IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2019

CORAM :

THE HON'BLE DR.VINEET KOTHARI, ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

W.A.Nos.2527 to 2529 of 2013 and
M.P.Nos.1 and 2 of 2013

Mettur Gas Service,
Rep. by its Proprietor,
Sri D.Balasubramanian,
128/82-B1, Salem Main Road,
Mettur Dam-RS.2,
Salem District. .. Appellant in W.A.No.2527 of 2013/ Petitioner

Annai Sundarambal Gas Service,
Rep. by its Proprietrix,
Smt.V.Saradha,
78/C2, Salem Main Road,
Kunjandiyur, Veerakalpudur,
Mettur Dam-4,
Salem District. .. Appellant in W.A.No.2528 of 2013/ Petitioner

G.K.M.Indane Gas Service,
Rep. by its Proprietrix,
Mrs.Vimala,
142 (244-A), Cuddalore Main Road,
Ammapet, Salem-2 .. Appellant in W.A.No.2529 of 2013/ Petitioner

-vs-

Indian Oil Corporation Ltd,
Rep. by its Chief Area Manager,
Indane Area Office,
8/1079, Avinashi Road,
Coimbatore-641 018. .. Respondent in all Appeals/Respondent

Prayer in all Writ Appeals:- Writ Appeals filed under Clause 15 of Letter Patent Act, to set aside the order dated 13.12.2013 passed in W.P.Nos.32602 to 32604 of 2013.

Prayer in WP No.32602 to 3204/13 : Writ Petitions filed under Article 226 of the Constitution of India to issue an order, direction, or writ, more particularly writ in the nature of writ of certiorari to call for the impugned Notice for Appointment of LPG Distributor dated 21.9.2013 issued by the respondent in so far as Sl.No.221-Mettur,Sl.No.225-Veerakalpudur, Sl.no.222-Allikuttai (Ammapet) is concerned and quash the same

For Petitioner : Mr.S.Manikandan
(in all Appeals)

For Respondents : Mr.Abdul Salem
(in all Appeals)

C O M M O N J U D G M E N T

(Judgment of the Court was made by The Hon'ble Acting Chief Justice)

The present Writ Appeals are directed against the common order dated 13.12.2013 passed by the learned Judge dismissing the Writ Petitions filed by the Appellants in W.P.Nos.32602 to 32604 of 2013.

2. The relevant portion of the order passed by the learned Single Judge is quoted below for ready reference:

> "8. The petitioners are all distributors of Indian Oil Corporation Ltd. The petitioners were appointed as distributors pursuant to the selection made by the Corporation. The petitioners have produced the letter of indent indicating the area of operation. Similarly, they have produced the agreement executed with the Corporation which governs the terms and conditions of appointment. The area of operation is clearly earmarked in the letter of indent issued by the respondent. The letter of indent or the relevant agreements entered into between the petitioners and the respondent does not contain any indication that the Indian Oil Corporation has agreed that no further distributorship would be commissioned within the area of

jurisdiction. The agreement contains a specific provision that the Corporation shall under no circumstances be held responsible for any loss to the distributor.

9. The existing LPG distributors were not given any guarantee that they would be given a particular number of customers or any kind of assurance regarding new dealership.

10. The Government of India have liberalized the business in LPG. The Government appears to have taken a policy decision to open new distributorships in all the villages in India, so as to enable even the people in the remote areas to avail LPG connection. The petitioners are all having sufficient connection and they are selling more than 9,000 cylinders per month. The possible reduction in the profit of the petitioners cannot be a reason to set aside the notification issued by the respondent inviting applications for new distributors. The respondent has not guaranteed any particular volume of business to the petitioners. The petitioners have no case that the respondent at an point of time assured them that another distributorship would not be granted in their service area. Therefore, I do not find any merit in the contention raised by the petitioners. "

2. When the matter was called up on 24.10.2019 in the first round the case was briefly heard and then passed over at the request of the learned counsel for the Appellants. In the first round when the case was called out Mr.M.R.Jothimanian, learned counsel for the Appellants on record had requested for a Passover but some arguments were heard as they submitted that the Senior Counsel Mr.N.L.Rajah has to argue the case on behalf of the petitioner. Considering his request, we passed over the case. Then again at 12.30 P.M. in the second round when the case was called, neither the said Mr.M.R.Jothimanian nor the Senior counsel Mr.N.L.Rajah appeared and then counsel Mr.S.Manikandan, the learned counsel again requested to pass over the case, which we were not inclined to do again. So we heard the learned counsel for the respondent and perused the materials on record.

3. The learned counsel for the respondent/Indian Oil Corporation Mr.Abdul Salem submits that the present Writ Appeals may be dismissed for the following reasons:

a) In the Agreement entered into between the parties viz., Appellants (Dealers/Distributors) and the Respondent (IOC), it is clearly stated that the Dealers are bound by the terms of the Agreement and nowhere the Agreement states that the Respondent will inform the Appellant for setting up new out-lets in the area which they have given LPG distributorship.

b) The Agreement contains an Arbitration clause and as per the said clause, if at all any dispute or differences arises between the parties in relation to the Agreement, the same may be referred to the arbitration, which has not been done in the present case.

c) This matter is covered by the Division Bench Judgment of this Court in a case of Nataraja Agencies rep. by its Proprietor Vs. The Secretary, Ministry of Petroleum and Natural Gas reported in 2005 (1) CTC 394 wherein this Court has clearly held that the rival businessmen has no locus standi to challenge the setting up of new petrol bunks around his business place. The Division Bench after following the Judgment of the Hon'ble Supreme Court in the case of Mithilesh Garg Vs.Union of India, reported AIR 992 SC 443 had held as follows:

"3. The Supreme Court in Mithilesh Garg v. Union of India, AIR 1992 SC 443, held that a rival businessman cannot file a writ petition, challenging the setting-up of a similar unit by another businessman, on the ground that establishing a rival business close to his business-place would adversely affect his business interest, even if the setting-up of the new unit is in violation of law. In Mithilesh case, cited supra, the Supreme Court followed its own decision in Rice and Flour Mills v. N.T. Gowda, AIR 1971 SC 246, wherein it was held that a rice mill-owner has no locus standi to challenge under Article 226, the setting up of a new rice-mill by another even if such setting up be in contravention of Section 8(3)(c) of the Rice Milling Industry (Regulation) Act, 1958 because no right vested in such an applicant is infringed.

4. In the present case, the only grievance of the appellant is that if the fourth respondent is permitted to set up her retail outlet within one kilometer radius of the appellant's outlet, his business interest would be adversely affected. In our opinion, the appellant has no locus standi at all to complain against the setting up of a rival retail outlet by the fourth respondent, near his place of business, on the ground that would affect his business interest, inasmuch as the damage, if any, suffered thereby was damnum sine injuria-damage without infringement of legal right. In our opinion, this will only result in promoting competition among the traders, which is good for the consumers. Merely because some of the customers may switch over to the rival retail outlet does not mean that public interest will suffer rather, in our opinion, it will benefit the consumers because, when there is competition, the businessmen are compelled to provide better quality products at reasonable rates."

5. On the basis of the aforesaid submissions made on behalf of the respondent-Indian Oil Gas Corporation, we do not find any merit in these Appeals of the petitioners. They cannot claim as a matter of right any prohibition against Respondent IOC not to open up new outlets in the same area or any other area.

6. Accordingly, these Appeals stand dismissed. No costs. Consequently the connected Miscellaneous Petitions are also closed.



Sd/-
Assistant Registrar(Insp.cell)

//True copy//

Sub Assistant Registrar

arr

To:

The Chief Area Manager,
The Indian Oil Corporation Ltd,
Indane Area Office,
8/1079, Avinashi Road,
Coimbatore-641 018.

+3cc to Mr.M.R.Jothimanian, Advocate SR.No.89311, 89312, 89310

W.A.Nos.2527 to 2529 of 2013

PVS(CO)
GMY(15/11/2019)