
(2013) 01 MAD CK 0004

In the Madras High Court

Case No : Writ Petition (MP) No. 14153 of 2011

Latha Kalichamy

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2013 Mad 119

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : T.R. Jeyapalam, for the Appellant; M.N. Sankar, K. Muralidharan and S. Karthik, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondents. The

writ petition has been filed under Article 226 of the Constitution of India, seeking an order in the nature of Writ of Certiorarified Mandamus, calling

for the records pertaining to the impugned notification of the respondents 2 and 3 so far as it relates to the appointment of the retail outlet dealer in

Naalroad, Ottanchatram Taluk, Dindigul district published in the Tamil daily, Dhina Thanthi, dated 29-1-2011 and quash the same and

consequently, forbear the respondents 1 to 3 from appointing any new retail outlet dealer in the aforesaid place.

2. Subsequent to the filing of the Writ Petition, the fourth respondent was impleaded as party respondent, since he was appointed as a retail outlet

dealer in the above said area.

3. Learned counsel appearing for the petitioner drew the attention of this Court

to the averments made in paragraph Nos. 8 and 9 of the supporting affidavit filed in this writ petition and contended that Petroleum Dealers Associations have already voiced their concern to the Union of India and Petroleum Corporations to stop the indiscriminate opening of dealership and that the Federation of All India Petroleum Traders had convened a meeting in September, 2010 and a decision was taken for setting right the infirmities and to look into the demands of Federation of All India Petroleum Traders by setting up a committee to arrive at a set of guidelines for planning, opening and operating new retail outlet dealers.

4. The aforesaid plea of the petitioner has no legal sanctity to maintain this writ petition. Admittedly, the petitioner is a dealer of Bharat Petroleum

Corporation and the third respondent herein is Indian Oil Corporation Ltd., (hereinafter referred to as IOC Ltd.). When there is no violation of any law or infringement of fundamental right, the petitioner cannot raise a plea against granting retail outlet dealership in the aforesaid place by IOC Ltd.

and the petitioner is not entitled to seek an order in the nature of mandamus against the retail dealership of IOC Ltd., by invoking Article 226 of the

Constitution of India. It cannot be said that the respondents 2 and 3 have no right to call for retail outlet dealership, in view of the petitioners

dealership in Bharat Petroleum Corporation Ltd., since the same has to be decided by Indian Oil Corporation. There is no violation of any

guidelines issued by Union of India, so as to infringe the Fundamental Rights of the petitioner.

5. In the instant case, the respondents 2 and 3 have made advertisements in various newspapers including the Tamil daily, Dhina Thanthi on 21-9-

2011 and they selected the fourth respondent as their retail outlet dealer. There is no privity of contract between the petitioner and respondents 2

and 3 in respect of opening a new retail outlet dealer. In fact the petitioner may lose her income if dealership is given by the respondents 1 to 3 in

favour of the fourth respondent or any other person in the said area. However, it would not create legal ground in favour of the petitioner, since it is

prerogative of the respondents 2 and 3 to have any retail outlet dealership. When there is no legal violation, it is not open to the petitioner to file a

Writ Petition, seeking an order in the nature of Writ of Certiorarified Mandamus to forebear the said respondents 1 to 3 from appointing any new

retail outlet dealer in the said place.

6. Learned counsel appearing for respondents 1 to 3 also produced a copy of the order passed in the earlier similar writ petitions. As contended

by the learned counsel it is *damnum sine injuria*, damage without infringement of legal right, setting up rival business venture may cause damage

without infringement of right. As an existing businessman, the petitioner has no vested right in the trade to claim monopoly to have only his

dealership in the area.

7. In *Mithilesh Garg, Vs. Union of India and others etc. etc.*, the Hon''ble Supreme Court has held that rival businessman cannot file writ petition

on the ground that establishing rival business venture in his nearby business place would cause damage to his business when there is no legal injury

sustained by such person. It is well known fact that promoting competition among traders would be for the benefit of the consumer in order to

maintain standard and for performing better service.

8. On the aforesaid decision, it was held by the Hon''ble Apex Court that challenging the setting up of a similar unit by another businessman on the

ground that establishing a rival business, close to his business place would adversely affect his business interest could not be a violation of law to

interfere with the same.

9. It is also brought to the notice of this Court by the learned counsel appearing for the respondents that in granting retail outlet dealership in the

area specified by the petitioner, there is no violation of any provision either mandatory violation or otherwise. Even the petitioner could not point

out any mandatory violation in granting retail outlet dealership to the fourth respondent. Therefore, this Court is of the view that the petitioner has

no *locus standi* or in other-words legal right to challenge the retail outlet dealership granted by the respondents 2 and 3 in favour of the fourth

respondent.

10. A Division Bench of this Court (Markandey Katju, C.J. and N.V. Balasubramanian, J.) relying on the decision rendered by the Hon''ble Apex

Court in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, held that setting up of a new rice mill by

another, even if such setting up be in contravention of Section 8(3)(C) of the Rice Milling Industry (Regulation) Act, 1958, on account of no right

vested with such an applicant is not legally sustainable.

11. In an unreported decision dated 6-9-2012 made in W.P. (MD) No. 4617 of 2012 etc. in batch of writ petitions, this Court (K. Chandru, J.)

took a similar view.

12. It is seen that respondents 2 and 3 had advertised in newspapers for appointing retail outlet dealer in Naal road, Ottanchatram Taluk, Dindigul

district and for which, an interview was also conducted. Learned standing counsel appearing for the first respondent/Union of India submits that

respondents 2 and 3 have authorised to appoint dealership, subject to the feasibility and on verifying retail outlet dealership.

13. Learned counsel appearing for respondents 2 and 3 further submitted that after conducting interview as per the guidelines issued by the

Government, only on merits, the fourth respondent was selected as retail outlet dealer. In view of the interim stay granted by this Court, the fourth

respondent is not in a position to run the retail outlet.

14. On a perusal of the grounds raised by the petitioner and the averments made by the respondents 1 and 4 and also the material papers filed in

the typed set of papers, this Court is of the view, that there is no legal grievance available to the petitioner against providing retail outlet dealership

by the respondents 1 to 3 to the fourth respondent in the above said area. It may be true that the petitioner may lose her income, however, it is

only a damage caused by the petitioner, without infringement of legal right, hence, the same cannot be questioned legally.

15. In view of the legal maxim, *damnum sine injuria* is not justifiable, this Court is of the view that the plea of the petitioner to forbear the

respondents 2 and 3 from granting retail outlet dealership is not sustainable in law and therefore, the Writ petition is liable to be dismissed. In the

result, the writ petition is dismissed. Consequently, connected M.Ps. are closed. No order as to costs.