(2013) 04 KL CK 0095

In the High Court Of Kerala

Case No : Writ Petition (C) No''s. 24608, 25178, 26602, 26603 of 2011, 1254, 11207, 15978, 16896, 17013, 17014, 18822, 19323, 25034, 25319, 26128, 28486, 28677, 28750, 28778, 28788, 29476, 30663, 30729, 30871 of 2012, 127, 1727, 1836, 1957, 4194, 4196, 7269, 7637 o

Hassan M. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 12-04-2013

Acts Referred:

Citation : (2013) 2 KHC 775

Hon'ble Judges : C.K. Abdul Rahim, J

Bench : Single Bench

Advocate : Alias M. Cherian, for the Appellant; P. Parameswaran Nair, Assistant Solicitor General of India, Shyson P. Manguzha, Government Pleader, C.S. Dias, Standing Counsel, Indian Oil Corpn., P. Gopakumaran Nair, N. K. Subramanian, M.H. Hanil Kumar and M. Gopikrishnan Nambiar, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Abdul Rahim, J.—In all these writ petitions the challenge is against sanctioning of new petroleum outlets by the Oil Marketing Companies (OMC) in a manner causing prejudice to the quantum of sale in the existing outlets situated nearby to the proposed sites. In some of the cases notifications calling for allotment and consequent steps taken by the OMCs are under challenge. In some other cases challenge is against grant of NOC by the District Collectors under Rule 144 of the Petroleum Rules, 2002. Grounds raised are many folded. In most of the cases it is contested that the OMCs have published notifications inviting applications for allotment of new outlets without conducting any study about the feasibility or necessity for new outlets in the area in question. It is also contended that the decision to have new outlets in such areas are taken without compliance of the guidelines and circulars issued by Government of India. In some other cases contentions are that, the existing outlets of the petitioners were allotted under reserved categories for Scheduled Castes and Scheduled

Tribes and in such cases the allotment of outlets were made on the basis of priority. Oil Marketing Companies are at an obligation to ensure minimum targeted sale in such cases and no new outlets can be allotted in detrimental to the business interests of such persons. In some of the cases it is also contended that while issuing NOCs, the District Collectors have not considered compliance of different criteria stipulated in the circulars and therefore there are violations of the statutory provisions. Identical issue came up for consideration in a batch of writ petitions disposed of by this Court through a common judgment, reported as Mary Ulahannan Vs. Union of India and Others, In those cases the allegation was that the NOCs were granted in violation of the circular issued by the State Government prescribing norms, which was introduced in consideration of public interest and public safety. While dealing with the issue involved the OMCs raised contention that the State Government have no jurisdiction to issue any such circular in exercise of their executive power, because legislative competence on the subject vests with the Union Government, under the relevant provisions of the Constitution. It was also contended that the petitioners therein have no locus standi because they cannot raise any challenge based on fundamental rights guaranteed under the Constitution. The companies took a stand that there cannot be any monopoly claim in the matter of retail outlets of petroleum products. In support of such contention they have pointed out various judicial precedents which will indicate that no writ petitions will lie by any business rivals, as there is no violation of any fundamental rights. This Court found that if a person is entitled to have a retail outlet on the basis of NOC issued by the Central Government, the eligibility is not liable to be watered down by the State Government or by any authority under the State. The very fact that the Rules do not contemplate any stipulations of ''distance rule'' or ''quantum rule'', no such stipulation can be prescribed or implemented virtually effecting the business prospects of others, who has vested rights under Article 19(1)(g) and other relevant provisions of the Constitution. It was further observed that absence of any such provisions in the relevant Acts or Rules as well as absence of any norms to that effect would suggest that the legislative wisdom of the Union Government has not found it necessary to impose any restrictions/conditions with regard to the trading rights of citizens. This Court also found that contentions based on the claim of some of the petitioners as allottees under the category of SC & ST also cannot be sustained, mainly because of the fact that there is no agreement or contract of dealership executed by them with the companies so as to suggest that the companies are restrained from issuing any further outlets within the same locality. Even though much reliance was placed by the petitioners on the letters issued by the Hon''ble Minister of Petroleum and Natural Gases addressed to another Minister with respect to the scheme for starting of new outlets, this Court observed that, it is not an order nor does it has any binding force. It was observed that no distance norms have been specified in the policy guidelines as on date and it will indicate that the Union Government has not given any commitment with respect to starting of new retail outlets. The finding of this Court is that, in the absence of any Rules/orders/norms stipulated by the appropriate Government, which is the Central Government, this Court can consider the matter only in accordance with law as it stands as on the date. On the question of locus standi of the petitioners to challenge the grant of similar licences to business rivals in the locality, this Court placed reliance on various decisions of the Hon''ble Supreme Court, The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, and The Simbhaoli Sugar Mills Ltd. and Another Vs. Union of India and Others, and many other cases. This Court expressed the opinion that the existing licences of retail outlets have no locus standi to challenge the allotment of new outlets. For arriving at such a conclusion the learned Judge had placed much reliance on a decision of this Court in Reliance Industries Ltd. and Another Vs. Commissioner of Land Revenue and Others and on a decision of the Madras High Court in Nataraja Agencies Vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India and Others, . Discarding a decision to be contrary rendered by the Orissa High Court it was categorically found that the writ petitions will not survive on the question of locus standi.

2. The decision in Mary Ulahannan''s case (cited supra), was taken up in appeal before the Division Bench. In the decision in Basheer Sreekumaran K. Sivaprasad Vs. HPC Ltd. and Others, the said judgment was reversed to the extent of directing the Government to constitute the high level joint committee to hear objections of existing operators. It was held by the Division Bench that the OMCs should keep in mind the viability of new retail outlets on the basis of the minimum quantity of business stipulated. It was also held that, interest of members belonging to Scheduled Caste/Scheduled Tribes, war injured, war widows, unemployed educated youth etc. should also be protected as they have a legal right to oppose indiscriminate and indiscrete opening of the new Petroleum outlets near to their existing outlets. Further this Court observed that, the competition among OMCs in sale of petrol and diesel will not promote consumer interest and will lead to escalation of price. Hence this Court directed to formulate guidelines imposing restrictions on establishment of new petroleum outlets.

3. The above decision in Basheer''s case (cited supra) was taken up in challenge before the Hon''ble Supreme Court by the Petroleum companies. Civil appeals filed by the OMCs Nos. 2784/2013 to 2792/2013 was disposed of by the Hon''ble Supreme Court through an order dated 2nd April, 2013. True extract of the order is reproduced hereunder.

We have heard learned Senior Counsel and learned counsel for the parties.

2. Leave granted.

3. We find no justification for the Division Bench to upturn the judgment and order of the Single Judge dismissing the writ petition. Accordingly, the impugned judgment is set aside. However, it is observed that the guidelines framed by the High Court may be kept in view by the Central Government if there is need to

frame guidelines with regard to establishment of retail outlets of the oil marketing companies.

4. Appeals are allowed with no order as to costs.

4. In view of the order of the Hon''ble Supreme Court as above, the issue involved now stands covered and these writ petitions cannot be entertained. But learned counsel for the petitioners in some of the cases have attempted to point out a distinction that in many of the cases the steps for allotment of new outlets were initiated without conducting any study regarding feasibility as required under circulars issued by the Union Government, dated 6th April, 2011 from the Ministry of Petroleum and Natural Gases (No. P. 19011/5/2010-10C). It is pointed out that in paragraph 18 of the decision in Mary Ulahannan''s case, this Court had clarified that the decision on the question of locus standi will not bar the petitioners in filing writ petition, if the impugned order is against law or if there is any violation of the Act/Rules as declared by the Apex Court. But standing counsel appearing for the OMCs had pointed out that even the circular upon which reliance has been placed is not in force at present, because by virtue of a subsequent decision taken by the Government, the application of the said circular has already been put on hold. I am of the opinion that, questions whether there is any circular prescribing the norms or whether such norms have been complied or not, are not matters left open for challenge to the petitioners in view of the specific findings contained in the decision in Mary Ulahannan''s case in which the locus standi has been found against, which has already been confirmed by the Hon''ble Supreme Court. It is pertinent to note that the observations contained in the judgment in Mary Ulahannan''s case, is to the effect that there is no Rules/orders/norms issued by the Union Government to the extent of formulating any policy or guidelines with respect to starting of new retail outlets in any locality near to the existing outlets, as contained in the circular issued by the State Government, which has already been set-aside. However, on the basis of the legal precedent settled directly on the question of locus standi, this Court cannot have a further scrutiny regarding the alleged violations of any norms.

5. Position remaining as on toady, the decision of this Court in Mary Ulahannan''s case, which stands confirmed through order of the Hon''ble Supreme Court is binding on me and hence I am of the view that these writ petitions cannot be entertained on the very question of locus standi itself. Further, as concluded, the petitioners are not entitled to challenge the grant of NOC on the basis that the new location proposed are prejudicial to their business interests. Under the above mentioned circumstances, these writ petitions deserve no merit and are accordingly dismissed.

It is made cleat that if there is violation of any statutory provisions or if any outlet is started in violation of the terms of the allotment, such actions are amenable to challenge before appropriate forum. Contentions if any raised in any of these writ petitions based on such allegations are left open for agitation in appropriate proceedings.

