
(2007) 08 OHC CK 0013
In the Orissa High Court

Premananda Mohapatra

APPELLANT

Vs

Bharat Petroleum Corporation Ltd. and Others

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 104 CLT 822 : (2007) 2 OLR 730 Supp

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 prayed for quashing of the advertisement dated 10.6.2005 published in the Oriya daily, The Sambad, inviting applications for selection of dealer for opening of a Retail Outlet at Banki by the Bharat Petroleum Corporation Limited (in short, "BPCL").

2. The case of the Petitioner is that he is an Orthopaedically Handicapped person and was granted with the Retail Outlet dealership of Indian Oil Corporation at Banki in the year 1985 with a social objective category of Physically Handicap and since then he is running the outlet in the name of M/s.Gopinath Filling Station. While the matter stood thus, Bharat Petroleum Corporation Limited published an advertisement in the Oriya daily, the Sambad for opening of retail outlets in different places of the State of Orissa including Banki. The further case of the Petitioner is that 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 Banki and that opening of another outlet at the same place by the Bharat Petroleum Corporation is in contravention of the policy and the same would destroy the viability of the Petitioner's filling station and negate the expected income from the said Filling Station and it would result in unhealthy competition.

3. This case was heard along with W.P.(C) No. 7918 of 2006 and W.P.(C) No. 6521 of 2005 which have been filed challenging opening of retail outlet by

different Oil Companies in the location of the Petitioner therein. In the counter affidavit filed in that case, a stand has been taken that the volume-distance norms dated 4.8.1980 and 24.2.1982 are not in force with effect from 1.4.2002. With the dismantling of Administered Pricing Mechanism, 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 and the Oil Companies enjoy commercial freedom for their marketing plan and no approval is required to be given to Oil Marketing Companies by Ministry of Petroleum & Natural Gas for commissioning of new retail outlet. It has been stated that opening of new outlet would largely benefit the consumer because when there is a competition then the businessmen are compelled to provide better quality of product at reasonable rates and provide service to the motoring public who visit the retail outlet. The grounds taken by the Petitioner challenging the opening of new retail outlet in this case are the same as taken in the aforesaid two Writ Petitions.

4. The main grievance of the Petitioner in this Writ Petition is that opening of a retail outlet by BPCL at Banki would violate the resolution dated 8.3.2002 of the Ministry of Petroleum and Natural Gas, Government of India which has prohibited opening of retail outlet within 10 KMs. of the existing retail outlet and would adversely affect his business interest and create unhealthy competition.

5. We have considered this question in W.P.(C) No. 6521 of 2004. In the resolution dated 8.3.2002 it has been mentioned that the Government of India has laid down a new policy on 8th of March, 2002 in supercession 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.F. 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 encroachments 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 retail outlets. 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. Following the ratio decided in the aforesaid case, in an identical matter, the Madras High Court in *Nataraja Agencies Vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India and Others*, held as follows:

In the present case, the only grievance of the Appellant is that if the fourth Respondent is permitted to set up her retail outlet within one kilometer radius of the Appellant's outlet, his business interest would be adversely affected. In our opinion, the Appellant has no locus standi at all to complain against the setting up of a rival retail outlet by the fourth Respondent, near his place of business, on the ground that that would affect his business interest, inasmuch as the damage, if any, suffered thereby was *damnum sine injuria*- damage without infringement of legal right. In our opinion, this will only result in promoting competition among the traders, which is good for the consumers. Merely because some of the customers may switch over to the rival retail outlet does not mean that public interest will suffer rather, in our opinion, it will benefit the consumers because, when there is competition, the businessmen are compelled to provide better quality products at reasonable price.

Therefore, it cannot be said that on opening of a retail outlet at Banki by BPCL, the right of the Petitioner who is an existing retail outlet dealer of Indian Oil Corporation would be infringed. Therefore, in our opinion the Petitioner has no locus standi to file the instant Writ Petition.

7. In view of what has been stated above, we find no merit in this Writ Petition, which is accordingly dismissed. The interim order stands discharged.

8. There would be no order as to costs.

A.K. Samantray, J.

9. I agree