IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-12092-2020 (O&M)
Date of decision:01.09.2020

M/s Chardikala Indane and others
.......Petitioners

Versus

Union of India and others
......Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Puneet Gupta, Advocate for the petitioners

ANIL KSHETARPAL, J.

The writ petitioners, who claim to be the new LPG Distributors, have filed this writ petition under Article 226/227 of the Constitution of India for issuance of mandamus directing the respondents to transfer the customers\LPG consumers to them from the existing distributors till they reach the refill sale viability level i.e. 50% of the ceiling in terms of the unified guidelines for the selection of LPG Distributorship – 2016 and as per the circular dated 04.01.2018 (Annexure P2).

In brief, the case of the writ petitioners is that they have been appointed as new LPG Distributors by the Indian Oil Corporation and Bharat Petroleum Corporation Limited. They pray that under the circular (Annexure P-2) while marketing restructuring, the existing customers of the old LPG Distributors have to be transferred to them till they reach the refill sale viability level i.e. 50% of the ceiling in terms of the unified guidelines for the selection of LPG Distributorship, 2016. At the outset, it must be noticed that the Government of India had approved the unified guidelines for the selection of LPG Distributorship on 23.06.2016. As per the unified guidelines under Clause 2.4.1.1 Market Ceiling and Refill Ceiling Limit as also refill sale per month for feasibility limit were defined and fixed. Clause 2.4.1.1. is extracted as under:

"2.4.1.1 ExistingMarketing

2.4.1.1.1 Market Ceiling

The market refill ceiling limit is the maximum number of the domestic refill sales stipulated for LPG and based on the market Market Ceiling Limit and the Feasibility Norm for different types of Distributorship Area is proposed below:

Type of Distributorship area	***Population as per census 2011***	***Refill Ceiling limit per month***	***Refill sale per month for feasibility limit***
Shehri Vitrak	*Cities with population >40 lakh*	*20,000*	*10,000*
	Cities with 20 to 40 lakh population	*12,000*	*7,500*
	Cities with 10 to 20 lakh population	*12,000*	*6,000*
Rurban Vitrak	*Towns with <10 lakh population*	*10,000*	*5,000*
Gramin Vitrak	*Village/Cluster of villages*	*5,000*	*2,500*
Durgam Khetriya Vitrak	*Village/Cluster of villages*	*1,500*	*600*

Restructuring of the LPG Distributorships viz Sheheri

Vitrak, Rurban Vitrak, Gramin Vitrak and Durgam Kshetriya Vitrak in the existing market will be planned only after the refill sale exceeds by 50 of the refill ceiling limit of the market.

Note:

I) *The proposed refill ceiling limits for LPG Distributors will be applicable for all the LPG as defined above on prospective basis. However, the restructuring exercise for all the locations advertised prior to these guidelines will continue on the basis of the pre-revised ceiling limits.*

ii) *Existing Rural with refill ceiling limit of 8800 per month will not be restructured applying new ceiling limit criteria under this guidelines.*

iii) *All existing RGGLV Distributorship with monthly refill sale of more than I500 will be treated as Gramin Vitrak in accordance with these guideline sand with mandatory home delivery facility.*

iv) *All existing RGGLV Distributorships with monthly refill sale of less than 1500will be treated as Durgam Kshetriya Vitrak in accordance with this policy and without* *mandatory home delivery facility. However, as and when the monthly refill sale exceeds more than I500 they will be treated as Gramin Vitrak in accordance with this guidelines and with mandatory home delivery facility.*

v) *This policy subsumes the existing Distributorships selection guidelines under RGGLV.*

vi) *Durgam Kshetriya Vitrak with monthly refill sales beyond 1500will be treated as Gramin Vitrak with upper ceiling limit of 5000 per month with mandatory home delivery of refills.*

Direct allotment of LPG Distributorships to State Government agencies in Durgam Areas".

Learned counsel for the writ petitioners admits that the unified guidelines do not itself provide for migration of the customers from the old distributors to the new distributors.

Thereafter, a circular- "Marketing Restructuring – Transfer of Customers" was issued providing for migration/transfer of the existing/old customers from old LPG Distributors to the new LPG Distributors enabling them to reach 50% of the refill ceiling of that market. The aforesaid circular issued on 04.01.2018 was challenged before the High Court of Judicature at Bombay in Civil Writ Petition No.

8753 of 2018 which has been allowed and the circular dated 04.01.2018 has been quashed and set aside by the Division Bench of the High Court on 30.09.2019. A special leave petition, filed against the judgment of the High Court of Judicature at Bombay, is pending. Even a review application is also pending before the High Court of Judicature at Bombay.

No doubt, the Madras High Court as well as the Patna High Court have dismissed the writ petitions challenging the circular dated 04.01.2018, however, as on today, the circular stands quashed by the High Court of Judicature at Bombay against which the special leave petition and review application are stated to be pending. Learned counsel for the writ petitioners has failed to bring to the notice of this Court any interim order passed by the Hon'ble Supreme Court in the pending special leave petition against the judgment of the High Court of Judicature at Bombay.

This Court has heard learned counsel for the petitioners and with his able assistance, gone through the paper-book.

The learned counsel for the petitioners has submitted that the judgment passed by the High Court of Judicature at Bombay would operate within the territorial jurisdiction of the aforesaid High Court, therefore, it is not binding on the area of States of Punjab, Haryana and Union Territory of Chandigarh. However, in the considered view of this Court, the argument of learned counsel for the petitioners is not correct. Once the circular has been quashed by the High Court, it ceases to exist at all. Similar issue arose before the Hon'ble Supreme Court in the context of the jurisdictions of the High Court quashing the statutes in ***Kusum Ingots and Alloys Limited v. Union of India (2004) 6 SCC 254***, wherein it was held that the quashing of the statute by a particular High Court results in its quashing/setting aside. Similarly a Division Bench of the High Court at Madras also took a similar view while examining the affect striking down of The Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) (Six Months Training) Rules 2014 to be beyond the scope of The Pre-conception and Prenatal Diagnostic Techniques (Prohibition of Sex Selection) Act , 1994 by the Delhi High Court. Still further, it is apparent that the writ petitioners have not impleaded the old/existing distributors who are going to be affected as respondents. If at all this Court orders implementation of Annexure P2, the circular dated 04.01.2018, the aforesaid old distributors shall be required to be heard and hence, they are necessary parties to the writ petition.

Once the circular dated 04.01.2018 stands quashed/set aside, a writ petition seeking implementation/enforcement thereof, at this stage, would not be maintainable. Keeping in view the aforesaid facts, the present writ petition is dismissed as premature with liberty to the writ petitioners to file a fresh writ petition after the decision of the Hon'ble Supreme Court in the pending special leave petition.

01.09.2020 **(ANIL KSHETARPAL)**
DK/rekha **JUDGE**

Whether speaking/reasoned Yes / No
Whether Reportable Yes / No