

**24.07.2025**  
**Court No.24**  
DL/Item No.-2  
[Milan]

**WPA 15554 of 2025**

**Ashok Kumar  
versus  
Union of India & Anr.**

Mr. Rishad Medora,  
Mr. Dipendra Nath Chunder,  
Mr. S. Panda,  
Mr. S. Mookherjee,  
Ms. Priyanka Mitra

....for the Petitioner

Mr. Amit Kumar Nag,  
Ms. Rishita Saha

....for the BPCL

1. The petitioner is the distributor of Liquefied Petroleum Gas (in short, "LPG"), who is distributing cylinders of respondent, oil marketing companies to the customers. The petitioner challenges the circular dated 21<sup>st</sup> February, 2025 on marketing restructuring and customer transfer policy issued by three leading Oil Marking Companies, namely, Indian Oil Corporation Limited (in short, "IOCL"), Bharat Petroleum Corporation Limited (in short, "BPCL") and Hindustan Petroleum Corporation Limited (in short, "HPCL").

2. It is the contention of the petitioner that on the earlier occasion, the oil marketing companies have issued circular under the same nomenclature on 4<sup>th</sup> January, 2018 and 9<sup>th</sup> January, 2018 respectively regarding the policy of customer transfer from one distributor to another distributor. The said policy was

under challenge initially before the Hon'ble Division Bench of the Bombay High Court in writ petition No.8753 of 2018 [Mrs. Shailaja R. Khanvilkar & Ors. Vs. Union of India & Ors.] wherein the Division Bench of the Bombay High Court has quashed the said circular dated 4<sup>th</sup> January, 2018 issued by the oil marketing companies against which oil marketing companies proceeded to the Hon'ble Apex Court through SLP. The Hon'ble Apex Court had not granted any stay against the order of the Hon'ble Bombay High Court and had admitted for hearing under civil appeal.

3. The circular dated 9<sup>th</sup> January, 2018 was also under challenge before this Court in writ petition being WPA 20391 of 2023 [M/s. CLS Limited & Ors. Vs. Union of India], wherein this Court vide judgment dated 20<sup>th</sup> February, 2025 has directed the said circulars to be unreasonable, arbitrary and irrational and also directed the concerned oil marketing companies to return the customers in favour of the petitioner therein.

4. The oil marketing companies/respondent authority has approached the Hon'ble Division Bench against the said order, wherein the Hon'ble Division Bench in MAT 335 of 2025 [Hindustan Petroleum Corporation Ltd. & Ors. Vs. M/s. CLS Ltd. & Anr.] dismissed the said appeal and did not interfere with the observations of this Court. A review application was filed by the oil marketing companies against the said

order and judgment but the said review application was also not entertained by the Hon'ble Division Bench.

5. At this juncture, learned advocate for the petitioner submits that the impugned policy dated 21<sup>st</sup> February, 2025 issued by the three leading oil marketing companies are the same policy of 2018 under new nomenclature. It is further contention of the petitioner that as the earlier circular of 2018 is under challenge and was quashed by the Hon'ble Division Bench of the Hon'ble Bombay High Court, and as this could not obtain any order of stay from the Hon'ble Supreme Court, the oil marketing companies have again issued new circular for the same purpose.

6. The learned advocate for the petitioner submits that this Court has already decided the issue that the policy for transferring the customers from one distributor to another distributor is unreasonable. Thus, the said new circular dated 21<sup>st</sup> February, 2025 is required to be stayed.

7. The learned advocate for the petitioner further argued that the said new circular dated 21<sup>st</sup> February, 2025 was also under challenge before the different High Courts, wherein the various High Courts had issued an order of stay. In one case, the Hon'ble Division Bench of Kerala High Court had passed an order in an appeal regarding the circular wherein the interim order was refused by the Learned Single Judge in the said appeal being WA No.776 of 2025 [All India LPG Distributors

Federation (Kerala Circle) & Ors. vs. Union of India & Ors.], the Division Bench of the Kerala High Court has granted an interim order of stay on the observations and following other interim orders passed by various High Courts. By virtue of the said order of the Division Bench, during the pendency of that writ petition, Clause 2.4.1.1.1 Note (i) of the policy 2025 remains stayed pan India basis.

8. It is further contention of the petitioner that this Court has a specific observation on the earlier occasion on merit that customers are the assets of the distributors; the view has been approved by the Hon'ble Division Bench. So, at this juncture, this Court cannot but pass an interim order staying the operation of the circular dated 21<sup>st</sup> February, 2025 and the subsequent letters issued by the oil marketing companies for transfer of number of customers from customer data base to the other distributors.

9. The learned advocate for the oil marketing companies/respondent authority has extensively argued regarding the area, periphery and ambit of the distributors under an agreement of LPG distributorship with the oil marketing companies. It is contention of the learned advocate for the oil marketing companies that the customers are using the product of the oil marketing companies and they are registered under the particular oil marketing company. The distributors are the intermediaries, who, at the instructions of the oil

marketing companies, are distributing LP gas to the customers for domestic use. It is has been specifically argued that at the time of entering into an agreement with oil marketing companies the distributors have equivocally agreed to carry out all the directions and orders of the oil marketing companies and also carry out formalities and the principles laid down in the LP gas manual.

10. It is further contention of the oil marketing companies that in Clause 12 of the said agreement, it has been specifically provided that distributor shall fully and vigilantly carry out all directions, orders and terms and conditions as may be issued by the Corporations (oil marketing companies) from time to time which was contained in the corporations HP Gas manual.

11. The HP Gas manual has placed before this Court; particular provision of HP gas manual has made provisions for the surrender of area and customers and ceiling limits of each and every distributor and rights thereof have been reserved by the oil marketing companies.

12. By showing the specific provisions, it is argued that the oil marketing companies may transfer customers from one distributor to another by strength of HP Gas Manual itself.

13. It is further argued by the oil marketing companies/respondent authority that the policy decision was taken by the Union of India regarding

restructure of market by which the Union of India intends to eradicate the monopoly of some specific distributors in catering the business. It is submitted that competition the policy decision will only benefit the service of the customers. The Government of India has issued circular so that the customers may be benefited for better service.

14. It is further submitted by the oil marketing companies/respondent authority that policy decision of Central Government cannot be called in question in a writ jurisdiction. It has been specifically argued that the Hon'ble Supreme Court, in several decisions, has put restriction in interfering with the policy decision. In support of their contentions, the learned advocate for the oil marketing companies/respondent authority has placed decisions of the Hon'ble Apex Court:- i) **Tata Cellular vs. Union of India** reported in **(1994) 6 SCC 651**; ii) **Balco Employees' Union (Regd.) vs. Union of India & Ors.** reported in **(2002) 2 SCC 333**; iii) **Directorate of Film Festivals & Ors. Vs. Gaurav Ashwin Jain & Ors.** reported in **(2007) 4 SCC 737**. iv) **The Nagar Rice & Flour Mills & Ors. Vs. N. Teekappa Gowda & Bros. & Ors.** reported in **1970 (1) SCC 575**.

In *Tata Cellular* (supra), the Hon'ble Apex Court has set out some principles where a writ Court can entertain petition in respect of the policy of a Govt. there are as follows:-

*"94. The principles deducible from the above are:*

- (1) *The modern trend points to judicial restraint in administrative action.*
- (2) *The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*
- (3) *The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*
- (4) *The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*
- (5) *The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (Including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*
- (6) *Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”*

In *Balco Employees' Union* (supra), the Hon'ble Apex Court has also embodied some principles regarding judicial restraint in policy decision of the State as follows:-

*“45. In Narmada Bachao Andolan v. Union of India there was a challenge to the validity of the establishment of a large dam. It was held by the majority at p.762 as follows:-*

*229. It is now well settled that the courts, in the exercise of their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people’s fundamental rights are not transgressed upon except to the extent permissible under the Constitution.”*

*“46. It is evident from the above that it is neither within the domain of the courts nor the scope of the judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are our courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical.”*

In Directorate of Film Festivals (supra), the Hon’ble Apex Court has also dealt with scope of judicial review of governmental policy as follows:-

*“16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy for the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution,*

*or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review.”*

In Nagar Rice & Flour Mills (supra), the Hon’ble Apex Court has dealt with fundamental right of the citizens enshrined under Article 19 (1) (g) of the Constitution of India, which can be exercised subject to the restrictions under Article 19 (6) (i).

15. The learned advocate for the oil marketing companies further argued that the issue which was dealt with by this Court and the Hon’ble Division Bench of the Hon’ble Bombay High Court is not similar to that of present issue; the circular of 2018 is totally different to that of circular which was issued by Union of India in the year 2025. On the earlier circular, the viability limit 75% of each distributor but now the viability limited of the distributor was taken up 100%. Thus, this is basically a different circular only to restructure market. Earlier judgment and observations of this Court cannot be followed in this case. It is further submitted that the viability limits of the distributors were fixed to 100%, thus, it cannot be said that the business of the distributors can be taken away by the impugned circular.

16. It is contention of the oil marketing companies/respondent authority that the justification

and necessary issue of such circular can be very well demonstrated before this Court, if the respondent authority is granted a leave to file affidavit-in-opposition in this matter.

17. They also argued as the business of the writ petitioner was not at all hampered by the impugned circular, that is to say their licences have not been cancelled, thus, the petitioner is not aggrieved by the said circular.

18. It is further contention of oil marketing companies/respondent authority that the petitioner is performing business on the basis of the agreement entered into by the petitioner with the oil marketing companies. They are catering business by the strength of the said agreement, at the same time they cannot challenge the some provisions of agreement including HP Gas Manual while they have agreed and signed it. On that principle, the oil marketing companies have cited a decision of the **Rajasthan State Industrial Development and Investment Corporation & Anr. Vs. Diamond & Gem Development Corporation Ltd. & Anr.** reported in **(2013) 5 SCC 470;**

*“19. There can be no dispute to the settled legal proposition that matters/disputes relating to contract cannot be agitated nor terms of the contract can be enforced through writ jurisdiction under Article 226 of the Constitution. Thus, the writ Court cannot be a forum to seek any relief based on terms and conditions incorporated in the agreement by the parties.”*

19. It is further contended by the oil marketing companies/respondent authority that though the judgment passed by the Hon'ble Division Bench of the Hon'ble Bombay High Court is under challenge before the Hon'ble Apex Court but there are some observations of different High Courts in respect of the said circular of 2018 wherein the different High Courts have allowed to continue the said circular. They submit as the decision has not been finally arrived at by the Hon'ble Apex Court, thus, the submission of the learned advocate for the petitioner regarding finality of earlier circular of 2018 that is not correct.

20. The learned advocate for the oil marketing companies has also placed some orders of the Hon'ble Apex Court. In the order dated 21<sup>st</sup> February, 2025, matter came up before the Hon'ble Apex Court for hearing wherein the learned Solicitor General of India has expressed that the oil marketing companies will come up with new policy and it was taken note of. In order dated 8<sup>th</sup> April, 2025, application for permission to file SLP was granted by the Hon'ble Apex Court.

21. It is further contention of the oil marketing companies that the matter is pending before the Hon'ble Apex Court, thus, the issue has not yet been finally decided. It is submitted in the instant case, the interim order cannot be passed as the impugned circular is a policy decision of the Union of India, wherein the writ Court should not entertain.

22. The learned advocate for the oil marketing companies further argued that in this writ petition the earlier circular for the year 2018 was not under challenge, the learned advocate for the oil marketing companies submit by the strength of the said circular of 2018, the oil marketing companies have transferred some of the customers of petitioner from customer data base to other distributors which was not under challenge. Moreover, no mandamus was prayed to challenge the earlier circular, hence, the petitioner cannot claim equity on the basis of the order passed by this Court on the basis of the earlier circular.

23. The learned advocate for the petitioner submits that the circular under 2018 passed by the oil marketing companies has already been quashed by the Hon'ble Division Bench of Bombay High Court though the Hon'ble Apex Court has accepted the SLP but no interim order of stay was passed against such order. Thus, the order of quashment passed by the Division Bench of the Hon'ble Bombay High Court has attained its finality. Though no mandamus was sought for against the earlier circular but the oil marketing companies have, without any intimation to the petitioner have taken 1918 customers from the data base of the petitioner to the other distributors, without any knowledge and intimation to the petitioner. He further submits that the acts and action of the oil marketing companies/respondent authority are

discriminatory and arbitrary, dehors to the provisions of the Article 14 of the Constitution of India.

24. Refuting the contentions of the oil marketing companies, in reply, the learned advocate for the petitioner has also pointed out some provisions of the agreement wherein the distributors are forced to enhance their business by supplying more cylinders.

The learned advocate for the petitioner also refers some Clauses of agreement wherein liability of indemnify customers is only upon the distributors, some clauses also mention that the corporation shall bear no warranty in respect of any loss and damages to the customers. Under the same submissions, it is contention of the learned advocate for the petitioner that all responsibility of the customers was upon the distributor and they were also forced to extend their business by the oil marketing companies by such they have taken huge loan from the different organizations and expanded their business, suddenly by the strength of the circular, if the customers were taken away and was given to another distributor, obviously business of the petitioner will be at loss. It is submission of the learned advocate for the petitioner that right guaranteed under the Article 19 (1) (g) has been violated by issuance of such circular, thus, it is required to be stayed.

25. The learned advocate for the petitioner has also cited a judgment reported in **(2012) 6 SCC 502 [Brij Mohan Lal vs. Union of India & Ors.]**, wherein the

Hon'ble Apex Court has categorically absorbed that the policy decision of the State cannot be challenged in the writ petition as follows:-

*“100. Certain test, whether this Court should or not interfere in the policy decision of the State, as stated in other judgments, can be summed up as:*

*(I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.*

*(II) The change in policy must be made fairly and should not give the impression that it was so done arbitrarily on any ulterior intention.*

*(III) The policy can be faulted on grounds of mala fides, unreasonableness, arbitrariness or unfairness, etc.*

*(IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.”*

26. Having heard the long submission of the respective parties and also considering the observations of the Hon'ble Apex Court, it appears that much have argued by the parties in respect of the present impugned policy circular dated 21<sup>st</sup> February, 2025 of the three oil marketing companies. The earlier policy which was under challenge before this Court and was decided finally by the order of the Hon'ble Division Bench. There are Clauses in the earlier circular that distributors may retain 75% of refill ceiling limit applicable to them. In the present circular, each distributor was directed to retain 100% of their refill ceiling limit. At the same time, the refill ceiling limit per month and viability limits of all the distributors has been reduced. It means though the distributors were directed to retain 100%

refill ceiling limit but refill ceiling limit having drastically reduced 50% to that earlier. Thus, by the strength of the impugned marketing structural policy, each and every distributor can retain 100% of their refill ceiling limit applicable to them, that means the actual refill ceiling limit which was earlier with the all distributors reduced by the strength of the circular. The three oil marketing companies intend to restructure the marketing of LP Gas distribution amongst the customers for domestic use.

27. It has been observed by this Court on the earlier occasion that the customers of LPG distributor are the assets of the distributor. In deciding the said issue, this Court has categorically observed each and every Clause of the agreement, the same issue has again placed before this Court. This Court has taken a decision on that issue which was upheld by the Division Bench. At this juncture, this Court cannot take a separate view on the argument placed by the learned advocate for the oil marketing companies, if entertained that would be tantamount to be sitting on appears over the order of stay. Furthermore, it appears that several High Courts have already stayed the impugned circular dated 21<sup>st</sup> February, 2025.

This Court also cannot pass a different order to that of view taken by the several High Courts.

28. Moreover, for better appreciation of the matter regarding purpose of issuing such circular by the

oil marketing companies and whether it is actually for the benefit of the public purpose or for the purpose of eradicating monopoly in the market, that would be considered at the final stage. The oil marketing companies/respondent authority is at leave to file affidavit-in-opposition against the writ petition within 4 weeks from date. Reply, if any, by the petitioner within 2 weeks thereafter.

29. Considering the entire facts and circumstances on principle of issuance of interim order, it appears that prima facie case and balance of convenience and inconvenience is tilting in favour of the petitioner as they are admittedly losing their customers. This Court feels appropriate to pass an interim order. Hence, this shall be an interim order in terms of prayer (g) and (h) of the writ petition; a period of 8 weeks from date.

30. In considering the prima facie case and balance of convenience of this matter, it appears that the oil marketing companies/respondent authority after issuance of circular dated 21<sup>st</sup> February, 2025 has strait way taken some customers of the petitioner and transfer them to another distributor without any intimation or knowledge; by such way if the said circular is allowed to be confined, the oil marketing companies may have the right to do same in future for which petitioner shall suffer irreparable loss and injury.

31. Considering the same, it appears that the petitioner has demonstrated a strong prima facie case before this Court, accordingly, the circular issued by the three the oil marketing companies on 21<sup>st</sup> February, 2025 is hereby stayed for a period of 8 weeks from date.

**(Subhendu Samanta, J.)**