

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 17.10.2012
Judgment pronounced on: 31.10.2012

+ **CS(OS) 1576/2008 and IA No. 9457/2008 (O. 39 R. 1&2 CPC)**

OIL AND NATURAL GAS CORPORATION LTD Plaintiff
Through: Mr Somiran Sharma, Adv.

versus

“MARYADA”, THE WEEKLY NEWS MAGAZINE & ORS Defendants
Through: None.

CORAM:
HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J.

1. This is a suit for injunction and recovery of Rs 10 crores as damages. The plaintiff is a Government of India Undertaking and is stated to be a Fortune 500 Company, engaged in exploration and production of Natural gas and oil in the country. The plaintiff claims to be a well-known and respected major oil and gas producer, having financial arrangements with international bankers and financiers. Defendant No.2 publishes a magazine, namely, *Maryada*, from Uran in District Raigad of Maharashtra. Defendant No. 3 claims to be a social worker, whereas defendant No. 4 prints the magazine ‘*Maryada*’. Defendant No. 3 wrote certain articles in various issues of *Maryada*, alleging corruption in the project of ONGC

at Uran. It was alleged that Hemant Chavan and Haridas Mhatre (defendants 2 and 3 respectively) had exposed corruption of crores of rupees in the aforesaid project, whereupon Mr P.K. Borthakur, working director of ONGC, contractors and other officers of ONGC got angry and threatened them, stating they would burn the office of *Maryada* by sending their *Gundas*. It was further alleged that they had made a plot against defendant No. 3, by filing fake false complaints against him. It was also alleged that there had been theft of crores of rupees in the aforesaid project of Uran and Government of India was being cheated by allotting illegal contracts. It was also alleged that there was only one contractor at Uran plant, namely, Global S.S. Contraction, which was sending bills of Rs 5 crore and those bills were getting cleared quickly. It was further alleged that the plant-in-charge P.K. Borthakur had given special order that no one other than Parveen Sharma, whose father was an engineer in the ONGC, should be given contracts. It was also alleged that the previous In-charge of ONGC at Uran had also indulged in corrupt practices by allotting maintenance contract to S.S. Construction and Borthakur, Sultania, Mujumdar of Contract Cell, Contract Department and Tender Department of ONGC had contributed to corruption, by allotting contracts only to S.S. Construction, owned by Parveen Sharma. Yet another allegation made in the article was that the repair bill of the guest house was Rs 53 crore, which was a clear indication of loot of Government money by ONGC officers and that monthly bill of

the guest house for lunch, dinner, breakfast, etc. came to about 4-5 lakh per month, all of which were fake and manipulated by the owner of S.S. Sibs Services and P.K. Borthakur was a participant in the corruption. It was also alleged that the contractors were fleecing ONGC of Rs 300-400 crores per month, by using illegal means.

2. In another article, it was alleged that defendant No. 3 had accused ONGC officers of conspiring steel scrap worth of Rs 4 crores and 13 lakh from ONGC plant at Uran on 05.03.2008. It was further alleged that this conspiracy was hatched by P.K. Borthakur (working director and Head Plant In-charge), D.D. Mishra (Deputy General Manager), P.K. Sultania (Deputy General Manager), V.V. Shah (Manager) and three truck of scrap going out of the plant were saved by timely action taken by defendant No. 3, who telephoned CBI and ONGC headquarters in this regard. It was also alleged that the people who had submitted the tenders were close relatives of P.K. Borthakur and the tenderers had conspired to fix the rate of scrap at Rs 21 per kg while the market rate was Rs 47 per kg. It was further alleged that Borthakur was helping the tenderer in getting the scrap had much lower rate and had also attempted lifting the scrap without weighing, besides instructing the tenderer to lift four ton extra scrap per truck. It was also alleged that scrap weighing 680 ton was being lifted officially at the rate of Rs 21 per kg while scrap weighing 240 ton was being diverted illegally and was not being accounted.

It was further alleged that there was corruption of crores of rupees on daily basis in ONGC at Uran.

3. Defendant No. 2, Shri Hemant Chavan also submitted a representation to CMD of ONGC, alleging irregularities in its Uran plant. He also wrote a letter to a Secretary, Ministry of Petroleum and Natural Gas, Government of India alleging corrupting in Uran plant of ONGC. In the letter, he claimed that Mr U.S. Deshmukh (ED Uran Plant), Borthakur (Ex.ED Uran Plant) and Mr R.S. Sharma, Chairman were corrupt officers who had tied up with the contractor to sell the plant in scrap. It was also alleged in this letter that tender were being awarded to Rakesh Sharma of Global S.S. Construction continuously since 1989 and the terms and conditions mentioned in the tender documents were such which no other firm could have fulfilled. These types of conditions, as per the letter, were being inserted by corrupt officers of ONGC, Mr Deshmukh, Borthakur and R.S. Sharma and all the maintenance job were captured by Mr Rakesh Sharma against payment of Rs 0.5 crore per month paid to them. It was also alleged that ONGC was paying Rs 8 lakh per month to M/s Sibs Services and out of that Rs 2 lakh per month was being paid to Mr Deshmukh and Mr Borthakur. Similar letter was addressed to CMD of ONGC.

4. On 14.03.2008, ONGC wrote a letter to defendant No. 2 referring to the article published in *Maryada* and rebutted all the allegations made in the article.

The defendants, however, did not publish the rebuttal. This is also the case of the plaintiff that the defendants did not try to verify the truth of these allegations and obtain their reaction to the allegations, before publishing the defamatory articles and writing defamatory letters against ONGC officers. This is also the case of the plaintiff that all the allegations made in the articles published and the letters written by the defendants are false, mala fide and motivated. The case of the plaintiff is that the defendants have defamed it by publishing such unsubstantiated defamatory allegations, as a result of which its reputation has been seriously damaged in the eyes of the Government, financiers, investors and the general public. The plaintiff also alleges serious harm to its officers on account of the enunciation made by the defendant. It is alleged that senior officers of the plaintiff and their family members have, on account of these defamatory allegations, become target of sarcastic remarks and rude comments by their colleagues, etc.

5. The first question which arises for consideration in this case is as to whether a corporation can sue for damages on account of defamation and if so, what is the scope of its right in this regard. The second question which arises for consideration is as to whether the articles / letters written published by the defendants can be said to be defamatory to the plaintiff company.

6. The law in regard to defamation of corporations has been stated as under in “Winfield on Tort” (Seventh Edition):-

“A corporation can sue for torts committed against it, but there are certain torts which it is impossible to commit against a corporation. Such are assault and personal defamation. Thus, a corporation cannot sue for libel a person who charges it with bribery and corruption although the individual members of it might be able to do so, but if a libel or slander affects the management or its trade or business, then the corporation itself can sue; as where the workmen's cottages of a colliery company were falsely described in a newspaper as highly insanitary”

In “Salmond on Law of Torts” (Fourteenth edition), the following statement of law is found in this regard:-

“In general a corporation may sue for a tort (e.g., malicious presentation of a winding up petition) in the same way as an individual. The only qualifications are (i) the tort must not be of a kind which it is impossible to commit against a corporation e.g., assault or false imprisonment; (ii) in case of defamation, it must be shown that the defamatory matter is of such nature that its tendency is to cause actual damage to the corporation in respect of its property or business. Thus an action of libel will lie at the suit of a trading corporation charged with insolvency or with dishonest or incompetent management. But where there is no actual damage, nor any tendency to produce such damage, no action will lie at the suit for the corporation; the only persons who have any cause of action are the individual members or agents of the corporation who have been defamed. So it has been held that a municipal corporation cannot sue for libel charging it with corruption and bribery in the administration of municipal affairs.

7. In **Naung Chit v. Maung Tun** AIR 1935 Rangoon 108, the Court, *inter alia*, observed as follows:-

“...A corporation may maintain a prosecution or an action for a libel affecting its property, but not for a libel merely affecting personal reputation as a corporation has no reputation apart from its property or trade. The words complained of must reflect on the management of its business and must injuriously affect the corporation, as distinct from the individuals who compose it. The alleged libel must attack the corporation in its method of conducting its affairs, must accuse it of fraud or mismanagement, or must attack its financial position. It cannot bring a prosecution for words which merely affect its honour or dignity. Moreover, it cannot maintain a prosecution for words which reflect, not upon it as a body, but upon its members individually, unless special damage has thereby been caused to it.”

Indian Express Newspapers (Bom.) Pvt. Ltd. V. Jagmohan, AIR 1985 Bom

229, the Court, *inter alia*, observed as under:-

“22. It is well settled that a corporation cannot suffer damages in mind or body. But as held in *Metroplitan Saloom Ombinus Co. Ltd. v. Hawkins*(1859) 4 H & N 87 : *South Helton Coal Co. v. North Eastern News Association Ltd.* (1894) 1 Q.B. 133 : *D.L. Caterers Ltd. v. D'Ajou* (1945) K.B. 364 : *Lewis v. Daily Telegraph Ltd.* (1964) A.C. 234 and *Selby Bridge Proprietors v. Sunday Telegraph* (The Times Feb. 17, 1966) a trading corporation has a business reputation and can sue for defamation in respect of a publication calculated to injure its reputation in the way of its business. The position is succinctly stated in

Spencer Bower on Actionable Defamation at Pp.278-279:

It is obvious that 'reputation' in the sense in which alone it concerns the topic of defamation has relation to the particular person enjoying it. But it must not be forgotten that 'person' for this purpose includes an artificial person; that is to say, it includes both 'a body of persons' and a firm....' That a commercial 'body of persons' has a trading character and can sue in respect of a publication to injure that trading character is now clearly well established.

It may be that the innuendo or the imputation may be directed against an individual connected with the management of the commercial body of persons. But if it is of such nature as to not only defame the individual but also injure the trading character of the commercial body of persons, then both the individual as well as the commercial body will have a cause of action to sue for defamation."

8. In **Wall Street Journal Europe Sprl v. Jameel and Ors.** (2006) UKHL 44, a judgment relied upon by the learned counsel for the plaintiff, one question which arose for consideration of the House of Lords was with respect to the entitlement of a trading corporation to sue for damages. The appellant before the Court, publisher of a Wall Street Journal Europe, published certain articles alleging therein that the Saudi Arabian Monetary Authority, the Kingdom's central bank, was, at the request of US law enforcement agencies, monitoring bank accounts associated with some of the country's most prominent businessmen in a bid to prevent them from being used, wittingly or unwittingly, for the funnelling of funds to terrorist organisations. This information was attributed to U.S. officials and Saudis familiar with the issue.

In the second paragraph a number of companies and individuals were named, among them "the Abdullatif Jamil Group of companies" who, it was stated later in the article, "couldn't be reached for comment".

On consideration of the law on the subject, House of Lords, *inter alia*, observed as under:-

“The authorities cited above clearly establish that a trading corporation is entitled to sue in respect of defamatory matters which can be seen as having a tendency to damage it in the way of its business. Examples are those that go to credit such as might deter banks from lending to it, or to the conditions experienced by its employees, which might impede the recruitment of the best qualified workers, or make people reluctant to deal with it.

17. In *Derbyshire* the correctness of *South Hetton* was not challenged, but acceptance of its correctness was an important step in Lord Keith's reasoning and I find no ambiguity in the proposition he propounded: the authorities clearly establish that a trading corporation is entitled to sue in respect of defamatory matters which can be seen as having a tendency to damage it in the way of its business.

25. There are of course many defamatory things which can be said about individuals (for example, about their sexual proclivities) which could not be said about corporations. But it is not at all hard to think of statements seriously injurious to the general commercial reputation of trading and charitable corporations: that an arms company has routinely bribed officials of foreign governments to secure contracts; that an oil company has wilfully and unnecessarily damaged the

environment; that an international humanitarian agency has wrongfully succumbed to government pressure; that a retailer has knowingly exploited child labour; and so on.”

In Derbyshire County Council v. Times Newspapers Ltd. and Ors. (1993)

AC 534, the plaintiff a local authority, brought an action for damages for libel against the defendant in respect of two articles which questioned the propriety of the investments made for its superannuation fund. The preliminary issue which arose for consideration in the case was as to whether the plaintiff had a cause of action and could sue for libel in respect of its Government and authoritative functions. During the course of the judgment, reference was made to the following view taken in **Metropolitan Saloon Omnibus Co. Ltd. v. Hawkins (1859) 4 H&N** 87:-

“That a corporation at common law can sue in respect of a libel, there is no doubt. It would be monstrous if a corporation could maintain no action for slander of title through which they lost a great deal of money. It could not sue in respect of an imputation of murder, or incest, or adultery, because it could not commit those crimes. Nor could it sue in respect of a charge of corruption, for a corporation cannot be guilty of corruption, although the individuals composing it may. But it would be very odd if a corporation had no means of protecting itself against wrong; and if its property is injured by slander it has no means of redress except by action. Therefore it appears to me clear that a corporation at common law may

maintain an action for a libel by which its property is injured.”

The Court also referred to the following observations made in National

Union of General and Municipal Workers v. Gillian (1946) K.B. 81:-

“Just as a trading company has a trading reputation which it is entitled to protect by bringing an action for defamation, so in my view the plaintiffs as a local government corporation have a ‘governing’ reputation which they are equally entitled to protect in the same way - of course, bearing in mind the vital distinction between defamation of the corporation as such and defamation of its individual officers or members. I entirely accept the statement made in *Gatley on Libel and Slander*, 6th ed. (1967), p. 409, para. 890: ‘A corporation or company cannot maintain an action of libel or slander for any words which reflect, not upon itself, but solely upon its individual officers or members.’ Then there is a quotation: ‘To merely attack or challenge the rectitude of the officers or members of a corporation, and hold them or either of them up to scorn, hatred, contempt, or obloquy for acts done in their official capacity, or which would render them liable to criminal prosecution, does not give the corporation a right of action for libel.’ I stress the words ‘solely’ and ‘merely’ in those passages. The quotation given in *Gatley* there is from a United States case, *Warner v. Ingersoll* (1907) 157 Fed.R. 311”

On consideration of the above-referred decisions, the House of Lords came to the following conclusion:-

“The authorities cited above clearly establish that a trading corporation is entitled to sue in respect

of defamatory matters which can be seen as having a tendency to damage it in the way of its business. Examples are those that go to credit such as might deter banks from lending to it, or to the conditions experienced by its employees, which might impede the recruitment of the best qualified workers, or make people reluctant to deal with it.”

In Shendish Manor Limited v. Coleman (2001) EWCA Civ 913, the respondent was alleged to have made the following defamatory statements:-

“The owner of Shendish Manor, Mr Ralph Thornberry, is a crook and is only in business for a fast buck.”

“That was Rulph Thornberry from Shendish. He is bloody crook and I have to count my fingers to make sure that they are all there after shaking hands with him.”

Damages on account of the above-referred defamatory statements were claimed by the corporation-Shendish Manor owned by Mr Rulph Thornberry. The First Court held that the alleged slanders were not capable of referring to the company and, therefore, action by the company was not maintainable. During the course of appeal, it was contended on behalf of the appellant that the company was just an alter ego of Mr Thornberry and, therefore, the claim of the company should not be struck out. Rejecting the appeal filed by the company, the Court of Appeal, *inter alia*, held as under:-

“37 There can be no doubt that the alleged words about Mr Thornberry would have implications for

the company in that subsequently councillors might have been inclined to look less favourably on planning proposals emanating from it. As Morland J Said in his judgment:

“A Slandorous allegations about the executive chairman of a company may well have an adverse effect on the company, but the company cannot succeed in the claim in slander unless it can establish that the defamatory message, albeit defamatory of its executive chairman, is defamatory of the company. Where, as in this case, the company is not referred to in the words complained of, the company must establish reference.

39. However, for my part, I cannot accept that these express references, as alleged, Mr Thornberry could be taken by an objective, albeit informed, observer as referring to the company. Although he may have been seen as the driving force behind the company, there is no evidence that he was known to own the company or was the majority shareholder. A jury could not, in my judgment, properly conclude that the alleged statements refer to the company. They were not words which, judged objectively, were capable of being understood by the ordinary, sensible person as referring to that corporate body.”

In **Bognor Regis Urban District Council v. Campion** (1972) 2

Q.B. 169, the Court *inter alia* observed as under:-

“Just as a trading company has a trading reputation which it is entitled to protect by bringing an action for defamation, so in my view the plaintiffs as a local government corporation has a “governing” reputation which they are equally entitled to protect in the same way – of course, bearing in mind the vital distinction

between defamation of the corporation as such and defamation of its individual officers or members. I entirely accept the statement made in *Gatley on Libel and Slander*, 6th ed. (1967), p.409, para. 890:

“A corporation or company cannot maintain an action of libel or slander for any words which reflect, not upon itself, but solely upon its individual officers or members.”

Then there is a quotation:

“To merely attack or challenge the rectitude of the officers or members of a corporation, and hold them or either of them up to scorn, hatred, contempt, or obloquy for acts done in their official capacity, or which would render them liable to criminal prosecution, does not give the corporation a right of action for libel.”

9. The proposition of law which emerges from the statement of law enunciated by Salmond and Winfield and the abovereferred decision is that though a corporation has the equal competence to sue for damages on account of its defamation, it would be necessary to distinguish the defamation of Corporation from defamation of its directors and officers. It is only when the target of the defamatory publication is the Corporation and not its officers, and the defamatory statement is calculated to injure the reputation and the business interests of the Corporation, it can sue for damages.

10. The following imputation can be gathered from a perusal of the articles published and the letters sent by the defendants:-

- (i) there was corruption in Uran plant of ONGC since some of its officers, particularly Mr P.K. Borthakur, Executive Director, D.D. Mishra (Deputy General Manager), P.K. Sultania (Deputy General Manager), V.V. Shah (Manager) were in league with the contractors and were indulging in corruption, thereby causing financial loss to ONGC;
- (ii) some of the officers were taking bribe from the contractors engaged by ONGC, on a regular basis;
- (iii) some officers of ONGC were involved in theft of aluminum scrap from its Uran plant;
- (iv) bogus bills were being submitted to ONGC;
- (v) the reserve price of scrap fixed by some officers of the ONGC was lower than the market price;
- (vi) some officers of ONGC had threatened to burn the office of Maryada and cause violence to defendants 2 and 3.

In my view, none of the allegations contained in the articles published and the letters sent by the defendants can be said to be defamatory to the plaintiff as a Corporation, though it can hardly be disputed that they are defamatory to the

officers, named therein, in case they are untrue. I am unable to accept the contention that the allegations contained in these articles and letters have the effect of lowering the business reputation of ONGC as a corporation, nor can I accept the contention that these allegations had the potential to adversely affect the financial and business interest of the plaintiff-company. A person who reads these articles and letters is likely to form an impression that some officers of ONGC were indulging in corruption favouring certain contractors and going to the extent of threatening the journalists who exposed their corruption. But, no one on reading all these articles and letters would consider ONGC, as a Company to be indulging in corruption. The defamation of the officers of a corporation, does not, per se, amount to defamation of the corporation itself. Dishonesty by a Corporation is altogether different from dishonesty by its officers. If a person says that a Company is indulging in corrupt or dishonest practices with the Government Agencies, its business associates, its shareholders or its employees, that would be defamatory to the Company. But, if it is said that its officers/directors are indulging in such practices, qua the Company itself, that will not be a defamation of the Company, which would stand projected as a victim and not as the offender. There may be umpteen cases of defamation of a corporation, i.e., if it is alleged that if a corporation was indulging in illegal activities, deliberately committing breach of labour laws or tax laws intentionally damaging the environment and ecology,

intentionally violating basic human rights, exploiting child labour ,engaged in cyber crimes or theft of information relating to its competitors. However, in the present case, the impression one gets from a reading of the articles and letters written by the defendants is that ONGC was victim of corruption, nepotism and favouritism on the part of some of its officers and those persons were causing financial loss to the company by favouring certain contractors and taking bribe from them. The persons aggrieved from such defamatory statements would be the individuals named in the articles and letters and not the company in which they were working. If it is alleged that some officers of a company had deliberately under-valued the scrap proposed to be sold by it, so as to benefit the contractors and the statement is factually untrue, this would be defamation of the officers against whom the allegation is made and not the company in which they are working. Similarly, if it is alleged that bogus bills were being submitted to ONGC in connivance with its officers, the statement would be defamatory to the contractor submitting the bill and the officers alleged to be in connivance with them and not of ONGC. If it is alleged that some officers of ONGC were receiving bribe from the contractor that, to my mind, cannot be said to be defamatory to the ONGC, though it would certainly be defamatory to the officers alleged to be taking bribe.

Since the articles published and the letters written by the defendants cannot be said to be defamatory to the plaintiff-company, it has no legal right to seek

damages from the defendants. The officers of ONGC named in the articles and letters have not even joined as co-plaintiffs. The suit, therefore, is liable to be dismissed on this ground alone.

11. The learned counsel for the plaintiff has submitted copies of the decisions in Arundhati Roy, in RE (2002) 3 Supreme Court Cases 343, D.C. Saxena(Dr.) v. Hon;ble The Chief Justice of India (1996) 5 SCC 216, Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay (P) Ltd. (1988) 4 SCC 592, R. Rajagopal v. State of T.N. (1994) 6 SCC 632, Rustom K.Karanjia and Anr. v. Krishnaraj M.D. Thackersey and Ors. AIR 1970 Bom. 424 and Pijush Kanti Datta v. Mangila Gidia AIR 1987 Cal. 136. However, none of these judgments are relevant to the issue involved in this case, since they do not deal with the right of a company to seek damages for defamation of its Directors, Officers/employees.

For the reasons stated hereinabove, the suit is hereby dismissed, without any order as to costs. Decree sheet be drawn accordingly.

V.K. JAIN, J

OCTOBER 31, 2012
BG