

(2014) 05 P&H CK 0358

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 24254 of 2013 (O&M)

All India LPG Distributors Fed.
(Punjab) and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision: May 26, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14, 15, 16, 18(1), 19(1)(g)

Citation: (2014) 176 PLR 472

Hon'ble Judges: Ritu Bahri, J

Bench: Single Bench

Advocate: R.S. Setia, Senior Advocate and Mr. Sanjiv Pandit, Advocate for the Appellant; Brijeshwar Singh Kanwar, Advocate for Respondent No. 1-UOI, Mr. Ashish Kapoor, Advocate for Respondent No. 2 and Mr. Raman Sharma, Advocate for Respondent Nos. 3 and 4, Advocate for the Respondent

Judgement

Ritu Bahri, J.

The petitioners are seeking writ of certiorari for quashing RGGLVY Scheme (Annexure P-4), Brochure (Annexure P-5) and Advertisement dated 27.05.2013 (Annexure P-6) regarding allotment of gas agencies in rural areas under the Rajiv Gandhi Gramin LPG Vitran Scheme (for short "RGGLV").

2. The petitioners are challenging the RGGLV Scheme on the ground that it is contrary to the law of land and prejudicial to the interests of the petitioners. Smt. Ranjit Kaur-petitioner No. 2 is a widow of shaheed Naib Subedar Karnail Singh, who was awarded "Vir Chakra" for sacrificing his life during operation "Vijay." She was allotted a gas agency by IBP (now Indian Oil Corporation) on 03.03.2001. She is running the said gas agency in the name of Shaheed Karnail Gas Agency at Chohla Sahib, District Tarn Taran. As per agreement dated 12.03.2002 (Annexure P-1), the area of petitioner No. 2 has been fixed within 15 kilometers from Chohla Sahib.

3. Similarly, Smt. Neelam Devi-petitioner No. 3, who is widow of Kargil Shaheed GDR Desraj, was allotted LPG agency on 05.12.2001 at Chheharata, District Amritsar vide Annexure P-2. Hari Singh-petitioner No. 4 was allotted a gas agency by Indian Oil Corporation at village Sabharwan, District Tarn Taran vide Annexure P-3, on account of the supreme sacrifice made by his father Shaheed Satnam Singh during operation "Vijay." Kuljeet Singh-petitioner No. 5 was allotted LPG agency by Indian Oil Corporation in the year 2004 under Freedom Fighter category at Kaonke Kalan, District Ludhiana.

4. On 01.09.2010, respondent No. 1-Union of India has launched RGGLV (Annexure P-4) Scheme for setting up gas agencies in the rural areas. In this regard, brochure (Annexure P-5) has also been issued. Subsequently, an advertisement dated 27.05.2013 for allotment of gas agencies under RGGLV Scheme at number of locations has been issued vide Annexure P-6. The object of the said scheme is to provide gas agencies at village level.

5. On the other hand, the petitioners are opposing the said Scheme on the ground that still they have not enrolled maximum number of customers, as per their target, in the allotted areas. The action of the respondents to allot number of gas agencies in rural areas under the RGGLV Scheme pursuant to the advertisement (Annexure P-6), will affect their future growth and also the existing customer base. In this regard, the petitioners made representations (Annexures P-7 to P-9) to the concerned authorities. As per the petitioners, if the said Scheme is implemented, their customers would be diverted to the village based gas agencies, resulting into encroachment of their business benefits and livelihood. Therefore, the said Scheme is in violation of Articles, 14, 15, 16 and 19(1)(g) of the Constitution of India. Further, the object of launching the said Scheme on the pretext of giving employment in the rural areas, is to attract maximum vote bank. The petitioners' business interests are being ignored and they are facing discrimination.

6. Learned counsel for the petitioners has argued that as per Clause 14 of the brochure (Annexure P-5), RGGLV will not be required to deliver LPG cylinders at the residence of the customers. LPG cylinders will be given to the customers from the authorized licensed LPG godown, whereas on the other hand, as per Clause 9(e) of the LPG (Regulation of Supply and Distribution) Order, 2000 (Annexure P-10), which is applicable to the petitioners, they are bound to make home delivery of the LPG cylinder at the address of the consumer, as registered with the distributor. The rider to this condition is that additional charges for home delivery can be fixed.

7. He has further argued that as per RGGLV Scheme, both LPG godown and showrooms will be located closely. This condition is against the Gas Cylinders Rules, 2004 (Annexure P-11), which is applicable in the case of the petitioners. As per condition No. 10 of Rules 2004 (Annexure P-11), a regular LPG distributor is under obligation to provide free service of mechanic in case necessity arises to a customer. This condition in the case of RGGLV Scheme is missing. Hence, a complete go by has

been given to the safety norms and the sale of gas cylinders is being treated like a grocery shop, which shall be very risky and breach of the provisions of the Act of 1884 and Rules of 2004. In the absence of mode of transportation in rural areas, the RGGLV distributors have been exempted from their duty to provide gas cylinders at the residence of the customers. Transporting the gas cylinder on a scooter and cycle is in violation of clause 1(a) of Schedule VI under Rule 20 of Rules 2004 (Annexure P-11). Moreover, there would be possibility of accident at the time of taking the gas cylinders on scooters and cycles.

8. On notice, written statement on behalf of respondent No. 1 has been filed, stating therein that vide order dated 01.04.2002, the Administered Price Mechanism (APM) has been dismantled and the Public Sector Oil Marketing Companies (OMCs) have been given freedom to choose location and adopt their own guidelines for selection of LPG distributorships/LPG Filling Stations as per their commercial consideration, subject to broad policy guidelines formulated by Government of India. As a matter of policy, the Government has advised OMCs to concentrate on semi-urban/rural areas for opening of new LPG distributorships. As per "Vision 2015" for the LPG sector, a target has been given to public sector oil marketing companies (OMCs) to raise the over all LPG population coverage in the country to 75% by releasing 5.5 crore new connections by 2015, especially in rural areas and under covered areas. Since the urban centers are more or less covered by LPG network, future growth envisaged under "Vision 2015" would be concentrated in the rural/semi urban areas. Usage of LPG in replacement of other fuels, such as wood, coal, kerosene etc., is advantageous not only in environmental point of view, but it also provides a cleaner and healthier cooking environment to the rural women folk.

9. Pursuant to the guidelines issued by the Government of India, respondent No. 1 has no control over selection of location, categorization of location, rostering of the location and selection of distributors etc. The LPG distributorships are selected by the OMCs. Locations for setting up of LPG distributorship/LPG filling stations are based on feasibility study, which is done jointly by the Public Sector Oil Marketing Companies. The feasibility study takes into account the percentage of population of the location for reservation to different categories for rostering/deciding the category of the location, economic status, purchasing ability per capita consumption of LPG of nearby existing market of LPG. The most important thing to be taken into consideration is, "whether setting up of LPG distributorship is commercially viable." Launching of RGGLV Scheme is a step towards popularizing LPG in rural/semi urban areas. Salient features of this Scheme are as under:-

(a) The concept of RGGLV is to make LPG available in rural areas. RGGLV is sustainable for cluster of villages having about 4000 families. RGGLV will be set up for a group/cluster of villages having a potential of average monthly sale of 600 cylinders (refill sales) per month of 14.2 Kg and 1800 customers considering monthly per capita consumption of 5 Kg. Proprietor himself along with one staff will operate

the same. This is a smaller operation than a regular LPG distributor.

(b) RGGLV would consequently have an LPG storage Godown of smaller size as compared to a normal distributorship godown. Both LPG godown and showroom will be located close by. The godown would be sufficient to store minimum 300 filled LPG cylinders to accommodate full truck load i.e. License capacity of about 5000 Kg LPG as against present size of 12000 Kg for urban distributors and 8000 Kg for rural distributors.

(c) A small showroom of the size 2.6 m x 3 m can be constructed near the Godown outside (safety zone) or in an existing nearby shop. LPG cylinders (14.2 Kg refills) are supplied to the customers on Cash and Carry basis.

10. It has been further stated that there is no violation of Article 18(1) of the Constitution of India by naming the Rural LPG distributorship in the name of late Prime Minister Shri Rajiv Gandhi. No title has been conferred on any individual. The object of RGGLV Scheme is for providing part time and localized operation to local residents, who are small in number in a village. The Scheme has been duly approved by the Government and there is no violation of the controlled order in home delivery. All LPG godowns of RGGLV distributorships are approved by Petroleum and Explosive Safety Organization (erstwhile CCOC), which is a statutory body and issue licenses only when safety distances, as per norms, are met. Moreover, Clause 9(e) of the LPG Supply Order (Annexure P-10), provides for exemption from delivery of gas cylinders at the residence of the customers.

11. In the written statement filed by respondent No. 2, it has been stated that the RGGLV Scheme has been approved by the Ministry vide Annexure R-2/1. The estimated capital expenditure for Godown/showroom and the indicative monthly net income is given as under:-

2.1

Godown and showroom-Land required 20 meter by 24 meter. Select candidate should be owner of the plot hence cost is taken as zero.

(a) Size of storage area-5 meter by 6 meter i.e. 30 Sq. meters. Considering cost of construction as Rs. 2000/- per square meter- Rs. 60,000/-.

(b) Small showroom hut 2.6 m by 3 m i.e. 7.8 square meter. Estimated cost of construction at Rs. 2000/- per square meter- Rs. 16,000/-.

(c) fire extinguishers, platform type weighing scale and other costs say Rs. 15,000/-.

(d) Office furniture and other equipment about Rs. 30,000/-.

(e) Interest free deposit of Rs. 2,00,000/- (cost of 200 cylinders which shall be with distributors) in favour of OMC.

Total indicative Capital Expenditure required will be about Rs. 3,21,000/-.

2.2

Working Capital Estimated Working Capital will be Rs. 1,00,000/-.

2.3

Indicative Revenue Expenditure. Indicative emoluments to one staff will be Rs. 3500/- per month.

Other expenses will be about Rs. 5000/- per month. Total monthly revenue expenses will be about Rs. 8500/- per month.

2.4

Indicative Earnings

Considering per capita consumption of 5 Kg per month, about 1800 LPG connections will be required for sale of 600 LPG cylinders per month.

2.4.1

Earning on release of new connection @ Rs. 225/- per connection for 1800 connections amount will be about Rs. 4.0 lakhs. The capital investment will be recovered by the time 1800 LPG connections are released.

2.4.2

Mandatory inspection of domestic installation is undertaken once in 2 years. When 1800 connections will get released, mandatory inspection of domestic installation for 900 customers will be done per annum. Presently mandatory inspection charges are Rs. 40/- per connection. It will generate earning of Rs. 40 x 900 = Rs. 36,000/- per annum which is Rs. 3000/- per month.

2.4.3

Refill commission for 600 refills per month will generate monthly earning of Rs. 21.94 x 600 = Rs. 13164/- per month.

2.4.4

The expected total monthly earning from 2.4.2 plus 2.4.3 will be about Rs. 16,164/- on 600 cylinders refill sales per month, excluding earning on release of new connections.

2.5

Indicative Net Income

(Indicative Earnings minus Indicative Revenue Expenditure)

The net monthly income expected is Rs. 7664/- per month.

12. The Scheme was started in the year 2009 and out of total 6713 LPG distributorships advertised under this Scheme, around 2341 have already been commissioned. Apart from expanding LPG's reach, the Scheme has pro-poor features including release of LPG connection to BPL families with funding of security deposit from CSR funds of OMCs, allotment of distributorship to the local (Panchayat) domiciles, women empowerment through mandatory partnership of spouse etc. 38.8 lakh LPG customers, including 1.42 lakh BPO families, have been enrolled through these distributorships up to 01.07.2013. There is a provision in the Scheme for granting LPG distributorship on commission basis and this is not subject to challenge under Articles 226/227 of the Constitution of India because it does not involve any public law function. Finally, it has been stated that petitioner No. 1-federation cannot seek to stall the establishment of new LPG distributorships by granting opportunities to new distributors. Moreover, as per the allotment letters (Annexures P-1 to P-3) issued to petitioner Nos. 2 to 4, there is a provision that the area of operation is subject to change, as considered necessary by the company at a later stage, even after the distributorship is commissioned. There is a further provision that from time to time, the allottee can be asked to take over customers from other distributors and he may be required to surrender some customers to other distributors. Therefore, after accepting the LPG distributorships, the petitioners cannot challenge the Scheme (Annexure P-4) on the ground that some more people have been introduced in their area for distributing LPG connections.

13. In the written statements filed by respondent Nos. 3 and 4, they had adopted the stand, taken by respondent Nos. 1 and 2.

14. Heard, counsel for the parties.

15. There is no dispute between the parties that petitioner Nos. 2 to 5 are neither applicants nor they are eligible to apply pursuant to the advertisement dated 27.05.2013 (Annexure P-6) on the ground that they have already got one gas agency each. Moreover, as per allotment letters (Annexures P-1 to P-3), there is a condition that the Oil Company reserves the right to extend or allot more distributors in the area. There is a further provision that the customers of their area can be transferred to other distributorship and vice versa. Therefore, once they have accepted such conditions, they have no right to challenge the Scheme formulated with an object of making LPG cylinders available at the rural level, on the ground that their business transactions or economic interests are likely to be affected. The Government of India has taken a policy decision and has advised the OMCs i.e. Public Sector Oil Marketing Companies to concentrate on semi urban/rural areas for opening new LPG dealerships. In this regard, Rajiv Gandhi Gramin LPG Vitruk (RGGLV) Scheme has been approved by the government of India on 06.08.2009 with the following modifications:-

(i) Reservation:

(a) 25% of locations would be reserved for SC/ST category in the respective State.

(b) 25% reservation for DP/PMP/PH/OSP may be clubbed under one common category. In case no candidate is found, then advertise next time under "Open" category. Also focus being on youth, age limit of candidate being 21-45 years there will be no reservation for FF Category.

(c) Since all spouses will be made partners, there will be no separate 33% reservation for women amongst the categories.

(ii) No educational qualification requirement for spouse.

(iii) Intimation/invitation be issued to the local MP, MLA, Zila Parishad, Panchayat Samiti Chairman, Sarpanch, Revenue officials etc. However, a quorum comprising of at least 50% of the candidates (whose names are there in the draw) and the concerned company officials could be sufficient to proceed with the draw of lots.

(iv) sufficient publicity of date, time and venue of draw of lots be given in local newspapers.

(v) the mandatory video recording of draw of lot be provided for.

16. A Division Bench of this Court in All India LPG Distributors Federation (North West Region) Vs. Union of India, 2002(2) RCR (Civil) 46, while considering the appointment of distributorship by the Indian Oil Companies, had examined the instructions issued by the Government of India, by which the oil marketing companies have been directed to close down the extension counters set-up by the dealers and transfer all the consumers enrolled through these counters to the newly-commissioned distributors. While dismissing the writ petition, it was held that there was no violation of principles of natural justice. It was also held that there was no violation of any contractual or legal rights by the oil marketing companies. The action of the respondents was in conformity with the terms of appointment letters and agreement signed by both the parties. Each distributor had been allotted an area of operation and as per the letter of allotment, this area, could be reduced. To meet a particular situation, the respondents-oil companies had permitted opening of extension counters. As per the letter of appointment, it is stipulated that number of customers allotted to a particular distributor, can be varied, increased or decreased. Subsequently, new dealers were appointed and to enable them to sustain their business, the instructions were issued by the Government of India, directing the petitioners (in that case) to close down their extension counters. The newly appointed distributors had spent huge amount of money on construction of godowns and other facilities. Their expenditure was much more than the amount spent by the old distributors on opening of the extension counters. The equity was held to be in favour of newly appointed distributors and their claim was legitimate. In paragraph 35 of the aforesaid judgment, the Division Bench has observed as under:-

35. In the present case, it is clear that there was no violation of any contractual or legal right of the petitioner. The action of the respondents is in conformity with the terms of appointment. The agreement signed by the two sides limited the area of operation. The petitioner or its members had no right to operate in the area beyond the prescribed limits. The agreement/agency could be terminated by 30 days notice. No opportunity of hearing was required to be given for such an action. In this situation, we are satisfied that principles of natural justice were not attracted.

17. Recently, a Coordinate Bench of this Court in Jugraj Singh Vs. Union of India (UOI) and others, CWP No. 17262 of 2011 (decided on 15.09.2011), examined a case, where the petitioner had challenged a condition of eligibility in the brochure for selection of dealership for LPG cylinders under RGGLV Scheme in the category of dependents of defence personnel. The petitioner, though was a retired defence personnel, but he was ineligible as he was not disabled. The Scheme covered the personnel of Armed Forces, who were disabled due to attributable causes of Armed Services or widows/dependents of those Army personnel who died in war, war disabled/disabled on duty. It did not include an able bodied armed personnel who had retired from service. While dismissing the writ petition, it was observed that grant of LPG distributorship was not to afford merely a public utility service for the people at large, but choice of dealership is invariably hinged to deserving class of persons, who would also make a respectable living by carrying on with dealership. By making reservation for a class of persons was to achieve the object of decent living for their family and at the same time offering public utility services. Further, reference can be made to a judgment delivered by Rajasthan High Court in Prem Pal Singh and Kewal Ram Meghwal Vs. IOC and others, Civil Misc. Writ Petition No. 10524 of 2009 (decided on 12.05.2010), wherein the petitioner had challenged the action of respondents to give LPG Cylinder distributorship under the Rajeev Gandhi Gramin LPG Vitrak Yojana. The petitioner had his own gas agency in the area. He had accepted the said contract by way of signing the agreement and agreed to opening of other outlets in the area. The said Scheme was started after a policy decision was taken by the Government of India to provide LPG to the rural public. The aforesaid writ petition was dismissed by the Rajasthan High Court by observing that the public interest was required to be protected over personal interest. In paragraph 11 of the said judgment, it was further observed as under:-

11. In view of the above reasons, the petitioner firstly failed to establish that he acquired any right to prevent even his own gas supply agency to open any outlet in the area because the petitioner agreed to opening of other outlets in the area by signing the agreement between him and the IOC, secondly, the policy decision was taken to provide the LPG Gas to the rural public and for that purpose under special scheme if new outlets are opened then natural consequence will have to follow and the public interest is required to be protected over personal interest. It is further worthwhile to mention here that as per the petitioner himself the distance of the villages Jasol 6 kms, Gudamalani 90 kms, Asotra 14 kms and Indrana 24 kms from

the place of the petitioner's village, therefore on that basis also, the petitioner is not entitled to any relief.

18. Recently, the Hon"ble Supreme Court in Sanjay Kumar Shukla Vs. Bharat Petroleum Corporation Ltd. & others, Civil Appeal Nos. 1871-1872 of 2014 (decided on 07.02.2014), while examining the law with regard to challenge of award of a contract, has held that the Court must exercise its discretionary power under Article 226 with great caution, only in furtherance of public interest and not merely on the making out of a legal point. The larger public interest has to be kept in mind and in this background, it is to be decided, "whether interference is called for or not." In paragraph 11 of the aforesaid judgment, the Hon"ble Supreme Court has observed as under:-

11. We cannot help observing that in the present case exercise of the extraordinary jurisdiction vested in the High Court by Article 226 of the Constitution has been with a somewhat free hand oblivious of the note of caution struck by this Court with regard to such exercise, particularly, in contractual matters. The present, therefore, may be an appropriate occasion to recall some of the observations of this Court in the above context. In [Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others](#), this Court had held as follows:-

9. The award of a contract, whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision, considerations which are of paramount importance are commercial considerations. These would be:

(1) the price at which the other side is willing to do the work;

(2) whether the goods or services offered are of the requisite specifications;

(3) whether the person tendering has the ability to deliver the goods or services as per specifications. When large works contracts involving engagement of substantial manpower or requiring specific skills are to be offered, the financial ability of the tenderer to fulfil the requirements of the job is also important;

(4) the ability of the tenderer to deliver goods or services or to do the work of the requisite standard and quality;

(5) past experience of the tenderer and whether he has successfully completed similar work earlier;

(6) time which will be taken to deliver the goods or services; and often

(7) the ability of the tenderer to take follow-up action, rectify defects or to give post-contract services.

Even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given

party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction.

10. What are these elements of public interest? (1) Public money would be expended for the purposes of the contract. (2) The goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities. (3) The public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously. (4) The public would also be interested in the quality of the work undertaken or goods supplied by the tenderer. Poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work--thus involving larger outlays of public money and delaying the availability of services, facilities or goods, e.g., a delay in commissioning a power project, as in the present case, could lead to power shortages, retardation of industrial development, hardship to the general public and substantial cost escalation.

11. When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation. A mere difference in the prices offered by the two tenderers may or may not be decisive in deciding whether any public interest is involved in intervening in such a commercial transaction. It is important to bear in mind that by court intervention, the proposed project may be considerably delayed thus escalating the cost far more than any saving which the court would ultimately effect in public money by deciding the dispute in favour of one tenderer or the other tenderer. Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers.

19. Finally, in paragraph 14, the Hon"ble Supreme Court has concluded as under:-

14. We have felt it necessary to reiterate the need of caution sounded by this Court in the decisions referred to hereinabove in view of the serious consequences that the entertainment of a writ petition in contractual matters, unless justified by public interest, can entail. Delay in the judicial process that seems to have become inevitable could work in different ways. Deprivation of the benefit of a service or facility to the public; escalating costs burdening the public exchequer and abandonment of half completed works and projects due to the ground realities in a fast changing economic/market scenario are some of the pitfalls that may occur.

20. In the present case, As per "Vision 2015" for the LPG sector, a target has been given to public sector Oil Marketing Companies (OMCs) to raise the over all LPG population coverage in the country to 75% by releasing 5.5 crore new connections by 2015, especially in rural areas and under covered areas. As per the written statement filed by respondent No. 2, the RGGLV Scheme was started in the year 2009. Out of total 6713 LPG distributorships advertised under this Scheme, around 2341 have already been commissioned. In addition to the above figure, the Scheme has pro-poor features including release of LPG connection to BPL families with funding of security deposit from CSR funds of OMCs, allotment of distributorship to the local (Panchayat) domiciles, women empowerment through mandatory partnership of spouse etc. 38.8 lakh LPG customers, including 1.42 lakh BPO families, have been enrolled through these distributorships up to 01.07.2013.

21. In the light of the above discussion and the law laid down by the Hon"ble Supreme Court, this Court is of the view that the RGGLV Scheme has been launched while keeping in mind the larger public interest.

22. Resultantly, the present petition is dismissed.