

Supreme Court of India

Ibp Company Ltd. And Anr. vs Bal Kishan Mittal on 4 March, 1993

Equivalent citations: JT 1993 (3) SC 628, 1993 (1) SCALE 780, 1993 Supp (3) SCC 499

Bench: K J Reddy, G Ray

JUDGMENT

1. Leave granted.

2. Pursuant to the notice issued on the Special Leave Petition out of which this appeal arises, the respondent has appeared through a counsel and counter affidavit has been filed. This appeal is directed against the decision dated May 18, 1992 passed by a Single Bench of the High Court of Punjab and Haryana in R.S.A. No. 228 of 1992 by which the said appeal preferred by the appellants was summarily dismissed at the stage of admission. The said R.S.A. No. 228 of 1992 arose out of a decision passed by the learned District Judge, Bhiwani, on August 26, 1991 in Civil Appeal No. 22 of 1991 whereby the said appeal was allowed and Civil Suit No. 468 of 1985 was decreed by the learned District Judge. The respondent filed the said Civil Suit No. 408 of 1985 for permanent and mandatory injunction directing the defendants in the said suit who are the appellants in this appeal to the effect that the said defendants should not give effect to the order contained in the letter No. C. 17(a) dated April 29, 1986 by which a decision was taken to discontinue the supply of kerosene/LDO to the said plaintiff/respondent with effect from June 1, 1986 and not to reduce the monthly quota of kerosene to the plaintiff and to restore the quota of kerosene/LDO. The case of the respondent was inter alia that the said plaintiff/respondent was appointed by the appellant-Company M/s. IBP Company Ltd. as the selling agent of kerosene/LDO at the plaintiffs petrol pump by letter dated February 28, 1977 situated at Badri-Loharu Road, Charkhi Dadri. The plaintiff contended that after obtaining such agency and the consequential licence for selling the kerosene/LDO from District Food and Supplies Controller, Bhiwani, in 1977, the plaintiff had been carrying on the said business by getting the said licence renewed from time to time and constructing necessary godown and underground storage tank. The Regional Manager of Indo Burma Company Ltd. by his letter dated April 29, 1986 informed the plaintiff that as it had been decided as a matter of policy to withdraw/discontinue the supply of kerosene/LDO to all petrol pumps selected by them under Multi Purpose Distribution center Scheme (MPDC), the supply of kerosene/LDO to the plaintiff should be discontinued from June 1, 1986. Hence, the plaintiff had to institute the said suit for permanent and mandatory injunction so that the defendants could not discontinue supply or reduce the quota of kerosene being supplied to the plaintiff.

3. Such suit was contested by the appellants by filing a Written Statement and it was inter alia contended that the Government of India formulated the MPDC Scheme in the year 1975 under 20 point programme with an objective to bring essential commodities like cement, cloth, medicines, kerosene, fertilizers etc. under one roof and within accessible reach of the public in backward/rural areas of the country at controlled prices. The Government of India through the Ministry of Petroleum, vide its letter dated January 14, 1976, directed the Oil Companies to engage and/or bring within the fold of the MPDC Scheme its retail outlet dealers situated in the rural areas. Pursuant to such policy of the Government of India and the directions received by the Oil Companies, the appellant-Company required the plaintiff/respondent to fulfill certain conditions in order to get

permission to operate MPDC outlet. The appellant-Company wrote letters to the plaintiff/respondent on November 1, 1976 and on January 24, 1977 in respect of implementation of the said MPDC Scheme and finally permitted the said respondent to sell kerosene/LDO from its said Petrol Pump at Badri-Loharu Road, Charkhi Dadri under the MPDC Scheme by letter dated February 18, 1977 and appointed the respondent as the kerosene/LDO agent of the appellant-Company. Being appointed as an agent, the respondent had obtained the necessary licence for selling kerosene and also for storage of kerosene/LDO. It is the case of the appellant-Company that subsequently the Government of India was of the view that giving dealership of kerosene/LDO and HSD under one roof and at the same outlet had increased the possibility of adulteration of HSD and petrol with kerosene because kerosene was much cheaper and a colourless commodity and almost undetectable to naked eye when mixed with HSD and petrol unless subjected to laboratory tests. With a view to avoid the possibility of adulteration of HSD and petrol with kerosene, Government of India as a matter of policy, withdrew distribution of kerosene from the MPDC Scheme vide Ministry's letter dated 21/22 May, 1982 and the Ministry directed the appellant-Company to stop supply of kerosene to its dealers under the MPDC Scheme. In view of such direction of the Government of India, all the Oil Companies withdrew the supply of kerosene to all their dealers all over India who had been appointed under the MPDC Scheme. It was for this reason that the appellant-Company informed the plaintiff/respondent that the supply of kerosene/LDO would be discontinued with effect from June 1, 1986. It was also contended that under Clause 7 of the agreement, agency of kerosene/LDO could be terminated by either parties by giving not less than one month's written notice for termination and that since the notice was served on the plaintiff/respondent on April 19, 1985, the plaintiff/respondent was not entitled to the relief of permanent and mandatory injunction and the suit was liable to be dismissed on that score alone.

4. After a contested hearing and on consideration of the materials on record, the trial court held inter alia that the plaintiff/respondent was appointed a selling agent of kerosene/LDO under the said MPDC Scheme and as a matter of policy decision such selling agency had been terminated and under the agreement itself such termination was permissible. Hence, the prayer for permanent and mandatory injunction was not available to the plaintiff/respondent. In that view of the matter, the said suit was dismissed.

5. The plaintiff/respondent thereafter preferred an appeal before the learned District Judge, Bhiwani. The learned District Judge was of the view that although in subsequent correspondence as well as from Inspection Note, the plaintiff/respondent was shown as a dealer under MPDC Scheme for kerosene/LDO, the plaintiff/respondent was not initially appointed a dealer of kerosene/LDO under MPDC Scheme. The learned District Judge was of the view that as the plaintiff at the time of his initial appointment as a selling agent was not covered under MPDC Scheme though he was covered under such Scheme subsequently, the supply of kerosene to him could not have been discontinued on the basis of policy decision of the Government. In that view of the matter, the learned District Judge allowed the appeal and set aside the judgment and decree of the learned trial Judge and passed the aforesaid permanent injunction and mandatory injunction as prayed for by the plaintiff/respondent.

6. The appellant-Company thereafter preferred a second appeal before the Punjab and Haryana High Court but as aforesaid, the said appeal was summarily dismissed by the learned Single Judge at the admission stage of hearing.

7. Mr. P. Chidambaram, learned Counsel appearing for the appellants had contended that the plaintiff/respondent was not entitled to a decree for permanent and mandatory injunction compelling the respondent to continue the agency of selling kerosene/LDO in favour of the plaintiff/respondent. Even if the agency had been wrongly and unjustly terminated by the appellant-Company, the plaintiff/respondent was only entitled to damages. The suit as framed being not maintainable in law was liable to be dismissed on that score. That apart, under the terms of the agreement, the agency was liable to be terminated by giving one month's notice and admittedly such notice of termination having been given, the plaintiff/respondent was not entitled to continue with the said agency. Mr. Chidambaram has submitted that even without considering the question of maintainability of the suit, the termination of the agency is fully justified on merits because such termination was not made arbitrarily or capriciously but on account of the policy decision taken by the Government of India for reasons indicated hereinbefore. He has submitted that the learned Civil Judge appreciated the facts and circumstances of the case correctly and came to the finding that the plaintiff/respondent was appointed a selling agent of kerosene/LDO under the said MPDC Scheme and in view of the said policy decision, such agency had been terminated and there was no mala fide or lack of fair play on the part of the appellant-Company. He has submitted that the learned District Judge misconceived the facts completely and had come to an erroneous finding that the plaintiff/respondent had been appointed a dealer independently but he was brought under the MPDC Scheme in the matter of selling agency of kerosene/LDO subsequently. Such finding, according to Mr. Chidambaram, is contrary to the documents and evidences adduced in the suit. He has further submitted that even assuming that the plaintiff had been brought subsequently under the MPDC Scheme, the appellant-Company was quite within its right to terminate the said selling agency because of the change in the policy decision and such policy decision having been made applicable all over India, no exception could be taken. Mr. Chidambaram has contended that unfortunately, the High Court failed to consider the facts and circumstances of the case and summarily dismissed the appeal at the admission stage. He has submitted that the appeal should be allowed and the suit should be dismissed by setting aside the impugned judgments.

8. The learned Counsel appearing for the plaintiff/respondent, however, contended that the policy decision of the Government of India on the basis of which the said termination of supply of kerosene/LDO was sought to be passed by the appellant-Company does not cover the case of the plaintiff/respondent. He has submitted that the District Judge has rightly held that the plaintiff/respondent was appointed as a selling agent of kerosene/LDO not under the MPDC Scheme at the initial stage but subsequently he was brought under the said Scheme. He has contended that as there was no allegation that the plaintiff/respondent had resorted to any unfair activities by mixing kerosene with petrol or HSD, the appellant-Company was not entitled to terminate the said agency and a public undertaking is bound to act fairly and reasonably and can not terminate the contract arbitrarily or simply on a pleasure doctrine.

9. After considering the respective contentions of learned Counsels for the parties and the facts and circumstances of the case, we are fully satisfied that the plaintiff/respondent was appointed as a selling agent of kerosene/LDO under the MPDC Scheme. It is not correct to contend that he was appointed as a selling agent of kerosene/LDO not on account of MPDC Scheme but such agency was later on brought under the said Scheme. The materials on record clearly establish that the plaintiff/respondent had been given the selling agency and consequential permission to sell kerosene at his aforesaid petrol pump in view of and after the introduction of MPDC Scheme. It also appears to us that there has not been any arbitrary or capricious decision in terminating the agency of the plaintiff/respondent and such decision had been taken because of the policy decision of the Government of India on cogent reasons and such decision had been applied to all the selling agents covered by the MPDC Scheme. Under the terms of the selling agency the agency was liable to be terminated by giving one month's notice and in this case such notice had been given. The learned District Judge had clearly gone wrong in setting aside the judgment and decree of the learned trial Court and granting the reliefs in the suit by way of permanent and mandatory injunction and the High Court was also wrong in dismissing the appeal summarily. It may be mentioned here that our attention has been drawn by Mr. Chidambaram that against the termination of selling agency of kerosene/LDO under similar circumstances, the Allahabad High Court dismissed the Writ Petition moved by the agent. Similar view has also been taken by the High Court of Delhi in dismissing Writ Petition No. 881 of 1986 (*Monga Filling Station v. Union of India*) moved against termination of the selling agency of kerosene/LDO under similar circumstances. The Special Leave Petition moved against the decision of Allahabad High Court dated August 28, 1990 in Civil Miscellaneous Writ Petition No. 8520 of 1986 (*Shiv Filling Station v. Indo Burma Petroleum Co. Ltd.*) was dismissed by this Court on March 8, 1991. We, therefore, allow this appeal and set aside the impugned judgment and decree passed by the learned District Judge and also the High Court of Punjab and Haryana and affirm the judgment and decree passed by the learned Trial Judge dismissing the civil suit. There will be, however, no order as to costs.