

(2011) 05 KL CK 0064

In the High Court Of Kerala

Case No : Writ Petition (C) No. 1016 of 2010 and Connected cases

Mary Ulahannan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 23-05-2011

Acts Referred:

Constitution of India, 1950 — Article 162, 19(1), 226, 254, 73
Industries (Development and Regulation) Act, 1951 — Section 18G, 2
Petroleum Rules, 2002 — Rule 144, 154, 161
Rice Milling Industry (Regulation) Act, 1958 — Section 8(3)

Citation : (2011) 3 ILR (Ker) 56 : (2011) 6 RCR(Civil) 750

Hon'ble Judges : P.R. Ramachandra Menon, J

Bench : Single Bench

Advocate : M. Cherian and Sri T. A. Jehfer Sadhiq, for the Appellant; P. Parameswaran Nair (Asst. S.G. of India) for 1st respondent, Sri T.K. Aravinda Kumar Babu (Government Pleader) for respondents 2, 6 to 8, Sri E.K. Nandakumar, Sri A.K. Jayasankar Nambiar, Sri K. John Mathai, Sri P. Benny Thomas, Sri P. Gopinath and Sri V.J. Anand for 3rd respondent Sri George Sebastian and Sri Egy N. Elias for 9th respondent, for the Respondent

Judgement

Mr. Justice P.R. Ramachandra Menon

1. The scope of the "NOC to be issued by the District Authority under Rule 144 of the Petroleum Rules, 2002 is the subject-matter involved in all these writ petitions.

2. The crux of the contentions raised, except W.R(C) No. 4863 of 2011, is that the petitioners are the existing retail dealers of petroleum products marketed/distributed by the three Oil Companies in the public sector, viz. The Indian Oil Corporation Limited, The Bharat Petroleum Corporation Limited and The Hindustan Petroleum Corporation Limited. The said petitioners are stated as aggrieved of the steps being taken by the Petroleum Companies (Company in short) to appoint new retail outlet dealers in the respective areas, inviting applications in this regard through advertisements, without any regard to the

feasibility or the potential of the area and in turn, affecting the returns of the petitioners quite adversely. It is contended that, because of the unhealthy competition among the Companies in setting up more and more new units, the entire business is plunging into losses, putting it quite detrimental to the investments made by the petitioners and also without any regard to the "public money" being invested by the Companies. It is in the said circumstances, that the State Government has intervened, convening a meeting of all concerned, arriving at a decision and issuing a Circular, stipulating certain norms fixing the minimum viability limit as 250 Kilo litres per month, lest, the business of the existing dealers should be affected while granting NOC to the new retail outlets in the area. Some of the writ petitioners challenge the NOCs issued by the District Authorities without any regard to the above norms, while the others seek for a direction to intercept the proceedings pursuant to the advertisements made by the Oil Companies inviting applications for retail outlets and the on-going steps of the District Authorities under the Petroleum Rules to issue the NOC.

3. Some of the writ petitions have been already admitted and the service is complete. In some cases, it has been made clear that, the issuance of NOC and the dealership appointments will be subject to the result of the writ petitions. In W.P.(C) No. 30337 of 2010, such an interim order was passed on 1-10-2010 and thereafter, as per order dated 10-12-2010, it was clarified that the Legal Metrology Department can proceed with the steps to verify and "stamp" the instruments/measuring units and to certify the same. Later, as per interim order dated 18-1-2011 in LA. 517 of 2011 (seeking to modify the interim order), it was made clear that, the orders passed by this Court never did stand in the way of granting NOC or in commissioning the Unit commencing the operation, but for making the same subject to the result of the writ petition.

4. Among the writ petitions, as mentioned herein before, W.P. (C) 4863 of 2011 alone stands on a different footing, the same having been filed by the prospective new comer, in favour of whom Ext. P-2 NOC dated 17-9-2010 has been issued by the District Authority, in spite of which, Ext. P-6 "stop memo" dated 25-10-2010 was issued by the Village Officer, referring to Exts. P-8/P-9 norms therein issued by the State. This in turn is under challenge, raising many a ground that the State Government or the Authorities under the State do not have any right, power, jurisdiction or competence to issue Exts. P-8 and P-9; that the petitioner has already invested lakhs of Rupees in connection with the setting up of the unit after receipt of Ext. P-1 letter of indent dated 13-4-2010 issued by the 4th respondent Oil Company and Ext. P-2 NOC issued by the District Authority thereafter, simultaneously pointing out that, the competent authority to prescribe the norms, if at all any, is only the "Central Government"; that the dealership arrangement is to be finalized in tune with the relevant provisions of the Act/Rules framed by the Central Government and that there is absolutely no violation of any stipulation in this regard.

5. Among the remaining writ petitions, W.P.(C) Nos. 37417 of 2010, 25211 of

2010, 27236 of 2010, 30337 of 2010, 5034 of 2011 and 2159 of 2011 have been filed by the persons belonging to Scheduled Caste community, who, while pressing the common contentions as raised in the other writ petitions, also seek to add that, by virtue of the Constitutional mandate providing reservation to Scheduled Castes and the Scheme implemented by the Oil Companies by giving retail distributorship to such petitioners, it is the duty of the Oil Companies to ensure that the petitioners, while running the Units, are not smoked out by setting up new retail outlets in the locality in an indiscriminate manner, without any regard to the viability or potential of the area, which accordingly is sought to be intercepted by this Court. It is for this reason as well, that they seek to enforce the norms prescribed by the State Government through "Minutes/Circulars" issued in this regard, fixing the norms for granting "NOC for new units, to be implemented through the District Collectors, who happen to be the District Authorities under Rule 144 of the Petroleum Rules, 2002. In W.P.(C) No. 7197 of 2011 (and in some other cases), in support of the challenge raised against Ext. P-14 NOC given by the District Authority, the petitioner therein seeks to rely upon Ext. P-6 (Recommendation of the Indian Roads Congress) as to the locational lay out of the retail outlets and so also on Ext. P-20 (Indian Roads Congress--access norms) which are stated as violated.

6. The respondent Companies have filed counter-affidavits in most of the cases. Some of the contesting parties, who are stated as selected for the new retail distributor ships have also filed their pleadings. In some of the cases, the petitioners have filed reply affidavits as well, mostly reiterating the averments in the writ petitions. Going by the contents of the separate counter-affidavits filed by the respondents 3 to 5 in W.P.(C) No. 1016 of 2010 and similar cases, it is seen that there is no conflict of interest between/among the Oil Companies.

7. The learned counsel for the petitioners submit that the concerned Oil Companies are engaged in an unhealthy business competition, in which, persons like the petitioners are made scapegoats, who have already made much investments and are having sales far below the optimum level, even on this day, which will further be pushed down, once the new retail outlets sought to be established are given sanction to function. Though, no specific provisions in the Act/Rules or any relevant norms issued by the Government of India with regard to the starting of the new outlets are referred to in any of the writ petitions, it is contended that, the State is at liberty to prescribe such norms in public interest and public safety and it was in this circumstance, that the Government Order dated 17-9-2009 (presumably of 17-9-2010) forwarding the Minutes of the meeting held on 28-7-2010 and Circular dated 31-12-2010 [Ext. P-1 and P-9 respectively in W.P.(C) 37417 of 2010] were issued by the State Government. It is pointed out that, even though there is no specific provision of law, it is always open for the Union/State to issue necessary instructions/guidelines in the form of executive orders, by virtue of the power conferred under Articles 73 and 162 respectively of the Constitution of India and as such, the contents of the Minutes/Circular issued by the State are binding upon the Oil Companies, who

participated in the proceedings, whereby the feasibility norms have been declared, placing reliance on the business volume, rather than the distance limit. The norms stipulated by the State as above, contemplate 5 different categories, such as, Corporation limits--350 Kilo litres per month; National Highway area--340 Kilo litres per month; State Highway area--250 Kilo litres per month--other roads/areas--250 Kilo litres per month and Kisan Sevak Kendras--50 Kilo litres per month. The petitioners contend that, they do not have the minimum sales output as above and as such, no NOC can be given for starting new retail outlets.

8. The petitioners in W.P. (C) 37417 of 2010 and similar cases, who belong to Scheduled Castes, have got a contention that, as per Ext. P-4 letter dated 30-10-2008 [in W.P.(C) 37417 of 2010] written by the Minister for the Petroleum and Natural Gases, Government of India to the Ministry for Overseas Indian Affairs, Government of India, it was assured that, unless there was enough potential available for setting up an additional petroleum pump, no new petrol pumps would be sanctioned adjacent to any of the existing petroleum pumps allotted to the SC/ST dealers, which however is stated as given a "go-bye".

9. The learned counsel appearing for the Oil Companies, with specific reference to the counter-affidavit filed in W.P.(C) No. 37417 of 2010, submits that Ext. P-1 (Minutes) was never with the consent, concurrence or agreement with the Companies and that the representatives of the Companies had not subscribed their signatures to the same. It is stated that, the actual facts and figures were brought to the notice of the authorities concerned, who convened the meeting then and there, simultaneously pointing out that, the State Government or any authority under the State is not having any power or competence to prescribe any norm in this regard, which however stands vested exclusively with the Union Government, by virtue of Rules 144 and 161 of the Petroleum Rules. Reference is also made to Entry 53 of List I of the 7th schedule to the Constitution of India, whereby all matters touching the production, sale, distribution etc. of the petroleum products are shown as exclusively within the jurisdiction of the Union. It is contended that, in the absence of any legislative power for the State, there is no executive power to have issued Ex. P-1/P-9 Minutes/Circular to the contrary, as the "executive power" of the State is co-existent with that of its "legislative power". The gist of the contentions raised by the respondents Oil Companies is that, there is no violation of any fundamental right; that there is no "locus standi" for the petitioners to file the writ petitions, which hence are not maintainable; that there cannot be any monopoly" claim by persons like the petitioners to have the retail outlets; that the feasibility study/potential of the area has been carried out/assessed by the Companies; that the convenience of the public is of paramount importance; that the plea of unviability is thoroughly wrong and unfounded; that the investment required in rural area (less than 15 lakhs) is comparatively less than the investments in the urban area; that the plea as to the investment of around Rupees 2 crores for setting up the units and the requirement of a minimum sale of 140 Kilo litres per month, to have viability

for the Unit is wrong and misconceived; that the competition with good service to the customers is the "Sine Qua Non" of any business; that the dealership "Selection Policy" is based on the guidelines issued by the Ministry of Petroleum and Natural Gases; that the dealership agreements do not contain any clause opposed to public policy and that the advertisement issued by the Oil Companies were specific, wherein it was made clear that, it was never a job proposal, but purely a "business proposal", where no profit or minimum return was assured. Reliance is sought to be placed on judicial precedents, including the verdicts passed by the Supreme Court, holding that, no writ petition will lie by a business rival, as there is no violation of any fundamental rights and such other decisions rendered by the Apex Court as reported in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, , *Mithilesh Garg, Vs. Union of India and others etc. etc.*, ; the decision rendered by the Delhi High Court in *The Simbhaoli Sugar Mills Ltd. and Another Vs. Union of India and Others*, ; the decisions rendered by this Court, as reported in *M/s Reliance Industries Ltd. and another v. Commissioner of Land Revenue and Others* 2007 (2) ILR Ker. 193, *Binu Chacko v. R.T.A. Pathanamthitta* and that of the Madras High Court in *W.A. No. 4057 of 2004 2006 (2) KLT 172 (F.B.) - Nataraja Agencies Vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India and Others*, .

10. The learned Government Pleader appearing for the State virtually supported the contentions of the petitioners, seeking to sustain the Minutes/ Circular fixing the norms at the instance of the State for issuance of NOC by the District Authorities, while considering the matter under Rule 144 of the Petroleum Rules in relation to the starting of the retail petroleum outlets. The question of "locus standi" of the petitioners is stated as immaterial, referring to the law declared by the Apex Court in *Jayaraj v. Commissioner of Excise* 2000 (3) KLT 820 and *Sai Chalchitra v. Commissioner, Meerut Mandal and Others* 2005 (3) S.C.C. 683 (where the impugned orders/proceedings were contrary to the guidelines). It is argued by the learned Government Pleader that the existence of Statute/Law is not mandatory to have issued the relevant Circulars, if it is not in contravention of the relevant provisions of the Law and that the Circulars will hold good in such circumstances. Reference was made to the decisions rendered by this Court as reported in *Rev. Fr. Joseph Valamangalam and Others Vs. State of Kerala*, , *Food Corporation of India, Alleppey Vs. Alleppey Municipality and Others*, , *Sarala Baby v. State of Kerala* 2010 (2) K.H.C. 334 and also on *Dilip Kumar Prusti v. Collector & District Magistrate* AIR 1997 Ori 30 (DB), Sambalpur. Even if there is a Central legislation, if there is no provision to meet a contingency, the State can step in, contends the learned Government Pleader, with reference to law declared by the Apex Court in *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, and *M/s. Siel Ltd. and Others Vs. Union of India and Others*, . Reference is also made to the decisions rendered by the Apex Court reported in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, [which was stated as followed by this Court in *Rev. Fr. Joseph Valamangalam and Others Vs. State of Kerala*, , *State of Andhra Pradesh and Another Vs. Lavu*

Narendranath and Others etc., and State of Madhya Pradesh and Another Vs. Kumari Nivedita Jain and Others,]. The learned counsel for the petitioner in W.P. (C) No. 4863 of 2011 (proposed retail dealer), adopting the contentions raised by the respondents Oil Companies, submits that, the petitioner was granted the necessary sanction as borne by Ext. P-1 letter of indent, but was virtually defeated from enjoying the fruits, on many a count. Later, as directed by the Oil Companies, the old Tank installed was removed and replaced in 2010 and it was while proceeding with the steps to have unit commissioned, that Ext. P-6 "stop memo" was issued by the Village Officer, which is stated as contrary to the relevant provisions of law and beyond power and competence and hence under challenge.

11. On hearing both the sides, with reference to the pleadings and proceedings, it is seen that, the petitioners/existing dealers have no dispute with regard to the fact that, the NOC for issuance of licence as contemplated under Rule 144 of the Petroleum Rules to start a retail petroleum outlet is to be issued by the District Authority, who is the District Collector. The said petitioners also do not have any case that the Petroleum Act or the Rules do contain any provision/norms for granting NOC or as to the setting up of the retail outlets. No Norms/Circulars/Orders if any, issued by the Central Government are also brought to the notice of this Court. The writ petitions have been moulded, mostly placing reliance on Ext. P-1 Minutes and Ext. P-9 Circular [in W.P.(C) No. 37417 of 2010] issued by the State Government, directing the District Collectors to give effect to the same, while considering the applications for NOC in their capacity as the District Officers/Authorities under Rule 144 of the Petroleum Rules. Rules 144 and 161 of the Petroleum Rules, with regard to the granting of NOC to start the retail outlets read as follows:

144. No-objection certificate.-(1) Where the licensing authority is the Chief Controller or the Controller, as the case may be, an applicant for a new licence other than a licence in Forms III, XI, XVII, XVIII or XIX shall apply to the District Authority with two copies of the site-plan showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection, to the applicant receiving a licence for the site proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application Form IX.

(2) Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly endorsed by him under his official seal.

(3) The Chief Controller or the Controller as the case may be, may refer an application not accompanied by certificate granted under sub-rule (1) to the District Authority for his observations.

(4) If the District Authority, either on a reference being made to him or otherwise, intimates to the Chief Controller or the Controller as the case may be,

that any licence which has been applied for should not, in his opinion, be granted, such licence shall not be issued without the sanction of the Central Government.

(5) The District Authority shall complete his inquiry for issuing No Objection Certificate (NOC) under sub-rule (1) and shall complete the action for issue or refusal of the NOC, as the case may be, as expeditiously as possible but not later than three months from the date of receipt of application by him.

161. Executive control over authorities.-Every authority other than the Central Government, acting under this chapter shall perform its duties subject to the control of the Central Government :

Provided that nothing in this rule shall be deemed to affect the powers of executive control of the Chief Controller over the officer subordinate to him.

12. The ultimate authority to grant the licence on the basis of the NOC to be given by the District Authority is the Chief Controller of Explosives. The District Authority, while considering an application for issuance of NOC under the Petroleum Rules has necessarily to consider the credentials in the light of the State Rules, with reference to the provisions of the Act / Rules / Norms / Orders, if any, issued by the Central Government or as prescribed by the Central Government. If a person is entitled to have a retail outlet on the basis of the NOC issued by the Central Government, the eligibility is not liable to be watered down by the State Government or by any authorities under the State, with reference to any norm/yardstick, which is detrimental to the parties concerned. The very fact that, the Rules do not contemplate any stipulation as to any requirements, such as "Distance Rule" or "Quantum Rule" (as now proposed to be implemented by the State, through the Minutes/Circulars, with reference to the sale out put of the nearby dealer). No such stipulation can be prescribed/implemented, virtually affecting the business prospects of others concerned, who are having vested rights under Article 19 (1) (g) and other relevant provisions of the Constitution of India. Absence of any such provision in the Act/Rules, as well as the absence of any norms in this regard, itself is a pointer to suggest that the legislative wisdom of the Union did not find it necessary to impose any restrictions/conditions with regard to the trading rights of the citizens, which hence is not liable to be re-written at the hands of the States. This Court finds support in this regard from the judgment already passed by this Court as reported in *M/s Reliance Industries Limited v. Commissioner of Land Revenue* 2007 (2) ILR (Ker.) 193.

13. With regard to the claim of some petitioners, who are stated as belonging to Scheduled Castes (stated as having better rights by virtue of the Constitutional mandate, providing the rules of reservation), it is rather admitted that such petitioners have been allotted the existing retail outlets in conformity with the relaxed requirements in the matter of selection, when such allotments were made.

14. As borne by Ext. P-2 advertisement in W.P(C) 37417 of 2010, there is no much financial burden on such allottees (but for the least minimum extent). Under Clause 8 (a) of the advertisement, the land is provided by the Oil Company, all the infrastructure including the building are set up by the Company itself and even the working capital is provided (which alone needs to be repaid by way of 100 installments commencing from 13th month of operation of the unit). This being the position, the contention raised by the petitioners belonging to Scheduled Caste community, stating that, much loss and hardships are being caused to them, because of the proposal to start new retail outlets in the localities concerned, does not hold good.

15. As a matter of fact, it has to be borne in mind that, the petroleum retail outlets being set up by the Oil Companies can be broadly categorized as two types--"A - Site" and "B - Site". In the case of "A - site", it is direct dealership--the land is given on lease to the Company for a minimum of 15 or more years, the Company sets up the fuel stations and the running management is handed over to the owner. In the case of "B - Site", the owner of the land, on allotment, sets up the station at his cost and fuel is supplied to such dealer, to be distributed to the customers, subject to the terms as prescribed. Almost all the cases involved herein are of the former category i.e. "A Sites", where it is direct dealership and the operation of the Unit is on the basis of the specific agreement executed in between, which is purely a matter of contract. No clause has been pointed out by any of the petitioners (if any), as contained in the agreement of dealership executed by them with the Company, so as to suggest anything to restrain the Companies from issuing any further retail outlets in the locality. If it be so, it has to be presumed that there is no violation of any terms of the agreement between the petitioners and the Oil Companies and as such, no interference is possible on this score as well. Even if there is any contravention of any of the terms of the agreement, the remedy of the persons like the petitioners is only to have it agitated before proper Civil Court, for damages, if any or for such other appropriate reliefs, which is a matter to be considered by such Court, on the basis of the specific pleadings and evidence to be let in and not for this Court to be examined invoking the discretionary jurisdiction under Article 226 of the Constitution of India.

16. With regard to Ext. P-4 dated 30-10-2008 in W.P.(C) 37417 of 2011, it is only a letter issued by the concerned Minister of Petroleum and Natural Gases to another Minister of a different Ministry, as to the scheme of starting new units. It is not an order, nor does it have any binding force. That apart, it only says that, on consultation with the Public Sector Oil Marketing Companies, it has been assured by them, that no new petrol pumps will be sanctioned adjacent to any existing petroleum pumps allotted to "SC/ST dealers", unless there is enough potential in this regard. It is also mentioned that, as per the information furnished, no distance norms have been specified in the policy guidelines as on date. This clearly shows that, the Government of India has not given any commitment as to the starting of new retail outlets, except the reference made

to the clarification given by the Oil Companies as to the potential.

17. Coming to the factual position, the number of vehicles are increasing day by day, notwithstanding the mounting price of fuels. Even the IRC (Indian Road Congress) norms/guidelines refer to setting up of petroleum outlets on both the sides of roads, from the safety point of view as well, lest, there should be any occasion for the vehicles to take a "U turn" or cross the road to have fuel, inviting unforeseen accidents. It of course may be a matter to be considered by the Central Government, while formulating the Policy. In the absence of any Rules/Orders/Norms in this regard, as stipulated by the appropriate Government, who cannot but be the Central Government, no other course can be pursued by this Court except to have the matter considered in accordance with the law, as it stands as on date.

18. With regard to the judicial precedents cited from both the sides, the question of "locus standi" may not bar the way of the petitioners in filing the writ petitions, if the impugned order is against the law or if there is any violation of the Act/Rules, as declared by the Apex Court in *Jayaraj v. Commissioner of Excise* 2000 (3) KLT 820 and *Sai Chalchitra v. Commissioner, Meerut Mandal and Others* 2005 (3) S.C.C. 683. But the petitioners herein have no case that any of the provisions of the Petroleum Act/Rules/Norms/Guidelines issued by the Central Government has been violated. The only case of the petitioners is to give effect to the Minutes dated 28-7-2010 and the Circular dated 31-12-2010, prescribing some norms at the instance of the State for granting the NOC under Rule 144 of the Petroleum Rules.

19. True, by virtue of the law declared by the Apex Court and also by this Court, as discernible from the various decisions cited by the learned Government Pleader [including in *Rai Sahib Ram Jawaya Kapur and Others Vs. The State of Punjab*, and *Rev. Fr. Joseph Valamangalam and Others Vs. State of Kerala*,], in view of the executive power of the State under Article 162 of the Constitution of India, it may be within the power of the State to have issued necessary Orders/Circulars which shall have binding force even in the absence of any statutory provision. But the law is well-settled that, such executive power can be exercised by the State for issuing the Orders/Circulars only in respect of the subject on which the State can legislate. In other words, the said power is co-existent with the power to legislate; in the absence of which, the Circulars/Orders cannot have any life at all. The petroleum products and their transactions are dealt with under the Petroleum Act, 1934/Petroleum Rules, 2002 which take the origin from "Entry 53" of "List I" of the 7th schedule to the Constitution of India. The said entry reads as follows:

53. Regulation and development of oil fields and mineral oil resources; petroleum and petroleum products; other liquids and substances declared by Parliament by law to be dangerously inflammable.

This shows that, the appropriate Government who is competent to legislate on

the subject is none other than the Central Government. Rule 161 of the Petroleum Rules is also categorical in this regard, which says that the power is exclusively vested with the Central Government. Similarly, Sub-rule 4 of Rule 144 regarding granting of NOC says that, if the District Authority disputes granting of NOC, the matter has to be referred to the Central Government for appropriate decision. In the said circumstances, no other course, than the one as prescribed above by the Rules, is liable to be permitted to govern the field and as such, Ext. P-1 Minutes and Ext. P-9 Circular [in W.P.(C) 37417 of 2010] cannot be held as having any binding effect with regard to the issue in hand.

20. There is a contention for the State that the State Government is also entitled to legislate on the subject by virtue of "Entry No. 33" of list III of the 7th Schedule of the Constitution of India, especially when the industry concerned is one which is enlisted in the "first schedule" of the Industries (Developments and Regulations) Act, 1951. Reliance is sought to be placed on M/s. SIEL Ltd. and Others Vs. Union of India and Others, , whereby the legislation made by the U.P. Government with regard to the decontrol of molasses by virtue of Entry under 33 of List III, notwithstanding the Entry 52 in List I, was upheld.

21. The above decision stands entirely on a different footing. As a matter of fact, the Industries (Development and Regulation) Act, 1951 was not made applicable to the States of Uttar Pradesh and Bihar. The Central Government had promulgated Molasses Control Order u/s 18-G of the above Act, imposing restriction on the sale of molasses and fixing the maximum price. The U. P. Government had issued orders decontrolling 70% molasses, which was subsequently reduced to a substantial extent as per further orders, which were questioned by the affected parties, on several grounds, mainly contending that, there was no power for the State of U. P. to have passed such order, when the power exclusively vested with the Central Government, by virtue of Entry No. 52 of List I.

22. The matter was considered by the Apex Court, also based on the doctrine of "pith and substance" and it was observed that any notification u/s 18-G of the Act would be an exercise of power under Entry 33 of the "concurrent list" and not under Entry 52 of List I and the State Legislature was equally competent to legislate in respect of the same subject-matter, subject to Article 254 of the Constitution of India. Accordingly, the contention of the appellants, that by the enactment of Section 18-G, the power of the State to legislate under Entry 33 of List III was taken away, was held as untenable. It was also observed that, there was no question of any repugnancy, in so far as the provisions of the Act were not made applicable to the State of Uttar Pradesh and as such, the power of the State of U. P. under Entry 33 of the List III to legislate in relation to the trade and commerce or supply and distribution of molasses in that State was not taken away, in any event, irrespective of Article 254. The said decision has no application to the case in hand, for the black and white difference in the factual position and the idea and understanding to the contrary is thoroughly wrong and

misconceived. This is more so, since, besides the general power under Entry 52 of List I, leading to the Industries (Development and Regulation) Act, 1951 declaring the Industry as one included in the I Schedule (forming the subject-matter of Entry 33 of the Concurrent List--List III), regulation of petroleum and petroleum products is separately taken care of by the specific entry--under Entry 53 of List I.

23. As mentioned hereinbefore, the crux of the contentions raised from the part of the petitioners and the State is with reference to the power of the State to give executive instructions, so as to sustain Ext. P-1 Minutes and P-9 Circular [W. P. (C) 37417 of 2010], with regard to the NOC to be given for starting the retail petroleum outlet, placing reliance on the decisions rendered by the Apex Court in State of Andhra Pradesh and Another Vs. Lavu Narendranath and Others etc., , Khoday Distilleries Ltd. and Others Vs. State of Karnataka and Others, and those of this Court in Rev. Fr. Joseph Valamangalam and Others Vs. State of Kerala, and Food Corporation of India, Alleppey Vs. Alleppey Municipality and Others, . In fact, there is no dispute with regard to the power of the State to give such executive instructions/circulars, which of course will have the effect of law in the particular circumstance, provided the same is not contrary to the provisions of the Statute and the State is vested with the powers to legislate upon the particular subject Even the very enactment referred to by the learned Government Pleader i.e. the Industries (Regulations and Development) Act, 1951, provides for declaration to be made u/s 2, whereby it is declared that, it is expedient in the public interest that the Union should take under its control the Industries specified in the first schedule, which very well includes the petroleum products as involved herein [Entry 2 (2) of the first schedule to the Act]. Once such a declaration is made, what is extent of legislative power of the State, is the crucial question. The Apex Court had occasioned to consider the scope and effect of similar declaration under the relevant provisions of the MMDR Act, 1957, whereby it was held by the Constitution Bench, as per the decision reported in Baijnath Kadio Vs. State of Bihar and Others, that, once such a declaration is made vesting the power exclusively upon the Central Government, it is no more open for the State to legislate upon the same subject, referring to the entry in the State List (Entry No. 23 of List II of the 7th schedule). Coming to the instant cases, there is no case that any legislation has been made by the State with reference to Entry No. 33 of List III and that the same has obtained assent of the President of India, to have suggested anything to the contrary. Applying the law laid down by the Constitution Bench of the Apex Court as above, it is not open for the State Government to issue Circular/Minutes without any power to legislate upon the subject.

24. Whether the proprietor of a Cinema Theater, holding a licence for exhibiting cinematographic films, had any "locus standi" to challenge the granting of similar licence to a business rival in the locality had come up for consideration before Apex Court. After considering the matter in detail, the law was declared as per the decision reported in Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir

Ahmed and Others, , holding that, there was no such legal right at all, either under the statutory provisions or under the general law or otherwise. It is relevant to note that the decision rendered by the Supreme Court as above was with reference to the earlier decision rendered by the Supreme Court in The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, , wherein, it was held that, a Rice Mill Owner had no "locus standi" to challenge under Article 226, setting up of a new Rice Mill by another party, even if such setting up be in contravention of the Section 8 (3) (c) of the Rice Milling Industry (Regulation) Act, 1958-because no right vested in such an applicant was infringed.

25. The above decisions were relied on by the Apex Court in a subsequent decision reported in Mithilesh Garg, Vs. Union of India and others etc. etc., , holding that, by virtue of the relevant provisions of the new Motor Vehicle Act, 1988, a stage carriage operator had no vested right to object granting of permit to other similarly situated persons/operators. It was noted by the Apex Court that, there was no question of violation of Article 19 (1) (g) of the Constitution of India in this regard and that "more operators" meant only "healthy competition" and efficient transport system.

26. Referring to the relevant provisions of the Industrial (Developments and Regulation) Act, 1951 and the Constitution of India, a Division Bench of the Delhi High Court held in The Simbhaoli Sugar Mills Ltd. and Another Vs. Union of India and Others, that the petitioner therein (a sugar factory) had no "locus standi" to challenge the letter of indent granted for establishment of a new sugar factory in its vicinity, when there was no case that such a letter of indent was contrary to any Act/Rules/Guidelines issued by the Central Government for granting the licences. The decision was rendered, following the law declared by the Apex Court on the point including in Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others, and in Mithilesh Garg's case(2). It is also to be noted that the law already declared by this Court in Girija Devi v. K. T. Mathew 1991 (1) KLT 353 and Secretary Changanacherry T.R.B.T. Co-operative Society v. Mathew 1992 (1) KLT 297 was confirmed by the Full Bench of this Court as well (placing reliance on Mithilesh Garg's (2) in Binu Chacho Vs. R.T.A., .

27. Coming to the scope of enquiry to be made by the District Authority while granting NOC under the Petroleum Rules, this issue had come up for consideration of this Court earlier, particularly, as to whether such authority could consider anything other than with reference to the Petroleum Act/Rules. After considering the facts, figures and the law, a learned Judge of this Court, as per the decision reported in M/s Reliance Industries Limited v. Commissioner of Land Revenue 2007 (2) ILR Ker. 193, held that, the District Authority, by virtue of the mandate under Rule 144 of the Petroleum Rules, 2002, had necessarily to consider the matter with reference to the specific provisions of the Act/Rules alone and that such decision taken by the District Authority under the Petroleum Act/Rules was not open to be challenged by way of appeal, referring to Rule 154

of the said Rules, by approaching the Land Revenue Commissioner of the State, as the District Authority mentioned under the Rules was not a subordinate authority to the Land Revenue Commissioner and that no appeal was provided under the Rules against granting of NOC, except against an order refusing to grant/amend/renew the licence or cancelling/suspending the same; to the concerned authority as mentioned under Rule 154. That apart, Rule 161 of the Rules clearly stipulates that every authority other than the Central Government, acting under the concerned Chapter (Chapter VII dealing with the granting of licences and the NOCs.) shall perform its duties subject to the control of the Central Government, simultaneously specifying the deemed powers of executive control of the Chief Controller over the officer subordinate to him. This Court does not find any tangible reason to take a different view as to the scope of the power of the District Authority under Rule 144.

28. Similar issue as involved in these cases had also come up for consideration before a Division Bench of Madras High Court as well in W.A. 4057 of 2004. As per the judgment dated 7-12-2004 reported in *Nataraja Agencies v. The Secretary, Ministry of Petroleum and Natural Gas* 2005 (1) C.T.C. 394, it was specifically held that, the contention of the appellant--retail petroleum outlet dealer, that if the respondent was permitted to set up her retail outlet within 1 km. radius of the appellant's outlet, his business interest would be adversely affected; was devoid of any merit and that the appellant had no locus standi" at all to complaint against setting up a retail outlet near his place of business. In so far as damage, if any caused thereby, it would only be "damnum sine injuria" (a damage without infringement of any legal right). The said decision was rendered, following the law declared by the Apex Court in *Mithilesh Garg, Vs. Union of India* and others etc. etc., . It was observed by the Madras High Court that, more and more outlets will only result in promoting competition among traders, which was good for the consumers and that, merely because some of the customers may switch over to the rival retail outlet, it did not mean that the public interest would suffer and that the same will only benefit the consumers, because, when there was competition, business men will be compelled to provide better quality products at reasonable rates.

29. However, during the course of hearing, a contrary decision rendered by a Division Bench of the Orissa High Court reported in *Dilip Kumar Prusti Vs. Collector and District Magistrate, Sambalpur and Others*, , was pressed much by the learned Government Pleader, who appeared for the State, to the effect that the affected party has "locus standi" to challenge the issuance of NOC in a writ petition. This was a case where the NOC was applied for "resitement" of a retail outlet of the Hindustan Petroleum Corporation, to the nearby site of the petitioner (who was an existing retail outlet dealer of the Indian Oil Corporation). As discernible from paragraph 5 of the said verdict, it was conceded from the part of the petitioner that, he had no grievance with regard to the "resitement" but was aggrieved only with the mode and manner of "resitement". It was also conceded that, once the Indian Oil Corporation had agreed on principle for

"resitement", the petitioner could not challenge and to that extent, he was having no "locus standi". The grievance was only with regard to the particular site of "resitement", contending that, the original retail outlet of the Hindustan Petroleum Corporation was situated in a "C Class market" area (markets having been classified by the Companies as A, B, C & D), while the same was sought to be "resited" to a "B Class" Market area, close to the petitioner's premises, which was not permissible, as per the then existing norms. It was accordingly contended that, the "locus standi" of the petitioner, notwithstanding the consent given by the Indian Oil Corporation in favour of the Hindustan Petroleum Corporation Limited, was to be considered with reference to the said norms. Interference was made in the above circumstances by the Orissa High Court, to have the matter re-considered with reference to the relevant norms, which in no way supports the case of the petitioners herein, as it is conceded by all the petitioners that no norms have been stipulated by the Central Government or the Oil Companies with regard to the setting up of the retail outlets, as contained in Ext. P-1 Minutes/Ext. P-9 Circular [W. P. (C) 37417 of 2010] issued at the instance of the State Government. That apart, it is also relevant to note that the decision rendered by the Division Bench of the Orissa High Court is without any reference to the law declared by the Apex Court in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, or in the subsequent decisions *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, and so also in *Mithilesh Garg, Vs. Union of India and others etc. etc.*, , whereas the decision rendered by the Division Bench of the Madras High Court in *Nataraja Agencies Vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India and Others*, (which stands against the petitioners) is by following the law declared by the Apex Court as above. As such, the decision rendered by the Orissa High Court does not persuade this Court, to take a different view, from the view taken by the Division Bench of the Madras High Court as reported in *Nataraja Agencies Vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India and Others*, . This Court finds that the petitioners do not have any vested right [other than the petitioner in W. P. (C) 4863 of 2011--filed by the prospective licensee] or "locus standi" to file these writ petitions and they are not maintainable in law. Interference is declined and all these writ petitions are dismissed accordingly.

30. In W. P. (C) No. 4863 of 2011, Ext. P-6 "stop memo" issued by the third respondent is set aside and the said writ petition is allowed to the above extent, enabling the petitioner therein to set up and operate the installation, based on the NOC stated as issued by the District Authority, subject to satisfaction of :he other statutory requirements in accordance with law. No cost.

31. However, before parting with the cases, this Court cannot but observe, that the setting up of new retail outlets throughout the country was always a subject-matter of grievance/dispute among the parties concerned. This is evident from the contents of Ext. P-10 Minutes of the meeting [filed along with the reply affidavit filed by the petitioner in W. P. (C) 37417 of 2010] stated as chaired by

the Minister for Petroleum and Natural Gases, Government of India on 18-9-2010. The said Minutes reveal that, it was decided to set up a Committee under the chairmanship of the Joint Secretary (Marketing), Ministry of Petroleum and Natural Gases and comprising of Directors of the said Department, Directors of the Indian Oil Corporation Limited, Hindustan Petroleum Corporation Limited and Bharat Petroleum Corporation Limited, as also to be the members, besides the members/representatives of the Federation of All India Petroleum Traders stated as to be invited as special invitees. It is stated that, the Committee would look into the demands of the traders for rationalising the growth of retail outlets in the country and that the Committee would prescribe a set of guidelines, on the basis of which, the Oil Marketing Companies will proceed while planning for new retail outlets. The petitioners are free to pursue the matter, if so advised, before the concerned authority. No opinion is expressed with regard to the merits in this regard.