

M.A.T. 718 of 2020
Saurav Rungta
Vs.
Surajit Kar & Ors.
With
CAN 1 of 2020
With
M.A.T. 719 of 2020
With
M.A.T. 720 of 2020
Bharat Petroleum Corporation Ltd. & Ors.
Vs.
Surajit Kar & Ors.
With
CAN 1 of 2020

For the Appellant in MAT 718 of 2020 : Mr. Anirban Ray, Advocate
& private respondent in M.A.T. 719 : Mr. Saptarshi Kumar Mal, Advocate
of 2020 & M.A.T. 720 of 2020

For the writ petitioner/respondent : Mr. Debabrata Saha Roy, Advocate
Mr. Pingal Bhattacharyya, Advocate
Mr. Neil Basu, Advocate

For the Union of India : Mr. Y.J. Dastoor, Ld. A.S.G.
Mr. Arijit Majumdar, Advocate

For the BPCL in M.A.T. 719 of 2020 & : Mr. Surajit Nath Mitra, Sr. Advocate
M.A.T. 720 of 2020 : Mr. Sanjib Mal, Advocate
Mr. Amit Kumar Nag, Advocate
Mr. M. Roy, Advocate

For the State : Mr. Amitesh Banerjee, Sr. St. Counsel
Ms. Ipsita Banerjee, Advocate

Hearing concluded on : November 5, 2020

Judgment on : November 5, 2020

The Court :-

1. Three appeals along with the connected applications are taken up for hearing as they emanate out of the same writ petition.
2. Two appeals are at the behest of Bharat Petroleum Corporation Limited (BPCL). Two appeals of BPCL are against the order dated October 16, 2020 and October 19, 2020. The other appeal is at the behest of a private respondent of the writ petition and is against the orders dated October 16, 2020 and October 19, 2020.
3. Mr. Surajit Nath Mitra, learned Senior Advocate appearing on behalf of the BPCL draws the attention of the Court to the impugned orders. He submits that, the impugned orders were passed in a writ petition, which was being heard finally by the learned Judge. He submits that, the writ petition was moved on July 24, 2020 when, BPCL raised the issue of maintainability of the writ petition. The issue of maintainability was recorded in the order dated July 24, 2020. No interim order was passed by the learned Judge taking up the writ petition. He draws the attention of the Court to the order dated August 28, 2020 passed in another writ petition being W.P. 5952 (W) of 2020 (Souradip Das vs. Bharat Petroleum Corporation Limited). He submits that, the Division Bench taking up such writ

petition as Public Interest Litigation did not grant any interim order. He points out that, interim order was refused by the Division Bench on the consideration of balance of convenience and the larger interest of a petroleum outlet.

4. Learned Senior Advocate appearing on behalf of the BPCL submits that, the writ petition was heard on October 14, 2020 when, interim order was refused. The writ petition was subsequently heard on October 16, 2020 when, the learned Judge was pleased to restrain selling of any petroleum product from the new outlet. Such interim order was continued by the impugned order dated October 19, 2020. None of the impugned orders did not decide the issue of maintainability of the writ petition prior to passing of the interim orders. He submits that, without deciding the issue of maintainability the learned Judge ought not to have passed any interim order. In support of his contention, he relies upon (2009) 1 SCC 193 (Director General of Police, Central Reserved Police Force, New Delhi and Ors. Vs. P.M. Ramalingam) and (1995) 3 SCC 157 (Bank of Maharashtra vs. Race Shipping & Transport Co. Pvt. Ltd. & Anr.).

5. Learned Senior Advocate appearing on behalf of the BPCL submits that, both the two impugned orders are devoid of any reasons. He submits that, the learned Judge failed to appreciate the fact that Indian Road Congress on which the writ petitioner was relying upon have statutory force. He points out that on October 19, 2020, the learned Judge after having recorded the objections raised on behalf of the BPCL as to the extension of the interim order granted on October 16, 2020 did not decide such objections. According to him, the impugned orders being non-speaking and the learned Judge, not having decided the issue of maintainability of the writ petition, prior to granting interim orders, such interim orders as impugned in the three appeals cannot be sustained.

6. The other appeal is at the behest of the private respondent in the writ petition and is against the orders dated August 16, 2020 and October 19, 2020.

7. Mr. Anirban Ray, learned Advocate appearing on behalf of the appellant in such appeal adopts the arguments advanced on behalf of the BPCL. He relies upon (2010) 3 SCC 732 (Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantriknagrik Samity & Ors.)

and particularly paragraphs 40 and 41 thereof. He submits that, the impugned orders being non-speaking, should be set aside.

8. Mr. Amitesh Banerjee, learned Senior Standing Counsel appearing on behalf of the State submits that, the State adopted the recommendations of the Indian Road Congress.

9. Mr. Debabrata Saha Roy, learned Advocate appearing on behalf of the writ petitioner submits that, BPCL is purporting to establish a petroleum outlet within 300 metres of the existing petroleum retail outlet of the writ petitioner. Such conduct is in gross violation of the Indian Road Congress. The recommendation of the Indian Road Congress have statutory force. They are binding upon BPCL. BPCL was acting in breach of such provisions of Indian Road Congress. Moreover, the petroleum retail outlet of the BPCL which the private respondent in the writ petition is purporting to operate, is within 6.5 metres and 3 metres of a road crossing. The same is also not permissible under the provisions of the Indian Road Congress. There being gross violations of the provisions of the Indian Road Congress, the impugned action of the BPCL in awarding the petroleum retail outlet in favour of the private respondent and allowing such private respondent to operate the same is wrong.

10. Mr. Saha Roy submits that, the fundamental right of the writ petitioner to carry on business is being infringed by the actions of BPCL. In the event, the private respondent is allowed to operate the petroleum retail outlet within 300 metres of an existing petroleum retail outlet of the petitioner, the same will affect the business of the writ petitioner. Given the fact that, the fundamental right of the petitioner stands infringed by the action of the BPCL and that the BPCL authorities are acting in violation of the provisions of the Indian Road Congress, the writ petition is maintainable.

11. Mr. Saha Roy, learned Advocate appearing on behalf of the writ petitioner submits that, the writ petition was initially moved on July 24, 2020 and subsequently, the writ petition was heard on October 14, 2020. On October 14, 2020, interim order was refused on the ground that, the learned Judge wanted to deliver judgment on the writ petition itself, expeditiously. According to him, the writ petition was heard in extenso. The next date of hearing was on October 16, 2020. Extensive submissions were made by the parties before the learned Judge on October 16, 2020. Before recess on October 16, 2020, learned Advocate appearing on behalf of the BPCL submitted before the learned Judge that, the petroleum retail outlet was not in

operation. It was at the conclusion of the hearing that, the learned Advocate for the BPCL submitted that, the retail outlet was running. He draws the attention of the Court to relevant provisions of the Indian Road Congress and submits that, various steps are required to be taken for the purpose of having the retail outlet operational and retail outlet selling petroleum product. He submits that in all likelihood the relevant licences required for operationalisation and selling of petroleum products from a retail outlet were obtained subsequent to October 14, 2020 which prompted the learned Judge to pass the interim order. He draws the attention of the Court to the recording made by the learned Judge in the order dated October 16, 2020. He submits that, the conduct of the learned Advocate for BPCL on October 16, 2020 was recorded by the learned Judge. According to him, the order dated October 16, 2020 when the interim order was being granted for the first time, cannot be said to be a non-speaking order. There are sufficient reasons given by the learned Judge while passing the interim order. Even on October 16, 2020, the learned Judge was of the view that, the judgment could be delivered shortly. Then on October 19, 2020, the learned Judge placed the matter suo motu in the list. On October 19, 2020, the learned Judge wanted the parties to the proceeding to disclose various documents. The learned

Judge issued directions in such regard as recorded in the order dated October 19, 2020. He submits that, the learned Judge extended the interim order granted on October 19, 2020 till December 18, 2020. Again, the learned Judge expected delivery of final judgment expeditiously. According to him, none of the parties in the writ petition will suffer any prejudice if the interim order granted on October 16, 2020 and as continued on October 19, 2020 is allowed to continue till December 18, 2020.

12. Mr. Saha Roy, learned Advocate appearing on behalf of the writ petitioner draws the attention of the Court to the recording of the order dated October 19, 2020 and submits that, BPCL acted upon the order dated October 16, 2020 and that at present the sale of petroleum products at the new petroleum retail outlet is stopped.

13. Mr. Saha Roy, learned Advocate appearing on behalf of the writ petitioner draws the attention of the Court to a sale invoice dated October 16, 2020 and submits that, the private respondent and the oil company started selling the petroleum products at or about 2-00 p.m. of such date when the hearing was continuing before the learned Judge.

14. In reply, Mr. S.N. Mitra, learned Senior Advocate appearing on behalf of the BPCL submits that, the advertisement for the establishing a new retail outlet was published in 2018. The letter of intent in respect of such retail outlet was issued in March 2019. In the event, the pandemic did not intervene, the retail outlet would have been running and functioning before the writ petition being filed in June 2020. He submits that, relevant licences were issued in favour of the new retail outlet since 2018. He draws the attention of the Court to the recording in the order dated October 20, 2020 in the other writ petition as to one of the permission being granted in 2018. He submits that other licences were issued in December 11, 2019 and June 23, 2020.

15. As noted above, three appeals are being considered. The appeals are directed against the orders dated October 16, 2020 and October 19, 2020. The two orders were passed in the writ petition being W.P. No. 5840 (W) of 2020.

16. The writ petitioner claims that, he runs a retail outlet within 300 metres of the new retail outlet. The writ petitioner filed the writ petition seeking recall of an advertisement dated November 25, 2018 and inter alia, a declaration that, the contract awarded in favour of

the private respondent in furtherance to the advertisement dated November 25, 2018 is illegal and should be quashed.

17. BPCL issued an advertisement dated November 25, 2018 proposing to establish a petroleum retail outlet in respect of a specific locale. The private respondent apparently responded to such advertisement and was awarded a contract in respect thereof. The letter of intent was awarded in favour of the private respondent in March 2019. It is the case of the writ petitioner that construction was being conducted at the locale for a considerable period of time. According to the writ petitioner, the locale where the retail outlet exists infringes the provisions of the Indian Road Congress. Such issues are being heard by the learned Judge in *seisin* of the writ petition.

18. The writ petition was initially moved on July 24, 2020 when directions for affidavits were given. The question of maintainability of the writ petition was kept open. From the records, it appears that, the writ petition was considered on October 14, 2020. On such date, an application for interim order was moved. Interim order was refused. The Court is informed that, no appeal was carried by any of the parties against the order dated July 24, 2020 or October 14,

2020. The writ petition was next considered on October 16, 2020 when the learned Judge passed a limited interim order till October 22, 2020 restraining the sale of any petroleum product from the new outlet of the private respondent. The parties were allowed to file their written arguments. The learned Judge expressed the desire to deliver judgment very soon.

19. The writ petition was thereafter placed in the list of October 19, 2020 at the instance of the Court. The learned Judge issued directions upon the parties to file the documents tabulated therein. The learned Judge thereafter directed the interim order passed on October 16, 2020 to continue till December 18, 2020 or until further order whichever was earlier. The learned Judge recorded the objections to the extension of the interim order as raised by the respondents in the writ petition. However, the learned Judge did not deal with the objections so raised at the behest of the respondent opposing the extension of the interim order. In neither the order dated October 16, 2020, nor October 19, 2020, the learned Judge decided the issue of maintainability of the writ petition. In the Director General of Police, Central Reserve Police Force (*supra*), the Supreme Court observed that interim order which virtually meant

allowing the review petition without deciding the question of maintainability of the review petition could not have been passed. It observed that such course is not permissible in law. As noted above in the facts of the present case, the two orders dated October 16, 2020 and October 19, 2020 did not decide the issue of maintainability of the writ petition. Applying the ratio of Director General of Police, Central Reserve Police Force (*supra*) to the facts of the present case, we are constrained to hold that the interim order passed on October 16, 2020 and October 19, 2020 not having decided the issue of maintainability of the writ petition prior to the issuance of the interim orders therein cannot be sustained. The Court could have considered the question of grant of interim order only after returning an affidavit finding on the issue of maintainability of the writ petition.

20. In *Bank of Maharashtra (supra)*, the Supreme Court observed that, since the issue of maintainability raised in the writ petition was yet to be decided, it would be improper for granting any interim order in the writ petition. The Supreme Court went on to observe that the practice of granting interim orders which practically gave the principal relief sought in the writ petition for no better reason than a *prima facie* case being made out without considering the balance of

convenience and the public interest and a host of other considerations should not be followed.

21. In the facts of the present case subsequent to the initial non-grant of interim order in the writ petition on July 24, 2020, the public interest litigation being W.P. No. 5952 (W) of 2020 (Souradip Das vs. Bharat Petroleum Corporation Limited) was passed. There while refusing a prayer for interim order the Division Bench considered the balance of convenience and larger interest of providing petroleum outlet. The public interest litigation was directed against the very same retail outlet which is the subject matter of the writ petition.

22. In the Secretary and Curator, Victoria Memorial Hall (supra), the Supreme Court is of the following view and the same is quoted below with regard to reasons in a judicial order:-

“40. It is a settled legal proposition that not only an administrative but also a judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of an order and exercise of judicial power by a judicial forum is to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of justice-delivery system, to make known that there had been

proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind." (Vide State of Orissa v. Dhaniram Luhar and State of Rajasthan v. Sohan Lal)

41. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum."

23. In the facts of the present case, on October 16, 2020 when the initial interim order was granted, the learned Judge recorded that, His Lordship wanted to know from the learned advocate for BPCL as to the status of the petrol pump and that, His Lordship was informed that, it was not commissioned. However, at the end of the hearing, learned advocate for BPCL submitted that, petroleum products were being sold and that, such sale started from October 16, 2020. There is, however, no discussion as to the balance of convenience, the public interest involved and the impact of the refusal to grant interim

order by the Division Bench in the Public Interest Litigation. The order dated October 19, 2020 does not deal with the objections raised on behalf of BPCL as to the extension of the interim order. None of the two orders return any finding as to whether any prima facie case was for grant of interim order was made out or not. We are constrained to hold that, the two impugned orders to the extent of the order of injunction are non-speaking.

24. Apparently, the writ petitioner knew of the advertisement issued by BPCL. The advertisement is of 2018. The letter of intent is of March, 2019. The private respondent in the writ petition, commenced constructions and such constructions were continuing over a considerable period of time. According to the writ petitioner, the locality is within 300 meters of the retail outlet of the petitioner. Prima facie it appears that, the relevant licenses for operating the petrol pump were available with BPCL and the private respondent from the year 2018 onwards and that the last of the required licenses were issued on June 23, 2020. The writ petition was filed in June, 2020. The writ petitioner was aware of such developments and did not approach the writ Court earlier. The writ petitioner allowed the respondents to invest in the retail outlet. We are unable to appreciate

the reasons for grant of interim order on October 16, 2020 as continued on October 19, 2020 in such circumstances.

25. In view of the discussions above, the order restraining the private respondent and BPCL from operating the new petrol retail outlet as granted on October 16, 2020 and extended on October 19, 2020 are set aside. We clarify that, none of the observations made in this order will prejudice any of the parties in the pending writ petitions in any manner whatsoever. It is clarified that save and except the order of injunction all other portions of the impugned orders shall remain in operation.

26. M.A.T. 718 of 2020 with CAN 1 of 2020 and M.A.T. 719 of 2020, M.A.T. 720 of 2020 with CAN 1 of 2020 are disposed of.

(HIRANMAY BHATTACHARYYA, J.)

(DEBANGSU BASAK, J.)

[DEBANGSU BASAK, J.]