075 M.T. detergent powders as per the alleged production programme given by the respondent No. 1. However, from January 2003 the respondent No. 1 completely stopped lifting material from the petitioner No. 1 although empty polly packets were supplied to the petitioner No. 1

for packaging detergent powders.

(j) The marketing manager of respondent No. 1 on April 3, 2003 issued a show cause notice asking your petitioner to show cause as to why actions would not be initiated against the petitioner No. 1 as it has been alleged by the ration dealers of Ghatal and other areas of Midnapore district that the petitioner No. 1 supplied bad quality of Websi detergent powders. It was, further, alleged that samples were collected from the said areas and after testing, the samples were found below the standard.

(k) The petitioner No. 1 replied to the show cause notice denying the allegations made against the petitioners. It was denied, *inter alia*, that the samples collected by the respondent No. 1 were manufacture by the petitioner No. 1. The petitioner No. 1 requested for supply of referee samples to enable the petitioner No. 1 to get the referee samples tested by recognised testing house.

3. The main writ application at that stage was listed before me on December 2, 2003. When the matter was taken up for hearing the learned advocate appearing for the writ petitioners submitted that the authorities concerned failed to consider the causes shown by the petitioners as yet. The learned advocate appearing for the respondent No. 1 submitted that the authorities concerned would give its decision in this matter within ten days. The matter was adjourned to enable the respondent No. 1 to produce the decision of the Managing Director of respondent No. 1 on the next date of hearing. However, the Managing Director was directed to give an opportunity of hearing to the representatives of the writ petitioners and he was directed to pass a reasoned and speaking order. The Managing Director of the respondent No. 1 passed his order on December 9, 2003 by which the petitioner No. 1 has been debarred as the manufacturer of Websi detergent powder and, also, as the supplying agency of the respondent No. 1. It has been noted in the said order dated December 9, 2003 that the respondent No. 1 received complaints by some consumers of Websi detergent powders regarding poor quality of such powders supplied through public distribution system in the district of Purba Midnapore and Paschim Midnapore. The petitioner No. 1 was the manufacturer and supplier in respect of the said two districts. On the basis of such complaints, a team comprising of four officials of the respondent No. 1 went to different places in the district of Paschim Midnapore to ascertain the facts. During the course of their enquiry, they interacted with number detergent consumers and dealers and came to learn that the Websi detergent powders, supplied through public distribution system, were of poor quality. They, also, approached ration shop dealers and purchased Websi detergent powders posing" themselves as consumers from different places of the said district. The powders collected by them was sent for testing by the Electronic Test and Development Centre, a unit of the Cottage and Small Scale Industries Department of Government of West Bengal and the said test centre conducted tests and reported, *inter alia*, that the active ingredient was substantially less than the stipulated requirement of minimum 15 per cent of active ingredient in the product.

It was held that the complaint and grievances of the consumers were genuine. It was, further, held that the petitioner No. 1 manufactured and supplied detergent powders of very low grade, which affected the brand image of the respondent No. 1 adversely.

4. Consequently, the petitioners filed an application for further reliefs, *inter alia*, challenging the said decision of the Managing Director of the respondent No. 1 dated December 9, 2003.

5. Mr. Hirak Mitra, learned senior advocate, appearing for the petitioners, submits that the action of the respondent No. 1 and its officials are *mala fide* and opposed to principle of natural justice and fair play. He submits that the proper sample collection procedure was not followed and as such the decision of the Managing Director of the respondent No. 1, based on the report submitted by the testing centre on the basis of such collection of samples, is bad in law. Mr. Mitra draws my attention to the handbook published by the Bureau of Indian Standard concerning household laundry detergent powders, which prescribes general precaution, the scale of sampling and preparation of testing samples. He, further, draws my attention to a circular issued by the Managing Director of the respondent No. 1 dated June 26, 2002 regarding maintenance of quality of detergent and procedures thereof. Mr. Mitra submits, on the basis of the said circular dated June 26, 2002, that the penalty imposed by the respondent No. 1 is without jurisdiction.

6. Mr. Jaydeep Kar, learned advocate, appearing for the respondent Nos. 1 and 4, submits that both the said writ petition and the application for further reliefs are not maintainable in law. If the matter is governed by a contract, the writ petition is not maintainable since it is a public law remedy and is not available in private law field, that is, where the matter is governed by a non-statutory contract. Mr. Kar in this connection cites the decisions in the cases of Radhakrishna Agarwal and Others Vs. State of Bihar and Others, State of Gujarat and Others Vs. Meghji Pethraj Shah Charitable Trust and Others, and Merine Engineer and Ors. v. Siddeswar Halder and Ors. reported in 19912 CHN 161. Mr. Kar submits that the respondent No. 1 has totally lost confidence in the writ petitioner No. 1 and as such determined the contract. Mr. Kar, therefore, submits that the remedy by way of recovery of damages may be maintainable before a competent civil Court, but the respondent No. 1 cannot be forced to continue with the contractual relationship between the petitioner No. 1 and the respondent No. 1. In this connection Mr. Kar cites the decisions in the case of Kerala State Electricity Board and Another Vs. Kurien E. Kalathil and Others. Mr. Kar submits that the application for further reliefs filed by the petitioners is not maintainable inasmuch as the prayers made in the said application are beyond the scope of the writ petition. Mr. Kar submits that an application for interim relief can only be maintained in the aid of the main reliefs. Mr. Kar, therefore, submits that the prayers made in the application for interim reliefs cannot be granted in this proceeding. Mr. Kar submits that the allegation of

mala fide is not supported by the facts. Mere allegation of mala fide is not enough, but such allegation must be supported by the facts to enable the Court to come to its own conclusion. Mr. Kar contends that the materials are insufficient to prove mala fide against the respondent No. 1 and its officials. In this connection Mr. Kar cites the decisions in the cases of Tara Chand Khatri Vs. Municipal Corporation of Delhi and Others, Kedar Nath Bahl Vs. The State of Punjab and Others, and Parbodh Sagar Vs. Punjab State Electricity Board and Others, .

7. In reply, Mr. Mitra submits that the rules of natural justice and fair play were not at all followed in this present case. Mr. Mitra, further, submits that mere determination of contract by a government agency on the allegation of loss of confidence is not enough inasmuch as such determination of contract was a patent abuse of powers, as loss of confidence must be based on objective facts.

8. A Division Bench of this Court in the case of Rai Charan Mandal and Anr. v. Biswa Nath Mandal and Ors. reported in 20 CLJ 107 observes that a suit is to be tried in all its stages on the cause of action as it existed at the date of its commencement. An exception to this rule, namely, that a Court may take notice of events, which have happened since the institution of the suit and afford relief to the parties on the basis of the altered conditions, is applied in cases where it is shown that the original relief claimed has, by reason of subsequent changes of circumstances, become inappropriate or that it is necessary to base the decision of the Court on the altered circumstances in order to shorten litigation or to do complete Justice between the parties.

9. The said observations of the Division Bench of this Court in Rai Charan Mandal (supra) have been approved by the Supreme Court of India in the case of Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Others, .

10. In the case of B.R. Ramabhadriah Vs. Secretary, Food and Agriculture Department, Andhra Pradesh and others, it is observed that the Court can undoubtedly take note of changed circumstances and suitably mould the relief to be granted to the party concerned in order to mete out justice in the case. As far as possible the anxiety and endeavour of the Court should be to remedy an injustice when it is brought to its notice rather than deny relief to an aggrieved party on purely technical and narrow procedural grounds.

11. The law is, therefore, well settled that though the rights of the parties are normally to be decided on the date of the presentation of the pleading, the Court can, in the interest of justice, take note of subsequent events and grant appropriate reliefs to the parties aggrieved, particularly, when the Court finds, after taking notice of the changed circumstances, that the original reliefs claimed have become inappropriate or inadequate because of reasons of the subsequent development. It is necessary for the purpose of shortening the litigation and for doing complete justice to the parties. The processual justice requires that the events and

developments occurred subsequent to the institution of the proceedings must be taken into consideration in appropriate cases to promote substantial justice. Technicality cannot and ought not to way out the course of justice. Moreover, the Court can mould the relief sought having regard to the germane and relevant circumstances for reasons of justice, equity and good conscience.

12. In the case in hand, the writ petitioners came up before this Court, *inter alia*, to obtain necessary orders on the said Corporation to accept delivery of 50 M.T. of Websi detergent powders per month from the petitioners. During the pendency of this proceeding, the said Corporation by the order dated December 9, 2003 terminated the contract of the petitioner No. 1 both as the manufacturer of Websi detergent powders and as the supplier of such detergent powders in the districts. To avoid multiplicity of proceedings and shorten the litigation, I have decided to consider the reliefs claimed in the application for further reliefs. If the reliefs claimed by the petitioners in the application for appropriate reliefs are not entertained in the facts and circumstances of the case at the present stage that is likely to result in a miscarriage of justice.

13. I have narrated hereinabove the circumstances as to how the contract has been terminated. The samples were collected behind the back of the petitioner, the officials of the Corporation allegedly purchased detergent powders from the ration shop dealers posing themselves as the consumers. It is not understood as to how the officials of the said Corporation, who are not the ration cardholders, could procure detergent powders meant to be supplied to the ration cardholders through the public distribution system. The samples were not drawn as per procedure as envisaged in handbook issued by the Bureau of Indian Standard. The Managing Director of the said Corporation rejected such objections of the petitioners on the ground that such objections were technical in nature. When an investigation was launched against the petitioners regarding the quality of the detergent powders manufactured by them, the said Corporation ought to have collected the samples in the presence of the representatives of the petitioners. It is alleged by the petitioners that at the time of taking delivery of the detergent powders quality of such powders was checked. No copy of the alleged complaint of the ration dealers of Ghatal and others areas was either supplied to the petitioners or produced at the time of hearing before the Managing Director for perusal of the petitioners or their representatives. The complainants were not produced for examination by the petitioners. The observations of the Managing Director of the said Corporation that the petitioners were trying to sabotage the efforts of the Corporation are more based on conjecture than on the materials on record. The procedure adopted for penalising the petitioners are certainly opposed to the fundamental principles of natural justice and fair play.

14. Even in *Marine Engineer and Ors. v. Siddeswar Haider and Ors.* (*supra*) a Division Bench of this Court observed that the State and its instrumentalities do not have the

absolute right like a private individual to enter into contract with any one and to cancel the same. While canceling a contract they have not only to follow a procedure, which should be consistent with Article 14 of the Constitution, that is, after observing the rules of fair play and the principles of natural justice, but the grounds for such cancellation should, also, be reasonable and not arbitrary. Any executive decision has to be tested on the touchstone of Article 14 of the Constitution not only so far as its procedural part is concerned, but also in respect of its substantive part. Even in a case where the procedural part has been followed still the Court can examine whether the ultimate decision is consistent with the requirement of Article 14 of the Constitution.

15. There is no set guideline for proving mala fide. It has to be ascertained from the facts and circumstances of the case. Since the entire investigation was conducted behind the back of the petitioners, I am satisfied that the actions taken and the order passed, even from the administrative point of view, are arbitrary and unreasonable.

16. I, therefore, set aside the order dated December 9, 2003 passed by the Managing Director of the West Bengal Small Industries Development Corporation. However, it will be open to the said corporation to initiate actions against the petitioners in accordance with law.

The writ petition and all connected application are, thus, disposed of.

I make no order as to cost.

All parties are to act on the signed copies of this judgment on the usual undertakings.