

(2020) 12 TEL CK 0006
In the Telangana High Court
Case No : Writ Petition No. 17795 Of 2019

Mohamed Abdul Nayeem Zakee

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 15-12-2020

Acts Referred:

Petroleum Rules, 2002 — Section 131, 131(i), 131(ii)
Static And Mobile Pressure Vessels (Unfired) Rules, 2016 — Section 47, 59
Constitution Of India, 1950 — Article 14, 19(1)(g), 19(6), 73, 162, 226

Citation : (2020) 12 TEL CK 0006

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : P.V.A. Padmanabham

Final Decision : Dismissed

Judgement

1. Heard learned counsel for petitioner Sri P.V.A. Padmanabham and the learned Assistant Government Pleader for Home.

2. According to petitioner his family intends to establish auto LPG dispensing unit in the family owned property bearing Municipal House No.

5-8-110/1 to 5, Nampally main Road, Hyderabad under license from M/s. SHV Energy Pvt. Limited, Hyderabad, a franchise of M/s.Super

Gas. The licensing authority under the Explosives Act, 1884 approved the drawings of proposed installations vide his letter dated 01.01.2019.

As required, an application was made to the Commissioner of Police, Hyderabad, City Police Commissionerate to grant No Objection

Certificate (NOC). The said application was rejected vide order dated 20.03.2019. Aggrieved thereby, he preferred appeal to the 1st

respondent-Principal Secretary. The 1st respondent rejected the appeal vide his orders, dated 31.07.2019. Hence, this writ petition.

3. Submissions of learned counsel for petitioner:

(i) According to learned counsel for petitioner, establishment of Auto LPG dispensing units governed by the Explosives Act, and the Static and

Mobile Pressure Vessels (Unfired) Rules, 2016 (The Rules) made thereunder. M/s. Petroleum and Explosives Safety Organization (PESO),

Nagpur is appointed by the Government of India as licensing authority.

The competent authority under the Explosives Act was satisfied with the drawings submitted by the Principal of the petitioner and having

satisfied that the site complies with all the parameters to establish the dispensing station, approved the drawings. As can be seen from Rule

47, the District Authority i.e., the 2nd respondent has limited role i.e., to verify the details of the site and approvals of site plan granted by the

licensing authority and as a matter of course he should grant NOC. The first and second respondents grossly erred to reject the NOC and

erred in placing reliance on Rule 131 (i) and (iii) of Petroleum Rules which has no application. Rule 131 of Petroleum Rules is applicable to the

Petroleum outlets and not to the LPG dispensing stations.

(ii) He would submit that the impugned decisions are without jurisdiction and competence, lacks application of mind and amounts to colorable

exercise of power.

(iii) Impugned decision offends right guaranteed by Article 19 of the Constitution of India.

(iv) He would submit that NOC is refused on the ground that it is very close to traffic inter-junction, based on a 2006 Circular Memo. Said

Circular Memo has no application as the Rules were made after this Memo, governing license to establish Auto LPG dispensing station i.e., in

the year 2016, and the Rules do not prescribe such stipulation. Application to grant NOC has to be considered strictly in accordance with the

Rules. Thus, the decision of respondents 1 and 2 is ex facie illegal and shows non application of mind.

(v) The impugned decision is also arbitrary and discriminatory. There are several instances where NOCs were issued even though the outlets

are located near traffic junctions.

(vi) The subject property is abutting national highway and the area is treated as commercial area and therefore, there can not be an objection

to establish LPG dispensing station.

4. Submissions of learned Assistant Government Pleader:

(i). Per contra, according to learned Assistant Government Pleader, NOC from the Commissioner of Police is mandatory to establish LPG

dispensing station. Granting NOC is not a matter of course. Competent Authority has to make an assessment of the proposals before granting

NOC.

(ii) Permitting commercial activity near a traffic junction can create problems in regulating traffic and can also result in law and order

problems. The Circular Memo dated 06.07.2006 prescribes certain norms to consider requests to grant NOC. One of the norms is the

premises should be located at-least 100 meters away from traffic junction. In the instant case, the premises is less than 6 meters and

therefore, NOC was not granted. He would submit that before 2016 Rules, 1981 Rules were in operation. The Circular dated 06.07.2006 is

not in contravention of the old Rules or new Rules.

(iii) He would further submit that Rule 47 of the Rules does not take away the power of the Police Commissioner to reject request to issue

NOC and having regard to the fact that the premises is very close to traffic junction, decision to reject was validly made.

(iv) He denied the allegation that NOC was granted to several others even when they are located near traffic junctions. He would submit that

the Petroleum Rules are applicable to petitioner unit also.

Issue for consideration:

5. Whether rejection of application to grant No Objection Certificate is legal and sustainable?

6. Shorn of details, the petitioner intends to establish LPG dispensing station in Nampally. In the process of securing license to establish the

station, he has to get NOC from the Commissioner of Police. His application to grant NOC was rejected on the ground that the premises is

very close to traffic junction. The respective submissions centered on the aspect whether NOC can be rejected on the ground that it is very

close to traffic junction. Learned counsel for petitioner laid great emphasis on the word 'Shall' employed in Rule 47 to contend that the

Police Commissioner is bound to grant NOC and can not reject.

7. The relevant provisions of law which have a bearing on the issue are Rules 471 and 592 of SMPV (U) Rules 2016, Rule 131 (i) and (iii)3 of

Petroleum Rules, 2002 and non-statutory instrument in the form of Circular Memo dated 06.07.2006.

WHETHER NO OBJECTION CERTIFICATE IS NECESSARY :

8. Establishment of LPG dispensing station is governed by Rules, 2016. Chapter V deals with license. According to Rule 45, no person shall

store any compressed gas in any vessel except in accordance with the conditions of licence granted under the Rules. Rule 46 requires prior

approval of specification and plans of vessel and premises proposed to be licensed. Once prior approval is granted under Rule 46, the

applicant has to apply for NOC. Rule 47 deals with NOC. Rule 50 requires submission of application for license in the prescribed forms and

enclosing the certificates provided therein. Rule 50 (vi) requires enclosure of NOC as prescribed in Rule 47. Rule 49 deals with grant of

license.

9. From the provisions of Chapter-V, it is seen that an applicant desires to establish LPG dispensing station has to undergo three layers of

processing. First layer is prior approval of specifications and plans. At this stage, the licensing authority considers the specifications and plans

of vessel and premises where station is proposed and may conduct inquiries. If the licensing authority is prima facie satisfied with the

specifications and plans of vessel and site, he may grant sanction. In the second layer, the applicant has to apply to the District Authority

requesting to issue NOC. He should enclose two copies of site plan showing the location of the premises proposed to be licensed. If NOC is

granted, he would enter to third layer of scrutiny. If the licensing authority is satisfied about compliance of all statutory requirements including

prior approval of specifications and plans of vessels and the site and NOC from the District Authority, he may issue license. Then only the

applicant can establish the LPG dispensing station and start commercial operations. All three layers of processing is mandatory. In the first

layer of scrutiny the licensing authority only looks into the specifications and plans of vessels and site. At this stage, his scrutiny is confined to

the technical aspects of LPG dispensing station. If he is satisfied, he can grant approval. When it comes to second layer, the District Authority

is required to assess the feasibility of such station coming up at the location. Two aspects are relevant to be noted. Firstly, Rule 47 requires

the applicant to enclose the site plan, which means before granting NOC the District Authority is required to assess the suitability of the site.

Secondly, when it comes to Metropolitan cities power is vested in the Police Commissioner to grant NOC. Therefore, perforce, the Rule

requires Police Commissioner to assess the suitability as with reference to traffic, law and order and safety and security of neighbouring

properties.

10. From the scheme of Chapter-V, it is apparent that on strict compliance of all the requirements only, license can be granted. A cumulative

reading of entire Rule 47, it is apparent that NOC is mandatory and is a very important component in processing a claim to establish LPG

dispensing station and issue of NOC is not a matter of course. These rules are formulated with an objective to ensure safety to the unit, safety

to the persons who frequent the station and safety to the general public as storage of compressed gas requires high degree of safety or else it

can lead to disastrous consequences.

11. Thus, processing NOC application by Police Commissioner is not an empty formality as sought to be contended by learned counsel for

petitioner. Perforce, he must apply his mind and make a decision. Mandatory nature of issuing NOC would arise only if he is convinced that

there is no objection to establish the unit.

WHETHER PROCEDURE TO CONSIDER REQUEST TO GRANT NO OBJECTION CERTIFICATE CAN BE REGULATED BY

CIRCULAR INSTRUCTIONS:

12. Rule 47 is silent on what are the parameters required to be considered in processing the application to grant NOC. It leaves to the

discretion of the District Authority to apply his mind and take a decision. It only requires to assign reasons if NOC is rejected. The Circular

Memo dated 06.07.2006 fills this void. It guides the Police Commissioner to assess the claim to issue NOC. It prescribes various parameters

to consider such application. One of the yardsticks fixed in this memo is that

proposed site should be at-least 100 meters away from traffic

junction. In the absence of specific Rule regulating decision to grant NOC, the Circular instructions can be relied upon to support the decision.

This Circular ensures objective evaluation and transparency in considering the application. It leaves limited scope for discretion, which is one

of the basic parameter to test the validity of a decision. This Circular does not offend Rule 47. On the contrary, it only brings out scope of fair consideration.

13. It is true that Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any

particular point Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

[Paragraph-7, Sant Ram Sharma v. State of Rajasthan - (1968) 1 SCR 111]. The executive power of a modern State is not capable of any

precise definition. In Ram Jawaya Kapur v. State of Punjab [AIR 1955 SC 549 : (1955) 2 SCR 225 : 1955 SCJ 504] Mukherjea, C.J., dealt

with the scope of Articles 73 and 162 of the Constitution. The learned Chief Justice observed that neither of the two Articles contains any

definition as to what the executive function is or gives an exhaustive enumeration of the activities which would legitimately come within its

scope. It was observed: "Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and

judicial functions are taken away." It is neither necessary nor possible to give an exhaustive enumeration of the kinds and categories of

executive functions which may comprise both the formulation of the policy as well as its execution. In other words, the State in exercise of its

executive power is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State

Government does not go against the provisions of the Constitution or any law, the width and amplitude of its executive power cannot be

circumscribed. If there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing

administrative directions or instructions, until the legislature makes a law in that behalf. Otherwise, the administration would come to a

standstill [Paragraph-20, BishambharDayal Chandra Mohan v. State of U.P., -

(1982) 1 SCC 39].

14. On power of State to impose restrictions on right to do business/trade by way of executive decisions in *Khoday Distilleries Limited and*

others Vs State of Karnataka and others (1995) 1 SCC 574, honorable Supreme Court held:

“64. The last contention in these groups of matters is whether the State can place restrictions and limitations under Article 19(6) by

subordinate legislation. Article 13(3)(a) of the Constitution states that law includes “any ordinance, order, bye-law, rule, regulation,

notification, custom or usage having in the territory of India the force of law”. Clauses (2) to (6) of Article 19 make no distinction between

the law made by the legislature and the subordinate legislation for the purpose of placing the restrictions on the exercise of the respective

fundamental rights mentioned in Article 19(1)(a) to (g). We are concerned in the present case with clause (6) of Article 19. It will be apparent

from the said clause that it only speaks of “operation of any existing law insofar as it imposes” “from making any law imposing”

reasonable restrictions on the exercise of the rights conferred by Article 19(1) (g). There is nothing in this provision which makes it imperative

to impose the restrictions in question only by a law enacted by the legislature. Hence the restrictions in question can also be imposed by any

subordinate legislation so long as such legislation is not violative of any provisions of the Constitution. This is apart from the fact that the trade

or business in potable liquor is a trade or business in *res extra commercium* and hence can be regulated and restricted even by executive order

provided it is issued by the Governor of the State. We, therefore, answer the question accordingly.”

WHETHER PETITIONER HAS RIGHT TO ESTABLISH AUTO LPG DISPENSING UNIT AND HAS A LEGITIMATE

EXPECTATION:

15. At this stage, it is necessary to test whether any assurance was given by the State or Central Government or their instrumentalities that if

he has site in an Urban area, he would be automatically granted license to establish Auto LPG dispensing station. If there was such

assurance, he was legitimately expecting to secure license and denial is unjust

and arbitrary offending Article 14 of the Constitution of India.

16. In *State of Jharkhand and others Vs Brehmaputra Metalics Limited, Ranchi and Another* C A Nos 3860-3862 of 2020 decided on

1.12.2020 : 2020 SCC Online SC 968, the Honâ??ble Supreme Court considered what is â??legitimate expectationâ?? and how the doctrine

is evolved in India. It is apt to note the discussion in paragraph 46 to 49, and the conclusion recorded in paragraph-50. They read as under:

â??46. In *Union of India v. Lt. Col. P.K. Choudhary* â?" [(2016) 4 SCC 236,] speaking through Chief Justice T.S. Thakur, the Court

discussed the decision in *Monnet Ispat (supra)* and noted its reliance on the judgment in *Attorney General for New South Wales v. Quinn* â?

[(1990) 64 Aust LJR 327 : (1990) 170 CLR 1]. It then observed:

â??This Court went on to hold that if denial of legitimate expectation in a given case amounts to denial of a right that is guaranteed or is

arbitrary, discriminatory, unfair or biased, gross abuse of power or in violation of principles of natural justice, the same can be questioned on

the well-known grounds attracting Article 14 of the Constitution but a claim based on mere legitimate expectation without anything more

cannot ipso facto give a right to invoke these principles.â??

47. Thus, the Court held that the doctrine of legitimate expectation cannot be claimed as a right in itself, but can be used only when the denial

of a legitimate expectation leads to the violation of Article 14 of the Constitution.

48. As regards the relationship between Article 14 and the doctrine of legitimate expectation, a three judge Bench in *Food Corporation of*

India v. Kamdhenu Cattle Feed Industries â?" [(1993) 1 SCC 71], speaking through Justice J.S. Verma, held thus:

â??7. In contractual sphere as in all other State actions, the State and all its instrumentalities have to conform to Article 14 of the Constitution

of which non-arbitrariness is a significant facet. There is no unfettered discretion in public law : A public authority possesses powers only to

use them for public good. This imposes the duty to act fairly and to adopt a procedure which is â??fairplay in actionâ??. Due observance of

this obligation as a part of good administration raises a reasonable or legitimate expectation in every citizen to be treated fairly in his

interaction with the State and its instrumentalities, with this element forming a

necessary component of the decision-making process in all

State actions. To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to

the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the

power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made

would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power,

as it is unrealistic, but provides for control of its exercise by judicial review.

8. The mere reasonable or legitimate expectation of a citizen, in such a situation, may not by itself be a distinct enforceable right, but failure to

consider and give due weight to it may render the decision arbitrary, and this is how the requirement of due consideration of a legitimate

expectation forms part of the principle of non-arbitrariness, a necessary concomitant of the rule of law. Every legitimate expectation is a

relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or

legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's

perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the

legitimate expectation of the claimant. A bona fide decision of the public authority reached in this manner would satisfy the requirement of

non-arbitrariness and withstand judicial scrutiny. The doctrine of legitimate expectation gets assimilated in the rule of law and operates in our

legal system in this manner and to this extent.â??

49. More recently, in *NOIDA Entrepreneurs Assn. v. NOIDA* - [(2011) 6 SCC 508] a two-judge bench of this Court, speaking through

Justice B.S. Chauhan, elaborated on this relationship in the following terms:

â??39. State actions are required to be non-arbitrary and justified on the touchstone of Article 14 of the Constitution. Action of the State or its

instrumentality must be in conformity with some principle which meets the test of reason and relevance. Functioning of a â??democratic form

of Government demands equality and absence of arbitrariness and

discriminationâ?. The rule of law prohibits arbitrary action and commands

the authority concerned to act in accordance with law. Every action of the State or its instrumentalities should neither be suggestive of

discrimination, nor even apparently give an impression of bias, favouritism and nepotism. If a decision is taken without any principle or without

any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law.

â?|

41. Power vested by the State in a public authority should be viewed as a trust coupled with duty to be exercised in larger public and social

interest. Power is to be exercised strictly adhering to the statutory provisions and fact situation of a case. â??Public authorities cannot play

fast and loose with the powers vested in them.â? A decision taken in an arbitrary manner contradicts the principle of legitimate expectation.

An authority is under a legal obligation to exercise the power reasonably and in good faith to effectuate the purpose for which power stood

conferred. In this context, â??in good faithâ? means â??for legitimate reasonsâ?. It must be exercised bona fide for the purpose and for

none other...]â??

50. As such, we can see that the doctrine of substantive legitimate expectation is one of the ways in which the guarantee of non-arbitrariness

enshrined under Article 14 finds concrete expression.â??

(emphasis supplied)

17. The Rules enable an individual to establish Auto LPG dispensing unit. The Rules delineate various safety measures required to establish

and run Auto LPG dispensing unit. On scanning through the Rules, it is apparent that the Rules do not dole out license as a matter of course, if

you own a plot in Urban area. There is no scope to assume a right to carry on business in Auto LPG dispensing unit by securing license merely

because a person owns a plot of land. Owning a plot of land is only one of the requirements. Rules prescribe procedure to apply for license

and to process such application. There is a three layer processing, noticed earlier, and only on complying all the requirements, license can be

granted. Rules only enable to apply for license. Strict compliance of the requirements is condition precedent to secure license. An individual

has right to apply to grant license to establish Auto LPG dispensing station and once such right is exercised his entitlement to secure licence

depends on compliance of norms prescribed in the Rules. Therefore, petitioner cannot say that he had legitimate expectation to secure the

licence and denial is arbitrary and discriminatory, and by this denial his right to carry on business or trade is offended. Further, right generated

under Article 19(1)(g) is not absolute. In the larger public interest, restrictions on such right can be enforced.

18. In *Khoday Distilleries Limited and others*, Constitution Bench of the Hon'ble Supreme Court considered the scope of

Article 19 (1) (g). Supreme Court held:

Thus Article 19(1)(g) read with Article 19(6) spells out a fundamental right of the citizens to practise any profession or to

carry on any occupation, trade or business so long as it is not prohibited or is within the framework of the regulation, if any, if such prohibition

or regulation has been imposed by the State by enacting a law in the interests of the general public. It cannot be disputed that certain

professions, occupations, trades or businesses which are not in the interests of the general public may be completely prohibited while others

may be permitted with reasonable restrictions on them. For the same purpose, viz., to subserve the interests of general public, the reasonable

restrictions on the carrying on of any profession, occupation, trade, etc., may provide that such trade, business etc., may be carried on

exclusively by the State or by a Corporation owned or controlled by it. The right conferred upon the citizens under Article 19(1)(g) is thus

subject to the complete or partial prohibition or to regulation, by the State. However, under the provisions of Article 19(6) the prohibition,

partial or complete, or the regulation, has to be in the interests of the general public.

17. Apart from the restrictions placed on the right under Article 301, by the provisions of Articles 19(6), 47, 302 and 303, the provisions of

Article 304 also place such restrictions on the said right. So do the provisions of Article 305, so far as they protect existing laws and laws

creating State monopolies. The provisions of the aforesaid articles, so far as they

are relevant for our purpose, read together, therefore, make the position clear that the right conferred by Article 19(1)(g) is not absolute. It is subject to restrictions imposed by the other provisions of the Constitution. Those provisions are contained in Articles 19(6), 47, 302, 303, 304 and 305.

â?â?â?â?!

60. We may now summarise the law on the subject as culled from the aforesaid decisions.

(a) The rights protected by Article 19(1) are not absolute but qualified. The qualifications are stated in clauses (2) to (6) of Article 19. The

fundamental rights guaranteed in Article 19(1)(a) to (g) are, therefore, to be read along with the said qualifications. Even the rights guaranteed

under the Constitutions of the other civilized countries are not absolute but are read subject to the implied limitations on them. Those implied

limitations are made explicit by clauses (2) to (6) of Article 19 of our Constitution.

â?â?â?â? (emphasis supplied)

19. As noticed above, an owner of piece of land can apply to grant license to establish Auto LPG dispensing station. At this stage, the right

available is to apply. An applicant has to undergo process of scrutiny and only on satisfying all the statutory compliances, he acquires right to

secure license. It is permissible to plead discrimination/arbitrary action if license is refused even though petitioner complied the statutory

requirements. At that stage burden is heavy on the authority to assign cogent reasons to refuse the license. But before the clearance to secure

license, the right of an individual is only to consider.

20. The strict scrutiny of eligibility of the applicant, viability of the unit, compliance of statutory conditions to establish and run are all intended

to ensure public safety. LPG is highly inflammable substance and unless all safety norms are observed before Auto LPG disbursing station is

established and during its operation, it can cause disastrous consequences. Thus, elaborate procedures are put in place. These norms are in

larger public interest. Yes, an individual is entitled to establish and run Auto LPG dispensing unit but any lapse in taking safety measures by

him may result in injury in person and/or property of others. Thus, compliance of various requirements is mandatory. Insistence of such

compliance amounts to imposing reasonable restrictions and such restrictions are in larger public interest. They stand the test of

reasonableness and the scrutiny of Article 19(1)(g) read with Article 19(6) of the Constitution of India. While processing the application to

grant NOC, which is part of assessment of suitability to grant license, the District Authority is competent to assess viability of the unit vis-à-vis

traffic density in the area. Ensuring free flow of traffic is in larger public interest.

EQUITY JURISDICTION OF THE WRIT COURTS AND JUDICIAL REVIEW

21. Further, even if the Circular Memo is ignored to test the validity of the decision not to grant NOC, the reason to reject NOC on the ground

that the proposed site is proximate to traffic junction cannot be said as unsustainable. It is common knowledge that there will be heavy traffic

at the traffic junction as vehicles crisscross from one side to another. Many times, police report jams at the junctions. Therefore, first task of

police is to decongest the traffic junction and ensure that there is no scope for congestion, so that there will be smooth flow of vehicular

movement. It is a fact that any commercial activity near traffic junctions adds to traffic congestion. There will be continuous in and out

movement of vehicles from petroleum/LPG dispensing stations and many times, the vehicles waiting for fuel stretch on to the road. Further, if

any unfortunate incident occurs in a LPG dispensing station located very proximate to traffic junction, it can create grave danger to larger

number of people. Therefore, it can not be said that fixing minimum distance of 100 meters from traffic junction to site, where LPG dispensing

unit is proposed, as illogical or without any justification. Further, in the instant case, the distance is just 5.3 meters. It can not be said that

establishing LPG dispensing station on a very busy road, on the traffic junction abutting a Metro Station and very close to Nampally Railway

Station would not create traffic hurdles. Thus, the assertion of police that establishing LPG dispensing station in the proposed site will add to

traffic congestion is valid.

22. It is not in public interest to allow establishment of LPG dispensing stations/petroleum outlets nearer to traffic junctions. They should be

located as far away as possible from traffic junctions/traffic islands. When Court

considers the right of an individual to pursue his avocation/do

business vis-à-vis the larger public interest, the Court shall lean in favour of larger public interest. The right of individual to carry on his

business is subservient to larger public interest. Therefore, the impugned decision can not be said as one made in arbitrary exercise of power

and without application of mind. It is a bona fide decision and answers the larger public interest.

23. As held by the Hon'ble Supreme Court in Food Corporation of India Vs Kamdhenu Cattle Feed Industries (1993)

1 SCC 71, whenever decision of competent authority is challenged, the Court is required to determine not according to the claimant's

perception but in larger public interest wherein other more important considerations may outweigh what would otherwise have been the

legitimate expectation of the claimant. A bonafide decision of the public authority reached in this manner would satisfy the requirement of

non-arbitrariness and withstand judicial scrutiny.

24. Since the administrative authorities have experience in administration, the Court must respect this. Thus, the Court should not interfere

readily with administrative decisions. The Court should not ordinarily interfere in policy decisions, unless there is clear violation of some

constitutional or statutory provision (or the statute). [Paragraph-15, Dilip Kumar Garg v. State of U.P., (2009) 4 SCC 753.] There should be

judicial restraint in administrative decisions. [Tata Cellular v. Union of India - (1994) 6 SCC 651]. An enabling provision postulates a discretion

which may or may not be exercised. The Court cannot find fault in exercising an enabling power in a particular manner. [Paragraph-29,

Zahoor Ahmad Rather and others Vs Sheikh Imtiyaz Ahmad and others (2019) 2 SCC 404]. Where an Executive action of the State is

challenged, the Court must tread with caution, and not overstep its limits. The interference by the Court is warranted only when there are

oblique motives, or there is miscarriage of justice. [Paragraph-21, Pradeep Kumar Rai v. Dinesh Kumar Pandey (2015) 11 SCC 493].

25. Judicial review against administrative decisions is not against the decision per se but on the decision making process. Court tests the

validity of the decision by examining whether fair procedure was adopted;

whether all parameters were looked into; whether reasons are assigned in support of the decision; whether reasons are germane to the decision; and whether decision is affected by arbitrary exercise of power/ bias against applicant. Even if one or more of these parameters are not satisfied, Court may still not interfere having regard to the issue involved or if consequences of setting aside would result more harm to the larger public interest.

26. Scope of Judicial Review in Administrative Action is succinctly put by the Honâ??ble Supreme Court in the following two decisions:

26.1. In *Tata Cellular v. Union of India* (1994) 6 SCC 651, the Honâ??ble Supreme Court held:

â??75. In *Chief Constable of the North Wales Police v. Evans* [(1982) 3 All ER 141, 154] Lord Brightman said:

â??Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

Judicial review is concerned, not with the decision, but with the decision- making process. Unless that restriction on the power of the court is

observed, the court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power.â??

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following

terms:

â??This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that

provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide

range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practised at the Bar, administrative. It is not

intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the

bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner (p. 1160).â??

In *R. v. Panel on Take-overs and Mergers, ex p Datafin plc* [(1987) 1 All ER 564] , Sir John Donaldson, M.R. commented:

“An application for judicial review is not an appeal.”

In *Lionhoo plc v. Secretary of State for Trade and Industry* [(1989) 2 All ER 609] , Lord Keith said:

“Judicial review is a protection and not a weapon.”

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In *Amin*, Re

[*Amin v. Entry Clearance Officer*, (1983) 2 All ER 864] , Lord Fraser observed that:

“Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made”.

Judicial review is entirely different from an ordinary appeal. It is made effective by the court quashing the administrative decision without

substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for

that of the administrative officer.”

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

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

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is

only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case.

Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

- (i) **Illegality** : This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.â??

26.2. In *S.R. Bommai v. Union of India* (1994) 3 SCC 1, the Honâ??ble Supreme Court held:

â??63. We may now examine the principles of judicial review evolved in the field of administrative law. As has been stated by Lord

Brightman in *Chief Constable of the North Wales Police v. Evans* [(1982) 3 All ER 141 : (1982) 1 WLR 1155] â??judicial review, as the

words imply, is not an appeal from a decision, but a review of the manner in which the decision was madeâ?. In other words, judicial review is

concerned with reviewing not the merits of the decision but the decision-making process itself. Lord Diplock in *Council of Civil Service*

Unions v. Minister for the Civil Service [*Council of Civil Service Unions v. Minister for the Civil Service*, (1985) AC 374 : (1984) 3 All ER

935] (AC at p. 408) has enunciated three heads of grounds upon which administrative action is subject to control by judicial review, viz., (i)

illegality, (ii) irrationality and (iii) procedural impropriety. He has also stated there that the three grounds evolved till then did not rule out that

â??further developments on a case by case basis may not in course of time add further groundsâ? and has added that â??principle of

proportionalityâ? which is recognised in the administrative law by several members of European Economic Community may be a possible

ground for judicial review for adoption in the future. It may be stated here that we have already adopted the said ground both statutorily and

judicially in our labour and service jurisprudence. Lord Diplock has explained the three heads of grounds. By â??illegalityâ? he means that the

decision-maker must understand correctly the law that regulates its decision-making power and must give effect to it, and whether he has or

has not, is a justiciable question. By â??irrationalityâ? he means unreasonableness. A decision may be so outrageous or in defiance of logic or

of accepted moral standards that no sensible person who had applied his mind to the question to be decided, could have arrived at it, and it is

for the judges to decide whether a decision falls in the said category. By â??procedural improprietyâ? he means not only failure to observe

the basic rules of natural justice or failure to act with procedural fairness, but

also failure to observe procedural rules that are expressly laid down in the legislative instrument by which the tribunal's jurisdiction is conferred even where such failure does not involve any denial of natural justice. Where the decision is one which does not alter rights or obligations enforceable in private law, but only deprives a person of legitimate expectations, 'procedural impropriety' will normally provide the only ground on which the decision is open to judicial review.

27. In the case on hand, the reason to reject NOC was that the location is on a high density traffic road, very close to 'T' junction and there is a Metro Station adjacent to this property and Nampally Railway Station, a major rail hub is very close. On going through the material placed on record and the decision impugned, it is more than clear that a transparent and objective assessment was made on the application of petitioner to grant NOC. The decision making process is not vitiated on any laid down parameters of assessment of administrative decision in exercise of power of judicial review.

DISCRIMINATION:

28. Only aspect which needs to be considered is whether the decision is vitiated on the ground of arbitrariness. In other words, while NOC was granted to others even though location of the petroleum outlets/LPG dispensing stations are proximate to traffic junctions, it is rejected to petitioner and therefore, the rejection is discriminatory and not bona fide. In ground 'G' petitioner alleges that NOC was granted in thickly populated areas/junctions. The affidavit is silent on instances. During the course of arguments, learned counsel for petitioner placed reliance on the additional material papers. To this additional material papers, petitioner enclosed representation dated 20.07.2019 where he has given list of 47 outlets established close to traffic junctions/ densely populated areas and also filed photographs.

29. To appreciate this contention, two aspects to be noticed. First, when and how such consideration was made to others and second, even if NOC was granted to sites proximate to traffic junctions would rejecting the application of petitioner gets vitiated on that ground if the decision is otherwise sustainable. The additional material papers are filed after counter was filed in the writ petition and there was no occasion for

respondents to respond to these assertions. However, as assessed hereunder, the case need not be kept back for that reason as this Court

considers that even otherwise petitioner is not entitled to relief prayed in the writ petition. From the perusal of the list appended to his

representation dated 20.7.2019, it is seen that many were cleared before 06.07.2006 circular was notified. With reference to others, it is not

known their exact location and reason for granting NOC. It is possible that when NOC was granted, the traffic was not heavy. Per se, even if

NOC was granted to others, even though the sites were located proximate to the traffic junctions, the Court can not invalidate the impugned

decision if it answers other parameters. As noticed above, the site of petitioner is on a high density traffic road and on the "T" junction

and metro station and Nampally Railway station. Establishing Auto LPG dispensing station at this location will certainly add to traffic

congestion and inconvenience to general public/road users. It may have disaster consequences if any untoward incident happens. Public

interest require not to locate Auto LPG dispensing stations/petroleum outlets proximate to traffic junctions. The decision was made on

objective consideration. There is no illegality or perversity in the decision. It is in compliance with the Circular Memo dated 06.07.2006.

Earlier, if petroleum outlets were permitted, as alleged by the petitioner, contrary to guidelines stipulated in Circular Memo dated 06.07.2006,

those decisions would amount to illegal decisions. If wrong decisions were taken earlier, they can not lead to committing further illegality.

Adopting such course amounts to perpetrating such illegalities, more so, when it is not in larger public interest to locate such units close to

traffic junctions. Court cannot subscribe to such course in exercise of its equity jurisdiction. On the contrary, validating the impugned decision

may lead to setting a new norm in considering such request.

30. Under Article 226 of the Constitution of India, writ remedy is an equitable remedy and discretionary. Writ court exercises equity

jurisdiction. Though scope of power of writ Court to undertake judicial review of administrative actions is very wide, its exercise is subjected

to self-imposed restraint. "It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal

pointâ?? [RAMNIKLAL N BHUTTA v. STATE OF MAHARASTRA - (1997) 1 SCC 1. 314t]must be exercised with great caution and

only in furtherance of public interest or to set right grave illegality. Larger public interest must be kept in mind to decide whether intervention

of the court is called for in a given case. Writ Court may refuse to grant relief in a case where justice and larger public interest require denial

of such relief as compared to grievance of an individual, even assuming there is breach of natural justice/statutory prescription and decision is

arbitrary.

31. Further, while considering the grievance in a petition under Article 226, the writ court need not grant relief merely because the petitioner

makes out a legal point. â??Even if a legal flaw can be electronically detected, this Court would not interfere save manifest injustice or unless

a substantial question of public importance is involved [RASHPAL MALHOTRA v. SATYA RAJPUT MRS. AND ANOTHER - 1987 SC

2235], & COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER v. K.G.S.BHATT â?" [AIR 1089 SC 1972].

32. In Kalasagaram, Secunderabad Cultural Association Vs State of Andhra Pradesh and others 1997 (6) ALD 277, learned single Judge of

this Court, as he then was, considered the very issue and held as under:

â??14. Even if it is to be assumed that the impugned order suffers from some infirmities, should the Court grant relief to the petitioner and

issue writ as prayed for? Whether the petitioner is entitled for any relief from this Court? It is settled law that this Court does not issue writs in

exercise of its jurisdiction under Article 226 of the Constitution of India, as a matter of course. The Court exercising jurisdiction under Article

226 of the Constitution of India is also a Court of equity. The relief to be granted in exercise of such power is an equitable one. Mere

infraction of a statutory provision would not automatically give rise to a cause for issuing a writ of Mandamus.

The Court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a

legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to

defend the law from crafty evasions and now subtleties invented to evade lawâ??

(See A.P. State Financial Corporation v. Gar Re-Rolling

Mills, (1994) 2 SCC 647 at 662. Writ of Mandamus is highly discretionary remedy as the aggrieved person has to not only establish the

infraction of a statutory provision of law but required to further establish that such infraction has resulted in invasion of a judicially enforceable

right. The existence of a right is the foundation of the jurisdiction of Court to issue a writ of Mandamus.

(emphasis supplied)

33. For the aforesaid reasons, Writ Petition fails. It is accordingly dismissed. Pending miscellaneous petitions if any shall stand closed.