IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.349 of 2016 (O&M)
Date of decision: 25.04.2016

M/s H.S. Gas Service and others ----Appellants

Versus

Union of India and others ----Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Harinder Singh Sidhu

Present: Mr.Puneet Jindal, Sr. Advocate with
Mr. Siddhant Kant, Advocate
for the appellants.

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

Mr. Raman Sharma, Advocate
for respondents No.3 and 4.

HARINDER SINGH SIDHU, J.

This intra-Court appeal under Clause X of the Letters Patent has been filed against the judgment dated 09.02.2016 of the learned Single Judge, whereby, CWP No.11032 of 2014 filed by the appellant challenging the advertisement dated 26.10.2013 inviting applications for appointment of LPG Distributors at various locations in the State of Punjab has been dismissed.

The appellants 23 in number, are distributors of Liquefied 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). They have prayed for directions to restrain the respondents from appointing further LPG Distributors till feasibility study was carried out as per norms/ceiling limit and also taking note of the fact that PNG contract at Jalandhar had been allotted by Petroleum and Natural Gas Regulatory Board to M/s Jay Madhok Energy Pvt. Ltd.

The appellants stated that as per 2011 census, the urban population of Jalandhar was approximately 9 lacs. In the financial year 2012-13 i.e. from 01.04.2012 to 31.10.2013 average refills sold per month were 2,07,000, which after division amongst existing LPG distributors came to 7,960 per distributor per month. In 2011-12, the ceiling limit for LPG distributorship in respect of towns with population upto 10 lacs was 8,000. This was increased to 8,800 in 2013. Contract has been issued to M/s Jay Madhok Energy Pvt. Ltd for laying, building and operating local natural gas distribution network to supply PNG to various areas in Jalandhar City. This company would have 46,800 domestic consumers in the first year of its operation. The contract was to commence within 180 days of the date of authorization i.e. 6th September, 2013. By adding 46,800 consumers every year it would total upto 1,75,000 consumers by the end of 2018. It was alleged that with the addition of 9 more distributors, the business of the appellants would suffer as they would not be in a position to sell 8,800 refills in a month. It was stated that the appellants had incurred huge investment in construction of godowns, show-rooms and provided employment to large number of persons.

The respondents justified their action by stating that the advertisement is based on re-structuring of existing distributorships. It was stated that only the distributors operating above the ceiling limit of refill would be restructured by transferring their customers to the newly appointed distributors in order to provide better consumer service. The allegations of loss to the distributors was negated by stating that the distributors not only get commission at the rate of ₹40.71 paise per cylinder but earn substantially from selling equipment like regulators, LPG pipes, Hot Plates etc.

Further, the very right of the distributors to challenge the induction of more distributors was contested by referring to the fact that the companies had reserved to themselves the right for appointment of additional distributors in the agreement.

Learned Single Judge firstly held that as the appellants had relied on the pendency of CWP No.25738 of 2013 All India LPG Distributors Federation (North Western Region) Vs. Union of India and ors, mentioning it as a similar case, the petition deserved to be dismissed consequent to the dismissal of that petition.

On merits, learned Single Judge relied on a decision of Andhra Pradesh High Court in **Andhra Pradesh LPG Dealers Association Vs. Union of India (UOI) rep. by its Secretary, Ministry of Petroleum and Natural Gases and others, 2009 (1) ALT 268** and a decision of this Court in CWP No. 24254 of 2013 **All India LPG Distibutors Fed. (Punjab) and others Vs. Union of India and ors** decided on 26.05.2014. In both these cases the challenge of the existing distributors to the induction of new distributors was repelled. It was held that the existing distributors had no legal right to maintain such challenge because as per the allotment letter the Oil Company had reserved the right to extend or allot more distributors and that any economic loss that may be suffered by them on that account has to be subordinated to the larger public interest which is catered to by the establishment of new distributorships.

Accordingly, the writ petition was dismissed.

Being unable to repel the compelling reasoning of the aforesaid decisions, Ld. Counsel for the appellants only stressed that the feasibility study (Annexure R2/2) that was carried out before issuing the advertisement, was not in the prescribed format (Annexure P-5).

This argument also is of no help to the appellants.

The respondents have clearly stated that the restructuring had been reviewed again by the Ministry of Petroleum and Natural Gas (MOP& NG) and modalities were decided. It is their case that considering the revised modalities, work for restructuring had been done based on domestic LPG refill sale of 2012-13.

However, even if the stand of the appellants that there is some deviation from the prescribed format in the feasibility study, is accepted, that would only be a matter for the concerned Ministry (MOP& NG), which has issued the guidelines. Any such deviation from the format prescribed in non-statutory guidelines cannot furnish any cause to the appellants to impugn the induction of new distributors on that ground.

Thus, there is no merit in the appeal and the same is dismissed.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

April 25, 2016
Atul