14.09.2023.
Item No. 3.
Court No. 13
ap

F.M.A. No. 899 of 2022

Indian Oil Corporation Limited & Ors.
Versus
Vipul Anand Singh

Mr. Jaydip Kar, ld. Sr. Advocate,
Mr. Amit Kumar Nag,
Mr. Partha Banerjee.
...For the appellants.
Mr. Debabrata Saha Ray,
Mr. Pingal Bhattacharyya,
Mr. Subhankar Das.
...For the respondent.

<u>The Proceedings</u>

1. M.A.T. No. 524 of 2021 had been filed against a judgment and order dated 16th March, 2021 passed by a Single Judge of this Court in W.P. No. 7257 (W) of 2019.

2. By the impugned judgment, the petitioner's application for allotment of Distributor Controlled Retail Outlet (DCRO) submitted with the delay of one day, was condoned and directed to be considered.

3. Prior thereto the writ petitioner had filed a writ petition being W.P. No. 25807 (W) of 2018. In the said writ petition, the petitioner challenged Clause 10 of the Brochure for selection of Dealers for regular and Retail Outlet Dealership dated 24/25th November, 2018 (said Brochure). It was also prayed that the petitioner should be allowed to participate in the selection process under the said Brochure, 2018 published by

the respondent Oil Companies. The petitioner wanted to apply for a **DCRO** on the left hand side from Nandakumar to Nimtouri on NH-41, Purba Midnapur.

4. By an interim order dated 21st December, 2018, passed in W.P. 25807 of 2018, a Single Bench prima facie, found that the petitioner was eligible under Clause 10 of the said Brochure and permitted him to apply and participate in the selection process for a **DCRO**. The participation was made subject to final result of the writ petition.

5. An appeal was preferred by the Oil Companies against the said order dated 21st December 2018 in M.A.T. No. 1675 of 2018. A Division Bench noted that the petitioner's participation was subject to final result of the writ petition declined interference in its order dated 21st February, 2019.

6. The petitioner was then notified by the Oil Companies, that he was successful but could not submit all the documents, particularly a sworn affidavit that he is married since he was single.

7. While considering admission of the instant appeal, a Co-ordinate Bench of this Court by an order dated 16th June, 2021 was of the view that this appeal, arising out of W.P. No. 7257 (W) of 2019, would be heard along with the first writ petition being W.P. No. 25807 (W) of 2018. The records of the said writ petition were directed to be placed before this Court.

Facts of the Instant Case

8. The four Oil Companies in India had three categories of Retail Outlets which are set out hereinbelow:

"*3. Type of Retail Outlet Sites*

The type of sites will be decided by the Oil Companies and the same would be:-

S.N.	***Type of Site***	***Status of Land & Facilities***	***Added by this Court***
i	*Locations under Corpus Fund Scheme (CFS sites)*	*The offered land would be taken on lease/purchased and fully developed as Corporation owned site.*	**CFS**
ii	*Other Corporation Owned Sites ("CC" / Ä" sites)*	*The offered land would be taken on lease/purchased and fully developed as Corporation owned site.*	**CCRO**
iii	*Dealer Owned sites ("DC"/ "B" sites)*	*The offered land and the super structure will be developed by the dealer. Pump, tank, automation, signages, etc. will be provided by the Corporation.*	**DCRO**

Note: Offered land can either be taken from the applicant or the owner of the land directly.
All locations rostered as SC/ST category will be developed as per (I) above.

9. Prior to November 2018, the Oil Companies followed a uniform policy under Clause 10 of their Brochure then existing. The old policy debarred and disqualified any other person of one family unit holding a Letter of Intent or Dealership or Distributorship from any of the Oil Companies, from

applying for another Dealership in any of the three categories aforementioned, i.e. **CFS, CCRO** or **DCRO**.

10. The said disqualification clause in the earlier brochure was as follows:-

> *"10. Disqualification.*
> *A. Individual Applicants:*
> *The persons while meeting the above mentioned eligibility criteria if do not satisfy any for the following requirements will be considered as ineligible for applying for the dealership:*
> *(i) Fulfil Multiple dealership norms: Multiple Dealership/Distributorship norms means that the applicant or any other member of 'family unit' should not hold a dealership/distributorship or Letter of Intent (LOI) for a dealership/distributorship of any Oil Company i.e., only one Retail Outlet/SKO-LDO dealership/LPG distributorship or an LOT of an Oil Company will be allowed to a 'Family Unit'.*
> *'Family Unit' in case of married applicant, shall consist of individual concerned his/her Spouse and unmarried son(s)/daughter(s). In case of unmarried person/applicant, 'Family Unit' shall consist of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s). In case of divorce, 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s) whose custody is given to him/her. In case of widow/widower, 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter (s)."*

11. The legality and propriety of the said clause came to be challenged before the Allahabad High Court in the year 2014 in the case of ***Ravi Kumar Vs. Union of India*** reported in ***2014 SCC Online All 15833***, and the definition of family unit and the restriction of another family member holding any other Dealership or Distributorship was duly upheld by a division bench of this Court.

12. On 28th October, 2018, the Central Government amended the aforesaid policy, and diluted the restriction. Clause 10 came to be amended. Post amendment, Clause 10 of the Brochure published on 24/25th November 2018 is as follows:-.

"10. **DISQUALIFICATION**

A. Individual Applicants :

The persons while meeting the above mentioned eligibility criteria if do not satisfy any of the following requirements will be considered as ineligible for applying for the dealership:-

(i) fulfil Multiple dealership norms : Multiple Dealership norms as mentioned below will be applicable for existing and future "A"/"C" sit RO dealerships.

Multiple Dealership norms means that the applicant or any other member of his/her 'family unit' should not hold a Corporation owned "A"/ "CC"sit RO/SKO-LDO dealership or RO/SKO-LDO dealerships/LPG distributorships developed under Corpus Fund Scheme and other Special category (DQ/Operation Vijay/Parliament attack beneficiary, etc.), or Letter of Intent (LOI) for the same of any Oil Company.

Note :

a) Existing "B"/ "DC" site RO/SKO-LDO dealers/LPG distributors {other than those distributorships developed under Corpus Fund Scheme and other Special category (DQ/Operation Vijay/Parliament attack beneficiary, etc)}, and LOI holders including members of his/her 'family unit' may apply for "B" / "DC" site RO dealerships.

b) Existing unviable SKO dealers of OMCs (individual & partnership firms only) can also apply for RO dealerships (for both "A" / "CC" site & "B" / "DC" site ROs) as per Clause 4 (viii).

'Family Unit' in case of married applicant, shall consist of individual concerned, his/her Spouse and unmarried son(s)/daughter(s). In case of unmarried person/applicant, 'Family Unit' shall consist of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried

> *sister(s). In case of divorcee, 'Family Unit' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s) whose custody is given to him/her. In case of widow/widower, 'Family Unit' shall consist of individual concerned, unmarried son(s) unmarried daughter(s).*
>
> *Oil company for this purpose would also include Private sector Oil Marketing Companies as per Gazette notification of 2002 i.e. (1) Indian Oil Corporation Ltd. (2) Bharat Petroleum Corporation Ltd. (3) Hindustan Petroleum Corporation Ltd. (4) Mangalore Refinery and Petrochemicals Ltd. (5) Oil & Natural Gas Corporation Ltd. (6) Reliance Industries Ltd. (7) Essar Oil/Nyara Energy (8) Shell Corporation or any other Oil Marketing Company as defined by the Govt Of India/MOP&NG from time to time."*

Pleadings and Arguments of the Parties

13. The writ petitioner would contends that he was informed by the Oil Companies, that since his father is already a Letter of Intent holder in respect of a **CCRO** situated and lying at Panskura near Kharagpur, Paschim Medinipur (43 kms away), he would be otherwise ineligible even for applying for a **DCRO**.

14. In W.P. No. 25807 (W) of 2018 it was contended that since the petitioner is an unmarried son of an existing C.C. Distributor, the disqualification Clause would debar him from making any application. A married on would, however, be entitled to apply as he is not considered part of the same family unit.

15. Across the bar, Mr. Debabrata Saha Ray would argue that a plain reading of the disqualification should not debar his client from making an application for a **DCRO**. The restriction under clause 10 would apply only to application by a family member

for a **CCRO**. He submits that his client's father was a LOI holder of a **CCRO** as on 2018 and is running it full-fledged as on date.

16. Mr. Jaydip Kar, learned Senior Advocate appearing on behalf of Oil Companies has made very detailed submissions on the interpretation of Clause 10 contending that sub-clause A(i) would essentially debar the writ petitioner from participating in the NIT even for a **DCRO**, by operation of the Multiple Dealership Norms restriction therein.

17. Reliance in this regard is placed on a decision of Allahabad High Court in the case of ***Ravi Kumar (supra)*** and also another decision of the Single Bench of Punjab & Haryana High Court in the case of ***Petrol Pump Dealers Association – Vs. – Indian Oil Corporation Limited & Ors.*** being an unreported decision dated 20th December, 2018 rendered in C.W.P. No. 37800 of 2018.

18. Mr. Kar seeks thereafter to rely upon two other decisions about power of a State Authority to "Play in The Joint", while specifying terms and conditions in an NIT. Reliance is placed on paragraph 94(4) of the decision of the Supreme Court of India in the case of ***Tata Cellular – Vs. – Union of India*** reported in ***(1994) 6 Supreme Court Cases 651.*** Mr. Kar also places a decision of the Supreme Court of India in the case of ***Central Coalfields Limited & Anr. – Vs. –***

SLL-SML (Joint Venture Consortium) & Ors. reported in ***(2016) 8 Supreme Court Cases 622***, particularly paragraphs 33, 38, 43, 44 and 48 thereof.

Analysis and Findings of this Court

19. This Court has very carefully considered the arguments of Mr. Kar and Mr. Saha Ray, Learned Counsel for the parties. This Court is of the view that an incorrect understanding of any law or rule, based on which a pleading is made cannot and does not estopp a party from taking a correct stand in a Court of law.The statement in the writ petition that the petitioner would be barred from applying by reason of Clause 10 therefore cannot estopp or bind him.

20. A plain reading of Clause 10 being the disqualification clause set out hereinabove essentially indicates, to this Court that the restriction on Multiple Dealership norms, would disentitle a person from applying for another **CCRO** if a member of his family unit (defined in the said clause), has an existing **CCRO**. The said Multiple Dealership norms, are therefore restricted to applications for another **CCRO** by any family member of an existing LOI holder or the **CCRO**.

21. The notes 'a' and 'b' appended to the disqualification clause also further clarify that bar under the clause would essentially imply that the bar cannot apply to a family member applying for a **DCRO**,

if there is already an existing **CCRO** allottee in the family. It is only application by a member of the same family unit applying for another **CCRO** dealership that is barred.

22. The aforesaid interpretation is fortified by a comparison of the Disqualification Clause 10 as it stood before May, 2018 and thereafter, both of which has been set out hereinabove.

23. It appears clearly to this Court as per the clause 10 existing prior to 2018 there was a blanket restriction on any family member holding one Dealership, either **CCRO** or **DCRO** from applying for any other Dealership of any nature.

24. A change of policy occurred and was implemented in the amended Brochure dated 24th November, 2018. The change has a very rational basis.

25. In **DCRO** the Oil Companies have no investment/ or financial outgo, whatsoever. It is the applicant who makes the investment both in the land as well as the setting up of the infrastructure for the pump. The demand for petroleum products is ever increasing. The Oil Companies would be able to cater to a larger consumer base if such **DCROs** are kept out of the mischief of clause 10. Supply to the increasing demand of its outlets can be made without any financial burden or to the Oil Companies.

26. The dilution of the pre-existing disqualification was and is in the interest of the Oil Companies. Such dilution would also increase the number of Retail Outlets for selling petroleum products. The Oil Companies were, therefore, increasing sales with much lesser capital outlay or exposure in permitting more **DCROs** as opposed to investing and setting up **CFS** and **CCRO** stations..

27. In the backdrop of the above and obvious object and purpose behind the amended Brochure of the year 2018, it is totally irrational for the Indian Oil Corporation Ltd. (IOCL) to contend that because the writ petitioner's father has an LOI for a **CCRO**, he would be debarred from applying for and participating in a selection process for a **DCRO** station. It is the petitioner who would make a huge investment of his own without any financial exposure to the IOCL. The restriction under the Multiple Dealership norms cannot be applied to te petitioner.

28. The interpretation given by the IOCL to Clause10 is ex facie irrational apart from defeating the very object and purpose for which the amended Clause 10 under theBrochure of November 2018, which watered down the clause that existed prior thereto.

29. The irrationality of the Oil Company is also evident from the consequence that would follow from their incorrect interpretation of the said clause 10. If

one family member has a **CCRO** another member of the same family would be debarred from applying even for a **DCRO**. Whereas if a family member has a **DCRO** any number of persons in the same family can apply for another **DCRO**. Hypothetically therefore one family can have four or more **DCROs**. A paradoxical situation would emerge if the respondent's interpretation of clause 10 is accepted.

30. Further it would clearly be a violation of Article 19(1)G of the Constitution of India, if an unmarried son of an existing **CCRO** dealer is prevented from applying for a **DCRO**. Particularly, when the oil companies have no financial exposure at all in setting up the **DCROs**. The said restriction as interpreted and argued by the counsel for the IOCL is totally irrational, unreasonable and bears no rational nexus with the object sought to be achieved by clause 10 of the brochure of 24th November 2018.

31. It would also imply an unmarried son of a **CCRO** dealership would be forced to get married to be able to apply for a **DCRO** since being single, the Oil companies wil not allow him to apply even for a **DCRO** station. To compel a citizen to do so would violate Article 19(i)g but also basic freedoms and liberties under Article 21 of the Constitution of India.

32. The decision of ***Ravi Kumar (supra)*** would have no manner of application as already stted above, as it

was dealing with clause 10 as it existed before the Brochure dated 24th November 2018.

33. In so far as the case of ***Petrol Pump Dealers Association (supra)*** this Court finds that the decision of the Single Bench in fact clearly is in harmony with the views taken by this Court. The Punjab and Haryana High Court found a reasonable classification between the two categories of ROs. It has also found that restriction was applicable only to families having a member running a **CCRO** and not applicable family members having **DCRO** dealership. The classification was found reasonable.

34. The other decisions relied upon by Mr. Kar have no manner of application in the facts of the case.

35. This Court's mind is not free from doubt the refusal by the Oil Companies may have been actuated by a deliberate misreading of the disqualification under the new Clause 10 above, for collateral purposes. The father of the petitioner had been litigating for long against the Oil Companies (BPCL) in connection with his individual Company Controlled Retail LOI and outlet.

Conclusion

36. W.P. No.25807 of 2018 is allowed with costs assessed at Rs.75,000/- (Rupees seventy five thousand only) payable by the Oil Companies to the writ petitioner. There shall be a writ of mandamus

holding that the petitioner was and is entitled to participate in the selection process under the Brochure dated 24th November, 2018.

37. It appears that since the petitioner was found successful in all respects and was delayed by one day in submission of one document, he had already put in the field verification fees within time.

38. The petitioner shall comply with any other requirements of the Oil Companies under the NIT brochure dated 24th November, 2018.

39. MAT No.524 of 2021 is therefore dismissed.

40. All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)

(*Supratim Bhattacharya, J.*)