

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 08.01.2018

CORAM:

THE HON'BLE MR.JUSTICE **K.K.SASIDHARAN**
AND
THE HON'BLE MR.JUSTICE **P.VELMURUGAN**

W.A No.1238 of 2016

V.Krishnan

...Appellant

Vs

1.Union of India,
Represented by The Secretary,
Ministry of Petroleum and Natural Gas,
Government of India, Shastri Bhavan
New Delhi – 110 001.

2.Bharat Petroleum Corporation Limited
Rep. By its Managing Director
Bharat Bhavan, 4 & 6, Currimbhoy Road,
Ballard Estate, Mumbai – 400 001.

3.The Regional LPG Manager (South)
Bharat Petroleum Corporation Limited
No.1, Ranganathan Garden
Off 11th Main Road, Anna Nagar,
Chennai.

...Respondents

Prayer:- Writ Appeal filed under clause 15 of the Letter Patent to set aside the order dated 03.08.2016 made in W.P.No.31619 of 2015.

For Appellant : Mr.P.V.S.Giridhar
for M/s.Giridhar and Sai

For Respondents : No appearance for R1
Mr.M.Vijayan
for M/s.King and Partridge
for R2 and R3

J U D G M E N T

(made by K.K.SASIDHARAN,J.)

The oil companies owned by the Union of India took a policy decision to allot the transportation contract to distributors of LPG Cylinders subject to the condition that they would be permitted to participate in the tender process specifically for transporting the Cylinders to the concerned distributorship and in case of submitting an application for transport contract to other routes, they should compete with others. The notification calling for tenders from the LPG Distributors for awarding transport contract was challenged by the appellant before the Writ Court in W.P.No.31619 of 2015. The learned single Judge dismissed the writ petition with an observation that there is nothing wrong in adopting the policy of permitting LPG Distributors to lift their own stocks from the Bottling Plant to the point of delivery, as it would serve larger public interest. Feeling aggrieved by the said order, the appellant has come up with this intra court appeal.

Brief Facts

2. M/s.Bharat Petroleum Corporation Limited (BPCL) and Indian Oil Corporation Limited (IOC) , taking into account the expiry of the Transport Contract initiated proceedings for award of contract. The Corporation before floating the transportation tender wanted to identify the number of distributors who are willing to transport the Cylinders to

their outlets. M/s.BPCL therefore issued a Circular dated 26 March 2015 seeking the Expression of Interest (EOI) in the attached format from the distributors in the Coimbatore LPG Division. The Circular provides that in case the dealer failed to participate in the Expression of Interest process, such dealers would not be allowed to put trucks during the pendency of the contract as a distributor. The notification issued by the Corporation was challenged by the appellant in W.P.No.31619 of 2015.

3. Before the Writ Court, the appellant contended that he has been a transporter of LPG Cylinders from the Bottling Plants situated in Coimbatore, Kochi and Mangalore for the last several years. According to the appellant, while giving preference to the LPG Distributors, Corporation adopted a discriminatory treatment. The process was against the Circular issued by the Central Vigilance Commission emphasizing the need for observing transparency and fairness in all aspects of decision making process regarding award of contract. The appellant further contended that the distributors must compete with other private transporters and no preference should be given to them.

4. The writ petition was opposed by the Corporation by filing counter affidavit. The Corporation in its counter explained the reasons for giving preference to the distributors. The cylinders should be

delivered to the customers without delay. According to the Corporation, in case, distributor is given the responsibility to transport the cylinders, it would streamline the delivery system.

5. The learned Judge considered the entire policy and rightly observed that there was neither arbitrariness nor unfairness in the matter of award of transport contract to the distributors.

Submissions

6. The learned counsel by placing reliance on the decision of the Hon'ble Supreme Court in **Sterling Computers v. M/s.M & N Publications Ltd and others [(1993) 1 SCC 445]** and the decisions of this Court, contended that there is no transparency and fairness in the matter of award of contract to the LPG Distributors. The learned counsel contended that on account of holding a distributorship by the LPG Distributor, he is getting preference. However, stringent conditions are imposed in case a private party is desirous to participate in the tender. The learned counsel contended that all the applicants should be considered uniformly and there should not be any kind of preference in favour of the LPG Distributors solely on the ground that they are doing business in LPG.

7. We have also heard the learned Standing Counsel for the

Corporation.

Discussion

8. The public sector oil companies have taken a policy decision to award transport contract to the LPG Distributors. To begin with, Expression of Interest would be invited from the distributors who would like to uplift their own requirement through their own trucks. The distributors would be offered the Bench Mark Rate published in the tender or weighted average of the negotiated rate, whichever is lower. After identifying the Expression of Interest from the distributors, public tender would be floated for the balance requirement of trucks for cylinder transportation.

9. This policy was adopted primarily to protect the distribution of the essential commodity like LPG which is in the larger public interest. In case, the distributors are given the transport contract, it would enable the company to maintain uninterrupted supplies taking into account the LPG requirement of the end customers. Since the distributors would be paid either the bench mark rate or weighted average of the negotiated rate, whichever is lower, it would ensure that they do not enjoy any unfair price advantage.

10. There is no undue advantage given to the distributors by

giving them preference. The distributors would be permitted to transport LPG to their outlet only. They are not allowed to take the transport contract for transportation of LPG to other outlets. In case, the distributor makes an application for transport contract to other outlets, such distributor has to comply with the other requirements and he would be treated like a third party contractor.

11. The distributor on receipt of the contract would take a demand draft in the name of the company and after depositing the same would take the cylinders in his truck to the godown. The distributor is responsible for the safe transportation of the Cylinders from the LPG Station to the LPG godown. In case, there are no sufficient transport facility, it would not be possible for the distributor to take the Cylinders as per the requirement. The counter affidavit filed by the BPCL indicates that in case of strike by the private transporters, the very supply of LPG would be affected. It was with this larger public interest, the Corporation took a policy decision to award transport contract to the distributors at the first instance and the remaining to the private parties. We do not find any unreasonableness in the decision taken by the public sector oil companies.

12. The appellant has no vested right to claim transport contract. The policy to give contract to the distributors to take the cylinders from

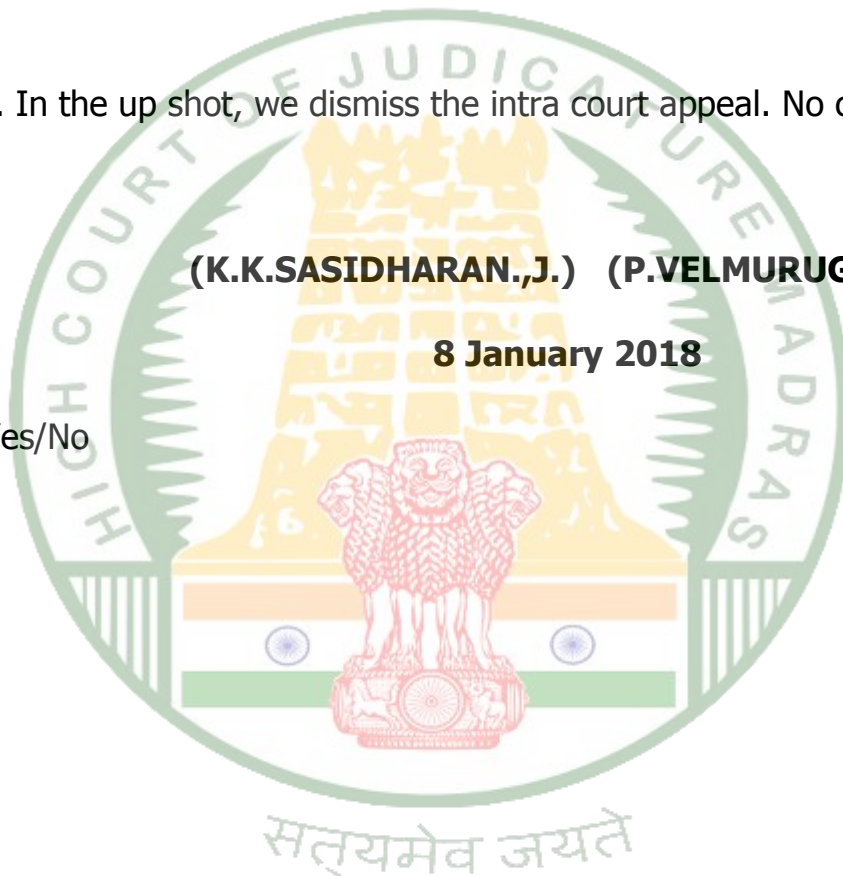
the point of supply to their godown was taken in larger public interest. The beneficiary of such a policy is only the public as they would receive cylinders regularly. We are therefore of the view that there is absolutely no merit in the contention taken by the appellant.

13. In the up shot, we dismiss the intra court appeal. No costs.

(K.K.SASIDHARAN.,J.) (P.VELMURUGAN.,J.)

8 January 2018

Index : Yes/No
svki



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K.K.SASIDHARAN,J.
and
P.VELMURUGAN,J.

(svki)

To

- 1.The Secretary,
Union of India,
Ministry of Petroleum and Natural Gas,
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