(2007) 08 OHC CK 0029

In the Orissa High Court

Narayan Mallick APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2008 Ori 54 : (2007) 104 CLT 715

Hon'ble Judges : I.M. Quddusi, J;A.K. Samantaray, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—By means of this Writ Petition the Petitioner has challenged the action of Opposite Party No. 2, the Hindustan Petroleum Corporation Limited in opening a new retail outlet of petrol and high speed diesel at Somanathpur, Kakatpur on the ground that the retail outlet/filling station of Indian Oil Corporation Limited of the Petitioner is functioning in the same village. Opposite Party No. 2. had submitted an application-before the Collector, Puri (Opposite Party No. 3, for grant of no-objection certificate for opening a new retail outlet at Somanathpur, kakatpur. It is alleged that the proposal to open the retail outlet is against the policy, norms and guidelines for the opening of new outlets by the Oil Companies.

3. The Petitioner applied to the Indian Oil Corporation to appoint him as a dealer for opening of a retail outlet of petrol and high speed diesel at Astarang and vide letter dated 2.7.1981 he was allowed to open the retail outlet for H.S.D. in that location and was running the same in the name of M/s. Marine Filling Station which was given to him under the rehabilitation category but the same was not viable on that place and was resited at Somanathpur, Kakatpur where Opposite Party No. 2. decided to open the new retail outlet. According to the norms and policy of the Oil Companies, no retail outlet can be opened within ten kilometer radius of the ''E'' Class Market like Somanathpur, Kakatpur.

4. A counter affidavit has been filed by the Deputy Secretary, Ministry of Petroleum and Natural Gas, New Delhi in which it has been stated that after dismantling of Administered Pricing Mechanism (APM) in the petroleum sector with effect from 1.4.2002, the entire selection process of dealers/distributors, for retail outlets (petrol pumps) /LPG distributorships (cooking gas agencies) /SKO-LDO dealerships (Kerosene depots) is done by the oil marketing companies themselves. The Government has neither any role in the same nor the government interferes with the selection process. After dismantling of the APM in the petroleum sector, the public sector oil companies enjoy commercial freedom in the matter of marketing/distribution of petroleum products, through their respective networks 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 the oil Companies themselves and have their own respective guidelines for selection of dealers/distributors for such agencies and manage and run their retail outlets as per their own guidelines.

5. In the counter affidavit filed on behalf of Opposite Party No. 2, Hindustan Petroleum Corporation Limited, it has been mentioned that the Government of India has laid down a new policy on 8th of March, 2002 in suppression of the earlier policy laid down in 1997 in which the Union Government has done away with the volume distance restrictions for encouraging investments in the refining sector thereby giving them marketing rights for transportation fuels, i.e. M.S., H.S.D. and A.T.R It has been further stated therein that after taking into account the recommendations in the report" India Hydrocarbon Vision-2025, the Government of India decided to grant authorization to market transportation fuels, namely, M.S., H.S.D. and ATF to the new entrants including the private sector by setting forth certain guidelines. In Clause XII of the guidelines, it has been mentioned that the company seeking authorization to market transportation fuels will be required to make an application in the specified form accompanied by such fees, as may be specified, giving details of the scheme of marketing for which authorization is sought. There shall be no limit to the quantum and size of the scheme and the number and location of retail outlets in the scheme provided that no encroachment''s on the existing retail outlets will be allowed. Therefore, the only restriction is that there should be no encroachment under the scheme of the Oil Companies on the existing (sic). It appears that the Petitioner has mis-interpreted the definition of ''Low service area'', which means an area not covered by National Highway State Highway, and not having any retail outlet within 10 KMs or as may be notified by the Central Government from time to time. It does not mean that there is restriction to open a retail outlet within an area of 10 KMs. ''Low service area'' has been defined because of the reason of improvement of the area, meaning thereby that if there is any retail outlet within 10 KMs in an area not covered by National Highway/State Highway, it cannot come within the ''Low service area. Further there is restriction in sub-clause (b). that the eligible company shall not operate with this authorization

through a dealer with whom another marketing company has entered into an agreement for marketing of. transportation fuel(s) or from the existing retail outlet of another company, meaning thereby that if any other marketing company had already entered into an agreement with a person for marketing of transportation fuels, the other eligible company would not make a contract with him for the same purpose either by making separate allotment of retail outlet or from the existing retail outlet of another marketing company, it does not mean there is restriction authorizing any other person as a dealer to open a retail outlet within 10 KMs of the existing outlet.

6. In the case of The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, , the Hon''ble Apex Court has held that a rice mill owner has no locus standi to challenge under Articles 226, the 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 because no right vested in such an applicant is infringed.

7. In view of the affidavit filed by the Deputy Secretary, Ministry of Petroleum and Natural Gas it is clear that the Oil Companies are free to establish retail outlets at the location of their choice, if found viable, within any distance of an existing retail outlet subject to no-objection from the statutory/State/Municipal/ local authorities concerned in this regard.

8. In the instant case, it cannot be said that by opening a retail outlet by the Hindustan Petroleum Corporation, the right of the Petitioner who is an existing retail outlet dealer of Indian Oil Corporation Limited would be infringed. Therefore, in our opinion the Petitioner has no locus standi to file the instant Writ Petition.

9. In view of the above the interim order stands discharged.

A.K. Samantaray, J.

10. I agree.