IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4037 OF 2021

M/s Jay Gas Agency,
Through its Proprietor
Sneha Vilas Kulkarni,
Age : 48 Years, Occu. : Business,
R/o Plot No. 21, Gut No. 707,
Near Telephone Exchange,
Bhusawal Road, Yawal,
District Jalgaon. .. Petitioner

Versus

1. The Union of India
Through Secretary,
Ministry of Petroleum and
Natural Gas, New Delhi.

2. Hindustan Petroleum Corporation
Ltd. Through Territory Manager
(LGP), MIDC Jalgaon.

3. The District Collector, Jalgaon,
District Jalgaon.

4. The State of Maharashtra,
Through its Secretary,
Food, Civil Supply and Consumer
Protection, Mantralaya,
Mumbai – 32. .. Respondents

Shri Amit A. Yadkikar, Advocate h/f Shri S. S. Gangakhedkar, Advocate for the Petitioner.
Mrs. Sudha Chintamani, Advocate for the Respondent No. 1.
Shri Anand P. Bhandari, Advocate for the Respondent No. 2.
Shri Sidhartha B. Yawalkar, Addl.G.P. for the Respondent Nos. 3 and 4.

CORAM : MANGESH S. PATIL AND
SANDEEP V. MARNE, JJ.

DATE : 13.09.2022.

<u>JUDGMENT</u> (*Per Sandeep V. Marne, J.*) -:

A. <u>The Challenge</u>

. Petitioner is aggrieved by discontinuation of scheme of payment of transportation charges for delivery of L.P.G. cylinders to the customers beyond contract territory, leading to filing of the present petition challenging the order dated 15.10.2020 passed by the District Collector, Jalgaon. Petitioner is a LPG Distributor appointed by Hindustan Petroleum Corporation Limited (hereinafter referred as to the 'Respondent Corporation'). His claim is essentially premised on the principle of legitimate expectation, as home delivery charges were being fixed and paid in the past in respect of deliveries made outside his contract territory. The petitioner is aggrieved by the discontinuation of the scheme for payment of such home delivery charges beyond contract territory and restricting the same only to the villages notified in hilly terrain.

B. <u>CASE OF THE PETITIONER</u>

2. The petitioner is proprietor of M/s Jay Gas Agency who is appointed by the respondent corporation as distributor of L.P.G. cylinders vide agreement dated 07.06.2005 for Yawal Town. By letter dated 07.02.2006, the customers of Adavad and adjoining area came to be transferred to his agency and he was directed to ensure LPG refill supplies to such customers. It is his case that, out of about 20,000 customers, about 14000 customers are located beyond his contract territory and to supply LPG cylinders to such 14,000 customers outside contract territory, he is required to bear additional expenses, justifying the payment of

additional home delivery charges.

3. The supply and distribution of LPG gas is governed by the provisions of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order 2000 (for the sake of brevity hereinafter referred as to the “LPG Order 2000”) issued under the provisions of Section 3 of the Essential Commodities Act, 1955.

4. It is the case of the petitioner that, in accordance with the provisions of the Rule 9(e) of the LPG Order 2000, the home delivery charges were being fixed and revised from time to time. By the Government Resolution dated 16 March 2016, the State Government delegated the powers to fix the home delivery charges in respect of customers beyond contract jurisdiction to the Collectors. In pursuance of order dated 28 March 2016 passed by this Court in Writ Petition No. 1119 of 2016 and minutes of the meeting held between the Collector Jalgaon and representatives of the Oil Marketing Companies, it was decided to revise the home delivery charges. By order dated 25.11.2019, the rates were revised as under:

Sr. No.	Area of operation	Rates approved on 25.11.2019
1.	Above trading area 1 to 10 K.M.	Rs. 22.00
2.	Above trading area 10 to 20 K.M.	Rs. 31.00
3.	Above trading area 20 K.M. and more	Rs. 35.00

5. By order dated 25.08.2020, the Collector, Jalgaon directed that all L.P.G. distributors must supply cylinders at the retail price fixed by the Ministry of Petroleum and Natural Gas and in the event of higher price being charged, action would be taken

against them.

6. A representation was made by the LPG Distributors on 05.09.2020 to the Collector, Jalgaon for reconsideration and revocation of the order dated 25.08.2020. The Collector, Jalgaon thereafter passed order dated 15.10.2020 slightly modifying the earlier order dated 25-08-2020 and directed that the order dated 25.11.2019 fixing home delivery charges would be applicable only in respect of notified villages falling in hilly terrain. All such villages falling in hilly terrain of Jalgaon district have been enlisted in the said order dated 15.10.2020, which includes nine villages in Yawal taluka. It is further directed that except such notified villages, LPG cylinders must be sold at retail sale price fixed by the Ministry of Petroleum and Natural Gas and that charge of price higher than the same would entail action against the LPG Distributors. The order dated 15.10.2020 is subject matter of challenge in the present petition. The petitioner has further prayed for revision and increase of home delivery charges keeping in mind escalation in price of fuel and labour charges after 25.11.2019.

C. CASE OF THE RESPONDENT CORPORATION

7. The petition is resisted by the respondent corporation by filing affidavit in reply, in which reliance is placed on letter dated 05 August 2019 issued by the Ministry of Petroleum and Natural Gas. It is submitted that even though the said letter is addressed to the Indian Oil Corporation, the same is applicable to all the Oil Marketing Companies.

8. Various clauses of the agreement have been reproduced in

the affidavit in reply filed by the respondent corporation to oppose the claim of the petitioner. It is averred that under Regulation 9(e) of the LPG Order 2000, home delivery charges are made only for very remote/difficult areas and for exceptional circumstances only.

D. CASE OF DISTRICT COLLECTOR

9. An affidavit in reply has also been filed on behalf of the District Collector justifying the impugned order. It is averred that the impugned order has been passed on the basis of directives issued by the Ministry of Petroleum and Natural Gas in the form of letters dated 19.03.2019, 05.08.2019 and 10.09.2019. It is further averred that there were 75 gas agencies in Jalgaon district in the year 2016, which number has increased to 97 gas agencies and the consumers have liberty to approach any of the three gas agencies for service. There are 472 common service Centers in Jalgaon district set up by way of agreements with the Oil Marketing Companies, which are functioning as retail gas cylinder sellers from whom the consumers can receive delivery of LPG cylinders. Referring to the Ujjawala 1.0 and Ujjawala 2.0 schemes of the Central Government, it is contended that there are 2.41 lacs LPG connections operational in Jalgaon district and the impugned order has ensured that the consumers located in rural areas are not required to pay additional charges.

E. SUBMISSIONS

10. Appearing for the petitioner, Mr. Amit Yadkikar, learned counsel has submitted that every LPG Distributing Agency is supposed to maintain only one stocking point from which all

deliveries are required to be managed. He would submit that on account of obligation put by the respondent corporation to ensure the service to customers located outside contract jurisdiction, petitioner is required to incur additional costs towards transportation of cylinders from such stocking point to the location of the customers. He would submit that the rationale behind issuance of the impugned order is flawed as it provides for payment of home delivery charges for delivery of LPG cylinders in the villages notified as hilly terrain located at a shorter distance but not for villages not notified as hilly terrain which are located at longer distance. He would further submit that the petitioner has more customers outside contract jurisdiction and, therefore, the petitioner is incurring losses for delivery of cylinders to customers located outside contract jurisdiction. Mr. Yadkikar would further submit that by circular dated 13.03.2018, a scheme was introduced for transfer of customers, however, the same has been set aside by the Division Bench of this Court at Principal Bench in Writ Petition No. 8753 of 2018 decided on 30 September 2019. He would submit that on account of setting aside of such scheme, the petitioner has no option but to meet the obligation of delivery of LPG cylinders to all customers located beyond the contract jurisdiction. Relying on the letter dated 07th February, 2006, Mr. Yadkikar, would contend that the petitioner has been mandated to serve all customers of Adavad and adjoining areas, which admittedly fall beyond the contract jurisdiction and, therefore, delivery to customer is not a matter of choice for the petitioner. Mr. Yadkikar has invited our attention to the letter dated 10.09.2019 of Indian Oil Corporation under which it was decided to treat a distributorship falling in identified areas under hilly/mountainous region and difficult terrains and that such identified distributorships were to be allowed to sell cylinders without mandatory home delivery. Mr. Yadkikar would contend that in pursuance of the said letter dated 10.09.2019, the petitioner was not given any intimation permitting him to sell the cylinders without mandatory home delivery in the identified areas. Lastly, Mr. Yadkikar would contend that the impugned decision has been taken on the basis of representation from the oil marketing companies, when payment of home delivery charges does not entail any additional financial burden for them.

11. Per contra, Mr. Anand Bhandari, learned counsel appearing for the respondent corporation has opposed the petition submitting that there is no public law element involved in the present petition, which is premised on contractual rights. He would therefore submit that this Court would be loath in interfering in the matters arising out of contractual obligations. He has relied upon clauses 4.4 and 10 of the Distribution Agreement executed between the petitioner and the respondent corporation under which there is an obligation on the dealer to sell the cylinders only at fixed retail selling rates. Referring to para 22 of the affidavit in reply filed by the respondent corporation, Mr. Bhandari would contend that there are now 2 HP Gas Distributorships in Yawal taluka and one of them is located only at a distance of 14 KM from Adavat, who can cater to the customers of Adavat and adjoining areas. Mr. Bhandari would further submit that the impugned order has been passed keeping in mind larger public interest in ensuring that all the customers are delivered LPG cylinders at a uniform price. Referring to the letter dated 05.08.2019 issued by the Ministry,

Mr. Bhandari would contend that the provision for payment of home delivery charges is rightly restricted only in respect of customers located in very remote/difficult areas and in exceptional situations only. He would submit that the said decision dated 05.08.2019 of the Ministry is not subject matter of challenge in the present petition. Referring to Ujjawala schemes, Mr. Bhandari would contend that substantially higher number of customers have been added in the past years thereby ensuring higher business to all LPG distributors, including the petitioner and, therefore, there is no question of any losses being incurred him.

12. Mr. Sidhartha Yawalkar, learned Additional Government Pleader for respondent State would submit that the Government Resolution dated 16 March 2016 delegating power of fixation of home delivery charges to the Collectors was issued in accordance with the provisions of Rule 9(e) of the LPG Order 2000. He would further submit that a clarification has been issued by the Ministry of Petroleum and Natural Gas about interpretation of Rule 9(e) vide letter dated 05.08.2019. He invited our attention to the representation dated 12.08.2020 made by Oil Marketing Companies to District Collector, Jalgaon for reconsideration of fixation of home delivery charges and submits that the decision impugned in the present petition has been taken on the basis of such joint representation made by the Oil Marketing Companies. Mr. Yawalkar, would further submit that by Government Resolution dated 18.01.2010, villages falling in hilly areas have been notified and the District Collector has considered provisions of the said G. R. while notifying nine villages of Yawal taluka in the impugned order dated 15.10.2020.

13. Rival contentions of the parties now fall for our consideration.

F. ANALYSIS AND FINDINGS

14. At the outset, we must observe that the impugned order dated 15.09.2020 has been issued by the Collector, Jalgaon on the basis of letters dated 19.03.2019 and 05.08.2019 issued by the Ministry of Petroleum and Natural Gas, Government of India. The letter dated 19 March 2019 issued by the Ministry of Petroleum and Natural Gas to all the Chief Secretaries of the State Governments and Union Territories, reads as under :

No. P-20028/2019-PP-LPG
Government of India
Ministry of Petroleum & Natural Gas

Shastri Bhavan, New Delhi,
19th March, 2019

To
The Chief Secretaries of State Governments/UTs
(List attached)

Sub. : Additional delivery charges for 14.2 Kg cylinders being charged by States / UTs

Sir,

I am directed to say that several instances have come to the notice of the Ministry wherein the local administration of the State / Union Territory has authorised LPG Distributors of Public Sector Oil Marketing Companies (OMCs) to collect additional delivery charges invoking clause 9(e) of the Liquefied Petroleum Gas (Regulation of Supply and Distribution), Order, 2000. The additional delivery charges even hiked for the customers residing in the distributor's trading area.

2. Attention is drawn to the clause 9(e) of the

Liquefied Petroleum Gas (Regulation of Supply and Distribution), Order, 2000 states that "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 delivery of LPG cylinders to the consumers, as it may deem necessary in view of the geographical terrain and/ or the distance in the aea of the distribution.

3. Currently, the distributor commission, includes payment to distributor towards delivery charges and establishment charges. Distributor is required to deliver refill in its trading area, without any additional charges. Domestic LPG is a regulated product and any additional charge over and above the Retail Selling Price is not advisable except for remote locations like islands, hilly areas etc. where additional costs may be incurred for distribution.

4. In view of the above, State Governments / Uts are requested that the decision to invoke the provision of clause 9(e) of the Liquefied Petroleum Gas (Regulation of Supply and Distribution), Order, 2000 may be taken in consultation with the OMCs and only in cases where it is necessary in view of the geographical terrain and/or the distance in the area of the distribution.

Yours faithfully,
Sd/-
(M.M. Mahesh)
Director (LPG)
Tel. 2338 7404

Copy to : Director (Marketing), IOC, BPCL and HPCL, Mumbai

15. The Ministry of Petroleum and Natural Gas addressed one more letter dated 5th August 2019, this time to the Indian Oil Corporation, in response to a representation made by one of the distributors. The letter is reproduced below:

No. P-26011/82/2017-LPG
Government of India
Ministry of Petroleum & Natural Gas

Shastri Bhavan, New Delhi,
Dated : 05th August, 2019

To
The Director (Marketing),
IOC,
Mumbai

Subject :- **<u>Representation received from Private LPG Distributor of Sikkim (NSKY Indane & oths) for issues related to home delivery of LPG cylinders in Sikkim.</u>**

Sir,

I am directed to inform you that Clause 9(e) of the Liquefied Petroleum Gas (Regulation of Supply and Distribution), Order, 2000 provides for dispensing with home delivery by a distributor of OMCs and also provides for State Government to 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.

2. It may be noted that this provision has been made in the LPG Control Order for very remote / difficult areas and for exceptional situation only. This provision cannot be used routinely for fixing additional charges for home delivery or for dispensing with home delivery. A list of all such areas may be shared with this Ministry. Whenever home delivery is not made, delivery charges need to be debited from RSP.

3. Further, I am directed to inform that in view of the above provisions of Liquefied Petroleum Gas (Regulation of Supply and Distribution), Order, 2000 OMCs may implement the action plan suggested by them vide IOC's letter No. SL/SC/1803 dated 26.06.2019 keeping in mind the provisions of Liquefied Petroleum Gas (Regulation of Supply and Distribution), Order, 2000 and the Ministry's letter No. P-20028/1/2019-PP-LPG dated 18.03.2019.

Yours faithfully,
Sign/-
(Nirmal Pegu)
Under Secretary (LPG)
Tel. No. 011- 2338 5420

Copy to : Director (Marketing), BPCL/HPCL, Mumbai

16. Thus, the decision not to pay home delivery charges for delivery of LPG cylinders in areas not falling in very remote / difficult areas has been taken by the Ministry. The said decision in the form of letters dated 19.03.2019 and 05.08.2019 has not been challenged by the petitioner, eventhough Union of India has been impleaded as a party Respondent. The order passed by the Collector Jalgaon on 15.10.2020 is merely a consequential order. Without challenging the main decision of the Ministry, a mere consequential order issued by the Collector, Jalgaon towards implementation of such decision cannot be challenged. This, according to us, is a serious flaw in the Petition striking at its very roots. We would have been justified in dismissing this Petition on this ground alone, however since detailed submissions have been made by the counsels appearing for the parties, we proceed to deal with them.

17. The sheet anchor of the Petitioner in support of his claim for payment of home delivery charges is Rule 9(e) of the LPG Order 2000, which is reproduced below :

LIQUEFIED PETROLEUM GAS (REGULATION OF SUPPLY AND DISTRIBUTION) ORDER 2000

9. (a) …
(b) …

(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 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.

18. Thus, Rule 9(e) of the LPG Order 2000 mandates the distributors to make home delivery at the address of the customers. An enabling provision has been made under Rule 9(e) of the LPG Order 2000, under which, the State Government, 'may' fix additional charges for home delivery of cylinders to consumers as it may deem necessary in view of the geographical terrain and/or the distance in the area of distribution. Thus, there is no specific provision under the Regulations which entitles the distributors to levy home delivery charges. The Proviso to Rule 9(e) cannot be construed to mean that a right is created in favour of the distributors to claim home delivery charges. The Proviso merely authorizes the State Governments to fix such charges. Furthermore, the matter of fixation of home delivery charges in respect of specific areas is left to the discretion of the State Government as the word used is 'may'. Therefore, it is not at all mandatory that home delivery charges must either be fixed or paid under Rule 9(e) of the LPG Order 2000.

19. Undeniably, rights and obligations between the petitioner and the respondent corporation are governed by the provisions of the dealership agreement. Under clause 2(a) of the agreement, the petitioner agreed to distribute cylinders in the area of 'Yawal town or as decided by the HPCL from time to time." The petitioner thus agreed to distribute the cylinders at such locations as may be directed by the respondent corporation.

Under clause 4.5 of the agreement, it is provided that, "*the dealer undertakes to sell and supply the gas at the rates so fixed and the dealer shall not sell at retail prices exceeding those fixed by the corporation from time to time......*". Clause 10 of the agreement provides as under:

> *"10. The Dealer shall at all times sell LPG obtained by him only from the Corporation at price/tariffs fixed by the Corporation from time to time and shall faithfully carry out the directions of Corporation. However, the price / tariffs shall not exceed the maximum imposed by the Corporation."*

20. Admittedly, there is no specific provision in the distribution agreement for payment of any home delivery charges. Thus, the petitioner not only agreed to distribute cylinders at the charges fixed by the respondent corporation, but also entered into the agreement which did not contain any provision for payment of any home delivery charges. Thus, contractually, he is not entitled to claim any home delivery charges. In this regard, Mr. Bhandari is right in contending that the present petition involves contractual rights and there is no public law element involved in the same.

21. Faced with the situation of absence of any provision for payment of home delivery charges in the agreement, Mr. Yadkikar has submitted that the entitlement to claim home delivery charges flows out of the LPG Order 2000 and places reliance on Rule 9(e) of the LPG Order 2000. We have already held that Rule 9(e) of the LPG Order 2000 does not create any entitlement in favour of a distributor to claim home delivery charges. Therefore, submission of Mr. Yadkikar in this regard

deserves to be rejected.

22. Now we examine Mr. Yadkikar's submission of legitimate expectation. It is submitted that the home delivery charges are being paid to the distributors from the year 2008 onwards. They have been revised from time to time based on the demands made by the distributors. It is therefore submitted that a legitimate expectation is created in favour of the petitioner to continue to claim home delivery charges. We are afraid, this contention of Mr. Yadkikar cannot be upheld as the entitlement of the petitioner to claim home delivery charges can flow either out of the contract or out of the LPG Order 2000. We have already arrived at a conclusion that there is no entitlement in favour of the petitioner to claim home delivery charges either under the contract or under the LPG Order 2000. Entitlement to receive home delivery charges cannot flow out of actions of any officials. Therefore, the contention regarding legitimate expectation deserves to be rejected.

23. The next contention of Mr. Yadkikar is that the rationale behind issuing the impugned order is flawed. This contention is raised by comparing longer distance deliveries in non-hilly areas with shorter distance deliveries in the hilly areas. We do not find any merit in this contention as well. The provision for payment of home delivery charges for delivery of LPG cylinders in hilly areas is made taking into consideration non availability of proper roads, whether conditions, etc. in the hilly terrains. The same also appears to have been made to encourage the LPG dealers to deliver LPG cylinders in remote areas so that persons residing in remote and hilly areas are not deprived of the facility of the LPG. Thus far from being flawed, the rationale in fact

appears to be sound.

24. The contention of Mr. Yadkikar that the petitioner is serving more customers outside contract jurisdiction than within its trading area is stated only to be rejected. By serving more customers, the petitioner is only earning more profits. Also, no correspondence is brought on record, which indicates petitioner's disinclination or difficulty in serving customers outside his contract jurisdiction. This shows that he has been more willing to serve more customers than agreed customers, even though they are residing outside the contract jurisdiction, possibly because this ensures earning of more profits.

25. On consideration of overall conspectus of the matter, we find that various State Governments had apparently committed an error in fixing home delivery charges in respect of each and every customer located outside contract jurisdiction. The things are set right by the Ministry by issuing clarificatory letters dated 19.03.2019 and 05.08.2019. Both under the contract as well as under the provisions of the LPG Order 2000, the objective is to sell LPG cylinders at a specified price. It has been the intention of the Government not to create classification amongst the customers in respect of LPG cylinder prices based on distance. Therefore, we do not find that any error is committed by the Ministry in issuing the letters dated 19.03.2019 and 05.08.2019. As observed hereinabove, the petitioner has failed to challenge said letters dated 19.03.2019 and 05.08.2019. These letters being the fountain source of the impugned decision, without challenging the decision of the Ministry taken in those letters, the petitioner could not have challenged consequential letter issued by the Collector Jalgaon.

26. Both the respondent corporation as well as Collector, Jalgaon have been able to successfully demonstrate before us that there are sufficient number of gas distributors to serve the customers to whom the petitioner has been serving outside his contract jurisdiction. This would indicate that the service of home delivery provided by the petitioner to such customers is out of his own volition and possibly to earn more profits. Therefore, the theory of incurring losses by him on account of mandatory delivery to customers outside contract jurisdiction cannot be accepted.

27. The respondents have come out with a specific case that under Ujjawala 1.0 and Ujjawala 2.0 schemes, the Government of India aims to provide free LPG gas to poor families and to ensure that all the families across the country receive LPG connections. This august intention cannot be permitted to be defeated on the commercial considerations of the distributors. Seen from any angle, we do not find that any case is made out by the petitioner for interference under our extraordinary jurisdiction under Article 226 of the Constitution of India.

G. ORDER

28. The Petition is thus devoid of merits and it must fail. It is accordingly dismissed without any orders as to costs.

[SANDEEP V. MARNE, J.] **[MANGESH S. PATIL, J.]**

bsb/Sept. 22