
(2011) 12 DEL CK 0439
In the Delhi High Court
Case No : LPA 962 of 2011

Parmod Malik

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 16-12-2011

Acts Referred:

Citation : (2011) 12 DEL CK 0439

Hon'ble Judges : S.P. Garg, J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Sanat Kumar with Mr. Tanamaya Mehta in LPA 962, 985 and 986/2011, for the Appellant; B.V. Niren, Advocate for R-1 and Ms. Mala Narayan, Advocate for R-2 in LPA 962, 985 and 986/2011, for the Respondent

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—Four writ petitions, three of which were filed by appellants Parmod Malik, Roshal Lal & Anr. and Virender Singh, have been dismissed by the learned Single Judge vide impugned order dated October 12, 2011. Appellant Parmod Malik had sought quashing of the Notification dated 06.09.2006 and as a result prayed that IBP Company be restrained from terminating the supply of petroleum products to him with respect to the sales outlet on Panipat-Sanouli Road. Alternatively it was prayed that if the first relief was not granted, the oil company be directed to surrender 8094 sq.mtr. land leased by him to the oil company. Appellant Roshan Lal and co-appellant Surender Gupta have likewise made prayers similar to the prayers made by Parmod Malik. Appellant Virender Singh had pleaded pari materia with the writ petition filed by Parmod Malik and has sought similar relief.

2. The learned Single Judge has held that the issue raised in the writ petitions was squarely covered by a decision of a Division Bench of this Court reported as IBP Co. Limited Vs. Nand Kishore Bajpai and Others,

3. Since learned counsel for the appellants had strenuously urged that the issues

raised in the writ petition(s) filed by the appellants were distinct from the issues raised and decided by the Division Bench in Nand Kishore Bajpai's case (supra), we propose to firstly analyze the decision of the Division Bench and then look into the issues raised in the writ petitions filed by the appellants.

4. At the outset it may be noted that the Division Bench was dealing with a challenge to the Notification dated 06.09.2006 i.e. the same Notification which has been challenged by the appellants.

5. The decision of the Division Bench commences its journey by noting in para 2 of the decision, that the writ petitioners were either land owners who had leased land to oil companies for running petroleum retail outlets and were appointed Maintenance and Handling Contractors (M&H Contractors) or were ad-hoc dealers running the outlets on contract but under supervision of the oil companies.

6. Thereafter, the learned Division Bench, in paragraphs 3 to 5 of its decision, noted the controversy; being the difference of opinion amongst two learned Single Judges of this Court. Declining relief, one of whom took the opinion that the oil companies could not sub-lease the lands taken on lease from the writ petitioners for operating retail outlets and declining relief another learned Single Judge took a view to the contrary.

7. In paragraph 6 of the decision, the learned Division Bench noted that the writ petitioners before it were M&H Contractors or ad-hoc dealers pertaining to four public sector oil companies; namely: (i) Bharat Petroleum Corporation Ltd. (BPCL), (ii) Hindustan Petroleum Corporation Ltd. (HPCL), (iii) Indian Oil Corporation Ltd. (IOCL) and, (iv) IBP Company. Tabulating the relevant data pertaining to the various writ petitioners who were litigating with the four oil companies, in the next para i.e. para 7 of the decision, the learned Division Bench noted in paras 8 and 9 that the lease deeds executed by the writ petitioners in favour of the oil companies had clauses permitting the oil company to assign, transfer or sub-let the land taken on lease by the oil companies. The Division Bench thereafter noted in para 10 that on the leased lands petrol pumps were established by appointing M&H Contractors and these retail outlets were called "Company Owned Company Operated" (COCO) outlets, a misnomer for the reason these outlets were actually operated by M&H Contractors. Thereafter, in para 11 onwards, the Division Bench noted:-(a) that on 08.10.1999 a policy decision was taken by the Government of India to dismantle Administrative Price Control by de-regulating, from Government control, the retail business of petroleum products inasmuch as hitherto prior retail business of petroleum products in India was under the control of public sector oil companies and dealership of retail outlets was through a process of selection conducted by the Oil Selection Boards. The decision taken was to dismantle the Administrative Price Control mechanism giving freedom to the public sector oil companies to frame policies keeping in view the fact that private players would be soon entering the market. However, the decision to de-regulate sale of petroleum products through retail business could only come into effect on 01.04.2002 and

thus the Division Bench noted that till 31.03.2002 the public sector oil companies alone could market petroleum products in retail.

8. With respect to the decision taken on 08.10.1999, the Division Bench noted that the policy decision taken by the Government of India was keeping in view that private players could entice and wean away the owners of retail sites of the public sector oil companies and thus it was decided that the oil companies would hithertofore take on long term lease lands and would operate therefrom the COCO outlets by appointing M&H Contractors for a period of one year, extendable by another, with a sales officer of the concerned oil company entrusted to each COCO outlet so that quality could be maintained. The policy specifically excluded by providing that landlords, existing dealers, distributors or letter of intent holders would under no circumstances be appointed as M&H Contractors. The Division Bench thereafter noted that from the pleadings of the parties before it, it was clear that: (i) M&H Contractors were appointed without proper selection, (ii) some M&H Contractors were existing dealers or distributors, and (iii) some oil companies had appointed ad-hoc dealers by calling them Retail Outlet Dealers and the appointment was without undertaking a selection process.

9. The Division Bench noted that only IBP Company had formulated a policy on October 08, 2002 for appointment of dealers and that this policy lasted only for five months till it was suspended in February 2003 and finally superseded on September 19, 2003. The Division Bench noted that the policy framed by IBP company on October 08, 2002 categorized dealership in Category I and Category II; Category I would be those dealers who were also the land owners and who would be obliged to provide infrastructure by spending money on constructing the petrol pumps, installing equipments and providing service centres. These Category I dealers i.e. land owner dealers were not to be COCO outlets. Category II were COCO outlets even as per which the land owner had to be given a first option to act as M&H Contractor.

10. Thereafter, the Division Bench noted that the policy decision under challenge was to undo the wrongs being committed by the public sector oil marketing companies, for the reason M&H Contractors were being appointed without any selection process, existing dealers and distributors were being appointed as M&H Contractors and even in respect of COCO retail outlets ad-hoc dealers were being appointed. The Division Bench noted that the oil companies were venturing into ad-hocism without there being any uniformity and consistency and it was thus decided as per the policy that all COCO retail outlets being hithertofore managed would be phased out within a year and the oil marketing companies would operate COCO retail outlets by appointing Sales Officers at each outlet and for operating the retail outlets labour contractors would be appointed.

11. Relevant would it be to note that the Notification dated 6th September, 2006 clarifies as to what would be a COCO retail outlet. This is apparent from Clause (i) of para 2 of the Notification in question wherein it is written:

While the OMCs may operate permanent COCO retail outlets (i.e. Flagship ROs, Jubilee Retail Outlets, Model Outlets etc.) by their own officers.....

12. Thus, it is clear that COCO retail outlet is the genus of which flagship, jubilee retail outlet and model outlet are a specie of.

13. The Division Bench thereafter concluded that the policy decision notified as per Notification dated 06.09.2006 was actually given effect to the policy decision dated 08.10.1999 whereunder Administrative Price Mechanism was dismantled in the petroleum retail segment. The learned Division Bench noted that the claim under the policy decision dated October 08, 2002 could only be predicated under IBP Company and in none others and that too only if it could be shown that the person concerned was appointed as a dealer between October 08, 2002 till February 2003 i.e. during the period the policy remained in operation, it being suspended in February, 2003 and ultimately superseded on 19.09.2003.

14. In para 18 the Division Bench categorically noted that as per the policy dated 08.10.2002, only such land owners could be appointed dealers who had spent money on creating the infrastructure. The Division Bench noted that after leasing the lands, no petitioner was appointed a dealer and thus relief was declined holding that the principle of legitimate expectation was not attracted to those who had neither applied nor were granted dealerships and that no vested right had accrued in their favour.

15. It be noted that the principle of legitimate expectation was sought to be attracted on the pleadings that the land owners gave on lease their lands on the belief that under the policy decision dated 08.10.2002 they would be appointed as dealers of the retail outlets.

16. We now proceed to note the difference which the appellants seek to lay bare between them and those whose writ petitions were decided by the Division Bench. It was urged that the Jubilee Retail outlets and COCO outlets are different outlets and that the learned Single Judge ignored that the Division Bench was concerned with COCO outlets and not the Jubilee Retail outlets and for which they highlight para 3 of the policy dated 08.10.2002 which draws a distinction between JROs i.e. Jubilee Retail outlets and COCO outlets.

17. The distinction sought to be urged ignores that the policy decision dated 06.09.2006, as noted hereinabove in para 11 has equated flagship retail outlets, jubilee retail outlets and model outlets under the banner of COCO outlets and thus it cannot be said that the decision of the Division Bench does not apply.

18. At the heart of the matter is the decision of the Government of India taken on 08.10.1999 that no public sector oil company would appoint anybody as a dealer to sell petroleum products in retail without a selection process. The Division Bench recognized this as the core of its opinion and we respectfully concur. We highlight that the policy decision dated 06.09.2006 clearly notes ad-hocism, an expression which is a softer version of the actual hard reality i.e.

corruption.

19. In this connection we find that on 04.10.1999 the Government of India had clearly written to all public sector oil companies that labour contractors appointed to manage COCO retail outlets would not be the landlords or existing dealers/distributors of the oil companies.

20. The appellants sought to distinguish their cases on the policy of the Indian Oil Corporation dated 23.07.2003 which provides that M&H Contractors would be the nominee of the landlords and further the policy permits dealership to be awarded to land owners or their nominees.

21. Suffice would it be to state that the taint in the said policy decision of the Indian Oil Corporation is the same which tainted the policy decision dated 08.10.2002 framed by IBP Company and thus the reasoning of the Division Bench would be applicable in the instant matters as well. Besides, appellants have no claim against Indian Oil Corporation.

22. The plea urged that not only have the appellants leased their land but have even spent money on effecting some constructions and thus an additional right flows to them on said account is neither here nor there for the reason supplementary lease deeds have been executed by them and for which they are receiving lease money from the oil company. Thus, it is not a case where the appellants have been out of pocket by spending money on constructions on the land. They are getting a return for the money spent.

23. The plea that such huge chunks of land would not be needed by the oil companies to operate the petrol pumps and thus the lease should be determined and the oil companies should be directed to revert possession cannot be accepted inasmuch as the lease is determinable on the terms of the lease and not by a judicial direction de-hors the terms of the lease.

24. We concur with the view taken by the learned Single Judge and thus we dismiss the appeals but refrain from imposing any costs.