
(2017) 14 Scale 30

SUPREME COURT OF INDIA

Case No: C.A. No 18917 of 2017 (@ Special Leave Petition (Civil) No 19996 of 2013)

Indian Oil Corporation
Limited & Anr.

APPELLANT

Vs

Kerala State Road
Trading Corporation &
Ors.

RESPONDENT

Date of Decision: Nov. 7, 2017

Acts Referred:

[Constitution of India](#), [Article 14](#), [Article 12](#) -#Electricity Act, 1948, Section 49

Citation: (2017) 14 Scale 30

Hon'ble Judges: Arun Mishra, J; Mohan M. Shantangoudar, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

1. Leave granted.,,,

2. The issue involved in the present matter(s) is with respect to the validity of the policy decision taken by the Government of India.,,,

3. Writ Petition (Civil) No.7517 of 2013 was filed in the High Court of Kerala at Ernakulam. The prayer made in the writ petition is as follows:,,,

I. Issue an appropriate writ, order or direction declaring that the diesel price hike introduced as per Ext.P1 to the Kerala State Road",,,

Transport Corporation, compelling the petitioner to pay enhanced rate than while purchasing diesel from private or other diesel bunk, is",,,

wholly arbitrary, illegal, unjust, unconstitutional and violative of Article 12 and 14 of the Constitution of India;",",,,

(ii) Issue any appropriate order commanding the 1st respondent to withdraw the dual pricing policy of diesel introduced as per Ext.P1 or in,,,

the alternative accord exemption to the petitioner, from the category of bulk consumer, and treat the petitioner as a retail customer for the",,,,

purpose of diesel purchasing.,,,

(iii) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to refund the excess diesel",,,,

charge collection in pursuance to clause (b) of Ext.P1, with interest at the treasury rate, with effect from 17.01.2013 to the petitioner,",,,

forthwith.,,,

4. The Ministry of Petroleum, Government of India, had taken a decision not to make the payment of subsidy to the bulk consumers on purchase",,,,

of diesel. Consequently, the bulk consumers were required to make the payment, which was a little higher than what was being paid by the",,,,

retailers. The said decision was questioned in the various writ applications filed in different High Courts.,,,

5. It was averred in the writ application, that Kerala State Road Transport Corporation had been duly established and formed on 01.04.1965, and",,,,

that it had 6108 buses, operating 5855 schedules per day. An average of 35 lakh passengers used the services provided by the petitioner, the",,,,

average daily collection was of Rs. 4.48 crores. The corporation presently has 30,132 permanent employees and around 10,000-temporary/"",,,,

provisional/ impaneled employees. Since petitioner is an establishment functioning without profit motives, with a social obligation to render",,,,

maximum service to the public, it extended free traveling services to the physically differently abled persons, freedom fighters, journalists,",,,

press/media reporters, MLAs (Members of Legislative Assembly) and M.Ps. (Members of Parliament). Thus, the total number of free passes",,,,

issued so far was 52,666.",,,

6. The first respondent in the Writ Petition- Government of India, through the Ministry of Petroleum and Natural Gas, issued direction dated 17th",,,,

January 2013 in which, it was observed, that sale of diesel, to all consumers taking bulk supplies directly from the installations of the Oil Marketing",,,

Companies (for short ""the OMCs""), be made at the non-subsidized, market-determined price, with immediate effect. The OMCs would not be",,,

eligible for any subsidy on such direct sale of diesel to bulk consumers. Thus, the petitioner claimed, that the respondent No.1 has meted out",,,

discrimination as against the Kerala State Road Transport Corporation in violation of Article 14 of the Constitution of India. The corporation was",,,

purchasing diesel in bulk, with the daily consumption of diesel being 4,10,000 litres, and was suffering a loss of Rs. 18/- crores in a month, with the",,,

annual estimated loss of Rs. 216/- crores.,,,

7. In other States as well, writ applications were filed more or less on similar grounds. In some States, an interim stay was granted. The decision of",,,

the Government of India was claimed to be arbitrary and that it would make rendering service to the public at large difficult. There was no nexus to",,,

be achieved by the aforesaid policy decision. It was also obligatory on the part of the State Government to provide a subsidy. It was obligatory on",,,

the part of the first respondent to provide maximum concession/subsidy/benevolence in the matter of sale of diesel to the State Road Transport",,,

Corporation. The respondents have ignored their constitutional obligation. It would make very difficult, the payment of pension to the pensioners,",,

and salary to the existing employees. Prayer was made to direct the Respondent No.1 to withdraw the dual pricing policy of diesel that had been",,,

introduced; in the alternative, to accord exemption to the writ petitioners from the category of bulk consumer, treating them as a retail customer for",,,

the purposes of diesel purchasing.,,,

8. The stand of the Government of India is that the policy has been made after due deliberations. In the year 2002, the Administered Pricing",,,

Mechanism for petroleum products was dismantled, with the decision that the pricing of all petroleum products, except those of PDS Kerosene",,,

and Domestic LPG, would be market-determined. However, the Government of India did not allow a full de-control of the price of Diesel and",,,

continued to regulate the same. The OMCs incurred under-recovery on sale of diesel and other regulated products due to non-revision of prices in,,,

line with the international prices. By 2007, the combined borrowing of the OMCs was Rs. 48,430/- crores due to the under-recoveries made from",,,

the sale of subsidized petroleum products. Despite measures having been taken, the continued incurrence of under-recoveries by the OMCs has",,,

adversely affected their financial and liquidity position, compelling them to borrow heavily from the market.",,,

9. In the year 2009, the Government of India appointed an Expert Group under the Chairmanship of Dr. Kirit S. Parikh, to advise on a viable and",,,

sustainable system of pricing of petroleum products, and also to examine the impact of an increase in the price of diesel. The Expert Group did not",,,

find compelling reasons to subsidize the petroleum products. The recommendations of the Expert Group were examined in detail and then placed,,,

before the Empowered Group of Ministers.,,,

10. On 26.06.2010, the Empowered Groups of Ministers (For short ""the EGoMs"") decided, that the price of petrol was to be made market-",,,

determined by Government of India, and the same would be for both, at Refinery Gate and at the Retail level. However, in order to insulate the",,,

common man from the impact of the rise in oil prices in the international market, and in view of the domestic inflationary conditions, the",,,

Government of India continued to modulate the Retail Selling Prices of Diesel. Several steps were taken. On March 2012, Industry Performance",,,

Review was conducted and, it was observed, that around 17.77% of the total diesel sale in India was directly made to the bulk consumers,",,,

including Railways and State Transport Undertakings. It was further observed, that on 31.12.2012, the combined borrowings of the OMCs was",,,

Year,"Under-realizations on

sensitive petroleum products","Under-realizations on

Diesel", "Share of Diesel in total

under-realisation (%)

2004-05, "20,146", "2,154", 11

2005-06, "40,000", "12,647", 32

2006-07, "49,387", "18,776", 38

2007-08, "77,123", "35,166", 46

2008-09, "1,03,292", "52,286", 51

2009-10, "46,051", "9,279", 20

2010-11, "78,190", "34,706", 44

2011-12, "1,38,541", "81,192", 59

'''

'''

2012-13, "1,24,854", "73,815", 59

22. With respect to other states, suffice it to observe that it would be open to the respective parties to work out equities as may be considered",,,

appropriate by them, otherwise payment has to be made by the bulk consumers to the Oil Marketing Companies (OMCs).",,,

23. It was also stated in the matters of the State of Karnataka and State of Tamil Nadu, that there was no interim order and the concerned",,,

Transport Corporations of the States have incurred no liability. The statement is placed on record.,,,

24. The writ petitions deserve dismissal and they are hereby dismissed. The appeals, as well as transferred cases, are accordingly, disposed of. No",,,

costs.,,,