(2014) 08 AP CK 0086

In the Andhra Pradesh High Court

Case No : Writ Petition No. 32775 of 2013

A.P. Kerosene APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 14-08-2014

Acts Referred:
Constitution of India, 1950 — Article 12, 14, 19(1)(g), 21

Citation : (2015) 2 ALD 699

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : C.V. Mohan Reddy, Senior Counsel for N. Chandrasekhar, Advocate for the Appellant; K. Mani Deepti, Deepak Bhattacharjee, M. Ravindranath Reddy and O. Manohar Reddy, Advocate for the Respondent

Final Decision : Dismissed

Judgement

P. Naveen Rao, J.—Petitioner herein is registered society representing wholesale Superior Kerosene Dealers (SKO) in the state of A.P. (undivided). In this writ petition, petitioner challenges various clauses in notification issued by Bharat Petroleum Corporation (BPCL), Hindustan Petroleum Corporation Limited (HPCL), Indian Oil Corporation Limited (IOCL) published in the daily newspapers on 15.9.2013 calling for applications for appointment as LPG distributors in the entire state of Andhra Pradesh (Undivided) imposing certain requirements to be complied by SKO. The notification calls for applications for enlistment as distributors at 497 locations. The procedure for selection, principle of reservation, eligibility criteria are all governed by the brochure of guidelines for selection on regular LPG distributors brought about by three oil companies in May, 2013. Clause 2 of the brochure deals with reservation to various categories. Clause 3 deals with arrangement of the reservation slots according to 200 point roster. Clause 5 deals with mode of selection. Clause 6 deals with eligibility criteria for new applicants. Clause 6.1 deals with common eligibility criteria for individual applicants, which include educational qualifications, age etc. Clause 6.2

prescribes specific eligibility criteria for different categories applying as individual. Clause 6.2.1 (c) deals with Other Backward Classes (OBC). Clause 6.2.2 (a) deals with Government and public sector undertaking units. Clause 6.2.3 deals with specific eligibility criteria for existing SKO dealers of OMCs. Clause 9 deals with procedure for drawl of lots. Clause 11.5 deals with spouse as co-owner. SKO Dealers are only provided relaxation in age and educational qualifications, but are required to compete with open category in all other respects. Petitioner asserts that members of the petitioner federation should be given dealerships as a matter of course without subjecting them to compete with others.

2. Heard Sri C.V.Mohan Reddy, Senior counsel for Sri Nizampur Chandrasekhar, Smt K.Mani Deepti, counsel for respondent No. 1, Sri Deepak Bhattacharjee, counsel for respondents 2 and 5, Sri M.Ravindranath Reddy, counsel for respondents 3 and 6 and Sri O.manoher Reddy, counsel for respondents 4 and 7.

3. Learned senior counsel Sri C V Mohan Reddy contended that SKO dealers are persons belonging to weaker sections of the society and were appointed as a welfare measure. Initially consumption of kerosene was high. A dealer used to sell 250 Kilo Litres of kerosene per month. Gradually sales have come down. By the year 2003, it was reduced to 200 Kilo Litres; by the year 2010 it further reduced to 100 Kilo Litres and now it is approximately 60 Kilo litres. The reason for reduction of consumption is mainly because of penetration of use of LPG due to combined efforts made by the Government and the respondent companies and the change of preferences by the households.

4. In the year 2010, Government formulated new LPG policy. The policy envisaged spread of availability of LPG to remotest areas also and locations where the population is less than 5 lakh by the year 2015. This push encouraged people living in villages to opt to LPG. Thus, on account of increase in LPG connections, the consumption of kerosene is reduced drastically. Soon after the new policy was evolved, the petitioner association has represented for provision of LPG distributorships to all those SKO dealers over a period of time.

Continuous representations and persuasions resulted in notification of an order on 12.6.2012. Though the petitioner association elated on the said decision of the Government of India, but on closer examination of the document, petitioner society realised that it resulted in greater disappointment. The Government order only enables SKO dealers to participate in the dealership selection along with others with certain concessions like age and educational qualifications, where as the demand made by the petitioner was to provide LPG distribution ships as a matter of course in the form of reservation and not for limited relaxations.

5. Learned senior counsel therefore attacks the Government of India decision dated 12.6.2012 on the ground that it is discriminatory, inasmuch as an under-privileged SKO dealer cannot compete with all other applicants who are financially sound. Their financial position does not enable them to apply for the

LPG dealership. They have been eking out their livelihood on the sale proceeds of kerosene and they do not have huge savings to compete with others. He thus submitted that permanently the SKO dealers are shut out from obtaining LPG distributorship, which is emerging as main source of cooking medium and totally eliminating the consumption of kerosene. On account of policy of encouraging wider usage of LPG as means of cooking fuel, there is drastic reduction of kerosene, taking away the livelihood of SKO dealers offending their right to life as guaranteed by Article 21 of the Constitution of India. Petitioners are deprived of proper living/honourable living. Learned senior counsel, therefore contended that the relevant clauses of brochure are unconstitutional and therefore liable to be set aside and mandamus be issued to the respondent companies to provide exclusive reservation to SKO dealers.

6. Learned senior counsel contended that even in policy decisions, judicial review is available. The decision impugned in the writ petition is offending the constitutional mandate of equality as enshrined in Article 14 of the Constitution of India. The policy document treats unequal as equals, which is anti thesis to mandate of Article 14 of the Constitution of India and on that ground it is liable to be set aside.

7. Learned senior counsel relied on the following decisions:

(i) Madhavi Amma Bhawani Amma and others vs. Kunjikutty Pillai Meenakshi Pillai and others for the proposition that earlier litigation does not operate as res judicata.

(ii) Secretary, Cannanore District Muslim Educational Association, Kanpur vs. State of Kerala and others for the proposition that writ of mandamus should remain flexible to meet the requirements of variable circumstance. Mandamus is a very wide remedy which must be easily available to reach injustice wherever it is found. Technicalities should not come in the way of granting that relief under Article 2267.

(iii) Union of India (UOI) and Ors. Vs. Nitdip Textile Processors Pvt. Ltd. And another, for the proposition of reasonable classification.

8. Learned standing counsel Sri Ravindranath Reddy contended that the SKO dealership is governed by contract. Clause 1 (A), 2 (5), 22 and 29 are the relevant clauses which mitigate against the claim of petitioner. The terms of contract enable the respondent companies to terminate the dealership. It also provide for arbitration clause (clause 29) and the arbitration clause is very wide and any dispute can be referred to an arbitrator. If the members of petitioner have grievance regarding the allotment of distribution ship or reduction of sales of kerosene, they can invoke the arbitration clause but claim made by the petitioner in this writ petition is not maintainable. The relationship between SKO dealer and respondent companies is governed by non statutory contract and the contract imposes no obligation to provide LPG distribution ship.

9. Learned standing counsel further contended that in the meeting held by the respondent companies and the Minister for Petroleum and Natural Gases on 26.6.2009, it was resolved to improve the facilities and supply of LPG. It was also resolved to provide better services and ensure more penetration of use of LPG and as a consequence to above decision vision document was brought out. Vision 2015 envisages larger penetration of LPG distribution to rural areas. The SKO dealers imposed obstructions by resorting to litigation. On 2.3.2012 meeting was held with All India Association of SKO dealers. In the said meeting the association has accepted 75 KL as criteria for the purpose of consideration to provide LPG distribution ship. The association having accepted the same, it is not open to the Kerosene dealers to insist reservation as a matter of course. In the further meeting held on 11.4.2012, the Government directed the oil companies to frame guidelines for providing openings to SKO dealers to become LPG dealers. Accordingly, policy is formulated by the oil companies which were approved by the Government of India on 30.7.2012. Learned standing counsel therefore submitted that it was not a unilateral decision taken by the respondent companies; the issue was discussed and deliberated at various levels and ultimately the oil companies came forward with special concessions to SKO dealers.

10. Learned standing counsel further contended that what are the requirements to be fulfilled by a person to qualify as a dealer and method of selection is exclusive privilege of the employer and no mandamus can be sought to apply a particular qualification or not to insist a qualification and not subject a person to selection process.

11. Learned standing counsel further contended that exclusive privilege of providing LPG Dealership as a matter of course sought by the petitioner cannot be granted. It would amount to granting undue favour to SKO dealers and would invite further litigation. It will find foul of mandate of Article 14 of the Constitution of India.

12. He further contended that no right is vested in SKO dealers to insist for provision of reservation. No such plea can be raised and the principle of law is well settled that no person can ask as a matter of right, provision of reservation. More particularly in matters concerning State larges principle applicable and preferences are entirely governed by the economic viability criteria. Unless SKO dealer has financial capacity to establish a godown and office, he cannot run the dealership. He must own/obtain lease of land to establish godown or a ready premises. These essential requirements cannot be relaxed. If dealership is not properly established and operated, subscribers would suffer.

13. In support of his contention that petitioner cannot seek exclusive privilege of allotment of LPG Dealership to its members and prescription of certain qualifications to obtain LPG dealership does not offend Articled 19(1)(g) of the Constitution of India, learned standing counsel placed reliance on the decision of Supreme Court in Harman Singh Vs. Regional Transport Authority, Calcutta. The

said matter was concerning operation of the taxis in Kolkata. Different tariff slabs were prescribed to different classes of taxis. Bigger taxi owners with higher tariff slab questioned grant of licence to smaller taxis and lower tariff. Supreme Court repelled the allegation of offending Article 19(1)(g) and upheld the classification brought about as reasonable and valid.

14. The point that arises for consideration is, can SKO dealers insist to provide them LPG distributorship as a matter of course without subjecting them to any selection process?

15. Faced with bleak prospects in view of the reduced consumption of kerosene and higher growth in usage of LPG, the SKO dealers intended to migrate to LPG distributorship. Even though certain relaxations in the eligibility criteria, i.e., age and educational qualifications and liberty to apply for LPG distributorship while retaining SKO dealership already granted, the SKO dealers want exclusive reservation and a matter of course allotment of LPG Dealership.

16. Any dealership is a business proposition and the business proposition always depends on the market dynamics. Once upon a time kerosene was in heavy demand as other means of cooking was not easily available, such as, LPG gas, electricity, solar energy etc. It was also used to burn lanterns. Advent of electric energy reduced use of kerosene in the domestic front. Today plenty of LPG is available and, therefore, the oil companies are encouraging the consumers to use LPG as medium of cooking. It is intended to ensure reduction of dependence on wood, coal and kerosene. It cannot be said with certainty that LPG remains the cooking medium for ever. Advent of other cheaper and better means of cooking in future cannot be ruled out. Thus an LPG dealer today may make good profits, but that the profits cannot be assured always. Furthermore, the earning capacity of LPG dealer depends on various factors such as nature of service provided, proximity, the efficiency of competitor etc. If the consumer is not satisfied with the kind of service provided by a dealer, it is now open to him to shift to any other dealer.

17. Members of petitioner association are existing dealers in kerosene and the said dealership is governed by contract entered into by them with the oil companies. Their continuation as a dealer in kerosene is in accordance with the terms of the said agreement. Their relationship with the respondent companies as existing dealer in kerosene is no way affected by the present notification. The premise on which exclusive privilege is sought is based is on the assumption that once dealership is granted to them, it is for the oil companies to protect the economic interest of the dealer irrespective of the viability of the dealer and in case dealership is not viable for any reason, the oil companies obligated to provide them alternative means of earnings.

18. The guidelines formulated by the oil companies prescribed various qualifications to be possessed by the individuals applying for LPG dealership. These guidelines were formulated on analysing the market requirements of a

dealer vis-?-vis, the interests of consumers. The oil companies are concerned about providing a dealer who is available in the vicinity of the consumer, supplies on time the refilled cylinders and provides better service. To meet the requirements of consumer it is mandatory for a prospective dealer to provide godown facilities where the cylinders can be stored, location of office proximity to consumers in the locality where consumer can come and register for supply of refilled cylinder or any other requirements with reference to use of LPG with ease and convenience. However, in recognition of special needs of SKO dealers certain basic concessions were extended to them.

19. What are the requirements to be fulfilled by the prospective applicant is a question of policy formulated by the employer. The respondent Oil companies are the best judges to decide the norms for establishing a dealership, based on their business policy choices and on analysis of market requirements. As long as there are certain set norms and the norms are uniformly applied to all the persons, the interference of the writ Court with reference to the eligibility criteria for grant of dealership is limited.

20. Petitioner cannot ask to issue a mandamus to relax these essential requirements. It cannot be said that not providing exclusive reservation to SKO dealers is arbitrary and discriminatory. On the contrary, granting such reservation exclusively to SKO dealers to the complete exclusion of the open market candidates would attract the wrath of Article 14.

21. It is well settled principle of law that Article 19(1)(g) does not extend to compel the State or its instrumentalities to do business with a person on his terms. Thus, it cannot be said that the policy formulated by the oil companies is erroneous. It cannot be said that the right flowing out of Article 19(1)(g) and the right to decent living as mandated by Article 21 is affected on account of increase in use of LPG and reduction in the consumption of kerosene. There is no restraint on the individual from carrying on any other business or avocation and is not prevented from applying to LPG distributorship like any other person. Thus, reduction of consumption of kerosene cannot be a ground to demand provision of LPG dealership.

22. At the time of granting SKO dealership, the dealer and the oil company have entered into an agreement. The dealership agreement defines the relationship between two contracting parties. It does not envisage a promise of compulsory minimum sale and assured income to dealer nor does it envisage prospect of future priority allotment of LPG dealership. The impugned notification does not alter the terms of agreement members of petitioner association have entered into with the respondent oil companies. In matters where relationship is governed by contract such relationship has to be regulated strictly in terms thereof and request of the petitioner would amount to expanding the scope of contract by way of mandamus, which is not permissible.

23. No right, much less a legal right was vested in the members of the petitioner

association and same is impeded by the impugned notification. On the contrary conceding their demand would have amounted to conferring exclusive privilege to them in the form of absolute reservation and the same would abhor the mandate of Article 14 of the Constitution of India.

24. In Andhra Pradesh LPG Dealers Association Vs. Union of India (UOI) Rep. by its Secretary, Ministry of Petroleum and Natural Gases and Others, the Association challenged the notification calling for fresh enrolment of dealers. Division bench o this Court held as under, which observations would equally apply to the facts of this case, though the claim is slightly different: There is another aspect of the matter which is also relevant in considering whether the petitioners can be heard to canvass the correctness of the respondents-Oil Companies decision the identification of new locations for grant of distributorships. The claims in the writ petitions underscore an assumption that the economic interests of existing distributors is the exclusive obligation of the respondents-Oil Companies. Such assumption is fundamentally flawed. As pointed out by the respondents-Public Sector Oil Companies and even in the context of the current constraints to the availability, LPG continues to be an essential and scarce commodity. The primary social obligation of the respondents-Public Sector Oil Companies (which are State within the meaning of Article 12 of the Constitution of India) is to ensure equitable, timely and efficient supply of this basic commodity, to the consumers. The economic benefits derived by the petitioners-distributors is a mere corollary an ancillary consequence of the respondent-public sector Oil Companies discharging the fundamental and primary social obligation, of ensuring efficient, timely and adequate supply of the essential commodity LPG, to the consumers. Where the Oil Companies generate a novated policy for establishment of new distributorships for enabling efficient supply of LPG to the consumers, such legitimate policy choice must prevail over any incidental or collateral prejudice that the petitioners might suffer. In any event, the only demonstrable if potential grievance of the petitioners is a measure of competition. Such impact even if there be is marginal must be subordinated to the larger public concerns which are catered to by the establishment of new distributorships, qua the impugned notification.

25. Petitioner has not made out a case to issue mandamus to provide existing SKO dealers direct dealership in the form of exclusive reservation to the complete exclusion of open market competition and as a matter of course. Sufficient leverage is already provided to the SKO dealers and no further relaxation or exclusive reservation can be insisted as a matter of right as no such right vested in them and writ court cannot issue mandamus directing the respondent oil companies to provide exclusive reservation. Hence, the writ petition is dismissed. There shall be no order as to costs. Miscellaneous petitions if any pending in this writ petition shall stand closed.

