BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 15.12.2020
DELIVERED ON : 21.12.2020

CORAM

THE HONOURABLE MR. JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.14340 of 2020
and
W.M.P.(MD)Nos.11990, 11992 and 13062 of 2020

M/s.Wallia Agency
through its Partner, N.Rajarampandian,
Ramanathapuram-623 501 : Petitioner

Vs.

1.Union of India represented by its
Secretary to Government of India,
Ministry of Petroleum and Natural Gas,
Government of India, Shastri Bhavan,
Dr.Rajendra Prasad Road, New Delihi - 110 111.

2.Union of India represented by its
Secretary to Government of India,
Ministry of Consumer Affairs, Food and
Public Distribution,
Department of Consumer Affairs,
Gallery No.12/2, Jam Nagar House,
Shahjahan Road, New Delhi 110 011.

3.State Level Coordinator,
IOCL, BPCL & HPCL Tamil Nadu and
Puducherry (UT), Indian Oil Bhavan,
Nungambakkam, Chennai - 600 034.

4.M/s.Indian Oil Corporation Limited,
represented by its Chairman,
3079/3, Sadiq Nagar, JB Tito Marg,
New Delihi - 110 049.

5.M/s.Bharat Petroleum Corporation Limited,
represented by is Chairman & Managing Director,
Bharat Bhavan,
No.26, Currimbhoy Road, Ballard Estate,
Mumbai - 400 001.

6.M/s.Hindustan Petroleum Corporation Limited,
represented by its Chairman and Managing Director,
No.17, Jamshed Tata Road, Mumbai - 400 020.

7.The Chief Area Manager,
Indian Oil Corporation Limited,
Indane Area Office,
No.2, Race Course Road,
Chokkikulam, Madurai - 625 002.

8.The Senior Officer (LPG-S),
Indian Oil Corporation Limited, Sales Officer,
Ramanathapuram SA,
Ramanathapuram District. : Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for the records of the impugned communication in No.P-20028/1/2019-PP-LPG, dated 19.03.2019 of the first respondent and the consequential 7th and 8th respondents' impugned circular of Email, dated 06.10.2020 preventing the collection of Transportation Charges and quash the same.

For Petitioner	:Mr.Mr.M.Ajmal Khan Senior Counsel for Mrs.T.Jayanthi Rani
For R1 and R2	:Mrs.L.Victoria Gowri, Assistant Solicitor General of India
For R3	:No Appearance
For R4, R7 and R8	:Mr.M.S.Krishnan, Senior Counsel for Mr.K.Muraleedharan
For R5	:Mr.Natesh Raja
For R6	:Mr.M.Sridhar

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ORDER

(This petition was heard through Video Conferencing)

This Writ Petition has been filed challenging the communication issued by the first respondent, dated 19.03.2019 and the consequential circular, dated 06.10.2020 issued by the 7th and 8th respondents preventing the collection of transportation charges by the LPG Distributors of the 4th respondent Oil Corporation.

2.Heard Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner, Mrs.L.Victoria Gowri, learned Assistant Solicitor General of India for respondents 1 and 2, Mr.M.S.Krishnan, learned Senior Counsel for R4, R7 and R8, Mr.Natesh Raja, learned Counsel for R5 and Mr.M.Sridhar, learned Counsel for R6.

3.The issues that arise for consideration in this Writ Petition are as follows:

a)Whether the distributors of Oil Marketing Companies are entitled to collect additional transportation charges from their customers in addition to the service charges received by them from the Oil Marketing Companies, under the distributorship agreement.

b)What is the legal sanctity of the communication sent by the some of the District Collectors in the year 2009 and 2010 in the State of Tamilnadu permitting the distributors to collect additional transportation charges from their customers.

4.The case of the petitioner is that they are entitled to collect additional transportation costs, since the District Collector has permitted them to collect such charges under Clause 9 (e) of the LPG (Regulation of Supply and Distribution) Order, 2000. According to the petitioner, only after consultation with Oil Marketing Companies, the communication, dated 16.06.2010, was sent by the District Collector, Ramanathapuram, permitting the distributors of Oil Marketing Companies in the district of Ramanathapuram, to collect additional transportation costs from their customers, wherever, the need arises. Therefore, according to the petitioner, the impugned letter, dated 19.03.2019 sent by the 1st respondent to the Chief Secretaries of all the State Governments and Union Territories calling upon them not to permit collection of additional transportation costs by the distributors without consulting them and the consequential circular, dated 06.10.2020, sent by the 7th and 8th respondents preventing the distributors from collecting additional transportation costs from their customers, are *per se*, arbitrary and illegal.

5.However, it is the contention of respondent Oil Corporation, as seen from the counter affidavit filed by them that the collection of additional transportation costs by the petitioner from their customers is illegal. According to them, the petitioner has entered into a distributorship agreement with them and they are bound by the terms and conditions contained therein. According to them, the service charges payable to the petitioner by them includes delivery charges also and the petitioner is prohibited from collecting any additional transportation costs from their customers. It is their case that the Public Sector Oil Corporations serve public interest. According to them, illegally, the petitioner has been collecting additional transportation costs from their customers in violation of the terms and conditions of the distributorship agreement. It is also their case that the communication of the District Collector, Ramanathapuram, dated 16.06.2010, permitting the distributors to collect additional transportation costs, has no legal sanctity, as it was without consultation with the Oil Marketing Companies.

6.It is their case that the communication sent in the year 2009 and 2010 by the District Collector cannot be relied upon by the petitioner for the purpose of collecting additional transportation costs. It is also their case that the said communication of the

District Collector permitting the distributors to collect additional transportation costs from their customers has not been issued under Clause 9(e) of LPG (Regulation of Supply and Distribution) Order, 2000. It is also their case that the petitioner has been fleecing their customers by charging exorbitant delivery charges, which is *per se* illegal. It is also the contention of the respondent Oil Corporation that the distributorship agreement entered into by the petitioner contains an arbitration clause and hence, according to them, if at all the petitioner has any grievance, they will have to redress the same only through the Arbitrator. Hence, according to them, the present Writ Petition is not maintainable.

7.According to the respondent Oil Corporation, the contention of the petitioner that respondent Oil Corporation has violated the principles of natural justice while issuing the impugned circular, dated 16.06.2020 is not correct, as the communication, dated 16.06.2010, issued by the District Collector, Ramanathapuram District, is not binding upon the respondent Oil Corporation, as it is of the year 2010 and has been issued without consultation of the respondent Oil Corporation. According to the respondent Oil Corporation, the petitioner is bound by the terms and conditions of the distributorship agreement, dated 28.06.1999, which clearly prohibits collection of additional transportation costs, as the service charges paid by the respondent Oil Corporation to the petitioner under the distributorship agreement includes the transportation charges also.

8.At the outset, Mr.M.Ajmal Khan, learned Senior Counsel for the petitioner, on instructions, would submit that the petitioner is giving up the challenge to the communication, dated 19.03.2019 sent by the Ministry of Petroleum and Natural Gas, Government of India to the Chief Secretaries of all the State Governments and Union Territories requesting the State Governments/Union Territories not to invoke the provision of clause 9(e) of LPG (Regulation of Supply and Distribution) Order, 2000, without consultation of the Oil Marketing Companies and have directed them to exercise the power under Clause 9(e) of the said order only, in cases where, it is necessary in view of the geographical terrain and/or the distance of the area of distribution. The learned Senior Counsel for the petitioner would further submit that the petitioner is restricting their challenge in this Writ Petition only to the impugned circular, dated 06.10.2020 issued by the 7th and 8th respondents.

9.The learned Senior Counsel for the petitioner drew the attention of this Court to Clause 9(e) of LPG (Regulation of Supply and Distribution) Order, 2000, and would submit that the proviso to the aforementioned clause permits the State Government to fix additional charges for home delivery of LPG cylinders to the customers. According to the learned Senior Counsel for the petitioner, in terms of the same, the various District Collectors in the State of Tamil Nadu have granted permission to the distributors to collect additional delivery charges from their customers. According to the learned Senior Counsel for the petitioner, the District Collector in Ramanathapuram has also issued a communication, dated 16.06.2010, whereby, the distributors were permitted to collect additional transportation costs from their customers.

10.According to the learned Senior Counsel for the petitioner, the communication, dated 16.06.2010, issued by the District Collector, Ramanathapuram, applies to the petitioner also, who operates in Ramanathapuram District, and therefore, they are permitted to collect additional transportation costs from their customers. According to him, the respondent Oil Corporation has also admitted in paragraph Nos.8 and 9 of their counter affidavit that in the past, the District Collectors of various districts have permitted the LPG distributors to collect additional transportation charges based on their request. The learned Senior Counsel for the petitioner would further contend that due to the distance in many cases, the petitioner is constrained to collect additional transportation costs from their customers. According to the learned Senior Counsel for the petitioner, the respondent Oil Corporation cannot impose restrictions in violation of the Statutory power exercised by the District Collectors under Clause 9(e) of LPG (Regulation of Supply and Distribution) Order, 2000, permitting the distributors to collect additional transportation costs. It is also his contention that there cannot be any estoppel against statute. Therefore, according to him, the 7th and 8th respondents' impugned circular, dated 06.10.2020 preventing the collection of transportation charges is non-est in the eye of law and violates the LPG distributors' constitutional rights. Further, it is his case that the impugned circular has been issued by violating the principles of natural justice, as it has failed to follow the principle of *audi alterum partem*.

11.Per contra, Mr.M.S.Krishnan, learned Senior Counsel for R4, R7 and R8, at the outset, would submit that much water has flown under the bridge, since the years 2009 and 2010, when the District Collectors had permitted the distributors to collect additional transportation charges from their customers. According to the learned Senior Counsel for the respondent Oil Corporation, under the distributorship agreement, dated 30.04.2017, entered into with the petitioner, the transportation costs is in-built and there is a prohibition for the petitioner to collect additional transportation costs from their customers. According to the learned Senior Counsel for the respondent Oil Corporation, the petitioner can operate their distributorship only within the radius of 15 kms. Further, it is his contention that Clause 9(e) of LPG (Regulation of Supply and Distribution) Order, 2000, applies only to cases where due to geographical terrain and the distance, the State Government has the power to permit the distributors to collect additional transportation costs, that too after consultation with the Oil Companies.

12.The learned Senior Counsel for the respondent Oil Corporation would further submit that the case of the petitioner does not fall in the said category, as the petitioner's distributorship does not fall in a terrain, where, it is difficult to deliver LPG cylinders. He would further contend that the petitioner under the garb of the communication in the year 2009 and 2010 of the District Collector, Ramanathapuram, permitting the distributors to collect additional transportation costs at the specified rate, the petitioner has been collecting exorbitant transportation costs amounting to several lakhs of rupees from their customers. He would also draw the attention of this Court to the receipts issued by the petitioner to their customers towards additional transportation costs collected by them, which according to him, will reveal that the petitioner has been collecting exorbitant additional transportation costs. The learned Senior Counsel would also draw the attention of this Court to the Distributorship agreement entered into with the petitioner by the respondent Oil Corporation, which contains the terms and conditions of the distributorship. According to him, the said agreement prohibits collection of any additional transportation costs, as the service charge payable by the respondent Oil Corporation to the petitioner includes the transportation costs also.

13.Mrs.L.Victoria Gowri, learned Assistant Solicitor General appearing on behalf of Ministry of Petroleum and Natural Gas and Ministry of Consumer Affairs, Food and Public Distribution and Department of Consumer Affairs, Government of India, would submit that the distributors' commission, which includes the establishment charges and delivery charges, has been fixed by the Ministry of Petroleum and Natural Gas, after giving careful consideration to the recommendations of Oil Industry and PPAC and she drew the attention of this Court to the communication, dated 28.09.2017, sent by the Ministry of Petroleum and Natural Gas, Government of India, to the Chairman and Managing Directors of all the Oil Companies, wherein, the distributors' commission was fixed. According to her, the petitioner and other distributors cannot collect additional delivery charges, as the delivery charge is in-built in the distributors' commission payable to the distributors. She also drew the attention of this Court to the Marketing Discipline Guidelines, 2014, for LPG distributorship and would submit that as per the said guidelines, the distributors will have to strictly adhere to the terms and conditions under the distributorship agreement entered into by them with the Oil Marketing Companies. She reiterated the contention of the learned Senior Counsel appearing for the respondents 4, 7 and 8 that in breach of the undertaking, the petitioner has been illegally collecting additional delivery charges from their customers.

Discussion:-

14.Order 9(e) of the the LPG (Regulation of Supply and Distribution) Order, 2000, reads as follows:

> "***9. Procurement storage and sale of liquefied petroleum gas by a distributor. -***
>
> *(a)....*
>
> *(b)....*
>
> *(c)......*
>
> *(d).....*
>
> *(e) No distributor shall, without prior written permission of the concerned Government Oil Company, refuse to make home delivery at the address of the consumer, as registered with the distributor:*
>
> *Provided that the State Government may, fix additional charges for home delivered of LPG cylinders to the consumers, as it may deem necessary in view of the geographical terrain and /or the distance in the area of distribution."*

15.As seen from the aforesaid Order, no distributor shall, without prior written permission of the concerned Government Oil Company, refuse to make home delivery at the address of the consumer, as registered with the distributor. However, there is a proviso to the said clause, which states that the State Government may, fix additional charges for home delivery of LPG cylinders to the consumers, as it may deem necessary in view of the geographical terrain and/or the distance in the area of distribution. The petitioner relies upon the permission granted by the various District Collectors in the State of Tamil Nadu during the years 2009 and 2010 permitting the distributors to collect additional delivery charges and the respective Collectors have also fixed the rates in those letters. In respect of the petitioner, who is operating in Ramantharapuram District, they rely upon a communication, dated 16.06.2010, sent by the District Collector, Ramanathapuram District, permitting the distributors in Ramanathapuram District to collect additional delivery charges from their customers. The said letter, dated 16.06.2010 of the District Collector, Ramanathapuram, does not refer to LPG (Regulation of Supply and Distribution) Order, 2000. As per Order 9(e) of the said Order, only in cases where, on account of geographical terrain and/or on account of distance to the area of distribution, additional delivery charges for home delivery of LPG cylinders can be permitted by the State Government. None of the respective District Collectors' communication in the year 2009 and 2010, disclose as to whether the additional delivery charges was fixed in view of the geographical terrain and/or the distance in the area of distribution. It is also not clear as to whether Public Sector Oil Companies were consulted by the respective District Collectors before finalising the rates towards additional delivery charges. The communications issued by the District Collector in the year 2009 and 2010 are not case specific ones. Under those communications, blanket permission has been given to distributors to collect additional transportation costs, which is not the criteria of Rule 9(e) of LPG (Regulation of Supply and Distribution) Order, 2000. Only in cases, where, the geographical terrain or the distance exceeds limit, collection additional transportation costs is permissible. The petitioner's case does not fall within any of those categories.

16.The First part of Order 9(e) of LPG (Regulation of Supply and Distribution) Order, 2000, makes it clear that no distributor shall, without prior written permission of the concerned Government Oil Companies, refuse to make home delivery at the address of the consumer, as registered with the distributor. While that be so, unless and until, there was consultation between the State Government, Distributors and Government Oil Companies, the State cannot fix the additional delivery charges unilaterally. However, the rates have been fixed by the respective District Collectors towards additional delivery charges in the years 2009 and 2010. If the contention of the petitioner is to be accepted, the rates would have been revised by the respective District Collectors periodically. Admittedly, it has not been done so. The petitioner relies upon a communication of the District Collector of the year 2010 fixing the rate of additional transportation charges that a distributor can collect. It is highly improbable that the additional transportation costs remains constant, ever since 2010, when the District Collector, Ramanathapuram, fixed the additional delivery charges. Therefore, it can be inferred that the said communication of the District Collectors granting permission to the distributors to collect additional delivery charges at the fixed rate under the said communication has not been issued under Clause 9(e) of LPG (Regulation of Supply and Distribution) Order, 2000. The said communication of the District Collector is only in the nature of instructions and is not mandatory for the Oil Companies to accept the same, that too when the Oil Companies nor the Central Government have not been consulted.

17.In order for executive instructions to have the force of statutory rules, it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution providing therefor. Since the District Collectors' instructions fixing the rate towards additional delivery charges in the year 2009 and 2010 have not been issued under the proviso to Order 9(e) of LPG (Regulation of Supply and Distribution) Order, 2000, the said instruction does not have any statutory force and is not binding on the Public Sector Oil Companies. In fact, in the case on hand, the Central Government has also supported the stand of the Public Sector Oil Companies, as seen from the submissions made by the learned Assistant Solicitor General. It would clearly indicate that the

Central Government was also not consulted before the respective District Collectors issuing communication in the years 2009 and 2010 permitting the distributors to collect additional delivery charges at the fixed rate. Therefore, the contention of the learned Senior Counsel for the petitioner that the terms and conditions of the distributorship agreement as well as the Marketing Discipline Guidelines 2014, cannot override a statutory provision, under which permission was granted to the distributors to collect additional delivery charges, is rejected, as the communications issued by the District Collectors in the year 2009 and 2010 have no statutory force.

18.The petitioner has entered into distributorship agreement with the respondent Oil Corporation and the terms and conditions are contained therein. As per the terms and conditions, the petitioner is not entitled to collect additional delivery charges. Further, the respondents have filed a detailed counter affidavit before this Court, wherein, they have stated that the commission payable to the petitioner under the Distributorship Agreement includes delivery charges also. The details of the establishment charges and delivery charges payable to the distributors by the respondent Corporation have also been extracted in paragraph 2 of the counter affidavit. They have also contended that they have been revising the service charges payable to the distributors periodically and the last such revision was made on 10.07.2019. When the delivery charge is in-built in the service charge, as rightly contended by the learned Senior Counsel for the respondent Oil Corporation, the petitioner cannot claim additional delivery charges. The petitioner is bound by the terms and conditions of the distributorship agreement as well as the Marketing Discipline Guidelines 2014, issued by the Oil Corporation in the year 2014, which prohibits the distributors from collecting additional delivery charges from their customers.

19.The Public Sector Oil Companies have been constituted for serving public interest without any profit motive. The interest of the customers is of paramount importance. While that be so, the petitioner cannot fleece their customers by collecting additional delivery charges, which will be detrimental to public interest. When the service charges payable to the distributors includes transportation charges/delivery charges, the petitioner cannot collect additional delivery charges without getting written approval of the respective Oil Companies or without permission being granted by the State Government, as per Order 9(e) of LPG (Regulation of Supply and Distribution) Order, 2000. Even that permission can be granted only to the cases where the distributor will have to supply in difficult geographical terrain and the distance is also more than the permissible limit.

20.As indicated earlier, since the circulars of respective District Collectors of the year 2009 and 2010, were not issued under

Clause 9(e) of LPG (Regulation of Supply and Distribution) Order, 2000, the same is not binding on the Oil Companies, including the respondent Oil Corporation. Under the distributorship agreement, in case of any dispute, the same will have to be referred to Arbitration. As the instant case does not involve any statutory violations by the respondent Oil Corporation, the petitioner, if aggrieved, will have to necessarily invoke the Arbitration clause contained in the distributorship agreement. Instead of exercising that option, the petitioner has filed this Writ Petition, which is not maintainable, as there is no statutory violation committed by the respondent Oil Corporation.

21.In the counter affidavit, the respondent Oil Corporation has also contended that apart from supplying LPG cylinders to the customers within 15 Km radius stipulated under the distributorship agreement, the petitioner in violation of the terms and conditions, has also supplied to customers, who live beyond 15 kms. The respondent Oil Corporation in the counter affidavit has also disclosed the details of supplies made by the petitioner to persons in various villages, beyond the permissible limit of 15 km radius.

22.The communications permitting the petitioner and other distributors have been issued by the respective District Collectors in the year 2009 and 2010. However, the petitioner has failed to make the District Collector, Ramanathapuram, as a party respondent in this Writ Petition. The District Collector, Ramanathapuram, is a necessary party, as the communication sent by him, is the basis for collection of additional delivery charges by the petitioner. On this score also, the Writ Petition will have to fail.

23.For the foregoing reasons, there is no merit in this Writ Petition. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Secretary to Government of India,
Ministry of Petroleum and Natural Gas,
Government of India, Shastri Bhavan,
Dr.Rajendra Prasad Road, New Delihi - 110 111.

2.The Secretary to Government of India,
Ministry of Consumer Affairs, Food and
Public Distribution,
Department of Consumer Affairs,
Gallery No.12/2, Jam Nagar House,
Shahjahan Road, New Delhi 110 011.

3.The District Collector,
Ramanathapuram District, Ramanathapuram.

Order made in
W.P.(MD)No.14340 of 2020
21.12.2020

svn(CO)
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