

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 9th February, 2015

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LPA 13/2015 & CM No.565/2015 (for directions)

SANTOSH KUMAR SINGH & ANR

.... Appellants

Through: Mr. A. Maitri with Ms. Radhika
Chandrasekhar, Advs.

Versus

UNION OF INDIA

..... Respondent

Through: Ms. Suparna Srivastava, CGSC with
Ms. Nishtha Sikroria, Adv. for UOI.

AND

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LPA 43/2015 & CM No.1598/2015 (for stay)

RAJA BAI & ANR

.... Appellants

Through: Mr. A. Maitri, Adv.

Versus

UNION OF INDIA

..... Respondent

Through: Mr. Akshay Makhija and Mr.
Kavindra Gill, Advs. for UOI.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. Both appeals impugn the order dated 28th November, 2014 of the learned Single Judge of this Court of dismissal *in limine* of W.P.(C) Nos.8264/2014 & 8272/2014 filed by the appellants respectively. LPA

No.13/2015 came up first on 13th January, 2015, when the counsel for the respondent Union of India (UOI) appeared on advance notice. After hearing the counsels at admission stage, we reserved judgment. LPA No.43/2015 came up before us on 30th January, 2015, when on the contention of the counsel for the appellants therein that the same was identical to LPA No.13/2015 and we pronounce judgment in LPA No.43/2015 also, on the basis of the arguments addressed in LPA No.13/2015, we reserved judgment therein also.

2. The appellants filed the writ petitions from which these appeals arise, contending;

(i) that they are dealers / operating retail outlets of Oil Marketing Companies (who have not been made parties to the writ petitions / appeals) and have their Petrol Pumps in the State of Uttar Pradesh;

(ii) that the appellants have invested huge monies in the said business;

(iii) that as per the appellants' agreements with the Oil Marketing Companies, the appellants have to achieve certain sale targets and if

fail to achieve the same, run the risk of the said agreements being terminated;

(iv) that the Oil Marketing Companies however set up / allow to be set up new retail outlets near the existing ones, in complete disregard of the volume of business which can be generated in the area and without conducting any feasibility / survey and which has the effect of further lowering the sales of the existing outlets;

(v) that the said issue regarding norms for setting up of new retail outlets was taken up in a meeting held on 9th June, 2011 by the then Minister of State for Petroleum and Natural Gas;

(vi) that in the said meeting, the Minister expressed concern over the rapid mushrooming of retail outlets in the country, especially when the new retail outlets set up by Oil Marketing Companies directly cut into the volumes / margins of an existing retail outlet of another Oil Marketing Company and which leads to a dealer indulging in malpractices such as adulteration, short delivery etc. to make up for the reduced margins;

(vii) that a decision was taken in the said meeting that the Oil Marketing Companies should submit to the Ministry within two weeks thereof, a proposal for norms for setting up of the new retail outlets in different class of markets and thereafter the respondent will issue guidelines for setting up / establishment of a new retail outlet;

(viii) however, no such proposals were submitted and hence no guidelines for setting up of new retail outlets in terms thereof issued by the respondent;

(ix) that a large number of petitions were filed in this Court in this regard;

(x) that similarly the Himachal Pradesh Petroleum Dealers Association also filed a petition in the Himachal Pradesh High Court;

(xi) that of all the writ petitions filed in this Court, all others except W.P.(C) No.7689/2011 were withdrawn on the condition that the interim order dated 9th January, 2012 in W.P.(C) No.7689/2011 would be made applicable to the said writ petitioners also and that if W.P.(C) No.7689/2011 succeeds, the same order will follow in the writ petitions being withdrawn also;

(xii) that W.P.(C) No.7689/2011 titled *Federation of All India Petroleum Traders, Delhi Vs. Union of India* was disposed of vide order dated 2nd January, 2013 noticing that W.P.(C) No.3723/2010 of the High Court of Himachal Pradesh filed by the Himachal Pradesh Petroleum Dealers Association had been allowed by a learned Single Judge of that Court vide judgment dated 17th May, 2012 and that the respondent therein had preferred an appeal before the Division Bench of the Himachal Pradesh High Court and by observing that both parties shall abide by the final judgment of the Himachal Pradesh High Court;

(xiii) that the learned Single Judge of the Himachal Pradesh High Court in the judgment dated 17th May, 2012 directed Oil Marketing Companies i.e. Bharat Petroleum Limited, Hindustan Petroleum Corporation Limited and Indian Oil Corporation Limited to comply with the action approved in the meeting held on 9th June, 2011 within a period of six weeks therefrom and directed the respondent UOI to thereafter take a final decision and issue appropriate directions / guidelines / instructions on the opening of new retail outlets and by

further directing that till then, the parties will maintain *status quo* as prevailing on that date;

(xiv) that the appeal preferred by the UOI before the Division Bench of the Himachal Pradesh High Court being LPA No.389/2012 was disposed of vide order dated 5th March, 2014 on the statement of the counsel for the UOI that directions contained in the judgment of the learned Single Judge had already been complied with and consequential follow up orders had been passed, inspite of the counsel for the Himachal Pradesh Petroleum Dealers Association controverting that the judgment of the learned Single Judge had not been complied with;

(xv) that in view of the appeal preferred by the UOI having been so withdrawn, the appeal preferred by Indian Oil Corporation Limited against the order of the learned Single Judge of the Himachal Pradesh High Court was also disposed of;

(xvi) that in fact the directions contained in the judgment of the learned Single Judge of the Himachal Pradesh High Court had not been complied with and hence no guidelines came to be issued by the respondent UOI regarding setting up of new retail outlets taking into

account the concerns of the existing retail outlets found justified in the meeting held on 9th June, 2011;

(xvii) that on the contrary, the respondent UOI had on 17th February, 2014 issued guidelines for setting up of new retail outlets and which did not take into account the concerns found justified in the meeting held on 9th June, 2011.

Accordingly, the writ petitions were filed impugning the said new guidelines dated 17th February, 2014 on the ground of being non-compliant with the decision taken in the meeting held on 9th June, 2011 and seeking a direction for formulation of guidelines in accordance with the decision taken in the said meeting.

3. The learned Single Judge dismissed the writ petitions observing that the decision to grant further outlets is a matter of policy and internal functioning of the Oil Marketing Companies and there is no scope for this Court to interfere with the same under Article 226 of the Constitution of India, unless the policy is found to be discriminatory, unreasonable capricious or *mala fide* and that the decision of the Oil Marketing Companies with respect to establishing new retail outlets is clearly commercial decision and this Court cannot examine the perception of

commercial viability or the merits of the decision of the Oil Marketing Companies to establish new retail outlets. It was further held that the appellants cannot make a grievance with respect to the violation of the orders of the learned Single Judge of the Himachal Pradesh High Court in these proceedings.

4. The counsel for the appellants argued, that the Division Bench of the Himachal Pradesh High Court was misled; that the right asserted by the appellants in the writ petitions from which these appeals arise is based on the judgment of the Himachal Pradesh High Court; that in the writ petitions earlier filed in this Court, it was agreed that the judgment of the Himachal Pradesh High Court will be abided by. Lastly it is contended that another writ petition being W.P.(C) No.3819/2014 titled *Shyam Filling Station Vs. Union of India* also challenging the guidelines dated 17th February, 2014 is still pending consideration.

5. Per contra, the counsel for the respondent UOI contended that the appellants are seeking to enforce the judgment of the Himachal Pradesh High Court before this Court and which is not permissible; else the arguments as accepted by the learned Single Judge in the impugned order are reiterated.

6. We had during the hearing enquired from the counsel for the appellants, as to how this Court is the appropriate Court to entertain the grievance, even if any of the appellants by a petition under Article 226 of the Constitution of India. It was highlighted that the retail outlets of the appellants are not situated within the jurisdiction of this Court and it was put to the counsel for the appellants, whether not a more appropriate Court to deal with the said grievance would be the High Court either at Allahabad / Lucknow or the High Court of Himachal Pradesh.

7. The counsel for the appellants contended that since the grievance in the present proceeding is confined to the Notification issued by the respondent UOI, this Court would be the most appropriate Court and it is for this reason that the appellants have not even impleaded the Oil Marketing Companies with which each of the appellants have an agreement, as parties hereto.

8. We further enquired from the counsel for the appellants as to how remedy of writ, which is a public law remedy is available to the appellants. The grievance of the appellants is qua their status as dealers / operators of petroleum and petroleum products retail outlets under contracts with the Oil Marketing Companies. In fact, we enquired, whether the said contracts

provide any such restriction regarding establishment of new retail outlets in the vicinity.

9. Neither have the appellants filed any documents in this regard nor did the counsel for the appellants have any instructions in this regard. Even after the judgment has been reserved, no information in this regard has been given; even in LPA No.43/2015 which was filed subsequently, nothing in this regard has been stated.

10. The challenge by the appellants to the guidelines dated 17th February, 2014 on the ground of the same being contrary to the decision taken in the meeting dated 9th June, 2011, in our opinion is misconceived. For enforcement of the decision taken in the meeting dated 9th June, 2011, earlier round of writ petitions were filed, in this Court as well as in the Himachal Pradesh High Court. Though on enquiry it is informed that the appellants themselves had then not filed writ petitions but the fact remains that the appellants are claiming benefit of orders in those petitions. Upon getting a favourable order from Single Judge of Himachal Pradesh High Court, the writ petitions filed in this Court were withdrawn on conditions to be bound by the ultimate decision / judgment in the Himachal Pradesh High Court proceedings. The then writ petitioners were perhaps apprehensive that this

Court may give a decision different from that of the Single Judge of the Himachal Pradesh High Court and thus chose to abide by the ultimate decision in those proceedings. The appellants thus cannot re-agitate the enforceability of the decision taken in the meeting dated 9th June, 2011 in this petition, before this Court, having agreed to be bound by judgment in Himachal Pradesh proceedings. The case of the appellants thus boils down to the respondent UOI having not complied with the directions contained in the judgment of the Himachal Pradesh High Court.

11. In the Himachal Pradesh proceedings, in the appeal it was recorded that the directions contained in the judgment of the Single Judge had been complied with. The appellants however contend that they were not.

12. We have enquired from the counsel for the appellants, whether the Himachal Pradesh Petroleum Dealers Association or any other petroleum dealer in the State of Himachal Pradesh has filed any petition or other proceeding in the Himachal Pradesh High Court for non-compliance of the directions contained in the judgment of the Single Judge of that Court or with respect to the new guidelines dated 17th February, 2014, contending the same to be in violation of the said guidelines.

13. The counsel for the appellants again had no instructions.

14. We find the same strange. It belies logic that the writ petitioner therein, after obtaining a favourable order and if it had attained finality, would not seek implementation thereof. Perhaps there were subsequent developments, for which reason, now the Himachal Pradesh High Court is not being approached.

15. The jurisdiction of this Court, in relation to the subject *lis*, having earlier been invoked and abandoned, opting to be bound by the final order in the Himachal Pradesh proceedings, we are of the opinion that it would not be proper for this Court to now entertain the *lis*. Adjudication of the present challenge would necessarily entail investigation into the statement made before the Division Bench of the Himachal Pradesh High Court, that the directions contained in the judgment of the learned Single Judge of that Court had been complied with. A Bench of five judges of this Court has in ***Sterling Agro Industries Ltd. Vs. UOI*** ILR (2011) VI Delhi 729 held that this Court can refuse to entertain a petition under Article 226 of the Constitution of India, if of the opinion that another High Court is more appropriate High Court to deal with the issue. In the aforesaid facts, we are of the considered opinion that the territorial jurisdiction of this Court having been abandoned at any earlier stage, preferring the jurisdiction of the

Himachal Pradesh High Court, at least this Court is not the appropriate Court to entertain the present challenge, whether the appropriate Court be the High Court of Himachal Pradesh or the High Court of Allahabad within whose territorial jurisdiction the retail outlets of the appellants are situated.

16. In this view of the matter, we deem it appropriate to also clarify that in the event of the appellants approaching any other High Court, the reasons on merits given by the learned Single Judge for dismissing the petitions shall not bind the appellants.

The appeals are accordingly disposed of with no order as to costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

FEBRUARY 9, 2015

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