Ossein And Gelatine ... vs Modi Alkalies And Chemicals Ltd. & Anr on 10 August, 1989

Equivalent citations: 1990 AIR 1744, 1989 SCR (3) 815, AIR 1990 SUPREME COURT 1744, 1989 (4) SCC 264, 1989 (17) DRJ 163, (1989) 3 JT 396 (SC), 1989 66 COM CAS 853, (1990) IJR 302 (SC), (1989) 39 DLT 51

Author: Sabyasachi Mukharji

Bench: Sabyasachi Mukharji

PETITIONER:
OSSEIN AND GELATINE MANUFACTURERS'ASSOCIATION OF INDIA

Vs.

RESPONDENT:
MODI ALKALIES AND CHEMICALS LTD. & ANR.

DATE OF JUDGMENT10/08/1989

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
MUKHARJI, SABYASACHI (J)

CITATION:
1990 AIR 1744 1989 SCR (3) 815
1989 SCC (4) 264 JT 1989 (3) 396
1989 SCALE (2)265

ACT:
Monopolies and Restrictive Trade Practices Act, 1969 : Sections 21, 22 and 23--Granting of applications--Central Government bound to give reasoned orders--To appraise evidence or review such reasoned conclusions--Not within the province of Courts.

HEADNOTE:
Respondent No. 1 made an application to the Central Government for permission to establish an undertaking for the manufacture of Ossein and Gelatine in the State of Rajasthan. The appellant Association made representations before the Central Government objecting to the grant of the said application inter alia on the ground that it would

cripple the small scale business of its members, who were already functioning far below capacity on account of short supply of crushed bones. The Central Government rejected the objections and granted the application of the Respondent, under section 22of the Monopolies and Restrictive Trade Practices Act, by its order dated 20.9.1988. Aggrieved by the said order, appellant association has preferred this appeal under section 55 of the MRTP Act.

On behalf of the appellant, it was contended that the Central Government has failed to pass a reasoned order and has not followed the principles of natural justice.

Dismissing the appeal,

HELD: 1. 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 Respondent No. 1 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 Respondent No. 1 arising out of the circumstances that they would be setting up the industry in a backward area; that they had categorically undertaken to export at least 60% of their proposed pro-

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duction; that since they would be producing their own hydrochloric acid, the availability of such acid to others will not be affected; and 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. [818G-H; 819A-B]

Oramco Chemicals Pvt. Ltd. v. Gwalior Rayon Silk Manufacturing (Weaving) Company Ltd. & Anr., [1987] 2 SCC 620 and Bombay Oil Industries v. Union of India, [1984] 1 SCR 815, referred to.

2. In the instant case, requirements of natural justice have been fulfilled and no prejudice has been caused to the appellant. Of course 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 meeting. The order itself summarises and deals with all the important objections. The delay in the passing of the order also does not 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 contention that the

application of Respondent No. 1 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 appellant was aware that the reference to bonemeal was incorrect and that Respondent No. 1 was going to use crushed bones in the project. That some documents were produced at the hearing by Respondent No. 1 which the appellant could not deal with effectively is also without force as, admittedly, the appellant's representatives were shown those documents but they did not seek any time for considering them and countering their effect. Moreover, 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. [819C-H; 820A-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 27(NM) of 1989.

From the Judgment and Order dated 20.9.88 of the Government Of India, Ministry of Industry, Department of Company Af- fairs, Shastri Bhavan, New Delhi in No. 2/51/85-M-II. Anil B. Divan, Nitin Thakkar, P.H. Parekh and S. Dogra for the Appellant.

Anil Dev Singh, H. Sharma, Sushma Suri, Harish Salve, Mohini Sud and Praveen Kumar for the Respondents. The Judgment of the Court was delivered by RANGANATHAN, J. 1. This appeal has been preferred under section 55 of the Monopolies & Restrictive Trade Practices Act ('the Act') from an order of the Central Government (C.G.) dated 20.9.88. By the said order the C.G. granted an application made by respondent No. 1 (hereinafter referred to as 'the Modis') under section 22 of the Act for permis- sion to establish an undertaking for the manufacture of Ossein and Gelatine in the State of Rajasthan. The petition- er, which claims to be an association of Ossein and Gelatin manufacturers in India, made representations before the C.G. 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 20.9.88 is vitiated as it merely sets out the bald conclusion 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 personal oral hearing in the matter had been given by 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 23.1.86 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 personal hearing but copies thereof had not been supplied to the appellant despite a grievance made by it the very next day.

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.

We are unable to accept the appellant's contention that the impugned order is bald, unreasoned or cryptic and vio- lates the requirements for such an order enunciated in the Oramco case [1987] 2 SCC 620, where this Court reaffirmed the following observations made in the Bombay Oil case [1984] 1 SCR 815:

> "We must, however, impress upon the Government that while disposing of applications under Sections 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 tribu- nals can be sustained only if the tribunals act fairly and dispose 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% of their proposed produc- tion; (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.

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 meeting. 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 circumstance 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 author- ity passing the order has forgotten to deal with any partic- ular 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 peti- tioners 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 consid- ering them and countering their effect. There has, there- fore, been in 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. 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 beard by one officer but the order is passed by another. Sri Salve, referring to certain passages in Local Government Board v. Alridge, [1915] A.C. 120; Ridge v. Baldwin, [1964] A.C. 40; Regina v. Race Relations Board, Ex parte Selvarajan, [1975] 1 WIR 1686 and in de Smith's Judicial Review of Administra- tive Action, Fourth Edn. p. 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 empow- ered to do it. Sri Divan, on the other hand, pointed out that the majority judgment in Gullappalli Nageswara Rao v. APSR TC, [1959] Supp. 1 SCR 3 19 has disapproved of Al- ridge's case and that natural justice demands that the hearing and order should be by the same officer. This is a very interesting question and Alridge's case has been dealt with by Wade (Administrative Law, 6th Edition at pp. 507 et seq.) We are of opinion that it is unnecessary to enter into a decision 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 desig- nated. 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. For the reasons stated above, the appeal stands dismissed. No costs.

G.N. Appeal dismissed.