

(2003) 08 AP CK 0032
In the Andhra Pradesh High Court
Case No : Writ Petition No. 190 of 2003

B.V.V.S.S. Narayana

APPELLANT

Vs

State Level Co-ordinator for Petroleum Products

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 ALT 402

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : V.V.N. Narayana Rao, for the Appellant; P.V. Sanjay Kumar, S.C., for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner was appointed as a dealer of Hindustan Petroleum Corporation Ltd., (HPCL) (not a party to the writ petition). By reason of the same, he is permitted to sell in retail motor spirit (petrol and high speed diesel). He has been in the business in Yanam in Pondicherry for the last seven years. On 14-10-2002, Indian Oil Corporation Ltd., (IOC,) Visakhapatnam invited bids in sealed covers for providing land to IOC on lease for a period of thirty years at various places including at Yanam. The bids have to be submitted to the second respondent at Visakhapatnam. Aggrieved by the same, the petitioner filed the writ petition seeking a declaration that the action of the IOC in issuing notification inviting sealed tenders for offering land on lease for establishing petroleum outlet is illegal and arbitrary. His main contention is that Yanam is a small place where there are already adequate number of petroleum outlets of various companies and that if another outlet is licensed in Yanam, the same would be detrimental to his business as a dealer of HPCL. He also apprehends that oil companies have prescribed sales targets to be achieved by various petroleum dealers and if targets are not reached, it would result in cancellation of the dealership. It is his further contention that the notification issued by IOC is

contrary to the guidelines issued by various oil companies for providing petroleum outlets as well as the norms prescribed by the Central Government.

2. The matter was admitted on 9-1 -2003. As the second respondent has filed a counter affidavit, the writ petition was heard at interlocutory stage and is being finally disposed of with the consent of the learned counsel for the petitioner and the learned Standing Counsel for IOC.

3. The counter affidavit filed by the Manager (Retail) of IOC, Visakhapatnam on behalf of the second respondent reveals the following. Yanam District is part of Pondicherry Union Territory. Therefore, High Court of A.P. has no territorial jurisdiction to entertain the writ petition. The volume/ distance norms relied on by the petitioner are non-statutory in nature, and they cannot be enforced in a writ petition under Art. 226 of the Constitution of India. Further, the norms also ceased to have application after 1-4-2002 when petroleum industry was deregulated. The allegation that the sales of petrol and diesel in his petroleum outlet do not exceed 80 K.ltrs. per month is not correct. From April to December 2202, the petitioner sold 884 K.ltrs. of motor spirit and 291 K.ltrs. of diesel and he has monthly average sales of 247 K.ltrs. The other two outlets also recorded monthly average sales of 219 K.ltrs. and 314 K.ltrs. In Yanam, on an average 800 K.ltrs. of petroleum products are being sold. Even as per the norms, if the combined sales are about 80 K.ltrs. it is permissible for petroleum companies to open new outlets. Taking into account the market potentiality in Yanam, the impugned notification was issued for establishing a retail outlet.

4. It is also stated in the counter affidavit that the petitioner being a business rival is trying to prevent opening of new petrol pumps at Yanam. Earlier he filed W.P.No. 12085 of 1996 before the High Court of Judicature at Madras challenging the opening of retail outlet at Yanam by BPCL. The said writ petition was dismissed on 27-1-2003 as not pressed. Having failed to stall opening of a retail outlet by BPCL., the petitioner now approached this Court when IOC has received No Objection Certificate from the district officials for establishment of outlet and IOC is in the process of setting up a new outlet. So far, no dealer has been identified. As dealer selection boards have been disbanded, there is no possibility of appointing fresh petroleum dealers. The company is, therefore, proposing to operate a retail outlet of the company as "company owned company operated outlet" (COCO).

5. Learned counsel for the petitioner, Sri V.V.N. Narayana Rao, submits that as all the intending bidders are required to submit sealed offers/tenders to the second respondent or the Senior Divisional Manager, IOC at Himayath Nagar Hyderabad, and the process of finalizing the tenders is done is the territorial jurisdiction of this Court, the writ petition is maintainable before this Court, he would submit that even according to the norms of oil companies, while opening new outlets, they have to follow the volume/distance regulations. As Yanam is 5 k.m. in length with a population of about 25.000/- there is no necessity to establish as new outlet.

6. Learned Standing Counsel for IOC, Sri P.V.Sanjay Kumar, placed reliance on three un-reported judgments of this Court in *R. Krishnan v. Indian Oil Corporation* W.P. No. 3093 of 1996, dt. 8-7-1998, *P. Jagannatham v. District Collector, Kurnool* W.P. No. 21384 of 1999, dt. 15-11-1999 and *Padmavathi Filling Station v. Indian Oil Corporation* W.P. No. 5959 of 1998, dt. 22-12-2000. in support of this contention that existing dealers of petroleum cannot challenge the action of the oil companies to establish a new outlet. He, however, does not dispute that this Court has territorial jurisdiction and, therefore, it is not necessary to decide the issue of jurisdiction. However, be it mentioned that by reason of Clause (2) of Article 226 of the Constitution of India even if part of cause of action arises in its jurisdiction, this Court has territorial jurisdiction to entertain the writ petition. The notification was published in EENADU newspaper all over Andhra Pradesh. The tenders/bids in relation to Yanam outlet have to be submitted to the second respondent within the jurisdiction of this Court where they will be processed. Therefore, this Court has jurisdiction to entertain the matter. A reference may be made to the judgments of the Supreme Court in *Aligarh Muslim University v. Vinay Engineering Enterprises Ltd.*, (1994) 4 SCC 710 . and *Oil and Natural Gas Commission Vs. Utpal Kumar Basu and Others*, In *Aligarh Muslim University v. Vinay Engineering Enterprises Ltd.*, (1994) 4 SCC 710 . it was held:

We are surprised, not a little, that the High Court of Calcutta should have exercised jurisdiction in a case where it had absolutely no jurisdiction. The contracts in question were executed at Aligarh, the construction work was to be carried out at Aligarh, even the contracts provided that in the event of dispute the Aligarh Court alone will have jurisdiction. The arbitrator was from Aligarh and was to function there. Merely because the respondent was a Calcutta-based firm, the High Court of Calcutta seems to have exercised jurisdiction where it had none by adopting a queer line of reasoning. We are constrained to say that this is a case of abuse of jurisdiction and we feel that the respondent deliberately moved the Calcutta High Court ignoring the fact that no part of the cause of action had arisen within the jurisdiction of that Court. It clearly show that the litigation filed in the Calcutta High Court was thoroughly unsustainable.

7. In *Oil and Natural Gas Commission v. Uptal Kumar Basu* (5 supra), while interpreting Article 226 of the Constitution of India, the Supreme Court observed that it depends on the facts averred in the writ petition to decide the question of jurisdiction and if a part of cause of action arises within the jurisdiction of a High Court, it has jurisdiction to entertain the writ petition. It was further observed:

Therefore, in determining the objection of lack of territorial jurisdiction the court must take all the facts pleaded in support of the cause of action into consideration albeit without embarking upon an enquiry as to the correctness or otherwise of the said facts. In other words, the question whether a High Court has territorial jurisdiction to entertain a writ petition must be answered on the basis of the averments made in the petition, the truth or otherwise whereof

being immaterial. To put it differently, the question of territorial jurisdiction must be decided on the facts pleaded in the petition. Therefore, the question whether in the instant case the Calcutta High Court had jurisdiction to entertain and decide the writ petition in question even on the facts alleged must depend upon whether the averments made in paragraphs, 5,7,18,22,26 and 43 are sufficient in law to establish that a part of the cause of action has arisen within the jurisdiction of the Calcutta High Court.

8. The submission of the petitioner's counsel that the petitioner has locus standi to question impugned notification cannot be accepted in view of the three judgments of this Court referred to hereinabove in R. Krishna v. Indian Oil Corporation (1 supra), this Court while referring to Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, and Rajappa Kawati Vs. G. Hanumantha Rao and Others, held that the petitioners therein who sought a declaration that the action of the IOC in issuing notifications calling for applications for award of dealership have no locus standi to file writ petition. In P. Jagannatham v. District Collector, Kurnool (2 supra), this Court repelled the contention that distance norms have been violated holding thus:

..... All the prescriptions in para 4 of R-1's 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 over all objective for which these guidelines have been prescribed within the framework of the objectives set out in para viz., ensuring a smooth flow of traffic and safety. No one of these prescriptions could 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. In fact, the Hon'ble Supreme Court in J.R. Raghupathy and Others Vs. State of A.P. and Others, clearly enunciated the principle that administrative instructions confer no enforceable right.

9. In Pandmavathi Filling Station v. Indian Oil Corporation (3 supra), after referring to the volume/distance norms and the judgment of this Court in R. Krishnan v. Indina Oil Corporation (1 supra) and P. Jagannatham v. District Collector, Kurnool (2 supra), this Court repelled the similar challenge observing thus:

.....It is observed by this Court that even if the respondent-Corporation violated the norms, no writ as such would lie since they are non-statutory in character and are mere guidelines to be observed by the Oil Companies and "do not confer any statutory or legally enforceable rights in favour of the licensees such as the petitioner. Similar is the view taken by this Court in W.P.No. 21384 of 1999, dated 15-11-1999 in which this Court observed "the licensing authority can in the plenitude of its discretion consider the

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."

10. There is yet another reason for not accepting the writ petition. By the impugned notification, IOC required the land for a period of thirty years. Mere obtaining land cannot lead to establishment of petroleum outlet. Be that as it is, in the counter affidavit, it is stated that as the Dealer Selection Boards have been disbanded, IOC itself wants to set up COC outlet. It is not denied by the petitioner. When the company itself wants to set up its own petroleum outlet, nobody can be heard to say that norms and guidelines bind the company also. A public sector undertaking like IOC is required to make business with profits. In that direction, if it takes business decision, the same cannot be termed as unconstitutional. This Court, in exercise of discretion cannot sit over in appeal over the decision of IOC to set up an outlet. The writ petition is misconceived and is accordingly dismissed with costs fixed at Rs. 2,000/-.