
(2003) 06 AP CK 0030

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25365 of 2002

B.V.V.S.S. Narayana

APPELLANT

Vs

State Level Co-ordinator for Petroleum Products and Others

RESPONDENT

Date of Decision : 24-06-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 5 ALD 28

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : N.V. Raghava Reddy, for the Appellant; Deepak Bhattacharjee, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, J.—This Writ Petition is filed seeking a declaration that the notification issued by the 2nd respondent in Eenadu daily newspaper dated 29-5-2002 is arbitrary and illegal and in violation of the norms of the Oil Companies and for consequential directions.

2. The petitioner claims to be the dealer of Hindustan Petroleum Corporation Limited for retail sale of Motor Spirit as well as High Speed Diesel at Yanam. He states that in addition to the retail outlet, there are two more retail outlets belonging to Bhgarat Petroleum Corporation Limited and Hindustan Petroleum Corporation Limited. It is also stated by the petitioner that the Central Government has stipulated several modalities for proper functioning and distribution of Petroleum products of the four oil companies so as to see that all the four Oil Companies distributes petroleum products evenly. The petitioner states that as per the norms issued, apart from maintaining distance from one retail outlet to the other, prescription has also been made with regard to the consumption in a retail outlet. It is pleaded that under the guidelines no outlet shall be opened within 5 KMs., unless the average combined M.S. 6 H.S.D. throughout exceeds 80 K.L. per month. It is the case of the petitioner that his

outlet and the two other retail outlets are situated almost adjacent to each other and the sales of none of the outlets exceed 80 K.L. per month. It is also pleaded that the total area of Yanam itself is less than 5 KMs. The grievance of the petitioner is that the 2nd respondent, without conducting any exercise in accordance with the norms, has issued notification, which was published in Eenadu daily newspaper dated 29-5-2002 inviting offers from interested landowners for acquiring open land on sale or lease basis for establishment of Petroleum Retail Outlet. The contention of the petitioner is that the said action of the 2nd respondent for locating another outlet at Yanam is arbitrary and illegal and in violation of the norms prescribed by the Government.

3. On behalf of the 2nd respondent a detailed counter-affidavit has been filed. In the counter-affidavit it is stated that the petitioner is only a rival trader and has no locus standi to maintain the writ petition. The contention of the writ petitioner that the sales of the existing outlets do, not exceed 80 KL per month is denied and it is stated that as per the prevailing practice the marketing data is exchanged by the four oil companies periodically and the State Level Co-ordinator is also provided with the marketing data and it shows that from 1-4-2002 to 30-11-2002 the petitioner alone has done business to a tune of 406 KL per month. It is further stated that the proposed retail outlet is strictly in accordance with the guidelines. It is contended that the marketing guidelines issued for the benefit of the oil industry by the Government of India do not have any statutory force and therefore, the writ petition is not maintainable on that ground also.

4. I have heard both the learned Counsel for the petitioner as well as the learned Counsel appearing for the 2nd respondent.

5. It is pertinent to note that the entire case of the petitioner is based on the guidelines under which it is claimed that there is a prescription that a distance of 5 KMs should be maintained between two retail outlets. As rightly contended by the learned Counsel for the 2nd respondent, the said guidelines issued by the Government of India do not have any statutory force and do not confer any legal right on the petitioner to enforce the same.

6. The learned Counsel for the 2nd respondent has brought to my notice that an identical question has already been considered by this Court in Writ Petition No. 21384 of 1999, dated 15-11-1999. The petitioner therein also placed reliance upon the very same guidelines and sought for a declaration that the action of the respondents therein in proposing to set up a retail outlet within 300 metres from the retail outlet of the petitioner is arbitrary and illegal. This Court having considered the purport of the guidelines held as under:

"All the prescriptions is para 4 of R.I's in instructions dated 27-7-1999 are thus in the nature of guidelines one or all or any of which could guide the discretion of the authority and ought to be considered by him having regard to the overall objective for which these guidelines have been prescribed within the frame work

of the objectives set out in para 3, viz., ensuing a smooth flow of traffic and safety. No one of these prescriptions shall provide an insular norm, for invalidating the exercise of discretion by the licensing authority. The licensing authority can in the plenitude of its discretion consider these prescriptions fairly and rationally. No writ under Article 226 of the Constitution can issue directing exercise of such discretion conferred on the licensing authority in a particular manner. Such an exercise would be outside the ambit of Article 226."

7. It is to be noted that the Apex Court in J.R. Raghupathy and Others Vs. State of A.P. and Others, , has considered the issue in detail and held that the guidelines are nothing more than administrative instructions not having any statutory force which do not give rise to any legal right and are not enforceable in a Court of law.

8. In the circumstances, I am of the view that the petitioner cannot be granted any relief on the basis of the guidelines, which do not have any statutory force.

9. I also find force in the contention of the learned Counsel for the respondent that the writ petition is premature since under the impugned notice, the 2nd respondent is only proposing to acquire the land and no licence, as such has been granted by the licensing authority. Viewed from any angle the writ petition is devoid of any merit.

10. Accordingly the writ petition is dismissed. It is needless to mention that the interim order granted by this Court in WP MP No. 32028 of 2002 dated 24-12-2002 stands vacated. No costs.