
(2011) 07 GUJ CK 0139
In the Gujarat High Court

Case No : Letter Patent Appeal No. 257 of 2010 in Special Civil Application No. 4404 of 2007 to Letters Patent Appeal No. 299 of 2010 and Cross Objections No's. 16 to 43 of 2010 and Civil Application No. 7157 of 2010

IBP Co Ltd.

APPELLANT

Vs

Bharat Mohanlal Trivedi and Others

RESPONDENT

Date of Decision : 20-07-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1), 226

Citation : (2011) 07 GUJ CK 0139

Hon'ble Judges : S.J. Mukhopadhaya, J;J.B. Pardiwala, J

Bench : Division Bench

Advocate : Manish R. Bhatt and Mauna M. Bhatt, for the Appellant; Percy kavina and Biren A. Vaishnav, for Respondent 1, PS Champaneri and Hriday Buch, for Respondent 2, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—In all these cases, as a common question of law is involved and common judgment dated 20.11.2009 passed by the learned Single Judge is under challenge, they were heard together and disposed of by this common judgment. While appeals have been preferred by the Oil Companies, cross objections have been filed by the land owner - Petitioners, as according to them, no specific direction is given by the learned Single Judge to provide for the dealership.

2. Indo Burma Petroleum Co. Ltd. (IBPC), Indian Oil Corporation (IOC), etc. (hereinafter referred to as "the Oil Companies") are the Appellants who have preferred the appeals under Clause 15 of the Letters Patent against the common judgment, whereby the learned Single Judge held that the Respondents - land owners, the writ Petitioners, or their nominees are entitled for dealership of Retail Outlet which is being run by the Oil Companies as Company Owned

Company Operated [hereinafter referred to as "the COCO Retail Outlet").

3. Therefore, the only question arises whether the Respondent - land owner - writ Petitioners or their nominees are entitled for dealership of the COCO Retail Outlets run by the Oil Companies.

4. The case of the land owners - Petitioners before the learned Single Judge is as follows.

In terms with the Government of India scheme as was existing in vogue at the time, the landlord -Petitioners leased their respective lands in favour of the Oil Companies. Before the lease deed was executed by the landlord-Petitioners in favour of the Oil Companies, a specific undertaking was given that the Retail Outlets will be formally handed over to them either by providing them with a dealership. The said letter of undertaking given by one of the Oil Companies is referred to as "Comfort Letter" by which the landlords who claim to be entitled for dealership of the retail outlets run by the Oil Companies on their leased land. It was contended that the lands were procured on long term lease basis with such understanding of providing comfort letters, and it was agreed upon that when the Oil Companies will not operate their respective COCO Retail Outlet, they will operate the same through the landlord-dealers by giving them first offer or to their nominees or the Maintenance and Handling contractors. Therefore, once the agreement is entered into, the Oil Companies cannot back out from their promise.

5. Per contra, according to the stand of the Oil Companies, the landlords have no right to claim dealership as a matter of right either under the earlier scheme or under the existing scheme, the Oil Companies having not made any promise in their favour to provide such dealerships in case the Oil Companies decide not to run their COCO Retail Outlets on their own.

6. For deciding such issue, it is necessary to notice the relevant facts of atleast one case as was noticed by the learned Single Judge and discussed hereunder.

One Bharat Mohanlal Trivedi, who preferred a writ petition (Special Civil Application No. 4404 of 2007) giving rise to Letters Patent Appeal No. 257 of 2010 and corresponding cross objections, has claimed that he has offered land to IBPC for setting up of a Retail Outlet. As per the circular dated 14th November 2002, on completion of the formalities the land owner or his nominee is entitled to have appointment of a dealer, who should be offered dealership first, before making any such offer to others. It is alleged that the Oil Companies are not honouring the terms of the agreement inasmuch as the landlord or his nominee has not been offered dealership in accordance with the circular.

7. Further case of the said landlord is that the land was acquired on lease by the IBPC for a stipulated period with a specific promise and condition, but the Company has turned out their claim and declined to honour its commitment. It is alleged that the Oil Companies now intend to utilize the land leased by the land

owner for allotment of COCO Retail Outlet to other categories as specified in the communication dated 6th September 2006. Thus, the Oil Companies are intended to stop operating permanent COCO Retail Outlet run by the landlord through their nominees as Maintenance and Handling contractor.

8. The learned Counsel for the Respondent-landlords would submit that the action on the part of the Oil Companies is unjust, unfair, arbitrary and violative of Articles 14, 19(1)(g) of the Constitution of India. The Appellant-Oil Companies have disputed the aforesaid fact. According to the Appellant-Oil Companies, the landlords have entered into the lease agreement on which the Oil Companies have set up the Retail Outlets spending substantial amounts towards installing pumps, tanks, etc. The transaction of leasing of land by landlord in favour of the Oil Companies is a separate identifiable transaction and has no nexus with the award of the dealership. After having taken the land on lease and the Retail Outlets having been commissioned, the Oil Companies have awarded contracts for maintenance and handling of Retail Outlets. Therefore, they are two separate contracts - one for lease of land and another for maintenance and handling of the Retail Outlet between the Company and two different sets of parties. Both the contracts being independent, it is not open to the landlords to interpolate the issue of grant of dealership, and therefore, the principles of legitimate expectation or promissory estoppel were not applicable.

9. The Oil Companies decided to do away with the dealership policy and to commission COCO Outlets, as per which, they made lease deed agreement with the landlords. In November, 2002, the Oil Companies came out with the policy of awarding dealership. Except for a few months, the Oil Companies had no policy to commission retail outlets by offering dealership to the land owners or their nominees.

10. Petitioner-Bharat Mohanlal Trivedi enclosed a letter dated 5th September 2002, which he termed as "Comfort Letter" to claim his right for dealership on alleged understanding given under the said letter. The lease deed has also been executed on the same date, i.e. on 5th September 2002, between the Company and the said landlord.

11. The learned Single Judge treating the said letter dated 5th September 2002 as a "Comfort Letter" held that the principle of promissory estoppel is attracted, but the landlord or his nominees are entitled to be given dealership subject to the policy decision as will be existing at the relevant point of time. The right of landlords or their nominees for consideration of dealership is first subject to the Rules which are prevailing at the relevant point of time. Such right of the landlords or their nominees accrued due to the decision taken by the Oil Companies to convert COCO Retail Outlets as general retail outlets. Therefore, the Oil Companies cannot deviate from the guidelines issued by the Government of India and the landlords or their nominees are entitled to get an offer before giving offer of dealership to others.

12. The learned Single Judge has not discussed the facts of the other case except the case of Bharat Mohanlal Trivedi, and giving reference to some of the judgments passed by one or other Courts, allowed the writ petitions with similar directions.

13. The grievance of the Appellants-Oil Companies is that in most of the cases even no such so called "Comfort Letter" was enclosed and in many of the cases even the lease agreement has not been enclosed, but a common decision has been rendered in all cases.

14. Learned Counsel for the parties relied upon decisions rendered by other High Courts, relevancy of which is noticed below:

15. In the case of Badri Prasad Soni v. Union of India Writ Petition No. 5100 of 2006, etc. the learned Single Judge of the Madhya Pradesh High Court at Jabalpur by a common judgment dated 5th April 2007, rejected the claim taking into consideration the policy decision of the Hindustan Petroleum Corporation Ltd. It was noticed that Hindustan Petroleum Corporation Ltd. by their policy decision dated 14th July 2005 reserved all the retail outlets which were operating as COCO Retail Outlets for those who were part of the Operation Vijay (Kargil), discretionary quota and other corpus fund beneficiaries like SC/ST, war widows and unemployed women about 40 years of age. The said policy decision was challenged by the landowners on the ground that the lease agreement has been executed in their favour by the Oil Companies for 30 years on an agreed monthly rent for setting up COCO Retail Outlets on different locations. Therefore, Hindustan Petroleum Corporation Ltd. cannot assign such Retail Outlets to a third party on their land without their consent. The Madhya Pradesh High Court held that such policy decision did not help the land owners and dismissed the cases.

16. Against the said judgment, one Smt. Shakuntala Mantri and another moved in Writ Appeal No. 599 of 2007 before the Division Bench of the Madhya Pradesh High Court, which dismissed the writ appeal and upheld the judgment rendered by the learned Single Judge.

17. A batch of writ petitions in the case of Gottumukkala Sri Lakshmi W/o Late Gottumukkala Venkata Raju v. Government of India Writ Petition No. 5351 of 2007, etc.) fell for consideration before the learned Single Judge of the Andhra Pradesh High Court. IPBC was the party Respondent to the said writ petitions. In those writ petitions, prayer was made to direct the Oil Company not to apply the Government policy dated 8th October 2002 in respect of the Retail Outlets as shown in the writ petitions. Prayer was also made to apply the revised policy of the Government of India dated 6th September 2006 regarding appointment of regular dealer for such outlets. In those cases, the parties also based their claim on the doctrine of promissory estoppel and doctrine of legitimate expectation. But, such submission was not accepted by the learned Single Judge of the Andhra Pradesh High Court, who dismissed the writ petitions by judgment dated 28th January 2008.

18. Similar issue fell for consideration before a Division Bench of the Delhi High Court in the case of IBP Company Ltd. v. Nand Kishore Baipal Letters Patent Appeal No. 158 of 2007, etc.). The original writ petitions were preferred by the land owners claiming their right of allotment of dealership of petrol pumps, which were being run by the Company on their leased land. Similar prayer was made by the land owners on the basis of the lease agreement or the agreement for maintenance and handling of COCO Retail Outlet. Some of the writ petitions having allowed, IPBC preferred Letters Patent Appeal Nos. 158 of 2007 and 159 of 2007. They were heard along with other pending writ petitions and the Division Bench of the Delhi High Court by a common judgment dated 8th February 2008 having noticed the policy decision dated 6th September 2006, the lease agreement reached between the land owner and the Oil Company and the maintenance and handling contract, held that such agreement did not confer any right on the landlord and thereby allowed the Letters Patent Appeals preferred by IBPC and dismissed the writ petitions preferred by the land owners.

19. From the record of the case of Bharat Mohanlal Trivedi, it appears that one Shaileshbhai Govindbhai Patel by letter dated 20th June 2002 requested to award contract for maintenance and handling of COCO Retail Outlet at Piplod, Taluka Choryasi, District Surat. IPBC by their letter dated 28.6.2002 informed said Shaileshbhai G Patel that his offer has been accepted. He was awarded the contract for maintenance and handling of the COCO Retail Outlet and asked to execute and agreement on a stamp paper. It was also informed that as per the Labour Contract Act, Shaileshbhai Patel will have to registered as an authorised labour contractor.

20. On 5th September 2002, IBPC reached an agreement with regard to lease of land and a deed was executed with (i) Chandrakant Thakoredas Bansal (HUF), (ii) Vasudev Goplani (HUF), (iii) Bharat Mohanlal Trivedi (HUF), and (iv) Induben Keshavbhai Patel concerning with their immovable property situated at Revenue Survey No. 72 of village Piplod of Surat City TPS No. 06 (Piplod) O.P. No. 32, F.P No. 9, Lot No. 37, 38, 39 Paiki, Surat Dumas Road, Surat. Relevant portion of such lease deed is quoted hereunder:

NOW THEREFORE THI DEED WITNESSETH AS FOLLOWS:

I.a In consideration of the premises and of the rent hereby reserved and of the covenants and agreements on the part of the lessee hereinafter contained the lessor doth hereby demise unto the Lessee ALL THAT piece and parcel of land along with structures bearing at R.S No. 72 of village Piplod, T.P.S No. 06 (Piplod) F.P No. 9, Plot No. 37, 38, 39 paiki, Surat Dumas Road, Surat measuring approx. 1000 sq.mtrs. or thereabout situated and lying at Surat-Dumas Road, Surat, and more particularly described in the first schedule hereunder written and delineated on the map or plan hereto annexed and marked as Annexure "A" and thereon verged in RED TOGETHER WITH the right for the Lessees to install, erect, alter and maintain at their own costs in or upon the demised premises any building, roadways, pathways, underground petroleum tanks and delivery pumps

and pipes connecting the said pumps with the said petroleum tanks for the purpose of storing, selling or otherwise carrying on trade in petrol/petroleum products, oil and kindred motor accessories and any other trade or business that can conveniently be carried on the demised premises.

b. The monthly rent payable for the initial period of 20 years will be as under:

5 years) = Rs. 25,000/- per month

(5 years) = Rs. 28,750/- per month

(5 years) = Rs. 33,062/- per month

(5 years) = Rs. 38,021.88 per month

II. The Lessee with intent to bind all persons into whatsoever hands the demised premises may come doth hereby covenant with the lessor as follows:

(a) To pay the rent hereby reserved on the days and in the manner aforesaid.

(b) The demised premises shall be used for any lawful purpose which the Lessees desire and especially as a depot for the storage and sale of petroleum products, motor accessories etc. as well as service station and/or filling station and for all other purposes incidental thereto and for any other business as the lessee may deem fit and for all such purposes the Lessees shall have full liberty to make excavations therein for tanks and construct and erect thereon any buildings boundary walls pumping plant and accessories as may be requisite. The Lessees shall have full freedom of access over suitable approaches thereto for its workmen, servants, agents and customers and for the passage of lorries carts and all other vehicles to maintain supplies and otherwise for working the depot and other business on the demised premises.

(c) The lessee shall exercise due precautions in working the depot against explosion, fire or other accident and they shall comply with all regulations as imposed by public authorities in that behalf.

(d) xxxx xxxx xxxx

(e) xxxx xxxx xxxx

(f) At the expiration or sooner determination of the said term to deliver upon the lessor the demised premises and the lessor's fixtures and fitting in such stage and condition as the same were in when taken possession of by the lessee and with all reasonable dispatch remove its fitting and fixtures such as boundaries, boundary walls, structures plant, tanks, fixtures, fitting, etc. from the demised premises.

(g) The entirety of such tanks, structures, boundary wall, plant and outfit as shall be put up by the lessee on the demised premises shall remain the property of the lessee notwithstanding that they comprise fixtures embodies in or attached to the earth the lessor shall have no claim thereto in any manner whatsoever.

(h) The lessee shall have full liberty to assign, transfer or sublet of lease the demised premises along with structures therein or any part thereof.

(I) To pay all existing and future rates, taxes, assessments and outgoing of every description for the time being payable by lessor in respect of the demised premises. Presently the taxes are not more than Rs. 75,000.00ps per year.

The lessor doth hereby covenant with the lessee as follows:

1 The lesser now has in themselves good right, full power and absolute authority to demise into the lessee the demised premises.

2 The lessor agrees that at the expiration of the said term of initial 20 years this Lease will be automatically and without any further act of the parties hereto be renewed for a further period of 10 years unless the lessee shall prior to the expiration of the last mentioned term given to the lessor one calendar months previous notice in writing of their intention not to take any renewal of the lease. The renewed lease will be on a monthly rent as may be mutually agreed between the parties subject to the same covenants, conditions and agreement as are herein contained including present covenant for renewal PROVIDED ALWAYS that the said renewed lease shall be duly executed between the parties hereto and stamp and registration charges in respect thereof will be borne and paid by the lessee.

3 On the lessee duly paying the rent reserved hereby in accordance with the provisions herein contained and performing and observing the terms and conditions hereof they shall peacefully possess and enjoy the demised premises without any interruption or disturbance or hindrance of claim from or by the lessor or any persons lawfully claiming by from or under the lessor.

To permit the lessee to use name boards and other boards and neon signs and other signs of such sizes as the lessee may deem fit and affix the same on the demised premises.

To observe and perform and comply with all regulations, restrictions or directions of orders at their own cost that may be given or issued by any local authority of Government or by any public authority in respect of the demised premises.

The lessor will indemnify and keep indemnified the lessee against all suits, claims, and demands in respect of the demised premises filed by any person or authority.

To provide separate electricity meters exclusively for the use and purpose of lessee's business.

NOW IT MTUALLY AGREED BETWEEN THE LESSOR AND LESSEE as follows:

1) xxxx

2) xxxx

3) Notwithstanding anything herein before contained, if the lessee for any reason wish to terminate this lease at any time during the said term, they shall be at liberty to do so on giving the lessor one months notice in writing of their intention in that behalf and then in such case immediately upon the expiration of the period of such notice this lease shall terminate and everything herein contained shall cease and be void and the lessee shall have the right to remove all such buildings, structures, boundary walls, plant, tanks, fixtures, fittings or other appliances as shall be put up or erected by them on the demised premises at their own cost.

The land owners claimed that on the same day, i.e. 5th September 2002 that in the event the Company decides not to operate COCO Retail Outlets and decides to operate such outlet through a dealer, the Company will make an offer to the landlords, provided all the terms and conditions of the Company prevailing at that time are fulfilled. The said letter is termed as a "Comfort Letter", with a hand note of a person, reads as follows:

Ref: COCO/Piplod Date: 5th September, 2002

To: Shri Chandrakant Thakordas Bansal (HUF)

Shri Vasudev Goplani (HUF)

Shri Bharat Mohanlal Trivedi (HUF)

Smt. Induben Keshavbhai Patel.

Sub: Lease deed executed on 5.9.2002 between IBP Co. Limited and Shri Chandrakant Thakordas Bansal HUF., Shri Vasudev Goplani (HUF), Shri Bharat Mohanlal Trivedi (HUF) Smt. Induben Keshavbhai Patel.

The Company (IBP Co. Limited) wanted to put a Company Owned Company Operated (COCO) Outlet at Piplod - Surat in the District of Surat of Gujarat State and for that purpose had entered into a lease agreement with you for lease of the part of land at R.S No. 72 of village Piplod of Surat City TPS No. 06, FP No. 37, 38, 39 Paiki for a period of 20 years commencing from 29.06.2002 which will be renewed for a further period as provided in the lease deed.

In furtherance to the above lease deed, the Company states that in the event of the Company deciding not to operate the outlet as a "COCO" and decides to operate the outlet through a dealer, the Company will make an offer to the Landlords, provided all the terms and conditions of the Company prevailing at that time are fulfilled.

The offer made to the landlords cannot be assigned/transferred to any third person and the landlords alone shall have the right to accept/refuse the offer which right the landlords shall exercise within a period of 30 (thirty) days, failing which the Company will be entitled to offer the dealership to any third party.

Kindly acknowledge receipt of this letter and acceptance of above terms.

Yours faithfully,

For IBP Co. Limited

Sd/- on 5.9.2002

DIVISIONAL MANAGER

SURAT.

During the visit of DG Manj for registering the lease, this letter was issued as per past commitment (Po commissioned on 29.6.02 as COCO by IBP Co Limited)

21. Though the letter has been enclosed, but it is not clear as to when the contract for maintenance and handling was reached between IBPC and Shaileshbhai G Patel, the letter dated 28th June 2005 for awarding maintenance and handing contract for the aforesaid COCO Retail Outlet at Piplod, Surat. A specimen copy of the application for maintenance and handling contract has been enclosed in the said case, but the contract of maintenance and handling reached between the parties has not been enclosed and even the date of such contract has not been mentioned.

22.e maintenance and handling contract is independent of the contract for leasing the land, as appears from the specimen of agreement, relevant portion of which is reproduced hereunder:

WHEREAS the Company carries on business of storage and marketing of petroleum products and more particularly of petrol, diesel and lubricants through its Retail Outlets through out the country;

AND WHEREAS the Company is the owner/lessee of the plot of land more particularly described in the first schedule hereto and of the structures thereon (hereinafter collectively referred to as "the premises") and has installed/or is about to install at the premises apparatus and the equipments described in the Second schedule hereto (hereinafter called "the Outfit"):

AND WHEREAS the Company is desirous of selling its petroleum products and more particularly petrol, diesel, lubricants and such other petroleum products as may hereafter be specified by the Company from time to time (all of which are hereinafter collectively referred to as the "Products") and to render services as provided for in this contract and such other services as may be specified by the Company from time to time from the Premises with the use of the said Outfit.

AND WHEREAS the Company is desirous of engaging the Contractor (hereinafter referred to as "the M&H Contractor") to operate the said Outfit for retail sale of the said Products and to render other services at the said premises; AND WHEREAS the M&H Contractor has agreed to operate the said Outfit and to render other services from the said Premises;

AND WHEREAS the Company shall have the right to remove any particular item or items of apparatus and equipments comprised in the Outfit without assigning

any reasons therefore. Provided that the M&H Contractor shall not remove the Outfit or any part thereof from its position on the said premises nor deliver or cause to be delivered possession thereof to any other person, firm or body corporate without the written permission of the Company.

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES HERETO as follows:

1. The Company hereby appoints the M&H Contractor to sell the Products to the customers and to ensure a high degree of customer satisfaction with regards to the quality and quantity of the products sold through the Outfit and to do various acts and deeds as hereinafter mentioned.

a) To operate the Outfit for sale of the products delivered to the M&H Contractor by the company from time to time. During the currency of this contract, the M&H Contractor will sell at the premises the products of/supplied by the Company only and no other products or articles or things of any other party will be received/delivered/sold at the premises (hereinafter referred to as "the retail Outlet").

b) To maintain proper and correct accounts of all transactions carried out every day and carry out connected banking activities.

c) To undertake upkeep and maintenance of the premises and the Outfit in a clean and satisfactory habitable condition.

d) To receive the products of the Company and to store, handle and sell the same as per the direction of the Company. The M&H Contractor shall ensure observance and strict adherence of the "Quality and Quantity Control Measures as set out in the Third Schedule hereunder written and as may be modified and be in vogue from time to time.

xxxx xxxx xxxx

xxxx xxxx xxxx

41(a) The Company shall set monthly sales targets for the Contractor, which targets shall be intimated to the contractor at the beginning or every month. The contractor hereby irrevocably and unconditionally commits to achieve the said monthly targets. Upon failure to achieve said monthly sales targets, the contractor shall be called upon to explain the aforesaid failure. If the explanation furnished by the contractor is not to the satisfaction of the Company, this agreement shall be liable to be terminated at the sole discretion of the Company, after giving notice as provided for in Clause 48 herein.

42.n the termination of this Agreement should there be any money due to the Company the M&H Contractor undertakes to pay the same forthwith to the Company at its office at Ahmedabad and/or if the Company shall appropriate the cash or the cash proceeds of the approved securities deposited by the M&H Contractor as security the extent of the amount due to it and if the amount thus appropriated shall be insufficient to cover the M&H Contractor's indebtedness to the Company, the M&H Contractor undertakes to pay to the Company at its office

mentioned earlier in this clause, any such balance immediately on demand thereof being made by the Company.

43 On the termination of the licence and permission, the M&H Contractor will immediately remove from the said premises all goods, property and effect belonging to him and hand over to the Company vacant and peaceful possession of the premises and the Company shall be entitled to enter upon the premises without any hindrance or objection from the M&H Contractor and the M&H Contractor shall cease to have any right whatsoever to enter into or remain in or to use the premises or the Outfit in any manner whatsoever. In case such goods, property and effects are not so removed by the M&H Contractor within three days of termination the same may be removed by the Company at the M&H Contractor's risk and the Company shall be under no obligation whatsoever to take any steps for the protection thereof and shall not in any way be responsible for loss or damage thereof.

44. on the termination of this Agreement for any cause whatsoever, the property in the products supplied by the Company and at the date of the termination, in the possession of the M&H Contractor, shall automatically revert to and become vested in the Company and the Company shall be at liberty to deal with the products in any manner it deems fit but shall reimburse to the M&H Contractor the cost thereof if deposited by the M&H Contractor to the Company at the then current rates for the supply by it of the petroleum products so taken over by the Company, as applicable to the M&H Contractor.

23. From both the lease deed reached between the landlord and the Company and the contract reached between the Company and the labour contractors, it will be evident that no promise was made by IBPC either in favour of Bharat Mohanlal Trivedi (land owner) or with Shaileshbhai G Patel (labour contractor) that in case the COCO Retail Outlet is not run by the Company, it will be offered to them.

24 The Government of India issued a draft guideline dated 19th August 2003 for selection of Retail Outlet dealers relating to marketing plan locations advertised by the Oil making Companies, dealership to be given in favour of one or others, but the said guideline do not relate to COCO outlets, i.e. outlets run by the Companies.

25 A lease deed was executed between the landlord and IBPC on 5th September 2002 whereas the circular dated 14.11.2002 was issued by IBPC much thereafter, relevant portion of which is quoted hereunder:

IBP Co Limited

(An Indian Oil Group Company)

Marketing Department,

MHO, Mumbai 400 018.

Policy Circular Sr. No. 4

Sub: Dealer Selection of Retail Outlet under De-Regulated Scenario.

Policy Ref No. : MDPM No. 319/02 Date: 14.11.2002

Policy Guidelines/Working Instructions issued on 14.11.2002

Procedure for locations outside Marketing Plans.

1.1 Categorization:

For the purpose of selection procedure, the dealerships to be categorized as under and all Retail Outlets would be developed only on A/C Site basis. Category "I" Land Owners:

(a) Land owned by the Dealer select.

(b) Land owned by the Dealer select and willing to sale/lease to the company.

(c) Land with super structure owned by the Dealer select and willing to sell/lease to the Company along with super structure.

(d) Any Social Worker/Retired Professional/Person of repute arranging land from Govt. Bodies/Govt. Sponsored Autonomous Bodies on long lease/purchase.

Category "II". Fleet operators, Automobile Dealers, Garage owners, Govt. organizations including State Tourism Dept., Employees" Co- operative Societies and existing direct Customers Employees" Co- operative Society.

Category "III: IBP/OMC"s existing dealers.

Category "IV: Others.

1.2 Procedure for Category "I" (Land Owners):

The following procedure may be adopted both for cases where land is directly offered by the landowner as well as where there is no such direct offer. The Company would prefer to take land on long lease of 15 years with renewal option of 15 years from private parties or as per Government norms wherever the land is Procured from Government, above subject to meeting Co"s prevalent IRR norms.

xxxxxxxxxxxxxxxxxx

1.2.1 Evaluation of Land:

Existing guidelines will be followed. In this connection reference is drawn to policy Ref. RO (A) titled "Purchase/Lease of Land" dated 20.06.02 duly approved by MD

xxxx xxxx xxxx

1.2.2 Appointment of dealership:

Once land is found suitable based on preliminary economic assessment of potential/IRR, the lease/sale offer will be evaluated/negotiated as per the existing policy for land procurement dated 20.06.02. In cases where more than one land is available, the evaluation/negotiation will be done with the candidate whose land is found most suitable. On successful negotiation and after obtaining the approval of the competent authority, Letter of Intent will be issued to the land owner and further action taken towards procurement of land as per the existing policy. On completion of all the formalities. The land owner/his or her nominee will be appointed as dealer and the Retail Outlet commissioned.

The land owner/Petitioners cannot take advantage of such policy, the lease deed having executed much prior to the same.

26. The Government of India also issued guidelines of dealership for retail outlets by Circular dated 6th September 2006. Commercial freedom was given to the public sector oil marketing Companies, which was challenged by the landlord. They claimed their cause of action on the basis of the circular dated 6.9.2006, which reads as follows:

No.P-19011/9/2001-IOC

Government of India Ministry of Petroleum & Natural Gas

Shastri Bhavan, New Delhi

Dated: the 6th September, 2006.

To:

- 1 The Chairman, Indian Oil Corporation Limited, New Delhi,
- 2 The Chairman & Managing Director, Bharat Petroleum Corporation Ltd., Mumbai.
- 3 The Chairman & Managing Director, Hindustan Petroleum Corporation Ltd., Mumbai.
- 4 The Chairman & Managing Director, ONGC, Dehradun.
- 5 The Managing Director, IBP Co. Limited, Kolkata.
- 6 The Managing Director, Numaligarh Refinery Limited, Numaligarh.

Sub: Operation of retail outlets of OMCs on COCO basis.

Sir,

I am directed to state that in order to provide commercial freedom to the Public Sector Oil Marketing Companies (OMCs), Post-administered Pricing Mechanism regime in the petroleum sector, it was decided by this Ministry vide its letter of even number dated 9.9.2003 that the OMCs would formulate their own policy and procedure for operating those retail outlets, where sites had been procured and facilities created, or which had been decommissioned because of termination

of dealerships, on Company Owned Company Operated (COCO)/ad hoc basis till regular dealers were appointed. However, this could not be formulated by the OM Cs uniformly on industry basis so far. The matter has been in consideration for a long time and a number of discussions were held in the Ministry, at different levels, with the OMCs.

2. With a view to finalizing the guidelines, a meeting was again taken by this Ministry on 19.7.2006, under the Chairmanship of Hon"ble Minister of State (Petroleum & Natural Gas), with the Chief Executives and other officers of the OM Cs, where a "presentation" on the subject was made by BPCL on behalf of the OM Cs. Minutes of that meeting have been circulated to all concerned vide this Ministry's letter No. R-30024/17/2006-MC. Dated 27.7.2006. Based on the deliberations in the said meeting and meeting taken by Secretary (P&NG) on 25.7.2006 and various discussions held earlier, it has been decided to lay down the following broad parameters, on the basis of which the OM Cs may finalize their guidelines for operation of Company-Owned Company Operated (COCO) retail outlets.

While the OM Cs may operate permanent COCO retail outlets (i.e.flagship Ros, Jubilee Retail Outlets, Model Outlets, etc.) by their own officers (without job-contractors or ad-hoc dealers), they should phase out the existing temporary COCO retail outlets within a time frame preferably within a year. However, in special circumstances like Court cases, complaints, etc. they may have to operate some Ros on temporary COCO basis till final decision on those Court cases/complaints.

The permanent COCO retail outlets should be operated by an officer of the OMC concerned being in overall charge of the outlet. If the OM Cs so like, they may post their own personnel for running the permanent COCO Ros. In that case, no labour contractor should be appointed. In case OM Cs are not able to deploy sufficient number of their own staff, the balance manpower requirement may be arranged through a labour contractor. The OM Cs should stop job-contractor ship or ad-hoc dealership for operating permanent COCO Ros and follow the model stated above or shift their such Ros into the category of temporary COC Os, within a period of one month.

Selection of labour contractors should be in an open and transparent manner, through advertisements only.OM Cs should adopt objective parameters for evaluation of candidates for labour contractor ship. These parameters should be uniform for all the OM Cs. The labour contractor should not be asked to invest in working capital as the working capital has to be arranged by the OMC concerned for running of COCO Ros.

For the permanent COCO Ros, the labour contractor ship may preferably be given for a period of three years in the first instance, instead of the one year system being followed at present. After three years, the labour contractor ship may again be advertised for selection.

As regards temporary COCO retail outlets, the period of the labour contract should not exceed one year, by which time the action for appointment of dealers for the COCO ROs in question should be completed. Even for this period, the labour contractors should be selected in the same open and transparent manner by advertisement, as labour contractor is to be selected for a permanent COCO outlet.

The phasing out of temporary COCOR Os preferably within a year may be completed as follows:

The temporary COCOR Os, may first be offered and handed over, subject to suitability, to the pending Letter of Intent (LOI) - holders under the following categories in the order these are indicated:

- (a) Special Schedule (Operation Vijay - Kargil), the Kargil allottees.
- (b) Discretionary quota scheme.
- (c) Corpus Fund Scheme (SC/ST category of dealerships, widows and women above 40 years of age without earning parents).
- (d) Other categories as prescribed in the marketing plans.
- (e) The industry may pool their available temporary COCOR Os for offering to the categories under (a) and (b) above. In case no LOI - holder under these categories are available, then these dealerships should be advertised for selection of dealers under normal process.
- (vii) The OM Cs should stop job-contractor ship or ad-hoc dealership for operating the temporary COCOR Os. The system of ad-hoc dealership may be restored to only in cases of dealerships which have been terminated and where new dealers are to be appointed. The period of ad-hoc dealership should not, in any case, be more than four months as ad-hoc dealership violates the multiple dealership norms. If the dealer cannot be appointed within this period of four months, the RO may be taken over by the OMC concerned and operated as temporary COCO with the selection of labour contractor by advertisement.

30. MCs should frame their detailed guidelines, on the basis of above broad parameters, and with the approval of their respective Board of Directors, without further loss of time as this has been long overdue. A copy of those guidelines, after formulation, may be forwarded to this Ministry for its record. It is stated that while laying down detailed guidelines, OM Cs must ensure objectively and transparency in the matter, and, as far as possible, there should be uniformity in the guidelines of the OM Cs. Further, the guidelines should also be given wide publicity by way of hosting on the websites of the OM Cs etc.

4 With the issue of this letter, any other instructions/letters issued by this Ministry in the past, on the subject of running of retail outlets on COCO/ad-hoc basis, shall stand superseded.

Yours faithfully (V.K. Dewangan) Deputy Secretary to the Government of India

27. Thereafter, no final decision has been taken by the Oil Companies in pursuance of the guidelines dated 6th September 2006. Thus, we find that there was no cause of action on the part of the writ-Petitioners to move before the High Court.

28. There is nothing on record to suggest that the Oil Companies such as IBPC or IOC decided not to run their COCO outlets. No decision was taken by any Oil Company to give COCO outlets to any other individuals. In this background also, we hold that there is no cause of action on the part of the writ Petitioners to move before this Court.

29. The relevant portion of one of the agreements for lease of land has been quoted in the preceding paragraphs. Specimen of Agreement for Maintenance and Handling Contract has also been noticed and quoted above. It will be evident that the land owners cannot claim any benefit out of the lease agreement to claim priority in the matter of allotment of dealership in their favour in case the Oil Companies decided not to run their COCO outlets. Maintenance and handling contractors also cannot derive any advantage out of the Maintenance and Handling Agreement to claim priority in the matter of allotment of dealership. In fact, both the lease deed and contract for maintenance and handling are silent on the question of allocation of dealership in favour of one or other landlord or contractor. Therefore, none of the writ Petitioners would have derived any advantage of the lease agreement or the handling and maintenance contract to claim priority in the matter of allotment of dealership.

30. The so called Comfort Letter dated 5th September 2002 is an individual letter written in favour of one or other party. The note given therein cannot be relied upon, a dispute having been raised on the question of fact whether the said letter was issued on behalf of the Company, whether such letter was issued prior to the institution of lease deed and the note was signed by any of the officers promising dealership in favour of landowner - Bharat Mohanlal Trivedi.

31. In most of the cases, "Comfort Letters" have not been enclosed, the copy of maintenance and handling contract has not been enclosed and even proper pleadings have not been made.

32. Learned Single Judge without discussing the case of individual writ Petitioners or facts of any other case, merely on the basis of some pleading made by the Petitioner - Bharat Mohanlal Trivedi a common relief has been passed in favour of all the writ Petitioners.

33. In view of the aforesaid facts as noticed above, it was not open to the learned Single Judge to give any finding of fact in a writ petition preferred under Article 226 of the Constitution of India, the facts being disputed and all evidence having not been enclosed. Even, no specific plea was made by most of the writ Petitioners.

34. For the reasons aforesaid, we have no other option, but to set aside the common judgment dated 20th November 2009 passed by the learned Single Judge, dismiss the writ petitions and allow the appeals preferred by the Oil Companies. The Cross-Objections filed by the writ Petitioners are also dismissed. But, in the facts and circumstances of the case, there shall be no order as to costs.