

Item-7. 06-03-2024

MAT 2510 of 2023
CAN 2 of 2023

sg Ct. 8

Hindustan Petroleum Corporation Ltd. & Ors.
Versus
M/s. CLS Limited & Anr.

Mr. Kishore Datta, Ld. AG
Mr. Biswanath Chatterjee, Adv.
Mr. Sobhan Pathak, Adv.
Mr. S.K. Chatterjee, Adv.
...for the appellants
Mr. Debabrata Saha Roy, Adv.
Mr. Neil Basu, Adv.
Mr. Rahul Kumar Singh, Adv.
Mr. Sankha Biswas, Adv.
...for the writ petitioner/respondent

1. This appeal is arising out of a judgment and order dated 3rd October, 2023 passed by the learned Single Judge in an application filed by the writ petitioners for an order of injunction restraining the HPCL to de-tag 1429 customers from the existing distributorship and consequential relief.
2. However, by the time, the said application came up for consideration. HPCL had transferred 1429 customers to the newly appointed distributor and to that effect, no interim order could be passed at this stage as HPCL wanted to justify such stand based on its interpretation of clause 2(b)(iv) of the memorandum dated 1st July, 2022.
3. The learned Counsel for the appellant submits that the licence was restricted to the trading area mentioned in paragraph 3 of the Letter of Intent, from which it will be evident that Uluberia was not covered and the present customers who have been transferred to the newly appointed distributorship are all from Uluberia.

4. The learned Counsel for the writ petitioner, however, has argued that it is an attempt to reinstate the policy that was set aside by the Bombay and Madras High Courts and an indirect attempt to implement such policy decision on the basis of the agreement.
5. The contention of the writ petitioner is that the interpretation of clause 2(b)(iv) is not extended to include the customers who have been already tagged. Moreover, on the basis of such tagging, the writ petitioner has made substantial investments towards infrastructure and at this stage, based on such clause, the customers cannot be de-tagged.
6. The learned Single Judge, however, without upsetting the transfer passed an interim order to the effect that the number of beneficiaries catered by the petitioner no.1 as distributor of LPG cylinder shall not be curtailed till the disposal of the writ petition.
7. This order cannot affect the curtailment that has already taken place but not expressly recorded in the impugned order. In the event HPCL decides to make further transfer or increase allotment, the HPCL can only do so with the leave of the learned Single Judge.
8. It is submitted on behalf of the HPCL that the affidavits are complete and the writ petition can be disposed of on the basis of the affidavits, in which, inter alia, the writ petitioners have also raised the issue of maintainability of the writ petition in view of the existence of the arbitration clause.

9. In view of the fact that the issues are now to be decided by the learned Single Judge and there was no immediate necessity to transfer any further customer, we feel that the writ petition is required to be heard on all points. On such consideration, we are not inclined to interfere with the order passed by the learned Single Judge.
10. The appeal and the application are, accordingly, disposed of. However, there shall be no order as to costs.
11. The learned Single Judge shall decide the writ petition uninfluenced by the observations made by us.
12. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)