

(2019) 09 OHC CK 0007

In the Orissa High Court

Case No : D.B. Writ Petition (Civil) (PIL) No. 12434, 18169 Of 2020

Arun Kumar Acharya And Others

APPELLANT

Vs

National Highway Authority Of India And Others

RESPONDENT

Date of Decision : 24-09-2019

Acts Referred:

National Highway Act, 1956 — Section 5, 25, 28, 31, 43
Control Of National Highways (Land & Traffic) Act, 2002 — Section 28(2)
General Clauses Act, 1897 — Section 5
Rice Milling Industry (Regulation) Act, 1958 — Section 8(3)(c)
Petroleum Rules, 2002 — Rule 143, 144, 144(5)
Constitution Of India, 1950 — Article 162, 226, 227, 309

Citation : (2019) 09 OHC CK 0007

Hon'ble Judges : Mohammad Rafiq, CJ;B.R. Sarangi, J

Bench : Division Bench

Advocate : Dr. A.K. Mohapatra, A.K. Patra, B. Shadangi, Yeeshan Mohanty, R.K. Routray, K.K. Mohapatra, B.P.B. Bahali, Dr. S.K. Kanungo, S. Palit, A.K Bose, S.P. Mishra, S. Mishra, Amitav Das, D.P. Dhal, B.S. Dasparida, S.K. Dash, S.Mohapatra, K. Mohanty, M.K. Agrawalla, B.P.B. Bahali, Sujata Jena

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J

1. Both the writ petitions, in the guise of public interest litigation espousing the public cause, have been filed seeking quashment of order dated 19.03.2020 passed by the Collector, Jagatsinghpur granting "No Objection Certificate" (NOC) under Rule 144(5) of the Petroleum Rules, 2002 in favour of Hindustan Petroleum Corporation Ltd. (HPCL), Odisha for permitting Usharani Sahoo to set up retail outlet over plot no. 1002(P), Khata No. 124 and Plot No. 1004(P), Khata No. 119, Kisan Gharabari, Mouza-Iswarpur, Tahasil- Balikuda, Dist- Jagatsinghpur on the ground that the same is violative of Gazette Notification dated 24.01.2020 and the guidelines issued on 24.07.2013 by the Government of India, Ministry of Road Transport & Highways.

Since relief sought in both the writ petitions is akin to each other and their cause of action is also common, they were heard together and are disposed of by this judgment, which will govern both the cases.

2. The factual matrix of the case, in hand, is that the Indian Roads Congress (IRC), which is the apex body of Highway Engineers in the country, was set up in December, 1934 on the recommendations of the Indian Road Development Committee, otherwise known as Jayakar Committee, set up by the Government of India with objectives of road development in India. IRC works in close collaboration with Ministry of Road Transport and Highways (MoRTH). The Director General (Road Development) and Special Secretary, MoRTH is the honorary treasurer of the IRC. The IRC issues guidelines from time to time on the location, layout and access to fuel stations in the National Highway, State Highways and Major District Roads for greater need, for road safety and also on other subject matter of road construction, which are universally followed by the Central Government and several State Governments, including Odisha in PWD and other concerned departments. MoRTH in its letter dated 20.09.2019 on road safety measures stressed on the strict adherence to the codes and guidelines issued by the Ministry and IRC from time to time, non-implementation of which was very seriously viewed by the Supreme Court Committee on road safety.

2.1. As per Clause 1.2 of the IRC guidelines on the establishment of fuel outlets, the norms were finalized in consultation with the Ministry of Petroleum and the oil companies, which are binding on them. Similarly, as per Clauses 3.2 and 4.5 of the IRC guidelines, the norms and distances are applicable to all fuel stations along the undivided and divided carriageway sections of all categories of roads, i.e., National Highway, State Highways, Major District Roads and Rural Roads in plain, rolling and hilly terrain.

2.2. The guidelines/norms were issued by the MoRTH on 24.07.2013 for access permission to fuel stations etc. along National Highways. As per Appendix-I of the said guidelines, an applicant should submit self-certified proposal for seeking access permission to the Highway Administration. It is also specified in Clause-1 of the Appendix-I that the norms have been finalized in conformity to IRC: 12. In clause- 4.2 thereof it is categorically prescribed that the location of the proposed fuel station should not interfere with future improvements of the highway and the nearby intersections/junctions. Clause-4.5, 4.5.1, 4.6, 6 and 8 thereof prescribe the minimum distance criteria and the same should be adhered to.

2.3. In consonance with the guidelines, referred to above, an advertisement was issued on 25.11.2018 by the HPCL for appointment of retail outlet dealerships in the State of Odisha. Therein at serial no.2 for Bhubaneswar region in the district of Jagatsinghpur for location Balikuda Block (Balikuda Block Chowk to Saw Mill Chhak on RHS of NH.55) of regular type of RO (Retail Outlet) for category OBC was advertised. Pursuant to such advertisement, Usharani Sahoo applied for the said retail outlet offering her land situated at plot no. 1002 (p), Khata No. 124 and plot no. 1004 (p), Khat No. 119, Mouza-Iswarpur, Tahasil- Balikuda, Dist.-

Jagatsinghpur. The HPCL, finding the site as most suitable, issued Letter of Intent (LOI) in favour of Usharani Sahoo on 16.10.2019. Accordingly, the HPCL, as per Rule 144 (5) of the Petroleum Rules, 2002, applied for grant of NOC in its favour from the Collector, Jagatsinghpur for installation of retail outlet at the proposed site, along with relevant documents, on 21.11.2019. The Revenue Inspector, Kusunpur submitted a report on 04.01.2020 to the Tahasildar, Balikuda furnishing the required information on the grant of NOC. In the said report at serial no.2 it was categorically reported that both the plots of proposed site are adjacent to NH-55 and Nayanjori (roadside land) and it is 100 metres away from inhabitation. At serial no.3, it was however reflected that the proposed land is situated at a distance of 7 meters from NH-55. At serial no.6 it was indicated that the proposed land is situated 300 metres away from Iswarpur Primary School. At serial no.9 it was reported that the proposed land is situated 50 metres away from ESSAR Petrol pump. The Tahasildar Balikuda, on 07.01.2020, forwarded the report of the Revenue Inspector to the Addl. District Magistrate, Jagatsinghpur.

2.4 At that point of time, an extraordinary gazette notification was issued by the MoRTH of the Central Government on 24.01.2020 in regard to the details of land acquisition specifying the State, district, tahasil and village, as per the schedule to the said gazette notification, for up-gradation to 2/4 laning with paved shoulders of certain distance of NH-55. During the enquiry conducted by the R.I., basing on which report dated 04.01.2020 was submitted, the schedule land, along with village Iswarpur, was coming under NH-55. After the notification dated 24.01.2020 issued by MoRTH, the suit plots and mouza-Iswarpur were not coming under NH-55. Consequently, as per instructions of the Collector & District Magistrate, Jagatsinghpur, vide letter dated 29.02.2020, Tahasildar, Balikuda directed R.I., Kusunpur to cause enquiry and submit a report. Accordingly, an enquiry was conducted by the R.I., Kusunpur and report was submitted on 06.03.2020. Basing on such report, Tahasildar, Balikuda submitted a check list on 06.03.2020 for NOC clarifying therein that Iswarpur village is not coming under the NH-55, as per the gazette notification dated 24.10.2020. After considering the same, the Collector, Jagatsinghpur, vide order no. 4059 dated 19.03.2020, granted NOC in favour of HPCL for setting up of a retail outlet over the schedule land, which is subject matter of challenge in both the writ applications.

3. Dr. A.K. Mohapatra, learned Sr. Counsel appearing along with Mr. A.K. Patra, learned counsel for the petitioner in W.P.(C) No.12434 of 2020 contended that the NOC granted by the Collector, Jagatsinghpur in favour of HPCL for installation of retail outlet at the proposed location, which has been allotted in favour of Usharani Sahoo, is not sustainable in the eye of law as the said location does not fulfill the eligibility criteria and requirement as per the IRC guidelines read with the guidelines issued by the MoRTH on 24.07.2013 requiring to maintain distance of 300 metres from the intersection or road and inhabitation, as well as another petrol pump and, as such, adherence to such distance is mandatory. More so, the area being accident prone due to traffic jam and in the nearby vicinity schools

are situated and that apart one 11 KV electricity line is running over the proposed location, it is contended that the writ petitions have been filed in the greater public interest and, therefore, the NOC issued by the Collector, Jagatsinghpur in favour of the HPCL should be quashed.

To substantiate his contention, he has relied upon the judgments of the apex Court as well as of this Court in *Indian Oil Corporation Ltd. v. Arti Devi Dangi*, (2016) 15 SCC 480; *Ujwala Santosh Kendre v. Bharat Petroleum Corporation Limited*, Nashik, 2018 (2) ABR (NOC) 38 (BOM.) at Nagpur Bench; *Rananjoy Bhattacharya v. Union of India*, AIR 2013 (NOC) 312 (CAL.); *M.S. Jayaraj v. Commissioner of Excise, Kerala*, AIR 2000 SC 3266; *Mehsana District Central Cooperative Bank Ltd. v. State of Gujarat*, AIR 2004 SC 1576; *Meghwal Samaj Shiksha Samiti v. Lakh Singh*, (2011) 11 SCC 800; *Friends Colony Development Committee v. State of Orissa*, AIR 2005 SC 1; and *Dilip Kumar Prusti v. Collector and District Magistrate, Sambalpur*, 1996 (II) OLR 13.

4. Mr. Y. Mohanty, learned Sr. Counsel appearing along with Mr. S.K. Kanungo, learned counsel for the petitioner in W.P.(C) No.18169 of 2020 endorsed the arguments advanced by Dr. A.K. Mohapatra, learned Sr. Counsel appearing on behalf of the petitioner in the connected writ petition and contended further that while granting NOC the Collector, Jagatsinghpur has not passed a reasoned order and, as such, NOC has been granted without any application of mind. It is further contended that the Collector, Jagatsinghpur has given NOC in favour of the HPCL in respect of the site belonging to Usharani Sahoo, who is a single applicant pursuant to advertisement issued for grant of retail outlet at Iswarpur. The proposed site at Iswarpur is within SH-43 and the lay out plan of which has been approved on 14.11.2019 and, as such, the NOC has been granted in violation of gazette notification dated 24.01.2020. It is further contended that the specific location, i.e., on RHS of NH-55 is an essential condition, as per the advertisement, and compliance of the same is mandatory in nature, but the proposed location is under NH-55 at the time of advertisement dated 25.11.2018, and in view of the gazette notification dated 24.01.2020 the proposed Iswarpur village is not coming under NH-55. Thereby, the NOC, having been granted by the Collector without any application of mind, cannot be sustained in the eye of law. As such, the NOC has been granted in deviation of the specific condition in the advertisement and against the touchstone of public interest. It is also contended that by letter dated 11.07.2019, the Executive Engineer, NH Division informed that the alignment of NH-55 from Kandarpur to Nuagaon, including proposed by-pass from Balikuda-Kania-Borikina-Ibrisingh, 17.60 KM is under active consideration for approval from NHA and, as such, the matter is still pending. Therefore, it is contended that the NOC so granted by the Collector cannot sustain in the eye of law and the same should be quashed.

To substantiate his contention, he has relied upon the judgments of the apex Court in *Prafull Goradia v. Union of India*, (2011) 2 SCC 568; *D.N. Jeevaraj v. Chief Secretary, Govt. of Karnataka*, 2016 (I) OLR (SC) 179; and *Kanwar Singh*

Saini v. High Court of Delhi, 2012 (I) OLR (SC) 116.

5. Though notice was issued to all the opposite parties and the matter was heard and judgment was reserved vide order dated 13.08.2020, but in course of preparing judgment it was revealed that notice as against opposite party no.1-NHAI was not made sufficient. Therefore, the matter was listed under the heading "to be mentioned" and the same was taken up on 19.08.2020, on which date direction was given to the petitioners to serve copy of the writ petitions on Mr. Amitav Das, learned counsel who usually appears for NHAI. In compliance of the said order, copy of the writ petitions were served on Mr. Amitav Das, who entered appearance and filed memo contending that NHAI be deleted from the cause list, as vide notification dated 15.03.2016 the Central Government, in exercise of power conferred by Section 5 of the National Highway Act, 1956, directs the State Government of Odisha to execute the new NH-55. Thereby, NHAI has no role to play in the matter. Consequentially, learned State Counsel was called upon to obtain instructions, vide order dated 31.08.2020, to file specific affidavit with regard to applicability of the guidelines and norms issued by the MoRTH dated 26.06.2020. Therefore, in view of the memo filed by Mr. Amitav Das, learned counsel, though he was present in Court but he did not participate in the hearing.

6. Mr. S.P. Mishra, learned Sr. Counsel appearing along with Mr. S. Pattnaik, learned counsel for HPCL raised preliminary objection with regard to maintainability of the public interest litigation by the petitioners and contended that at the behest of the proprietor of a nearby retail outlet the petitioners have been set up to file present writ petitions before this Court because of business rivalry, for which the same should be dismissed. He has justified the NOC granted by the Collector, Jagatsinghpur in favour of HPCL and contended that the petitioners have not come up to this Court with clean hands by disclosing the correct facts. It is contended that an advertisement was issued on 25.11.2018 for appointment of Regular/Rural outlet dealerships for various location at Balikuda Block chowk to saw mill chhak on the right hand side of NH-55 under type of retail outlet being regular for OBC category. As per the terms and conditions mentioned in the broacher for dealership selection 2018, Usharani Sahoo offered land for retail outlet purpose which was abutting to NH-55 and she being the sole applicant for the aforesaid location, was duly selected as per the prescribed procedure. It is further contended that as per the dealership guidelines the applicant was asked to obtain information from National Highway Authorities about the status of the road in respect of the advertised location at Balikuda Block (Balikuda Block chowk to saw mill chhak on RHS of NH-55). Accordingly, the Executive Engineer, NH Division, vide letter dated 11.07.2019 responded that vide letter no.RO/BBSR/11011/NH/IAHE/39/ORS/10-11/08/178 /2010-2449 dated 14.03.2019 the alignment of NH-55 from Kandarpur to Nuagaon, including the proposed bye-pass from Balikuda-Kania-Borikina-Ibrisingh-17.60 km is under active consideration for approval. The plot offered by Usharani Sahoo is situated in between Balikuda Block chowk to saw

mill chhak and is not coming under the proposed bye-pass in the proposed alignment. Therefore, the Corporation issued letter of intent on 16.10.2019 selecting Usharani Sahoo for the purpose of setting up of the retail outlet, after the selection process was completed on 14.10.2019, accordingly LOE was issued on 16.10.2019. By the subsequent gazette notification dated 24.01.2020 issued by the MoRTH in respect of NHAI, the mouza/village Iswarpur was excluded from the National Highway. Therefore, the location of the land where the retail outlet is proposed to be established remains to be the same, as the selection process for the said retail outlet for the advertized location "Balikuda Block chowk to saw mill chhak" in the district of Jagatsinghpur, was completed on 14.10.2019. It is further contended that HPCL, after obtaining due statutory approval from the district administration under Rule 144 of Petrol Pump Rules, 2002, undertaken the development of the land by the dealer to make it habitable and imbedded the storage tank in the earth and provided the pumps and other facilities considered necessary at the retail outlet and, as such, due investments have also been made by the HPCL and the selected candidate. As such, the retail outlet of the HPCL has been commissioned on 27.06.2020 and petroleum products have already been supplied to Usharani Sahoo. But while awaiting for final approval to commence its operation, at that point of time, these public interest litigations have been filed at the behest of the rival businessmen, whose petrol pumps are situated nearby vicinity, and thereby the writ petitions in the guise of public interest litigation are liable to be dismissed as not maintainable.

To substantiate his contention, he has relied upon the judgments of the apex Court in Santosh Sood v. Gajendra Singh, (2009) 7 SCC 314; Ms. Gammon India Ltd., v. Union of India, AIR 1974 SC 960; M/s Saraswati Industrial Syndicate Ltd. v. Commissioner of Income Tax, Haryana, AIR 1999 SC 1218; and Jasmine Sirajudeen v. State of Kerala, High Court of Kerala, Ernakulam, (W.A. No. 27 of 2020 and batch of matters disposed of on 05.03.2020).

7. Mr. S. Palit, learned Addl. Government Advocate appearing for opposite parties contended that the Addl. District Magistrate, Jagatsinghpur directed the Tahasildar, Balikuda on 05.12.2019 to submit a detailed inquiry report in order to grant NOC for setting up of the retail outlet by HPCL. In response thereto, on 07.01.2020, the Tahasildar, Balikuda submitted a detailed inquiry report, basing on the joint inquiry report dated 04.01.2020 of the Revenue Supervisor, Balikuda and R.I. Kusunupur along with the objection filed by Mr. Ajayananda Mohaptra, Advocate, Bhanjanagar, Ganjam. Thereafter, notification was issued by MoRTH on 24.01.2020. Therefore, the Collector, Jagatsinghpur, vide letter dated 29.02.2020, directed the Tahasildar, Balikuda to submit a specific report on serial no.1 and 5 of the enclosed check list for taking further action at his end. Accordingly, the Tahasildar submitted the enquiry report, vide letter dated 06.03.2020. In the joint enquiry report submitted by Revenue Supervisor, Balikuda and R.I. Kusunupur on 04.01.2020 it had been mentioned that the suit plots i.e., nos.1002 and 1004 of mouza-Iswarpur were coming under NH-55, which is reflected in the advertisement made by the HPCL describing the location

of proposed retail outlet from Balikuda Block chhak to Saw mill chhaka on RHS of NH-55. As per the instructions of the Collector and District Magistrate, Jagatsinghpur, vide letter dated 29.02.2020, the Tahasildar, Balikuda directed the Revenue Inspector, Kusunupur to cause an enquiry and submit report and accordingly enquiry was conducted by the R.I. Kusunupur and report was submitted on 06.03.2020. Pursuant thereto, the Tahasildar, Balikuda submitted his report describing lawful possession of Usharani Sahoo over the plots in question and clarified that during the enquiry conducted by the Tahasildar the suit plots were coming under NH-55, but after the gazette notification of Government of India dated 24.01.2020, the suit plots in the mouza-Iswarpur were not coming under NH-55 and, as such, this change was communicated by the Tahasildar, Balikuda, vide letter dated 06.03.2020. Further, the objection which had been filed by Mr. Ajayananda Mohapatra, Advocate with a prayer not to issue NOC to HPCL, relying upon the circular dated 24.07.2013, as the said suit plots are not coming under the NH-55, in view of the notification dated 24.01.2020 of MoRTH, was considered by the Collector and NOC was granted in favour of HPCL. Thereby, no illegality and irregularity has been committed by the Collector by issuing such NOC in favour of the HPCL.

It is further contended that the matter was reserved on 13.08.2020 for judgment and again thereafter it was listed under the heading "to be mentioned" on 19.08.2020, on which date this Court directed to serve copy of the writ petitions on Mr. Amitav Das, learned counsel who usually appears on behalf of NHAI. On receipt of copies of the writ petitions, he filed a memo indicating that NHAI has nothing to do in the matter and the disputed lands belonged to NH Division of the State Government and not pertaining to NHAI. Thereafter, I.A. No. 9782 of 2020 was filed by the Executive Engineer, NH Division, Cuttack seeking intervention in the matter, which was allowed and consequentially he sought time to file specific affidavit as regards the applicability of the guidelines and norms dated 26.06.2020 issued by MoRTH.

It is contended, by referring to the affidavit filed by the Executive Engineer, that power to give permission for access to national highways lies with the Highway Administration as per the Highway Administration Rules, 2004 under the Control of National Highways (Land and Traffic) Act, 2002. Vide circular dated 24.07.2013 MoRTH, Government of India enunciated guidelines/norms for access permission to fuel stations, private properties, rest area complexes and such other facilities along National Highways. The said guidelines have been revised/superseded by circular dated 26.06.2020 by which power to give permission for access to the National Highways is vested with the competent authority of the National Highways. It is further contended that in view of the procedure, as stipulated under the guidelines for access permission to fuel station, the beneficiary has to apply the highway administration so that the competent authority can consider and scrutinize the site of the fuel station. So far as the present case is concerned, no application has been submitted to the competent authority by the beneficiary so as to assess the viability of installation of the fuel

station for the safety of the people and for larger interest of the public. Therefore, the HPCL /private party has to apply with all the relevant documents, before Executive Engineer, and the same shall be considered by the proposing authority, i.e., Executive Engineer, National Highways, Public Works Department. Therefore, it is contended that the writ petitions should be dismissed on that count only.

To substantiate his contention, he has relied upon the judgments the apex Court as well as this Court in *Indian Oil Corporation Ltd. v. Arti Devi Dangi*, (2016) 15 SCC 480; *Ram Preeti Yadav v. U.P. Board of High School and Intermediate Education*, (2003) 8 SCC 311; *Kishore Samrite v. State of U.P.*, (2013) 2 SCC 398; *K.D. Sharma v. Steel Authority of India Ltd.*, (2008) 12 SCC 481; *Dr. Budhi Kota Subbarao v. K. Parasaran*, (1996) 5 SCC 530; *State of Uttaranchal v. Balwant Singh Chaufal*, (2010) 3 SCC 402; *Chhabindra Mukhi v. State of Odisha*, 122 (2016) CLT 609; *Chief Commercial Manager, South Central Railway, Secunderabad v. G. Ratnam*, (2007) 8 SCC 212, *S.K. Shukla v. State of U.P.*, (2006) 1 SCC 314; *Laxmidhar Roul v. Devraj Mohanty*, 2004 (I) Cr.L.J. 165; and *Monarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar*, (2000) 5 SCC 287.

8. Mr. D.P. Dhal, learned Sr. Counsel appearing along with Mr. S. Mohapatra, learned counsel for opposite party-Usharani Sahoo contended that these public interest litigations have been filed with an ulterior motive, as the petitioners are no way connected with the installation of petrol pump, rather they have been planted to file such writ petitions. It is further contended that NOC had been granted by the Collector, Jagatsinghpur in favour of HPCL, without violating the gazette notification dated 24.01.2020, as mouza-Iswarpur was not coming under NH-55. It is further contended that the writ petitions are filed at the behest of one Sarat Chandra Nayak of village-Bhagabanpur, who is the proprietor of a nearby outlet, namely, ESSAR Petrol Pump. More so, the petitioner in W.P.(C) No. 12434 of 2020 is not a resident of Balikuda Block but of village Kantaballvapour under Jagatsinghpur Block and his house is situated around 25 kms away from Balikuda Block. So far as the report of the R.I. is concerned, it is stated that at the initial stage the schedule land was coming under NH-55 but subsequently as per the notification dated 24.01.2020, the position of the land was changed due to alignment. Therefore, the District Magistrate-cum-Collector, Jagatsinghpur has duly considered the same in proper perspective and, as such, the schedule plots do not come under the alignment of NH-55, i.e., Kandarpur to Nuagaon as well as proposed bye-pass from Balikuda-Kania-Borikina-Ibrisingh 17-60 kms, the location of the outlet was changed which is around 4 kms away from the schedule land. Therefore, the NOC has been granted taking into consideration the report furnished by the Tahasildar, Balikuda dated 06.03.2020 and S.P. Jagatsinghpur for installation of the outlet. But all the times, attempt was made by Sarat Chandra Nayak, the rival businessman to see that NOC should not be issued for installation of the outlet by Usharani Sahoo. Apart from the same, Mr. Ajayananda Mohapatra also filed C.S. No. 108 of 2020 before the Civil Judge (Sr. Division), Jagatsinghpur seeking direction to the District Magistrate-cum-

Collector, Jagatsinghpur not to issue NOC in favour of HPCL for opening of the retail outlet. He having failed in his attempt to get any interim relief in the said suit, in the garb of public interest litigation, the present writ petitions have been filed and, as such, the civil suit is still pending consideration. Therefore, it is contended that it is a camouflage approach at the behest of Sarat Chandra Nayak, the rival businessman, and consequentially the writ petitions cannot sustain and are liable to be dismissed with heavy cost.

It is further contended that after the NOC was granted to HPCL, immediately permission was granted to Usharani Sahoo to go ahead with the work and accordingly huge investments have been made for establishment of fuel outlet. As such, the outlet was scheduled to be opened on 04.07.2020, but before that because of the interim order passed by this Court on 09.06.2020, the function of the outlet has been stalled causing huge loss to the opposite party-Usharani Sahoo and HPCL. Therefore, it is contended that these types of litigations should not be encouraged at the instance of the persons those who are acting at the behest of the above named rival businessman.

9. Mr. A.K. Bose, learned Asst. Solicitor General appearing for Regional Officer, Ministry of Road Transport and Highways, Bhubaneswar, Government of India contended that MoRTH issued a comprehensive guidelines/norms on 26.06.2020 for access permission to fuel stations, private properties, rest area complexes and such other facilities along National Highways. The power to give permission for access to national highways lies with the Highway Administration, as per the Highway Administration Rules, 2004 under the control of National Highway (Land and Traffic) Act, 2002. It is contended that Government of India vide gazette notification nos.S.O. 3292(E) and S.O. 3293(E) dated 16.09.2019 authorized the Regional Officer of the MoRTH to exercise the powers conferred under Sections 25, 28, 31 and 43 of the said Act in respect of their respective territorial jurisdiction. Therefore, as per the guidelines issued on 26.06.2020, the applicant would submit a self certified proposal for seeking access permission to the Highway administration along with all the documents. As per clause-2.5.2, the Executive Engineer of the National Highways wing of the State PWD in respect of their territorial jurisdictions shall be the proposing authority and Regional Officer of MoRTH shall be the competent authority for approval of the proposal.

It is further contended that vide notification dated 15.03.2016, the Central Government directed for execution of new NH-55, which shall be exercisable by the State Government as per letter dated 21.03.2016 issued by the Chief Engineer NH Division, Odisha. It is further contended that the stretch in question pertaining to NH-55 was handed over to the Executive Engineer, NH Division, vide letter dated 10.05.2016, in which village Balikuda finds place and it was stated that mouza-Iswarpur is about 3 km away from Balikuda in Balikuda-Borikina Road Section. It is contended that the circular dated 26.06.2020 clearly stipulates that notwithstanding NOC granted by the licensing authority the concerned Highway Authority has to issue NOC, which will be by the competent

officers of MoRTH, after receiving proposal of designated proposing authority (Highway Administration), which in this case is Executive Engineer, NH, PWD, as contained at sl.no.5 of table-5 under para-5 of the circular dated 18.09.2019 issued by the MoRTH. Therefore, it is contended that the writ petitions merit no consideration and are to be dismissed.

10. Mr. B.P.B. Bahali, learned counsel filed I.A. No. 8423 of 2020 on behalf of intervenor petitioners, namely, Harekrushna Mohanty, Biswendu Swain, Nabakishore Barik, Ddebendra Kumar Maharana and Satyananda Barik and supported the contention raised by learned Senior Counsel appearing for the petitioners and laying emphasis on the guidelines dated 24.07.2013 issued by MoRTH contended that in view of that guidelines since the proposed retail outlet is situated within 300 metres, from intersection of the SH, NOC granted by the Collector is without any application of mind, therefore seeks for quashing of the same. It is further contended that even if subsequent revised guidelines issued by the authority have not been fulfilled by Usharani Sahoo, therefore selection and allotment of retail outlet in her favour is in gross violation of the guidelines issued by the IRC as well as NHAI. Therefore, claims that NOC granted in favour of HPCL for opening of retail outlet by Usharani Sahoo should be quashed.

To substantiate his contention he has relied upon Indian Oil Corporation Ltd. v. Arti Devi Dangi, (2016) 15 SCC 480; Ujwala Santosh Kendre v. Bharat Petroleum Corporation Limited, Nashik, 2018 (2) ABR (NOC) 38 (BOM.)(NAGPUR BENCH); Rananjay Bhattacharya v. Union of India, AIR 2013 (NOC) 312 (CAL.); M.S.Jayaraj v. Commissioner of Excise, Kerala, AIR 2000 SC 3266; Mehsana District Central Cooperative Bank Ltd. v. State of Gujarat, AIR 2004 SC 1576; Friends Colony Development Committee v. State of Orissa, AIR 2005 SC 1; and Dilip Kumar Prusti v. Collector and District Magistrate, Sambalpur, 1996 (II) OLR 13.

12. Mrs. Sujata Jena files affidavits of Harekrushna Mohanty, Nabakishore Barik, Debendra Kumar Maharana and Satyananda Barik, who are intervenors in I.A. No. 8423 of 2020 and for whom Mr. B.P.B. Bahali was appearing, contending therein that they had never signed any application to appear in the case as intervenors and they are not subscribing to such signature and as such they do not know anything about the case itself. They also contend that fraudulating their signatures if any application has been filed, the action as deemed fit should be taken against the person concerned. It is also further contended that the petitioners in order to fulfill their ill intention made conspiracy with the proprietor of ESSAR Petrol Pump, namely, Sarat Chandra Nayak, having failed to get an interim order in C.S. No. 108 of 2020 pending before the learned Civil Judge (Senior Division), Jagatsinghpur, filed these frivolous applications and, therefore, contended that the intervention application be dismissed with cost.

13. This Court heard through video conferencing Dr. A.K. Mohapatra, learned Senior counsel appearing along with Mr. A.K. Patra, learned counsel for the petitioner in W.P.(C) No.12434 of 2020; Mr. Yeesan Mohanty, learned Senior

Counsel appearing along with Mr. R.K. Routray, learned counsel for the petitioners in W.P.(C) No. 18169 of 2020; Mr. S. Palit, learned Addl. Govt. Advocate appearing for the State opposite parties in both the writ petitions; Mr. A.K Bose, learned Asst. Solicitor General appearing for Govt. of India in both the writ petitions; Mr. S.P. Mishra, learned Senior Counsel appearing for HPCL in both the writ petitions; Mr. Amitav Das, learned counsel appearing for NHAI in both the writ petitions; Mr. D.P. Dhal, learned Senior Counsel appearing along with Mr. S. Mohapatra, learned counsel for Usharani Sahoo-opposite party no.4 in W.P.(C) (PIL) No.12434/2020 and opposite party no.6 in W.P.(C)(PIL) No. 18169/2020; Mr. B.P.B. Bahali, learned counsel appearing for the intervenors in I.A. No. 8423 of 2020; and Mrs. S. Jena, learned counsel appearing for some of the intervenors in I.A. No. 8423 of 2020. Pleadings having been exchanged between the parties, since an interim order of status quo had been passed on 09.06.2020 with regard to the site of the retail outlet in question, with the consent of the parties, the matter has been heard and disposed of finally at the stage of admission.

14. On the basis of the undisputed facts and rival contentions raised by the learned counsel appearing for the respective parties, this Court is to consider whether:

(i) the Collector, Jagatsinghpur is justified in granting NOC vide letter dated 19.03.2020 in favour of HPCL under Rule 144(5) of the Petroleum Rules, 2002; and

(ii) both the public interest litigations at the instance of the present petitioners are maintainable.

15. Before advertng into issue no.(i) whether the Collector, Jagatsinghpur is justified in granting NOC vide letter dated 19.03.2020 in favour of HPCL under Rule 144(5) of the Petroleum Rules, 2002, it is worthwhile to delve into the relevant clauses of Indian Roads Congress (IRC) 2009 guidelines, on which much reliance has been placed. Clauses-1.2, 3.2, 4.5 and 4.5.1, which are relevant for the purpose of deciding the instant issue, are extracted hereunder:-

"1.2 The Ministry of Shipping, Road Transport and Highways (MOSRT&H) revised substantially the norms for location, layout and access to fuel stations along the National Highways keeping in view the increased speed of vehicles and greater need for road safety due to development of National Highways network under various phases of National Highway Development Project (NHDP) and other development works on National Highways. These norms were circulated in October, 2003. These norms were finalized in consultation with the Ministry of Petroleum and the oil companies.

xx xx xx

3.2 These norms are applicable to all Fuel Stations with or without other user facilities of rest areas, along un-divided carriageway and divided carriageway sections of all categories of roads i.e. National Highways, State highways, Major

District Roads and Rural roads in plain, rolling and hilly terrain, and passing through rural and urban stretches including towns and cities. For this purpose hilly or mountainous terrain would be, when the cross slope of the country is more than 25%. The urban stretches, only for the purpose of this guidelines, would be, where a highway passes through towns or cities which have been notified as Municipalities or Municipal Corporations.

xx xx xx

4.5. In order to provide safe length for weaving of traffic, fuel stations along highways/roads shall be located at the minimum distance from an intersection (gap in the central median be treated as intersection), as given below. For single carriageway section, these minimum distances would be applicable for both sides. All the distances shall be measured between the tangent points of the curves of the side roads at intersections/the median openings and the access/ egress roads of the fuel stations, as is applicable, in a direction parallel to the centre line of the nearest carriageway of the highway.

The above mentioned distances are applicable for setting up of fuel stations along National Highways, State Highways and Major District Roads. In case of fuel stations along the Rural Roads in plain and rolling terrain, the distance from the intersection with NHs/SHs/MDRs can be reduced to 300 m in place of 1000 m depending on the level of traffic.

4.5.1

Non-urban (Rural) stretches

(i) Intersection with NHs/SHs /MDRs/City Roads

- 1000 m

(ii) Intersection with Rural Roads/ approach roads to private and public properties

- 300 m

2)

Hilly/Mountainous Terrain

(i) Intersection with NHs/SHs/MDRs

- 300 m

(ii) Intersection with all other roads and tracks

- 100 m"

The MoRTH had issued separate guidelines on access permission to fuel stations, service stations, rest areas etc., vide circular dated 25.09.2003/17.10.2003, and access permission to private properties etc. along the National Highways, vide

circular dated 31.08.2000. With the improvement in the National Highway network, a greater need for road safety of the users had been felt along with stricter enforcement of the guidelines, for which it was decided that unified norms of access to fuel stations, service stations, private properties, rest areas and other such facilities along the national highways to be evolved. Accordingly, a guideline was issued on 24.07.2013, in which clauses-4.2, 4.5, 4.5.1 and 4.6 of Appendix-I, on which much reliance has been placed, read thus;

"4.2 It should be ensured that the location of the proposed fuel station does not interfere with future improvements of the highways and the nearby intersections/ junctions.

xx xx xx

4.5 In order to provide safe length for weaving of traffic, fuel stations along National Highways shall be located at the minimum distance from an intersection (gap in the central median be treated as intersection) as given below. For Single carriageway section, these minimum distances would be applicable for both sides. All the distances shall be measured between the tangent points of the curves of the side roads at intersections/ the median openings and the access/ egress roads of the fuel stations, as is applicable, in a direction parallel to the centre line of the nearest carriageway of the National Highway.

4.5.1 Non-Urban (Rural) stretches.

1

Plain and Rolling Terrain

Distance

(i)

Intersection with NHs/SHs/MDRs

1000 m

(ii)

Intersection with Rural Roads/ approach roads to private and public properties

300 m

2.

Hilly/Mountainous Terrain

(i)

Intersection with NHs/SHs/MDRs

300 m

(ii)

Intersection with all other roads and tracks

100 m

xx xx xx

4.6. The minimum distance between two fuel stations along with the National Highway would be as given below:-

4.6.1

Plain and Rolling Terrain in Non-Urban (Rural)

Distance

(i)

Divided carriageway (with no gap in median at this location and stretch)

1000m (Including declaration and acceleration lanes)

4.6.2

Hilly/ Mountainous Terrain and Urban Stretches

(i)

Undivided carriageway (for both sides of carriageway)

300m (clear)

(ii)

Divided carriageway (with no gap in median at this location and stretch)

300m (clear)

xx xx xx

On a conjoint reading of the IRC guidelines and MoRTH guidelines, referred to above, it can be seen that the intersection with NH/SHs/MDRs has been fixed to 300 metres. Similarly, undivided carriageway (for both sides of carriageway) has been prescribed to 300 metres. Therefore, it is contended that there is no strict adherence to the above guidelines. In the memo of NHA dated 26.08.2020, it has been clarified that the disputed land belongs to NH Division of State Government and not pertaining to NHA. The said disputed stretch was notified as new NH-55, vide notification dated 17.09.2015. As such, vide notification dated 15.03.2016, the Central Government, in exercise of the power conferred by Section-5 of the NH Act, 1956 directed the State Government of Odisha to execute the new NH-55.

16. To fortify the above stand, reliance has been placed on the judgment of the apex Court in *Arti Devi Dangi* (supra). In paragraphs 7, 9 and 10 thereof, the apex Court held as follows:-

"7. We, therefore, hold that the fulfilment of the requirements spelt out by the IRC Guidelines relevant to the present cases to be a mandatory requirement of the tender conditions.

9. In view of the above conclusion reached, it is not necessary for us to consider the arguments advanced on the question of permissibility of deviations from the tender conditions on the touchstone of public interest or the issue of understanding the requirement of the IRC Guidelines as implied terms of the tender document.

10. For the aforesaid reasons, the orders of the learned Single Judge as well as the Division Bench of the High Court cannot be sustained. We, therefore, set aside the same and allow the appeals."

Similarly, in Dilip Kumar Prusty (supra) this Court held as follows:-

"2. As ultimately, No Objection Certificate" has been granted without considering the objections raised by the petitioner and without affording him an opportunity, he has visited this Court challenging the decision.

12. On the basis of the preceding analysis, we are of the view that the learned Additional District Magistrate has not kept the norms while passing the order granting 'No Objection Certificate'. We have already held the stand taken by the authority that it was not obligated to appraise itself with regard to the norms is not acceptable. On the basis of this finding alone, we could have disposed of the writ application but we would also address ourselves in regard to the decision of resitement and the execution of the said decision. The prayer in the writ application is for quashing of Annexure-5 the order granting 'No Objection Certificate.' Grant of No Objection Certificate is given on the basis of an application filed by the Oil Company under Rule 143. The Oil Company, a Government undertaking is required to get with fairness. They had decided for resitement which is really not open to challenge. But while proceeding with resitement they cannot lose sight of the norms prescribed by them. Norms are laid down to be followed. If a policy is formulated by Government undertaking the same has to be adhered to. True it is, the prayer is for quashing of the ultimate act but the said ultimate act is because of the execution of resitement in flagrant violation of the norms. It is settled in law that a writ Court can mould the prayer. We are persuaded to mould the prayer in the instant case. Wee notice that the real grievance is with regard to the decision for the fixation of site, indication of which has been given in Rule 143 in violation of the norms set forth by the Company. We are constrained to observe that if the area in question comes within the 'D' Class market, the same is not permissible and applicable under Rule 143 by the Company being violative of its own norms should be regarded as incomplete. To put it in another way, the decision to resite the Pump at the present site is contrary to norms of the Oil Industries and therefore, the same is not sustainable and as on the said basis, 'No Objection Certificate' has been granted, the same is not tenable....."

Similar view has also been taken by the Bombay High Court of Nagpur Bench in *Ujwala Santosh Kendre* (supra) and by the Calcutta High Court in *Rananjoy Bhattacharya* (supra).

17. As it reveals from the record, the MoRTH, vide notification dated 17.09.2015, declared that new NH-55 would be "starting from its junction with NH-53 near Sambalpur connecting Redhakhole, Angul, Banarpal, Dhenkanal, Cuttack, Jagatsinghpur, Balikuda and terminating at Nuagaon in the State of Odisha". Thereafter, vide notification dated 15.03.2016, the Central Government directed that the execution of new NH-55 shall be exercisable by the State Government as per letter dated 21.03.2016 issued by the Chief Engineer NH Division, Odisha. The stretch in question pertaining to new NH-55 was handed over to the Executive Engineer, NH Division on 10.05.2016, in which letter the village Balikuda finds place and it is stated that mouza Iswarpur is about 3 km. away from Balikuda in Balikuda-Borikina Road Section. Vide Circular dated 18.09.2019 the designated proposing authority has been prescribed as Executive Engineer, National Highway, Public Works Department as provided at serial no.5 under table-5 of paragraph-5. Therefore, power to give permission for access to National Highways lies with the Highway Administration as per the Highway Administration Rules, 2004 under the control of National Highways (Land and Traffic) Act, 2002. Vide circular dated 24.07.2013, the MoRTH enunciated Guidelines/Norms for access permission to fuel stations, private properties, rest area complexes and such other facilities along National Highways. Paragraph-3 of the said guidelines reads as follows:-

"The power to give permission for access to National Highways lies with the Highway Administration as per the Highway Administration Rules, 2004 under the Control of National Highways (Land and Traffic) Act, 2002. All such access permissions to the National Highways are to be given under Section 28 and 29 of Chapter-IV and Section 38 of Chapter-VI of the Control of National Highways (Land & Traffic) Act, 2002. These permissions are to be given by the concerned Highway Administration notified by the Central Government under sub-section (1) of Section 28 as per the Guidelines and instructions issued by the Central Government under sub-section(2) of Section 28 of the Control of National Highways (Land & Traffic) Act, 2002."

The said guideline dated 24.07.2013, on which reliance has been placed by the counsel for the petitioners, has been revised/superseded by MoRTH, vide circular dated 26.06.2020, and the above requirements have been reiterated under paragraphs 2.2. and 2.3, whereby it has been stated that "the persons or entities requiring and applying for access to a National Highway, shall submit a self-certified proposal for obtaining access permission to the concerned Authority, to whom such Highway is entrusted". As per the notification dated 18.09.2019, the competent authority is the Highway Administration for Control and Management of National Highways. In paragraph-5 of the said notification, it has been provided that the power to grant of right to access to the Highway is vested with

the competent authority of the National Highway Administration. For just and proper adjudication of the dispute, the required portion of the guidelines dated 26.06.2020 is quoted below:-

"The Ministry had issued guidelines regarding Grant of permissions for construction of access to various establishments situated along the National Highways e.g. Fuel Stations, Private Properties, Rest Area Complexes and such other facilities vide Circular No. RW/NH-33023/19/99/DO-III dated 24.07.2013 and its subsequent amendments from time to time with focus on enabling smooth flow of traffic, minimum interference from vehicles entering the Right of Way of a National Highway, safety of road users etc.

Considering the difficulties faces and the experience gained over the years, the above mentioned guidelines/Norms have been revised, the details of which are separately enclosed under (Grant of permissions for construction of access of Fuel Stations, Wayside amenities, Private Properties, Rest Area Complexes, connecting roads and such other facilities)."

The clauses-2.2, 2.3 and 3.0 of Appendix-I of the guidelines dated 26.06.2020, which are also relevant for the purpose of deciding the present issue, are extracted hereunder:-

"2.2 Location Norms on Rural stretches of National Highways.

Sr. No

Items

Norms applicable

1.

Acceleration/Deceleration lane

Need to construct 100m acceleration lane and 70m deceleration lane.

2.

Distance of any Intersection with any category of road and median gap

300 m

3.

Any barrier including that of toll Plaza and Railway Level Crossing

1000 m

4.

Distance from the Start of approach road of Road Over Bridge (ROB)

200 m

5.

Start of approach road of Grade Separator/flyover

300 m

6

Distance between two fuel stations

Undivided carriage way - 300 m* Divided Carriageway -1000 m*

* Including deceleration and acceleration lanes However, this restriction shall not apply in case access/egress for all such fuel stations are provided through common service road of 7.0 m width and not direct to NH..

Further, access for fuel stations at closer proximity than above distance may be allowed provided entry/exit for both the Fuel Stations are provided through service road of 7.0m width having sufficient length; further, additional length of such service road shall be constructed at the cost of the latter fuel station owner/ company seeking grant of permission for access for the facility.

2.3 Location Norms for Urban/Mountainous stretches of National Highways.

Sr. No

Items

Norms applicable

1.

Acceleration/Deceleration

lane

The deceleration and acceleration lanes may be dispensed with for the fuel station located along urban roads and roads in hilly and mountainous terrain

2.

Intersection with any category of road and median gap

300 m

3

Any barrier including that of Toll Plaza and Railway Level Crossing

1000 m

4

Start of approach road of Road Over Bridge (ROB)

200 m

5.

Start of approach road of Grade Separator/flyover

300 m

6

Distance between two fuel stations

300 m* for both divided and undivided carriageway

*(Including deceleration and acceleration lanes) However, this restriction shall not apply in case access/egress for all such fuel stations are provided through common service road of 7.0 m width and not directly to NH. Further, access for fuel stations at closer proximity than 300m may be allowed provided entry/exit for both the Fuel Stations are provided through service road of 7.0m width having sufficient length; further, additional length of such service road shall be constructed at the cost of the latter fuel station owner /company seeking grant of permission for access for the facility

Notes :

- a. All the dimensions are to be measured from the boundary of the Fuel Station.
- b. In case of distance from intersection with any category of road, the roads means paved carriageway (Bituminous/ concrete/Interlocking Concrete block) of 3.0m width and having length of Minimum 300m and above irrespective of the category of road.
- c. The minimum distance between two fuel stations on both sides of the highway is applicable for undivided carriageway. In case of divided carriageway, with no gap in medians, the distance restriction is for same side and is not applicable on the opposite side of the fuel Station. However, access for fuel stations at closer proximity may be allowed provided entry/exit for both the Fuel Stations are provided through service road of sufficient length; further, additional length of such service road shall be constructed at the cost of the latter fuel station owner/ company seeking grant of permission for access for the facility.
- d. Distance between the Fuel Station and the structural barrier (i.e. toll plaza, railway level crossing, check barrier etc.) shall not apply if such barriers are located on service road only and are separated from the main carriageway.
- c. The gap in the Central Median shall be treated as Intersection.

3.0 General Conditions of Siting.

- i. Rest areas should have various amenities for users e.g. fuel stations, places for parking, toilets, restaurants, rest room, kiosks for selling sundry items, bathing facilities, repair facilities crèche etc. These aspects should be incorporated while planning for improvement and up-gradation of highways and/or planning for new

fuel stations along with highways. The rest area complex may be planned subject to their commercial viability.

ii. It should be ensured that the location of the proposed fuel station does not interfere with future improvements of the highway and the nearby intersections/junctions.

iii. The fuel stations would be located where the highway alignment and profile are favourable, i.e. where the grounds are practically level, there is no sharp curves not less than those specified for minimum design speed or steep grades (more than 5%) and where sight distances would be adequate for safe traffic operations. The location should not interfere with the placement and proper functioning of highways signs, signals, lighting or other devices that may affect traffic operation.

iv. If two or more fuel stations are to be sited in close proximity for some reasons these would be grouped together to have a common access through a service road of 7.0m width and connected to the highway through acceleration, deceleration lanes. Any objection from the existing fuel station owner against granting of access permission from NH for the proposed new fuel station are to be overruled and access to all fuel stations in case of clustering, shall invariably be from the service road only. Wherever longer service road exists, which may itself act as deceleration/ acceleration lane, no separate deceleration/ acceleration lane is required. New entrant would be responsible for construction and maintenance of the common service road, deceleration & acceleration lanes drainage and traffic control device. Wherever available ROW is inadequate to accommodate such service roads, deceleration/acceleration lanes etc. the additional land by the side of ROW to accommodate such service roads shall be acquired by the new entrant Oil Company."

On perusal of the above mentioned letter dated 26.06.2020, it is made clear that the guidelines dated 24.07.2013 have been revised. In clause-3.0(iv) of Appendix-I of letter dated 26.06.2020 it has been specifically mentioned that if two or more fuel stations are to be sited in close proximity for some reasons these would be grouped together to have a common access through a service road of 7.0m width and connected to the highway through acceleration and deceleration lanes. Any objection from the existing fuel station owner against granting of access permission from NH for the proposed new fuel station are to be overruled and access to all fuel stations in case of clustering, shall invariably be from the service road only. As such, the HPCL has been required in the present guidelines to apply to the competent authority, as indicated in the guidelines dated 26.06.2020, seeking access permission along the National Highway. The power to give permission for access to National Highway lies with the Highway Administration as per the Highway Administration Rules, 2004 under the control of National Highways (Land and Traffic) Act, 2002. Vide notification dated 18.09.2019, the MoRTH under the Control of National Highways (Land and Traffic) Act, 2002 has prescribed the competent authority i.e. Highway

Administration for Control and Management of National Highway. In paragraph-5 of the said notification dated 18.09.2019, the Project Director of NHAI/GM or DGM of the NHIDCL/Executive Engineer of the NH Wing of the State PWD, Regional Officer of the Ministry/NHAI/ED of NHIDCL, as per their respective territorial jurisdictions, shall exercise the powers and functions of Highway Administrators in their ex-officio capacity to discharge the functions and exercise the powers as assigned to them. As per the guidelines/norms for access permission to fuel stations, the beneficiary has to apply the Highway Administration so that the competent authority can scrutinize the site of the fuel station as per the terms and conditions laid down in the guidelines dated 26.06.2020 issued by MoRTH and such application has to be made to the Executive Engineer, Highway Administration, which is the competent authority as per the notification issued on 18.09.2019. But, as it reveals from the record, no such application has been submitted to the competent authority by the beneficiary so as to assess the viability of the installation of fuel station for the safety of the people and for larger interest of the public. In the guidelines dated 26.06.2020, it is clearly stipulated that notwithstanding NOC granted by licensing authority the NOC will be issued by the competent officers of MoRTH, after receiving proposal of designated proposing authority, i.e., NH, PWD, as described at serial no.5 of table 5 under para-5 of the circular dated 18.09.2019 issued by MoRTH. Therefore, the NOC, which has been granted by the authority, is only a permission to set up the retail outlet and the subsequent procedure has to be followed in accordance with the guideline issued on 26.06.2020.

18. In *G. Ratnam (supra)*, the apex Court held at paragraphs 18, 19 and 20 as follows:-

"18. We are not inclined to agree that the non-adherence of the mandatory instructions and guidelines contained in Paras 704 and 705 of the Vigilance Manual has vitiated the departmental proceedings initiated against the respondents by the Railway Authority. In our view, such finding and reasoning are wholly unjustified and cannot be sustained.

19. We have carefully gone through the contents of various chapters of the Vigilance Manual. Chapters II, III, VIII, IX and Chapter XIII deal with Railway Vigilance Organisation and its role, Central Vigilance Commission, Central Bureau of Investigation, investigation of complaints by Railway Vigilance, processing of vigilance cases in Railway Board, suspension and relevant aspects of Railway Servants (Discipline and Appeal) Rules, 1968 as relevant to vigilance work, etc. Paras 704 and 705, as noticed earlier, cover the procedures and guidelines to be followed by the investigating officers, who are entrusted with the task of investigation of trap cases and departmental trap cases against the railway officials. Broadly speaking, the administrative rules, regulations and instructions, which have no statutory force, do not give rise to any legal right in favour of the aggrieved party and cannot be enforced in a court of law against the administration. The executive orders appropriately so-called do not confer any

legally enforceable rights on any persons and impose no legal obligation on the subordinate authorities for whose guidance they are issued. Such an order would confer no legal and enforceable rights on the delinquent even if any of the directions is ignored, no right would lie. Their breach may expose the subordinate authorities to disciplinary or other appropriate action, but they cannot be said to be in the nature of statutory rules having the force of law, subject to the jurisdiction of certiorari.

20. It is well settled that the Central Government or the State Government can give administrative instructions to its servants how to act in certain circumstances; but that will not make such instructions statutory rules which are justiciable in certain circumstances. In order that such executive instructions have the force of statutory rules, it must be shown that they have been issued either under the authority conferred on the Central Government or the State Government by some statute or under some provision of the Constitution providing therefor. Therefore, even if there has been any breach of such executive instructions that does not confer any right on any member of the public to ask for a writ against the Government by a petition under Article 226 of the Constitution of India.

In view of the aforesaid judgment, reliance placed on Arati Devi mentioned supra by learned counsel for the petitioner, is distinguishable on its fact that IRC guidelines for petrol pumps, as noticed by the Supreme Court, have been adopted by the State PWD of the State of Madhya Pradesh. Therefore, it is presumed that their Lordships of the apex Court must have scrutinized as to whether the State PWD of Madhya Pradesh has complied with all relevant laws applicable to such adoption, i.e. a valid gazette notification as prescribed under Section 5 of the General Clauses Act, 1897.

19. In *S.K. Shukla v. State of U.P.*, (2006) 1 SCC 314, which has been taken note of by this Court in *Laxmidhar Roul v. Devraj Mohanty*, 2004(1) Cr.L.J. 165, the apex Court in paragraph-4 stated that as per Section-5 of the General Clauses Act, 1897 when any regulation is dependent on the issuance of a notification regarding their enforcement, such regulation cannot be said to have come into force by a process of reasoning or theorizing and as such their coming into force mandatorily depends upon the issuance of a notification in the official gazette. Any adoption of the IRC Guidelines needs to be notified by the State Government in its official Gazette in order to coming into force, and without such notification, the guidelines cannot be enforced mandatorily. Absence of such notification by the State of Odisha, further establishes the contention that the IRC guidelines are merely recommendatory in nature and lacks any manner of statutory basis.

20. A perusal of the PWD code would show that it was neither framed under Article 162 nor Article 309 of the Constitution of India, but in the preamble of such code it has been specifically mentioned that it should be followed by every department. The IRC is only a society registered under the Societies Registration Act and has no statutory backing. It is the apex body of road sector engineers

and professionals in the country. The recommendation made by the same have no statutory value nor is binding upon a statutory authority. The norms issued by IRC are only a guideline for access, location and layout of roadside fuel stations and service stations published by the Indian Road Congress in 2012. As such, IRC norms are only recommendatory in nature and have no statutory value.

21. The case of Arati Devi Dangi (*supra*), on which reliance has been placed by learned Senior Counsel appearing for the petitioners, if is analyzed factually, it was a matter between the Indian Oil Corporation and the qualified bidders. Therefore, while dealing with the said case, the apex Court came to a finding as mentioned therein. But, in the present case, the petitioners are neither the competitors nor have they got any nexus with HPCL and, as such, they have no locus to ask the correctness and validity of allotment of rural petrol pump in favour of Usharani Sahoo.

22. Now, even if the matter is considered from other angle, the advertisement for establishment of retail outlet at different places in the district of Jagatsinghpur, including the present site, was issued on 25.11.2018 and following the procedure as envisaged by the HPCL, Usharani Sahoo was issued with LOI on 16.10.2019 and thereafter on 21.11.2019 the HPCL issued a letter to the Collector, Jagatsinghpur to issue NOC in their favour for establishment of retail outlet by Usharani Sahoo. Pursuant thereto, steps were taken by the District Administration by causing an enquiry and finally, on the basis of the required information submitted by the Tahasildar on 06.03.2020, the Collector, Jagatsinghpur issued NOC in favour of the HPCL on 19.03.2020. But fact remains, PIL petitioners received a copy of the letter dated 21.11.2019 issued by HPCL to the Collector, Jagatsinghpur on 20.12.2019, but they kept silent over the matter. When HPCL, after completing all formalities, permitted Usharani Sahoo to go ahead with construction work and, as such, a huge amount was invested by both HPCL as well as Usharani Sahoo for establishment of such retail fuel tank, W.P.(C) No. 12434 of 2020 was filed on 19.05.2020, and to cover up the lacunae in the said writ petition, another set of people filed W.P.(C) No. 18169 of 2020 on 03.08.2020. If the petitioners are so aggrieved for establishment of a retail outlet on the schedule land, they should have made an objection from the very beginning, i.e. from the date of issuance of advertisement.

23. It is of relevance to note that Mr. Ajayananda Mohapatra, Advocate Bhanjanagar (Ganjam) submitted objection before the Collector and the Tahasildar with a prayer not to issue NOC to HPCL, but on consideration of the said objection the Collector granted NOC. On being unsuccessful there, a civil suit was filed before the learned Civil Judge (Senior Division) bearing C.S. No. 105 of 2020 seeking direction to the District Magistrate-cum-Collector not to issue NOC in favour of HPCL for opening of the retail outlet. Having failed to get any interim relief in the said suit, the present writ petitions have been filed in the garb of public interest litigation, particularly when the said civil suit is pending in the Court of learned Civil Judge (Sr. Division), Jagatsinghpur.

24. In the above background, at best it can be construed that the petitioners are fence sitters and they have approached this Court, after selection process was over, on a frivolous and flimsy ground relying upon a guideline, which has been revised in the meantime. As such, without knowing the present status in proper prospective, the petitioners have approached this Court in a camouflage manner to cause prejudice to the selected candidate, namely, Usharani Sahoo in whose favour right has already been accrued pursuant to advertisement issued under Annexure-1.

25. It is pertinent to mention here, pursuant to advertisement dated 25.11.2018, Usharani Sahoo was the applicant for allotment of retail outlet at village Iswarpur. On scrutiny, the said application form having been found in order, LOI was issued on 16.10.2019. Thereafter, on 21.11.2019, HPCL issued a letter to the Collector, Jagatsinghpur to issue NOC in their favour for establishment of retail outlet by Usharani Sahoo. On receipt of such letter, the Additional District Magistrate, Jagatsinghpur, vide letter dated 05.12.2019, directed Tahasildar, Balikuda to submit a detailed inquiry report in connection with grant of NOC for setting up retail outlet by HPCL. In response to same, Tahasildar, Balikuda submitted a detailed report, basing on the joint inquiry report dated 04.01.2020 of Revenue Supervisor, Balikuda Tahasil and Revenue Inspector, Kusunupur, along with the objection petition filed by Mr. Ajayananda Mahapatra, Advocate, Bhanjanagar (Ganjam), vide Tahasil Office, Balikuda letter dated 07.01.2020. In the meantime, the MoRTH issued a gazette notification on 24.01.2020, therefore, the Collector & District Magistrate, Jagatsinghpur, vide letter No.2923/(Judicial) dated 29.02.2020 directed the Tahasildar, Balikuda to submit report on Sl.Nos.1 and 5 of the enclosed check list for taking further action at his end. Accordingly, Tahasildar, Balikuda submitted the enquiry report on 06.03.2020 mentioning specifically that during the joint enquiry conducted by the Revenue Supervisor, Balikuda Tahasil and Revenue Inspector, Kusunupur on 04.01.2020 the suit plots i.e. 1002 and 1004 of mouza-Iswarpur were coming under NH-55, which is reflected in the advertisement made by HPCL that describes the location of proposed Retail Outlet (Petrol Pump) from Balikuda Block chowk to Saw-mill Chhaka on Right Hand side of NH-55. As per instruction of Collector & District Magistrate, Jagatsinghpur, vide letter dated 29.02.2020, the Tahasildar, Balikuda directed Revenue Inspector, Kusunupur to cause an enquiry and submit report accordingly. Basing on which, the enquiry was conducted by the Revenue Inspector, Kusunupur and report was submitted on 06.03.2020 and basing on such report the Tahasildar, Balikuda submitted his report, vide letter dated 06.03.2020, to the Collector & District Magistrate, Jagatsinghpur with specific query made as against Sl. No.1 & 5 of the Check List to the following effect:-

"Sl.No.1(i) Lawful possession of the applicant

That the Plot No.1002, Area-Ac 0.29 Kisam-Gharabari under Khata No.124 of Mouza-Iswarpur stands recorded in the names of Sri Bhagirathi Sahoo, Sri Sashirathi Sahoo, Sons of Sri Debendra Kumar Sahoo by Caste-Khandayat of

Village-Iswarpur in Stitiban Status and Plot No.1004, Kisam-Gharabari under Khata No.119 of Mouza-Iswarpur stands recorded in the name of Sri Debendra Kumar Sahoo, S/o-Sri Kasinath Sahoo by Caste-Khandayat of Village-Kuliagaon.

The applicant's (Smt. Usharani Sahoo) husband namely Sri Bhagirathi Sahoo, S/o-Debendra Kumar Sahoo and brother-in-law Sri Sashirathi Sahoo, S/o-Sri Debendra Kumar Sahoo are in lawful possession in respect of plot No.1002 under khata No.124 of Mouza-Iswarpur and the father-in-law namely Sri Debendra Kumar Sahoo, S/o-Kasinath Sahoo is in lawful possession over plot No.1004 of khata No.119 of Mouza-Iswarpur.

(ii) That the flow of water will not be obstructed due to proposed installation of new retail outlet (petrol pump) over plot No.1002 & 1004.

Sl.No.5-Clearance from N.H. authority

A clearance from N.H authority on distance from intersection and distance from near Petrol Pump was required. But it was seen during the enquiry dated 06.03.2020 the suit plots of Mouza Iswarpur is not coming under N.B.-55. Accordingly the Tahasildar, Balikuda has given his report basing on The Gazette of India Notification No.S.O.377(E) dated 24th January, 2020 Ministry of Road Transport and Highways, Govt. of India that the mouza Iswarpur is not coming under N.H.-55, which implies that the suit plots are not coming under NH-55. Copy of the Gazette of India Notification No.S.O.377(E) dated 24th January, 2020 is annexed herewith as Annexure-G/6.

Therefore, it is clarified that during the joint enquiry on 04.01.2020 the suit plots were coming under NH-55, but after the Gazette of India Notification dated 24.01.2020 the suit plots in the Mouza-Iswarpur were not coming under NH-55. This change was communicated by the Tahasildar, Balikuda vide letter dated 06.03.2020.

26. In view of such position, the NOC granted by the Collector & District Magistrate, Jagatsinghpur is well within its domain and, as such, the same was issued after making proper enquiry and by following due procedure established by law. Accordingly, issue no.(i) is answered in affirmative and against the petitioners.

27. Now comes issue no.(ii), whether both the public interest litigations at the instance of the present petitioners are maintainable. Admittedly, an advertisement for appointment of retail outlet dealerships in the State of Odisha by HPCL was published on 25.11.2018, pursuant to which Usharani Sahoo submitted her application and on her selection LOI was issued on 16.10.2019. On 21.11.2019, HPCL issued letter to the Collector & District Magistrate, Jagatsinghpur to issue NOC in their favour for establishment of retail outlet by Usaharani Sahoo. Thereafter, necessary follow up action was taken by the Collector & District Magistrate, Jagatsinghpur to cause enquiry and ultimately on receipt of the report of Tahasildar, Balikuda, vide letter dated 06.03.2020, NOC

was issued on 19.03.2020 in favour of HPCL. From 25.11.2018 till issuance of NOC on 19.03.2020, admittedly the petitioners in both the writ petitions had not taken any steps assailing issuance of such NOC. Finally, on receipt of NOC, when steps were taken by the HPCL and Usharani Sahoo to go ahead with the setting up of retail outlet and when the same was at the verge of completion and scheduled for operation, these two public interest litigations were filed on 19.05.2020 and 03.08.2020 respectively.

28. On perusal of the pleadings available on records, it is made clear that the petitioners have not made out what constitutional right or personal right or statutory right or fundamental rights of theirs have been infringed while issuing NOC by the Collector & District Magistrate, Jagatsinghpur in favour of HPCL. Rather, setting up of the retail outlet in question would be beneficial to the public at large, instead of hampering their interest in any way. But fact remains, another retail outlet is continuing there called ESSAR petrol pump, and these PILs have been filed at the behest of rival businessman.

29. In *Nagar Rice and Flour Mills v. N.T. Gowda*, AIR 1971 SC 246, the apex Court held that a rice mill-owner had no locus standi to challenge under Article 226 the setting up of a rice-mill at a new site by another even if such setting up be in contravention of Section 8(3)(c) of the Rice Milling Industry (Regulation) Act, 1958 because no vested right of the owner was infringed thereby.

But subsequent thereto the apex Court in many occasions had to decide the question as to whether a person in trade can object to the grant of a licence to his rival by approaching the High Court under Article 226 of the Constitution of India on the ground of violation of some statutory provision.

30. In *J.M. Desai v. Roshan Kumar*, AIR 1976 SC 578, a four-Judge Bench speaking through Sarkaria, J. observed in paragraph-46 of the judgment as follows:-

"46. Thus, in substance, the applicant'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. Judicially, 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."

The said decision has also been followed in *Ibrahim Khan v. State of M.P.*, AIR 1980 SC 517.

31. Now, it is to be seen whether the present writ petitions filed in the guise of public interest litigation are for the betterment of the society at large or for

benefiting any individual.

In *Malik Bros v. Narendra Dadhich*, (1999) 6 SCC 552, the apex Court held as follows:-

"... a public interest litigation is usually entertained by a Court for the purpose of redressing public injury enforcing public duty, protecting social rights and vindicating public interest. The real purpose of entertaining such application is the vindication of the rule of law, effect access to justice to the economically weaker class and meaningful realization of the fundamental rights. The direction and commands issued by the courts of law in a public interest are for the betterment of the society at large and not for benefiting any individual. But if the Court finds that in the garb of a public interest litigation actually an individual's interest is sought to be carried out or protected, it would be the bounden-duty of the Court not to entertain such petitions as otherwise a very purpose of innovation of public interest litigation will be frustrated. It is in fact a litigation in which a person is not aggrieved personally but brings an action on behalf of the downtrodden mass for the redressal of their grievance."

In view of the law laid down by the apex Court, in our considered opinion, on Public Interest Litigation (PIL), redressal of public injury, enforcement of public duty, protection of social rights and vindication of public interest must be the parameters for entertaining a PIL. The Court has a bounden duty to see whether any legal injury is caused to a person or a cluster of persons or an indeterminate class of persons by way of infringement of any constitutional or other legal rights while delving into a PIL. The existence of any public interest as well as bona fide are the other vital areas to come under the Court's scrutiny. In absence of any legal injury or public interest or bona fide, a PIL is liable to be dismissed at the threshold. It is to be borne in mind that ultimately it is the rule of law that is to be vindicated. As such, there is a need for restraint on the part of the public interest litigants when they move Courts. The Courts should also be cautious and selective in accepting PIL as well.

32. Public Interest Litigation which has now come to occupy an important field in the administration of law should not be 'publicity interest litigation' or 'private interest litigation'.. If not properly regulated and abuse averted, it becomes also a tool in unscrupulous hands to release vendetta and wreck vengeance, as well. There must be real and genuine public interest involved in the litigation and not merely an adventure of knight errant or poke ones nose into for a probe. It cannot also be invoked by a person or a body of persons to further his or their personal causes or satisfy his or their personal grudge and enmity. Courts of justice should not be allowed to be polluted by unscrupulous litigants by resorting to the extraordinary jurisdiction. A person acting bona fide and having sufficient interest in the proceeding of public interest litigation will alone have locus standi and can approach the Court to wipe out violation of fundamental rights and genuine infraction of statutory provisions, but not for personal gain or private profit or political motive or any oblique consideration.

33. In *Ashok Kumar Pandey v. State of West Bengal*, 2003 (9) Scale 741, the apex Court held as follows:

"Public Interest Litigation is a weapon which has to be used with great care and circumspection and the judiciary has to be extremely careful to see that behind the beautiful veil and public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. It is to be used as an effective weapon in the armory of law for delivering social justice to the citizens. The attractive brand name of public interest litigation should not be used for suspicious products of mischief. It should be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta. Court must be careful to see that a body of persons or member of public, who approaches the Court is acting bona fide and not for personal gain or private motive or political motivation or other oblique consideration. The Court must not allow its process to be abused for oblique consideration. Some persons with vested interest indulge in the pastime of meddling with judicial process either by force of habit or from improper motives often they are actuated by a desire to win notoriety or cheap popularity. The petitions of such busybodies deserves to be thrown out by rejection at the threshold and in appropriate cases with exemplary costs."

Laying down certain conditions on which the Court has to satisfy itself it was observed:

"The Court has to be satisfied about-

- (a) the credentials of the applicant;
- (b) the prime facie correctness or nature of the information given by him;
- (c) the information being not vague and indefinite;

The information should show gravity and seriousness involved. Court has to strike a balance between two conflicting interest;

- (i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and
- (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive action. In such case, however, the Court cannot afford to be liberal."

The apex Court, on the point of exercising restraint, held that it has to be very careful that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to be executive and legislature. The Court hardening its stand said:-

"The court has to act ruthlessly while dealing with imposters and busy-bodies or meddlesome interlopers impersonating as public-spirited holy men. They masquerade as crusaders of justice. They pretend to act in the name of pro bono public, though they have no interest of the public or even of their own to protect."

34. In *T.N. Godavarman Thirumulpad v. Union of India*, (2006) 5 SCC 28, the apex Court, relying upon the judgments of *S.P. Gupta v. President of India*, AIR 1982 SC 149 : 1981 Supp. SCC 87, *Janata Dal v. H.S. Chowdhary*, AIR 1993 SC 892, after noticing that lakhs of rupees had been spent by the petitioner to prosecute the case, held as under:-

"it has been repeatedly held by the Court that none has a right to approach the Court as a public interest litigant and that Court must be careful to see that the member of the public who approaches the Court in public interest, is acting bona fide and not for any personal gain or private profit or political motivation or other oblique consideration.

..... while the Court has laid down a chain of notable decisions with all emphasis at their command about the importance and significance of this newly developed doctrine of PIL, it has also hastened to sound a red alert and a note of severe warning that courts should not allow their process to be abused by a mere busybody, or a meddlesome interloper or wayfarer or officious intervener without any interest or concern except for personal gain or private profit or other oblique consideration."

35. Undisputedly, the petitioners have approached this Court of equity invoking jurisdiction under Articles 226 and 227 of Constitution of India.

In *Ramjas Foundation v. Union of India*, AIR 1993 SC 852, the apex Court held that who seeks equity must do equity. The legal maxim "*Jure Naturae Aequum Est Neminem cum Alterius Detrimeto Et Injuria Fieri Locupletiolem*", means that it is a law of nature that one should not be enriched by the loss or injury to another.

Similar view has also been taken in *K.R. Srinivas v. R.M. Premchand*, (1994) 6 SCC 620, where the apex Court held that when a person approaches a Court of Equity in exercise of its extraordinary jurisdiction under article 226/227 of the Constitution, he should approach the Court not only with clean hands but also with clean mind, clean heart and clean objective.

In *Noorduddin v. K.L. Anand* (1995) 1 SCC 242, the apex Court held that Judicial process should not become an instrument of oppression or abuse of means in the process of the Court to subvert justice for the reason that the interest of justice and public interest coalesce. The Courts have to weigh the public interest vis-à-vis private interest while exercising their discretionary powers. Easy access to justice should not be misused as a licence to file misconceived and frivolous petitions.

Similar view has also been taken in *Dr. Buddhi Kota Subbarao v. K. Parasaran*, AIR 1996 SC 2687, and *Ramniklal N. Bhutta v. State of Maharashtra*, AIR 1997 SC 1236.

36. In W.P.(C) No.12434 of 2020, an interlocutory application bearing no.8423 of 2020 was filed by five intervenor-petitioners seeking to be impleaded as parties

to support the case of the petitioners. As such, the said application was not allowed, but Mr. B.P.B. Bahali, learned counsel appearing for the intervenor-petitioners was permitted to address the Court. He supported the arguments advanced by the learned Senior Counsel appearing for the petitioners, but subsequently, Mrs. S. Jena, learned counsel filed four affidavits of Harekrushna Mohanty, Nabakishore Barik, Debendra Kumar Moharana and Satyananda Barik stating that they have not subscribed any signature before the High Court and they do not know anything about the case and such signatures have been obtained by one Susanta Kanungo, son of Sarat Kishore Kanungo of village-Kania, where the intervenors were asked to be members of an anti-corruption organization formed by him and obtained their signatures in blank papers and such blank papers have been utilized in the present case. Therefore, request was made to delete their names from the cause title of intervention petition and further sought for appropriate action against such persons. When out of five intervenor-petitioners, four have recused themselves on the ground mentioned above, only one person remained, namely, Biswendu Swain for whom Mr. B.P.B. Bahali, learned counsel appeared and was permitted to address the Court. As it appears from the cause list, Mr. B.P.B. Bahali, learned counsel was appearing along with Mr. Yeesan Mohanty, learned Senior Counsel appearing for the petitioners in W.P.(C) No.18169 of 2020.

In any event, this Court did not feel inclined to go into the correctness of the affidavits filed by the respective intervenor petitioners, but, however, gave opportunity of hearing to all of them to participate in the process of hearing, and ultimately it revealed that these PILs have been moved in a camouflage manner to unsettle a settled position against the interest of general public at large.

37. In *Kishore Samrite* (supra), the apex Court laid down guidelines to the Court, in the matter of entertaining the PIL, to the following effect:-

"(1) The obligation to approach the Court with clean hands is an absolute obligation.

(2) Quests for personal gains have become so intense that those involved in litigation do not hesitate to take shelter of falsehood and misrepresent and suppress facts in the court proceedings. Materialism, opportunism and malicious intent have over-shadowed the old ethos of litigative values for small gains.

(3) A litigant who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands is not entitled to any relief, interim or final.

(4) The Court must ensure that its process is not abused and in order to prevent abuse of the process the Court, it would be justified even in insisting on furnishing of security and in cases of serious abuse, the Court would be duty bound to impose heavy costs.

(5) Wherever a public interest is invoked, the Court must examine the petition

carefully to ensure that there is genuine public interest involved. The stream of justice should not be allowed to be polluted by unscrupulous litigants.

(6) It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs"

Similarly in K.D. Sharma (supra), the apex Court held that no litigant can play 'hide and seek' with the Courts or adopt 'pick and choose'. True facts ought to be disclosed as the Court knows law, but not facts. One, who does not come with candid facts and clean breast cannot hold a writ of the court with soiled hands. Suppression or concealment of material facts is impermissible to a litigant or even as a technique of advocacy. In such cases, the Court is duty bound to discharge rule nisi and such applicant is required to be dealt with for contempt of court for abusing the process of the Court.

38. In Balwant Singh Chaufal (supra), the apex Court in paragraphs-143 and 181 of the judgment held as follows:-

"143. Unfortunately, of late, it has been noticed that such an important jurisdiction which has been carefully carved out, created and nurtured with great care and caution by the courts, is being blatantly abused by filing some petitions with oblique motives. We think time has come when genuine and bona fide public interest litigation must be encouraged whereas frivolous public interest litigation should be discouraged. In our considered opinion, we have to protect and preserve this important jurisdiction in the larger interest of the people of this country but we must take effective steps to prevent and cure its abuse on the basis of monetary and non-monetary directions by the courts.

181. In order to preserve the purity and sanctity of the PIL, it has become imperative to issue the following directions:

(1) The Courts must encourage genuine and bona fide PIL and effectively discourage and curb the PIL filed for extraneous considerations.

(2) Instead of every individual Judge devising his own procedure for dealing with the public interest litigation, it would be appropriate for each High Court to properly formulate rules for encouraging the genuine PIL and discouraging the PIL filed with oblique motives. Consequently, we request that the High Courts who have not yet framed the rules, should frame the rules within three months. The Registrar General of each High Court is directed to ensure that a copy of the rules prepared by the High Court is sent to the Secretary General of this Court immediately thereafter.

(3) The Courts should prima facie verify the credentials of the petitioner before entertaining a PIL.

(4) The Courts should be prima facie satisfied regarding the correctness of the contents of the petition before entertaining a PIL.

(5) The Courts should be fully satisfied that substantial public interest is involved before entertaining the petition.

(6) The Courts should ensure that the petition which involves larger public interest, gravity and urgency must be given priority over other petitions.

(7) The Courts before entertaining the PIL should ensure that the PIL is aimed at redressal of genuine public harm or public injury. The Court should also ensure that there is no personal gain, private motive or oblique motive behind filing the public interest litigation.

(8) The Courts should also ensure that the petitions filed by busybodies for extraneous and ulterior motives must be discouraged by imposing exemplary costs or by adopting similar novel methods to curb frivolous petitions and the petitions filed for extraneous considerations".

Similar view has also been taken by this Court in Chhabindra Mukhi (supra).

39. Applying the settled principles of law, as discussed above, to the issue at hand, there are enough circumstances to infer that by filing the present writ petitions in the garb of public interest litigation an attempt has been made at the behest of a rival businessman much after the decision was taken to establish retail outlet in question and having failed to obtain an interim order from the common law forum by filing a civil suit which is still pending. Thereby, filing the instant writ petitions in the nature of public interest litigation is nothing but abuse of the forum of public interest litigation.

40. It is well settled principle of law laid down by the apex Court that public interest litigation is a weapon to be used with great care and that is why the judiciary has to be extremely careful to see that behind the beautiful veil of public interest an ugly private malice, vested interest and/or publicity seeking is not lurking. As such, it should not be used for suspicious products of mischief and it should not be aimed at redressal of genuine public wrong or public injury and not publicity oriented or founded on personal vendetta.

As is revealed, on careful examination of the facts, the petitioners in the instant writ petitions in approaching this Court have not acted bona fide, rather for their personal gain, and private motive they have approached this Court by using attractive brand name of public interest litigation. The credential of the petitioners vis-à-vis the intervenors is also doubtful. Therefore, the Court has to take a stringent step while dealing with such persons, as they have acted impersonating as public-spirited holy man. As a matter of prudence, the petitioners owe an obligation to approach the Court with clean hands, but a perusal of the factual matrix of both the cases would reveal that the petitioners and intervenors, being the litigants, attempt to pollute the stream of justice or touch the pure fountain of justice with tainted hands. Therefore, this Court is of

the considered view that the petitioners and the intervenors have abused the process of Court by filing the instant writ petitions with an oblique motive and filing of such frivolous public interest litigations should be discouraged.

41. In *Manohar Lal v. Ugrasen*, (2010) 11 SCC 557, the apex Court held that filing a totally misconceived petition amounts to 'abuse of process' of the Court. Such a litigation is not required to be dealt with lightly, as a petition containing misleading and inaccurate statement, if filed, to achieve an ulterior purpose, amounts to 'abuse of the process' of the Court.

Similar view has also been taken by the apex Court in *State of M.P. v. Narmada Bachao Andolan*, (2011) 7 SCC 639.

In view of the above discussion, issue no.(ii) is answered against the petitioners.

42. It is revealed that the writ petitioners and intervenors have consumed valuable judicial time of the Court during extraordinary situation of pandemic Covid-19. As such, they have not satisfied any of the guidelines prescribed by the apex Court. Therefore, the writ petitions deserve to be dismissed with exemplary cost, which is quantified at Rs.25,000/- (twenty-five thousand) for each of the two writ petitions. The total cost of Rs.50,000/- (fifty thousand) for both the writ petitions shall be deposited in the Advocate's Welfare Fund of Orissa High Court Bar Association and receipt thereof shall be filed before this Court within a period of three months, failing which steps, as deemed fit and proper, against the petitioner (s) of each of the writ petition for realization of such amount shall be taken in accordance with law.

43. In view of the answers given hereinbefore to the issues framed, both the writ petitions merit no consideration and the same are hereby dismissed. As a consequence thereof, the interim order of status quo granted by this Court vide order no.2 dated 09.06.2020 in W.P.(C) No. 12434 of 2020 stands vacated.

As Lock-down period is continuing for COVID-19, learned counsel for the petitioner may utilize the soft copy of this judgment available in the High Court's official website or print out thereof at par with certified copies in the manner prescribed, vide Court's Notice No.4587 dated 25.03.2020.