ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)
4 November 1992 *

In Case T-14/89 REV,

Montecatini SpA, previously Montedipe SpA, a company governed by Italian law, established in Milan (Italy), represented by G. Celona and G. Aghina, of the Milan Bar, and by P. Ferrari, of the Rome Bar, with an address for service in Luxembourg at the Chambers of G. Margue, 20 Rue Philippe II,

applicant,

v

Commission of the European Communities, represented by G. Marenco, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of R. Hayder, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

APPLICATION for revision of the judgment delivered by the Court of First Instance on 10 March 1992 (Case T-14/89 *Montedipe* v *Commission* [1992] ECR II-1155),

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of: H. Kirschner, President of the Chamber, C. W. Bellamy, R. Schintgen, R. García-Valdecasas and K. Lenaerts, Judges,

Registrar: H. Jung,

makes the following

* Language of the case: Italian.

Order

1 By application lodged at the Registry of the Court of First Instance on 11 June 1992, Montecatini SpA (hereinafter 'Monte') sought, pursuant to Article 41 of the Protocol on the Statute of the Court of Justice of the EEC (hereinafter 'the Statute of the Court') and Article 125 of the Rules of Procedure of the Court of First Instance (hereinafter 'the Rules of Procedure'), revision of the judgment delivered by the Court of First Instance on 10 March 1992 in Case T-14/89 *Montedipe* v *Commission* [1992] ECR II-1155 (hereinafter 'the judgment of 10 March 1992').

2 By that judgment the Court of First Instance dismissed the application by Monte for annulment of the Commission Decision of 23 April 1986 relating to a proceeding under Article 85 of the EEC Treaty (IV/31.149 — Polypropylene, OJ 1986 L 230, p. 1).

3 The applicant claims that the Court of First Instance should:

(1) declare the application admissible and consider the substance of the case;

(2) by way of preparatory inquiry, order the Commission to produce the records relating to the adoption of the Decision of 23 April 1986 and the decision itself adopted on that date in relation to Monte;

(3) as regards the substance, uphold the application for revision, revise the contested judgment by declaring the Decision of 23 April 1986 non-existent as regards Montedipe SpA and, therefore, declare the latter's application for its annulment inadmissible;

(4) order the Commission to pay the costs.

4 The defendant contends that the Court of First Instance should:

(1) declare the application for revision of the judgment of 10 March 1992 in Case T-14/89 *Montedipe* v *Commission* inadmissible on the ground that it does not specify the new fact on which it is based and in any event because there is nothing new about the alleged fact;

(2) order the applicant to pay the costs.

5 In support of its application, Monte states that it became aware, from the *Financial Times* of 28 February 1992 and the *Corriere della Sera* of 29 February 1992, of the reactions prompted within the Commission by the judgment of 27 February 1992 in Joined Cases T-79/89, 84/89, 85/89, 86/89, 89/89, 91/89, 92/89, 94/89, 96/89, 98/89, 102/89 and 104/89 *BASF and Others* v *Commission* [1992] ECR II-315 (hereinafter 'the PVC judgment'). Certain statements by the Commission raised the fear that the practice criticized in the abovementioned judgment by the Court of First Instance had been extensively engaged in by the Commission, in particular in competition matters, thus affecting not only the adoption of the decisions in the PVC and LDPE cases but also several other decisions adopted by the Commission, such as that with which the judgment of 10 March 1992 was concerned. That practice consisted in treating decisions whose text was as yet incomplete, or which were still liable to be amended, or even were not yet available in all the languages in which they were binding, as having been 'adopted' by the Commissioners collectively.

6 Monte claims that those statements by the Commission, reproduced in various press reports, constitute a new fact as a result of which it has standing to apply for revision of the judgment of 10 March 1992.

7 The Commission raises an objection of inadmissibility against Monte's application for revision. It points out that, pursuant to the first paragraph of Article 41 of the Statute of the Court, revision of a judgment may be sought only on discovery of a new fact which is of such a nature as to be a decisive factor and which, before

judgment was delivered, was unknown to the Court and to the party seeking revision.

8 According to the Commission, the applicant claims that its application is based on statements made by the Commission, as reported in newspapers on and after 28 February 1992. It observes that Monte, far from claiming that that fact was unknown to the Court of First Instance and to itself before judgment was delivered, Monte explains that, before delivery of the judgment, it applied, following those statements, for the oral procedure to be re-opened and that the Court of First Instance rejected that request in its judgment. The Commission concludes that, in the absence of any new fact, the application for revision must be declared inadmissible.

9 In considering the admissibility of this application, it should be borne in mind that pursuant to the first paragraph of Article 41 of the Statute of the Court of Justice, which applies to proceedings before the Court of First Instance by virtue of the first paragraph of Article 46 thereof,

'An application for revision of a judgment may be made to the Court only on discovery of a fact which is of such a nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming revision.'

10 It is apparent from that provision that revision is not an appeal procedure but an exceptional review procedure that allows an applicant to call in question the authority of *res judicata* attaching to a final judgment on the basis of the findings of fact relied upon by the Court. Revision presupposes the discovery of elements of a factual nature which existed prior to the judgment and which were unknown at that time to the Court which delivered it as well as to the party applying for revision and which, had the Court been able to take them into consideration, could have led it to a different determination of the proceedings (see most recently the order of the Court of Justice in Case C-185/90 P-REV *Gill* v *Commission* [1992] ECR I-993 and the order of the Court of First Instance in Case T-4/89 REV *BASF* v *Commission* [1992] ECR II-1591).

11 In this case, the Court finds, first, that the only fact relied on by the applicant in support of its application consists of the Commission's statements reported in the press on 28 and 29 February 1992 and, secondly, that the applicant relied on that same fact in support of its request that the oral procedure be re-opened, which it submitted to the Court of First Instance on 6 March 1992, that is to say before delivery of the judgment of 10 March 1992 which it seeks to have revised and against which it has lodged an appeal before the Court of Justice.

12 As a result, not only was the fact relied on by the applicant already known to it and to the Court before delivery of the judgment but also the Court of First Instance stated in paragraphs 389 to 391 of its judgment the reasons for which that fact did not justify re-opening the oral procedure.

13 It follows from the foregoing that the fact relied on by the applicant cannot in any circumstances constitute, for the purposes of the first paragraph of Article 41 of the Statute of the Court of Justice, a fact unknown to the applicant and to the Court of First Instance before delivery of the judgment of 10 March 1992 and therefore cannot give rise to revision of the judgment.

Costs

14 Under Article 87(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful and the Commission has applied for costs, the applicant must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

1. The application for revision is dismissed as inadmissible.

2. The applicant is ordered to pay the costs.

Luxembourg, 4 November 1992

H. Jung — Registrar

H. Kirschner — President