
(2018) 06 CAL CK 0142
In the Calcutta High Court
Case No : W.P.No.5070(W) of 2018

Ratan Kumar Barman

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 13-06-2018

Acts Referred:

Essential Commodities Act, 1955 — Section 7(1)(a)(ii)

Citation : (2018) 06 CAL CK 0142

Hon'ble Judges : PROTIK PRAKASH BANERJEE, J

Bench : Single Bench

Advocate : Subrata Ghosh, Sayantan Hazra, Manas Kumar Sadhu, Puspendu Chakraborty, Suman Dey

Final Decision : Dismissed

Judgement

The writ petition is moved on service; affidavit of service is taken on record. The writ petitioner has asked for less when he could have asked for

more. The proceedings have been initiated against the writ petitioner under the provisions of the West Bengal Cooking Gas (Licensing & Control)

Order, 1985. The allegation is that the petitioner who is a distributor of liquefied petroleum gas cylinders has distributed some cylinders in violation of

the licence granted to him by the Hindustan Petroleum Corporation Limited (HPCL), the sixth respondent, which appears from the FIR on page 38 of

the writ petition, to pertain to section 7(1)(a)(ii) of the Essential Commodities Act, 1955. However, confiscation proceedings have also been

contemplated in terms of the intimation given to learned Judicial Magistrate, 1st Court at Jalpaiguri. Four questions mentioned therein are set out

below:â?

â??1. Whether any License has been issued to Ratan Kumar Barman, M/S

Kathalbari HP Gas (Gramin Bitarok) P.S. + Dist Alipurduar from your

office as appointment letter. 2. What is the jurisdiction of such License?

3. Whether the Distributor can sell letter of indent and other articles beyond his jurisdiction.

4. Whether the beneficiaries can get any facilities of insurance if Gas cylinder burst beyond his jurisdiction which is selling illegally by the distributor.

HPCL being the public sector oil marketing company has answered these questions in the manner as follows:

Our Comments to Point No.1: M/s Kathalbari HP Gas Gramin Vitarak, Dist Jalpaiguri (now Dist Alipurduar) was commissioned as HP Gas

Distributorship in the year 2013 vide Letter of Appointment reference no KLRO/RGGLV-Purba Kathalbari/Paschim Kathalbari/LOA, Date 20th May

2013.

Our comments to Point No.2 & 3: Trading area for a distributorship is defined by respective PSU OMC (Oil Marketing Company) in line with the

dealership agreement. The respective OMCs basis the identified unrepresented areas or as and when new distributorships get commissioned, increases

or reduces the Trading Area of any particular distributorship. The main objective is to ensure that the citizens of the country, desirable to take

Domestic LPG connections are not denied the new LPG connection and the benefits of a clean fuel.

In this case there are no HPCL Distributorship from Jalpaiguri to Kathalbari i.e. within a stretch of 63 Km and the entire area is unrepresented by

HPCL. Post launch of PMUY scheme by MoP&NG, there was large numbers of representations being received from these areas to provide the

LPG connections under PMUY scheme to the genuine beneficiaries. Hence HPCL has advised M/s Kathalbari HP Gas Gramin Vitarak to increase

the Trading Area limit and cater to the requirement of general public, at the rates declared by OMC for that market. The location Daukimari which M/s

Kathalbari HP Gas was supplying is 33 Km from his showroom.

Accordingly, I find a prima facie case in favour of the writ petitioner to the extent that he does not appear to have done anything, which is an offence

under any of the statutes mentioned in the writ petition. However, this is a case which is to be decided by the appropriate forum having jurisdiction in

the matter of quashing the criminal case, so I say nothing more about it. So far

as the prayer for return of the cylinders are concerned, passing the order at this stage would mean disposal of the writ petition itself. ^ This I ought not to do without calling for affidavits.

The respondents shall file opposition within four weeks; reply, if any, shall be filed by two weeks thereafter. Add the writ petition to the monthly list of

August 2018 for final hearing. In the meanwhile, I find a prima facie case in favour of the writ petitioner as aforesaid; and since particularly on a

comparison of the proceedings of the said Control Order, 1985 read with the Essential Commodities Act, 1955 and the conditions of the statutory

licence, it does not appear prima facie that there has been any violation of the conditions of the licence, hence the operation of the showcause notice

on page 46 (Annexure P6 to the writ petition) shall remain stayed till disposal of the writ petition, or until further order, whichever is earlier. Leave is

granted to paginate the Annexure portions indicating the Annexure marks. Certified website copy of this order, if applied for, shall be given to the

parties.