

AD. 81.
December 23, 2020.
MNS.

W. P. A. 10446 of 2020
(Via video conference)

Prasanna Hembram
Vs.
Hindustan Petroleum Corporation Limited
and others

Mr. Srijib Chakraborty,
Mr. Dyutimoy Paul

... for the petitioner.

Mr. Prasun Mukherjee,
Mr. Deepak Agarwal

...for the respondent-authorities.

Mr. Probal Mukherjee,
Mr. Parashar Baidya

...for the private respondent.

Affidavit-of-service filed in Court today be
taken on record.

The writ petitioner is an LPG distributor under the Bharat Petroleum Company Limited (BPCL). The present challenge is directed against the grant of licence by the respondent-authorities for LPG distributorship to the private respondent, specifically on the approval of the proposed location of a godown of the private respondent which, according to learned counsel for the petitioner, is beyond the upper limit

stipulated in the brochure governing the guidelines for selection of LPG distributors, formulated in June 2017 by the oil companies-in-question.

Learned counsel for the petitioner argues that the acceptance of the private respondent's offered location of godown is hit by the said guidelines, since the guidelines specifically stipulate 15 kilometers as the upper limit of the location of such godown from the advertised location of the showroom.

Learned counsel for the petitioner relies on Clause 1(c)(ii), Clause 2(b), Clause 3 and sub-clause (iii) under the head 'Minimum Dimension of Land for Godown', falling under the category 'godown' which is covered by the eligibility criteria stipulated in Clause (h) of the said guidelines.

It is submitted that, as per the present notification, whereby the private respondent was awarded the licence, the advertised location was Bachurkhoard at Jhargram. However, by placing reliance on a report apparently authored by an Assistant Engineer, Midnapore High-way Sub-Division, PW(Roads) Directorate of the Government of West Bengal at the behest of the petitioner, which is annexed to the writ, the

petitioner submits that the area chosen for the godown of the private respondent is about 24 kilometers away from Bachurkhoard, thus contravening the guidelines. It is submitted that the said guidelines govern the issuance of all LPG distributorships by the oil companies and cannot be contravened by any of the parties to such licence of distributorship.

It is further contended that the location of the proposed godown of the private respondent falls within 300 meters of the existing godown of the petitioner, raising apprehension of breach of security of a serious nature affecting the petitioner's godown in the event the private respondent does not conform to appropriate safety measures.

It is further argued that the petitioner's right to run the distributorship in the location of the private respondent's godown is at stake due to such unlawful allocation in violation of the guidelines themselves.

Learned counsel appearing for the respondent-authorities takes a preliminary objection as to the maintainability of the writ petition since no right of the petitioner has been infringed in the present case, let alone a

fundamental right. Learned counsel submits that the petitioner has challenged a grant of licence in favour of the private respondent by the respondent-authorities, that is, the Hindustan Petroleum Corporation Limited (HPCL), with which the petitioner has no jural relationship. Moreover, the writ petition is based on the argument of exclusivity of agreement, which has been deprecated in several judgements of this Court.

Learned counsel for the respondent-authorities cites the judgments passed on June 5, 2018 in **WP 25486(w) of 2017 (Kartick Chandra Dhole and another Vs. Bharat Petroleum Corporation Limited and others)** and on December 14, 2014 passed in **WP 28232(w) of 2017 (Suparna Bera Giri and another Vs. Bharat Petroleum Corporation Limited and others)**, both by co-ordinate Benches of this Court and a judgement dated April 11, 2019 passed in **MAT 725 of 2018(Kartick Chandra Dhole and another Vs. Bharat Petroleum Corporation Limited and others)** of a division Bench of this Court.

As held in all the judgments, mere apprehension of the writ court should not be

sufficient to invoke the jurisdiction under Article 226 of the Constitution of India until and unless any statutory right or fundamental right is found to have been jeopardised. Moreover, the person, having covenanted with an oil company cannot resile from the same and challenge the action of the Corporation in appointing an additional distributor for the same area. The expression 'Corporation' was deemed to include all and each of the three oil companies named therein (including the oil companies involved here).

By placing reliance on a copy of a satellite picture of the location of the relevant godown, learned counsel for the respondent-authorities submits that the distance between the godown of the private respondent and the advertised location was within the range of 15 kilometers.

Learned counsel also places reliance on a format of an agreement for LPG distributorship entered into by the HPCL, which indicates that the corporation reserves the right, without any reference to or consent of the dealer, to appoint one or more additional dealers in the same territory referred to in a previous clause therein and such additional dealer or dealers shall be entitled to make sales of H. P. Gas in the same

territory without any objection from the dealer. The dealer shall not be entitled to claim any overriding remuneration, commission or allowance for the purpose.

Apart from that, Clause 2(b)(ii), sub-clause (iv) provides that the dealer will, during the continuance of the agreement, confine himself to effect the sales in the area or territory specified thereinabove but the Corporation shall be entitled without the consent of the dealer to enlarge, reduce, increase or modify such area or territory to such other places as may from time to time be authorised by the Corporation in writing.

It is argued that the LPG distributorship issued by all the relevant oil companies, including the BPCL, under which the petitioner claims dealership, are of similar purport and include such clause reserving the right of distributorship and the location thereof with the oil company.

Learned senior counsel appearing for the private respondent, while submitting in tune with the arguments of the respondent authorities, additionally submits that the provision of 15 kilometers in the guidelines relates to the radial distance between the showroom and the godown. It is argued that, in the present case, the godown

of the private respondent fell well within that range.

That apart, learned senior counsel submits that the relevant clause of the guidelines, as stipulated at pages 46 and 47 of the present writ petition, pertains to 'godown' and provides for different categories of radial distance under the Gramin Vitrak Scheme.

It is argued that the private respondent comes within the fold of such specifications and there is no contravention of the guidelines at all.

It is argued further by the private respondent that the award of licence for LPG distributorship is entirely the prerogative of the oil company and may very well overlap with other distributors as far as territory is concerned. The petitioner, as such, does not have a right to challenge the allocation of godown or grant of licence to the private respondent.

A perusal of the guidelines indicates that the relevant oil companies are governed by the same. The stipulation as regards distance is undoubtedly 15 kilometers from the advertised location. In the present case, the respondent-oil company, that is, the HPCL specifically submits that the said company was satisfied as regards

the credentials of the private respondent regarding LPG distributorship and only upon field inspections and assessment of all the credentials of the private respondent and satisfying themselves as regards those being within the purview of the guidelines, the distributorship was handed out to the private respondent.

The location of the godown of the private respondent does not contravene any provision of the guidelines, as per the issuing authority of such licence, that is, HPCL.

That apart, the respondents are justified in arguing that the petitioner cannot have any exclusivity of operation in a particular territory, since such prerogative rests entirely with the oil companies. Even apart from the proforma agreement handed up by learned counsel for the respondent-authorities, it is rather obvious that a third party to a licence agreement for LPG distributorship does not have any *locus standi* to challenge the allocation of godown or such award of distributorship, being hit by the principle of privity of contract. As regards exclusivity of territory, such a proposition, if accepted, would merely encourage monopoly of business in the absence of any special circumstance to justify the

same. Also, the settled principle of deprecating such exclusivity and reserving the right with the oil companies is evident from the cited judgments.

As rightly argued by the respondent, the petitioner does not have any *locus standi* to move the present writ petition in any event, since no fundamental and/or statutory right of the petitioner has been infringed by the allocation of LPG distributorship to the private respondent.

The mere apprehension of security breach, advanced by the petitioner, is based on no material and, even if the same were to be true, the remedy of the petitioner does not lie in seeking a cancellation of allocation of godown or handing over LPG distributorship by HPCL to the private respondent, with none of whom the petitioner has any jural relationship or reasonably proximate nexus at all.

In such view of the matter, the challenge thrown in the present writ petition deserves to be turned down.

Since no affidavits were invited from any of the respondents, it is deemed that the respondents have not admitted any of the allegations made in the writ petition.

Accordingly, W. P. A. 10446 of 2020 is dismissed on contest.

There will be no order as to costs.

The parties are directed to act on the server copies of this order as and when uploaded in the official website of this Court. In any event, the petitioner is granted liberty to communicate the gist of this order to the respondents even without waiting for such server copy to be uploaded and the respondents are directed to act upon the same.

(Sabyasachi Bhattacharyya, J.)