(2014) 09 KAR CK 0207

In the Karnataka High Court

Case No : Writ Petition Nos.49584-49590/2013 (GM-RES)

Lakshmi Trades APPELLANT

Vs

The Union of India RESPONDENT

Date of Decision : 12-09-2014

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

Citation : (2014) 09 KAR CK 0207

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : M. Sreenivasa, Advocate for the Appellant; Ashok Haranahalli, Senior Counsel, Syeda Shehnaz, R. Gopalakrishna, Advocate and T.L. Kiran Kumar, AGA, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopal Gowda, J.—Challenge in these writ petitions is to the Notifications, as at Annexures-A & B, jointly issued by the three oil companies: IOCL, BPCL & HPCL, relating to appointment of LPG distributors in the State of Karnataka and for a mandamus, to consider representations made by the Karnataka Kerosene Dealers Association and All India Kerosene Dealers Federation, in the matter of conversion of kerosene dealership into LPG distributorship and to implement an order dated 23.08.2011 passed in W.P. Nos. 16517-19/2010 by the High Court Judicature at Madras and to direct respondents 3 to 5 to implement directions issued on 16.10.2009 as per Annexure-G, by respondent No. 1.

2. Petitioners are kerosene dealers of Indian Oil Corporation Ltd. and Hindustan Petroleum Corporation Ltd., in the city of Bangalore. After dismantling of the Administered Pricing Mechanism in the petroleum sector with effect from 01.04.2002, the selection process of dealers/distributors for retail outlets (petrol pumps)/LPG distributorships (cooking gas agencies) is done by the oil marketing companies themselves, subject to broad policy guidelines issued from time to

time by the Ministry of Petroleum and Natural Gas, in relation to matters like reservation to weaker sections, reconstitution, revival of defunct outlets, resitement and transparency in selection. Public sector oil companies have been given freedom in the matter of marketing/distribution of petroleum products through their respective network of retail outlet dealerships, LPG distributorships and SKO-LDO dealerships. The oil companies choose their own locations for setting up such dealerships/distributorships, if found viable after feasibility study thereof by themselves.

3. High Court of Judicature at Madras passed a common order, as at Annexure-C, impressing upon the Union of India, Ministry of Petroleum and Natural Gas, to take decision on the proposal for conversion of SKO/LDO dealerships into LPG distributorships on account of reduction in PDS SKO quota and the hardship faced by the kerosene dealers.

4. Admittedly, deliberations were held and the LPG Selection Guidelines, December, 2012 was amended and decision was taken to relax eligibility conditions for SKO dealers, to enable them to participate in the Award process of LPG distributorships as applicable for others. The SKO dealers were enabled to apply for LPG distributorship with relaxed eligibility conditions. As a consequence, the prayer of the petitioners at Clause (B) in the main prayer of these writ petitions, does not survive for consideration.

5. Sri M. Sreenivasa, learned advocate, submitted that in view of the issuance of Annexure-B, the petitioners do not press the relief with regard to quashing of the Notification, as at Annexure-A. Submission of the learned counsel is recorded.

6. Sri M. Sreenivasa, contended that the petitioners being from economically weaker sections, belonging to ex-servicemen, unemployed graduates, physically handicapped, SC/ST categories, are incurring huge loss every month in view of the drastic reduction of quantity of kerosene supply and that the advertisement issued vide Annexure-B, for appointment of LPG distributors is arbitrary. He submitted that when the petitioners are expecting conversion of kerosene dealerships into LPG distributorships, which being a legitimate expectation, the course of action which the respondents have adopted vide Annexure-B, being arbitrary, interference is called for. He submitted that, if the impugned action is allowed to proceed, the petitioners would be deprived of their right to life as guaranteed by Article 21 of the Constitution of India, since they would be deprived of the only means of living.

7. Sri Ashok Haranahalli, learned Senior Advocate, appearing for the respondents, on the other hand contended that the SKO dealership of the petitioners is governed by contracts, which enable the respondent companies, even to terminate the dealerships. He submitted that the contracts between the petitioners and their respective oil companies is non statutory and that the contracts do not impose any obligation on the respective oil companies to provide LPG distributorships as a matter of course. He submitted that in view of

the meetings held by the Ministry with the oil companies, guidelines were framed in the matter of providing openings to SKO dealers to become LPG distributors and the policy was approved by the Government of India on 13.07.2012. He submitted that there is relaxed standards for the SKO dealers. He contended that the petitioners have no legal right or legitimate and enforceable expectation for automatic conversion to LPG distributorships. He submitted that the issues, as raised by the petitioners herein, has been considered and answered in an order dated 14.08.2014 passed in W.P. No. 32775/2013 (in the case of A.P. Kerosene Wholesale Dealers Federation Vs. Union of India and Others) by the High Court of Judicature at Hyderabad and hence, the petitioners are not entitled to any relief.

8. During the course of hearing, Sri M. Sreenivasa, learned advocate, conceded that the grievance of these petitioners, is identical to the one which was urged, considered and decided by the High Court of Judicature at Hyderabad on which Sri Ashok Haranahalli, placed reliance.

9. Perused the writ record. In view of the submissions made by the learned advocates, the points for consideration are:

(i) Whether the Notification, as at Annexure-B, is arbitrary and illegal?

(ii) Can the petitioners-SKO dealers, insist to provide them LPG distributorship as a matter of course, i.e., without subjecting them to the selection process?

10. After the order at Annexure-C was passed by the High Court of Judicature at Madras, after deliberations, the LPG Selection Guidelines, December, 2012, has been amended. Decision was taken to relax eligibility conditions for SKO dealers, so that, they can participate in the Award process of LPG distributorship notified vide Annexure-B.

11. Undeniably, it is the obligation of the public sector oil companies, which fall within the meaning of ''State'' under Article 12 of the Constitution of India, to ensure equitable timely and efficient supply of the petroleum products to the consumers. The petitioners, existing kerosene dealers, have no right to object the oil companies in establishing the LPG Stations in different locations of the State. The oil companies having developed a policy for establishment of new distributorship for enabling efficient supply of LPG to the consumers, issued the Notification as at Annexure-B, by providing relaxed conditions for the existing dealers in kerosene, like the petitioners, to apply. In the face of the policy decision taken by the public sector oil companies, in the larger public interest for efficient supply of LPG to the consumers, the economic benefits derived by the petitioners as dealers of kerosene should yield. It is the larger public interest which should prevail and not the private economic interest of a citizen, whose interests is also taken care of by relaxing the conditions.

12. Similar contentions canvassed in W.P. No. 32775/2013 before the High Court of Judicature at Hyderabad, by the AP Kerosene Wholesale Dealers Federation, has been negated, on 14.08.2014, in the following terms:-

"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-a-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 requirement. 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 defies 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.

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."

I find myself in agreement with the view taken in the aforesaid order passed by the High Court of Judicature at Hyderabad.

In view of the foregoing, I do not find any justification to interfere with the impugned Notification, as at Annexure-B. The petitioners have not made out any case to issue mandamus against the respondents to provide LPG distributorship merely on account of they being the existing kerosene dealers, i.e., without undergoing the selection process in terms of the Notification, as at Annexure-B.

Consequently, the petitions being devoid of merit are dismissed with no order as to costs.

