

HIGH COURT OF CHHATTISGARH, BILASPUR**WPPIL No. 5 of 2019**

- Surguja Petroleum Dealers Association Through Raj Kumar Agrawal, President, S/o Ram Nivan Agrawal, Aged About 58 Years, R/o Ring Road, Nemnakala, Ambikapur, Chhattisgarh.

---- Petitioner**Versus**

1. Union Of India Through Secretary, Ministry Of Petroleum And Natural Gas, A-Wink, Shastri Bhawan, Rajendra Prasad Road, New Delhi - 110001.
2. State Of Chhattisgarh Through Secretary, Department Of Mineral Resource, Mahanadi Bhawan, Naya Raipur, Raipur.
3. Petroleum And Natural Gas Regulatory Board, Through Secretary, Ist Floor, World Trade Centre, Babar Road, New Delhi - 110001.
4. Indian Oil Corporation Ltd. Through Managing Director, G-9, Aliyavar Jung Marg, Bandra East, Mumbai - 40051.
5. Hindustan Petroleum Corporation Ltd. Through - Chairman, Petroleum House - 17, Jamshedji Tata Road, Mumbai, Maharashtra - 400020.
6. Bharat Petroleum Corporation Ltd. Through - Chairman, Bharat Bhawan 4 And 6, Currimbhoy Road Balad Estate, Mumbai - 400001.
7. Department Of Heavy Industry, Through Secretary, Room No. 126-C, Udyog Bhawan, Rafi Marg, New Delhi.
8. Controller Of Explosives Avanti Vihar Colony, Main Road, Near Nala, Raipur, Chhattisgarh.

---- Respondent**WPPIL No. 6 of 2019**

- Rajendra Kumar Pandey S/o Late Shri Manrakhanlal Pandey Aged About 57 Years Occupation Advocate R/o A -26 Nandkishore Aggrawal Colony Ashok Nagar Sarkanda Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. Union Of India Through Secretary Ministry Of Petroleum And Natural Gas A Wing Shastri Bhawan Rajendra Prasad Road, New Delhi 110001
2. The Petroleum And Natural Gas Regulatory Board Through Its Secretary, 1st Floor, World Trade Centre, Badar Road, new Delhi, 110001
3. The State Of Chhattisgarh Through Its Secretary Department Of Petroleum Mantralaya Atal Nagar Chhattisgarh.
4. The Indian Oil Corporation Managing Director G-9, Aliyavar Jung Marg Bandra, East Mumbai 400051
5. Bharat Petroleum Through Its Chairman Bharat Bhawan 4 And 6 Currimbhoy Road Balad Estate Mumbai 400001
6. Hindustan Petroleum Corporation Through Its Chairman Petroleum House 17, Jamshed Ji Tata Road, Mumbai Maharashtra 400020

---- Respondent

For Petitioners : Shri Saurabh Dangi with Smt. Surya Kawalkar Dangi and Shri Shivang Dubey, Advocates.

For Respondent No.1 : Shri B. Gopakumar, ASG.

For Respondent/State : Shri Gagan Tiwari, Deputy GA.

For Respondent/IOCL : Shri Prafulla Bharat and Shri Anand Shukla, Adv.

For Respondent/HPCL : Shri Ali Asgar, Advocate.

For Respondent/BPCL : Dr. NK Shukla, Sr. Adv. With Shri Sourabh Sharma and Shri Tarkeshwar Nande, Advocates.

Hon'ble Shri Prashant Kumar Mishra, Ag. C.J. &
Hon'ble Shri Parth Prateem Sahu, J

Order On Board By Prashant Kumar Mishra, Ag CJ

30/04/2019 :

1. Challenge in these two Public Interest Litigations (PIL) is to the advertisement dated 14.12.2018 and the steps taken in furtherance of the said advertisement issued by 3 Oil Companies

namely, Indian Oil Corporation, Hindustan Petroleum Corporation and Bharat Petroleum Corporation for opening new petrol pump at various places in the State of Chhattisgarh, with further prayer to direct respondent No.8 not to grant licence under the Petroleum Rules, 1976 for operation of retail outlet allotted by the concerned oil company pursuant to the said advertisement.

2. Petitioner of the first PIL is an Association of Petroleum Dealer in the district of Surguja whereas the second writ petition has been preferred by the individual. They would challenge the policy decision of the respondents for opening of 65000 regular/rural outlets in the entire country pursuant to which the subject advertisement dated 14.12.2018 has been issued in the newspapers having circulation in the State of Chhattisgarh inviting on-line applications from the interested candidates.
3. According to the petitioners, about 1266 retail outlets are presently in operation in the State of Chhattisgarh, which would be increased by 3367 if the subject advertisement is processed. There is no necessity of such huge numbers of retail outlets in the State of Chhattisgarh. It is argued that crude oil is imported by the Government of India for which foreign exchange is needed. Therefore, substantial increase in the retail outlets would incur huge foreign exchange affecting the economy. It is further argued that the petroleum is a natural resource which should not be distributed through retail outlets in an indiscriminate manner without conduct of any viability study recommending opening of huge number of outlets. It is also argued that the retail outlets cannot be opened only for creating jobs. Referring to the Apurva

Chandra Committee's report, it is further put-forth that a petrol pump to have sustainable earning should at-least sell standard 170 kilo liter in a month, or else, the earning will be lowered from what Apurva Chandra Committee has computed, therefore, opening of retail outlets in the near vicinity of existing petrol pump is opposed to Apurva Committee Report.

4. Per contra, learned counsel for the respondents would submit that several writ petitions challenging the same advertisement has been dismissed by different High Courts, therefore, the present writ petitions also deserve to be dismissed. It is argued that the petitioner being competitor qua the new allottees cannot maintain this writ petition and further that the petitioner being beneficiary of outcome, they have no locus to maintain this PIL. It is also argued that viability study has been carried out by the respective oil companies without which location of the retail outlets cannot be determined. It is next argued that the distance travelled by the consumers to and fro for obtaining supply of petroleum products from the existing outlet and the fuel burnt in that process is called "dead mileage" which is totally unproductive and waste. To reduce the "dead mileage" it is necessary to open new outlets within the reach of consumers.
5. Having heard learned counsel for the parties, it appears to us that the subject decision for opening of new petrol pumps in the rural areas is in the nature of policy decision of the Central Government and oil companies. Therefore, the writ Court should be slow to interfere in such policy matters. It is settled law that policy decisions of the Executive are best left to it and a Court cannot be propelled into the uncharted ocean of Government policy. {See

Benett Coleman & Co. Vs. Union of India¹}. Public authorities must have liberty and freedom in framing the policies. It is well accepted principle that in complex social, economic and commercial matters, decisions have to be taken by the governmental authorities keeping in view several factors and it is not possible for the Courts to consider competing claims and to conclude which way the balance tilts. Courts are ill-equipped to substitute their decisions. It is not within the realm of the Courts to go into the issue as to whether there could have been a better policy and on that parameters direct the Executive to formulate, change, vary and/or modify the policy which appears better to the Court. Such an exercise is impermissible in policy matters. The scope of judicial review is very limited in such matters. It is only when a particular policy decision is found to be against a statute or it offends any of the provisions of the Constitution or it is manifestly arbitrary, capricious or *mala fide*, the Court would interfere with such policy decisions. {See : **Maharashtra State Board of Secondary & Higher Secondary Education Vs. Paritosh Bhupeshkumar Sheth²**}. In the said matter, the following has been held at para-16:-

“16.....The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to

1 (1972) 2 SCC 788

2 (1984) 4 SCC 27

effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution.”

6. In the matter of **The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. And Others**³ the Supreme Court has held thus :-

“Competition in the trade or business may be subject to such restrictions as are permissible and are imposed by the State by a law enacted in the interests of the general public under Article 19 (6), but a person cannot claim independently of such restriction that another person shall not carry on business or trade so as to affect his trade or business adversely. The appellants complied with the statutory requirements for carrying on rice milling operations in the building on the new site. Even assuming that no previous permission was obtained, the respondents would have no locus standi for challenging the grant of the permission, because no right vested in the respondents was infringed.”

7. In the matter of **Mithilesh Garg and Others Vs. Union of India and Others**⁴ the Supreme Court, while repelling challenge to the liberalised claims for grant of stage carriage permits under the Motor Vehicles Act, 1988, held that the existing operators who are plying their vehicles on the route being in full enjoyment of their fundamental rights and there being no complaint of

³ AIR 1971 SC 246

⁴ (1992) 1 SCC 168

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 infringement of any of their statutory rights, their effort to stop the new operators from coming in the field as competitors is not justified. More operators mean healthy competition and efficient transport system. Therefore, it is necessary that there should be plenty of operators on every route to provide ample choice to the commuter public to board the vehicle of their choice.

8. In the case at hand also, more number of retail outlets would subserve the consumers of petroleum products, as the same would be available within convenient distance. In our country of about 130 crores people, more and more petroleum outlets are needed in the rural areas so that farmers and general public can obtain supply of petroleum products without too much of expenditure.
9. In the matter of **Mahinder Kumar Gupta and Others Vs. Union of India, Ministry of Petroleum and Natural Gas**⁵, the Supreme Court, while dealing with challenge to the policy norms for award of contract of retail outlet, observed that production and distribution of the petroleum products are the exclusive monopoly of the State. As a part of its policy of the distribution of its largesse Government has prescribed the eligibility criteria to the persons to obtain dealership for distribution of petroleum products. The distribution of largesse of the State is for the common good and to subserve the common good of as many persons as possible.
10. In the matter of **Federation Haj PTOS of India Vs. Union of India**, by order dated 4.2.2019 passed in WP(C) No.4/2019, the Supreme Court has also taken a view that the judicial review of

⁵ (1995) 1 SCC 85

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policy decision of the State Government is not permissible unless
it suffers from any arbitrariness or is in violation of any statutory
provision.

11. Moreover, similar Writ Petition has been dismissed by the Rajasthan High Court in the matter of **Rajasthan Petroleum Dealers Association through its Secretary, Jaipur Vs. Union of India and Others** by order dated 20.9.2011 passed in S.B. Civil Writ Petition No.10441/2010. Similarly, High Court of M.P. (Gwalior Bench) has dismissed the similar writ petition vide its order dated 11.2.2019 in WP No.2001/2019. Another writ petition of similar nature has been dismissed by the Division Bench of M.P. High Court (Indore Bench) vide order dated 19.2.2019 in WP No.1294/2019.
12. In the matter at hand, it has been stated in the return filed by the Indian Oil Corporation Limited that viability study has been carried on. On-line application form has already been processed and draw of lots have also been conducted.
13. Therefore, for all the above stated reasons, we do not find any substance in the present writ petitions to interfere in the subject policy decisions of the respondents for opening of retail outlets. Accordingly, both the Writ Petitions are dismissed.

Sd/-
(Prashant Kumar Mishra)
Acting Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

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