

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.4185 of 2011

and

M.P.No.2 of 2011

R.Miruthula

... Petitioner

Vs.

1. Union of India
rep. by Secretary to Government,
Ministry of Petroleum and Natural Gas,
New Delhi.
 2. Hindustan Petroleum Corporation
rep. by the Chief General Manager,
18/3, Big Bazaar Street,
Coimbatore.
 3. State Level Coordinator & Executive Director,
Indian Oil Corporation,
Indian Oil Bhavan,
Nungambakkam High Road,
Chennai-600 034.
 4. Territory Manager,
Bharat Petroleum Corporation Ltd.,
Irurur Installation,
Ravathur Thottam Post,
Irurur (Via),
Coimbatore-641 103.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records in connection with the impugned notification of the 4th respondent, so far as it related to the calling for the appointment of retail outlet dealer in Soundapur, Mevani and Koogalur Hamlets in Gobichettipalayam Taluk, Erode District, near the retail outlet of the petitioner, which is being commissioned (Sl.Nos.82, 83 & 84 in advertisement), calling for applications, published by the 4th respondent in Tamil Daily Thinathanthi issue dated 20.12.2010 and to quash the same and consequently, to forbear the

respondents from appointing any new retail outlet dealer in the said place.

For Petitioner : Mr.D.Shivakumaran

For respondents : Mr.J.Madhanagopal Rao, SCGSC (for R1)
Mr.O.R.Santhanakrishnan (For RR2 - 4)

ORDER

The present writ petition has been filed by the petitioner challenging the Notification issued by the 4th respondent, which was published in the daily Thinathanthi on 20.12.2010, whereby the 4th respondent called for applications for appointment of retail outlet dealers in Soundapur, Mevani and Koogalur Hamlets in Gobichettipalayam Taluk, Erode District.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1.The petitioner made an application during August, 2010, for retail outlet dealership of Hindustan Petroleum Corporation Ltd., for the proposed retail outlet dealership called for by the 2nd respondent for 'Pudukarai Pudur' village which is 7 kms away from Gobichettipalayam, between Gobichettipalayam and Athani, within Erode District, under the open category. After screening and interview, by the letter dated 19.11.2010, the 2nd respondent has offered the retail outlet dealership of Hindustan Petroleum Corporation Ltd., to the petitioner, for the above said location. The 2nd respondent has imposed terms and conditions while offering the letter of intent, under which the petitioner is expected to make available a suitable plot for holding the retail outlet, in which the 2nd respondent would develop sales room, building storage tank, drive way, compound wall, stores, toilets, generator and compressor room yard, lighting etc., besides service station for the Corporation. It is stipulated that the 2nd respondent Corporation will recover licence fee from the petitioner as may be decided by the Corporation from time to time. The petitioner has already made arrangements for funds and the development of infrastructure facilities at the site are in full progress. The petitioner has invested more than Rs.10 lakhs and the retail outlet is yet to be commissioned.

2-2.It is further stated by the petitioner that in Gobichettipalayam Town, there are nine retail outlets already functioning. In Athani Town also, there is a retail outlet. The location of the proposed retail outlet is situated amidst small villages. Three other villages namely, Soundapur, Mevani and Koogalur are situated in the same vicinity of Pudukarai Pudur, for which the petitioner has been issued a Letter of Intent already.

2-3.While so, the 4th respondent and also other Petroleum Corporations have called for setting up more than 700 retail outlets in Tamil Nadu. Out of the same, in Gobichettipalayam area itself, applications are called for by the 4th respondent, for setting up 7 retail outlets. Out of the 7 proposed outlets proposed to be set up by the 4th respondent, 3 outlets are situated very close to the Pudukkarai Pudur outlet, which is under the process of being commissioned. One applicant, who is having a land just about 75 meters from the Pudukkarai Pudur site of the petitioner is staking his claim for setting up the outlet at Siruvallur Village.

2-4.Dealership agreement usually imposes stringent conditions for minimum off-take quantity of products supplied by the Corporation with a consequence of cancellation of Dealership in case of failure to meet the stipulations. Similarly, the terms of payment for products supplied by the Corporation is also very stringent. As such, when the petitioner would have to run the business with so much of pressure, with a stipulation to show a huge volume of sales and good level of manpower to run the business. As such, only based upon the potentiality and the volume of business that can be generated from that area, the petitioner would be able to run the business.

2-5.In fact, all over India, the Petroleum Dealers Associations, have already voiced their concern to the Union of India and four major Petroleum Corporations, to stop the indiscriminate offering of dealership without considering the past, present and future potential of the new retail outlets. In this regard, meetings appeared to have taken place between the Petroleum Dealers in the country on the one hand and the authorities of the Union of India as well as the four major Petroleum Corporation on the other.

2-6.In one such a meeting headed by the Hon'ble Minister for Petroleum and Natural Gas and the representatives of Federation of All India Petroleum Traders held in September, 2010, a decision appears to have been taken for setting right the infirmities and to look into the demands of the Federation of All India Petroleum Traders by setting up a Committee to arrive at a set of guidelines, on the basis of which the Public Sector OMCs will proceed while planning and operationalising new retail outlets.

2-7.The petitioner very reliably understands that no such guidelines are arrived at as of now. While so, the 4th respondent herein, perhaps with the concurrence of the respondents 1 & 3, has called for an appointment of Dealers for the retail outlets in respect of 410 locations within the State of Tamil Nadu. The 4th respondent proposed to offer licence for retail outlet in 3 hamlets namely Koogalur, Maveni and

Soundapur, within a very close vicinity of Pudukarai Pudur, where the petitioner is yet to commence the retail outlet operation under the letter of intent issued by the 2nd respondent.

2-8. It is further case of the petitioner that even with the existing level of competition and availability of retail outlets, the petitioner will have to strive very hard to create a market to satisfy the minimum off-take quota, that is stringently fixed by the 2nd respondent. Under these circumstances, the proposal for 3 more outlets in the close vicinity within a radius of 3 kms would make the retail outlet of the petitioner a non starter. Hence, the petitioner has filed the present writ petition for the relief as stated supra.

3. Heard both sides and perused the materials available on record.

4. The learned counsel for the petitioner made his submissions, reiterating the contentions in the affidavit. The substance of the submissions made by the learned counsel for the petitioner is that without waiting for the guidelines to be framed by the Committee, which appears to have been constituted already with a specific purpose to check the new outlets, the present impugned notification was issued by the 4th respondent, calling for the application for appointment of retail outlet dealership in Soundapur, Mevani and Koogalur Hamlets in Gobichettipalayam Taluk, near the retail outlet of the petitioner. In fact, the Oil Companies are imposing stringent conditions on the dealers and if there is no minimum off-take quantity, it would result in termination of the dealership. Therefore, if the Petroleum Corporations issue notifications indiscriminately calling for dealerships, it would create only pressure on the dealers like the petitioner and the dealers have to run the business with so much of pressure with a speculation to show a huge volume of sales. Thus, the learned counsel for the petitioner sought for quashing the impugned notification issued by the 4th respondent, so far as it relates to the retail outlet dealership near the petitioner's place of business.

5. Per contra, the learned counsel appearing for the 4th respondent, by filing a detailed counter, submitted that during the last five years, GDP growth in the country has been in the range of about 8% and the number of people in the middle class and above has been steadily increasing. Based on the Planning Commission Vision 2020 document, based on projected GDP growth of 8% p.a., the total freight traffic is likely to reach 5500 billion tons and in case, the growth rate is at 10%, the same would touch 10,000 billion tons. This would take the retail sale between 70 - 105 Million Tons from the present 57 Million Tons. With development, the vehicular traffic is growing at

CAGR of 10% and the number of vehicles in the passenger and commercial category has increased from 11.43 lakhs & 3.51 lakhs in 2005-06 to 19.49 lakhs and 5.31 lakhs in 2009-10. The growth in 2/3 Wheeler is much more at 12% per year i.e., from about 74 lakh to 98 lakhs during same period. All this clearly has an effect on demand for Motor Spirit and High Speed Diesel which is steadily increasing.

6. Apart from the above submission on the factual aspects, it is further submitted by the learned counsel appearing for the respondents that the petitioner is a rival trader of the 4th respondent-Corporation and the rival trader is not an aggrieved person, by the entry of a new competitor in the market. The learned counsel for the respondents has also relied upon number of judgments to show that the writ petition is not maintainable.

7. In this regard, it would be appropriate to place reliance in the judgment reported in 2005 (1) CTC 394 [Nataraja Agencies Vs. The Secretary, Ministry of Petroleum and Natural Gas], wherein it has been held as follows

"4. 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 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 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 rates."

The dictum laid down in the above said judgment is squarely applicable to the present facts of the case. In the light of the above said judgment, I find that the petitioner herein has no locus standi to complain against the setting up of retail outlet by others near the petitioner's retail outlet. Moreover, the petitioner is retail outlet dealer of Hindustan

Petroleum Corporation. Whereas, the impugned notification has been issued by the Bharat Petroleum Corporation. As a rival trader, the petitioner is not entitled to seek direction from the Court to forbear the other traders from establishing their outlet.

Considering the present need of the petroleum dealers for the growing vehicle transportation, establishing more retail outlets cannot be denied. On this ground also the present writ petition is liable to be dismissed.

For the foregoing reasons, the writ petition fails and the same is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

ssv

s/d-

Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. The Secretary to Government,
Union of India,
Ministry of Petroleum and Natural Gas,
New Delhi.
2. The Chief General Manager,
Hindustan Petroleum Corporation,
18/3, Big Bazaar Street,
Coimbatore.
3. State Level Coordinator & Executive Director,
Indian Oil Corporation,
Indian Oil Bhavan,
Nungambakkam High Road,
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4. Territory Manager,
Bharat Petroleum Corporation Ltd.,
Irurur Installation,
Ravathur Thottam Post,
Irurur (Via),
Coimbatore-641 103.

+ 1 cc to Mr.D.Shivakumaran, Advocate, SR 21667

+ 1 cc to Mr.O.R.Santhanakrishnan, Advocate, SR 21857

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