IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

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CWP-4500-2023 (O&M).
Date of Decision: 17.03.2023.

M/s Bhamba Oil Carriers and others

.. Petitioners

Versus

Bharat Petroleum Corporation Limited and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Ishnoor Singh, Advocate, for
Mr. Vikram Singh, Advocate,
for the petitioner.

VINOD S. BHARDWAJ, J.

The petitioners herein seek directions to the respondents to decide the representation dated 26.01.2023 (Annexure P-2) submitted by the petitioners for seeking withdrawal of a clause permitting "Formation of Dealers' Consortium" in the Expression of Interests/Offer Letter for engagement of Tank Lorries for uplifting of the MS/HSD requirements in the State of Punjab alleging that the same violates their right to carry on trade and business.

The petitioners are the partnership/proprietorship firms dealing in the transportation business and presently associated with the respondent-Bharat Petroleum Corporation Limited (hereinafter to be referred as 'BPCL') for lifting and transportation of MS/HSD requirements and to deliver the same to different outlets in the State of Punjab.

The grievance of the petitioners arose on account of the issuance of Expression Of Interests/offer letter for engagement of Tank

Lorries for lifting and transportation of the MS/HSD requirements by the concerned retail outlet/consumer pumps directly from the supply point at Bathinda. The relevant clause of the Offer of Expression of Interest for engagement of tank lorries by the dealers' giving rise to grievance of the petitioners is extracted as under:-

> *"**Formation of Dealers consortium**:- The offer can also be submitted by group of dealers attached to Bathinda supply location who are willing to form a consortium and submit expression of interest (EOI)) for uplifting load for their own requirement. You shall attach an undertaking on a non-judicial stamp paper towards formation of aforesaid consortium. Please note that **maximum 3 dealers within the same district** can form consortium. Any dealer having sales volume up to 200 Kl per month can be part of the consortium. The combined sales volumes of all dealers put together **should not be more than 450 KL at the time of application**. One TL can be offered in the consortium initially. Further, in case consortium is disrupted due to realignment of market leading to change of supply point of one of the ROS, the TL owner Dealer will be allowed to opt for consortium with another RO/s, provided the initial consortium qualifying criteria is fulfilled. In case of change of dealership (like ad hoc to permanent or vice versa/ termination etc.) but the site remains the same then the TL owner Dealer will be allowed to opt for consortium with the incumbent dealership, provided the initial consortium qualifying criteria is fulfilled."*

The aforesaid Expression of Interest/Offer letter was communicated to the owners of the retail outlets/consumer pumps vide letter dated 31.12.2022 (Annexure P-1).

Aggrieved of the aforesaid clause, the petitioner submitted a representation to the respondent-BPCL alleging that seeking Expression of

Interests from the consortium of the owners of the retail outlets/consumer pumps is violative of their right to carry on trade and business enshrined under Article 19 (1) (g) of the Constitution of India.

The respondent Company had issued such an expression of interest vide offer letter dated 07.07.2021 whereby such a clause was introduced. A representation dated 16.07.2021 was submitted by the petitioner but no decision was taken on the same.

The petitioners approached this Court by filing of CWP No.15031 of 2021 which was disposed of vide order dated 09.08.2021 directing the respondent-BPCL to decide the representation dated 16.07.2021. No decision on the said representation had, however, been conveyed to the petitioners.

However, identical instructions have been issued again vide letter dated 31.12.2022 and the same is likely to cause financial loss to the petitioners and their associates since the dealer/pump operators can now themselves get MS/HSD requirements delivered not only for their own requirements but also for two other pumps.

Counsel argues that the petitioners being engaged in the business of transportation for respondent-BPCL to different dealers would suffer huge financial loss as the dealers are being allowed to arrange for their own delivery. The dealers can thus not only seek his own supply but for two more dealers. It is averred that petitioners have no objection to the dealers' only arranging for their own supply. This gives an advantage to the dealer at the cost of the petitioners. Inclusion of the said clause is without granting any opportunity of hearing to the petitioners who are likely to be prejudiced by inclusive of such tender conditions.

No judgment to supplement the arguments was however, cited or relied upon by the petitioners.

Mr. Raman Sharma, learned counsel for the respondents-BPCL, to whom an advance copy of the writ petition had been delivered, entered appearance and submitted that the grievance of the petitioners is misconceived. He contends that the clause has been inserted with an object to eradicate possibility of adulteration of the MS/HSD supplies to the retail outlets/consumer pumps, respondent-BPCL. It thus made an offer to the retail outlets to themselves arrange for their means of transportation. Since the requirements of each retail outlet may vary, hence to reduce the transportation cost by the dealers, the consumer pumps/retail outlets have been permitted to formulate a consortium of upto 03 retail outlets that may jointly engage tank lorries for uplifting of MS/HSD requirements of their respective pumps. He contends that the said clause does not, in any manner, take always or infringe anybody’s right to carry on trade or business. He further submits that it is not a vested right of any person to exclusively carry on business of supply of MS/HSD requirements. The petitioners are owners of tank lorries who are transporting MS/HSD requirements amongst other owners. There can be no interpretation of a constitutional provision as would operate as a bar against the retail outlets/consumer pumps from making their own arrangements for supply of MS/HSD requirements. The Expression of Interest/Offer Letter has not been put in public domain and an offer is only made to the existing retail outlets/consumer pumps to engage their own Tank Lorries for transportation of MS/HSD products. A maximum of three dealers with a carriage capacity not beyond 450 KL may engage one common tank lorry for transportation of the product. It is further submitted that there is no vested or accrued right in favour of the petitioners to be the sole and exclusive supplier or that no person other than the petitioners should be permitted to transport such material. The interpretation suggested by petitioners which is based upon a misconceived construction of Article 19 (1) (g) of the Constitution of India, and is not sustainable. The petitioners are, in no way, denied the opportunity of being the carriage operators. It is upto them to enter into appropriate settlement with the concerned retail outlets/consumer pumps. He further submitted that the aforesaid

aspect had been considered by a Division Bench of the Hon'ble Allahabad High Court in the matter of ***Ramakant Paswan and others Vs. Indian Oil Corporation Limited, in a Civil Misc. Writ Petition No.38522 of 2014 decided on 30.07.2014***. The relevant part of the aforesaid judgment is extracted as under:-

> *"12. On account of this new policy, if the petitioners' business is being reduced, then reduction in such business cannot be termed as an arbitrary act on the part of the respondents. The petitioners have neither any fundamental or legal right to force upon the respondents their own terms and conditions.*
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> *13. In the background aforesaid, it is clear that the terms and conditions which have been introduced are with the object to ensure supplies of petroleum through various methods that clearly falls within the realm of policy. Nothing has been demonstrated except the inconvenience which is being caused to the petitioners that may establish any act of arbitrariness. It is always open to the contracting parties to run their business on such terms and conditions that may be fair and reasonable. It is not for the Court to read any unfairness in matters of public contract unless a violation of Article 14 or Article 19 (1)*

(g) is established. It is not for the Court to formulate a convenient policy.

14. We have considered all the submissions raised by Sri M.D. Singh Shekhar pointwise and we do not find any of the issues raised which may indicate an arbitrary act on the part of the respondents in introducing the new policy. Merely because the petitioners transporters may have to bear expenses over and above that were being previously reimbursed, and merely because their number of trucks might get reduced, the conditions imposed do not appear to be in any way violative of the fundamental rights guaranteed under the Constitution of India. If the petitioners are being asked not to have trucks and tankers more than 15 years old from the date of manufacture, the same is in consonance with the Motor Vehicles Act. 1988 and the rules framed thereunder and also in the interest of road safety and the supply of petroleum products. Sri Shekhar has been unable to point out as to why such conditions are arbitrary. Similarly the reduction in the number of tankers and unlimited tankers in favour of the Retail Outlet dealers also does not create any disparity in the sense that contractors would be called upon to supply only when the dealers are unable or incapable to engage their own tankers. In this background, as a matter of fact, neither on a close scrutiny nor even broadly there is any constitutional violation so as to strike down the policy. The writ petition lacks merit and is accordingly dismissed."

I have heard the learned counsel representing the respective parties and have gone through the documents appended along with the present petition.

It has been held by the Hon'ble Supreme Court in the matter of ***State of Madhya Pradesh and others Vs. Nandlal Jaiswal and others, reported as (1986) 4 SCC 566*** that the Court must, while adjudging the legality or validity of an executive decision, grant a sufficient "play in the joints" to the executive. It is not for the Court to strike down one policy decision for the other merely because in its wisdom it is a fair thing to do. It must be established that such a decision suffers from patent illegality; arbitrariness; discrimination; impropriety or mala fide. No such thing has however been alleged or pleaded in the petition. The Hon'ble Supreme Court further ruled in the matter of ***Krishnan Kakkanth Vs. Government of Kerala, reported as (1997) 9 SCC 495*** that for a policy decision to be struck down, it must be demonstrably capricious or arbitrary and not informed by any reason what-so-ever or that it suffers from vice of discrimination or infringes the statutory/constitutional mandate.

Such executive discretion cannot thus be trammeled by a perception of breach of rights mistaken for perceptive reduction of business opportunities. Such right of the State or its instrumentalities is not to be infringed by the Courts. A policy decision to allow the dealers to have their own network of tank-lorries for ensuring cost-effective and unadulterated supplies cannot be said to be an act with no rationality or reasonableness. Sufficiency or adequacy of reasons is however not for the Court to provide for and look into.

It was for the aforesaid position in law that the Hon'ble Supreme Court held in the matter of ***Cannanore District Muslim Educational Association Vs. State reported as (2010) 6 SCC 373*** that the State cannot be tied down to any policy and it can change its policies. It would thus not be proper for the Courts to interfere.

Further, it is also well settled position in law that it is the prerogative of the employer to prescribe the conditions for engagement of contractor. The test for the same is also as is noticed above. It does not lie for the prospective bidders to prescribe what the conditions ought to be at the time when bids are to be invited. It is not in dispute that the bids are yet to be invited.

The freedom guaranteed under Article 19 (1) (g) is subject to the restrictions as guiding principles prescribed in Article 19 (6) of the Constitution of India. Hence, imposition of any restriction perceived as reasonable and in the interest of general public can duly be imposed and the same cannot be labelled as violative of the right to carry on any occupation, trade or business. Permitting a trader to arrange for his own mode of transport cannot be held to be violative of any right of the transporter. Such violation can be alleged or suggested where transportation by tank lorry is prohibited entirely, subject of course to the provisions of Article 19 (6) of the Constitution of India.

The proposition canvassed by the petitioners is also examined conversely. It in effect mandates that the dealers must obtain the supplies only through the tank-lorries of the transporters. Such a proposition may in fact be also viewed as an infringement of the right of the dealer to elect the mode of supply which makes business efficacy. However, all such decisions fall in discsretionary executive administrative domain and subject to the tests noticed earlier and it is not for the Courts to decide which mode or policy ought to be preferred.

The test of principles of natural justice is not applicable to policy decisions and such decision cannot be impugned for want of opportunity of hearing. At the same time, as the fresh bids are yet to be invited, it cannot be suggested that there is an unconscionable alteration of the bid condition after the contract has come in existence. There is thus no violation of any civil right as well. The submission qua the act being in violation of principles of natural justice and ought to be set aside is thus declined.

It thus requires no reiteration that the terms and conditions for engagement of services of transport are within the domain of the employer and are not to be ordinarily interferred with by the High Court in the exercise of it jurisdiction under Articles 226/227 of the Constitution of India unless such terms and conditions are established to be perpetuated by any illegality; arbitrariness; discrimination; irrationality; malice or suffers from procedural impropriety.

It has been further held by the Hon'ble Supreme Court in the matter of ***Municipal Council, Neemuch Vs. Mahadeo Real Estate and others, reported as (2019) 10 SCC 738***, that the scope of judicial review of an administrative action is very limited. Unless the Court finds that the decision-maker has not understood the law correctly that regulates his decision making power or when it is found that the decision of the decision-maker suffers by irrationality and that too on the principle of "Wednesbury unreasonableness" or unless it is found that there has been a procedural impropriety in the decision-making process, it would be impermissible for the High Court to interfere in the decision making-process. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person would take. The High Court thus does not sit in appeal over an administrative action.

The reasons explained by the learned counsel appearing on behalf of the respondent-BPCL for the above offer to the retail outlets/consumer pumps cannot be said to be irrational or taking away any accrued right in favour of the petitioners. Under the garb of some protracted prejudice, the petitioners cannot seek to monopolize the transportation of MS/HSD requirements of the retail outlets/consumer pumps and to not allow any other person including the end user to seek transportation of the MS/HSD requirements by a mode or a manner which he may deem appropriate or by making his own arrangements. Besides it may even otherwise be very well possible that the retail outlets/consumer pumps may enter into private contractual arrangements with the tank lorries for ensuring supply of the MS/HSD requirements. The petitioners have also failed to refer to any judgment to distinguish the Division Bench judgment of the Hon'ble Allahabad High Court and this Court finds support from the above judgment to confirm its view that a person does not have any fundamental or legal right to force the other to engage their services at his terms and conditions. A mere inconvenience or reduction in profit margin/business cannot be perceived as deprivation of fundamental right.

Hence, vide the impugned communication, an offer made to the retail outlets/Consumer Pumps cannot be said to be constitutionally invalid or beyond the scope of the powers of the respondent or to suffer from any illegality; arbitrariness; discrimination; malice; procedural impropriety or competence of the authority. The petition thus lacks merits.

The present petition is accordingly dismissed.

March 17, 2023 **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No