

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 13577 of 2013

Date of decision : July 11, 2018

M/s Rishi Gas Agency

..... Petitioner

Versus

Union of India and others

..... Respondents

CWP No. 23604 of 2016

M/s Rishi Gas Agency

..... Petitioner

Versus

Bharat Petroleum Corporation Ltd. and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Ms. Nupur Chaudhary, Advocate
for the petitioners.

Mr. Raman Sharma, Advocate
for respondent Nos. 1 & 2 in CWP No. 23604 of 2016.

Mr. Ashish Kapoor, Advocate
for respondent No.2 in CWP No. 13577 of 2013.

Mr. Pawan Kumar Longia, Senior Panel Counsel
for respondent No.4 in CWP No. 13577 of 2013 &
for respondent No.5 in CWP No. 23604 of 2016.

Mr. R. K. Malik, Senior Advocate with
Mr. Sunil Hooda, Advocate
for respondent Nos. 4 and 5 in both the petitions.

RAKESH KUMAR JAIN, J (oral).

This order shall dispose of two writ petitions bearing

CWP No. 13577 of 2013 (for short the first petition) and CWP No. 23604 of

2016 (for short the second petition) as the issue involved in both the petitions is similar. However, for the sake of convenience facts are being extracted from the first petition.

In short, the petitioner has challenged the advertisement Annexure P-6. All the three Oil Companies namely Indian Oil Corporation Ltd. (IOCL), Bharat Petroleum Corporation Ltd. (BPCL) and Hindustan Petroleum Corporation Ltd. (HPCL) had issued an advertisement on 28.2.2011 to invite the applications for appointment of distributors under the Rajiv Gandhi Gramin LPG Vitrak (RGGLV) in various categories at various locations in the State of Haryana. The BPCL issued the advertisement, for the location of village Panjokhra which is in District Ambala, in the S.C. Category. Respondent No.5 applied for the allotment of distributorship. On 21.12.2012 after having been successful in draw of lots, LOI was issued to respondent No.5 and appointment letter dated 29.6.2013. However, before that, the petitioner who is running a gas agency in Village Babiya, district Ambala having been appointed as a distributor by the IBP Company (now Indian Oil Corporation) challenged the advertisement dated 28.2.2011, letter of intent dated 21.12.2012 and approval dated 1.3.2013, inter alia, on the ground that the appointment of respondent No.5 violates clause 1 (a) of the agreement entered into between the petitioner and the IBP Company (erstwhile company). The case set up by the petitioner is that as per clause 1 (a) of the agreement, it has been appointed as the distributor within the radius of 15 K.Ms and the advertised location is at 7 K.Ms within its territory. The petitioner has also challenged the advertisement with reference to clause 3(i) (a), 9(e) and entry 10 appended to Schedule 3 (4) of the LPG (supply) order notified by Ministry of Petroleum and Natural Gas

order (for short the order) dated 26.4.2000 on the ground that as per clause 3 (1) (a) a person cannot possess more than one connection of liquefied petroleum gas granted under different distribution system and if new distributorship, purported to have been set up by respondent Nos. 1 to 4 and allotted to respondent No.5 is allowed then the consumers registered with it would definitely have more than one connection as they are residing within the radius of 15 K.Ms of the area of operation allotted to the petitioner. The petitioner has also challenged the eligibility of respondent No.5 to seek appointment as a distributor, on the ground that respondent No.5 has not offered the land for the purpose of construction of godown as per its correct measurement.

In regard to the second petition, it is submitted that it had to be filed because the first petition came up for preliminary hearing on 2.7.2013 and at that time commissioning of the gas agency in favour of respondent No.5 was ordered to be stayed. In order to wriggle out of the order of stay, respondent No.5 has antedated the order of commission w.e.f. 29.6.2013 whereas the appointment letter was issued on 30.6.2013. The petitioner has thus challenged the LOI as well as the commissioning in the second petition.

Learned counsel appearing on behalf of the petitioner has vehemently argued that once there is an agreement between the petitioner and the IOC that the petitioner would operate within the area of 15 K.Ms radius, the other oil company, namely, BPCL had no right to issue the advertisement for setting up the distributorship within the area of his operation as the said decision of the BPCL would not only be against the business interest of the petitioner but also would violate the order which

says that there cannot be more than two connections with a person.

Learned counsel appearing on behalf of the BPCL has raised a preliminary objection about the maintainability of the writ petition inter alia, on the ground that the petitioner cannot challenge the appointment of respondent No.5, firstly on the ground that she has not applied for the allotment of distributorship and secondly, in view of clause 1 (b) (ii) of the agreement as per which the BPCL while entering into an agreement with the petitioner had made it clear that it can appoint additional distributors or more than two distributors as referred in clause 1 (b) (ii)

It is also submitted that if the petitioner who had entered into an agreement with the IBP Company cannot restrain the BPCL which is a different Company from opening their own distributorship within that area. In this regard he has relied upon the decision of Division Bench of the Rajasthan High Court rendered in **Prem Pal Singh Vs. Union of India and others 2010 (25) RCR (Civil) 914.** He has also submitted that the petitioner has nothing to do with the appointment of respondent No.5 except that the petitioner is now afraid of losing the business and in this regard, referred to a decision of the Supreme Court in the case of **The Nagar Rice and Flour Mills and others Vs. N. Teekappa Gowda and others 1971 AIR (SC)246** to contend that a competitor in the business cannot seek to prevent the owner from exercising his right to carry on business. He has also submitted that RGGLV scheme has already been upheld by this Court in **CWP No. 24254 of 2013 All India LPG Distributors Fed.(Punjab) and others Vs. Union of India and others 2014 (57) RCR (Civil) 729**

Learned Senior counsel appearing on behalf of respondent

No.5 has also submitted that respondent No.5 has offered the plot of correct

dimension. He has also supported the argument of counsel for the BPCL to contend that the petitioner being not an applicant pursuant to the advertisement issued on 28.2.2011, therefore, the writ petition at the instance of the petitioner is not maintainable.

I have heard learned counsel for the parties and perused the paper book with their able assistance.

Insofar as the first argument of the petitioner is concerned, it is based upon the contents of clause I(a) of the agreement dated 16.3.2003, purported to have been entered into between the petitioner and IBP Company (erstwhile company) and now (IOC) but there is an exception carved out in the agreement as clause 1 (b) (ii) which says that IBP Company has a right to appoint additional distributors in the same territory or one or more distributor, additional distributors in the same territory referred to in Clause 1 (a). For the sake of clarity clause 1 (a) and clause 1 (b) (ii) are reproduced hereinunder:-

“1 (a) The Company hereby appoints the Distributor and distributor the Distributor hereby accepts the appointment of the Company, on principal to principal basis, for sale of Company's Liquefied Petroleum Gas (LPG) known as 'IBP GAS' in cylinders only for house-hold consumers, and commercial consumers like hotels, canteens, hospitals etc.but not for any industrial use nor for any industrial consumer in the territory or distribution area of 15 K.M.radius or Distributorship (Babiyal).

(b) (ii) The Company reserve the right, without any reference to or consent of the additional Distributor, to appoint one or more Distributor, additional distributors in the same territory referred to in Clause 1 (a) above and such additional distributor or distributors shall be entitled to make sales of IBP Gas in the same territory without any objection from the Distributor and

the Distributor shall not be entitled to claim any over riding remuneration, commission or allowance for the purpose.”

It is also the case of the respondent-Company that if the same Company has reserved its right to appoint additional distributors or more than one distributor in the area of the petitioner then it cannot restrain the different Company. I agree with the argument raised by learned counsel for the respondent-Oil Company and reject the argument raised by learned counsel for the petitioner in this regard.

Insofar as, the violation of the order is concerned, the argument of the petitioner is presumptory and imaginative that in case new distributorship is allowed within its territory then the consumers would have two connections. Once it is the policy of the Oil Companies that one consumer cannot have more than one connection within one family then the oil Company would look into this aspect at the time of granting LPG connection. Therefore, this argument also does not carry any kind of weight for the purpose of interference. The third and last argument of the learned counsel for the petitioner that the appointment of respondent No.5 is illegal because he was not eligible is also not accepted because the petitioner has not applied pursuant to the impugned advertisement, therefore, it has no right to challenge the appointment of respondent No.5. Merely because business of the petitioner is going to be affected with the presence of respondent No.5 would not be a ground to challenge the same. In this regard, reference could be had to **CWP No. 11032 of 2014** decided on 9.2.2016 and also to the Division Bench judgment of Rajasthan High Court rendered in **Prem Pal Singh's case (supra)**. Thus, in view of the totality of facts and circumstance, I am of the considered opinion that there is no merit

in the present petitions. Hence both the petitions are dismissed. However, without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

July 11, 2018
archana

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No