

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.03.2018

Coram

The Honourable Mr.Justice V.PARTHIBAN

W.P. No.4360 of 2012
and M.P.No.1 of 2012

M/s.A.V.N.S.Navagraha Fuel Center,
Dealer - Hindustan Petroleum Corporation
Limited (R.O.)
Rep. by its Proprietrix,
R.Latha W/o. Rajagopal
No.1/309 Tiruturaipoondi Road,
Kachanam, Thiruvarur District-610 201. ... Petitioner

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

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the 2nd and 4th respondents herein not to permit to open any new retail outlet nearer to the petitioner's existing outlet situated at No.1/309 Tiruthuraipoondi Road, Kachanam Thiruvarur District-610 201 allotted by M/s.Hindustan Petroleum Corporation Limited, the 3th respondent herein under SC category.

For Petitioner : Dr.R.Sampathkumar
For Respondent : Mr.Madanagopal Rao, SCCG
for R1
M/s.Mohammed Fayaz Ali for R2
: Mr.O.R.Santhanakrishnan for R3 & 4

ORDER

The present writ petition has been filed, seeking for the following relief:

"Issue Writ of Mandamus, directing the 2nd and 4th respondents herein not to permit to open any new retail outlet nearer to the petitioner's existing outlet situated at No.1/309 Tiruthuraipoondi Road, Kachanam Thiruvarur District-610 201, allotted by M/s.Hindustan Petroleum Corporation Limited, the 3th respondent herein under SC category."

2. The petitioner has been allotted a retail outlet during the year 2011, by the third respondent herein and it was located at Tiruturaipoondi Road, Kachanam, Thiruvarur District. The petitioner was granted the retail outlet against the quota reserved for SC/ST communities by the third respondent Corporation with a noble purpose of lifting the people from downtrodden community socially and economically by empowering them.

3. 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, respondents 2 and 4 have called for applications for allotting new retail outlets to establish its new outlets from general category for various places in the Thiruvarur District, in which the second respondent is going to establish its new outlets in the following places:

- 1.Alathampadi, which is just 2 km from the petitioner's outlet.
- 2.Mavoor, which is just 7 km from the petitioner's outlet.

And the fourth respondent is going to establish its new outlets in the following places:

- 1.Thirukkadavasal, which is just 4 km from the petitioner's outlet.
- 2.Kachanam, the same place where the petitioner's outlet is located.

The grievance of the petitioner is that if the new outlets as stated above, are opened which were proposed very close to the petitioner's outlet, his business would be severely affected and he would not be able to achieve the target fixed by the third respondent Corporation. In the said circumstances, the petitioner submitted a representation dated 11.01.2011, to all the respondents requested not to open fresh retail outlets nearer to the existing outlets owned by SC/ST people, however, there were no response from the respondents so far. More over, the fourth respondent herein has given its advertisement dated 11.02.2011, to allot certain outlets to general category nearer to the existing outlet after receiving the representation of the petitioner. According to the petitioner, the action initiated by the fourth 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 third 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. In all the circumstances, the opening of retail outlet by other Corporation, particularly, respondents 2 and 4 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 respondents herein and other officials on 11.11.2011. The said representation has not evoked any response and therefore, the petitioner was constrained to approach this Court.

4. Upon notice, Mr.Madanagopal Rao, learned Senior Central Government Standing counsel entered appearance for first respondent, Mr.Mohammed Fayaz Ali, the learned counsel entered appearance for the second respondent and Mr.O.R.Santhanakrishnan, learned counsel entered appearance for respondents 3 and 4.

5. The learned counsel for the petitioner 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 respondents 2 and 4 to consider the grievance of the petitioner 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 petition.

8. In the above circumstances, without expressing any opinion on the merits of the petitioner's claim, a direction is issued to respondents to dispose of the representation said to have been made on 11.11.2011 on merits and in accordance with law. The respondents are 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 respondents shall comply with the direction within a period of eight weeks from the date of receipt of a copy of this order.

10. With these direction, the Writ Petition is disposed of. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

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

+2cc to Mr.O.R.Santhanakrishnan, Advocate, S.R.No.22649

+1cc to Mr.R.Ravi, Advocate, S.R.No.23174

+1cc to Mr.J.Madanagopal Rao, Advocate, S.R.No.23222

+1cc to Mr.Mohamed Fays Ali, Advocate, S.R.No.22960

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SJ(CO)

RRK(15/05/2018)

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