

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.02.2017

CORAM:

THE HON'BLE MR. JUSTICE M.SUNDAR
W.P.No.2152 of 2012
&
M.P.No.1 of 2012

M/s.V.K.S.Agencies,
Dealer - Indian Oil Corporation Limited (R.O.),
rep. by its Proprietrix,
P.Vijaya,
W/o.P.Kandasamy,
No.1, Ram Nagar,
Esanatham Main Road,
Rayanoor, Karur District-639 003. ... Petitioner

-Vs-

1. THE SECRETARY TO GOVERNMENT OF INDIA
MINISTRY OF PETROLEUM AND NATURAL GAS
SHASTRI BHAVAN, NEW DELHI 110 001.
2. THE CHAIRMAN
INDIAN OIL CORPORATION LTD.
INDIAN OIL BHAVAN,
G-9 ALI YUVAR JUNG MARG,
BANDHRA (WEST), MUMBAI.
3. THE CHAIRMAN
HINDUSTAN PETROLEUM CORPORATION LTD.
17, JAMSHEDJI TATA ROAD,
MUMBAI 400 020.
4. THE CHAIRMAN
BHARAT PETROLEUM CORPORATION LTD.
4, 6 CURRIMBOY ROAD,
BALLARD ESTATE,
MUMBAI 400 001. ... Respondents

The writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 2nd, 3rd and 4th respondents herein not to permit to open any new retail outlets nearer to the petitioner's existing outlet situated at No.1, Ram Nagar, Esanatham Main Road, Rayanoor, Karur District 639 003 allotted by M/s.Indian Oil Corporation Limited, the 2nd respondent herein under SC category.

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For Petitioner : Mr.G.Sudhakar
For Respondent-1 : Mr.Aravind Kumar, SCGPC
For Respondent-2 : Mr.Mohammed Fayaz Ali
For Respondents 3 & 4 : Mr.O.R.Santhanakrishnan

ORDER

1.Writ petitioner is a dealer of Indian Oil Corporation with dealership at No.1, Ram Nagar, Esanatham Main Road, Rayanoor, Karur District 639 003.

2.Writ petitioner has filed the instant writ petition with a prayer to mandamus the respondents 2,3 and 4 to not to permit anyone to open a new retail outlet near her existing above said outlet in the above said address.

3. It is seen from the writ petition, that the writ petitioner has arrayed the Ministry of Petroleum and Natural Gas as first respondent. Writ petitioner has arrayed his Principal, Indian Oil Corporation [hereinafter referred to as 'IOCL' for brevity] as second respondent. The other oil companies namely, Hindustan Petroleum Corporation Limited (HPCL) and Bharat Petroleum Corporation Limited (BPCL) have been arrayed as respondents 3 and 4.

4. Before embarking on issues herein and passing an order in the writ petition, it is to be noticed that the prayer in the writ petition is very sweeping. This Court is of the view that it is so sweeping that it has no specificity and is vague. When faced with this situation, the writ petitioner says that other dealers should not be permitted to open the outlets within a radius of 10 k.m. and she restricts / abridges her prayer to this effect. On this basis, I proceeded to deal with the writ petition.

5.Mr.O.R.Santhanakrishnan, learned counsel for respondents 3 and 4, would draw my attention to a reported judgement of a Division Bench of our High Court in Nataraja Agencies case reported in 2005 (1) CTC 394 [Nataraja Agencies vs. The Secretary, Ministry of Petroleum and Natural Gas and others]. This judgement is dated 07.12.2004. Learned counsel would say that the writ petitioner has no legal right and the principles of law in this regard have been settled by a Division Bench of our High Court with regard to rival retail outlets being started in proximity and within the same specified radius.

6. Mr.Fiyaz, learned counsel for the second respondent IOCL, would also make submissions on similar lines. Besides this, Mr.Fiyaz, would draw my attention to the dealership agreement of the writ petitioner dated 24.08.2009 and particularly to two covenants therein which read as follows:

"The Corporation reserves the right without reference to or consent of the Dealer to appoint one or more additional Dealer/s in the same town/area or location and such additional Dealer/s shall be entitled to make sales of the products without any objection from the Dealer and the Dealer allowance whatsoever in respect of the sales made by such additional Dealer/s and/or sales made by the Corporation through such additional Dealer/s.

The Dealer hereby expressly further agrees not to dispute, objects to or challenge the appointment of other Dealers at the same place or at any other place either by the Corporation or by any other Oil Company or Corporation for the time being operating in India."

7. By the aforesaid two covenants, the writ petitioner has undertaken/agreed that she will not object to other outlets being commenced, started within territorial proximity to her outlet.

8. Writ petitioner would draw my attention to an order dated 14.12.2011, made by another Honourable Single Judge of this Court in W.P.Nos.1537 to 1541/2011 & 2271/11[batch] in similar circumstances.

9. From a reading of the said order of the other Honourable Single Judge, it comes to light that the Government of India somewhere in 2008, has taken a policy decision that with regard to cases where the dealers of oil companies belong to Schedule Caste and Schedule Tribes category, they will consider regulation and registration of other outlets in proximity. It is also seen from the said order that this decision of the Government of India appears to have been noticed by a Division Bench of Kerala High Court in W.A.No.764 of 2011, dated 19.10.2011.

10. Therefore, the position that emerges is as follows.

11. With regard to dealers/dealership which fall in general category, the principle laid down by a

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Division Bench of our High Court in Nataraja Agencies' case will continue to apply/govern. However, with regard to dealers/dealership which fall under the Schedule Caste/Schedule Tribes category, the request if any for regulating/restricting other outlets being opened in proximity, Government of India has taken a policy decision to consider the same is counsel's say.

12. With regard to the contract dated 24.08.2009, shown to me [dealership contract] by Mr. Mohammed Fiyaz, it is clear that it is a contract for dealers falling under Schedule Caste/Schedule Tribes category. However, it appears that this contract which is obviously a template has lost sight of the decision of the Ministry which appears to have been taken some time in 2008.

13. In the order dated 14.12.2011 made by another Honourable Single Judge which has been placed before me by the learned counsel for the writ petitioner, the learned Single Judge has held that it is open to the writ petitioner dealer therein to approach their principal and their principal in turn shall consider the matter in the light of the policy taken by the Government of India.

14. Owing to all that have been stated supra, it would be appropriate to pass orders on similar lines.

15. Writ petitioner undertakes to approach her principal namely, the second respondent herein with written representation and a prayer not to permit other outlets of oil companies, within 10 k.m. radius.

16. The same shall be forwarded by the second respondent to the first respondent, which shall consider the same and pass suitable orders in the light of the decision which the Government of India appears to have taken with regard to dealers falling under Schedule Caste/Schedule Tribe category.

17. Writ petitioner undertakes to give such representation to second respondent within two weeks from the date of receipt of a copy of this order. The same shall be forwarded by the second respondent to the first respondent within a week from the date of receipt of the representation.

18. The first respondent shall dispose of the representation and pass orders on the same within a period of four weeks therefrom in a manner known to law.

19. The outcome/order the first respondent may pass shall be duly communicated to the writ petitioner within a period of four weeks therefrom.

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20. Writ petition is disposed of on above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS IX)

//True Copy//

Sub Assistant Registrar

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To,

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+1 CC TO MR.DRR.SAMPATH KUMAR Advocate SR.NO.11325

+1 CC TO MR.O.R.SANTHANKRISHNAN Advocate SR.NO.10948

+1 CC TO MR.ARAVINDH KUMAR Advocate SR.NO.10926

W.P.No.2152 of 2012

SPD(CO)
ASK(30/08/2018)