

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :27.10.2017
Delivered on:10-11-2017

Coram

The Honourable Mr.Justice V.PARTHIBAN

W.P. Nos.3431 & 3465 of 2012
and M.P.No.1 of 2012

M/s.Sri Bharathi Agencies,
Dealer-Indian Oil Corporation Limited (R&O),
rep. by its Proprietor M.Maran .. Petitioner in
WP 3431 of 2012

M/s.Shri Guha Petroleums,
Dealer-Indian Oil Corporation Limited (R&O),
rep. by its Proprietor S.Srinivasan .. Petitioner in
WP 3431 of 2012

Versus

1. The Secretary to Government of India,
Ministry of Petroleum and Natural Gas,
Shastri Bhavan,
New Delhi-110 001.

2. The Chairman,
Indian Oil Corporation Limited,
Indian Oil bhavan,
G-9 Ali Yuvar Jung Marg,
Bandhra (West), Mumbai.

3. The Chairman,
Hindustan Petroleum Corporation Limited,
17, Jamshedji Tata Road,
Mumbai-400 020.

4. The Chairman,
Bharat Petroleum Corporation Limited,
4, 6 Currimbhoy Road,
Ballard Estate,
Mumbai-400 001.

.. Respondents 1 to 4
in both W.Ps.

5. The District Revenue Officer,
Krishanagiri District,
Krishnagiri.

6. Sri Maruthi Fuel Station,
Dealer-Hindustan Petroleum Corporation Limited,
rep. by Gayathhri .. Respondents 5 & 6
in WP 3431 of 2012

Prayer in W.P.No.3431 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct the respondents 1 to 5 to consider the grievances of the petitioner placed through representation dated 25.10.2011 and protect my right of minimum guaranteed sale.

Prayer in W.P.No.3465 of 2012: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct the 4th respondent herein not to permit to open any new retail outlet just opposite to the petitioner's existing outlet situated at Narnamangalam village, Kunnam taluk, Perambalur District allotted by M/s.Indian Oil Corporation Limited, the 2nd respondent herein under SC category.

For Petitioner : Dr.R.Sampathkumar
in both WPs
For Respondents : Mr.Madanagopal Rao, SCCG
for RR1&2,4 in WP 3431/2012
and R1 in WP 3465 of 2012
: Mr.O.R.Santhanakrishnan for
RR3&4 in WP 3431/2012
and WP 3465/2012
: Mr.Mohammed Fayaz Ali for
R2 in WP 3465 of 2012

COMMON ORDER

The present writ petitions have been filed, seeking for the following relief:

"W.P.No.3431 of 2012:

Issue Writ of Mandamus, to direct the 4th respondents 1 to 5 herein to consider the grievances of the petitioner placed through his representation dated 25.10.2011 and protect his right of minimum guaranteed sale.

"W.P.No.3465 of 2012:

Issue Writ of Mandamus, to direct the 4th respondent herein not to permit to open any new retail outlet just opposite to the petitioner's existing outlet situated at Narnamangalam village, Kunnam taluk, Perambalur District allotted by M/s.Indian Oil Corporation Limited, 2nd respondent herein under SC category.

2. Since both the Writ Petitions have raised common issues and grounds, they are taken up together and being disposed of by this common order.

3. It is suffice to narrate brief facts of the writ petition in W.P.No.3431 of 2012, which can be stated as hereunder:

3.1 The petitioner has been allotted a retail outlet. It was located at Subramaniyapuram in Krishnagiri District. The said outlet is functioning in the name and style "M/s.Bharathi Agencies". The petitioner was granted the retail outlet against the quota reserved for SC/ST communities by second respondent Corporation with a noble purpose of lifting the people from downtrodden community socially and economically by empowering them. At the time of allotment of the retail outlet, the petitioner has been extended corpus fund and also certain concessions were extended to him for running the outlet which concessions were not normally available for allotment against the general pool.

3.2 While granting the retail outlet, a contract has been fixed on a monthly basis. According to the petitioner, the outlet has been able to achieve the target with great difficulty. While so, the third respondent called for applications for allotting new retail outlets from general category for various places in the Salem District. An advertisement was published in daily newspaper on 20.4.2010 and one of the retail outlets which was allotted to be located within a half kilometer from the existing petitioner's outlet. If the new outlet is going to be opened very close to the petitioner's outlet, according to the petitioner, his business would be severely affected and he would not be able to achieve the target fixed by the second respondent Corporation. In the said circumstances, the petitioner submitted a representation and since it has not evoked any response, a writ petition was filed in W.P.No.1536 of 2011. But the same was withdrawn with liberty to file a fresh writ petition with same cause of action. Thereafter, another writ petition was filed in W.P.No.4645 of 2011 in which, the petitioner challenged the notification published in the newspaper dated 20.4.2010 calling for applications for allotment of petroleum outlet by the third respondent Corporation. According to the petitioner, the action initiated by the third respondent was against the business interest of the petitioner who had been allotted retail outlet under special category and the very purpose for which the scheme was framed to uplift the downtrodden people belonging to SC/ST communities would be defeated if such competitiveness is introduced by allowing petroleum outlets by other Petroleum Corporation very close to the outlet of the petitioner. This is more so when the second respondent itself has extended a huge amount towards corpus fund to assist SC/ST persons who were allotted such outlets as a matter of subsidy to enable them to effectively manage the outlets. According to the petitioner, apart from corpus fund extended by the third Corporation, he also borrowed huge amount from the bank which had not been

repaid. In all the circumstances, the opening of retail outlet by other Corporation, particularly, the third respondent Corporation would not sub-serve the purpose for which the retail outlet allotted to the petitioner under special category. Therefore, a representation was made to the second respondent on 25.10.2011. The said representation has not evoked any response and therefore, the petitioner was constrained to approach this Court, seeking to issue Writ of Mandamus, to dispose of the representation by protecting his right of minimum guaranteed sale.

3.3 As regards the writ petition in W.P.No.3465 of 2012 is concerned, the facts are similar to that of the above writ petition, however, the grievance of the petitioner is that the 4th respondent/Bharath Petroleum Corporation Limited has given advertisement in New papers, inviting applications for opening new retail outlets, and one of such outlets is going to be allotted just opposite to the petitioner's outlet. It is to be noted that the petitioner has not given any representation in this regard to the respondents. However, the petitioner sought for a direction to the 4th respondent not to permit to open any new retail outlet just opposite to his existing outlet situated at Narnamangalam village, Kunnam taluk, Perambalur District.

4. Upon notice, Mr.Madanagopal Rao, learned Senior Central Government Standing counsel entered appearance for respondents 1, 2 and 4 in WP 3431 of 2012 & for respondent No.1 in WP 3465 of 2012 and Mr.O.R.Santhanakrishnan, learned counsel for respondents 3 and 4 in WP Nos.3431 & 3465 of 2012 and Mr.Mohammed Fayaz Ali, learned counsel for respondent No.2 in W.P.No.3465 of 2012.

5. The learned counsel for the petitioners would straight away draw the attention of this Court to the order passed by the learned single Judge of this Court dated 14.12.2011 in a batch of Writ Petitions, viz., W.P.Nos.1537 to 1541 & 2271 of 2011 wherein similar grievances of the allottees of such retail outlets were considered and while disposing of the writ petitions, this Court has directed the respondents therein to consider the representations of those allottees who were similarly placed like that of the petitioners herein, finding some justification in their grievance. The operative portion of the order passed by the learned single Judge in the aforesaid batch of Writ Petitions, in para 15 to 17, is extracted as under:

"15. Coming to the last question raised by the learned counsel for the petitioners, this Court finds considerable force in the said submission. The petitioners stand on a different footing than that of the respondents. It is not in dispute that

the petitioners were given subsidy and the substantial amount has been borne out by the

respective principal-Corporation. The allotment has been made to the dealers under the Scheduled Caste/Scheduled Tribe category only in order to encourage the weaker sections by way of policy decision. Therefore, it is incumbent on the respondents to see to it that the very policy which has been initiated should not be allowed to be defeated. This Court is of the view that considering the peculiar facts of the case and taking note of the materials, the petitioners will have to be shown some difference as against the normal dealers. It is the case of the petitioners that they would be substantially affected by the proposed outlets. It is no doubt true that they cannot maintain these Writ Petitions as against the other Oil Corporations in the absence of any legal right vis-a-vis corresponding legal duty that would be public in nature. The subsequent communication relied on by the learned counsel for the respondents dated 25.08.2011 deals with the general decision regarding the establishment of outlet. By the subsequent communication, it cannot be said that the respondents can deviate from the stand taken by way of communication sent to the other Ministry in and by its letter dated 30.10.2008. While it can be said that the petitioners may not have a legal right to stop another outlet, certainly it can be stated by the petitioners that the principal-Corporation will have to be taken into consideration of the factual position.

16. Therefore, the petitioners will be at liberty to approach the principal-Corporation, in which, they are dealers to address their grievances by producing their materials available with them to specify their case, within a period of four weeks from the date of receipt of a copy of this order. As and when, the petitioners make such representation, the same will have to be considered by the principal-Corporation by taking into consideration of the entire materials available on record and appropriate orders will have to be passed thereafter. It is made clear that if any such representation is made till appropriate orders are passed, no coercive action will be taken against the petitioners by the principal-Corporation.

17. These Writ Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed."

6. The learned counsel would therefore urge this Court that similar direction may be issued to the second respondent to consider the grievances of the petitioners in the light of the scheme and object behind granting the retail outlets to the downtrodden people like the petitioner herein, who were allottees of petroleum outlets.

7. The learned counsel appearing for the respondents have uniformly submitted that they would have no objection if a direction is issued to dispose of the representation and to consider the claim of the petitioner in the light of the facts and grounds stated in the writ petitions.

8. In the above circumstances, without expressing any opinion on the merits of the petitioners' claim, a direction is issued to the 2nd respondent in W.P.No.3431 of 2012 to dispose of the representation said to have been made on 25.10.2011 on merits and in accordance with law. The second respondent is directed to take note of the averments contained in the writ petition and also the grounds raised therein vis-a-vis the observation made by the learned single Judge of this Court in his order dated 14.12.2011 in a batch of Writ Petitions, viz., W.P.Nos.1537 to 1541 & 2271 of 2011. The second respondent shall comply with the direction within a period of eight weeks from the date of receipt of a copy of this order.

9. As regards the other writ petition in W.P.No.3465 of 2012 is concerned, since there was no representation submitted by the petitioner and only Writ of Mandamus was sought for by the petitioner, praying not to permit any new retail outlet opposite to his existing outlet, the petitioner is directed to submit a comprehensive representation to the second respondent/Indian Oil Corporation Limited, within a period of two weeks from the date of receipt of copy of this order. On such representation being made by the petitioner, the second respondent is directed to dispose of the same in the manner as indicated above.

10. With these directions, the Writ Petitions are disposed of. No costs. Consequently, connected MP is closed.

suk

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1. The Chairman,
Indian Oil Corporation Limited,
Indian Oil bhavan,
G-9 Ali Yuvar Jung Marg,
Bandhra (West), Mumbai.

2. The District Revenue Officer,
Krishanagiri District,
Krishnagiri.

+1cc to Mr.Mohammed Fayaz Ali, Advocate Sr.NO.79692/17

+1cc to Mr.J.Madanagopal Rao, Sr.Central

Government standing counsel Sr.No.79810/17

+2cc to Mr.OR.Santhana Krishnan, Advocate SR.no.79839 & 79840/17

common Order in
W.P.Nos.3431 & 3465 of 2012

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