

In the High Court of Judicature at Madras

Reserved on : 09.1.2017 & Pronounced on : **04/8/2017**

Coram :

The Honourable Mr.Justice NOOTY.RAMAMOZHANA RAO

And

The Honourable Mr.Justice S.M.SUBRAMANIAN

Writ Appeal Nos.898, 1278, 1279, 1285, 1286, 1302,
1352 to 1354 of 2016 and 49 & 51 of 2017
& all connected pending CMPs

W.A.No.898 of 2016 :

M/s.Joseph Trading Corporation,
IOCL Dealer, rep.by its Partner
P.Sathyanathan

...Appellant

Vs

- 1.The Union of India, rep.by its
Secretary, Ministry of Petroleum
& Natural Gas, Sastri Bhavan,
New Delhi.
- 2.Hindustan Petroleum Corporation Ltd.,
rep.by its Chairman & Managing
Director, No.17, Jamshed Ji Tata
Road, Mumbai-20.
- 3.Indian Oil Corporation Limited,
rep.by its Chairman & Managing
Director, Scope Complex,
New Delhi-110033.
- 4.The Director (Marketing),
Indian Oil Corporation Ltd.,
G-9, Ali Yuavar Jung Marg,
Bandara East, Mumbai-51.
- 5.Bharat Petroleum Corporation Ltd.,

rep.by its Chairman & Managing
Director, Bharat Bhavan, No.4 & 6,
Currim Bhoy Road, Ballard Estate,
P.B.No.688, Mumbai-1.

6.The Government of Tamil Nadu,
rep.by its Secretary, Food, Civil
Supplies and Consumer Protection
Department, Fort.St.George,
Chennai-9.

7.The Commissioner of Civil Supplies,
Chepauk, Chennai-5.

...Respondents

APPEALS under Clause 15 of the Letters Patent against the common
order dated 30.6.2016 made in WP.(MD)No.17221 of 2013, WP.No.3121 of
2015, WP.(MD).No.17223 of 2013, WP.No.35325 of 2013, WP(MD)No.17218
of 2013, WP.No.35324 of 2013, WP.No.35326 of 2013, WP.(MD)No.17222 of
2013 and WP(MD)No.17220 of 2013.

For Appellants in
WA.Nos.1285, 1286, 1302
& 1352 to 1354 of 2016 : Sri.K.Raja

For Appellant in
WA.No.898 of 2016 : Sri.AR.L.Sundaresan, SC
assisted by
SrI.M.Baskar

For Appellants in
WA.Nos.1278 & 1279
of 2016 : Sri.Sriram Panchu, SC for
Sri.N.Kolandaivelu

For Appellant in
WA.No.49 of 2017 : Sri.P.N.Vignesh

For Appellant in
WA.No.51 of 2017 : Sri.P.Krishnan

For Respondent-1 in
WA.Nos.898, 1285, 1286,
1302 & 1352 to 1354 of
2016 : Sri.G.Rajagopalan, ASG
assisted by
Sri.J.Madanagopal Rao, SCGSC

For Respondent-1 in
WA.Nos.1278 & 1279 of
2016 : Sri.B.Rabu Manohar

For Respondents 2 to 5 in
WA.Nos.898, 1278, 1279,
1285, 1286, 1302 & 1352
to 1354 of 2016 : Sri.M.Raveendran, SC
assisted by
Sri.V.Ananthanatarajan

For Respondents 6 & 7 in
WA.Nos.898, 1278, 1279,
1285, 1286, 1302 & 1352
to 1354 of 2016 : Mr.L.P.Shanmugasundaram,
SGP

Respondents 8 to 11 in
WA.Nos.1278 & 1279 of
2016 : Given Up

COMMON JUDGMENTNOOTY.RAMAMOHANA RAO,J

These batch of writ appeals have been preferred by the writ petitioners, whose writ petitions have all been dismissed by the learned Single Judge finding no merit therein.

2. The writ petitioners are carrying on business as dealers of kerosene. They are essentially aggrieved that their cases are not being considered by Oil Marketing Corporations (OMCs) for appointment as dealers/distributors of Liquid Petroleum Gas (LPG).

3. For centuries, firewood was used as cooking medium by the house holders. When it was realized that the green cover is getting depleted, for purpose of keeping firewood depot in a position to supply the firewood to the customers, a switch over was made to coal based cooking media. When kerosene, a by-product obtained while refining the crude oil, has become available because of its high inflammable characteristic, a switch over was made to using kerosene in as safe a form as possible as a cooking medium. But however, consumption of kerosene in large quantities has been found to have been associated with various other ill-effects, including high emission of carbon di oxide (CO₂) and also having a potential risk from unsafe methods of its usage. It was also further realized that kerosene, all because of its easy availability, is finding a different route than to the genuine users. Kerosene is being increasingly used as a dilutant of various other petroleum products. To prevent the ill-effects of dilution of the petroleum products, colouring the

kerosene oil has been undertaken, resulting in increased production costs. Since kerosene is used essentially by the lower strata of the society, it is also being heavily subsidized by the State, causing considerable strain on the economy.

4. In those circumstances and also to encourage usage of far safer and far more effective consumption of LPG, more and more domestic consumers are made to switch over to the LPG usage instead of dependence on kerosene. As a result of these developments, allotment of kerosene quota to the States by the Union Governments has been on the decline. More and more kerosene dealers are finding their business prospects dwindling with the reduced quantities being made available to them and also due to reduced quantities of stocks being lifted by the consumers. With a view to encourage the kerosene dealers to give up their dealership upon switch over to LPG dealership/distributorship, necessary measures of relief are contemplated and provided for. All the OMCs have been directed by the Government of India to make necessary provision for switch over of the kerosene dealers by rendering them eligible for selection as LPG dealers/distributors, thus without putting the licence held by them for distributing SKO, against them as a bar for picking up another licence, so that the selected SKO dealer can surrender his SKO dealership, upon selection as dealer/distributor of LPG.

5. Consequently, certain steps and measures have been taken. But however, finding such measures as inadequate and falling short of their

rehabilitation, the kerosene dealers have mounted a challenge to the Notifications issued by the various Oil Corporations inviting applications for selection of dealers/distributors of LPG.

6. Several contentions have been canvassed essentially on the ground that merely rendering eligible former dealers of kerosene for selection as dealers/distributors of LPG, is not an effective measure of rehabilitation, particularly when such kerosene dealers are willing to surrender their licence granted to them earlier. It was also urged that the partnership firms are rendered ineligible to compete for selection as dealers/distributors of LPG. It was also urged that by subjecting the former superior kerosene oil (SKO) dealers to the system of drawing lots, only a mere opportunity, but not a realistic one has been provided. More importantly, the decision of the OMCs is not in consonance with the views expressed by the Union of India on the subject.

7. Per contra, the learned Additional Solicitor General would contend that the Government of India has decided, as early as in the year 2000, to reduce the allocation of SKO supplies for distribution under the Public Distribution System to the States, particularly when there is an increased coverage of LPG and more and more consumers have switched over to LPG consumption and hence, the Government of India has been progressively reducing supplies from the year 2010-11 onwards. The Central Government has mooted the idea for creating a favourable situation for the switch over of SKO dealers.

8. Sri.M.Raveendran, learned Senior Counsel appearing for the respondent – Oil Corporations would contend that the High Court of Andhra Pradesh and the High Court of Karnataka have dismissed similar claims while the High Court of Bombay has found the system of selection of dealers/distributors through drawal of lots as free from the vice of arbitrariness and favoritism and rejected the attack made there against. He would further contend that the learned Single Judge, in the case on hand, has subscribed to the same reasoning of the other High Courts and rejected the claim of the writ petitioners. Hence, no exception need be drawn thereto.

9. The long and short of the case is as to whether the Government of India has made any promise to rehabilitate the SKO dealers by converting them as LPG dealers/distributors or merely allow the OMCs to provide them an opportunity for selection as dealers of LPG. The Government of India, in its Ministry of Petroleum and Natural Gas, has been critically examining the issue of securing larger coverage of LPG and simultaneous withdrawal of the distribution of SKO under the Public Distribution System. The Government of India wanted to ensure that over a period of time, the States can be rendered kerosene free, like Delhi. At the same time, they also realized that with the depleted quotas of SKO, the business of distribution of kerosene becomes an unviable factor. Though the SKO dealers were contending that reducing the quota of allocation of SKO to less than 100 KL would make the dealership unviable, the OMCs appear to have considered the said limit as 75 KL instead of 100 KL. The Government of India since was periodically revising

the commission payable to the SKO dealers, which stood revised to those wholesale dealers, who are having licence in Form XV at the rate of Rs.255/- per KL and for the other wholesale dealers of SKO holding the licence in other than Form XV at Rs.212/- through their communication dated 23.5.2008, duly revising the commission earlier announced on 28.2.2007. Further, through their communication dated 06.7.2009, the commission was respectively revised to the above two classes of licensees at the rate of Rs.263/- and 220/-/KL. But yet, the business prospects of SKO dealers are not any way encouraging, as it used to be at one time in the past.

10. The Government of India also mooted the feasibility of a switch over from SKO dealership to LPG dealership/distributorship, if it can be allowed as a measure of compensation/rehabilitation to the existing SKO dealers. It has, hence, taken up the matter with the Director (Marketing) of the Indian Oil Corporation at Mumbai through their communication dated 16.10.2009, requesting to send his comments on behalf of the OMCs on operational requirements relating to the feasibility and working of such a system, in which, a switch over from SKO dealership to LPG distributorship is allowed.

11. The Government of India has, again, as lately as on 24.7.2012, reminded the Director of Indian Oil Corporation to make its views of switch over of SKO dealers to LPG distributorships known. At long last, the Indian Oil Corporation made its recommendations on the subject through its communication dated 30.7.2012, after holding due deliberations in the

matter by the Industry Group, meaning thereby all OMCs. The recommendations contained in the communication dated 30.7.2012 of the Indian Oil Corporation read as under :

"Industry Group had detailed recommendations in the matter and the following is recommended :

(a) Existing SKO dealers of OMCs operating below an average allocation of 75 KL of SKO per month during the immediate preceding 12 months prior to the month of advertisement (with proof of such allocation from allocating authority of the State Government/Divisional/Territory/Regional Office of the Oil Company, as the case may be) will be eligible to apply for regular LPG distributorship RGGLV under the category of individual applicant only (since there is no provision for applying in partnership for LPG distributorships). Accordingly, multiple dealership/distributorship norm shall not be applicable for such applicants.

(b) In case of allotment, the SKO dealers will have to surrender their kerosene dealership prior to issuance of letter of appointment for regular LPG distributorship/ RGGLV.

(c) Age & educational qualification are proposed to be relaxed as under :

Age : Maximum upper age limit – 60 years (as against 45 years both in case of regular LPG distributorship & RGGLV).

Educational Qualification: Should have passed minimum X Standard examination or equivalent from a recognised Board (as against minimum qualification of graduate/diploma in Engineering for regular LPG distributorships.

(d) To be eligible to apply for regular LPG distributorship/RGGLV, the SKO dealer should not have been penalized for violation of Marketing Discipline Guidelines within last 5 years preceding the date of advertisement or there should not be any proceedings pending against the dealership under Marketing Discipline Guidelines/Dealership/Agreement, Kerosene Control Order or ESMA.

(e) Other provisions in the selection guidelines of regular LPG distributorships/RGGLV shall remain applicable.

Approval may please be accorded for the above so that it can be incorporated in the selection guidelines for regular LPG Distributorship/RGGLV.

This letter is issued on behalf of Industry."

12. In pursuance of these recommendations, the follow up action appears to have been taken by the OMCs, as the Government of India has not taken any decision to the contra.

13. When we examine the recommendations made by the Indian Oil Corporation, it is seen that the oil industry is only interested to render the SKO dealers eligible to apply for regular LPG distributorship rather than

agreeing for a switch over of the existing SKO dealers to that of LPG dealership/distributorship, without anything further. On the other hand, the concessions that are sought to be held out relate only to the age factor and the educational qualifications to be possessed by the candidate. The recommendation of the industry appears to be not to favour the partnership firms to make a switch over, as partnership firms are not chosen, it appears, for LPG dealership.

14. These recommendations of the Indian Oil Corporation appears to have been accepted by the Ministry. At any rate, there is no material record to vouch that the Government of India decided upon any automatic switch over. The net result is that there is no scheme of rehabilitation contemplated and provided for the existing SKOs. The existing SKOs are merely rendered eligible to apply and if selected, would become the dealer/distributor of LPG by surrendering the existing licence for distribution of SKO. In other words, there is no rehabilitation measure or any greater amount of relief sanctioned in the process. Thus, there is no enforceable right, held out, in the form of a promise by the Government of India for switching over of the SKO dealer as LPG dealer.

15. What policy decision should be taken by the Government of India in the matter of accommodating the interests of existing SKO dealers cannot be a matter of judicial review exercise. So long as the power is vested under Article 162 of our Constitution to take any policy decision, such policy decision cannot be dictated to by the Courts. The review exercise of any

policy decision is only confined to the well recognized grounds of judicial review. It is no longer open for the Court to substitute its opinion to that of the policy matter. Nor can the Court suggest a more expedient line of action to be pursued instead.

16. So long as the policy decision does not offend any provision of The Constitution including the Fundamental Rights guaranteed under Part III of The Constitution or any other existing Statutory Provision and so long as no vested right is taken away or no enforceable promise is held out, no serious exception can be drawn to a policy decision. Where an SKO dealer, who is getting paid the commission at the specified rate per every KL of the commodity distributed by him, finds his economic interests impacted either due to reduced quantity of supply of SKO or due to the drastic fall of necessity for supplying kerosene under the PDS, the same is a factor impacting the business carried on till then, but it does not deal with or defeat any vested right. SKO dealers were selected to ensure that the PDS/network functions smoothly and efficiently. The essential commodities become easily available to the targeted group without much hardship faced by them. Simultaneously, the dealer can expect to make a decent profit out of his enterprise.

17. When the subsidy components are found to be eating into the vital parts of the economy or at any rate, they are perceived increasingly as impeding factors for a fast track economic progress, the Government of India is legitimate in its decision to revise and revisit the draining factors in the

form of subsidies. The Government of India, therefore, has considered it appropriate to reduce the quantum of supply of SKO for PDS distribution so as to ensure that a kerosene free State objective is achieved. It has been encouraging the consumers of kerosene at the domestic level to switch over to far safer, more convenient and hassle free option of LPG coverage. Once the LPG coverage increases, it is but natural that the quantity of kerosene distribution must necessarily and correspondingly come down.

18. When once the writ petitioners have preferred and agreed to carry on business by engaging themselves to be the distributors of SKO and when the going was good, they had the benefit of higher quantum of turnover and consequently higher quantum of returns on capital. They cannot now make an issue out of either reduced quantities of profits or the prospects of the business itself becoming unworkable and unviable.

19. Over a period of time, all due to rapid technological progress made, the market conditions are undergoing a rapid change. A thing or object which is considered as an essential item for a convenient and comfortable way of living, is giving way to new and modified systems. Consequently, the older technologies and objects are becoming nearly useless, if not obsolete. If one can imagine a quick example, the landline telephones have been now on the verge of becoming obsolete. Therefore, the business prospects keep varying with the varying times and the needs and necessities of the society. The needs of the society do not remain constant.

They undergo revolutionary change once in a while. If advent of LPG as a cooking medium was considered to be a revolutionary change at one time, now, induction coil cooking is almost the in-thing and the LPG dependence is more likely to get reduced. If electric energy consumption charges can be rationally brought down or stabilized, perhaps, even dependence on LPG may come to an overall end, as consumers are likely to switch over to electric cooking ranges. The failure on the part of the Central Government or for that matter the OMCs to provide for any rehabilitation package for the SKO dealers cannot be a subject matter of judicial review exercise. There is no enforceable right guaranteed or even promised to SKO dealers to switch them over as LPG dealers. Further, any such automatic switch over may not be feasible either. In the same area, for which, the LPG dealership is sought to be created, there can be more than one SKO dealer available with the result all of them cannot be switched over as LPG dealers. Further, the Government of India has to necessarily provide for and take care of other competing social interests such as SC, ST, OBC, war widows, ex-servicemen, etc. Their interests cannot be completely ignored in selecting LPG dealers.

20. The learned Single Judge has virtually subscribed to the reasoning assigned by the Andhra Pradesh and the Karnataka High Courts. The reasoning assigned by those High Courts being correct also appealed to us.

21. So far as the contention canvassed that selecting dealers by drawal of lots amounts to a mere chance and not a realistic opportunity, the various other methods of selecting dealers by the OMCs that have been tried

in the past have fallen for critical examination by the Courts in this country and the methods have not been approved on one ground or the other. While the necessity to prescribe a far reasonable and transparent procedure is the in-thing, by virtue of the mandate contained in Article 14 of our Constitution, choosing a method of picking up by drawal of lots cannot be completely faulted. It spares action of the OMCs from being characterized as 'favouring a few' and leaving the others. When once several eligible applicants come forward to market various products of the OMCs including the LPG, adopting the method of drawing the lots to select the dealers/distributors cannot be characterized as an arbitrary exercise. By doing so, the OMCs are not picking or choosing anyone, but whoever is otherwise eligible enjoys fair and equal opportunity for grant of distributorship.

22. For the aforesaid reasons, we find no merit in these writ appeals and they stand accordingly dismissed. No costs. Consequently, all connected pending CMPs are also dismissed.

04/8/2017

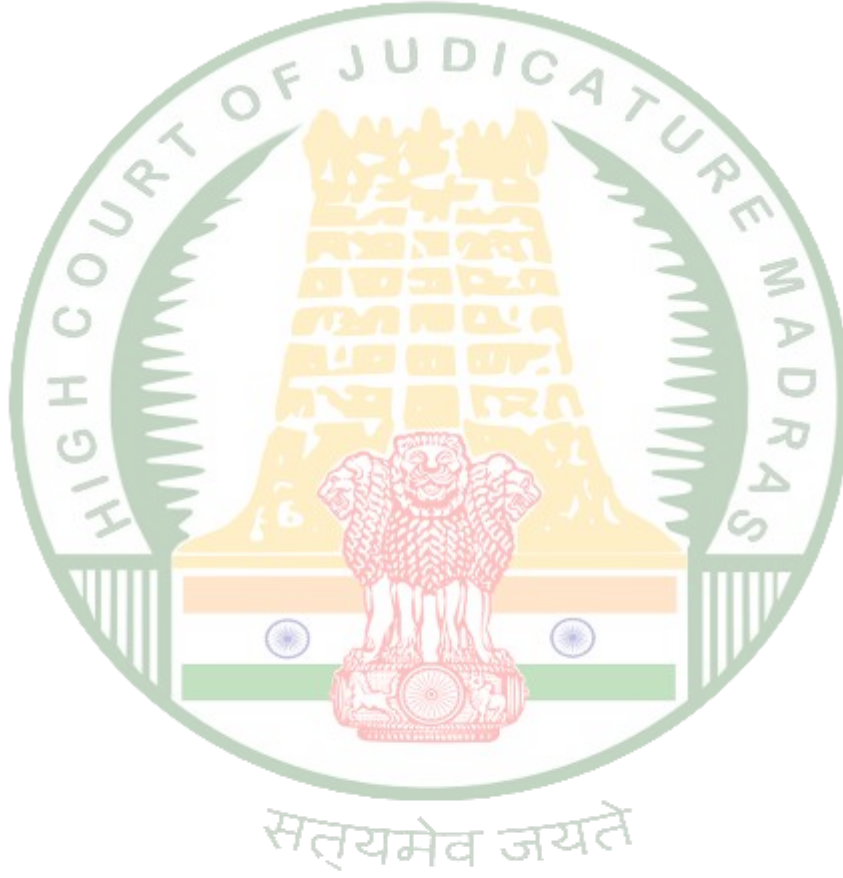
Internet : Yes

To

- 1.The Secretary to Union of India, Ministry of Petroleum & Natural Gas, Sastri Bhavan, New Delhi.
- 2.The Chairman & Managing Director, Hindustan Petroleum Corporation Ltd., No.17, Jamshed Ji Tata Road, Mumbai-20.
- 3.The Chairman & Managing Director, Indian Oil Corporation Limited, Scope Complex, New Delhi-110033.
- 4.The Director (Marketing), Indian Oil Corporation Ltd., G-9, Ali Yuavar Jung Marg, Bandara East, Mumbai-51.
- 5.The Chairman & Managing Director, Bharat Petroleum Corporation Ltd., Bharat Bhavan, No.4 & 6, Currim Bhoy Road, Ballard Estate,

- P.B.No.688, Mumbai-1.
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