(1985) 12 GUJ CK 0027

Gujarat High Court

Case No: None

Gujarat State Civil Supplies Corporation Ltd.		APPELLANT
	Vs	
Bharat Petroleum Corporation Ltd. and Others		RESPONDENT

Date of Decision: Dec. 18, 1985

Acts Referred:

- Companies Act, 1956 - Section 617
- Constitution of India, 1950 - Article 12, 12, 14, 14

Citation: (1986) 1 GLR 585

Hon'ble Judges: A.P. Ravani, J

Bench: Single Bench

Judgement

A.P. Ravani, J.

Why consider a Government Company intelligible from competing with others even when it is being considered eminently suitable for carrying in the business in question in difficult time and situations? The petitioner, which is a Government Company within the meaning of Section 617 of the Companies Act, 1956 has raised this question and has challenged the legality and validity of the action of respondent Oil Company by which the petitioner is considered ineligible for LPG distributorship. The petitioner is already working as Dealer in L.P.G. (Liquid Petroleum Gas) of different Oil-Companies at Surat, Nadiad, Palanpur and Ahmedabad. The petitioner is also working as dealer in petrol at Gandhidham and Gandhinagar. In respect of dealership of L.P.G. at Bhuj, the petitioner Company is working by way of interim arrangement because some dispute is pending in this Court with regard to the dealership of the same. But recently the petitioner as denied its right to compete with others for dealership of LPG and hence the petitions.

2. As far as Special Civil Application No. 1049 of 1984 is concerned, the respondent Oil Company issued an advertisement sometime in April/May 1983 and invited applications for distributorship of LPG for Shahibaug area in Ahmedabad. The petitioner applied for the same. The petitioner was called for the interview, but the person who appeared on behalf of the petitioner-corporation was told that the petitioner being a Corporation cannot apply for the distributorship of gas and he was, therefore, not interviewed at all. This action of the respondent Oil Company is challenged by the petitioner in this petition.

3. In another petition (the Special Civil Application No. 5551 of 1984) the respondent Oil Company gave an advertisement inviting application for dealership at Bhavnagar. The petitioner has not been given application form on the ground that as per guidelines, only individuals and registered co-operative societies were eligible and therefore, the petitioner was not given the application form. This letter dated September, 3, 1984, is produced at Annex. C to this petition. The petitioner has challenged the legality and validity of this letter in this petition.

4. Since the common questions of law and facts arise, at the request of and by consent of the parties, both the petitions are being, heard together and are being disposed of by a common judgment.

5. The stand of the Oil Company and the Government of India is that as per the guidelines issued by the Government of India, only the living persons and registered co-operative societies are eligible, to apply for the dealership in question. Since the petitioner is neither a living individual nor a registered cooperative society, the petitioner is not eligible to apply for the dealership. It is also contended on behalf of the respondents that even if it is held that the petitioner, can apply, the petitioner does not fulfil other eligibility criteria regarding residence, age and income as prescribed in the guidelines. Therefore also, the petitioner would be ineligible for being included in consideration for the grant of dealership.

6. In special Civil Application No. 1049 of 1984, one Mr. M.H. Dave, Dy. Co-Ordinator of Indian Oil Corporation has filed an affidavit-in-reply and has produced a copy of the guidelines issued by the Ministry of Petroleum Chemicals and Fertilisers, New Delhi. In this guideline, under the caption, "Guidelines for Dealer/selection," it is inter alia stated as follows:

Due to very large numbers of Distributorships/Dealerships involved and, the problems faced in regard to the selection of distributors/dealers, the Oil Industry has prescribed an objective selection procedure. The guidelines must be objective providing equal opportunity to all sections of society and eliminate areas where there is a scope of subjective discretion in order to minimise public criticism.

7. The guidelines appear to have been framed sometime in February, 1983. It also appears that subsequently, some modifications have been made in the guidelines, reference to which will be made little later on.

8. As these guidelines, the dealership is reserved for different categories of people as follows:

Scheduled Castes/Scheduled Tribes	25%
Unemployed graduates including unemployed engineering graduates.	25%
Physically handicapped/	15%
Freedom Fighter	5%
Others	30%

9. The criteria with regard to the age, educational qualification, residence and income etc. had also been mentioned. The Counsel for the respondent has produced a latter dated May 31, 1984 which substantially reiterates the policy guidelines for selection of dealership/distributorships of Oil Companies with effect from April 1, 1984. In these guidelines, specific mention is made with regard to the registered co-operative Societies. The Co-operative societies, desirous to have dealership/distributorship in reserved categories should fulfil the condition that each of its members should individually belong to the categories for which the dealership is advertised. We are not concerned with this category. As far as the category "Others" is concerned, it is mentioned that the Co-operative societies should be registered and the Society must be making net profit for the three proceeding years as cetified by the Chartered Accountants.

10. On the basis of the aforesaid guidelines, it is submitted that however in the guidelines, it is provided that the Corporation, public or private or Government Companies would be eligible for dealership. Therefore, by necessary implication, it should be held that all corporations, public, private or Government Companies have been excluded and they are ineligible to apply. It is also contended that if one reads the entire guidelines, it is evident that except the Co-operative Societies, legal persons are excluded. The object of the guidelines as submitted on behalf of the respondents is to cover only the natural persons. This has been done with a view to see that the small individual persons get employment and, therefore, it should be held that by necessary implication, the Corporations like the petitioner have been excluded.

11. The guidelines, provide for two broad categories in Which the dealership. is sought to be distributed. The reservation for Scheduled Castes/Scheduled Tribes, unemployed graduates, physically handicapped and freedom fighters would fall in one category which may be termed as "Social Objective Categories." This phrase is used in the guideline itself. (See Clause 2.1 of letter dated May 31, 1984 which has been produced at the time of hearing the petition). Another category is that of "Others".

12. Ordinarily, the category "Others" should include all others who are not covered by the "Social Objective Categories." Thus, it would be clear that the petitioner which

is a Government company would also be included in the category of "Others". There is no reason why the category "Others" should not include the Government Company like the petitioner. In fact, in past, the petitioner has been granted dealership by various Oil Companies. It is also stated in the affidavit-in-reply dated Dec. 10, 1985 filed by the Dy. Co-ordinator on behalf of the Oil Selection Board that on reconsideration, the Government of India has come to the conclusion that the State Civil Supplies Corporation like the petitioner should considered for distributorship in hilly and remote areas where other persons are not generally coming forward to establish distributorship. As stated in the affidavit this guideline is introduced on. May 30, 1985. It also appears that the State Civil Supplies Corporations like the petitioner as a matter of policy are to be allotted agencies on interim basis whenever agencies are terminated for one reason or another. (See para 11 of the affidavit-in-reply filed by Mr. M.H. Dave, Co-ordinator of Indian Oil Corporation). Thus, even according to the respondents, inherently there is nothing against the petitioner which would make it ineligible for dealership. Then how the submission that since there is no specific mention of Corporation, private, public or Government Company, the petitioner cannot be considered eligible be accepted?

13. The submission has got to be rejected. The respondent Oil Company is ''State'' within the meaning of Article 12 of the Constitution of India. On this point, there is no dispute. The respondent-Oil Company is acting as per the guidelines issued by the Government of India, as a matter of administrative policy. But the guidelines have got to be in conformity with the constitutional provisions even in administrative spheres the State cannot act arbitrary and deny equality of opportunity to any person. The mandate of Article 14 is that the ''State'' shall not deny any person equality of law or the equal protection of law. Be it noted that provisions of Article 14 will take within its sweep all persons natural as well as legal persons. There is no dispute on this score. Therefore except on rational grounds, the respondent-Oil Company and the Government of India cannot be permitted to make classification in such & way which would exclude unjustly and or is an unfair manner any person from being included in the zone of consideration for the purposes of grant of dealership. Moreover, as stated in the guideline itself, object of guidelines is to provide equal opportunity to all sections of society. In conformity with this object, two broad categories appear to have been carved out by the Government of India, one "Social Objective Categories" and another "Residuary" or "Others". If at all, the Government of India desired to exclude the Government Companies like the petitioner, the same would (and should) have been specifically mentioned. On the contrary, when two broad categories as stated hereinabove have been made and in one category, different groups of people who are required to be helped and given special treatment are included, there is no reason why in another category, of "Others", the Government Companies like the petitioner should not be included. As a matter of fact, the Government of India has also considered the petitioner as eminently suitable ''person'' for carrying on the business as dealer of

LPG in hilly and remote areas and wherever the dealership is terminated at the interim state. If the object of the guidelines is to see that all sections of society are given equal opportunity, it is not understood how by excluding Government Company like the petitioner, the aforesaid object can be achieved. In this view of the matter, when there is no specific mention in the guidelines regarding the exclusion of the Government Company like the petitioner it would not be just and fair to exclude it by implication. Moreover in view of the fact that the petitioner is considered eminently suitable for carrying on business in question in hilly and remote areas and at the time when the existing dealership is terminated at interim stage, there is no reason why it should not be allowed to compete alongwith others when fresh dealership is being granted. Be it noted that if the petitioner is granted dealership, the social objective will also be served. The petitioner-corporation will have to engage small persons as employees. As stated at the bar, the petitioner-Corporation is at present handling 5 dealerships in L.P. Gas. The petitioner has engaged 34 persons in these five dealerships at five different places. Thus, when the petitioner-corporation is given dealership, objective of providing employment to small people will definitely be served. Moreover, the profit that may be earned by the Corporation will not go to an individual but it will ultimately go to the coffers of the State.

14. As stated hereinabove, having regard to the provisions of Article 14 of the Constitution of India, simply because there is no specific mention of the Government Corporation nor Govt. Companies in the guidelines the exclusion thereon cannot be inferred. If that is done, the guidelines will be exposed to the charge of arbitrariness which will be hit by the provisions of Article 14 of the Constitution of India. On the other hand, if it is held that the Government Companies like the petitioner are not to be excluded, then it would be in conformity with the provisions of the Constitution as provided in Article 39(b). Article 39(b) inter alia provides that the State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. As stated hereinabove, if the petitioner-Company is given dealership, it will serve two purposes.

(1) it would generate employment and small people will be employed at dealership outlets.

(2) the profit that may be earned by the Corporation would not go to any individual but it would ultimately go to the State coffers.

15. Over and above these two purposes, it must be borne in mind that the Govt. Companies like the petitioner are not free to do business as they like. By the very nature of its constitution and the functions assigned to it, the petitioner Corpn. would be "State" within the meaning of Article 12 of the Constitution of India. Therefore, it would have to observe all the limitations to which the State and all other instrumentalities of the State are subjected to. Moreover, the working of the

Corporation can be discussed by the representatives of the people on the floor of assembly. Complaints can be made to the representatives of the people if there is any irregularity or malpractice in the business. If the interests of the consumers are to be served properly and if the constitutional objective enshrined in Article 39(b) of the Constitution of India is to be achieved, then there is no reason why the Government Company like the petitioner should be excluded from entering into the zone of competition for dealership of L.P.G. Moreover, there is no reason why the courts should infer ''exclusion'' which guidelines do not specifically exclude the Government Companies. The Courts should be slow in interpreting any Government Circular or guidelines so as to defeat the constitutional objective.

16. In above view of the matter, the contention raised by the respondent that by necessary implication, it should be held that the Government Companies like the petitioner is excluded, cannot be accepted.

17. This leads us to the question regarding the applicability of other criteria in respect of the age and income etc. to the petitioner-corporation.

18. As far as the criteria regarding age, residence and income are concerned, if one reads the guidelines properly, this criteria apply to individuals only. Under the caption "age of the applicant on the date of application" in col. 3.2, three categories have been mentioned. Nowhere the Corporation or Co-operative societies have been referred to therein. Similarly, under the caption "Educational qualification" and "Residence", nowhere the Co-operative societies and the Corporations have been referred to.

19. As far as the criterion regarding income is concerned, it reads as under:

The candidates income should not be more than Rs. 24,000/- per annum. The income for this purpose would include income of the candidate, his/her spouse, dependent children put together. In case the candidate happens to be dependent on his/her parents then his/her parent''s income would, also be taken into consideration for computing the total income.

20. This also does not refer to the income of the co-operative societies or that of any other Corporation. Moreover, it appears that with respect to co-operative societies, the practice of the respondent-companies and the Govt, is not to insist for the income limit of Rs. 24,000/- p.a. In fact, cases have come to me in which co-operative societies having annual income of more than Rs. 24,000/- have been considered eligible for such dealership. "This position is not disputed by the counsels for the respondent-companies of the old Selection Board. If with respect to co-operative societies, the income criterion does not apply then there is no reason why it should be made applicable to the Corporation like the petitioner. In fact, the criteria mentioned in the guidelines regarding age, residence, educational qualification and income appear to be applicable to individuals and partnership firms only and not to co-operative societies and the Corporations like the petitioner. Therefore, the

argument that; in view of the other criteria prescribed for eligibility, the petitioner-corporation would not be eligible, cannot be accepted.

21. The limitation imposed in the guidelines to the effect that a candidate should not be holding any other dealership of the same or any other Company also will not apply to the Government company like the petitioner. This limitation is applicable to individuals only. There is nothing to show that this limitation applies to co-operative societies and the Corporations like the petitioner. As a matter of fact the petitioner-corporation has been given more than one dealership in L.P.G.

It was submitted that having regard to the overall view of the guidelines, it should be held that the object of the Government is to see that the small persons be assisted in getting some employment and, therefore, the Corporations like the petitioner and other public and/or private corporations have been excluded. As far as this petition is concerned, I am not concerned with the case of public limits companies or private limited companies incorporated under the provisions of the Companies Act. Therefore, it is not necessary to consider from the view point of Corporation in private sector. In this case, we are concerned with the exclusion, by necessary implication of Government Companies like the petitioner. As stated hereinabove, even if the object of the Government is to see that the small persons are provided employment and they are assisted in getting gainful occupation, then also, this object cannot be achieved by excluding the Government Companies like the petitioner. The petitioner itself is a ''State'' within the meaning of Article 12 of the Constitution. The petitioner is not incorporated with a view to reap more and more profits as may be the case with regard to other private and public limited companies in private sector. The petitioner being a Government Company will not exploit the labour and at any rate, will not commit breach of the labour legislations and the small persons employed by it will have a relatively more secured tenure of service with it. The very object of the formation of the petitioner-corporation is to engage itself in promotion, improvement and development of the proper distribution and sale of foodgrains and other essential articles. It is also the object behind the formation of the Corporation to see that the consumer movement is strengthened. In this view of the matter, the object of assisting small people would better be served by giving dealership to the applicants like the petitioner-corporation and not by excluding it.

At any rate, as the guidelines stand today, it would be difficult, rather impossible to exclude the petitioner-corporation. It appears that enough thought is not given by the framers of the guidelines on this subject. If the respondent Oil Companies and the authorities in the Government feel that the Corporation like the petitioner be excluded from competition, and should not be allowed to enter into the zone of consideration, proper guidelines should be framed., It is needless to say that the guidelines that may be framed should again be in conformity with the provisions of the Constitution and particularly the objects enshrined in the Constitution.

22. In above view of the matter, both the petitions are required to be allowed. The respondents are directed to consider the application of the petitioner for dealership in question on merits and decide the same is accordance with law.

Rule made absolute accordingly.