



W.P(MD)No.5768 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.01.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.5768 of 2020

and

W.M.P.(MD)No.5043 of 2020

M.Ganesan

... Petitioner

Vs.

1.Union of India,
Rep. by the Secretary,
Ministry of Petroleum and Natural Gas
Shastri Bhavan, New Delhi.

2.The Chief Regional Manager,
Madurai Regional Office,
Hindustan Petroleum Corporation Ltd.,
171-172, SIDCO Industria Estate,
Kappalur, Madurai-625 008.

3.The Assistant Manager-Sales,
Madurai LPG Regional Office,
Hindustan Petroleum Corporation Ltd.,
171-172, SIDCO Industrial Estate,
Kappalur, Madurai-625 008.

4.Shri Balaji HP Gas Gramin Vitrak,
Main Road, Vannikonendhal,
Tirunelveli District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order of the 3rd respondent in MDLRO/SSK/LPG dated 29.2.2020 and quash the same as arbitrary.



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For Petitioner : Mr.K.Jeyamohan

For Respondents : Mr.R.Subbiah
CGSC for R1

: Mr.M.Sridhar for R2 & R3

ORDER

Heard both sides.

2. The petitioner was granted LPG distributorship by the Hindustan Petroleum Corporation Limited in Melaneelithanallur in Tirunelveli District. The petitioner has been carrying on business in the name and style of Murugan HP Gas Gramin Vitrak. The petitioner feels aggrieved by the compulsory transfer of consumers from the petitioner's rolls to that of the fourth respondent. Challenging the communication dated 29.02.2020 issued by the corporation in this regard, this writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for. He pointed out that the oil companies have been brought under an uniform regime by the central Government. The impugned communication has been issued on the basis of the notification bearing P-20019/2/2016-LPC, dated 23.06.2016. He pointed out that the aforesaid notification and circular have been quashed by the



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Hon'ble Bombay High Court on 30.09.2019 in W.P.No.8753 of 2018. His prime contention is that when any central enactment or circular or notification has been set aside by one particular High Court, it is applicable throughout India. He therefore called upon this Court to set aside the impugned communication also.

4. The argument anchored on the doctrine of precedent is undoubtedly attractive and formidable. But then, the learned standing counsel for the corporation brings it to my notice that the Hon'ble High Court of Kerala has taken a contra view and sustained the aforesaid notification and circular. He also pointed out that I had followed the decision of the Kerala High Court *vide order dated 22.08.2023 in W.P.(MD)No.1247 of 2015(V.Srinivasan Vs. Union of India)*. He added that though the writ petition was filed in March 2020, it has not been admitted till date. No interim order has been passed so far. The transfer of customers was effected as early as on 04.03.2020. He pointed out that the writ petition was filed only after the transfer was effected. He therefore called upon this Court to dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. It is true that the Hon'ble Division of the Bombay High Court in the decision reported in *(2019) SCC online Bom 2289 (Shailaja R.Khanvilkar Vs. Union of India)* had struck down the aforesaid circular dated



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04.01.2018. Even before the Bombay High Court took the aforesaid view, the Division Bench of the Madurai Bench of the Madras High Court *vide order dated 07.07.2017 in W.P.(MD)No.12607 of 2017(P.Radhakrishnan Vs. Union of India)* had taken the view that the petroleum companies are empowered to transfer the consumers from one distributorship to another distributorship. Yet another Division Bench *vide order dated 13.03.2018 in W.P.(MD)No.1963 of 2018 (Thirupathi Gas Service Vs. Union of India)* sustained the circulars on the ground that it has the object of benefitting the consumers by appropriately accommodating them. It was held that these are policy matters and that in the absence of arbitrariness or mala fide or oblique motive, the question of challenging such a policy decision does not arise. It was specifically declared that the corporation is having every right to transfer the customers from one agency to another agency. Vide order dated 22.08.2023 in W.P.(MD)No.1247 of 2015, I had held as follows:-

“ 4.The learned sanding counsel for the oil companies fairly bring it to my notice that when a circular in pari materia issued by Bharat Petroleum Corporation Limited on 13.03.2018 was put to challenge in W.P.No.8753 of 2018, the Hon'ble Division Bench of the Bombay High Court was pleased to allow the same. Challenging the decision of the Hon'ble Bombay High Court rendered on 30.09.2019, the Oil companies have filed SLP before the Hon'ble Apex Court and it is said to be pending and it is due to be listed for final hearing shortly. Be that as it may, the Hon'ble Division Bench of the Kerala High Court repelled the challenge. One such order dated 15.09.2022 was passed in W.P.(C)No.26014 of 2019. In paragraph No.2, the issue had been framed in the following terms:-



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“2. The issue with respect to the transfer of consumers from one distributor to another was considered by this Court in several writ petitions filed by the distributors and had held that the Oil Marketing Corporations have got power and authority to port the consumers from one distributor to another.”

5. Paragraph No.35 of the said order reads as follows:-

“35. However, we are of the considered opinion that the transfer of a consumer from one distributor and the consequences arising therefrom to the distributor is already settled by this Court in the judgments referred to above and therefore, it has no locus standi or any right to get itself impleaded in the writ petition in question, opposing the reliefs sought for by a consumer to implement the guidelines and the orders issued by the Government of India and the Oil Marketing Corporations. Therefore, I.A. No. 1 of 2022 seeking impleadment will stand dismissed.”

6. When the petitioner filed W.P.(MD)No.1963 of 2018 for forbearing the oil company from compelling him to transfer his LPG consumers to any new / other distributors, the Hon'ble Division Bench vide order 13.03.2018 dismissed the same. Paragraph Nos.15, 16, 17 and 18 of the said order read as follows:-

“15. It is settled position of law that the policy decision can be challenged on the ground of arbitrariness or mala fide or oblique motive and the petitioner admittedly did not make any such allegations or averments in the affidavit filed in support of this writ petition. A perusal of the distributorship Clauses in the distributorship agreement, which has been extracted in the counter affidavit of the present writ petition would disclose that the second respondent Corporation is having every right to transfer the consumers from one agency to another agency and it was also



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pointed out that the writ petitioner himself was the beneficiary of the said benevolence offered by the second respondent and as such, it is not open to him to make a complaint as to the said policy decision.

16. The petitioner is aggrieved by the fact that he is developed infrastructure by spending huge money and on account of the transfer of consumers from his agency to some other agency, he is put to financial hardship, difficulty, and the remedy open to him is to invoke the arbitration Clause 37 of the Distributorship agreement dated 18.03.2009.

17. The petitioner fails to make out any tenable or legal ground to his challenge made to the impugned circular.

18. In the considered opinion of the Court, the impugned circular issued by the second respondent, is having the object of benefiting the consumers by accommodating there from one agency to another agency and it is also taken in terms of the agreement as well as the policy decision formulated by the Government and therefore, in the absence of any arbitrariness or mala fide, it cannot be put to challenge.” Even in though the said writ petition, the impugned guidelines were not put to challenge, implicitly they have been upheld.

7. In view of the order passed by the Hon'ble Division Bench of this Court in the aforesaid writ petition and the decisions rendered by the Hon'ble Kerala High Court, I do not find any ground to interfere and the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.”

6. In these circumstances, the question of entertaining this writ petition does not arise at all. I make it clear that in the event of Hon'ble Supreme Court upholding the view taken by the Bombay High Court, the corporation would be



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obliged to put the clock back by re-transferring the consumers to the petitioner.

In other words, the petitioner can reap the benefit of SLP even without formally challenging this order.

7. With this observation, the Writ Petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

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G.R.SWAMINATHAN, J.

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