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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5077/2019 & CM Nos. 22544/2019, 22545/2019 & 22546/2019

ALL HARYANA PETROLEUM DEALERS'
ASSOCIATION

..... Petitioner

Through: Mr Rajesh Mahale, Advocate.

versus

UNION OF INDIA AND ORS.

..... Respondents

Through: Mr Amit Mahajan, CGSC with Ms
Manpreet Khan Bhasin, Govt. Pleader
for UOI.

Mr Naveen Kumar Raheja, Advocate
for HPCL.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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10.05.2019

1. The petitioner has filed the present petition, *inter alia*, impugning the advertisements issued by respondent nos.2, 3 and 4 (Oil Marketing Companies – hereafter ‘OMCs’), inviting applications from various prospective persons to establish 80,000 new retail outlets for the sale of Motor Spirit (MS) and High Speed Diesel (HSD).
2. The petitioner is an association of dealers of the OMCs. The petitioner is, essentially, aggrieved with the proposed plan of the OMCs to expand their network of dealership, by increasing the number of retail outlets. The petitioner contends that their members are aggrieved by the expansion of the retail network to such an extent. It is contended that the same would

adversely affect their business and, according to the petitioner, the same violates Article 19(1)(g) of the Constitution of India. It is stated that the petitioner is not averse to healthy competition. However, the proposed plan entails more than twofold (124%) expansion of the current network, which according to the petitioner is not commensurate with the increase in the offtake of MS and HSD. The petitioner contends that the expansion is being undertaken without conducting any scientific studies as to the need for the number of dealers and also without ascertaining the locations as to where the additional retail outlets should be located.

3. In view of the above, the petitioner also seeks that a direction be issued to the respondents to publish a policy for the establishment of the new retail outlets for MS and HSD in the country.

4. The decisions as to how many retail outlets are to be opened or the number of dealers to be appointed is squarely within the realm of the commercial wisdom of the OMCs. Such decisions are not amenable to judicial review, under Article 226 of the Constitution of India. The manner in which the OMCs are to conduct their business is to be determined by the management of the OMCs and it is not apposite for this Court to examine the merits of such decisions.

5. The petitioner's contention that the expansion of dealership violates the right of its members to carry on their business and violates Article 19(1)(g) of the Constitution of India, is bereft of any merit. The members of the petitioner association are not fettered in any manner in conducting their affairs. If they find that the business of running a retail outlet of an OMC is not lucrative enough, they are at liberty to surrender the dealership. However, the OMCs cannot be restricted in carrying on their expansion

plans. The members of the petitioner have no fundamental right to determine the manner in which the OMCs carry on their business or to insist on restricting the number or retail outlets.

6. The prayer that a writ of mandamus be issued to the respondents to publish a policy of establishment of new retail outlets is also unsustainable. As stated above, the decision to establish new retail outlets is required to be taken by the management of the OMCs. The policy regarding the manner in which the business of an OMC is to be run, is to be determined by the Board of Directors of that OMC, and there is no requirement for the Board of Directors to publish any policy as to how they wish to run their business. The OMCs are public companies and they are required to file returns and reports as to their affairs, as stipulated under the Companies Act, 2013. There is no requirement for any company to frame their financial policies or to place them in public domain.

7. In view of the above, the petition is unmerited and is, accordingly, dismissed. The pending applications stand disposed of.

VIBHU BAKHRU, J

MAY 10, 2019

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