IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.37800 of 2018
Date of Decision: 20.12.2018

Petrol Pump Dealers Association ... Petitioner

Versus

Indian Oil Corporation Limited
and others ... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Abhinav Gupta, Advocate,
for the petitioner.

Mr. Akshay Bhan, Sr. Advocate,
with Mr. Ashish Kapoor, Advocate,
and Mr. Raman Sharma, Advocate,
for the caveators-respondents.

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RAJIV NARAIN RAINA, J.(Oral)

1. The Petrol Pump Dealers Association, has approached this Court challenging, inter alia, the disqualification Clause 10 in the brochure dated November 24, 2018 issued by the three oil companies, i.e. Indian Oil Corporation Limited, Bharat Petroleum Corporation Limited and Hindustan Petroleum Corporation Limited for selection of dealers for regular and rural retail outlets pan India, including in the State of Punjab. Two types of outlet sites are contemplated in the advertisement which have been classified in three types in Clause 3 thereof of which we are concerned with two in the present controversy raised i.e. (ii) and (iii) which define the type of sites as under:-

S.N.	***Type of Site***	***Status of Land & Facilities***
i.	*Locations under Corpus Fund Scheme (CFS sites)*	*The offered land would be taken on lease/purchased and fully developed as Corporation owned site.*
ii.	*Other Corporation Owned Sites ("CC"/"A" sites)*	*The offered land would be taken on lease/purchased and fully developed as Corporation owned site.*
iii.	*Dealer Owned sites ("DC"/ "B" sites)*	*The offered land and the super structure will be developed by the dealer. Pump, tank automation, signages, etc. will be provided by the Corporation.*

2. There is a note under the tabulation. The offered land can either be taken from the applicant or the owner of the land directly. In short, the status of land and facilities in "A" sites is that the offered land is taken on lease/purchase by the Corporation and fully developed by it. It is a special category which appears to be in the nature of social beneficial scheme as the person who would run it neither owns a land nor has developed the site and sells fuel on commission as the capital contribution is by one of the oil companies. "B" sites are those where the prospective dealer owns the land, builds the superstructure, develops the dealership but the equipment is provided by the Corporation. There is a qualitative difference in the objects, purposes and demands of "A" & "B" sites which are separately and distinctly classified to mean two different things.

3. Reference can also be made to Clause 8 which defines basic facilities required for operation of RO dealerships. The same is reproduced below:-

> ***"8. BASIC FACILITIES REQUIRED FOR OPERATION OF RO DEALERSHIPS***
> *The following facilities are required to be provided at the retail outlet as specified by the Oil Company. Depending upon on the type of site the facilities are to be made available by the Dealer (as specified by the*

Corporation) / Corporation as mentioned against each type of facility:

S.N.	***Type of Facility***	***TYPE OF SITE***	
		"A" / "CC" site including CFS locations	***"B" / "DC" Site***
		Provision of Facility by:	
A	***Infrastructural Facilities:***		
i.	*Developed land with boundary/compound wall as per Corpn. Specification*	*Dealer*	*Dealer*
ii.	*Tanks, Dispensing Units, Signages, Automation, etc.*	*Corpn.*	*Corpn.*
iii.	*Sales Office, Store Room, Toilet, Electrical Room, Water Connection, Yard Lighting, etc.*	*Corpn.*	*Dealer*
iv.	*Generator / Invertor*	*Dealer*	*Dealer*
v.	*Compressor with Electronic Gauge for Air Filling (As decided by OMC)*	*Corpn. / Dealer*	*Dealer*
vi.	*Driveway*	*Corpn.*	*Dealer*
vii.	*Canopy (as per Corpn. requirement)*	*Corpn.*	*Dealer*
B	***Customer Convenience Facilities:***		
i.	*Clean Drinking Water, Maintenance of Neat & Clean Toilet, Telephone, etc.*	*Dealer*	*Dealer*

A. Site specific additional facilities *required for customer service such as Staff cum Change Room, Service Station, Rest Room, Restaurant, PUC facility and/other Facilities as may be specified by Oil Company from time to time will be provided by Oil Company/Dealer Select as applicable.*

B. Firefighting & Safety Equipments

Dealer will provide Firefighting/Safety equipments at Retail Outlet as per the statutory *requirements and maintain them in good working condition at his/her own cost. Trained staff should be available to handle and operate the same.*

C. Investment Required:

The approximate investments required for development of infrastructure and facilities & working capital requirement at New Retail Outlets will be indicated in the advertisement.

The selected candidate shall undertake to make available the funds required for development of desired infrastructure and facilities at the Outlet allotted to him and the working capital for operation of the outlet.

D. Statutory Approvals/Licences :

Dealer select will obtain all statutory approvals / licences for operation of dealership as required.

E. Licence Fee:

For the investments made at the RO towards Land and infrastructure/facilities by the Corporation, Licence Fee would be payable on per KL basis by the dealer as applicable from time to time.

In case of Corporation owned "A" / "CC" site, ROs, including ROs developed under Corpus Fund Scheme for SC/ST category dealerships, the current Licence Fees including GST are as under:-

Petrol : Rs.472.77 / Kl
Diesel : Rs.393.97 / Kl

For Dealer owned "B" / "DC" site ROs the current Licence Fees including GST are as under:-

Petrol : Rs.233.45 / Kl
Diesel : Rs.194.54 / Kl"

4. To turn to the disqualifications in Clause X that persons who possess the eligibility criteria would be considered ineligible for applying for dealership if they do not meet the requirements of Clause 10 A (i to vi) which reads as under:-

"10. DISQUALIFICATION

A. Individual Applicants :

The persons while meeting the above mentioned eligibility criteria if do not satisfy any of the following requirements will be considered as ineligible for applying for the dealership:-

(i) Fulfill Multiple dealership norms : Multiple Dealership norms as mentioned below will be applicable for existing and future "A" / "CC" site RO dealerships.

Multiple Dealership norms means that the applicant or any other member of his/her 'family unit' should not hold a Corporation owned "A" / "CC" site RO/SKO-LDO dealership or RO/SKO-LDO dealerships/LPG distributorships developed under Corpus Fund Scheme and other Special category (DQ/Operation Vijay/Parliament attack beneficiary, etc.), or Letter of Intent (LOI) for the same of any Oil Company.

Note :

a) Existing "B" / "DC" site RO/SKO-LDO dealers/LPG distributors {other than those distributorships developed under Corpus Fund Scheme and other Special category (DQ/Operation Vijay/Parliament attack beneficiary, etc.)}. and LOI holders including members of his/her 'family unit' may apply for "B" / "DC" site RO dealerships.

b) Existing unviable SKO dealers of OMCs (individual & partnership firms only) can also apply for RO dealerships (for both "A" / "CC" site & "B" / "DC" site ROs) as per Clause 4 (viii).

'Family Unit' in case of married applicant, shall consist of individual concerned, his/he Spouse and unmarried son(s)/daughter(s). In case of unmarried person/applicant, 'Family Unit' shall consist of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s). In case

of divorcee, 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s) whose custody is given to him/her. In case of widow/widower, 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s).

Oil Company for this purpose would also include Private sector Oil Marketing Companies as per Gazette notification of 2002 i.e. (1) Indian Oil Corporation Ltd. (2) Bharat Petroleum Corporation Ltd. (3) Hindustaan Petroleum Corporation Ltd. (4) Mangalore Refinery and Petrochemicals Ltd. (5) Oil & Natural Gas Corporation Ltd. (6) Reliance Industries Ltd. (7) Essar Oil/Nyara Energy (8) Shell Corporation or any other Oil Marketing Company as defined by the Govt. of India / MOP&NG from time to time.

In addition they should :

(ii) Not have been convicted for any criminal offence involving moral turpitude/economic offences (other than freedom struggle).

(iii) Not have been a signatory to a dealership / distributorship terminated on account of proven malpractices.

(iv) Not be Mentally unsound / totally paralyzed.

Further,

(v) The family members (as per definition under multiple dealership norm) of the employees of Oil Marketing Companies (who are employed at the time of application) would not be permitted to apply for RO dealership.

(vi) To be eligible to apply for new RO dealership, existing RO/SKO-LDO Dealerships and LPG Distributorships and their "family unit", as defined under Dealership/Distributorship Selection Guidelines, should not belong to a dealership/distributorship which has been penalized for violation of Marketing

Discipline Guidelines under major irregularities within last 5 years (for RO/SKO-LDO Dealerships) and 4 years (for LPG Distributorships) preceding the date of advertisement. Further, in case of any proceedings (Court cases, Show Cause notices, etc.) pending against the dealership/distributorship under critical/major irregularities for violation of Marketing Discipline Guidelines/Dealership Agreement, Control Orders or ESMA, in case selected, the allotment will be conditional and subject to the outcome of such proceedings.

The applicant has to be submit an undertaking to this effect."

5. The stipulation in this provision is that Multiple Dealership Norms will be applicable for existing and future "A"/"CC" site RO dealership. "CC" is short for 'Company Controlled' which type has no bearing on this case.

6. The grievance of the Association is that it seems illogical to them that relaxation in Multiple Dealership Norms can satisfy the test of equality. They urge that disqualification is discriminatory to the dealers who have "A" sites and if Multiple Dealership Norms were to be relaxed then every dealer, irrespective of "A" site or "B" site status has a right to equal opportunity of applying for more than one dealership and it cannot be restricted to "B" site dealership alone. This grievance was made in a representation made by the Association to the respondent-Oil Companies in e-mail letter dated December 13, 2018 which is Annexure P-5 at p.98 of the paper-book.

7. Mr. Sharma for one of the respondent companies points out that December 15, 2018 and December 16, 2018 were holidays and the petition

is filed on December 17, 2018. Obviously, there was no time for any of the companies to take any steps on the e-mail request.

8. Having heard Mr. Gupta and the counsel/Senior counsel for the Oil Companies, I am unable to appreciate the argument of the Association that there can be any discrimination as far as sites “A” and “B” are concerned as they operate in different fields serving different objectives. It appears to me that category “A” sites are a largesse to the dealers who do not own land or infrastructure but thrive on the usufruct of the RO dealership. Dealership of “B” sites can only be awarded when the applicant owns land and has the capacity to build superstructure at their own expense, the standardized equipment alone coming from the oil companies. Therefore, the insistence of the Association that its members are being disadvantaged is misconstruing the classification of the two types of outlets. The disqualification clause in the advertisement is reasonable classified restriction on the right to do business with the three companies. Those disqualifications are inherent in maintaining non-discrimination in the two type of sites. There is no inter se discrimination nor has a case been made out that there is any unfair discrimination within the two type of sites.

9. Restriction from doing business other than running dealership, in categories “A” and “B” is inconsequential to the challenge to the advertisement. These are mere guidelines which would remain subject to fundamental rights in Article 19 (1) (g) of the Constitution of India.

10. I find no sufficient locus standi of the Association whose prayer appears to be creation of a monopoly nor do I see any prejudice caused to its members by the impugned terms of the advertisement as a result of creation

of the two types of retail outlet dealerships.

11. I find no valid reason to interfere in this petition and the same stands dismissed without any order as to costs.

12. On the request of learned counsel for the petitioner, a copy of the order be given to him attested by the Bench Secretary.

(RAJIV NARAIN RAINA)
JUDGE

20.12.2018
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No