

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**CWP No.11032 of 2014
Date of Order: 09.02.2016**

M/s H.S. Gas Service and Others

....Petitioners

Versus

UOI and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. Puneet Jindal, Sr. Advocate with
Mr. Sidharth Kant, Advocate for the petitioners.

Mr. Ashish Kapoor, Advocate for respondent No.2.

Mr. Raman Sharma, Advocate for respondent
Nos.3 & 4.

RAKESH KUMAR JAIN, J

The petitioners, 26 in number, are the distributors of
Liquified Petroleum Gas (for short "LPG") at Jalandhar, of three
companies, namely, Indian Oil Corporation Limited (IOCL),
Bharat Petroleum Corporation Limited (BPCL) and Hindustan
Petroleum Corporation Limited (HPCL). Out of 26 distributors,
17 are of IOCL, five are of HPCL and four are of BPCL.

The petitioners have challenged the Advertisement
dated 26.10.2013, issued by all the aforesaid three companies
for appointment of LPG distributors, under various categories, at
location specified in the State of Punjab. In the said

Advertisement, the distributors to be appointed at Serial Nos.12 to 18 are of the IOCL, distributor at Sr. No.115 is of HPCL whereas the distributor at Sr.No.149 is of BPCL. The petitioners have also prayed for the issuance of a writ in the nature of prohibition, in order to restrain the respondents, from appointing further LPG distributors in Jalandhar City till feasibility is arrived at, keeping in view norms/ceiling limit and also keeping in view the PNG contract at Jalandhar, having been allotted by Petroleum and Natural Gas Regulatory Board-respondent No.5 to M/s Jay Madhok Energy Private Limited.

Case set up by the petitioners is that as per the Census of 2011, urban population of Jalandhar is approximately 9 lakhs. According to the petitioners, figures available with all the three oil Companies, for the financial year 2012-2013 i.e from 1.4.2012 to 31.3.2013, suggests that the average refills sold per month comes to 2,07,000, which after division with the existing LPG distributors comes to 7960 per month. It is alleged that till financial year 2011-2012, the ceiling limit for an LPG distributorship in respect of towns upto population of 10 lakh was 8000, which has now been increased in 2013 from 8000 to 8800. It is further alleged that respondent No.5 has issued a contract authorizing one M/s Jay Madhok Energy Private Limited for laying, building, operating or expanding local natural gas distribution network in order to supply PNG to the household in various areas of Jalandhar city. Said company would have 46800 domestic consumers in its first year of operation. The said

contract was to commence within a period of 180 days from the date of authorization i.e 6 September 2013 and thus, by the end of year 2014, the said Company would cater to 46800 domestic customers and as per schedule given in Annexure -A, another 46800 domestic consumers would be added every year uptill next 4 years, which would be 1,75,000 by the end of 2018. It is further alleged that as per the guidelines issued by respondent No.1, each Company has to work out feasibility study report before issuing public notice for appointment of LPG distributors and the said study has to be carried out in the prescribed format.

The petitioner had also filed an application bearing Civil Miscellaneous No.9492 of 2014 for bringing on record letter dated 05.4.2013 issued by the Indian Oil Corporation Limited by which the re-fill ceiling limit per month was increased in the towns upto 10 lakhs population from 8000 cylinders to 8800.

The basic grievance of the petitioners, being authorized LPG distributors at Jalandhar is that there is no scope for further appointment of distributors of LPG at Jalandhar and by adding nine more distributors, being appointed by all the aforesaid three Companies, their business is going to suffer because then the petitioners would not be in a position to touch the limit of their re-fill of 8800 in a month. It is also the case of the petitioners that in order to run distributorship, they had to incur a huge investments in the shape of godowns, show-rooms and employment of various persons besides maintaining fire

fighting equipments etc and in the presence of other competitor, namely, M/s Jay Madhok Energy Private Limited, who would be supplying similar energy in the form of gas through pipe lines, then customer base would be reduced.

Learned counsel for the petitioners has submitted that the action of the respondents is, thus, arbitrary and unreasonable and deserves to be declared illegal in view of Article 14 of the Constitution.

In the reply, learned counsel for the respondents has submitted that the present petition has to be dismissed simply on the ground that the writ petition, which has been relied upon as a similar case, mentioned in the Index of this petition, has already been dismissed by this Court on 27.7.2015.

On merits, it is submitted that the petitioners have no legal right to challenge the impugned notification on the ground that the Advertisement is based on restructuring of existing distributorships, which means that those distributorships operating above ceiling limit of the refills, will be restructured by transferring its consumers to newly appointed distributorship in order to provide better customer services. It is further submitted that the petitioners have not disclosed their customer base and have made all hypothetical assertions. There would be re-structuring of the distributorships and only those distributors are required to transfer the customers to newly appointed distributors, who are working above 75% of the ceiling limit. It is further alleged that the distributors, not only get commission

per cylinder at the rate of Rs.40.71 paise but also sell other equipments like regulators, LPG pipes, hotplates and various other products, out of which, they get handsome commission besides the income, which is generated on the release of a new connection and sale of ARB items, therefore, the petitioners cannot be allowed to urge that with the induction of more distributors, they would be economically affected. It is further submitted that the Company has reserved the right to itself for appointment of one or more additional distributors. The relevant portion of one of the agreements, which is on record, reads as under:

“The Corporation reserves the right, without any reference to on consent of the Distributor, to appoint one or more additional distributors in the same territory referred to in Clause 1 (a) above and such additional distributor or distributors shall be entitled to make sales of Bharat gas in the same territory without any objection from the Distributor and the Distributor shall not be entitled to claim any overriding remuneration, commission or allowance for the purpose.”

Learned counsel for the respondents have also relied upon a decision of Andhra Pradesh High Court at Hyderabad reported as **Andhra Pradesh LPG Dealers Association Vs. Union of India (UOI) rep. by its Secretary, Ministry of Petroleum and Natural Gases and Ors.,2009 (1) ALT 268** and a judgment of this court reported as **All India LPG Distributors**

Fed. (Punjab) and others Vs. Union of India and Others,
passed in CWP No.24254 of 2013 (O&M) on 26.05.2014.

Learned counsel for the respondents has seriously objected to the decision of the writ petition on merits on the ground that the similar writ petition, as mentioned by the petitioners, in the Index as well in para 19 of the writ petition, has already been dismissed by a Coordinate Bench on 27.7.2015, which was filed by the All India LPG Distributors' Federation (North Western Region) against Union of India and Others and some of the assertions made in that writ petition, are similar to the assertions made in the present writ petition. It is further submitted that if the petitioners had relied upon notice issued in another case, which is relied as similar case and the said case has been dismissed prior in time, present case should not be allowed to proceed any further but for a formal dismissal.

Learned counsel for the petitioners while countering the arguments of the respondents has submitted that notice of motion in the present writ petition was not issued on the basis of writ petition mentioned in the Index as similar case. It is further submitted that in the case, which has been mentioned as similar case, the only similarity was of the notification, otherwise the said case bearing CWP No.25738 of 2013 was on different issue as in that case, the guidelines for selection as regular LPG distributors while fixing minimum educational qualification were challenged. Learned counsel for the respondents have submitted that notice of motion was issued in this case on

29.5.2014 for 30.7.2014 because the similar writ petition i.e CWP No.25738 of 2013 stood adjourned for 30.7.2014. It is also submitted that the petitioners did not ask for stay in the present case at the time of issuance of notice of motion because stay order was operating in the similar case bearing CWP No.25738 of 2013 passed on 25.11.2013 to the effect that in the mean time, pursuant to impugned Advertisement (P.8), proceedings may go on but the selection will not be finalised. It is further submitted that the interim order in CWP No.25738 of 2013 was vacated by this Court on 17.09.2014 and thereafter the present petitioners filed an application bearing CM No.15566 of 2014 in order to restrain the respondents from finalising/issuing letter of intent to any third party in respect of nine LPG distributors advertised through impugned Advertisement. In the said application, status quo was granted by this Court on 12.3.2015.

Learned counsel for the respondents have also argued that the question of law framed in para 14 (b) of the similar writ petition bearing CWP No.25738 of 2013 was with regard to the appointment of LPG distributors in the entire State of Punjab and the same reads as under:

“Whether the advertisement dated 26.10.2013 (Annexure P-8) for appointments of 198 LPG distributors issued by respondent no.2 to 4 in the State of Punjab is illegal, arbitrary and discriminatory and is violative of Articles 14,16 and 19 (1) (g) of Constitution of India.”

The petitioners have further alleged in another

question of law in para 14 (d) of the writ petition that:

“Whether impugned advertisement dated 26.10.2013 (Annexure P-8) has been issued without taking into consideration the refill sales data of 2013-14 in the State of Punjab as well as the ratio of population, customers and existing LPG distributors and is based on non-application of mind by the respondents or not?”

The prayer made in para 16 (ii) of the said writ petition reads as under:

“16. (ii) And further to quash the advertisement dated 26.10.2013 for appointment of 198 LPG distributors issued by respondent Nos.2 to 4 in the State of Punjab.”

I would first deal with the objection raised by the respondents to dismiss the writ petition on account of dismissal of writ petition mentioned as similar case by the petitioners.

Part F of Chapter 4, Volume 5 of High Court Rules and Orders deals with writ jurisdiction (Punjab and Haryana) Rules, 1976 (for short “the Rules”). Rule 20 (vi) of the Rules provides that every petition shall consist of paragraphs numbered consecutively and shall contain “a statement whether a similar petition has been made to the Supreme Court or previously in the Court or in any other Court in respect of the same matter, and if made, with what result.”

This provision has been made to avoid concealment of facts of having filed similar petition either before this Court or in the Hon'ble Supreme Court or any other court in respect of the

same matter so that any case, which has already been disposed of by this Court, in any manner, may not be re-agitated by an unscrupulous litigant. It also helps the litigant, in case, similar matter has been allowed or at least assist the Court in examining in the light of the result of the similar matter already pending or decided.

The question, which arises in this case, is as to whether present petition deserves to be dismissed on the ground that the writ petition mentioned in the Index as similar case, has already been dismissed and if it is not, as alleged by the petitioners, then whether the petitioners are guilty of *Suppressio Veri Suggestio Falsi*?

Since the petitioners have contested the objection raised by the respondents of dismissing the writ petition in view of dismissal of the similar writ petition, therefore, it would be apt to observe that if the said writ petition was different from the present writ petition, the petitioners had no right to mention it as a similar case in the Index of the writ petition even though the same Advertisement was involved and if the petitioners are trying to explain the difference between the two cases, it should have been specifically mentioned concisely in the Index itself. This matter has, thus, assumed an utmost importance in the present scenario, where the courts tends to believe the averments made in the writ petition, which is supported by an affidavit filed in terms of Rule 20 (iii) of the writ Rules.

I would also examine the case on the basis of the facts

pleaded in both the petitions. The first writ petition i.e CWP No.25738 of 2013 was filed by the LPG distributors federation (North Western Region) being aggrieved against the impugned Advertisement. As I have already mentioned in the earlier part of the order that specific questions of law have been framed in the said writ petition about the illegal appointment of 198 LPG distributors throughout the Punjab and also a prayer has been made for quashing of Advertisement for appointment of 198 LPG distributors. The notice of motion was issued in this case for the date, for which the similar case bearing CWP No.25738 of 2013 was already adjourned. There was no prayer by the petitioners for stay at the time of notice of motion because of the reason that the stay was already operating in the similar writ bearing CWP No.25738 of 2013 and filing of application for stay after the stay was vacated in CWP No.25738 of 2013 would all collectively show that the CWP No.25738 of 2013 and the present petition are similar, if not in the form then in substance as the petitioners in both the writ petitions were espousing the same cause.

Thus, in case, the contention of the petitioners is accepted that the writ petition i.e CWP No.25738 of 2013 is different from the present writ petition, then the petitioners are guilty of overreaching the Court by making a mis-statement of facts and on that account, writ petition deserves to be dismissed with heavy costs and in case, the writ petition bearing CWP No.25738 of 2013 is similar to the present writ petition, then it has to be dismissed in terms of order passed in the writ petition

No.25738 of 2013 because if the petitioners had tried to take advantage of similar writ petition for the purpose of issuing notice of motion, then they must meet the same fate of dismissal of petition. Thus, in view of the aforesaid discussion, the objection of the respondent is hereby accepted.

The next question would be on merits. The petitioners have no cause of action because it is a prerogative of the respondents to appoint one or more dealers. In this regard, para 20 and 23 of the decision in Andhra Pradesh LPG Dealers Association's case (supra) is relevant and is reproduced as under:

“20. As the petitioners are all parties to a contract which clearly inheres a discretion that enables the Oil Companies to enlarge or restrict the territories specified in the several agreements, without reference to the petitioners and without any claim by the petitioners for restitution of any loss suffered on account of such alteration, the petitioners are seen to have no legal right or a scintilla of legitimate expectation to seek interdiction of the action by the Oil Companies (by issuing the impugned notification) for appointment of new distributors even where the new distributorship is in respect of a territory overlapping with or trenching into the area of operation specified to an existing dealer.

23. There is another aspect of the matter which is also relevant in considering whether the petitioners can be heard to convass the correctness of the respondents-Oil Companies

decision the identification of new locations for grant of distributorships. The claims in the writ petitions underscore an assumption that the economic interests of existing distributors is the exclusive obligation of the respondents-Oil Companies. Such assumption is fundamentally flawed. As pointed out by the respondents-Public Sector Oil Companies and even in the context of the current constraints to the availability, LPG continues to be an essential and scarce commodity. The primary social obligation of the respondents-Public Sector Oil Companies (which are State within the meaning of Article 12 of the Constitution of India) is to ensure equitable, timely and efficient supply of this basic commodity, to the consumers. The economic benefits derived by the petitioners-distributors is a mere corollary an ancillary consequence of the respondent-public sector Oil Companies discharging the fundamental and primary social obligation of ensuring efficient, timely and adequate supply of the essential commodity LPG, to the consumers. Where the Oil Companies generate a novated policy for establishment of new distributorships for enabling efficient supply of LPG to the consumers, such legitimate policy choice must prevail over any incidental or collateral prejudice that the petitioners might suffer. In any event, the only demonstrable if potential grievance of the petitioners is a measure of competition. Such impact even if there be is marginal must be subordinated to the larger public concerns which are catered to by the

establishment of new distributorships, qua the impugned notification.”

Similarly, in All India Federation's case (supra), para No.5 and 16 being relevant are reproduced as under:

“5. On the other hand, the petitioners are opposing the said Scheme on the ground that still they have not enrolled maximum number of customers, as per their target, in the allotted areas. The action of the respondents to allot number of gas agencies in rural areas under the RGGLV Scheme pursuant to the advertisement (Annexure P.6), will affect their future growth and also the existing customer base. In this regard, the petitioners made representations (Annexure P.7 to P.9) to the concerned authorities. As per the petitioners, if the said Scheme is implemented, their customers would be diverted to the village based gas agencies, resulting into encroachment of their business benefits and livelihood. Therefore, the said Scheme is in violation of Articles 14,15,16 and 19 (1)(g) of the Constitution of India. Further, the object of launching the said Scheme on the pretext of giving employment in the rural areas, is to attract maximum vote bank. The petitioners' business interests are being ignored and they are facing discrimination.

16. A Division Bench of this Court in All India LPG Distributors Federation (North West Region) Vs. Union of India, 2002 (2) RCR (Civil) 46, while considering the appointment of distributorship by the Indian Oil Companies, had examined the instructions issued by the Government of India, by which the oil marketing companies have been

directed to close down the extension counters set-up by the dealers and transfer all the consumers enrolled through these counters to the newly-commissioned distributors. While dismissing the writ petition, it was held that there was no violation of principles of natural justice. It was also held that there was no violation of any contractual or legal rights by the oil marketing companies. The action of the respondents was in conformity with the terms of appointment letters and agreement signed by both the parties. Each distributor had been allotted an area of operation and as per the letter of allotment, this area, could be reduced. To meet a particular situation, the respondents-oil companies had permitted opening of extension counters. As per the letter of appointment, it is stipulated that number of customers allotted to a particular distributor, can be varied, increased or decreased. Subsequently, new dealers were appointed and to enable them to sustain their business, the instructions were issued by the Government of India, directing the petitioners (in that case) to close down their extension counters. The newly appointed distributors had spent huge amount of money on construction of godowns and other facilities. Their expenditure was much more than the amount spent by the old distributors on opening of the extension counters. The equity was held to be in favour of newly appointed distributors and their claim was legitimate. In paragraph 35 of the aforesaid judgment, the Division Bench has observed as under:-

"35. In the present case, it is clear that there was no violation of any contractual or legal right of the petitioner. The action of the respondents is in

conformity with the terms of appointment. The agreement signed by the two sides limited the area of operation. The petitioner or its members had no right to operate in the area beyond the prescribed limits. The agreement/agency could be terminated by 30 days notice. No opportunity of hearing was required to be given for such an action. In this situation, we are satisfied that principles of natural justice were not attracted.”

In the format attached as Annexure P.5, it is specifically mentioned that in the town with population less than 10 lakhs, monthly Refill Ceiling of LPG is 8000 and the monthly Refill Sale potential for new distributor has been 4000 i.e 50% of the applicable ceiling limit for the respective market as prevailing on the date of feasibility study. When the petitioners have themselves entered into agreement knowing well that they cannot raise any objection on the appointment of one or more additional distributors, they have no right to challenge the appointment of additional distributors.

In view of the totality of the facts and circumstances discussed hereinabove, I do not find any merit in the present petition and the same is hereby dismissed.

February 9, 2016
manoj

(RAKESH KUMAR JAIN)
JUDGE