
(2017) 12 RAJ CK 0065
In the Rajasthan High Court
Case No : 15513 of 2017

M/s Maa Agar HP Gas Servies

APPELLANT

Vs

Hindustan Petroleum Corporation Ltd. & Ors.

RESPONDENT

Date of Decision : 01-12-2017

Acts Referred:

Constitution of India, Article 226, Article 12 - Power of High Courts to Issue certain writs - Application of Acts of Parliament and of the Legislature of the State of Assam to autonomous distr

Citation : (2017) 12 RAJ CK 0065

Hon'ble Judges : Vijay Bishnoi

Bench : SINGLE BENCH

Advocate : Vinod Choudhary, Kuldeep Mathur, Vinay Kothari.

Final Decision : Dismissed

Judgement

1. This writ petition has been filed on behalf of petitioner-firm through its Proprietor, which is a LPG Distributor at Pokaran, Jaisalmer being aggrieved with the action of the respondentHindustan Petroleum Corporation Ltd. (hereinafter to be referred as "the respondent-OMC"), whereby it has invited application forms vide advertisement dated 23.08.2017 (Annexure-4) from the eligible candidates for the purpose of appointment of LPG Distributors for various locations.
2. The grievance of the petitioner-firm in particular is with the location village Bhesara figured at Sl. No.107 in the advertisement (Annexure-4).
3. The petitioner-firm has challenged the action of the respondent-OMC of appointing LPG Distributor at village Bhesara mainly on the ground that with the appointment of LPG Distributor at village Bhesara the business of the petitioner-firm will be adversely affected as the proposed location figured at Sl. No.107 in the advertisement (Annexure-4) i.e. village Bhesara is very near to the Pokaran, Jaisalmer and with the appointment of LPG Distributor at the proposed location, the operational area of the petitioner-firm will be over lapped.

4. It is also contended that as per the Unified Guidelines for Selection of LPG Distributorship 2016-2017, a location of setting up LPG Distributorship has to be identified on the basis of refill sale potential, which can sustain economically viable operation of the LPG Distributorship. But in the present case the respondent OMC has not taken into consideration the refill sale potential and advertised the new location in illegal manner. Several other similar types of the grounds have also been raised.

5. Learned counsel for the respondent-OMC has defended the action of inviting application forms vide advertisement (Annexure-4) from the eligible candidates for LPG Distributorship at location village Bhesara.

6. During the course of the arguments, learned counsel for the respondent-OMC has submitted that a challenge of similar nature has already been rejected by the High Court of Gujarat and the

High Court of Patna.

7. The judgment dated 21.09.2017 passed by the Division Bench of High Court of Gujarat in All India LPG Distributors Federation (Gujarat) & 7 Vs. Union of India & 3 (Letters Patent Appeal No.1410/2017) is placed on record.

8. The judgment dated 17.11.2017 passed by the Single Bench of High Court of Patna in Gramin LPG Vitrak Association (Bihar) & Anr. Vs. UOI & Ors. (Civil Writ Jurisdiction Case No.12282/2017) and one connected matter is also placed on record.

9. The Division Bench of High Court of Gujarat vide judgment dated 21.09.2017 passed in All India LPG Distributors Federation (Gujarat)'s case (supra) while affirming the judgment passed by the Single Bench of High Court of Gujarat has held as under :-

"[11] Having heard learned Senior advocates for the parties, we have perused the order passed by the learned Single Judge and other material placed on record. At the outset, it is noticed that Petroleum Companies have given distributorship to the existing distributors by entering into agreement which is titled as "(Liquefied Petroleum Gas) Distributorship (Domestic and Commercial) Agreement". Clause 1(b)(ii) of the agreement dated 01.07.1995 entered by Bharat Petroleum Corporation Limited with one C.R.Gas Agency reads as under:-

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

(i) xxxx...xxx

(ii) The Corporation reserves the right, without any reference to or consent of the distributor, to appoint one or more additional distribution in the same territory referred to in clause (a) above and

such additional distributor or distributors shall be entitled to make sales of Bharatgas in the same territory without any objection from the distributor and

the distributor shall not be entitled to claim any overriding remuneration, commission or allowance for the purpose".

[12] From reading the above clause of agreement, it is clear that the Corporation reserved the right without any reference to or consent of the distributor, to appoint one or more additional distributors in the same territory also. Learned Counsel for the petitioner in support of his argument that advertisement issued inviting applications for appointing distributors is coincidentally within 15 km of the municipal limits, has placed reliance on definition "Rurban Vitrak". From the definition of Rurban Vitrak under clause 1.3 (ii), it is clear that word Rural Urban means LPG distributor located in Urban area and also providing service to the LPG customers in specified Rural Area, generally covering all villages falling within 15 km from the municipal limits of the LPG distributorship location. In view of language used in the definition, it cannot be accurately said that it confers right on the petitioners for the villages within 15 km from the municipal limits so as to preclude the companies from issuing distributorship in such areas. When it is specific case of the respondents that there is no penetration by the existing distributors in the rural areas, as such impugned advertisement is issued, there is no reason to disbelieve such statement made on behalf of the companies filed in the reply affidavit.

[13] Even market ceiling defined under clause 2.4.1.1.1, the market refill ceiling limit is the maximum number of domestic refill sales stipulated for LPG distributorship and based on the market. Market ceiling limit and the feasibility norm for different types of distributorship is shown in clause 2.4.1.1.1. Even assuming that refill sale per month is less than 5000, that will not confer any indefeasible right on the petitioners to seek enforcement of such guidelines by way of petition under Article 226 of the Constitution of India.

[14] From the submission made in reply affidavit filed on behalf of the company, it is amply clear that impugned advertisement is issued only to reach virgin areas where there is no distribution of LPG by existing distributorship. On one hand, the petitioners are unable to reach such rural area for the purpose of distribution of LPG and on the other hand, they are seeking to preclude the respondent company to invite distributorship for the virgin areas only on the ground that they are not in tune with the guidelines. In any event, only on the ground that new advertisement for distributorship is issued within area of 15 km of municipal limits of the existing distributorship, and in absence of any material to show that such areas are attended to by the existing distributors, no case is made out for grant of directions as prayed..

[15] Mr. Dave, learned Senior advocate in support of his argument that the action of the respondents is arbitrary and in violation of guidelines, placed reliance on the judgment in the case of Mahabir Auto Stores and Ors. v/s. Indian Oil Corporation and Ors. reported in (1990) 3 SCC 752. In the aforesaid judgment, the Hon"ble Supreme Court has held that Indian Oil Corporation is an organ or instrumentality under the State within the meaning of Article 12 of the

Constitution of India and further held that its action must be reasonable, fair and just, even when no formal contract is entered into. It is true that now there is no bar to issue appropriate directions in exercise of powers under Article 226 of the Constitution of India even in the matters relating to contracts, but whether the action is arbitrary or not, and whether interference is called for in a given case is a matter, which is required to be considered with reference to facts of each case. When it is case of the respondents that impugned advertisement is issued only to reach virgin areas to penetrate rural areas for supply of LPG gas, which area is not attended to by the petitioners, it cannot be said that action of the respondents is either arbitrary or illegal. There cannot be any dispute with regard to proposition of law laid down by Hon'ble Supreme Court in the case of Mahabir (supra), but at the same time we are of the view that there is no illegality or arbitrariness on the part of the respondents in issuing advertisement inviting applications for rural areas where there is no distributor for supply of LPG gas. We are of the view that the judgment in the case of Mahabir (supra) would not render any assistance to the petitioners in support of their case."

10. The Single Bench of High Court of Patna vide judgment dated 17.11.2017 passed in Gramin LPG Vitrak Association (Bihar)'s case (supra) has dismissed the similar nature of writ petitions while placing reliance on the decision of Division Bench of High Court of Gujarat rendered in All India LPG Distributors Federation (Gujarat)'s case (supra) has held as under :-

"5. Having heard the parties and on a consideration of the materials on record, this Court is not inclined to interfere in the matter. The thrust of submissions on behalf of the petitioners is based on para 1.1.iii of the Unified Guidelines of 2016. However, a careful reading thereof shows that the term "Rural Area" was intended to "generally" cover all the villages within 15 Kms. from the boundary limits of the distributorships. Clearly therefore, the 15 Kms. limit was not made inflexible and unexceptionable. Under the RGGLV Manual of December, 2014, the OMCs were required to plan additional RGGLVs as and when existing RGGLVs reached the limit of 1200 cylinder refill sale if there was a potential for refill sale of another 600 cylinders per month. The sale chart enclosed by the respondents in their counter affidavit indicates a monthly refill sale far in excess of that figure for the quarter of April to July, 2017. The Unified Guidelines in December 2016 did not provide for identification of new locations only in virgin market rather it had to be on the basis of the refill sale potential, and this, prima facie, indicates that selection of fresh LPG Distributors/Gramin Vitraks does not violate the right and assurance given to the petitioners. Detailed feasibility study with reference to the number of households and existing

LPG coverage is also said to have been made and the area of operation duly incorporated in respect of the newly identified locations before the decision was finally taken by the respondents.

6. It is relevant to take note that a similar advertisement dated 16.06.2017 had been challenged before the Gujarat High Court by the All India LPG Distributors

Federation (Gujarat) and others, which was dismissed by a learned Single Judge of that Court. The matter was further urged in appeal, but did not find favour also with the Division Bench, and the Letters Patent Appeal stood dismissed with the following observations -

"It is true that now there is no bar to issue appropriate directions in exercise of powers under Article 226 of the Constitution of India even in the matters relating to contracts, but whether the action is arbitrary or not, and whether interference is called for in a given case is a matter, which is required to be considered with reference to facts of each case. When it is case of the respondents that impugned advertisement is issued only to reach virgin areas to penetrate rural areas for supply of LPG gas, which area is not attended to by the petitioners, it cannot be said that action of the respondents is either arbitrary or illegal. There cannot be any dispute with regard to proposition of law laid down by Hon"ble Supreme Court in the case of Mahabir (supra), but at the same time we are of the view that there is no illegality or arbitrariness on the part of the respondents in issuing advertisement inviting applications for rural areas where there is no distributor for supply of LPG gas. We are of the view that the judgment in the case of Mahabir (supra) would not render any assistance to the petitioners in support of their case."

It was further observed that the purpose of advertising new locations for LPG distributorships is to reach out to the rural areas in the State. As such, it expressed the view that such a step taken by the respondents was in the larger public interest.

7. This Court is of the view that in matters of policy, the scope for judicial review is rather limited. The submissions of the petitioners that fresh selection of LPG Distributors/Gramin Vitraaks is likely to impact their businesses adversely cannot be allowed to override or undermine the larger public interest, furtherance of which the Oil Companies are required to ensure by acting in a manner that ensures supply and availability of LPG to each and every household. A business concern must decide its own viability based on commercial considerations. Therefore, no case for interference is made out. The writ petitions stand dismissed."

11. I am in perfect agreement with the preposition of law laid down by the Division Bench of High Court of Gujarat and the Single Bench of High Court of Patna in above referred judgments. Hence, this writ petition is dismissed. Stay petition also stands dismissed.