

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

WRIT PETITION No.2258 of 2013

ORDER:

This writ petition came to be filed with the following prayer:

“...to issue a writ order or direction more particularly one in the nature of Writ of Mandamus, declaring the action of the respondent and its sub-ordinates in not permitting the petitioners to engage 15 years old tank trucks for lifting the PDS kerosene quota allotted to them every month for distribution to the retailers as illegal, arbitrary and unjust and consequently direct the respondent and its sub-ordinates to deliver the kerosene quota to the tank trucks engaged by the petitioners without reference to the year of making of the tank trucks.

The petitioners claim to be wholesale kerosene dealers of Hindustan Petroleum Corporation Limited in East and West Godavari Districts and they have been distributing PDS kerosene to fair price shop dealers, who in turn deliver the same to BPL card holders. It is stated that petitioners were paid commission for distributing the kerosene allotted to them by lifting the same from HPCL terminal situated at Gummalladoddi in Korukonda Mandal, East Godavari District through tank trucks engaged by them. The transport charges would be paid to them by the Government. It is further stated that some of the petitioners are engaging tank trucks of their own and others were hiring them. It is the case of the petitioners that in December, 2012, respondents-authorities stopped delivery of kerosene to their tank trucks on the ground that tank trucks were more than 15 years old and insisted them to engage tank trucks having the year of make below 15 years. Their grievance is that respondents-authorities are not vested with any power to insist upon them to use tank trucks which are less than 15 years old for the purpose of lifting the kerosene quota.

This Court, by order dated 29.01.2013, directed the respondents not to reject more than 15 year old tankers subject to the petitioners producing fitness certificates from the competent transport authority.

A counter-affidavit came to be filed by the respondent-Corporation, along with a petition to vacate the interim order dated 29.01.2013, stating that the reason for not permitting the petitioners to use tank trucks which are more than 15 years old is because of tank trucks not having Anti-Lock Braking System (ABS), which is vital and essential for trucks carrying petroleum products.

During the course of hearing, learned standing counsel for the respondent-Corporation submits that the said restriction came to be imposed in view of the judgment of the Apex Court. But in spite of giving opportunity, he could not produce the said judgment. Now, it is submitted by the standing counsel that authorities are insisting vehicles installed with ABS only as a measure of safety and that there are no rules or regulations prescribing use of vehicles installed with ABS for transporting petroleum products.

It is to be noted that, in the absence of any rules or regulations under the Motor Vehicles Act and without there being any mention of it in the terms of contract, which was entered into by the petitioners with the respondent-Corporation, imposition of such a condition, cannot be accepted. But, safety measures are required to be taken while using these tank trucks for transporting petroleum products.

Having regard to the facts and circumstances of the case, the writ petition is disposed of, directing the respondents to permit the petitioners to use tank trucks/vehicles having the year of make of more than 15 years, for

transporting fuel, subject to the petitioners producing fitness certificates of the said vehicles from the competent authorities, once in every six months.

As sequel, miscellaneous petitions if any pending in the writ petition stand closed. No order as to costs.

C.PRAVEEN KUMAR, J

July 13, 2017
MRR

