
(2011) 10 KL CK 0032
In the High Court Of Kerala
Case No : W.A. No. 741 of 2011

Basheer, M.M. and another

APPELLANT

Vs

State of Kerala and others

RESPONDENT

Date of Decision : 19-10-2011

Acts Referred:

Constitution of India, 1950 — Article 161, 46
Petroleum Rules, 1976 — Rule 144, 144(1), 161

Citation : (2011) 4 ILR (Ker) 617

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : P.B. Sahasranaman, Sri T.S. Harikumar and Sri K. Jagadeesh, for the Appellant; George Mecheril, Govt. Pleader, Sri A.M. Shaffique , Sri E.K. Nandakumar, Sri K. John Mathai, Sri P. Benny Thomas, Sri P. Gopinath and Sri P. Parameswaran Nair, for the Respondent

Final Decision : Allowed

Judgement

Ramachandran Nair, Ag. C. J.

1. The three Oil Marketing Companies (hereinafter called "OMCs.") under the control of the Central Government namely, Indian Oil Corporation, Bharath Petroleum Corporation and Hindustan Petroleum Corporation are engaged in retail marketing of petrol and high speed diesel in Kerala through around 2700 retail outlets. Even after the liberalisation which started two decades back allowing private players in oil exploration, production and marketing, Kerala has relatively an insignificant number of around 70 outlets started by the private operators like Reliance Petroleum, Essar Oil etc. many of which remain closed or are non-operational. The boom in the automobile market and the increased demand for petroleum products has led to opening up of large number of new retail outlets by the OMCs. and the process is continuing. Most of the existing dealers operating retail outlets were appointed during the control regime during which dealers were selected by the Oil Selection Board giving certain preferences

to injured in war, war widows, unemployed educated youth, members of the Scheduled Caste and Scheduled Tribe communities etc. Under the present dispensation OMCs. are free to open retail outlets anywhere. When publications were made by these companies proposing to start new retail outlets near existing ones, the present operators of retail outlets complained to the Government of Kerala, which convened a meeting of representatives of OMCs. and representatives of the Retail Dealers' Association on 28-7-2010 and took a policy decision to instruct the District authority namely, the District Collectors to follow the norms prescribed on 17-9-2010 for issuing No Objection Certificate as required under Rule 144(1) of the Petroleum Rules for commencement of new petroleum outlets. Under the norms prescribed by the Government through Circular dated 31-12-2010 issued by the State Government, the OMCs. are required to ensure a minimum guaranteed business to existing operators while considering opening up of new retail outlets. When the OMCs. started advertising for starting authorised retail outlets in various centres contrary to the above stated norms prescribed by the State, the existing dealers in the nearby areas approached this Court with writ petitions challenging the opening of such new retail outlets on the ground that the same is in violation of the norms prescribed by the State Government after consultation with the Oil Companies and if new petroleum outlets are allowed to be started indiscreetly, the existing outlets will suffer loss leading to even closure of their business. While admitting writ petitions, certain interim orders were issued by Single Judges interdicting the OMCs. from proceeding with setting up of some of the new outlets proposed and in some cases stay orders issued were later lifted or modified. Before the learned Single Judge, the OMCs. and some of the new applicants who were parties in the writ petitions raised the contention that the State Government has no role in the production and marketing of petroleum products and so much so, the decision taken by the Government in the Circular issued and relied on by the existing operators will have no force of law and will not bind the OMCs. The OMCs. also denied the claim of the Government that the norms were prescribed and circulated by the Government based on the consensus reached among representatives of the OMCs. who participated in the meeting arranged by the State Government.

2. The learned Single Judge after hearing all sides including the Government Pleader for the State took the view that the objection raised by the existing retail dealers against setting up of new outlets is essentially to monopolise the business by them, which in the first place cannot be permitted and secondly, existing operators have no right to oppose starting of new outlets which offer competition in business with them. So far as the violation of the norms prescribed by the State Government through the Circular issued by them towards guidelines to District Collectors for issuing NOC under Rule 144 of the Petroleum Rules is concerned, the learned Single Judge accepted the contention of the OMCs. that since legislative power in regard to production and marketing of petroleum products is exclusively with the Central Government under Entry 52 of

List 1 of VII Schedule to the Constitution, the State has no authority to issue executive orders. Relying on several decisions of the Supreme Court and that of the Madras High Court against the right of business community to oppose competition in the market, the learned Single Judge permitted the OMCs. to proceed with setting up of petroleum outlets at their choice and in accordance with their policies. It is against this common judgment of the learned Single Judge rendered in batch of cases filed by existing operators, they have come up with these Writ Appeals. So far as W.A. No. 966/2011 is concerned, this is filed by the State Government challenging the finding of the learned Single Judge that the State has no authority to interfere with the oil marketing business carried on by the OMCs. in the State. The W.P.(C)s. above referred are cases filed after disposal of the batch cases by the learned Single Judge and the question raised is one and the same. Since common issues are raised in all the cases, we have grouped all these cases together, heard counsel for appellants/petitioners, common Standing Counsel appearing for HPC Ltd. and BPC Ltd. and Standing Counsel appearing for IOC Ltd., the Government Pleader for the State, Assistant Solicitor General Sri S. Parameswaran Nair and counsel appearing for dealers selected by the OMCs. for starting new retail outlets.

3. Before considering the facts of each and every case, we have to first consider the tenability of the findings entered by the learned Single Judge on the freedom of the Public Sector Oil Companies to set up retail outlets at any place of their choice, lack of any control or authority by the State Government and the scope of NOC to be issued by the District Collector in terms of Rule 144(1) of the Petroleum Rules. The fundamental issue to be considered is whether the assumption by the learned Single Judge that larger the number of petrol bunks in the State the more will be the competition among the dealers leading to benefits to consumers of petroleum products is correct. There can be no controversy that market forces determine prices of commodities and consumer will be the beneficiary of price reduction on account of competition in the market. However, we do not find any application for this principle in the marketing of petroleum products because petrol and diesel are sold at controlled prices or at uniform prices fixed by the OMCs. So far as quality is concerned, admittedly all the OMCs. are procuring petrol and diesel mainly from Kochi Refineries and, therefore, the product sold by all the companies in all the retail outlets, whether existing or newly opened ones is of the same quality. Therefore, the increase in the number of petroleum outlets in the State has no impact on retail price or quality of the product sold and so much so, consumer is not beneficiary of this exercise by the OMCs. Demand also does not go up by increasing the number of outlets. On the other hand, we are afraid whether the indiscreet opening up of retail outlets by petroleum companies on a competitive basis at a heavy cost, each one said to be ranging from Rs. 25 lakhs to Rs. 1.5 crores, will lead to increase in their losses compelling Government to increase the subsidy on diesel, and OMCs. going for price increase on petrol. We are, therefore, of the view that the market for the petroleum products is a guaranteed one irrespective of the number of outlets

operated and, therefore, unnecessary investment in new retail petroleum outlets at heavy cost will only be detrimental to the interest of the OMCs. and in turn to the public at large because loss to the Public Sector Companies is compensated by way of subsidy by the Government or increase in price of the petroleum products both ultimately affecting the public at large. In support of his findings, the learned Single Judge has relied on several decisions of the Supreme Court, particularly in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, , *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, , *Mithilesh Garg, Vs. Union of India and others etc. etc.*, , *Simbhaoli Sugar Mills Limited v. Union of India* reported in AIR 1993 S.C. 219. What we notice is that these cases decided pertain to establishment of Cinema theatre, new rice and flour mill in competition with an existing one, starting of new stage carriage operation in competition with another stage carriage operator, setting up of sugar mill etc. The issue decided by the Supreme Court is in the context of business of manufacturing industries or in the service sector where there is no control or regulation in regard to quality of service or the product or price. There can be no controversy that competition among service providers or manufacturing industries would be beneficial to the customers both in the form of quality and competitive prices. However, competition has no relevance in the sale of petrol and diesel at uniform prices fixed by the Government and the Companies. In our view, the only consideration that the OMCs. should keep in mind is that they should ensure even distribution of the products to the customers all over the State. The OMCs. being public sector companies are operating with public money and, therefore, should not engage in unnecessary capital outlay for setting up new pumps without returns. Petrol and diesel prices are periodically increased causing lot of public resentment and discontentment on the consequent price increase on commodities. OMCs., therefore, have to be very careful about every investment made by them and have to economise their operations to prevent waste which in turn is passed on to the public through price increase of petroleum products. If these considerations weighed with the OMCs., we doubt whether they would proceed to set up the whole number of new retail outlets proposed very close to the existing operators who have very low volume and turnover of business. The justification for the increase in retail outlets projected by counsel appearing for the OMCs. is the increase in the market demand on account of the automobile boom. There can be no controversy on this, though the projections are exaggerated. Further, the question is whether the large number of retail outlets for petrol and diesel proposed to be opened has any proportion to the increase in market demand of petroleum products. Going by the statistics furnished by the existing dealers, we are sure that the OMCs. have not taken into account the most relevant aspect i.e. volume and turnover of existing dealers before proposing to set up new pumps near to existing outlets particularly, in rural areas where business has not picked up to justify another or more outlets nearby.

4. Appellants relied on Ext. P-1 minutes and Ext. P-9 Circular [produced in W.P.

(C) No. 37417/2010 against which W.A. No.763/2011 is filed] issued by the State Government and contended that under the said norms evolved by the State Government, new retail outlets should be permitted after guaranteeing volume of business of at least 350 kilo litres per month for retail outlets within Corporation limits and at least 250 kilo litres per month on National Highways and on the side of State Highways for existing dealers in the same area. So far as the Kissan Sevak Kendras are concerned, the minimum provided is 0.50 kilo litres. The learned Single Judge, however, rejected the norms prescribed by the Government for the reason that State Government has no authority under the Petroleum Act and Rules to prescribe any norms for setting up or permitting new retail outlets. So far as the NOC to be issued by the District Collector under Rule 144 of the Petroleum Rules is concerned, the learned Single Judge held that under Rule 161 the executive control in all matters relating to production and marketing of petroleum products is on the Central Government and so much so, State Government has no authority to issue any guidelines to the District Collectors, no matter District Collectors work under Revenue Department of the State Government. Detailed arguments have been raised by both sides and the Government Pleader also tried to sustain the State Government's authority to prescribe norms for the District Collectors to consider while issuing NOC for starting new retail outlets. Going by the view we are taking in the matter, we do not think there is any need to consider whether State Government has authority, though not under the statute, but under Article 161 of the Constitution to prescribe norms to be followed by the Collectors for granting NOC for setting up new retail petroleum outlets under Rule 144 of the Petroleum Rules or whether the District Collectors could of their own accept objections of the type raised by the appellants against issuance of NOC. Before the learned Single Judge counsel for the appellants relied on letter dated 30-10-2008 [produced as Ext. P-4 in W.P(C) No. 37417/2010] written by the Minister of Petroleum and Natural Gas to the Minister for Overseas Indian Affairs to whom the appellants represented their grievance, wherein it was assured that unless there was enough potential available for setting up new petroleum outlets, no new petroleum outlet would be sanctioned adjacent to any of the existing outlets allotted to SC/ST dealers. Further, admittedly the Government of India has on 6-4-2011, which is even prior to the date on which the learned Single Judge rendered the impugned judgment, issued instructions to all the three OMCs. about the criteria to be followed for setting up new retail outlets. On going through the same, what we find is that feasibility study has to be conducted by OMCs. before deciding to open up new retail outlets in an area. Admittedly, the new outlets the starting of which are challenged in the W.R(C)s. and in turn in these appeals were all proposed before the Central Government issued the new criteria for conducting feasibility study for starting new retail outlets. It is pertinent to note that the OMCs. should keep in mind financial viability of new retail outlet which according to the Ministry, should have minimum business in MS/HSD at 350 kl. Further, emphasis is given for setting up B sites wherein investment is substantially by the dealer who proposes to start the business and not by the OMCs. as in the

case of site A where virtually full funds are spent for acquisition of land, whether by purchase or through lease, and setting up the sales outlet by the company. Even though OMCs. have advertised for setting up large number of petroleum outlets at different locations and LOIs. issued, we see no reason why the matter cannot be reconsidered based on the criteria fixed by the Central Government as stated above, at least in cases where substantial investments are not made for development and setting up of the outlet. The OMCs. and the new applicants do not question the authority of the Central Government to prescribe norms for setting up new petroleum outlets because Rule 161 of the Petroleum Rules specifically confers powers on the Central Government. They are only questioning the authority of the State Government to prescribe norms for establishing new retail outlets in the State. In view of the guidelines issued by the Central Government constituting consortium of 3 OMCs. to decide on expansion based on the potential and feasibility of business which certainly takes in volume and turnover of business of existing dealers in the area of the proposed site, we feel they should be directed to reconsider the proposal to start new retail outlets pursuant to publications already made, at least in all cases where substantial investment is not made for development of the land for setting up of the outlet. Even though we find force in the contention of the Government Pleader in support of the appeal filed by the State Government that State Government in exercise of its authority to promote public interest and public safety can limit the number of petroleum outlets wherein they are also entitled to take into account the availability of existing outlets, we do not think there is any need to consider all these because in our view, going by the instructions issued by the Central Government noted above the OMCs. cannot indiscretely start petroleum outlets anywhere in the State. In other words, the guidelines issued by Central Government will serve the purpose of achieving the objectives of the Circular issued by the State Government.

5. The appellants have challenged the findings of the learned Single Judge on the locus standi of the appellants to challenge the setting up of the new retail outlets. The learned Single Judge relying on decisions of this Court in *M/s Reliance Industries Ltd. & another v. Commissioner of Land Revenue & others* reported in 2007 (2) ILR Ker. 193 and that of the Madras High Court in *Nataraja Agencies Vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India and Others*, held that an existing business concern has no locus standi to challenge the setting up of new business in competition with his business. We have already noticed that business competition has no relevance so far as sale of petroleum products at the same price all over the State is concerned. So far as the decision of our High Court relied on by the learned Single Judge is concerned, we notice that the petroleum outlet started in that case was that of a large private company and probably private players in the market along with Public Sector Companies may certainly benefit the consumers both quantitatively, qualitatively and pricewise. Unfortunately private sector oil marketing in India is still a non-starter and benefits of market competition in petroleum products

remain a dream for the customers. Therefore, this decision cannot be made applicable in the case of distribution of petroleum products by Public Sector Companies at price controlled by the Government or at uniform price fixed by them. We are also unable to find any basis in the observation of the Madras High Court in the above decision that competition will lead to improvement in quality of the product because all the OMCs. in Kerala are essentially marketing the petrol and diesel produced by the very same Refinery in Kochi which is under the control of BPCL. The learned Single Judge further proceeded to hold that the appellants' relation with the OMCs. is only contractual and unless the agreement provides for restriction clause binding the OMCs. against starting new retail outlets nearby areas, appellants have no right to oppose the same. Further finding of the learned Single Judge is that if there is any breach of contract of any provision, express or implied, the remedy of the appellants is only before civil court, that too, for damages and not against setting up of new petroleum outlets. We are unable to uphold any of the finding because in our view, the Petroleum Act and Rules have inherent limitations, the most important of which is that OMCs. should not indiscreetly start retail petroleum outlets leading to loss for themselves which in turn is adverse to public interest because OMCs. Are funded with public money. Further, we have already noted that business loss of OMCs. are recouped by the Exchequer through subsidies and unless business is run in a healthy manner by these OMCs., the same will lead to loss and consequent increase in sale price affecting public interest. Under Rule 161 of the Petroleum Rules, the Central Government is admittedly authorised to issue norms and guidelines in the setting up of retail outlets in the country and in exercise of the powers Government has in fact issued Circular referred above wherein viability of the business for the proposed new retail outlets should be the concern of the OMC while starting it. We also find force in the contention of the existing dealers who have been given allotments on certain priorities for starting retail business in petroleum wherein there is implied guarantee that the OMCs. which are Public Sector Companies which made the allotments, will not act detrimental to the interest of the existing dealers. It is worthwhile to note that Article 46 provides for economic upliftment of the downtrodden, particularly of the Scheduled Caste and Scheduled Tribe community. Therefore, there is force in the contention raised by the appellants in respect of 6 outlets presently operated by members of Scheduled Caste community that the very purpose of giving a benefit to them through allotment of retail dealership will be defeated, if in the nearby areas new retail outlets are started leading to complete loss and closure of the existing outlets. We, therefore, feel that the existing dealers have locus standi to have their grievance redressed in this Court, if the OMCs. act against the letter and spirit of the Petroleum Act and Rules in the setting up of new retail outlets.

6. We find force in the contention of the appellants and petitioners that they being authorised retail dealers appointed by the OMCs. are entitled to protection against indiscrete opening of petroleum outlets in nearby areas which will lead to

complete loss of business and destruction of the existing dealers. Almost all the appellants/petitioners have furnished details of their monthly sales in volume and value and their returns and the net income presently they are getting. According to them, opening up of new retail outlets near to the existing bunks will only lead to sharing of business which will lead to reduction of existing meagre business in volume and value leading to loss and closure. Even though the net profit worked out and presented by the dealers may not be acceptable as such, what we notice is that in Kerala almost all petrol pumps are operated by underpaid employees from outside States who work from 6 a.m. to 9 to 10 p.m., i.e. average 15-16 hours on very low wages. If the State Labour Department enforces labour laws in regard to minimum wages, gratuity and other welfare measures and protection of these employees, certainly the operating cost of existing petrol pumps will go up and one day or other, the retail outlets employing these people will have to confront reality and open their eyes to the problems of the underpaid employees. Therefore, it is our view that OMCs. have responsibility to ensure a minimum business to the dealers while considering necessity of opening up another retail outlet in or around an existing one. In this context it may be noticed that the Ministry of Petroleum vide proceedings dated 6-4-2011 issued guidelines to OMCs. wherein clause (1) specifically states that OMCs. should ensure guaranteed business and reasonable margins while permitting new outlets. This obviously means that without considering the volume and value of business of existing outlets, the need to open fresh outlet does not arise at all. Under the current rates, the commission paid by the OMCs. for sale of petrol is at Rs. 1.499 per litre and diesel at Rs. 0.912 per litre. The OMCs. have pointed out increase in market demand as the ground for proposing large number of retail outlets all over Kerala. However, from the figures furnished by the appellants it is seen that the market expansion is not reflected in the volume of business of the dealers. For example, the details furnished by some of the appellants at least establish beyond doubt that there is no increase in volume of business as alleged by the OMCs. in the area where these pumps are located. We extract hereunder details furnished by some of the existing dealers, near to whom new outlets are proposed:

Case

No.

Location

Monthly sales in volume of petrol and diesel

Distance from existing outlet within which new retail outlet is proposed to be opened

WA 820/11

Elavumthitta

62 KL

No site located

WA 845/11

Vallamkulam

98 KL

6 kms from Pullad

"

Kumbanad

194 KL

2.5 kms from Pullad

"

Kozhencherry

209 KL

5 kms from Pullad

WA 844/11

Arakkapady

199 KX

5 kms.

WPC 25590/10

Chakkuvally

136 KL

2 kms.

WA 847/11

Vennikulam

100 KL

No site located

WA 818/11

Chakkuvalli

120 KL

Below 1000 metres

WA 819/11

Thattayil

45 KL

Below 2.5 kms.

WA 846/11

Vazhakulam

150 KL

Below 600 metres

WA 1009/11

Thamarakulan

i 70 KL

Below 2 kms.

WPC 17933/11

Kunnikode

130 KL

Below 2000 metres

WPC 19231/11

Thattayil

45 KL

Below 250 metres

If the facts stated above are true, then we have to necessarily conclude that there is no increase in volume of business in the above retail outlets located in rural areas justifying starting of new retail outlets within the same area or within a distance of 3 to 5 kilometres. The arguments of the respondents that petrol bunks should be provided anywhere and everywhere to suit the convenience of the customers is absolutely baseless. All over the world indications are given on road side about the distance to reach the next retail petroleum outlet. Customers are well aware about the locations where fuel is available and it is not as if the vehicle owners expect petrol in every nook and corner in the State. There is no request from any public organisation, local bodies or Government about the requirement of starting new outlet anywhere to suit customer convenience. In fact, in our view, in order to reduce the cost of marketing, the OMCs. should limit number of retail outlets providing maximum capacity business to them and there will be requirement of a retail outlet near to the existing only if vehicles are waiting for fuel and the queue may stretch to the road which should not be allowed. By allowing increase in volume of sales and consequently ensuring

reasonable returns, the OMCs. could avoid further increase in margins to dealers which in turn can prevent further increase in the fuel prices affecting the public. Therefore, in our view, it is the duty of OMCs. to ensure that new outlets are started only when it is necessary and the necessity will have to be certainly considered with reference to the volume of business of nearby existing dealers.

7. The controversy raised and decided before the learned Single Judge, in our view, has no significance because even assuming that the State Government has no authority to issue guidelines to the District Collectors in the matter of issuance of NOC under Rule 144 of the Petroleum Rules, petroleum products being essential commodities should be marketed by the OMCs. in such a way as to serve the public interest. Since unhealthy competition and unwise investment lead to loss for the OMCs. which are run on public funds, it is the duty of the Central Government to ensure that the system works not to the detriment of public at large. We have already found that there is no scope for permitting competition among Public Sector Companies in the marketing of petroleum products which are sold at uniform price all over the State. The contention of the OMCs. that business in retail outlets depends on service rendered is also equally unworthy of credit. The only reason why the OMCs. decline to reconsider approval for starting new retail outlets based on Central Government's order dated 6-4-2011 is that decisions have been taken prior to the date of Government Order. As already stated, we find public interest angle for the whole issue because in a single year the Petroleum Companies have increased the price of petrol five times and if the OMCs. continue to waste their resources by establishing unnecessary retail pumps all over, their loss will only increase clearing way for further price increase again affecting the public. Even though NOCs. have to be considered by the District Collector keeping in mind public interest, safety and convenience, the same does not mean that the OMCs. can without any regard to need and requirement permit opening up of new petroleum outlets anywhere at heavy cost. The respondents have no case that the Government of India letter dated 6-4-2011 does not bind them. It is specifically mentioned by the Petroleum Ministry in the above order that OMCs. have to take coordinated decision about the need to start new outlets and as far as possible, retail outlets should be started in the B category which only means that the Government's advice to the Oil Companies is to reduce investment in marketing network. From the above we do not find any justification for the OMCs. to start new outlets in the several areas proposed.

8. The contention of the OMCs. that they have not guaranteed any business to the existing dealers also is not acceptable. As already stated, many of the existing pumps are operated by priority categories selected by Oil Selection Board and it is the duty of the OMCs. under the Central Government to protect their rights which, though may not entitle to guaranteed business, but to ensure that their business is not destroyed by opening new outlets in nearby areas. Article 46 of the Constitution providing protection to the economic interest of Scheduled Caste/Scheduled Tribe is as follows:

46. Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.--The State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

When the above is the constitutional provision, we do not know on what basis the OMCs. can contend before court that they cannot guarantee any business to existing petroleum outlets given to SC/ST wherein the total investment is by the OMCs. In our view, members of SC/ST community have a constitutional right to be protected by this Court, if the OMCs. try to violate it. Even though several existing outlets which filed Writ Petitions have furnished their volume sales and if the figures furnished by them are correct, this Court should prohibit setting up of new outlets near to such of the existing ones, we do not propose to do it but direct the Committee of OMCs. to consider correctness of the volume and sales figures submitted by them and to decide whether the new outlets proposed should be opened based on the guidelines issued by the Government and in this judgment and if not, to drop the proposal. Even if tanks and dispensers are brought over to be installed, the same should not be a justification for opening unnecessary outlet near to an existing one with massive investment and the OMCs. should arrange for shifting of the same to other sites.

9. From the above observations and findings we conclude the following:

(i) Competition among Public Sector Oil Marketing Companies namely, IOC, BPCL and HPCL (commonly called OMCs.) for sale of petrol and diesel, the price of which are fixed either by the Government or by the companies will not promote any consumer interest and will have only adverse consequences for the OMCs., the Central Government and hence detrimental to public interest. Petrol and diesel being essential commodities have to be marketed by OMCs. keeping in mind the financial interest of the marketing companies and the public interest whereunder price escalation of the products as far as possible should be prevented.

(ii) Existing dealers of OMCs. particularly the outlets operated by members of SC/ST have a legal right to oppose indiscrete and indiscriminate opening of retail outlets by OMCs. near existing outlets, if the same leads to loss and eventual closure of their business. The OMCs. in a coordinated manner have to take into account the need of new outlet in an area by taking into account mainly the increase in volume and sales in the existing outlets at least around 5 kilometres in rural areas.

(iii) Though distance from existing outlets as such need not inhibit opening of new outlets in Municipal areas, it should be taken as a criteria in rural areas under Panchayats where new outlets should be permitted near existing ones only if the existing outlets are found inadequate to serve the vehicle owners and after ensuring that existing outlets have sufficient volume sales, say at least 150 to

200 KLs. per month. Before notifying or starting new retail outlets, the OMCs. together should take into account volume of business of nearby outlets, say within a range of 5 kilometres in rural areas and decide to open new ones only if the business increase in the area reflected in increased volume of sales of existing retail outlets in or around proposed area justify it.

(iv) The OMCs. should constitute a High Level Joint Committee in the State to hear objections from existing operators against opening of new sites and before proceeding to issue L.O.I., and if issued before starting new outlets, the objections raised by existing retail outlets within 5 Kms. in rural areas should be considered and disposed of and the same should be communicated to the objector.

10. Going by the guidelines issued by the Central Government and State Government with regard to volume sales justifying new outlets, we feel there is no justification for the OMCs. to set up new petroleum retail outlets within the radius of 5 kilometres from a retail existing outlet located in a Panchayat/rural area unless the monthly sales volume of both MS and HSD together in the existing retail outlet exceeds 150 KL. We do not find any justification for OMCs. to set up retail outlets of different companies in the same area or nearby. In other words, the OMCs. should allot exclusive areas so that unnecessary competition among the three companies is avoided.

11. Our findings in this judgment apply only to the Public Sector OMCs. and has nothing to do with retail petroleum outlets started by private companies which are free to start retail outlets at any place of their choice in competition with outlets opened and maintained by the OMCs.

12. For the reasons stated above, we allow the Writ Appeals by vacating judgment of the learned Single Judge and dispose of the corresponding WPCs. along with fresh WPCs. filed with the following directions to the respondents.

(a) The OMCs. will keep in abeyance starting of all the new outlets proposed against which Writ Appeals and WPCs. are filed, consider the volume of business of the objectors by calling for sales details from them and after verifying with the marketing companies concerned and decide afresh whether the outlet proposed is justified based on the Central Government's Order dated 6-4-2011 and the observations above and if not, to give up such of the retail outlets which are unnecessary.

(b) So far as new proposals which are in contemplation, the OMCs. should identify location and advertise for opening up new retail outlet only on being satisfied about the need based on the Government Order and observations and findings stated above and after considering the volume sales of existing operators within 5 Kms. in rural areas and after considering objections if any raised by them.

(c) So far as retail outlets objected in W.As. or WPCs. but commissioned during

pendency of these cases in this Court are concerned, the OMCs. will watch volume sales of the existing and new retail outlets and if it is found that sharing of business makes both unviable and the existing one faces closure, then the operations in the new retail outlets should be suspended until business increases in the area justifying it's reopening.

13. The Joint Committee constituted by the OMCs. is directed to consider the objection raised by each and every appellant/petitioner and other existing dealers within 5 kms. from the new sites proposed taking into consideration the volume sales of such existing dealers and decide whether the retail outlet proposed is required or not. A speaking order should be issued to the objectors, if the objections are overruled and only after the OMCs. consider the objections and decide location of the outlet, the District Authorities namely, the District Collectors, should issue NOC under Rule 144. All steps taken for setting up of new outlets will be withheld until the Committee of OMCs. decide and approve the justification for opening retail outlet at the proposed site after hearing objections and after considering the volume sales in the nearby existing pumps. So far as new outlets proposed in Municipal and Corporation areas are concerned, considering the density of vehicles in urban areas, nearness to existing pumps should not be taken as a valid objection. But here again, the volume of business of the existing outlets should be taken into account and in the urban area, we feel unless the existing retail outlet has atleast 200 Kls. of sales per month, new outlets should not be permitted near to it.

14. Wherever construction of the retail outlet is full and complete in all respects based on L.O.Is. and NOCs. issued, the OMCs. are free to start supply. However, if the starting of any such new outlet leads to loss and closure of the nearby existing outlet, then the new one should be closed in preference to the old one existing there. In cases where work is in progress in respect of new outlets, it's commencement should wait until decision by the Committee of OMCs. as above.