

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

PUBLIC INTEREST LITIGATION NO.11 OF 2019

Shaikh Iqbal Abdul Hafeez,
Age: 54 years, Occu: Service,
R/o. Plot No.13, Opp. Anand Nagar,
Mosque, Near Railway Ground, Jalna,
Tq. & Dist. Jalna, Maharashtra

..PETITIONER

VERSUS

1. Ministry of Environment,
Forest and climate of
Government Of India,
Through its Secretary,
New Delhi, Delhi
2. Ministry of Petroleum and Natural Gas,
Government of India,
Through its Secretary,
New Delhi, Delhi
3. Ministry of Finance,
Government of India,
Through its Secretary,
New Delhi, Delhi
4. Directorate General of
Commercial Intelligence
And Statistics of
Government of India,
Ministry of Commerce,
565, Anandpur, Kolkatta,
Through its Directorate General
5. The State of Maharashtra,
Through its Chief Secretary,
Mantralaya, Mumbai
6. The State of Maharashtra,
Through Secretary of
General Administration Department,
Mantralaya, Mumbai

(2)

7. Central Pollution Control Board,
Through its Chairman,
Having Official Address as
Parivesh Bhavan, C.B.D. Cum Complex,
East Arjun Nagar, Delhi – 110032
8. Maharashtra Pollution Control Board,
Through its Chairman,
Having Official Address as
Kalpataru Point 3 & 4,
Floor, Opp. Cine Planet,
Sion Circle, Mumbai, Mumbai
9. Indian Oil Corporation,
Through Chairman,
Having official Address as
Indian Oil Bhavan,
G-9, Ali Yavar Jung Marg,
Bandra East, Mumbai
Mumbai
10. Hindustan Petroleum Corporation Ltd.,
Through its Chairman,
Petroleum House 17,
Jamshedji Tata Road,
Mumbai 400020
Maharashtra
11. Bharat Petroleum Corporation Ltd.,
Through its Chairman,
Having official Address as
Bharat Bhavan 4,
Currimbhay Road, Ballard,
Estate, Mumbai 400001
Maharashtra

..RESPONDENTS

Mr P. R. Katneshwarkar, Advocate h/f Mr P. M. Nagargoje, Advocate
for petitioner;
Mr S. B. Deshpande, ASGI for respondent Nos.1 to 4;
Mr S. P. Sonpawale, A.G.P. for respondent Nos.5 & 6;
Mr Bhushan Kulkarni, Advocate for respondent No.7;
Mr A. P. Bhandari, Advocate for respondent Nos.9 to 11

WITH

(3)

WRIT PETITION NO.14007 OF 2018

Shivvandan Petroleum Corporation,
Through its Director
Mr Ashok Mandge,
Age: 36 years, Occu: Business,
R/o. Sy. No. 130, Nagar-Beed High way,
Near Yeshwant Forging Ambhora,
Ta. Ashti, District Beed

..PETITIONER

VERSUS

1. The Union of India,
Ministry of Road Transport High-ways,
New Delhi
2. Hindustan Petroleum Corporation Ltd.,
R/o. Division Office, HPCL,
Pakni IRD,
Near Pakni Railway Station, Pakni,
Solapur

..RESPONDENTS

Mr A. D. Jagtap, Advocate for petitioner;
Mr S. B. Deshpande, ASGI for respondent No.1;
Mrs Anjali Dube-Bajapi, Advocate for respondent No.2

WITH
WRIT PETITION NO.973 OF 2019

Bibi Hafez Jamal @ Irfana D/o Kallimulla Khan,
Age: 39 years, Occu: Business,
R/o: Unique House, Ganesh Colony,
Near Collector Office, Aurangabad

..PETITIONER

VERSUS

1. Ministry of Petroleum and
Natural Gas, Govt. of India,
Through its Secretary,
New Delhi
2. The State of Maharashtra

(4)

3. Bharat Petroleum Corporation Ltd.,
Through its Chairman
Zonal Coordinator, (Retail),
Bharat Petroleum Corp. Ltd.,
Post : Akolner,
Tal. and Dist. Ahmendangar-414105 ..RESPONDENTS

Mr G. A. Kulkarni, Advocate h/f Mr R. D. Sanap, Advocate for
petitioner;

Mr S. B. Deshpande, ASGI for respondent No.1;

Mr S. P. Sonpawale, A.G.P. for respondent No.2;

Mr S. D. Kulkarni, Advocate for respondent No.3

WITH
WRIT PETITION NO.6909 OF 2019

H. R. Bhusari and Sons,
Indian oil Petrol Pump, Newasa (B),
Through its Proprietor
Mr Harish s/o Ramchandra Bhusari,
Age: 45 years, Occu: Business,
R/o. Plot No.39, Nakshatra Wadi, Paithan Road,
Aurangabad ..PETITIONER

VERSUS

1. The Union of India,
Ministry for Road Transport High-ways,
New Delhi
2. General Manager,
Hindustan Petroleum Corporation Ltd.,
R & C Building, West Zon, Sr. J.J. Road
Byculla, Mumbai-8
3. Deputy General Manager,
Hindustan Petroleum Corporation Ltd.,
Plot No.39, Sector-G, CIDCO
Town Center, Aurangabad ..RESPONDENTS

Mr R. D. Biradar, Advocate for petitioner;

Mr R. B. Bhosale, Advocate for respondent No.1;

Mrs Anjali Dube-Bajapi, Advocate for respondent Nos.2 & 3

WITH

PUBLIC INTEREST LITIGATION NO.13 OF 2019

Dattatraya s/o Laxman Navale,
Age: 34 years, Occu: Agri. & Business,
R/o. Patoda (G), Tq. Jamkhed,
Dist. Ahmednagar

..PETITIONER

VERSUS

1. The Ministry of Petroleum
& Natural Gas, Govt. Of India,
Through its Secretary,
New Delhi
2. Ministry of Environment,
Forest and Climate of
Govt. of India,
Through its Secretary,
New Delhi, Delhi
3. The State of Maharashtra,
Through its Chief Secretary,
Mantralaya, Mumbai-32
4. The Central Pollution Control Board,
Through its Chairman,
Parivesh Bhavan, C.B.D. Cum Complex,
East Arjun Nagar, Delhi-110032
5. The Maharashtra Pollution Control Board,
Through its Chairman,
Kalpataru Point 3 & 4
Floor, Opp. Cine Planet,
Sion Circle, Mumbai
6. Indian Oil Corporation,
Through its Chairman,
Indian Oil Bhavan,
G-9, Ali Yavar Jung Marg,
Bandra East, Mumbai,
Maharashtra
7. Hindustan Petroleum Corp. Ltd.,
Through its Chairman,
Petroleum House 17,

(6)

Jamshedji Tata Road
Mumbai – 400020,
Maharashtra

8. Bharat Petroleum Corp. Ltd.,
Through its Chairman,
Bharat Bhavan 4,
Currimbhay Road, Ballard,
East, Mumbai 400001
Maharashtra

..RESPONDENTS

Mrs S. K. Doke and Mr K. R. Doke, Advocates for petitioner;
Mr S. B. Deshpande, ASGI for respondent Nos.1 & 2;
Mr S. P. Sonpawale, A.G.P. for respondent No.3;
Mr Bhushan Kulkarni, Advocate for respondent No.4;
Mr A. P. Bhandari, Advocate for respondent No.6 & 8
Mrs Anjali Dube-Bajpai, Advocate for respondent No.7

**CORAM : PRASANNA B. VARALE
AND
R. G. AVACHAT, JJ.**

DATE : 17th February, 2020

ORAL ORDER:

All the present petitions raise a challenge to the notification, issued by respondents - Oil Companies/Corporations, namely, Indian Oil Corporation, Hindustan Petroleum Corporation Ltd. and Bharat Petroleum Corporation Limited, inviting tenders for establishing retail outlets of petrol and diesel within the territory of State of Maharashtra.

2. Insofar as Public Interest Litigation No.11 of 2019 is concerned, the submissions were advanced by Mr Katneshwarkar, learned Counsel appearing on behalf of the petitioner. The bone of contentions of Mr Katneshwarkar, learned Counsel is on the issue or

(7)

impact of the policy, whereby a large number of petrol and diesel outlets were permitted to be opened and such opening may cause an adverse effect to the environment. It was submitted by Mr Katneshwarkar that when there is a continuous attempt being made to prevent damages to the environment and there are certain judicial decisions also taking into consideration this aspect of the matter, the policy of opening of petrol and diesel outlets in large numbers creates an apprehension in the mind of petitioner that such opening may lead to imbalance in ecology or environment.

3. Mrs. Doke, learned Counsel appearing with Mr S. K. Doke, learned Counsel for the petitioner in Public Interest Litigation No.13 of 2019 raised the issue in respect of not maintaining the policy of reservations i.e. to the Scheduled Castes and Scheduled Tribes candidates.

4. Mr Jagtap, learned Counsel appearing on behalf of the petitioner in Writ Petition No.14007 of 2018 raises a challenge to the notification on the ground that an adverse impact on the petitioners who have already been allotted the dealership of petroleum product and the submission is, the allotment of the outlets in large number would adversely be affected the business prospects of the petitioners or other similarly situated dealers.

5. Mr Bhandari, learned Counsel appearing on behalf of respondents - Oil Corporations, while opposing the petitions, invited our attention to the various orders passed in different States by the respective High Courts. A heavy reliance is placed on the judgment and order in the matter of **Durairaj Venkatachalam vs. The Additional Chief Secretary & ors.**, delivered by the Madras High Court in a bunch of petitions, namely, Writ Petition (MD) No.19218 of 2019 and others.

6. Insofar as the issue in respect of the impact on environment is concerned, we may refer to the report submitted before the Principal Seat of National Green Tribunal, New Delhi. This report was submitted in Original Application Nos.86 of 2019 and 31 of 2019. Perusal of the copy of the report which is placed on record clearly shows that the very issue of setting up of large number of petrol pumps in the country, having a concern on the environment was before the National Green Tribunal for consideration and on the backdrop of the submissions advanced, the National Green Tribunal thought it fit to call report and various measures are suggested in the report. There is reference to the earlier guidelines and the added guidelines, which are said to be supplementary to all existing relevant Rules, Guidelines and Orders.

7. It may not be out of place to refer to the order dated 19th February, 2019, passed by the High Court of Madhya Pradesh, Bench at Indore in Writ Petition No.1294 of 2019, in the matter of **Manthan Parmarthik Sanstha Vs. Union of India and ors.** The observations of the High Court of Madhya Pradesh read thus:

“16. So far the issue of adverse impact on environment is concerned, the National Green Tribunal is already dealing with the matter and there cannot be parallel proceedings before this Court or before the National Green Tribunal in respect of adverse impact of environment”

8. Now, faced with the aforesaid observations, Mr Katneshwarkar, learned Counsel appearing for the petitioner in Public Interest Litigation No.11 of 2019 prays for withdrawal of the public interest litigation, with liberty to approach the National Green Tribunal, wherein the issue is pending consideration.

9. Accordingly, we allow the petitioner to withdraw the Public Interest Litigation No.11 of 2019, with liberty to approach the National Green Tribunal raising the issue, needless to state if it is so advised. The petitioner to approach the National Green Tribunal as expeditiously as possible.

10. Insofar as the challenge raised in the public interest litigation on

the ground of not maintaining the reservation policy is concerned, the very submission could not find favour with the Madras High Court. The Madras High Court, considering the very relationship between the parties, was pleased to observe thus:

“61. Furthermore, the relationship between the Oil Corporation and the Dealer is that of a licensor and licensee. The terms and conditions are spelt out in the agreement between the parties and by no stretch of imagination, it can be stated to have been “appointed to the service” of a public sector undertaking by virtue of grant of dealership. Thus, the argument is thoroughly misconceived and hence, rejected.”

62. In the counter affidavit filed by the respondents, the policy decisions taken by Government from time to time with regard to the award of dealership have been spelt out. The policy framed during 1997 provides reservation of 25% for SC/ST category, 8% for Paramilitary / Police / Government Personnel, 8% for Defence Personnel, 5% for Physically handicapped Persons, 2% for Freedom Fighters, 2% for Outstanding Sportspersons and 50% for Open Category. It is further stated that while formulating the revised guidelines, 27% reservation has been given OBC category and reservation for SC/ST category was limited to 22.5% and balance 50.5% was earmarked for open market category. The above main categories of reservation have also been provided to sub-categories such as Paramilitary / Police / Government Personnel, Defence

Personnel, Physically Handicapped Persons, Freedom Fighters, Outstanding Sportspersons etc. With a view to ensure financial and social status of women, in case of individual applicants applying as sole proprietor, his spouse will be made a partner with share of 50%, unless the spouse is already gainfully employed and does not wish to be made a partner. Therefore, women candidates are entitled to apply against all categories, provided they are eligible to apply under the said category. Thus, it is the submission of the respondents that by the policy, which is in vogue as on date, at 99% of the locations, women can become dealers instead of being just applicants.”

11. Thus, the Madras High Court also took into consideration the aspect of providing an opportunity to the women candidates qua the guidelines and the existing policy. We see no reason to take a different view than the view adopted by the Madras High Court and as such, we are unable to accept the submissions of Mrs Doke, learned Counsel for the petitioner in Public Interest Litigation No.13 of 2019. Resultantly, the challenge raised on that ground in this public interest litigation fails. Thus, the public interest litigation stands dismissed.

12. Insofar as the challenge raised to the notification on the ground that by this policy, if majority outlets are opened, they would adversely affect the petitioners’ business interest, is also dealt with by the High Court of Madhya Pradesh in Writ Petition No.1294 of 2019 (supra).

We may refer to the observations of the High Court of Madhya Pradesh, which read thus :

“10. It has been argued with great force that the commission which the present dealers are receiving from the oil companies will be divided in large number of people on the ground of establishment of retail outlets.

11. This Court is of the considered opinion that no person is being forced to open a retail outlet or to carry out the business of selling petrol / other petroleum product. If a person has entered into an agreement with an oil company as per his / her sweet will, profit & loss is the subject matter between the dealer and oil company and simply because the dealer will get less profit, it cannot be a ground for treating the petitioner's petition as a Public Interest Litigation Writ Petition.”

13. Though the aforesaid observations were in respect of the public interest litigation, they are equally applicable to a writ petition preferred by an individual.

14. At this stage, we may also refer to the judgment of the Rajasthan High Court, Bench at Jodhpur, in the matter of **Rajasthan Petroleum Dealers Association Vs. Union of India and ors.**, passed in S.B. Civil Writ Petition No.10441 of 2010, relied on by Mr Bhandari, learned Counsel for respondents – Corporations. The contentions

raised in that petition are referred to in the judgment and order at para 3 and the same read thus:

“3. Learned counsel for the petitioner, Mr. Sajjan Singh also canvassed before this Court that allotment of so many petrol pumps will not only congest the retail outlet market but will cause severe competition to the present dealers, who are members of the petitioner association and with the increase of competition, the income earned by way of commission by the members of the petitioner Association is bound to go down.

4. Though the last contention was feebly raised and kept in a veiled cover, this appears to be the most important reason for the petitioner Association to have invoked the extra ordinary jurisdiction of this Court for quashing these advertisements, namely; to avoid competition.”

15. The present writ petition is nothing but a camouflage to prevent possible competition by other retail outlets. The discretion & freedom of OMCs to set up more outlets with the expansion of road net work and consumer markets has neither been disputed nor it can possibly be disputed. From the material placed on record before this Court by the respondent Union of India and OMCs, it is clear that there is no breach of any guidelines, which are not even statutory in nature, by the OMCs while inviting applications for such retail outlets. The fear of competition only seems to be at the bottom of

the writ petition of the Association. A fair and legitimate competition coupled with the need of increased number of retail outlets with the expansion and development of road network & consumer market cannot be denied or disputed.”

15. Mr S. D. Kulkarni, learned Counsel appearing on behalf of respondent - Corporation in Writ Petition No.973 of 2019 places heavy reliance on the judgment of the Honourable the Apex Court in the matter of **Federation Haj Ptos of India Vs. Union of India & ors.** Our attention is invited to the observations in para Nos.18 and 19 of the said judgment and the same read thus :

“18. Going by the aforesaid considerations, the respondent has carved out the categories of HGOs on the parameters of experience as well as financial strength of HGOs. Such a decision is based on policy considerations. It cannot be said that this decision is manifestly arbitrary or unreasonable. 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. v. Union of India](#)}. 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 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

(15)

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. In Bennett Coleman's case, the Court explained this principle in the following manner:

"The argument of the petitioners that Government should have accorded greater priority to the import of newsprint to supply the need of all newspaper proprietor to the maximum extent is a matter relating to the policy of import and this Court cannot be propelled into the uncharted ocean of governmental policy."

19. 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. No such case is made out. On the contrary, views of the petitioners have not only been considered but accommodated to the extent possible and permissible. We may, at this junction, recall the following observations from the judgment in Maharashtra State Board of Secondary & Higher Secondary Education v. Paritosh Bhupeshkumar Sheth⁴:

"16... The Court cannot sit in judgment over

(16)

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 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.”

16. Though the Rajasthan High Court, on the backdrop of the above referred observations, was of the opinion that the attempt of the petitioner was nothing but an abuse of process of the Court and then

(17)

further thought it fit to dismiss the petition with imposition of costs, we refrain ourselves from adopting that view of the Honourable Rajsthan High Court and we simply dismiss the petitions on the ground that they are devoid of any merit. Resultantly, the petitions are dismissed.

17. In view of the disposal of present public interest litigations and writ petitions, no orders are required to be passed on the pending applications and the same are also disposed of accordingly.

(R. G. AVACHAT, J.)

(PRASANNA B. VARALE, J.)

sjk