

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.448 OF 2018

Vishal s/o Prabhakar Deshmukh

Petitioner

Versus

Union of India & others

Respondents

Mr. Quadri Taher Ali, advocate for the petitioner.
Mr. S. B. Deshpande, Assistant Solicitor General of India for
Respondent No.1.
Mr. S. S. Dande, A.G.P. for Respondent No.2.
Mr. A. P. Bhandari, advocate for Respondent No.3.
Mr. S. D. Kulkarni, advocate for Respondent No.4.
Mrs. Anjali Dube-Bajpai, advocate for Respondent No.5.

WITH
WRIT PETITION NO.14406 OF 2017

Abhijeet Indane, Loha

Petitioner

Versus

M/s Indian Oil Corporation Ltd.
and another

Respondents

Mr. U. B. Bilolikar, advocate for the petitioner.
Mr. A. P. Bhandari, advocate for Respondent No.1.
Mr. S. D. Kulkarni, advocate for Respondent No.2.

WITH
WRIT PETITION NO.14407 OF 2017

M/s Shagun Indane, Naigaon (Bz)

Petitioner

Versus

M/s Indian Oil Corporation Ltd.
and another

Respondents

Mr. U. B. Bilolikar, advocate for the petitioner.
Mr. A. P. Bhandari, advocate for Respondent No.1.

WITH
WRIT PETITION NO.14408 OF 2017

Versus

Mr.R.R.Mantri, advocate with Mr.R.R.Sancheti, advocate for petitioners.
Mr.A.P.Bhandari, advocate for Respondent No.1.
Mrs.Anjali Dube-Bajpayi, advocate for Respondent No.2.

WITH
WRIT PETITION NO.14409 OF 2017

Versus

Mr.R.R.Mantri, advocate with Mr.R.R.Sancheti, advocate for petitioners.
Mr.A.P.Bhandari, advocate for Respondent No.1.
Mrs.Anjali Dube-Bajpayi, advocate for Respondent No.2.

WITH
WRIT PETITION NO.14410 OF 2017

Versus

Mr.R.R.Mantri, advocate with Mr.R.R.Sancheti, advocate for petitioners.

Mr.A.P.Bhandari, advocate for Respondent No.1.
Mrs.Anjali Dube-Bajpayi, advocate for Respondents No.2 & 3.

**CORAM : R.M.BORDE AND
A.M.DHAVAL, JJ.
DATE : 25th June, 2018.**

P.C. :

1 Heard.

2 Petitioners are objecting to the advertisement issued by the Petroleum Corporation for the purpose of appointment of LPG distributors in rural and difficult/remote areas (*Durgam Kshetria Vitrak*).

3 Petitioners contend that in view of the Unified Guidelines for appointment of LPG distributors in different areas, the Petroleum Corporation is not expected to appoint distributors within periphery of 15 KMs of the existing distributor. Petitioners place reliance on paragraph 1.3 (iii), which reads thus:

1.3 Type of Distributorship Area:

(iii) Gramin Vitrak: In the guidelines, the word 'Rural Area' will have the definition of 'Rural' as per Census 2011. LPG distributorship located in 'Rural Area' will be called as Gramin Vitrak and will service the LPG customers of the specified rural area. Generally it will cover all villages falling within 15 KM from the boundary

limits of the LPG Distributorship location and or the area specified by the respective OMCs.

4 Petitioners are functioning as Gramin Vitrak and according to them, they are providing services to the population within the periphery of 15 KMs.

5 'Virgin Market' is defined in paragraph no.1.11, which means a town or a village where no LPG distributorship is located and not served by any LPG distributor of OMC. 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.

6 It is contended that since the petitioners are providing services to the population residing in the area of advertisement, those locations cannot be considered as a virgin market. Petitioners further contend that the Petroleum Corporation has allowed ceiling limit of 5000 connections to a Gramin Vitrak and they have yet to attain maximum limit of distribution. If additional distributors are appointed within periphery of 15 KMs., it would not be viable for the petitioners to continue to operate retail outlet. It is contended that considering the economic viability factor also, it is imprudent for the petroleum corporation to appoint distributors within periphery of 15 Kms' radius. Petitioners further contend that they are already certain distributors functioning at the proximate distance and such appointments made by the Petroleum Corporations may have adverse impact on the business of the petitioners. The appointment of additional

distributors would bring business of the petitioners in jeopardy and it would not be economically viable.

7 In rebuttal, it is contended by the Petroleum Corporation that clause 1.3 (iii) of the Unified Guidelines cannot be construed as limiting the entitlement of the Petroleum Corporation to appoint distributors within periphery of 15 KMs from the existing distributor. Our attention is invited to a clause contained in the agreement whereunder right is reserved by the Corporation to appoint one or more additional distributors in the same territory without any reference to or consent of the existing distributors and the additional distributors shall be entitled to make sale of the petroleum products in the same territory without any objection from the existing distributor/s and the distributor/s shall not be entitled to claim any overriding remuneration, commission or allowance.

8 It is contended that the petitioners have agreed to the term that the Corporation has reserved its right, without any reference or consent of the distributor, to appoint one or more additional distributors in the same territory and as such, it is not permissible for the petitioners to make any grievance in that regard.

9 From reading relevant clause in the agreement, it is clear that the Corporation has reserved its right, without any reference or consent of the distributor, to appoint one or more additional distributors in the same territory. It is further contended that the Petroleum Corporations are covering rural

areas and remote villages in the matter of supplying cooking gas and reaching out to the rural markets. Apart from fulfilling the objective to supply cooking gas cylinders to the rural masses at their door steps, same shall be considered to be eco-friendly step. Shifting of the pattern of cooking system from biogas, wood and kerosene to alternate system i.e. user of cooking gas also serves the purpose of maintaining greener areas in villages. It is contended by the respondents that the whole purpose of advertisement in gramian and durgam (rural and remote/difficult) areas is to reach out to the rural areas of the Maharashtra and to supply LPG to poorest of poor persons. The Unified Guidelines, on which reliance is placed, does not confer any right on the petitioners to claim distributorship for the villages within periphery of 15 Kms area so as to preclude the Oil Companies from appointing one or more LPG distributors. There are certain areas where distributorship is not reached and the areas are described as Hilly region, forest area, tribal inhabited area, sparsely populated, disturbed areas, islands, Left Wing Extremism (LWE) affected area, etc. Since the essential commodity is being reached at the doorsteps of needy persons in remote areas and considering larger public interest, complaint made by the petitioners *qua* existing distributors from the rural and durgam areas on the ground that economical advantages to the petitioners would be lost, cannot be a matter of consideration by the Corporation. Some of the petitioners, who claim to be beneficiaries, cannot be permitted to challenge the policy. The beneficiaries of the policy formulated by the Petroleum Corporations/Companies are the public at large. Grant of distributorship to the petitioners is a transaction of commercial nature. The distributors are paid

commission which facilitates them to make profit. The aspect of commercial viability based on the commercial transactions need not be looked into at the cost of larger public interest, by this Court in exercise of extraordinary writ jurisdiction.

10 It is not a matter of controversy that the petitioners have agreed to the terms contained in the agreement permitting the Petroleum Corporation/Company to appoint distributors within the area of operation of the petitioners.

11 Apart from this, the clause contained in the unified guidelines, on which reliance is placed by the petitioners, does not debar the Petroleum Corporation/Company from appointing new dealers/distributors within the periphery of 15 Kms from the location of existing distributors. The object of appointing distributors in the rural and durgam areas is to provide essential commodity to the masses at their door steps. Considering the aforesaid object, objection raised by the petitioners on the ground of economical viability does not deserve to be considered.

12 Learned Counsel for respondents, to substantiate their case, have placed reliance on the judgment delivered by Gujarat High Court in L.P.A. No.1410/2017, decided on 21.09.2017. In identical circumstances, challenge, based on same clause contained in the Unified Guidelines, has been turned down. It is informed that the judgment delivered by the Gujarat High Court has been confirmed by the Hon'ble Supreme Court.

13 Mr.Mantri, learned Counsel for some petitioners placed reliance on the judgment in the matter of **Indian Oil Corporation Limited Vs. Nilofer Siddiqui and others**, 2015 AIR (SCW) 6568. In the said matter, the distributorship of the respondents before the Hon'ble Supreme Court was terminated by the Petroleum Company and the said action was a matter of challenge before the Hon'ble Supreme Court. While dealing with the challenge, an argument was advanced on behalf of the respondents that one of the conditions incorporated in the agreement gives the Petroleum Company unfettered right to terminate distributorship without assigning any reason. It was further advanced that the clause contained in the agreement providing not to assign any reason is liable to be turned down under Article 14 of the Constitution of India. Relying on the observations of the Honourable Supreme Court in paragraph no. 33, it is contended that in the instant matters also the condition incorporated in the agreement permitting the petroleum companies to appoint distributors in the area of operation or in the proximity of location of existing distributors-petitioners shall be turned down.

14 The observations made by the Honourable Supreme Court have been made in totally different circumstances. As has been recorded above, the action of the petroleum companies to appoint additional distributors in the rural and remote / difficult areas is a positive steps in the larger public interest. The petroleum companies are providing essential commodities to the rural masses at their door steps and such policy, which is in the larger public interest of rural population, shall not be stalled on the grounds canvassed before us in the petitions. Petitioners do

not have any legal right to seek prohibition against the petroleum companies to appoint new distributors to serve rural masses.

15 Writ petitions are devoid of substance. Hence stand dismissed.

16 Pending civil applications, if any, do not survive and stand disposed of.

17 For the reasons recorded above, request made by learned counsel for petitioners for continuance of interim stay stands rejected.

A.M.DHAVALÉ
JUDGE

R.M.BORDE
JUDGE

adb