Court No. - 40

Case :- WRIT - C No. - 11195 of 2025

Petitioner :- Vikramaditya Gas Agencies
Respondent :- Union Of India And 3 Others
Counsel for Petitioner :- Tarun Agrawal
Counsel for Respondent :- A.S.G.I.,Anand Tiwari,Gaurav Kumar Chand,Yash Padia

Hon'ble Shekhar B. Saraf,J.
Hon'ble Dr. Yogendra Kumar Srivastava,J.

1. Heard Sri Tarun Agrawal, learned counsel for the petitioner, Sri Anil Sharma, learned Senior Counsel assisted by Sri Shrey Sharma, learned counsel for respondent no.2.

2. Sri Gaurav Kumar Chand, learned counsel for respondent no.1, Sri Yash Padia, learned counsel for respondent no.3, and Sri Nishant Mehrotra holding brief of Sri Komal Mehrotra, learned counsel for respondent no.4 are also present.

3. This is a writ petition under Article 226 of the Constitution of India wherein the writ petitioner has prayed for the following reliefs:-

"i) Issue a writ, order or direction in the nature of CERTIORARI quashing the impugned Policy on Customer Transfer-Market Restructuring dated 21.02.2025 as well as Policy on Customer Transfer-Based on Area of Operation dated 21.02.2025 notified by the respondent nos. 2 to 4/Oil Marketing Companies (OMC) (Annexure No. 1);

ii) Issue a writ, order or direction in the nature of MANDAMUS restraining the respondent no. 2 from implementing the impugned policy dated 21.02.2025 and transferring the existing customers of the petitioner to any other distributor."

4. Upon perusal of the writ petition, it appears that that the petitioner has challenged the new policy dated 21.02.2025 with regard to Customer Transfer-Market Restructuring issued by the

oil marketing companies.

5. Counsel appearing on behalf of the petitioner submits that earlier in 2018 a similar policy had been brought into effect by the oil marketing companies that was struck down by the Bombay High Court in **Mrs. Shailaja R. Khanvilkar and others Vs. Union of India and others, 2019 SCC OnLine Bom 2289** relevant paragraphs of which are delineated as under:-

"13. Since we have held that the present Writ Petition is maintainable, we now deal with whether or not the Impugned Circular is arbitrary and unreasonable as submitted by Mr. Dhond. As recorded hereinabove, the Impugned Circular stipulates that refill sales more than/in excess of 75% of the ceiling limit for existing distributors will stand transferred to new distributors to achieve market viability of 50% of the ceiling limit for new distributors. In effect, the Impugned Circular unilaterally seeks to achieve market viability of 50%. It is an admitted position that there is no rationale and/or basis provided for the percentage stipulated by BPCL in the Impugned Circular. Further, the quantum of customers to be transferred i.e. more than 75% of the ceiling limit of existing customers, also appears to be imposed unilaterally. It is an evident position that there is no rationale and/or reasoning for affixing such percentage nor were the Petitioners heard before the Impugned Circular was issued. This is despite the fact that the Impugned Circular does in fact impinge on the Petitioners' rights. Therefore, it can be concluded that (i) the percentage(s) referred to in the Impugned Circular appear to be stipulated in the absence of any rationale and/or reasoning; and (ii) the Petitioners (or other dealers/distributors) were not even consulted on the effects and/or consequences before such Circular was published. Had any such consultation been done, perhaps the infirmities in the operation of the Circular would have been brought to the attention of the Oil Company. In our opinion, the Impugned Circular arbitrarily seeks to achieve market viability. We are unable to ascertain as to on what basis has BPCL determined what constitutes "excess customers". We cannot therefore sustain the Impugned Circular which seeks to impose such arbitrary stipulations which violate the Petitioners' rights. At this stage, it would be apposite to refer to Mr. Dhond's proposed case scenario in the event the Impugned Circular is implemented:"

6. The Bombay High Court further held that the doctrine of legitimate expectation would apply in the case of the distributors. Paragraph-19 of the same is delineated below:-

"19. The principal laid down in the aforesaid decisions of the Apex Court prohibits the State and/or an instrumentality thereof from resiling on a promise made earlier by it on which promise a citizen has acted upon. In the facts and circumstances of the present case and in view of the correspondence

repeatedly addressed by BPCL to the Petitioners as referred to hereinabove, we are of the considered opinion that the doctrine of Promissory Estoppel would impede the existence of the Impugned Circular. BPCL has failed to consider and/or appreciate aspects such as the added obligations upon existing distributors towards retrenchment of manpower in the event the Impugned Circular is given effect to. Therefore, the lack of due regard to the consequences that the Impugned Circular will have, brings forth the arbitrary and high-handed manner in which the Impugned Circular has been issued. As recorded herein, since the grant of their respective distributorship(s), the Petitioners have infused capital, manpower and infrastructure to improve their customer base on the legitimate expectation of not only retention of the existing clientele but also that their customer base will increase in the future. The Petitioner's investments over the years (caused by BPCL) would be rendered futile by the effect and operation of the Impugned Circular. Therefore, in our considered opinion, the doctrine of legitimate expectation also applies squarely to the present case and in fact, is gravely violated by the Impugned Circular."

7. Per contra, learned counsel appearing on behalf of the oil companies relies on the judgment of the Kerala High Court in **Vembanad Gas Agencies Vs. Union of India and others, 2021 SCC OnLine Ker 4833,** to submit that the oil companies have the right to redistribute areas as well as the number of customers or distributors. The Kerala High Court has differed from the view taken by the Bombay High Court in **Mrs. Shailaja R. Khanvilkar** (supra) and held as follows:-

"12. ..... The business of distributorship is carried out by the distributor as a principal without any vicarious liability cast on the company, with respect to the sale, installation, repairs of appliances or pressure regulators, refills and other equipments which the distributor purchases from the Company and sells to the consumer. The company distances itself from the actual supply effected by the distributors, which is again through the infrastructure and employees of the distributor. It cannot distance itself from the essential responsibility to supply LPG cylinders to the consumers, following the norms and guidelines which regulate the public utility services. A breach committed by the distributor would be the responsibility of the distributor, but the company definitely would have a supervisory role and such breach would also entail penalties and sanctions from the Company. There cannot be any proprietary rights of the consumers on the company, especially in a public utility system and it is the option of the consumer to chose the company or the distributor; subject only to those existing in the area in which such consumer is located. The primacy of the consumer cannot be given a go-by and there cannot be a proprietary right on the Company and least of all, on the distributor of the consumers canvassed by them and serviced. The consumer has the freedom to migrate from one distributor to another or from one oil company to another, so far as there is a supply carried out in the location of the consumer.

13. The Division Bench of this Court in All India LPG Distributors Federation (supra) held so in paragraph 16.

"16. We are unable to accept the contention. Admittedly, the Corporation has reserved the right to reduce the area of operation. It has also reserved the right to appoint additional distributors for the area initially allotted to them. The reduction in the area of operation would automatically result in the number of consumers registered with the dealer. Equally, the appointment of new dealers for the area carved out of the operational limits of an existing dealer would automatically result in the reduction of the number of consumers. Thus, it cannot be said that the action of the Corporation or the Government of India violates the terms of the agreement".

We bow to the above proposition and are unable to follow the dictum of the decision in Shailaja R. Khanvilkar (supra) for reason of the binding precedent of this Court and also on our independent consideration; we find ourselves unable to accede to that position."

8. Another judgment of the Andhra Pradesh High Court passed in **Shri Satyamahalaxmi Gas Agency Vs. Union of India (Writ Petition No.36913 of 2022)**, has been relied upon by the oil companies. Relevant paragraphs of the said judgment are delineated below:-

"34. The case of petitioners is that the right reserved in favour of Corporation by clause 1(b)(iii) does not authorize the Corporation to transfer the existing consumers to a new distributor. Before answering the above contention, this Court applies the ratio of the precedents referred to above, and, therefore, the Distributors before questioning the authority and right of Corporation to transfer ceiling surplus consumers to a new distributor, shall establish the right or privilege held by the Distributors in absolute terms vis-à-vis the consumers of Corporation. The arrangement under Distributorship Agreement is on principal to principal basis. Under such arrangement, both parties are not having agents and the relationship between them is, they both represent them. It means further that under such arrangement, there is no involvement of middlemen. The Distributorship Agreement authorizes the distributor to sell the LPG cylinder of Corporation to household and commercial consumers etc. The Distributors could not draw the attention of the Court to a clause in the Distributorship Agreement, where the right of distribution to continue to retain all consumers is conferred. On a plain and simple construction of clause 1(b)(i) to (iii) of the Distributorship Agreement, the Corporation has not given guarantee of area and at the same time retained right to sell directly or indirectly to central/state governments etc., without reference to Distributor, reserved right for appointment of additional distributors and also retained discretion to reduce, restrict, modify or alter the area of distributorship territory. The submission that in exercise of right reserved under clause 1(b)(iii) the existing connections ought not to be removed is untenable, for the communication, the Corporation informed the Distributor that it is operating above the market ceiling limit, gave discretion

to Distributor to transfer the ceiling excess refills and also the areas and consumers so that the Corporation could exercise its authority under clause 1(b)(iii). The Distributor was advised to create a lot of consumers to transfer to newly appointed distributor. The objection of petitioners that, the Corporation does not have authority to transfer surplus refills is untenable and liable to be rejected. This Court is of the view that the distributors have no right to claim retention of the consumers of Corporation, moreso, the Distributorship Agreement enables the Distributor to sell LPG cylinder to consumers of Corporation in an identified locality. The arrangement is subject to other rights and privileges retained by the Corporation. This Court is further compelled to observe that restructuring, if is envisaged either as part of implementing a policy of the Government or in accordance with the Guidelines for effective operation, the petitioners, who are Distributors, cannot restrict the authority and discretion of Corporation, unless it is shown that the policy is implemented in a discriminatory manner. The Corporation is restructuring its activity by transferring ceiling surplus connection to new distributor and in the process is withdrawing the consumers firstly as per the existing guidelines and secondly not directing the Distributors herein to transfer far below the ceiling limit accepted as policy by the Corporation. These efforts are part of business dynamics of Corporation to address the needs of public at large and unless a judicially enforceable right is pleaded and proved by Distributors, the Distributors cannot have the relief of Mandamus. Reverting to the circumstances on hand, this Court is of the view that the Circulars are not to be understood as final policy decision on transfer of excess refills to new distributors. The LPG cylinders are the product of Corporation and it should be at least shown that the Corporation conferred a right on Distributors to retain the existing consumers for all time to come. Such claim in arrangement of Distributor of a product is untenable. The Unified Guidelines 2016 are comprehensive and it is not the case of Distributors that the transfer of excess refills is discriminatory or contrary to the guidelines in operation.

35. It is settled position of law that the policy decision can be challenged on the ground of arbitrariness or malafide or oblique motive and the petitioners admittedly did not make any such allegations or averments in the affidavit filed in support of the writ petitions. A perusal of the distributorship clauses in the distributorship agreement which has been extracted supra would disclose that the Corporation is having every right to transfer the consumers from one agency to another agency. The petitioners are aggrieved by the fact that they have developed infrastructure by spending huge money and on account of the transfer of consumers from their agencies to some other agencies, they are put to financial hardship, difficulty and the remedy open to them is to invoke the arbitration clause of the Distributorship Agreement."

9. From perusal of the above judgments it is clear that the issue is required to be thrashed out once again by this Court after hearing the counsel appearing for the parties. Accordingly, affidavits are required to be exchanged in this matter.

10. Let counter affidavit be filed within three weeks. Rejoinder

affidavit, if any, may be filed within one week thereafter.

11. Fix this matter on 27.05.2025 in the top ten cases.

12. The policy insofar as it relates to transfer of customers from one distributor to another shall not be put into effect till the next date of listing.

13. We make it clear that the directions in respect of the affidavits is peremptory in nature and no further adjournment shall be granted.

Order Date :- 23.4.2025
Shahroz

(Dr. Y.K. Srivastava,J.) (Shekhar B. Saraf,J.)

Digitally signed by :-
SHAHROJ ALAM
High Court of Judicature at Allahabad