

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24/01/2020

DATED : 14.02.2020

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.Nos. 35491 & 35495 of 2019

And

W.M.P.Nos. 36322, 36327 & 36328 of 2019

Tamil Nadu Kerosene Dealers Association
(Reg. No. 830/2000)

Rep. by its Secretary

Mr.K.M.V.Bhuvaneshwaran @ Durai

S/o. M.Venkatteshan

No.87, Karaneeswarar Pagoda Street

Mylapore, Chennai - 600 004.

.. Petitioner in W.P.No. 35491 /2019

S.Kuppusamy

.. Petitioner in W.P.No. 35495 of 2019

..Vs..

1. Union of India
Represented by its Secretary
Ministry of Petroleum and Natural Gas
Shastri Bhawan, New Delhi - 110 001.
2. The Director General
Petroleum Planning and Analysis Cell,
Ministry of Petroleum and Natural Gas
Shastri Bhawan, New Delhi - 110 001.
3. The Director (S&P)
Petroleum Planning Section
Ministry of Petroleum and Natural Gas
Shastri Bhawan,
New Delhi - 110 001.
4. The Government of Tamil Nadu
Rep. by its Secretary
Food and Consumer Protection Department
Secretariat,
Chennai - 600 009.

5. The Commissioner of Civil Supplies
Rep. by its Commissioner
Food and Consumer Protection Department
Ezhilagam, Chennai - 600 005.

.. Respondents in
both W.Ps.

PRAYER IN BOTH W.Ps.: Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent in Order No.P21016/02/2019-Dist Government of India, Ministry of Petroleum and Natural Gas dated 26.06.2019 and quash the same in so far as it has reduced the allotment of kerosene from 48,444 KL per quarter to 32,292 KL per quarter and to make allocation of kerosene to the State of Tamil Nadu considering per capita requirement on uniform basis.

For Petitioners in
both W.Ps.

:: Mr. M.Kempuraj

For RR 1 to 3 in
both W.Ps.

:: Mr.S.Janarthanan
Central Government Senior Panel

For RR 4 & 5 in
both W.Ps.

:: Mr.L.P.Shanmuga Sundaram
Special Government Pleader

COMMON ORDER

The writ petitioner in W.P.No. 35491 of 2019 is the Tamil Nadu Kerosene Dealers Association and the writ petitioner in W.P.No. 35495 of 2019 is S.Kuppusamy, Partner of Aarthi Enterprises, Kancheepuram. Both the Writ Petitions have been filed in the nature of Certiorarified Mandamus to call for the records of the first respondent, namely, Ministry of Petroleum and Natural Gas, Union of India, New Delhi in Order No. P21016/02/2019-Dist Government of India, Ministry of Petroleum and Natural Gas dated 26.06.2019 and quash the same since it has reduced the allotment of kerosene from 48,444 KL per quarter to 32,292 KL per quarter and to make allocation of kerosene to the State of Tamil Nadu considering per capita requirement on uniform basis.

2. In the affidavit filed in support of the Writ Petition in W.P.No. 35491 of 2019, the Secretary of the petitioner Association had stated that the petitioner is an Association of licensed wholesale kerosene dealers in Tamil Nadu, who are functioning under the licenses granted by the State of Tamil

Nadu under Tamil Nadu Kerosene Control Order, 1973. It had been stated that the Central Government allocates kerosene to all the States for distribution through Public Distribution System. This has been referred by the National Council of Applied Economic Research (NCAER) and sponsored by the Petroleum Planning and Analysis Cell, Ministry of Petroleum and Natural Gas. It had been stated that the allocation of kerosene for the State of Tamil Nadu had been reduced from time to time consecutively from the year 2016-2017 and finally, by the impugned order, it had been reduced from 48,444 KL per quarter to 32,292 KL per quarter.

3. It is stated that under Section 3 of the Essential Commodities Act 1955, the Central Government passed the kerosene (Restriction on Use and Fixation of Ceiling Price) Order 1993. It had been stated that the Control Order provides for grant of license to agents. It is also stated that the members of the petitioner Association had been appointed as dealers after selection and had procured land and infrastructure. They have also invested huge money towards infrastructure, storage tanks, office, machineries and man power. It had been stated that there is a gross discrimination in allocation of kerosene oil to the States, viz.,

Gujarat	-	17.2 litres per head
Goa	-	16.2 litres per head
Maharashtra	-	14.7 litres per head
Chandigarh	-	14.9 litres per head
West Bengal	-	11.1 litres per head
Tamil Nadu	-	6 litres per head

4. It is also stated that there is a gross discrimination in allocation of kerosene made by Central Government, viz.,

Uttar Pradesh	-	2,33,640 K.L
West Bengal	-	1,76,004 K.L
Bihar	-	1,51,032 K.L
Maharashtra	-	98,640 K.L
Madhya Pradesh	-	88,476 K.L
Gujarat	-	86,820 K.L
Tamil Nadu	-	53,820 K.L

5. It is stated that every consumer under the Control Order of 1993 is entitled to equal quantity to kerosene per month. It is therefore stated that a direction is required to be issued to the Central Government to allot kerosene to the States on uniform basis and on the basis of ration card population at uniform rate without any discrimination. It is under these circumstances that the Writ Petition has been filed.

6. The affidavit filed in support of W.P.No. 35495 of 2019 is practically an exact replication of the affidavit filed in support of W.P.No. 35491 of 2019.

7. A counter affidavit has been filed on behalf of the first, second and third respondents, namely, the Ministry of Petroleum and Natural Gas. It had been stated that the petitioners have no legal or fundamental right to claim allocation of kerosene in the manner as they think fit and it had also been further stated that no fundamental right of the petitioners have been infringed. It had been stated that the petitioners have filed the Writ Petitions in the nature of Public Interest Litigation and therefore, the petitions before this Court are not maintainable. It is also stated that earlier the petitioners have filed Writ Petitions in W.P.Nos. 13179, 26879 and 26880 of 2017. It is stated that the affidavits are verbatim in nature. It is also stated that the Writ Petitions have been filed with relation to the reduction of kerosene allocation for the second quarter of financial year 2019, namely, July-September 2019 and the Writ Petitions having been filed in December 2019 have become infructuous. It is also stated that the Ministry had already passed orders for the third and fourth quarters of 2019-2020 on 11.09.2019 and 11.12.2019 respectively. Consequently, it is stated that the Writ Petitions have to be dismissed.

8. It is also stated that allocation of kerosene by the Government of India to different States/Union Territories on quarterly basis is made for the purpose of cooking and illumination. It is stated that LPG is a cleaner and environment friendly fuel as compared to kerosene. It is also stated that Public Sector Oil Marketing Companies had incurred huge subsidy on PDS Kerosene to a sum of Rs.30,574 crores in the year 2013-2014, to a sum of Rs.24,799 crores in the year 2014-2015 and to a sum of Rs.11,496 crores in the year 2015-2016. It is also stated that the Central Government had also permitted the States, Union of Territories to draw one month quota of PDS Kerosene at non-subsidized rate. It is also stated that there is increased LPG coverage in the State of Tamil Nadu. Statistics have also been given. It is further stated that there is increased Electricity coverage in the State of Tamil Nadu. It is further stated that earlier Writ Petitions have also been dismissed by this Court and a similar Writ Petition by the Andhra Pradesh High Court. It was therefore stated that the Writ Petitions have to be dismissed.

9. Heard Mr. M.Kempuraj, learned counsel for the petitioners, Mr.S.Janarthanam, learned Senior Panel Counsel for the respondents 1 to 3 and Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader for the respondents 4 & 5.

10. The Writ Petitioners have approached this Court in the nature of Certiorarified Mandamus seeking to quash the Order No.P21016/02/2019-Dist Government of India, Ministry of Petroleum and Natural Gas dated 26.06.2019. By the said order, the allocation of kerosene has been reduced from 48,444 KL per quarter to 32,292 KL per quarter for the State of Tamil Nadu. However, it is seen that the impugned order relates to the second quarter of the Financial Year 2019, namely, July-September 2019. The Writ Petitions have been filed in the month of December 2019. On that one single ground itself, no orders can be passed on the two Writ Petitions.

11. Further, it is also seen that the Central Government have passed further orders for the third and fourth quarters for the Financial Years 2019-2020 on 11.09.2019 and 11.12.2019 respectively. When subsequent orders have been passed with respect to the allotment of kerosene, examining the impugned order, would be of no avail and would only be a futile exercise. Even otherwise, the petitioners seek to challenge the allocation and the Writ Petitions prima facie are public interest litigation. The said Writ Petitions cannot be maintained before this Court. Moreover, the petitioners seek to challenge a policy of the Central Government. The interference of this Court under Article 226 of the Constitution of India into policy decision is very narrow and limited.

12. The Central Government, has, in the counter affidavits justified the reduction in the allotment and has stated that it has been done based on studies, namely, as provided under the SKO Control Order, 1993. It has also been very clearly stated that there has been increased LPG coverage in the State. It is also seen that as on 01.07.2017, there are 203.20 lakhs households in the State of Tamil Nadu out of which 174.30 lakhs households have LPG connections. It is also stated that as on 01.12.2019, there are about 210.17 lakh households out of which 209.51 lakhs households have LPG connections.

13. It is also seen that there is also increased Electricity coverage in the State of Tamil Nadu. As per the Dashboard of Ministry of Power, Electricity coverage in the State of Tamil Nadu was 99.98% as early as 10.10.2017. It is stated that now it had reached 100% as early as 31.03.2019. Apart from these facts, it had also been stated that the very same issue had been examined by a learned Single Judge of this Court in W.P.No. 35322 and 35326 of 2013 [Sri Ram Agencies Vs. Union of India and Others]. It was decided on 30.06.2016. In that case, the petitioners were kerosene wholesale dealers. They were also aggrieved by the Notification issued by the Oil Corporations. The learned Single Judge while dismissing the

said Writ Petitions had referred to a Judgment dated 14.08.2014 passed in W.P.No. 32775 of 2013 by the Andhra Pradesh High Court. Paragraph Nos. 20 to 25 of the Judgment of the Andhra Pradesh High Court is extracted below:-

"20. Petitioners cannot ask to issue a mandamus to relax these essential requirements. It cannot be said that not providing exclusive reservation to SKO dealers is arbitrary and discriminatory. On the contrary, granting such reservation exclusively to SKO dealers to the complete exclusion of the open market candidates would attract the wrath of Article 14.

21. It is well settled principle of law that Article 19(1)(g) does not extend to compel the State or its instrumentalities to do business with a person on his terms. Thus, it cannot be said that the policy formulated by the oil companies is erroneous. It cannot be said that the right flowing out of Article 19(1)(g) and the right to decent living as mandated by Article 21 is affected on account of increase in use of LPG and reduction in the consumption of kerosene. There is no restraint on the individual from carrying on any other business or avocation and is not prevented from applying to LPG distributorship like any other person. Thus, reduction of consumption of kerosene cannot be a ground to demand provision of LPG dealership.

22. At the time of granting SKO dealership, the dealer and the oil company have entered into an agreement. The dealership agreement defines the relationship between two contracting parties. It does not envisage a promise of compulsory minimum sale and assured income to dealer nor does it envisage prospect of future priority allotment of LPG dealership. The impugned notification does not alter the terms of agreement members of petitioners association have entered into with the respondent oil companies. In matters where relationship is governed by

contract such relationship has to be regulated strictly in terms thereof and request of the petitioners would amount to expanding the scope of contract by way of mandamus, which is not permissible.

23. No right, much less a legal right was vested in the members of the petitioners association and same is impeded by the impugned notification. On the contrary conceding their demand would have amounted to conferring exclusive privilege to them in the form of absolute reservation and the same would abhor the mandate of Article 14 of the Constitution of India.

*** **

25. Petitioner has not made out a case to issue mandamus to provide existing SKO dealers direct dealership in the form of exclusive reservation to the complete exclusion of open market competition and as a matter of course. Sufficient leverage is already provided to the SKO dealers and no further relaxation or exclusive reservation can be insisted as a matter of right as no such right vested in them and writ court cannot issue mandamus directing the respondent oil companies to provide exclusive reservation. Hence, the writ petition is dismissed. There shall be no order as to costs. Miscellaneous Petitions if any pending in this writ petition shall stand closed."

14. The learned Single Judge of this Court in Sri Ram Agencies Vs. Union of India and Others in W.P.Nos. 35322 to 35326 of 2013 by common Judgment dated 30.06.2016 referring to the Judgment of the Andhra Pradesh High Court had stated as follows:-

"25. The above said judgments, in my opinion, are squarely applicable to the present case also. I do not find any valid reason to take a different view. On account of increase of usage of LPG, the use of kerosene has come down

drastically which affects livelihood of the the SKO dealers, who are entirely dependent on this avocation for several years and they are on the verge of losing their main source of earnings. In fact, taking into account of this as well as the directions of this Court, the Oil Corporations have prescribed certain criteria facilitating SKO dealers to participate and get LPG distributorship. However, it appears that being not satisfied with the said criteria, the petitioners/SKO dealers have come up with the present writ petitions, demanding automatic conversion into LPG Dealership, which in my opinion, is not feasible. The principle of law is well settled and needs no reiteration that no person can insist a special concession or percentage of reservation in favour of a particular class of people or category of persons as a matter of right. Concession or reservation is an enabling provision and it is exclusive domain of the Oil Corporations to provide concession or reservation to various social groups and to prescribe the percentage of reservation in favour of various social groups. Thus, petitioners cannot as a matter of right insists that there should be automatic conversion by switching over to LPG distributorship and they should not be clubbed with any category of persons in the process of selection of LPG dealerships. In fact, the Oil Corporations have given sufficient justification by making provision, enabling the SKO dealers to switch to LPG distributorship, subject to fulfillment of the prescribed criteria and they have to compete with the other groups in open competition for securing LPG distributorship. Therefore, I do not find any merit in the contentions raised on behalf of the petitioners. Though the learned counsel for the petitioners relied upon numbers judgments delivered by the Hon'ble Supreme Court, in support of their

contentions, I find that all those judgments were delivered on different factual aspects and not in respect of commercial transactions; hence, they are not applicable to the present facts of the case. "

15. I have also examined the facts of the case and also considered the arguments advanced.

16. As stated earlier, under Article 226 of the Constitution of India, the law is well settled that there cannot be any examination of a policy of the Central Government. There is also no inherent fundamental right of the petitioners to seek allocation of a particular quantity or kiloliters of kerosene. There is also no indication as to how the fundamental right of the petitioners have been violated by the impugned order of the Central Government. It is also seen that the petitioners herein cannot compel the Government, either Central or State, or any of his instrumentalities, to allocate kerosene on the terms as the petitioners deem correct. There is no right which flows out of Article 19(1)(g) by the Constitution of India as mandated by Article 21 and there is no violation of the fundamental principles as stated in the said Articles. There is a dealership agreement which gives specific quantity which a particular dealer can draw. At the same time, a direction cannot be issued to the Government with respect to the quantity of the kerosene to be supplied.

17. In view of all these reasons, I am afraid, this Court cannot come to the rescue of the petitioners. The Writ Petitions are dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

vsg

To

1. The Secretary
Union of India
Ministry of Petroleum and Natural Gas
Shastri Bhawan, New Delhi - 110 001.

WEB COPY

2. The Director General
Petroleum Planning and Analysis Cell,
Ministry of Petroleum and Natural Gas
Shastri Bhawan, New Delhi - 110 001.
3. The Director (S&P)
Petroleum Planning Section
Ministry of Petroleum and Natural Gas
Shastri Bhawan, New Delhi - 110 001.
4. The Secretary
The Government of Tamil Nadu
Food and Consumer Protection Department
Secretariat, Chennai - 600 009.
5. The Commissioner
The Commissioner of Civil Supplies
Food and Consumer Protection Department
Ezhilagam, Chennai - 600 005.

+4cc to Mr.M.Kempuraj, Advocate, S.R.No.12804, 12803

+1cc to Mr.S.Janarthanan, Advocate, S.R.No. 13564(04/03/2020)

W.P.Nos. 35491 & 35495 of 2019

And

W.M.P.Nos. 36322, 36327 & 36328 of 2019

KS (CO)
GN (17/02/2020)

सत्यमेव जयते

WEB COPY