

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

WRIT PETITION NO.1815 OF 2019

Amba-Deep Servo Petrolieums
Dealer Indian Oil Corporation Ltd,
Digambar Mawal Patil,
Age : 61 Years, Occ. Business,
R/o. S.No. 892, Jalna Road,
Sultanpur Tq. Lonar, Dist.
Buldhana.

...PETITIONER

VERSUS

1. The Union of India,
Through Ministry of Petroleum
& Natural Gas, Government of
India, Shastri Bhawan,
New Delhi- 110001
2. The Chief Co-ordinator,
Grievances Cell, Ministry of
Petroleum, Shastri Bhawan,
New Delhi - 11---1
3. CDM/DGM, Indian Oil Corporation Ltd
Aurangabad Divisional Office,
Indian Oil Bhawan, 99, Jyoti Nagar,
Aurangabad.
4. Territory Manager Retail,
Territory Office, Bharat
Petrol Pump Corporation Ltd,
Manmad Road, Pandewadi,
Manmad 423104, Dist. Nashik
5. Regional Officer, Aurangabad
Retail Regional Office,
Hindustan Petroleum Corporation
Ltd. Plot No. G-39, Sector-G-Town Center,
CIDCO, Aurangabad.

..RESPONDENTS

Digambar Mawal Patil : Party In Person
Sudha Chintamani Advocate for Respondent Nos. 1 and 2

Union of India
Mr. A. P. Bhandari, Advocate for Respondent No.3.
Mr. S. S. Kulkarni, Advocate for Respondent No.4
Mrs. Anjali Dube (Bajpai) Advocate for Respondent No.5

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**CORAM : R. D. DHANUKA &
S.G. MEHARE JJ.
DATE : 07.03.2022.**

ORAL JUDGMENT (Per R.D. DHANUKA J) :-

This petition is filed under Article 226 of the Constitution of India. The petitioner has prayed for a writ of certiorari for quashing and setting-aside the notification dated 24th November, 2018 to the extent of allotment of new Retail Outlet by Indian Oil Corporation Limited and Hindustan Petroleum Corporation Limited and Bharat Petroleum Corporation Limited nearby Sultanpur, District Buldhana and within Mehkar/Lonar Tahsil. The petitioner also prays for writ of mandamus directing the respondent to decide the representation dated 10th December, 2019 made by the petitioner.

2. The petitioner is appointed as a dealer by Indian Oil Corporation some time in the year 2008, and running a petrol pump situated at Jalna Road Sultanpur Tq. Lonar, District Buldhana. There are two existing Retail Outlet's in the said

locality i.e. one run by the petitioner and another dealer of Hindustan Petroleum Corporation Limited.

3. The respondent issued notification in the year 2018 inviting application from the public for allotting new RO's nearby village Sultanpur, District Buldhana and within Mehkar/Lonar Tahsil. The petitioner impugned the said notification on various grounds. The petitioner appears in person and states that respondent did not carry out any market survey before inviting application for additional Dealership. The respondents did not consider "*Apurva Chandra Committee*" report while issuing the said notification.

4. It is submitted that agreement dated 27.12.2007 entered in between the parties has not been considered. The minimum expected sales made by the existing dealers has not been considered in the said notification. The advertisement issued by the respondent is totally illegal.

5. It is submitted that online advertisement issued by the respondents is causing injustice to the large number of public. It is submitted that since a Dealer is already appointed in the same territory, respondents could not have invited applications for Dealership in the same territory. It is submitted that the existing Dealers are already suffering loss and as result

of new Dealership being awarded, the loss of the petitioner would multiply.

6. It is submitted that the respondents are wasting public money and thus the petitioner being a citizen of this country is entitled to agitate the said issue in Writ Petition in larger interest of public to save public money.

7. Mr. Bhandari, learned counsel appearing for the respondent No.3 on the other hand drew our attention to clause four of the agreement dated 27.12.2007 entered between the petitioner and his client and would submit that respondent No.3 reserved the right without reference to or consent of the Dealer to appoint one Dealer/s in the same town/ area or location and such additional Dealer/s shall be entitled to make sales of the products without any objection from the Dealer and the Dealer shall not be entitled to make any claim for remuneration, commission or allowance whatsoever in respect of the sales made by the additional Dealer/s and/or sales made by the Corporation through such additional Dealer/s.

8. It is submitted by the learned counsel that several Dealers have already applied pursuant to the advertisement issued by his client. Some of them are already issued letter of

intent and are already running their petrol pump. He submit that none of those parties , in whose favour rights are created by virtue of letter of intent are impleaded as party respondent to this petition. No legal rights of the petitioners are violated.

9. Mrs. Anjali Dube (Bajpai), learned counsel for respondent No.5, invited our attention to communication dated 19th February 2019, issued by Hindustan Petroleum Corporation Limited to the petitioner and would submit that the said representation made by the petitioner in respect of the notification issued by the respondent has already been decided after considering all the issues raised by the petitioner threadbare and thus prayer clause 'C' does not survive. Learned counsel invited our attention to the Judgment delivered by the Division Bench of this Court on 17th February, 2022 in Public Interest Litigation No. 11 of 2019 In case of **Shaikh Iqbal Abdul Hafeez Vs. Ministry of Environment Forest and Climate of Government of India New Delhi** and more particularly in paragraphs Nos. 12 to 15 and would submit that this Court has already considered the validity of the said notification which is the subject matter of this petition and has disposed the said Public Interest Litigation, without granting any relief having found the said petition devoid of any merits. She

submits that petitioner thus cannot be allowed to re-agitate the same issue again by this petition.

10. Mr. Kulkarni, learned counsel for respondent No.4 made similar argument as that made by learned counsel Mr. Bhandari for respondent No.1 and the learned counsel for respondent No.5 and would submit that agitating parties are already impleaded as party respondents and no relief can be granted. It is submitted that the petitioner did not participate in response to the advertisement issued by the respondents and thus cannot be allowed to challenge the process carried out by the respondents pursuant to the notification impugned in this petition.

11. Mr. Bhandari, learned counsel for respondent No.3 states that this petition was tagged along with the said Public Interest Litigation, which is already dismissed by this Court as pointed out by the learned counsel for the respondent No.5.

12. In his rejoinder argument, petitioner submit that there is gross injustice to the petitioner and also to entire nation.

13. A perusal of the record indicates that the petitioner was allotted the Dealership by entering into an agreement annexed at page No. 102 of the petition. Clause four of the said

agreement clearly provides that the Indian Oil Corporation has reserved its right without any reference to or consent of the Dealer to appoint one Dealer/s in the same town/area or location and such additional Dealer/s shall be entitled to make sales of the product without any objection from the Dealer. The petitioner is an educated person and has signed said agreement and fully aware of the clauses of the said agreement.

14. We have heard the petitioner at length and have perused the pleadings and the document annexed to the petition. In our view, the submissions of the petitioner are contrary to the provisions of agreement entered between him and the Indian Oil Corporation. The respondent No.5 has already dealt with the representation made by the petitioner on 19th February 2019. A perusal of the said communication dated 19th February 2019 clearly indicates that the HPCL has considered the existing retail outlets and their economic viability in the area of Sultanpur, the growth of the existing outlets, the factual aspect that there is scope for increasing demand of petrol and Diesel at Sultanpur: as there is healthy growth of more than 10% in both petrol and diesel demand in Sultanpur. The National Highway 548 Khamgaon to Pandharpur is still under construction. It is observed that the demand will increase significantly, when the National highway construction

is completed, it is anticipated that, traffic movement will increase significantly. Nagpur-Mumbai Super Expressway, *Samrudhi Mahamarg* is under construction in Buldhana district and will pass within 10-15 Km of Sultanpur. When this road is completed, all areas near it will experience good growth in business. The Super Expressway is under construction and the proposed completion date of the project is October 2019 according to the said order.

15. In our view it is for the respondents to decide about the requirement of additional outlets considering the demand according to the growth and expansion in the area. The petitioner being one of the Dealer has no locus to challenge the rights of the respondents to invite applications for awarding Dealership in the same locality/territory considering the growth. The notification issued by the respondents is issued after considering the Apurva Chandra Committee report. We do not find any infirmity in the notification issued by the respondents.

16. The Division Bench of this Court in the *Public Interest Litigation No. 11 of 2019 Shaikh Abdul Hafeez Vs. Ministry of Environment Forest and climate of Government of India and Others* dated 17th February, 2020 along with companion Writ Petitions has dealt with the notification which

is the subject matter of this petition. This Court has considered Judgments of various Courts and observed that the Writ Petition was nothing but a camouflage to prevent possible competition by other retail outlets. The discretion and 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.

17. It is held on perusal of 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 and consumer market cannot be denied or disputed. The said Judgment applies to the facts of this case.

18. We are informed that Writ Petition filed by this petitioner was also on board along with the said Public Interest Litigation and other bunch of the petitions but did not appear on

board when the said P.I.L was disposed off . We are not inclined to accept the submissions made by the petitioner that the said order passed by this Court in Public Interest Litigation cannot be relied upon as the precedent in this petition.

19. In so far as the issue raised by the petitioner that respondents have not considered the minimum target of sale described under Clause 10 of the Dealership agreement while issuing the notification is concerned, in our view, there is no substance in this submission of the petitioner.

20. In our view the Writ Petition is thoroughly misconceived and is accordingly dismissed. No order as to costs.

(S.G. MEHARE J.)

(R.D. DHANUKA J.)

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