

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

102+217

2023:PHHC: 093000-DB

CWP No. 4562 of 2019 and other connected matters

Reserved on 13.07.2023 and 25.07.2023

Date of Decision: 26.07.2023

Hindustan Petroleum Corporation Ltd.

.....Petitioner(s)

Versus

Haryana Urban Development Authority and others

....Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN**

Present: Mr. Akshay Bhan, Senior Advocate with
Mr. Aashish Kapoor, Mr. Shantanu Bansal, Ms. Shanaya Khanna,
Advocates for the petitioner (s).

Mr. Sunil Chadha, Senior Advocate, with
Ms. Kashish Aggarwal, Ms. Taanvi Dhull, Advocates
for the petitioner(s) in CWP-19553-2017.

Mr. Aman Bahri, Addl. A.G., Haryana.

Mr. Nav Chahal, Advocate for
Mr. A. K. Jain, Advocate for the petitioner(s)
in CWP-17071-2021.

Mr. Baldev Raj Mahajan, Senior Advocate
with Mr. Deepak Sabherwal, Advocate,
for the respondents-HSVP.

Mr. Vicky Chauhan, Advocate for
Mr. Deepak Balyan, Advocate for the respondent(s)-HSVP
in CWP-8333-2018; CWP-10059-2014; CWP-17566-2021.

Mr. Anil Chawla, Advocate, for the respondents
in CWP-6210-2021.

G.S.SANDHAWALIA, J.

1. The present judgment shall dispose of 32 cases i.e. CWP Nos.

14681, 14687, 14699, 14744, 14848, 15274, 15378, 15450, 15454, 15484 of 2019, 15518, 15541, 17230, 3375, 3374, 17071 & 6210-2021 (O&M); CWP-19553-2017 (O&M); CWP-9928-2019 (O&M); CWP-8333-2018 (O&M); CWP-14210-2022 (O&M) and CWP-37680 of 2019 since the issue in consideration is common. Facts have been taken from ***CWP-4562-2019, Hindustan Petroleum Corporation Ltd. vs. Haryana Urban Development Authority and others.***

2. The challenge in the present set of cases is to the circular dated 06.07.2016 (Annexure P-6) issued by the respondent-authority wherein, it took a decision that regarding the petrol pumps on lease, the monthly rent which was being calculated at one filling point of petrol and one filling point of diesel should be calculated on the basis of each dispensing unit having two nozzles instead of calculating it on every nozzle. Since the respondent-authorities had applied the decision prospectively, the petitioners are before this Court with a plea that it is a clarification and the calculation as per dispensing unit should be from the date of allotment of site in question and, therefore, the rent should be recalculated accordingly. In sum and substance, the argument raised is that the circular could not be prospective in operation being clarificatory in nature.

3. For adjudication of the dispute, a peep into the background would be required. The allotment of the petrol pump site in favour of the petitioner was made on 17.10.1997 (Annexure P-1) for Sector 25, Gurugram (erstwhile Gurgaon). The formal lease of 15 years was entered into with the Estate Officer, Haryana Urban Development Authority (HUDA) on 14.03.2005 (Annexure R-1). The lease deed contained the stipulation

regarding how the rent was to be paid which was to be calculated on the basis

of one filling point of petrol and one filling point of diesel. For the additional points, the rental amount at 12.5% was to be charged extra per month which was further subject to revision at least after three years. The said clause reads thus:-

“2. The lessee shall pay to the lessor the rent hereby reserved i.e. 66392/- per month for one filling point of petrol and one filling point of Diesel. For every additional point of petrol/diesel the rent amount @ 12.5% shall be charged extra per month which is subject to revision at least after three yrs and shall punctually pay in advance the amount on 10th of each month.”

4. Apparently, a Civil Court judgment and decree dated 04.01.2013 was passed at Gurgaon against the respondents whereby directions were issued to charge the rent per filling point which was to be construed as every additional dispensing machine and not in respect of every nozzle. The said operative part reads thus:-

“17. In view of the above said discussion of mine, the suit of the plaintiff is hereby partly decreed to the effect that:-

(1) no amount on account of additional or revised lease rent is lawfully due towards the plaintiff under the lease deed dated 1.12.1997.

(2) the demand raised by the defendants under their demand notice dated 13.11.2007 is illegal and void.

(3) the lease deed dated 1.12.1997 is valid.

(4) the notice dated 9.5.2008 cancelling the lease deed dated 1.12.1997 is illegal and void.

(5) the defendants are entitled for additional rent @12.5% per filling point for 4 additional filling points admitted by the plaintiff but only after adopting

due process of law as well as affording reasonable effective opportunity to the plaintiff. The term filing point shall be construed as to every additional dispensing machine and not in respect of every nozzals/point of dispensing of the petrol/diesel.

(6) the defendants are liable to refund the amount of Rs.1016504/- deposited by the plaintiff under protest with the defendants.

(7) that defendants shall not resort to any coercive method in the functioning of the retail outlet.

(8) that defendants shall not interfere in the possession of the plaintiff over the plot in question, except in due course of law.

Decree sheet be drawn accordingly. File be consigned to records after due compliance.

Announced.”

5. On the basis of the said decision which is stated to have become final, a demand was raised for Rs.78,17,377/- payable upto 30.04.2013 as per communication dated 18.06.2013 (Annexure P-9). Since the dispute was regarding the non-payment of the amounts being disputed and not as per the order of the Civil Court, an order of eviction had been passed against the Corporation and resultantly, the writ Court had been approached by filing ***CWP No. 17456 of 2014, M/s. Hindustan Petroleum Corporation Ltd. vs. State of Haryana and others.*** The writ petition was dismissed on 27.08.2014 (Annexure P-5) while noting that there was a civil Court decree in favour of the Corporation but on account of the fact that the lease had not been extended, it was held that the Corporation was an unauthorized occupant and, therefore, the eviction order was justified. The remedy and the claim of the authorities of Rs.78 lakhs being illegal and against the judgment of the Civil

Court was left open. The relevant part of the order reads thus:-

“The proceedings initiated against the petitioner are the proceedings to take possession from unauthorized occupant after the expiry of lease period. Admittedly, the lease has not been extended. In the event of non extension of lease, the petitioner is unauthorized occupant and the order passed by the Authority under Act cannot be said to be unjustified in any manner.

Learned counsel for the petitioner relies upon a Civil Court judgment and decree dated 4.1.2013 (Annexure P/4), wherein respondents were directed to charge rent per filling point to be construed as every additional dispensing machine and not in respect of every nozals/points of the dispensing of petrol/diesel. It is thus contended that the claim of an amount of Rs.78.00 lacs as due against the petitioner, is against the findings recorded by the Civil Court. It is also contended that the petitioner satisfies all the conditions of extension of lease other than the demand of arrears of rent which is not sustainable in view of judgment of the Civil Court.

We have heard learned counsel for the petitioner and find no merit in the present petition. Whether after the expiry period the lease should be extended or not depends upon the commercial considerations the respondents. Merely, because the lease has not been extended, will not confer any enforceable right on the petitioner to seek extension of lease in terms of policy/guidelines. The policy/guidelines are not statutory and are issued for uniform application to avoid have arbitrariness but such policy guidelines do not confer any enforceable right in favour of lessee. Still further, whether the claim of respondents against the petitioner of over Rs. 78.00 lacs is illegal or against the judgment of Civil Court, it is for the petitioner to avail

the remedy which may be available to the petitioner consequent to the judgment and decree of the Civil Court. However, they will not be entitled to seek conversion of fixed period lease after its expiry into perpetual lease.

In view of the above, we do not find any merit in the present petition.

Dismissed.”

6. The matter was taken to the Apex Court whereby, vide interim order dated 02.12.2014, the parties were directed to resolve the issue amicably. The said order reads thus:-

“Mr. Mukul Rohatgi, learned Attorney General for India, appearing for the petitioner-Corporation, and Mr. Dushyant Dave, learned Senior Counsel appearing for the respondents, fairly submit that the dispute ought to be resolved if the responsible officers of both the parties sit together and discuss the dispute.

Hence, we direct the Administrator, Haryana Urban Development Authority (HUDA), to convene a meeting within three days from today at a place convenient to both the parties and the Chief Regional Manager of the petitioner-Corporation shall sit and discuss the matter so that it could be resolved amicably.

Let this matter come on 10.12.2014.”

7. Keeping in view the above observations, the respondent-authority prepared the Agenda Item No.110th dated 12.05.2016 (Annexure R-6) and submitted a proposal that the lease rent should be charged in the case of dispensing units having more than two nozzles as two filling points on one dispensing unit and also the said policy should apply retrospectively. The said agenda reads thus:-

“Agenda Item No.110th (34)

Clarification about additional filling points for charging of monthly rent in respect of Petrol/Diesel Pumps-SLP No. 28198 of 2014 titled as HPCL Vs. State of Haryana and Ors in respect of Petrol Pump site in sector 25, Gurugram - definition of filling point.

As per HUDA policy approved vide agenda item NoA-53(30) by the Authority in the meeting held on 13.05.1992 the monthly rent is fixed for one filling point of petrol and one filling point of diesel. For every additional point, ground rent @ of 12.5% is charged extra. So far HUDA is asking for additional rent by treating each nozzle on dispensing unit as additional point. But HPCL filed SLP No. 29198 of 2014 titled as HPCL Vs. State of Haryana and Ors before the Hon'ble Supreme Court of India with prayer that instead of treating every nozzle as additional filling point, HUDA should treat each dispensing unit as additional filling-point-and not every nozzle. The Hon'ble Supreme Court vide order dated 02.12.2014 has directed HUDA & HPCL to resolve the issue amicably.

A meeting was held under the Chairmanship of Chief Administrator, HUDA with the representatives of HPCL and it was decided that lease rent would be charged in case of dispensing unit having more than two nozzles as two filling points on one dispensing unit. The proposal was approved by the Hon'ble CM-cum-Chairman, HUDA on 31.03.2015.

Further, a proposal was submitted to the CM-cum-Chairman, HUDA that the proposed policy of counting one dispensing unit with two or more nozzles as two filling points be applied retrospectively to all the

allottees of Petrol Pumps. Hon'ble CM-cum-Chairman, HUDA vide his order dated 01.10.2015 directed that the matter be considered in the next meeting of the Authority. Accordingly, the same is placed before the Authority for consideration and decision.

8. However, eventually the decision taken was that it would be applicable prospectively by approving in principle the Agenda Item No.110th without any reasons as such given. The said decision is reproduced as under:-

“Approved. It was decided that this would be applicable prospectively.”

9. In pursuance of the same, the impugned communication dated 06.07.2016 (Annexure P-6) has been issued which is subject matter of challenge. The litigation before the Apex Court was eventually disposed of bearing C.A. No. 1295 of 2019 on 29.01.2019 (Annexure P-8) noting that the decision dated 06.07.2016 has come in, which would be applicable prospectively and which was objected to by the counsel for the Corporation that it should apply retrospectively. Liberty was accordingly given to file a fresh writ petition in this Court as there was a change in the clauses of the lease deed and the question would be whether it is to be applied for the earlier period as well. The relevant part of the order in the civil appeal reads thus:-

“Insofar as payment of rent as per clause 7A of the lease deed is concerned, it would be pertinent to point out that parties had discussed the matter on this aspect as well. It is agreed between the parties that the landlord shall be charged on the following basis :

"If the dispensing unit is having more than two nozzles, such dispensing unit shall be treated as having two filling points."

At the same time, respondent no.2 has also passed order dated 6.7.2016 categorically stating that the aforesaid decision will be applicable prospectively. The effect thereof is that insofar as respondent no.2 is concerned, it still wants to claim the past arrears on the basis of demand raised by it.

The submission of Mr. Mehta, learned Solicitor General appearing for the appellant, is that since the aforesaid agreement is clarificatory in nature, this should apply retrospectively and cover the previous period as well. However, respondent no.2 disputes the same.

Be that as it may, we find from the impugned order of the High Court that as far as this aspect is concerned, the High Court had given liberty to the appellant proceedings, to resolve the same in an appropriate proceedings.

Mr. Mehta submits that the appellant shall be filing a fresh writ petition in the High Court since the dispute now has taken a different turn inasmuch as respondent no. 2 has agreed for the change in clauses of the lease deed but the only question is whether it is to be applied for earlier period as well.

We leave it to the appellant to take whatever recourse permissible under law without expressing our opinion thereon.

We direct that for one week from today, no coercive steps shall be taken by the respondent(s) for recovery of the aforesaid amount from the appellant.

With the aforesaid directions, this appeal stands disposed of.”

10. It is in such circumstances, the matter has come back for consideration before this Court.

11. The stance of the respondents in the reply is that there was a conscious decision to make it prospective and was after due deliberation and by having retrospective effect, it would lead to opening of a pandora box and effect all old cases of petrol pump sites. The defence of the financial crunch was taken that the authority works on the basis of “*no profit no loss*” and lease money had not been paid for many years.

12. In our considered opinion, the argument of the counsel for the writ petitioner-Corporation is justified as apparently the policy decision has been taken on account of the fact that a re-look had to be done as to whether the rate was to be charged on the basis of nozzles or the dispensing unit. Having taken a decision and clarifying the same would amount to re-altering the term of the lease deed which has been reproduced above. This fact has also been noticed by the Apex Court in its order dated 29.01.2019 that once the respondents had agreed for the change, it would amount to changing the clause of the lease deed. In principle, once the respondents have decided that it was one dispensing unit which would be the calculating basis, merely on account of financial exigencies, they could not have as such come to the conclusion that it would be prospective since the matter was pending *inter se* the Corporation and the Authority.

13. Reliance has rightly been placed by the senior counsel for the Corporation upon the judgments in ***Collector of Central Excise, Shillong vs. Wood Craft Products Ltd. and others, (1995) 3 SCC 454; W.P.I.L. Ltd. Ghaziabad vs. Commissioner of Central Excise, Meerut (2005) 3 SCC 73*** and ***State Bank of India vs. V. Ramakrishnan and another, 2018 AIR (SC) 3876*** and also the fact that the proposal as such was also with retrospective

and, therefore, is also hit by the judgment of the Apex Court in *M/s. Kranti Associates Pvt. Ltd. and another vs. Sh. Masood Ahmed Khan and others, (2010) 9 SCC 496*.

14. The defence of Mr. Baldev Raj Mahajan, Advocate General appearing for HSVP that it would be a mutual settlement and an amicable decision and, therefore, reasons have not to be given and it could not be challenged is not liable to be sustained. Neither it is the argument that the Corporation after the expiry of the lease would not effect recovery from the Corporation after the period of lease. The mutual settlement as directed by the Apex Court was only to have a re-look of the policy and apparently, the criteria for re-calculating the rent was fixed as a dispensing unit which amounted to modifying the original clause as such. Therefore in the absence of any reasons given in spite of a positive recommendation only for financial exigencies apparently, the decision has been applied prospectively frustrating the whole effort to give the litigation a quietus and reconsideration as directed by the Apex Court. Therefore, it cannot be held that it was a mutual settlement as such as the petitioners were not privy to the agenda item which was placed before the respondent-authority, which eventually had taken the decision to apply the same prospectively.

15. Our abovesaid conclusion can be strengthened by the three-Bench judgment in *Collector of Central Excise, Shillong (supra)* wherein the issue before the Apex Court was whether the “block boards” are to be classified under which heading as the controversy related to various periods in view of the amendment made in the concerned Chapter under the Central Excise Tariff Act, 1986. Resultantly, it was held that the clarification made

made to end the dispute raised by the manufacturers. Resultantly, the decisions of the Tribunal and that of the High Court were reversed giving the benefit as such to the manufacturer. At the cost of repetition herein also, the benefit has been granted and, therefore, it has to relate back from the lease deed as such once in principle it has been decided that the one dispensing unit having two nozzles is the basis of calculation instead of every nozzle.

16. Another three-Judge Bench in *M/s. W.P.I.L. Ltd. case (supra)* followed the said view which was again under the Central Excise Act, 1944 and there was a notification which had been rescinded and a consolidated notification had been issued from 01.03.1994. The clarification and subsequent notification dated 24.04.1994 had been issued and resultantly, it was held that the clarificatory notification would take effect retrospectively. The relevant portion reads thus:-

“15. The learned counsel for the appellant is also right in relying upon a decision of this Court in [Collector of Central Excise, Shillong v. Wood Craft Products Ltd.](#), [1995] 3 SCC 454. In that case, this Court held that a clarificatory notification would take effect retrospectively. Such a notification merely clarifies the position and makes explicit what was implicit. Clarificatory notifications have been issued to end the dispute between the parties.

16. In view of the consistent policy of the Government of exempting parts of power driven pumps utilized by the factory within the factory premises, it could not be said that while issuing notification No.46/94 of March 1, 1994, the exemption in respect of said item which was operative was either withdrawn or revoked. The action was taken only with a view to rescinding several notifications and by issuing a composite notification.

The policy remained as it was and in view of demand being made by the Department, a representation was made by the industries and on being satisfied, the Central Government issued a clarificatory notification No.95/94 on April 25, 1994. It was not a new notification granting exemption for the first time in respect of parts of power driven pumps to be used in the factory for manufacture of pumps but clarified the position and made the position explicit which was implicit.

17. For the foregoing reasons, in our opinion, the appeals deserve to be allowed and are allowed accordingly. Deposit, if any, made by the appellant in pursuance of the order passed by the authorities below will be refunded to it. In the facts and circumstances of the case, however, there shall be no order as to costs.

Appeals allowed.”

17. In *V. Ramakrishnan's case (supra)*, the provisions of Section 14 of the Insolvency and Bankruptcy Code, 2016 were subject matter of consideration whether the moratorium would apply to a personal guarantor of a corporate debtor. Since there was an amendment under Section 14(3) which substituted the earlier section, it was held that the clarificatory amendment was retrospective in nature and is a declaratory statute while placing reliance upon a Constitution Bench judgment in ***Commissioner of Income Tax vs. Vatika Township, (2015) 1 SCC 1*** wherein, it was held as under:-

“The presumption against retrospective operation is not applicable to declaratory statutes. As stated in CRAIES [W.F. Craies, Craies on Statute Law (7th Edn., Sweet and Maxwell Ltd., 1971)] and approved by the Supreme Court [in Central Bank of India v. Workmen,

AIR 1960 SC 12, para 29]: ‘For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any statute. Such Acts are usually held to be retrospective. The usual reason for passing a declaratory Act is to set aside what Parliament deems to have been a judicial error, whether in the statement of the common law or in the interpretation of statutes. Usually, if not invariably, such an Act contains a Preamble, and also the word “declared” as well as the word “enacted”.’ But the use of the words ‘it is declared’ is not conclusive that the Act is declaratory for these words may, at times, be used to introduced new rules of law and the Act in the latter case will only be amending the law and will not necessarily be retrospective. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is ‘to explain’ an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. The language ‘shall be deemed always to have meant’ is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the pre-amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law which the

Constitution came into force, the amending Act also will be part of the existing law.”

18. Resultantly, keeping in view the fact that there is a clarificatory amendment and it would have retrospective effect, the judgment of the National Company Law Appellate Tribunal was set aside wherein, it was held that the benefit would also apply to the personal guarantor.

19. Another aspect which is to be necessarily kept in mind is that the agenda item itself as reproduced in Para No.7 above, which has also been duly highlighted by us, would go on to show that the proposal also submitted was that the policy would be applied retrospectively to all the allottees of the leased petrol pumps. The decision, as also reproduced above, would go on to show that there are no reasons as such which were recorded in the administrative decision taken as to why it should not be from with retrospective effect even though the matter had been pending consideration before the Apex Court at that point of time. The lack of reasoning as such would also be hit by the judgment of the Apex Court in *Kranti Associates case (supra)* wherein, it has been held that where administrative decision affects one prejudicially, the authority must record reasons in support of its conclusion as it would facilitate the process of judicial review by superior Courts and is the life and blood of the judicial decision making. For that reason also, we find that the decision making suffers from the lack of reasons.

20. Resultantly, we are of the considered opinion that the clause in the policy dated 06.07.2016, wherein the benefit has been restricted to be applicable prospectively, is liable to be struck down. Accordingly, the writ petition is allowed by issuing a writ of certiorari in the quashing circular to that extent and making it applicable with retrospective effect from the date

the lease deed as such was entered into between the parties.

21. The respondents will calculate the rent accordingly and raise demands upon the petitioner-Corporation. Needless to say, we have not commented upon the expiry of the lease deed as such and it is for the respondents to take a call whether the lease deed is to be extended or not and on what terms, since that is not the issue in question herein.

(G.S. SANDHAWALIA)
JUDGE

26.07.2023
shivani

(HARPREET KAUR JEEWAN)
JUDGE

Whether reasoned/speaking	Yes
Whether reportable	Yes