

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

LPA-545-2023(O&M)
Reserved on 03.05.2023
Date of Decision: 09.05.2023

M/s Bhamba Oil Carriers & others

. . . . Appellant

Vs.

Bharat Petroleum Corporation Ltd. & others

. . . . Respondents

**CORAM: HON'BLE MR JUSTICE M.S. RAMACHANDRA RAO
HON'BLE MRS JUSTICE SUKHVINDER KAUR**

Present: Mr. Vikram Singh, Advocate for the appellants.

M.S. RAMACHANDRA RAO, J.

1. This Letters Patent Appeal is filed challenging judgment dt.17.03.2023 passed by the learned Single Judge in *CWP-4500-2023*.
2. The appellants are registered partnership/proprietor entities doing transportation business and had been working with the Bharat Petroleum Corporation Ltd. (respondent No.1 herein) for lifting of MS/HSD and delivery of same to different petrol pumps in the State of Punjab, pursuant to tenders awarded in their favour by respondent No.1.
3. They are aggrieved by proceeding reference BTI/Transport/Revised EOI dt.31.12.2022 issued by respondent No.1 insofar as it permitted consortium of dealers attached to Bathinda Supplies location to be formed as per clause 10 thereof.
4. They had given a representation (P-2) dt.26.01.2023 to the respondents for withdrawal of the said clause permitting formation of dealers consortium,

- but since there was no response, they have approached this Court by filing CWP-4500-2023.
5. They contended in the CWP that one dealer can get only one petrol pump as per norms prevailing as on today, but the impugned clause in the above proceeding enables a dealer to procure work of 3 petrol pumps, and the appellants would be put to hardship because it would result in deduction of the number of petrol pumps to whom they were delivering petroleum products through their tank lorries.
 6. It was contended that the said clause is illegal and arbitrary, and would give undue advantage to some dealers, and cause loss to others who are doing transportation business like the appellants, and this violates Article 21 of the Constitution of India.
 7. They therefore sought quashing of the said clause providing such formation of dealers consortium in Expression of Interest/offer letter for engagement of tank lorries for lifting of MS/HSD in the State of Punjab.
 8. By the impugned order dt.17.03.2023 passed in *CWP-4500-2023*, the learned Single Judge dismissed the said Writ Petition.

He rejected the plea of the appellants that they would suffer a huge financial loss since dealers would now be allowed to arrange for their own delivery.

The learned Single Judge held that the Court must, while adjudging the legality and validity of an executive decision, grant a sufficient 'play in the joints' to the executive and should not strike down one policy decision for another merely because in its wisdom it is a fair thing to do. He held that a policy decision can only be struck down if it is

demonstrably capricious and arbitrary and not informed by any reason whatsoever or it suffers from vice of discrimination or infringes statutory/constitutional mandate.

According to the learned Single Judge, a policy decision to allow 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; that permitting a trader to arrange his own mode of transport cannot be held to be violative of any right of the transporter; the appellants cannot contend that the dealers must obtain supplies only through the tank lorries of the transporters because that would be an infringement of the right of the dealer to elect the mode of supply, which makes business efficacy; and it is not for the Courts to decide which mode or policy ought to be preferred.

He also rejected the plea of the appellants that there is a violation of principles of natural justice observing that such principles cannot be applied to policy decisions. He held that terms and conditions for engagement of services of transport are within the domain of the employer and are not to be ordinarily interfered with by the High Court in exercise of its jurisdiction under Articles 226/227 of the Constitution of India unless such terms and conditions are established to be illegal, arbitrary, discriminatory, or irrational, or that such policy decision is vitiated by malice or a procedural impropriety. He held that this Court cannot sit in appeal over administrative action.

He agreed with the contentions of the respondents that the clause had been inserted with an object to eradicate possibility of adulteration of

the MS/HSD supplies to the retail outlets/consumer pumps, and that the clause does not in any manner take away or infringe anybody's rights to carry on trade or business.

He held that the appellants cannot seek to monopolize the transportation of MS/HSD requirements of the retail outlets/consumer pumps; and they cannot prevent any other person including the end user to seek transportation of the same by a mode or manner which he may deem appropriate or by making his own arrangements.

9. We are in agreement with the reasoning of the learned Single Judge.
10. We are of the opinion that no person has a fundamental or legal right to force another to engage his services on his terms and conditions and a mere inconvenience or reduction in profit margins/business would not amount to deprivation of a fundamental right. The impugned clause, in our opinion, places no restriction on the rights of the appellants to do transportation business/carriage operations.
11. There is nothing inherently wrong in a policy permitting retail outlets to themselves arrange for means of transportation of MS/HSD, and the appellants cannot demand that their services should be engaged for the said purpose.
12. It is a policy decision which allows dealers to have their own network of tank lorries for ensuring cost-effective and unadulterated supplies, and there is no irrationality or unreasonableness in the said policy decision.
13. There is nothing inherently wrong in permitting a trader to arrange for his own mode of transport of goods and the same would not violate any right

of a transporter, and the appellants cannot insist that the dealers must obtain supplies only through their tank lorries.

14. We therefore do not find any merit in the present Appeal.
15. Accordingly, this LPA stands dismissed.
16. No costs.
17. Pending application(s), if any, also stands disposed of accordingly.

(M.S. RAMACHANDRA RAO)
JUDGE

(SUKHVINDER KAUR)
JUDGE

09.05.2023

Mohit Goyal

1. *Whether speaking/reasoned?*
2. *Whether reportable?*

Yes/No
Yes/No