(2007) 08 OHC CK 0025

In the Orissa High Court

Smt. Sabitri Sahu APPELLANT

Vs

Collector and District Magistrate and Others RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2007) 104 CLT 710

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 decision of Opposite Party No. 2, the Bharat Petroleum Corporation Limited (BPCL) for opening of a new retail outlet of petrol and high speed diesel at Odagaon and the appointment of Opposite Party No. 3. as a dealer of BPCL in respect of the outlet at Odagaon.

2. The case of the Petitioner is that upon her application to open a retail outlet of IBP Co.Ltd. at Odagaon, the Collector and District Magistrate, Nayagarh granted no objection certificate in her favour for opening of the said retail outlet. Thereafter, the Petitioner invested huge amount of more than Rs. 30,00,000/- to develop the land and provide all facilities as directed by M/s. IBP CO. Ltd. where after she was allowed to open the IBP retail Outlet for MS,HSD and Lubricants at Odagaon and running the same in the name of M/s. Radha Krushna Filling Station since 12.12.2005. 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 Odagaon. The farther case of the Petitioner is 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. (Sic) Counter affidavit has been filed by Opposite Party No. 3. wherein it has been stated 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 and decision has been taken for commissioning of a new retail outlet at Odagaon as per the available norms without violating any guidelines with a view to serve the common motoring public of that vicinity. It has further been stated that decision to open a retail outlet at Odagaon has been taken after considering the feasibility and after being satisfied with the commercial viability of the location The allegation that opening of a new outlet at Odagaon would lead to unhealthy competition has been stoutly denied. It has been stated that opening of a new outlet at Odagaon 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. It has further been stated that in view of the fact that the volume-distance norms are no more in force after the guidelines issued by the Ministry of Petroleum and Natural Gas, Opposite Party No. 2 is free to open its new retail outlet at any place and the doctrine of promissory estoppel is not applicable to it.

Opposite Party No. 3. in her counter affidavit has stated that after being selected in the interview for the dealership, she was allowed to open the new retail outlet by BPGL after obtaining no objection certificate from the Collector & District Magistrate. The MDR road by the side of which the present retail outlet is going to be set up is a life-line between the State Capital and the different district headquarters like Ganjam, Kalahandi, Phulbani, Koraput and Gajapati etc. When considering the various aspects, the competent authority has decided to have a second outlet which is in conformity with the guidelines, the Petitioner, an existing retail outlet dealer, has no locus standi to challenge the same.

4. The main grievance of the Petitioner in this Writ Petition is that opening of a retail outlet by BPCL at Odagaon is in violation of 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 her business interest and create unhealthy competition.

5. We have considered this question in W.P.(C) No. 6521 of 2004 and W.P.(C) No. 8084 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 supersession 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 Hdn''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. 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, hear 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.

7. On perusal of the affidavit filed by Opposite Party No. 2. and its enclosures, it appears 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.

In the instant case, it cannot be said that on opening of a retail outlet by the BPCL at Odagabn, the right of the Petitioner who is an existing retail outlet dealer of IBP Co. Ltd. would be infringed. Therefore, in our opinion the Petitioner has no locus standi-to file the instant Writ Petition.

8. In view of the above, the Writ Petition is dismissed. The interim order stands discharged.

There would be no order as to costs.

A.K. Samantaray, J.

9. I agree.

