THE HIGH COURT OF MADHYA PRADESH
WP-2001-2019
(Munnalal Agrawal and another Vs. Union of India and others)

Gwalior, Dated : 11-02-2019

Shri Brajesh Tyagi, counsel for the petitioners.

Shri Nakul Khedkar, counsel for the respondent No. 1.

Shri Sankalp Sharma, counsel for the respondent No. 3.

This petition under Article 226 of the Constitution of India has been filed seeking the following relief:-

> "1) The Advertisements "Annexure P/2" and further proceedings pursuant thereto may kindly be quashed and set aside.
> 2) The respondents may be directed to comply by the prevailing laws before initiating the process for establishment of new retail outlets in the state of Madhya Pradesh.
> 3) That, any other relief which this Hon'ble Court deems fit and proper may kindly be granted."

The petitioner No. 1 is running the retail outlet of Bharat Petroleum Corporation Limited situated at Ramdas Ghati, Bahodapur District Gwalior, whereas the petitioner No. 2 is running a retail outlet of BPCL located at Rampurkala, District Morena. It appears that the respondents No. 3, 4 and 5, who are the Indian Oil Corporation, Bharat Petroleum and Hindustan Petroleum Corporation, have issued an advertisement for establishment of an additional retail outlet in various parts of the State and the selection process has been initiated. It is submitted that respondents No. 3 to 5 are going to establish an additional retail outlet and have issued an advertisement

to establish retail outlets more than double of the existing retail outlets established in the last 70 years without examining the need and availability of the business and settled the norms for establishing the retail outlets. It is submitted by the counsel for the petitioners that before establishing the new retail outlets, no assessment, feasibility and viability has been carried out by the respondents. It is further submitted that the advertisement dated 13-14 December, 2018 for establishment of new retail outlet has been issued in violation of the policies and guidelines issued by the Government of India through Ministry of Petroleum and Natural Gas by office memorandum dated 19.01.2012 as well as the guidelines issued by the Indian Road Congress as well as in contravention of the directions given by the Petroleum and Natural Gas Regulatory Board. It is submitted that establishment of mass retail outlets would have the adverse impact on the existing retail outlet dealers, who were allotted the dealership in the past. There was an implied guarantee that the oil marketing companies would not act detrimental to the interest of the dealers. Thus, it is prayed that the existing dealers are entitled for protection against discreet opening of petroleum outlets in nearby areas. It is further submitted that the oil companies have issued several reminders to the dealers from time to time to achieve the target with a threat to take action against them and if the number of retail outsets is increased, then it would be very difficult for existing retail outlet dealers to achieve the target so fixed by the oil marketing company.

The oil marketing company is trying to open further retail outlets in the areas where several outlets are already in operation. The petroleum products are highly inflammable products and their exploration, transportation, offloading and storing and sale points and facilities should not be granted like any other products. For establishing the retail outlets several precautionary measures are required to be taken. Thus, in nutshell the petitioners have sought the quashment of the advertisement inviting applications for opening of the new retail outlets.

It is submitted by the counsel for the respondent No. 3 that while exercising the powers under Article 226 of the Constitution of India, the Courts should not interfere with the policy matters of the authorities. It is further submitted that the present petition has been filed to protect the private business interest and monopolistic attitude of the petitioners. They don't want that any more retail outlet should be opened in the same locality, so that their monopoly may be retained. It is further submitted that the policy decisions of the executive are to be left to them and the authorities must have opportunity and freedom in framing the policies.

Heard the learned counsel for the parties.

The Supreme Court in the case of **Federation HAJ PTOS of India Vs. Union of India** by order dated 04.02.2019 passed in **Writ Petition (Civil) No. 4/2019** has held as under:-

"18) Going by the aforesaid considerations, the

respondent has carved out the categories of HGOs on the parameters of experience as well as financial strength of HGOs. Such a decision is based on policy considerations. It cannot be said that this decision is manifestly arbitrary or unreasonable. It is settled law that policy decisions of the Executive are best left to it and a court cannot be propelled into the unchartered ocean of Government policy {See ***Benett Coleman & Co.*** v. ***Union of India***}. Public authorities must have liberty and freedom in framing the policies. It is well accepted principle that in complex social, economic and commercial matters, decisions have to be taken by governmental authorities keeping in view several factors and it is not possible for the courts to consider competing claims and to conclude which way the balance tilts. Courts are illequipped to substitute their decisions. It is not within the realm of the courts to go into the issue as to whether there could have been a better policy and on that parameters direct the Executive to formulate, change, vary and/or modify the policy which appears better to the court. Such an exercise is impermissible in policy matters. In ***Bennett Coleman***'s case, the Court explained this principle in the following manner:

> "The argument of the petitioners that Government should have accorded greater priority to the import of newsprint to supply the need of all newspaper proprietor to the maximum extent is a matter relating to the policy of import and this Court cannot be propelled into the unchartered ocean of governmental policy."

19) The scope of judicial review is very limited in such matters. It is only when a particular policy decision is found to be against a statute or it offends any of the provisions of the Constitution or it is manifestly arbitrary, capricious or *mala fide*, the court would interfere with such policy decisions. No such case is made out. On the contrary, views of the petitioners have not only been considered but accommodated to the extent possible and permissible. We may, at this junction, recall the following observations from the judgment in ***Maharashtra State Board of Secondary & Higher Secondary Education*** v. ***Paritosh Bhupeshkumar Sheth***:

> "16... The Court cannot sit in judgment over the wisdom of the policy evolved by the Legislature and the subordinate regulation-

> making body. It may be a wise policy which will fully effectuate the purpose of the enactment or it may be lacking in effectiveness and hence calling for revision and improvement. But any drawbacks in the policy incorporated in a rule or regulation will not render it ultra vires and the Court cannot strike it down on the ground that in its opinion, it is not a wise or prudent policy, but is even a foolish one, and that it will not really serve to effectuate the purposes of the Act. The Legislature and its delegate are the sole repositories of the power to decide what policy should be pursued in relation to matters covered by the Act and there is no scope for interference by the Court unless the particular provision impugned before it can be said to suffer from any legal infirmity, in the sense of its being wholly beyond the scope of the regulation-making power or its being inconsistent with any of the provisions of the parent enactment or in violation of any of the limitation imposed by the Constitution."

20) We may also usefully refer to the judgment in ***State of Madhya Pradesh*** v. ***Nandlan Jaiswal***5. In this judgment, licence to run a liquor shop granted in favour of *A* was challenged as arbitrary and unreasonable. The Supreme Court held that there was no fundamental right in a citizen to carry on trade or business in liquor. However, the State was bound to act in accordance with law and not according to its sweet will or in an arbitrary manner and it could not escape the rigour of Article 14. Therefore, the contention that Article 14 would have no application in a case where the licence to manufacture or sell liquor was to be granted by the State Government was negatived by the Supreme Court. The Court, however, observed:

> "But, while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of

> regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government had done, unless it appears to be plainly arbitrary, irrational or *mala fide*."
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> 21) It is not necessary to multiply the cases as the aforesaid principle can be said to be cast in stone. It is, therefore, difficult to agree to the aforesaid argument of the petitioners."

The Rajasthan High Court in the case of **Rajasthan Petroleum Dealers Association through its Secretary, Jaipur Vs. Union of India and others** by order dated 20.09.2011 passed in **S.B. Civil Writ Petition No. 10441/2010** has held as under:-

> "15. The present writ petition is nothing but a camouflage to prevent possible competition by other retail outlets. The discretion & freeedom of OMCs to set up more outlets with the expansion of road network and consumer markets has neither been disputed nor it can possibly be disputed. From the material placed on record before this Court by the respondent Union of India and OMCs, it is clear that there is no breach of any guidelines, which are not even statutory in nature, by the OMCs while inviting applications for such retail outlets. The allegation that lesser sale targets have been fixed for such applicants than the standard quota does not make out any ground for prohibiting the OMCs for allotting such retail outlets. In their replies, the OMCs have clearly come out with a case that they undertook the cost benefit analysis for each retail outlet to be opened by comparison of possible sales with actual sales of existing retail outlets and profit to be earned by it and it is only upon finding such economic viability for such new proposed retail outlet that such advertisements have been issued with the approval of the Board of Directors of respective OMCs at the highest level and there is no arbitrariness or illegality pointed out in the decision making process. A fair and legitimate competition coupled with the need of increased number of retail outlets with the expansion

> and development of road network & consumer market cannot be denied or disputed."

Thus, it is clear that the petitioners are merely rivals in trade. The establishment of competitive business may have the effect on their profitability, but it would not give rise to any legal flaw.

The Supreme Court in the case of **Jasbhai Motibhai Desai Vs. Roshan Kumar and others** reported in **(1976) 1 SCC 671,** has held as under:-

> "47. Thus, in substance, the appellant's stand is that the setting up of a rival cinema house in the town will adversely affect his monopolistic commercial interest, causing pecuniary harm and loss of business from competition. Such harm or loss is not wrongful in the eye of law, because it does not result in injury to a legal right or a legally protected interest, the business competition causing it being a lawful activity. Juridically, harm of this description is called *damnum sine injuria*, the term *injuria* being here used in its true sense of an act contrary to law. The reason why the law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to society at large.
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> 48. In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He has no legal peg for a justiciable claim to hang on. Therefore he is not a "person aggrieved" and has no locus standi to challenge the grant of the no-objection certificate."

Thus, this Court is of the considered opinion that the petitioners have failed to make out any *prima facie* case warranting interference

in the advertisement.

Accordingly, this petition fails and is hereby dismissed *in limine.*

(G.S. Ahluwalia)
Judge

Abhi