

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2018

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.3711 of 2011

&

M.P. No.2 of 2011

Akay Oils

...Petitioner

-Vs-

- 1.The Union of India,
Rep. by its Secretary,
Ministry of Petroleum
and Natural Gas,
Sasthri Bhavan, New Delhi.
- 2.The Director (Marketing)
Indian Oil Corporation,
G-9, Ali Yuavar Jung Marg,
Bandara East, Mumbai - 400 051.
3. Hindustan Petroleum Corporation Limited,
Rep. by its Chairmen & Managing Director,
Scope Complex, New Delhi - 110003.
- 4.Indian Oil Corporation Limited,
Rep by its Chairman & Managing Director,
Scope Complex, New Delhi - 110003.
5. Bharat Petroleum Corporation Ltd.
rep by its Chairman & Managing Director,
Bharat Bavan, No.4 & 6, Currim Bhoj Road,
Ballard Estate, P.B. No.688,
Mumbai-1
6. The Government of Tamil Nadu,
Rep. by its Secretary, Food, Civil
Supplies & Consumer
Fort St. George, Chennai - 600 009.

7. The Commissioner for
Civil Supplies, Chepauk,
Chennai - 600 005.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the impugned advertisement published in The Hindu Newspaper dated 15.06.2010 by the 2nd to 5th respondents for appointment of LPG distributors in Vedachandur, Dindugul District (Item No.24) and quash the same and consequently direct the 1st to 5th respondents herein to allot LPG distributorship in Vedachandur, Dindugul District (Item No.24) or in any location in Tamil Nadu to the petitioner.

For Petitioner : M/s. K. Raja

For Respondents 3 & 5 : Mr.O.R. Santhanakrishnan

For Respondents
1, 2, 4 & 6 and 7 : No Appearance

O R D E R

The writ petition has been filed praying for issuance of Writ of Certiorarified Mandamus, calling for the impugned advertisement published in The Hindu Newspaper dated 15.06.2010 by the 2nd to 5th respondents for appointment of LPG distributors in Vedachandur, Dindugul District (Item No.24) and quash the same and consequently direct the 1st to 5th respondents herein to allot LPG distributorship in Vedachandur, Dindugul District (Item No.24) or in any location in Tamil Nadu to the petitioner.

2. The learned counsel for the petitioner would submit that the petitioner is the kerosene dealer of the fourth respondent and has sustained huge loss affecting his livelihood due to supply of LPG Cylinders increased for general public. Hence the petitioner has made representation to the first respondent for switching over his SKO/LDO dealership to LPG distributorship. While his representation is pending, in the meantime, the 2nd to 5th respondents issued an impugned advertisement in The Hindu newspaper on 15.06.2010 calling for application for appointing 140 LPG Distributorship in Tamilnadu including location in Vedachandur, Dindugul District (Item No.24) wherein the petitioner is ready with the infrastructure to run LPG distributorship. Being aggrieved by the said notification, the

petitioner has preferred the present writ petition to quash the impugned order and consequently, direct the respondents to allot LPG dealership to him.

3. On the contrary, the learned counsel for the respondents would submit that similar writ petition in W.P. Nos.35322 to 35326 of 2013 filed before this Court was dismissed by this Court. The order passed by this Court in W.P. Nos.35322 to 35326 of 2013 dated 30.06.2016 in the case of Sri Ram Agencies Vs. Union of India and others in paragraph No.25 to 28 reads as follows:

.....

"25. The above said judgments, in my opinion, are squarely applicable to the present case also. I do not find any valid reasons to take a different view. On account of increase of usage of LPG, the use of kerosene has come down drastically which affects livelihood of the SKO dealers, who are entirely dependent on this avocation for several years and they are on the verge of losing their main source of earnings. In fact, taking into account of this as well as the directions of this Court, the Oil Corporations have prescribed certain criteria facilitating SKO dealers to participate and get LPG dealership. However, it appears that being not satisfied with the said criteria, the petitioners/SKO dealers have come up with the present writ petitions, demanding automatic conversion into LPG Dealership, which in my opinion, is not feasible. The principle of law is well settled and needs no reiteration that no person can insist a special concession or percentage of reservation in favour of a particular class of people or category of persons as a matter of right. Concession or reservation is an enabling provision and it is exclusive domain of the Oil Corporations to provide concession or reservation to various social groups and to prescribe the percentage of reservation in favour of various social groups. Thus, petitioners cannot as a matter of right insist that there should be automatic conversion by switching over to LPG distributorship and they should not be clubbed with any category of persons in the process of selection of LPG dealerships. In fact, the Oil Corporations have given sufficient justification by making provision, enabling the SKO dealers to switch to LPG distributorship, subject to fulfillment of the prescribed criteria and they have to compete with the other groups in open competition for securing LPG distributorship. Therefore, I do not find any merit in the contentions raised on behalf of the

petitioners. Though the learned counsel for the petitioners relied upon numbers of judgments delivered by the Hon'ble Supreme Court, in support of their contentions, I find that all those judgments were delivered on different factual aspects not in respect of commercial transaction; hence, they are not applicable to the present facts of the case.

26. As regards the contentions raised in respect of allotment of LPG distributorship by way of draw of lots systems as per Clause 9, generally, in selection process, there were allegations of personal bias and interference in selecting the dealer and manner of conducting interview was utilized for the purpose of choosing the persons of their choice. In order to eliminate the scope of pick and choose method and to ensure more transparency, the Oil Corporations have decided to adopt draw of lots systems. The said draw of lots systems envisages putting all the applications into a box and choosing the prospective dealer by picking up in random from among the applicants. A detailed criteria is prescribed for said system. Applications are scrutinized and are being short listed based on the criteria prescribed by excluding those applications which do not fulfill various requirements as advertised. Thus, the valid applications are put together and subjected to draw system. The parameters for screening of applications are laid down and they are transparent. Once those parameters are fulfilled by all the applicants, all of them would stand on par, there is no further scrutiny and there is no scope for picking A or B, since there is no discretion vested. Therefore, in order to eliminate arbitrariness and favouritism in the selection process, the Oil Corporations have rightly adopted the draw of lots system, which, in my opinion is valid and the selection process would be done in transparent manner. In fact, this issue has also been dealt with by a Division Bench of the Bombay High Court in W.P.No.4693 of 2010, wherein it has been as under in para 11:"

"11. The procedure of selecting the candidate by drawing lots, in our view, eliminates arbitrariness and favouritism. Clause 12.2 of the Brochure creates a class of meritorious candidates who have secured minimum 80% / 60% marks for respective locations and out of this class of eligible candidates one is selected by drawing lots for allotment of LPG distributorship without

compromising the aspect of merit and also eliminates arbitrariness and favouritism. The said procedure, in our view, is just and proper for allotment of LPG distributorship."

4. In the aforesaid case, similar issue has been considered in detail by this Court and dismissed the same. Therefore, the aforesaid Judgment passed by this Court would apply to the facts of the present case also. Further, the learned counsel for the petitioner has not disputed the facts on the aforesaid Judgment and the facts on the present case.

5. The issue raised in the present Writ petition has already been decided by this Court in the Judgment cited supra. Hence, the Writ petition deserves to be dismissed.

6. Accordingly, this writ petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary,
Ministry of Petroleum
and Natural Gas,
Sasthri Bhavan, New Delhi, Union of India.

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3. The Chairmen & Managing Director,
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4.The Chairman & Managing Director,
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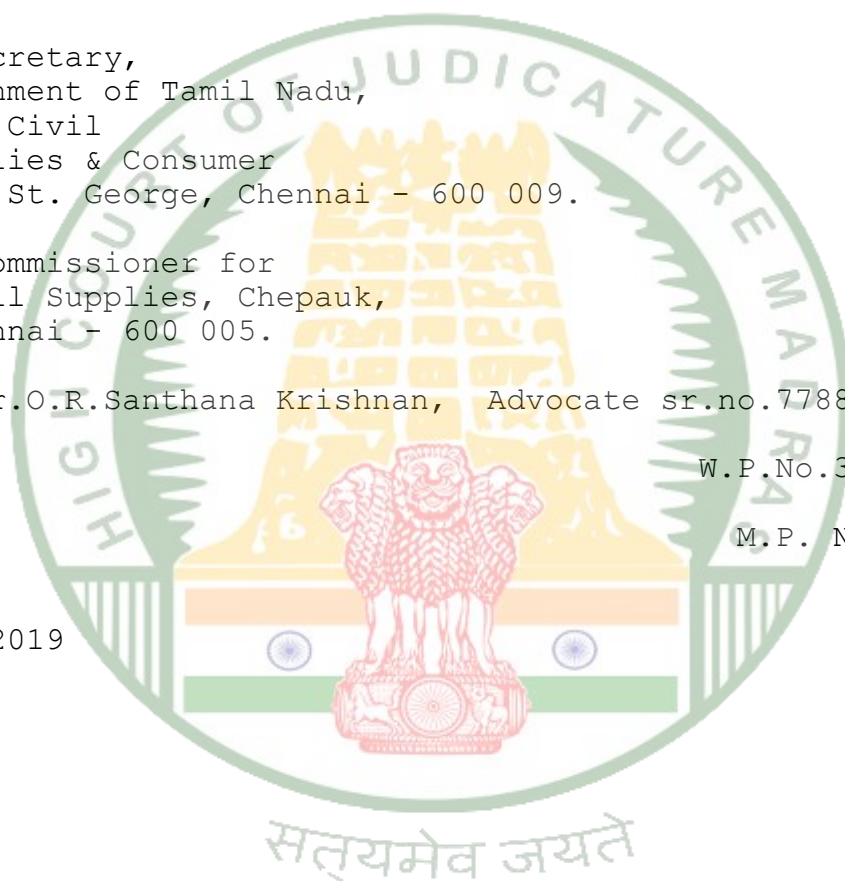
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7. The Commissioner for
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+1cc to Mr.O.R.Santhana Krishnan, Advocate sr.no.77888

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vgi(co)
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