

(2011) 05 AHC CK 0449

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 54670 of 2009 and 5588 of 2011

Luheta Urja Kendra and Another

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-05-2011

Acts Referred:

Citation : (2011) 7 ADJ 622 : (2011) 5 AWC 4727

Hon'ble Judges : Ashok Srivastava, J;Amitava Lala, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Amitava Lala, J.—Both the aforesaid writ petitions, being connected with each other, have been heard analogously and are being decided by this common judgment, which will have binding effect in both the matters.

2. So far as Civil Misc. Writ Petition No. 54670 of 2009 (hereinafter in short called as the "first writ petition") is concerned, it was filed on 14th October, 2009 with the prayer to quash the advertisement dated 23rd June, 2009 issued by the Respondent-Hindustan Petroleum Corporation (hereinafter in short called as the "Corporation") for grant of retail outlet dealership insofar as it relates to the place mentioned at Serial No. 42 of such advertisement, and also prayed for other consequential reliefs in connection thereto. In such writ petition, on 21st October, 2009 an interim order was passed by a Division Bench of this Court to the extent that the impugned advertisement, as far as Item No. 42 is concerned, shall remain stayed and the Respondents shall not finalize the dealership with any party of Item No. 42 mentioned in the advertisement. The Petitioners of the first writ petition were happy with such interim order.

3. The moot point of argument of the Petitioners in the first writ petition is that as per the policy decision of the Union of India, no retail outlet should be opened within a radius of 5 kilometres from an existing outlet unless the average

combined thruput of the area as a whole exceeds 80 Kilolitres per month. According to the recording of reason in the interim order, the Court held that only in the month of January and March, 2008 the sale was more than 80 kilolitres of diesel oil and the average sale of the entire year was 58.5 kilolitres, which is less than 80 Kilolitres fixed in the policy decision by the Union of India. The Court further recorded that since the Respondents are acting contrary to the norms fixed by the Union of India, the Petitioners are entitled for interim order.

4. According to the Petitioners of the first writ petition, their petrol pump and another petrol pump, which is situated only at a distance of three kilometres from their petrol pump, fall in Category "C" and the same are not situated on the National Highway or State Highway but are situated at the district level road, which is an interconnected road connecting to National Highway Nos. 3 to 11. However, the Respondent-Corporation has issued the impugned advertisement dated 23rd June, 2009 inviting applications for grant of retail outlet dealership in respect of the place mentioned at Item No. 42 of the advertisement. Therefore, such action of the Respondent-Corporation is against the norms of the Union of India dated 4th August, 1980, which provide that no retail outlet should be opened within a radius of 5 kilometres from an existing outlet(s) unless the average combined thruput of the area as a whole exceeds 80 kilolitres per month. Mr. H.R. Mishra, learned Senior Counsel appearing for the Petitioners in the first writ petition, has submitted that the case of the Petitioners is covered by such norms. He further contended that such norms have statutory force. In support of his contention, Mr. H.R. Mishra, has relied upon several judgments in *Home Secretary, U.T. of Chandigarh and Another Vs. Darshjit Singh Grewal and Others*, *Shankar Video and another Vs. State of Maharashtra and others*, *Union of India v. Mamta Anurag Sharma and Anr.* 2001 (3) UPLBEC 2559 and *Hindustan Petroleum Corporation Limited and Ors. v. Super Highway Services and Anr.* 2010 (3) SCC 321.

5. From paragraph 15 of *Darshjit Singh Grewal (supra)* we find that the Supreme Court has held that while the rules and Regulations are statutory, the policy guidelines are relatable to the executive power of the administration. It is axiomatic that having enunciated a policy of general application and having communicated it to all concerned, the administration is bound by it. It can, of course, change the policy but until that is done, it is bound to adhere to it. In *Shankar Video (supra)* by and large the Supreme Court wanted to say so in relation to Cinematograph Act, 1952. In *Mamta Anurag Sharma (supra)* the Supreme Court again held that the Government cannot go against the policy. Similar view has also been taken by the Supreme Court in *Hindustan Petroleum Corporation Limited (supra)*.

6. Though Mr. Mishra has cited so many judgments which directly or indirectly speak for the same but there is no necessity of multiplicity of the citations in view of the fact that it is well settled that if any norm or guideline has a statutory force, then the authority is bound to proceed accordingly and not otherwise.

7. So far as Civil Misc. Writ Petition No. 5588 of 2011 (hereinafter in short called as the "second writ petition") is concerned, the Petitioner therein is a selected candidate, who by means of this writ petition prayed for a direction upon the Respondent No. 3 to issue letter of intent in her favour to run her retail outlet dealership. Therefore, second writ petition and the submissions thereof alongwith the submission of the Hindustan Petroleum Corporation can be treated to be defence of the first writ petition for combined disposal.

8. Mr. V.C. Mishra, learned Senior Counsel assisted by Ms. Amrita Rai, Learned Counsel appearing for the Petitioner in the second writ petition, has submitted that on 23rd June, 2009 an advertisement was published, which is impugned in the first writ petition, pursuant to which the Petitioner filed her application for grant of retail outlet dealership. Interview was held on 22nd October, 2009, in which she obtained highest marks and was selected. However, such Petitioner is affected by the interim order passed in the second writ petition as by the same the finalization of dealership has been stayed. Mr. V.C. Mishra has further submitted that the norms dated 04th August, 1980 are no more in existence as the same have been superseded by the guidelines dated 09th October, 2000 issued by the Ministry of Petroleum and Natural Gas, Union of India and it was held so by a Division Bench of this Court in the judgment dated 15th September, 2004 delivered in Civil Misc. Writ Petition No. 8852 of 2004 Gopal Auto Centre and Anr. v. Union of India and Ors. Therefore, according to him, the first writ petition is liable to be dismissed upon vacating the interim order passed therein.

9. Mr. Vikas Budhwar, Learned Counsel appearing for the Respondents-Corporation, has submitted before this Court that the Petitioners in the first writ petition have no locus standi to challenge the advertisement being rival businessmen. In support of such contention, Mr. Budhwar relied upon the various judgments in The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, M.L. Krishnamurthy and etc. Vs. The District Revenue Officer, Vellore and another, etc., Ganesh Chandra Hazarika Vs. State of Assam and Others, and two unreported judgments of this Court being dated 22nd August, 2007 and 14th March, 2011 delivered in Civil Misc. Writ Petition No. 39125 of 2007 Kisan Seva Kendra v. State of U.P. and Ors. and Civil Misc. Writ Petition No. 15351 of 2011 Manoj Kumar v. Union of India and Ors. respectively. In the second unreported judgment i.e. Manoj Kumar (supra) this Division Bench has already held that when the Petitioner wants that a competitor should not carry on any similar business near his business place, such type of disputes between the parties can be adjudicated by the civil Court provided any appropriate suit for injunction is filed. this Court cannot interfere with the same particularly when the question of supplying essential commodities is involved.

10. According to us, had it been the case of non-compliance of the statutory norms or guidelines, as has been argued on behalf of the Petitioners in the first writ petition, then necessity would have been there for the Court to deal with

such type of submissions in detail. But when we find that the norms, as were published in the year 1980, have been superseded by the subsequent guidelines dated 9th October, 2000 giving no such clause indicating distance and quantity of sale of petroleum products, the subsequent guidelines are as a last nail on the coffin to the claim of the Petitioners in the first writ petition. Possibly, at the time of passing the interim order in the first writ petition, either the Division Bench of this Court overlooked this aspect or the Petitioners therein did not bring to the notice of the Court this fact to suit their purpose.

11. Against this background, we do not find any reason to pass any affirmative order in favour of the Petitioners in the first writ petition, who have substantially stalled opening of the retail outlet by the Petitioner in the second writ Petitioner approximately for a period of two years. Hence, the first writ petition, being Civil Misc. Writ Petition No. 54670 of 2009, is dismissed. Interim order passed therein stands vacated. However, no order is passed as to costs.

12. As a consequential effect, there is no embargo upon the Respondents-Corporation to issue the letter of intent in favour of the Petitioner in the second writ petition. Therefore, the same will be issued as expeditiously as possible preferably within a period of seven days from the date of communication of this order. Accordingly, the second writ petition, being Civil Misc. Writ Petition No. 5588 of 2011, succeeds and is allowed also without imposing any cost.