
(2019) 03 MP CK 0024

In the Madhya Pradesh High Court

Case No : Writ Petition No. 15501, 16317, 17286, 17323, 17809, 18221, 20026, 20028, 20617, 21002, 21409, 21786, 22442, 22640, 22863, 23482 Of 2017, 415, 480, 875, 1833 Of 2018

M/S Agroha Indane

APPELLANT

Vs

Indian Oil Corporation Limited & Another

RESPONDENT

Date of Decision : 07-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 03 MP CK 0024

Hon'ble Judges : Subodh Abhyankar, J

Bench : Single Bench

Advocate : Sankalp Kochar, A.G.Tiwari, Abhishek Arjariya, Samresh Katare, Aditya Adhikari, Deepak Tiwari, J.K.Jain, D.K.Gupta, Anoop Nair, Kapil Jain, P.L.Shrivastava, VP Singh

Final Decision : Dismissed

Judgement

1. These writ petitions, filed under Article 226 of the Constitution of India are being decided by a common order, as the issues involved in these petitions are common. For the sake of convenience, the facts are borrowed of WP No.22863/2017.

2. The petitioner is aggrieved by the advertisement dated 29.8.2017 (Annexure P-5) issued by the respondent No.2/Chief Area Manager of Indian Oil Corporation, Bhopal for location lying in the rural area of Village Alipura Gram Panchayat Block Naugaon. The petitioner's contention is that the aforesaid proposed distributorship would fall within the periphery of 15 kms. from his distributorship agency at village Harpalpur which would prejudicially affect his business..

3. The petitioner, M/s. Agroha Indian is a proprietorship concern and owns an LPG distributorship at Village Harpalpur, Tahsil and district Chhattarpur. The appointment letter is dated 15.10.1999 and a detailed distributorship agreement

was also executed by the petitioner with respondent/Indian Oil Corporation Ltd. On 15. 3.2001 in which it was provided that the petitioner shall have distributorship at village Harpalpur within the limits of Gram Panchayat/ Municipalities for the adjoining areas falling within 30 kms radius. The aforesaid area, however, was changed vide letter dated 11.1.2002 issued by the Indian Oil Corp. wherein it was stated that in the light of the guidelines issued by the Ministry of Petroleum and Natrual Gas, the area of operation of distributorship operating in rural areas stood revised to a radius 15 kms. The petitioner's case is that the distributorship agreement is governed by the guidelines as provided under Unified Guidelines for selection of LPG Distributorship 2016 (hereinafter referred to as "the Unified Guidelines") which has been issued by the Ministry of Petroleum and Natural Gas.

4. Learned counsel for the petitioner has vehemently argued that the aforesaid advertisement, for appointment of another distributorship within 15 kms. radius from the petitioner's agency is contrary to the Unified Guidelines, which have been formulated by the Ministry of Petroleum and Natural Gas and are binding on the respondent Indian Oil Corp. as well, which is a Government Company. It is further submitted by the learned counsel for the petitioner that even as per the aforesaid guidelines, the feasibility chart as provided for different types of distributorship area, is applied to the petitioner's distributorship, it falls short of achieving even the minimum feasibility criteria, which has also not been denied by the respondents. It is further submitted that Gram Alipura where the new distributorship for LPG is proposed, is classified as a Tribal or 'difficult/durgam' area which is contrary to clauses (iii) and (iv) of Clause 13 of the Unified Guidelines as the said area of Gram Alipura clearly falls within the territory of the petitioner's distributorship at Village Harpalpur. Thus it is submitted that the impugned advertisement issued by the respondent No.2 is liable to be quashed. In support of his contention learned counsel for the petitioner has relied upon the decision rendered by the High Court in the case of Ambica Charan Sinha Vs. Union of India, (2005) 3 CHN 468, India Oil Corporation Ltd. & others Vs. Arti Devi Dangi & another, (2016) 15 SCC 480, as also on a division bench judgment of this court in MP Road Development Corporation Vs. Yusuf Kapadi & others in WA no.411/2016 decided on 5.7.2017.

5. On the other hand learned counsel for the respondents has submitted by the petition is totally misconceived and is liable to be dismissed at the threshold only, as the reliefs as sought by the petitioner run contrary to the judgment rendered by the Apex Court in the case of Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed, (1976) 1 SCC 671, in which it is clearly held that no petition lies to challenge the setting up of a rival retail outlet as no justifiable wrong can be said to be caused to the petitioner if the competition is increased.

6. Learned counsel for the respondents has further submitted that the petitioner is governed by the terms and conditions of the distributorship agreement in which as per Clause 1(b)(ii), it is provided that the OMC has full rights to appoint

one or more distributor in the same territory and having signed the aforesaid distributorship agreement, the petitioner cannot raise any objection and cry foul. It is further submitted that new LPG Distributorship Agencies are appointed only to facilitate proper supply of LPG Gas to the remote areas with ease and no prejudice is going to be caused to the petitioner as his business would not be affected. Learned counsel for the respondents has also drawn the attention of this Court to a feasibility report in which it is clearly stated that advertised location at village Alipura is feasible in terms of the area. It is further submitted that the feasibility report has been also been prepared in respect of all areas advertised for various locations for which other petitions have also been filed.

7. Shri Adhikari, Learned senior counsel for the respondents has further submitted that the issue raised by the petitioner has already been dealt with by the Apex court as well as other Courts in various other cases. In support of his contentions, learned senior counsel has relied upon the judgments of the Hon'ble Apex Court in the case of Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed, (1976) 1 SCC 671.

8. A rejoinder to the reply has also been filed by the petitioner wherein it is reiterated that Unified Guidelines for selection of LPG Distributorship are binding on the respondents as the same have been issued by the Ministry of Petroleum and Natural Gas.

9. Heard the learned counsel for the parties and perused the record.

10. From the record this Court finds that the petitioner has obtained distributorship of LPG Gas after entering into an agreement with the respondent No.1/ Indian Oil Corporation Limited on 15.3.2001. A bare perusal of the aforesaid agreement itself reveals that there is no guarantee of area and there is a clear stipulation that there would be a provision for appointment of additional distributor. The relevant excerpts of the said agreement reads as under:-

"1. Appointment as distributor:

(a)

(b)The aforesaid appointment is subject to the following:-

(i)

The Corporation reserves the right at all times during the or consent of the Distributor, to appoint one or more additional to Central or State Governments, Government Departments, Government Companies, Railways Military, Municipal authorities and other public bodies and authorities without any reference to the Distributor and on such direct sales the Distributor shall not be entitled to any remuneration, commission or allowance of whatsoever nature.

No guarantee of area: Right of Corporation to sell directly or indirectly

(ii)

The Corporation reserves the right, without any reference to or consent of the Distributor, to appoint one or more additional distributors in the same territory referred to in clause 1(a) above and such additional distributor or distributors shall be entitled to make sales of Indane in the same territory without any objection from the Distributor and the Distributor shall not be entitled to claim any over-riding remuneration, commission or allowance for the purpose."

Provision for appointment of additional Distributor.

(emphasis supplied)

In addition to the aforesaid, the agreement between the parties also provides for settlement of the dispute through arbitration as para 37 of the agreement specifically provides for arbitration clause.

11. So far as the entitlement of the petitioner to challenge the appointment of another distributor in his area is concerned, the Hon'ble Apex Court in the case of Jasbhai Motibhai Desai (supra) in paragraphs 47 and 48 held as under:-

"47. Thus, in substance, the appellant's stand is that the setting up of a rival cinema house in the town will adversely affect his monopolistic commercial interest, causing pecuniary harm and loss of business from competition. Such harm or loss is not wrongful in the eye of law, because it does not result in injury to a legal right or a legally protected interest, the business competition causing it being a lawful activity. Juridically, harm of this description is called *demnum sine injuria*, the term *injuria* being here used in its true sense of an act contrary to law. The reason why the law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to society at large.

48. In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore he is not a 'person aggrieved' and has no *locus standi* to challenge the grant of the No-objection Certificate."

(emphasis supplied)

In the circumstances, this Court find force in the contentions raised by Shri Aditya Adhikari, learned senior counsel that the petitioner has no locus to file this petition to challenge the appointment of a rivay distributorship in his own area.

12. So far as the judgment relied upon by the learned counsel for the petitioner in the case of Ambica Charan Sinha (supra) is concerned, there is no reference of any agreement between the parties in this case and apart from that in para 41 of the said judgment it is conceded by the IOC that if the impugned order is given

effect to then the same would contravene the policy guidelines of the Central Government regarding viability norms which is not the situation in the case on hand and above all, the said decision does not take into account the judgement rendered by the Apex Court in the case of Jasbhai Motibhai Desai (supra). Similarly, in the case of Arti Devi Dangi (supra) the appeal was filed by the Indian Oil Corporation and the Apex court observed that the action of the appellant corporation cannot be said to be either arbitrary or unreasonable inasmuch as a uniform standard has been applied to all the applicants. Thus, both the cases are distinguishable and have no application in the facts and circumstances of the case. The judgment passed by the Division Bench of this Court in the case of MP Road Development Corporation Vs. Yusuf Kapadi & others passed in WA no.411/2016 decided on 5.7.2017 is also of no help to the petitioner, as in that case which involved the refusal to grant the NOC by the Road Development Corporation to the respondent No.1 for setting up of retail outlet for a petrol pump. The refusal was on the ground that as per the guidelines framed by the Indian Oil Corporation, there should be a minimum required distance between the two outlets, however, this Court after considering the rival submissions and after going through the guidelines came to a conclusion that there is no statutory provision which prohibits the establishment of retail outlet even within the distance 300 meters. This judgment, on the contrary, allows setting up of another retail outlet within 300 meters of another outlet hence is of no avail to the petitioner where their contention is that the no new distributor should be appointed in his area of operation.

13. So far as the contention regarding the Durgam area is concerned, Clause 2 of the Guidelines which refers to the identification of locations, is relevant in which it is nowhere provided that no new distributor shall be appointed in area already having a distributor and the only concern is that it should be seen that the new location shall have sale potential that can sustain economically viable operation of LPG distributorship. On the other hand, in the note no.(iv) appended to Clause 2.4.1.1.1 it is also provided that all existing RGGLV distributorships with monthly refill sale of less than 1500 would be treated as Durgam Kshetiya Vitrak as per the policy.

14. In view of above discussion, in the considered opinion of this Court, the impugned advertisement cannot be said to be arbitrary or unreasonable and needs no interference. Accordingly, the writ petition being devoid of merit is liable to be dismissed and is hereby dismissed.

15. Resultantly, the other writ petitions are also hereby dismissed.