

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR.**

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:: ORDER ::

Prem Pal Singh Vs. UOI & Ors.

D.B. CIVIL SPECIAL APPEAL (W) NO. 465/2010.

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PRESENT

HON'BLE THE CHIEF JUSTICE MR. JAGDISH BHALLA
HON'BLE MR. JUSTICE DINESH MAHESHWARI

Dr. P.S. Bhati, for the appellant.

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BY THE COURT:

This intra-court appeal is directed against the order dated 12.05.2010 passed in CWP No.10524/2009 whereby the learned Single Judge of this Court has dismissed the writ petition filed by the petitioner-appellant seeking to question the award of LPG distributorship at 4 places in Barmer District.

The petitioner-appellant submitted in the writ petition that he was given the distributorship of Indane Gas at Balotra District Barmer under the Para Military Personnel category; that his gas agency was falling under the rural category having total customers to the tune of 9,600 in the span of 10 years of operation; that the average re-filling sale was of 5551 cylinders per month; and that he was supplying the cylinders in all the nearby villages. The petitioner stated the grievance against the advertisement dated 17.10.2009 whereby the respondents

proposed to grant new distributorships and wherein were included 4 new agencies in the region at Jasol, Gudamalani, Asotra and Indrana. According to the petitioner, in all these 4 locations, he was providing new gas connection on demand and there was no waiting list and the re-filling sale had not yet touched the figure of viability mark of 6000 cylinders per month; and with opening of these 4 new agencies, all shall share about 2000 refills of cylinders per month and, thus, not only the new one shall be unviable, the petitioner's agency shall also become unviable.

The learned Single Judge found no case for interference in the writ jurisdiction particularly for the petitioner having no right to prevent his principal petroleum company from opening new outlets and observed that the petitioner has agreed to the opening of other outlets in the area by signing agreement with the principal. The learned Single Judge was also of opinion that the decision had been taken by the petroleum company to provide LPG gas to rural public and the new outlets were going to serve such public cause. The learned Single Judge proceeded to dismiss the writ petition while noticing and observing thus:

"It is true that petitioner being son of a person of paramilitary person got the Gas Distributorship, but he himself was knowing it well that new and more dealers can be appointed even by his own gas supply agency. In view of this fact alone, the petitioner cannot have an locus standi to challenge the decision to give more outlets in the area. Be it as it may be, another contention of the petitioner is that there is limit fixed by the respondents themselves that for the town upto 10 lacs of population, the dealer can distribute cylinders upto 8000 and since the petitioner has not achieved that target, therefore, no new outlet can be opened is also of no help to the petitioner because of the reason that said circular clearly mentions that, that will be the revised ceiling limit of making available

of cylinders to the dealer and it nowhere says that unless this target is achieved by one dealer no new outlet will be opened. From perusal of the scheme it is clear that the location of setting up LPG Distributorship are required to be done in accordance with the scheme after examining potential of average monthly sale of 600 LPG cylinders of 14.2 kg and 1800 customers with monthly per capita consumption of about 5 kg and in the light of the other considerations referred in the scheme. It appears from the manual for selection of the distributorship under the Scheme that the issue of supply to the rural areas have been considered and it has been observed so :

"The concept was appreciated and accepted by MoP&NG. The new business model for distribution of LPG in Rural Area has been named by MoP&NG as 'Rajiv Gandhi Gramin LPG Vitrak (RGGLV) and the underlying philosophy of the scheme is to provide income generation opportunity to youth and empower women at the village level itself. MoP&NG advised the broad guidelines for selection vide its letter No. P-20020/22/2009-Mkt. dated August 6, 2009 and advised OMCs to formulate detailed guidelines."

The above scheme clearly suggests that the decision was taken consciously after taking into account the fact that there is a substantial increase in the LPG users in urban and semi-urban areas, but so far as rural areas are concerned, that the use is low because of the non-availability of the distributors.

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."

Seeking to assail the order aforesaid, it is submitted by the appellant that the respondents were trying to create illegitimate competition in restrictive trade by violating their own guidelines and the decision being highly irrational and discriminatory calls for interference by the writ Court. It is submitted that even when the appellant had entered into the

agreement with Indian Oil Corporation, the Company was not entitled to violate the norms and guidelines set by the competent authorities and the concerned Ministry. It is also submitted that in the present case, the decision having been taken against the norms and without having regard to the viability, cannot be sustained. The learned counsel for the petitioner-appellant has referred to the decision in the case of Tata Cellular Vs. Union of India : (1994) 6 SCC 651 and particularly to paragraphs 70, 71 and 77 therein.

Having given our thoughtful consideration to the matter, we are unable to find any reason to show interference in this case.

The paragraphs referred by the learned counsel from the case of Tata Cellular (supra) read as under:-

“70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. *Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State.* The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

71. Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.

77. The duty of the court is to confine itself to the question of legality. Its concern should be :

1. Whether a decision-making authority exceeded its powers ?

2. Committed an error of law,
3. committed a breach of the rules of natural justice,
4. reached a decision which no reasonable tribunal would have reached or,
5. abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfillment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :

- (i) Illegality : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.
- (ii) Irrationality, namely, Wednesbury unreasonableness.
- (iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time. As a matter of fact, in *R. v. Secretary of State for the Home Department, ex Brind*, Lord Diplock refers specifically to one development, namely, the possible recognition of the principle of proportionality. In all these cases the test to be adopted is that the court should, "consider whether something has gone wrong of a nature and degree which requires its intervention".

Viewed in the light of the principles expounded by the Hon'ble Supreme Court, there appears hardly any ground for judicial review in the present case. It has rightly been pointed out by the learned Single Judge that the appellant has no legal right to prevent appointment of other distributors. Moreover, the object and purpose being to provide more opportunities at the village level, the decision making authority cannot be said to have exceeded or abused its powers or having acted unfair.

We are unable to find any case of illegality, irrationality or procedural impropriety nor any other reason wherefor the

respondents could be prohibited from granting new distributorship in the rural areas.

In our view, the learned Single Judge has rightly dismissed the writ petition and we concur with the reasonings of the learned Single Judge.

In the result, the appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J. (JAGDISH BHALLA), CJ.

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