

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1682 of 2017

IN

Civil Writ Jurisdiction Case No. 12282 of 2017

- =====
1. Gramin L P G Vitrak Association (Bihar), an association registered under the Society Registration Act 1860 having Registration No. 595 of 2015-16, Registered Office at Idira Nagar, Road No. 1, Postal Park, PO – GPO, PS Jakanpur, District Patna through its Secretary, Rakesh Kumar , son of Shivji Singh, Vullage and P.O. Beriya, PS Gopalpur, District Patna, Bihar
 2. Rakesh Kumar, son of Shivji Singh, Village & P.O. Beriya, PS Gopalpur, District Patna, Bihar, the Secretary of Gramin LPG Vitrak Association

.... Petitioners/ Appellant/s

Versus

1. The Union of India through the Seretary, Ministry of Petroleum & Natural Gas, Shastri Bhawan, New Delhi
2. Indian Oil Corporation Ltd. Through its Chairman-cum-Managing Director, G-9, Ali Yavar Jung Mrg, Bandra (East), Mumbai- 400051
3. The General Manager, Indian Oil Corporation Ltd. Bihar State Office, 5th Floor, Lok Nayak Jai Prakash Bhawan, Dak Bungalow Chowk, Patna
4. The Senior Area Manager, Indian Oil Corporation Limited, Marketing Division, Eastern Region, Indane Area Office, Patna Shasshi Bhawan, Exhibition Road
5. Bharat Petroleum Corporation Ltd. Through its Chairman-cum-Managing Director, BPCL, Bharat Bhawan, 4 & 6 Curimbhioy Road, Ballard Estate, PB No. 668 Mumbai 40001
6. The Area Marketing Manager, Bharat Petroleum Corporation Ltd. 3rd Floor, Ashiyana Chamber, Exhibition Road, Patna 80001
7. Hindustan Petroleum Corporation Ltd. Trough its Chairman-cum-Managing Director, 17, Jamshedji Tata Road, Mumbai 400020
8. The Senior Regional Manager, Hindustan Petroleum Corporation Ltd. Patna LPG Regional Office, 6th Floor, Lok Nayak Jai Prakash Bhawan, Duk Bungalow Chowk, Patna

.... Respondents/ Respondent/s

with

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Letters Patent Appeal No. 1675 of 2017

IN



Civil Writ Jurisdiction Case No. 14040 of 2017

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Pankaj Kumar,son of Haribansh Kumar, Resident of Mohalla Near PNB Bank
Sherpur, Patna, PS Maner, District Patna

..... Appellant/s

Versus

The Union of India & Ors

..... Respondent/s

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Appearance :

(In LPA No.1682 of 2017)

For the Appellant/s : Mr. Jitendra Singh, Sr. Advocate

For UOI : Mr. Arvind Kumar Tewary, CGC

For IOCL : Mr. Anil Kumar Jha, Sr. Advocate

Mr. Sanat Kumar Mishra

For HPCL : Dr. Pankaj

For BPCL : Mr. Sanjay Singh

(In LPA No.1675 of 2017)

For the Appellant/s : Mr. Sandip Kumar

Mr. Abhishek Kumar

For the UOI : Mr. Arvind Kumar Tiwary, CGC

For IOCL : Mr. Anil Kumar Singh

Mr.Amalesh Kumar Verma

For HPCL : Dr Pankaj Kumar

For BPCL : Mr. Sanjay Singh

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 20-12-2017

In both these appeals filed under Clause 10 of the Letters Patent challenge is made to a common order dated 17.11.2017 passed by the learned Writ Court in CWJC No. 12282 of 2017 and CWJC No. 14040 of 2017.

An Advertisement issued on 17.06.2017 by the Oil



Corporations was challenged in the writ petition. The advertisement was issued on 17.06.2017 by which 974 new locations were advertised for appointment of LPG Distributors in the category of Gramin Vitraks in the State of Bihar.

Inviting out attention to the guidelines and the policy laid down for selection of distributors vide Annexure-4 available in the record of CWJC No. 14040 of 2017, it was vehemently argued before us that in the matter of determining the limits with regard to Market ceiling as contemplated under Clause 2.1.1.1.1 of the policy for determining the feasibility limit has been violated. Even though by referring to various statistics and statement below rival contentions are made to show that the limits have not been exceeded:-

“ 2.1.1.1. Existing Market

2.1.1.1.1. Market Ceiling

The market refill ceiling limit is the maximum number of the domestic refill sales stipulated for LPG Distributorships and based on the market. Market Ceiling Limit and the Feasibility norm for different types of Distributorship Area is proposed below:

Types of Distributorships Area	Population as per Census 2011	Refill Ceiling Limit per month	Refill Sale Per Month for Feasib limit
Sheheri Vitrak	Cities with Population > 40 Lakh	20,000	10,000
	Cities with 20 to 40 lakh Population	15,000	7,500
	Cities with 10 to 20 lakh Population	12,000	6,000
Rurban Vitrak	Towns with <10 Lakh Population	10,000	5,000
Gramin Vitrak	Village/Cluster of villages	5,000	2,500
Durgam Khetriya Vitrak	Village/Cluster of villages	1,500	600



Restructuring of the LPG Distributorship viz., Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriay Vitrak in the existing market will be planned only after the refill sale exceeds by 50% of the refill ceiling limit of the market. “

On going through the detailed order passed by the learned Writ Court we find that the Writ Court considering the judgment rendered by the Gujarat High Court with regard to the same advertisement by Division Bench in a Letters Patent Appeal and in paragraph-7 of the impugned order has refused to interfere on the following consideration:-

“(7) Clause (1) of the Guidelines, deals with definitions and clause 1.1 to 1.3 defines types of distributorship areas. There are various types of distributorship areas titled as Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriya Vitrak. Presently, case of the petitioners is that distributors of the petitioners are operating in the areas called ‘Rurban Vitrak’. Definition of ‘Rurban Vitrak’ is defined as under:-

‘Rurban Viitrak:- In the guidelines, the word Rural Urban means LPG Distributor located in ‘Urban Area’ and also providing service to the LPG Customers in specified ‘Rural Area’, generally covering all villages falling within 15 km from the municipal limits of the LPG distributorship location and or the area specified by the respective OMCs. LPG Distributors servicing this area will be called ‘Rurban Vitrak’.



(7.1) Other relevant, definition of Virgin Market as defined in clause 1.11 reads as under:-

“1.11 Virgin Market means a town or a village where no LPG Distributorship is located and nor serviced by any LPG distributor of OMG. Cluster of villages includes villages considered for working out refill sale potential for considering the feasibility for setting up of a Gramin Vitrak or Durgam Kshetriya Vitrak.”

(7.2) Ceiling Limit as defined under clause 1.14 reads as under :-

“1.14. Ceiling limit means maximum limit of refill sale of domestic LPG cylinder in terms of 14.2 kg capacity per month of the distributorship for the market.”

(7.3) Identification of locations is governed by clause (2). For the purpose of this appeal, clause 2.1, 2.2, 2.3, 2.4, 2.4.1 reads as under:-

“2.1 Locations for setting up of LPG Distributorship (Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriya Vitrak will be identified based on available refill sale potential that can sustain economically viable operation of LPG distributorship. It will also be based on data mining involving features of a particular geographical area and its demographic profile.

2.2 The refill sale potential will be based on several factors including population, population growth rate,



economic prosperity of the location and the distance from the existing nearest distributor.

2.3 In selecting locations, inputs will also be taken from State Government/Local Administration/Public Representatives.

2.4 To the extent possible, new LPG Distributorships will be planned in the virgin location either of an existing market or virgin market as below.

2.41 Virgin Market – Sheheri, Rurban Vitrak, Gramin and Durgam Kshetriya Vitrak.

New Distributorship will be planned in a virgin market if the refill (14.2 kg) sale potential is 50% of ceiling limit applicable for the market in the 2nd year of operation.

In a virgin market, Durgam Kshetriya Vitrak (DKV) will be planned in a village or a cluster of villages in such areas (which do not fall under the area of operation of any existing LPG distributor) if the refill sale potential of the village/cluster of village is 600 per month.”

(7.4) Existing market is defined in Clause 2.4.1.1.1

2.4.1.1.1 Market Ceiling

The market refill ceiling limit is the maximum number of the domestic refill sales stipulated for LPG Distributorships and based on the market. Market Ceiling Limit and the feasibility norm for different types of distributorship area is proposed below:-

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Area			limit
Sheheri Vitrak	Cities with Population > 40 Lakh	20,000	10,000
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Restructuring of the LPG distributorship viz. Sheheri Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriya Vitrak in the existing market will be planned only after the refill sale exceeds by 50% of the refill ceiling limit of the market.”

We find no error in the aforesaid consideration made by the learned Writ Court warranting reconsideration.

The appeals stand dismissed.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mr.l./-

AFR/NAFR	NAFR
CAV DATE	N.A.
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