

(2022) 01 GAU CK 0062

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3543, 3690 Of 2020

Ramkrishna Das

APPELLANT

Vs

State Of Assam And 5 Ors

RESPONDENT

Date of Decision : 25-01-2022

Acts Referred:

Constitution Of India, 1950 — Article 13, 19(1)(g), 226
Rice Milling Industry (Regulation) Act, 1958 — Section 8(3)(c)

Citation : (2022) 01 GAU CK 0062

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : A K Hussain, B Deuri

Final Decision : Dismissed

Judgement

1. Heard Mr. A. K. Hussain, the learned counsel for the petitioner in both the writ petitions. I have also heard Mr. B.Deuri, learned Junior

Government Advocate appearing on behalf of the Respondent Nos. 1, 2 and 3 in both the writ petitions. Mr. R. Islam, the learned counsel appears on

behalf of the Respondent No. 4 and 5 and Mr. Santanu Kumar Das, learned counsel appears on behalf of the Respondent No. 6 in W.P.(C) No.

3543/2020 and Mr. A.A.R. Karim, learned counsel appears on behalf of the Respondent No. 6 in W.P. (C) No. 3690/2020.

2. In both the writ petitions, as the facts and issue of law being similar, the same are taken up for disposal by the instant common judgment and order.

3. In the instant writ petition, the petitioner is a license holder of a fair price shop at village Dhuturamari under M/S Tamarhat Samabay Samity Ltd. in

the district of Dhubri, Assam. The petitioner's license No. is GSM-39/92/PD-IV/G/TH/R-18 dated 23/11/1992. It is the case of the petitioner that

the petitioner has household consumers totaling to 1523 out of which 32 numbers of ration card holders cover 151 population under the AAY Rice

Commodities and 274 ration card holders cover 1372 population under Priority Rice Commodities. The petitioner's further case in the writ petition

is that since 1992 the petitioner has been operating his fair price shop to the full satisfaction of all concerned, but suddenly in the month of May, 2020

he came to learn from reliable sources that the Respondent No. 6 in connivance with the Respondent No. 5 and the Respondent No. 4 made a

conspiracy, whereby the respondent No. 6 was making an attempt to open a fair price shop by curtailing the consumers of the petitioner and with a

view thereof a false petition was filed before the authorities concerned by the 88 Nos. of card holders. Thereupon the said 88 nos. of card holders

made a representation before the Respondent No. 3 on 21/6/2020 and before the Respondent No. 2 on 18/7/2020 withdrawing their grievances and

also stated that they want to get the commodities, rice etc from the petitioner's fair price shop. On the basis of the said representation of the

consumers, the Respondent No. 3 issued a letter on 23/7/2020 whereby instructed the Respondent No. 4 to stop issue of PDS commodities to the

Respondent No. 6 fair price shop till the assembly election 2021 was over. Thereafter on 17/8/2020 the Respondent No. 3 issued the letter being

Memo no. GSM-4/2018/674(A) whereby instructed the Respondent No. 4 that the letter dated 23/7/2020 may be treated as withdrawn and instructed

to issue allotted PDS commodities to the Respondent No. 6 from the month of September onwards. Thereupon the petitioner submitted two

representations before the Respondent No. 2 and 3 on 01/09/2020 raising his grievances and also prayed for cancellation of the fair price shop license

issued in favor of the Respondent No. 6 and also prayed not to allot any PDS commodities to the Respondent no. 6. The Respondent No. 6 having not

acted upon the representations of the petitioner, the petitioner has approached this Court under Article 226 of the Constitution of India seeking a writ

of certiorari for setting aside and quashing the letter dated 27/8/2020 under Memo No. GSM-4/2018/674(A) issued by the respondent No. 3 as well as

any fair price license issued in favor of the Respondent no. 6 and further prayed for a writ in the nature of mandamus directing the Respondent Nos.

2, 3 and 4 not to make any allotment of PDS commodities by curtailing the existing consumers attached to the petitioner's fair price shop in terms

with the Government guidelines as well as order of this Court and in the alternative prayed for a direction to the Respondent Nos. 2 and 3 to consider

the representations of the petitioner dated 01/09/2020. In the said writ petition, the petitioner has relied upon a communication dated bearing

FSA.78/98/11 dated 9/11/1998 whereby the then Under Secretary to the Government of Assam had issued a communication to all the Deputy

Commissioners and all the Sub- Divisional Officers not to issue fresh licenses for the retailer/Sub-dealer (wholesaler) of SK Oil and F.P. Shops /retail

outlets without obtaining prior approval from the Government. The petitioner had also relied upon certain orders dated 22/4/2002, 13/9/2013 and

23/5/2016 passed by this Court in W.P.(C) No. 3110/2000, W.P.(C) No. 5312/2013 as well as W.P.(C) No. 3065/2016 respectively whereby as per

the petitioner this Court on the basis of an instruction issued by the Under Secretary to the Govt. of Assam, Food and Civil Supplies Department have

issued certain instructions to the effect that the license issuing authority should take into account that while issuing a fair price shop license there

should not be less than 1,000 units for economic viability of the fair price shop.

4. The Respondent No. 2 & 3 have filed an affidavit in opposition wherein it was the categorical stand taken therein that in the greater interest of the

consumers of the locality the new license was issued to the Respondent No. 6 of village Dhuturamari under M/S Tamarhat Samabay Samity Ltd. It

was also the specific stand taken that the said license has been issued for the convenience of the consumers of the locality. The Respondent Nos. 4 and

5 have filed their affidavit-in-opposition. In the said affidavit-in-opposition, it was the categorical stand taken that 88 numbers of consumers/

beneficiaries of the F.P. Shops of the writ petitioner had applied before the Respondent No. 3 vide a representation dated 11/5/2020 for curtailment of

their name and include their name in the other FP shops or by appointing a new dealer citing some allegations against the petitioner. The Respondent

No. 3 directed the area officer concerned to enquire into the matter and submit a report thereof. The area officer enquired into the matter and

submitted a report on 13/5/2020. Apart from the 88 numbers of consumers/ beneficiaries of the F.P. shop of the writ petitioner, as per the stand taken

by the Respondent No. 4 & 5 in their affidavit, there were also similarly situated consumers making allegations against the writ petitioner. In that

regard, the Respondent Nos. 4 and 5 have also stated in paragraph No. 5 of their affidavit in opposition that the writ petitioner had also submitted a

letter dated 2/6/2020 before the Respondent No. 3 issuing no objection if the 88 nos. of dissatisfied consumers are tagged with any other FP shop or

by appointing a new FP shop dealer. The said communication issued by the petitioner dated 2/6/2020 has been enclosed to the affidavit in opposition of

the Respondents Nos. 4 and 5 as Annexure-B. It has also been the stand taken by the Respondent No. 4 and 5 that the representations dated

21/6/2020 and 18/7/2020 have been submitted by the petitioner as an afterthought. In paragraph No. 9 of the said affidavit in opposition, it has been the

stand of the Respondent Nos. 4 and 5 that the licensing authority of FP shop is not the GPSS but the Department of Food, Civil Supplies and

Consumers Affairs and the GPSS functions under the Co-op., Department, Government of Assam. It has also been mentioned that even after

issuance of the license to the Respondent No. 6, the petitioner continues to have 943 numbers of consumers attached to his fair price shop.

5. The Respondent No. 6 also filed their affidavit-in-opposition wherein it justified the issuance of license on 13/7/2020 to the Respondent No. 6 and

further stated that even after the appointment of the Respondent No. 6 as a licensee, the petitioner still has 943 numbers of consumers attached to his

fair price shop.

6. The petitioner filed his affidavit in reply against the affidavit in opposition filed by the respondents. In the affidavit in replies to the affidavit in

opposition filed by the Respondent Nos. 2 & 3, it was alleged that the license was issued in favor of the Respondent No. 6 by violating the

Government guidelines and the same cannot be for the greater interest of the consumers of the locality. It was also specifically mentioned that the

distance between the fair price shop of the petitioner and the new fair price shop of the Respondent No. 6 is 200 metre only and it is just opposite

direction of the road of the fair price shop of the petitioner. It was also alleged that the issuance of license to the Respondent No. 6 was by violating

the Government circulars dated 9/11/1998 and 18/8/1994 and purely on extraneous consideration for which the license issued to the Respondent No. 6

ought to be cancelled and the earlier consumers of the petitioner should again be brought within the fold of the petitioner's fair price shop. In the

affidavit in reply to the affidavit in opposition of the Respondent Nos. 4 & 5, it was alleged that the petitioner under compulsion had issued a communication dated 2/6/2020 whereby he had given the no objection for issuance of a fresh license. It was also mentioned in the said affidavit in reply that even assuming that the petitioner had given a no objection in respect to 85 numbers of ration card holders who signed the application dated 11/5/2020 but there were 103 numbers of card holders who have now been transferred as consumers under the Respondent No. 6 which could not have been done. The petitioner further submitted that the issuance of a license to the Respondent No.6 for 580 consumers was in violation to the guidelines dated 18/8/1994 as well as this Court's order dated 30/1/2017 passed in W.P.(C) No.7768/2016. In the affidavit-in-reply to the affidavit in opposition filed by the respondent No. 6, the petitioner took the similar stand as in its reply to the affidavit- in-opposition of the Respondent Nos. 4 and 5.

W.P.(C) No. 3690/2020

7. The case of the petitioner in the instant writ petition is that the petitioner was issued a license under M/S Tamarhat Samabay Samity Ltd. in the district of Dhubri, Assam bearing license No. GSM-9/2003/RL/THT/GPSS/90 dated 23/11/1992. The total household consumers under the petitioner is 1219 and out of this 35 numbers of ration card holders cover 155 population under AAY rice commodities and 240 ration card holders cover 1064 population under the priority rice commodities. The petitioner case is that since 1990 the petitioner has been operating his fair price shop to the full satisfaction of all concerned but suddenly in the month of August, 2019 he came to know from reliable sources that the Respondent No. 6 in connivance with the Respondent No. 4 made a conspiracy whereby an attempt was made to open a fair price shop by curtailing the consumers of the petitioner on the basis of a false petition filed purportedly by large number of card holders before the respondent No. 3 with false signature. Thereupon 206 and 232 numbers of consumers of the petitioner made a representation before the Respondent No. 3 on 5/8/2019 and before the Respondent No. 2 on 21/7/2020 highlighting their grievances and also stated that they want to get their commodities, rice etc under the petitioner's fair price shop.

The petitioner thereupon issued two separate representations before the

Respondent Nos. 2 and 3 on 1/9/2020 highlighting the grievances of the petitioner and requested the said authorities not to curtail any number of consumers from his existing consumers and not to issue any fair price shop license to the Respondent No. 6. Thereupon the petitioner came to learn that on 10/9/2020 the Respondent No. 6 was issued a license. Similar to the earlier writ petition, the petitioner herein also contended that the respondent authorities have issued license to the Respondent No. 6 in violation to the instructions dated 9/11/1998 as well as the instruction issued by the Food, Civil Supplies Department, Government of Assam dated 18/8/1994. The petitioner had also relied upon the orders passed by this Court dated 22/4/2002, 13/9/2013 and 23/5/2016 passed in W.P.(C) No. 3110/2000, W.P.(C) No. 5312/2013 as well as W.P.(C) No. 3065/2016 respectively. On the basis that the petitioner's representation has not been considered the petitioner has approached this Court for a writ in the nature of certiorari for setting aside and quashing the impugned license issued to the Respondent No. 6 dated 10/9/2020; for a writ in the nature of mandamus directing the Respondent Nos. 2 & 3 not to make any allotment of PDS commodities by curtailing the existing consumers attached to the petitioner's fair price shop and alternatively for a direction to the Respondent Nos. 2 and 3 to consider the representation of the petitioner dated 1/9/2020.

8. The Respondent No. 2 and 3 filed the joint affidavit wherein it was specifically stated that the Respondent No. 6 was issued the license by bifurcating the existing population of the petitioner's F.P. shop in the greater interest of the locality on public demand. It was also mentioned that as per the public demand of the locality and in the greater interest of the consumers, the Assistant Director, Food, Civil Supplies & Consumer Affairs, Gossaigaon on perusal of the enquiry report of the local NTCA Inspector approved the Respondent No. 6 fair price shop and asked the Respondent No. 6 to deposit the security money and the license fee. In the said affidavit in opposition at Annexure-2 a report submitted by the Circle Officer, Bhawraguri Revenue Circle was enclosed wherein it was mentioned that 141 numbers of villagers with BPL Card of Sonalurdabri village is facing problem in availing their food and civil supplies from the petitioner under M/S Tamarhat Samabay Samity Ltd. as the dealer's house is far away from the village. It was also mentioned in the report that when an inquiry was

caused it was found that the distance of the existing dealer's house is 3.04 kms from the village and the distance of the Respondent No. 6 as chosen by the villagers to be their new dealer was 1.25 km from the village.

The Respondent Nos. 4 and 5 filed their affidavit-in-opposition wherein while denying the allegation that the Respondent Nos. 4 and 5 had anything to

do with issuance of the license to Respondent No. 6, stated that the fair price shop licenses are issued by the Food, Civil Supplies and Consumer

Department and the Respondent No. 4 was only discharging his duties as Secretary InCharge of the M/S Tamarhat Samabay Samity. Ltd. The

Respondent No. 6 had filed his affidavit in opposition stating inter alia that on 8/9/2020 the license was issued to the Respondent No. 6 and the

Respondent No. 6 has been running his fair price shop having 506 numbers of consumers to the satisfaction of all concerned. It was also the

specific stand that there were lot of dissatisfied consumers of the petitioner who had represented before the authorities concerned about their

difficulties to access the petitioner's fair price shop and this aspect was duly inquired into by the Circle Officer, Bhawraguri and accordingly a

report was duly submitted stating inter alia that the Respondent No. 6 proposed fair price shop was nearer in distance to the fair price shop of the

petitioner. To the said affidavit in opposition filed by the respondents, the petitioners had also filed the affidavit in reply to the affidavit in opposition

filed by the Respondent Nos. 2 and 3 and the Respondent No. 6. In both the affidavits in reply the specific stand of the petitioner is that the issuance

of the license in favor of the respondent was in violation of the instruction dated 9/11/1998 and 18/8/1994 and that the license to the Respondent No. 6

was issued purely on extraneous consideration.

9. Mr. A. K. Hussain, the learned counsel for the petitioners in both the cases submitted that the issuance of the license to the respondent no. 6 in

both the cases had been done in violation to the communication dated FSA.79/98/11 dated 9th of November, 1998 whereby without obtaining the prior

approval from the government the Deputy Commissioners and the Sub-Divisional Officers were directed not to issue any fresh license. He further

relied upon the various orders passed by this court as above mentioned wherein relying upon the instructions issued by the Under Secretary to the

Government of Assam, Food and Civil Supplies Department dated 18/8/1994

orders have been passed whereby directions were issued to the respondent authorities to take into consideration the said communication that while issuing a license there should not be less than 1000 units for economic viability of the fair price shop. He further submitted that by issuance of the license to the respondent no. 6, business in respect to the fair price shop of both the petitioners have become commercially unviable in as much as the respondent authorities while issuing the license have reduced the consumers attached to both the petitioners's fair price shop.

10. On the other hand, Mr. B. Deuri the learned Junior Government Advocate appearing for the respondent Nos. 2 and 3 submitted that the licenses have been issued to the respondent no. 6 in both the writ petitions in the greater interest of the locality on public demand as well as for the convenience of the consumers.

11. Mr. R. Islam the learned counsel appearing for the respondent nos. 4 and 5 in both the writ petitions has submitted that in the case of the writ petitioner in W.P. C No. 3543/2020 the said writ petitioner even after curtailment in the number of consumers still continues to have 943 numbers of

consumers. He further submitted that the filing of the instant writ petition is nothing but an afterthought in as much as the petitioner had vide the letter

dated 2/6/2020 submitted before the respondent no. 3 a no objection, if the 88 numbers of dissatisfied consumers are tagged with any other fair price

shop or by appointing a new fair price shop dealer. He further submitted that the allegations made of a conspiracy being lodged jointly by the

Respondent Nos. 4, 5 and 6 which led to the issuance of the license in favor of the Respondent No. 6 is without any basis in as much as the

Respondent No. 4 and 5 is not the licensing authority. In regard to the Writ Petition No.3690/2020 Mr. R. Islam submits that the allegation of a

conspiracy made in the writ petition of the Respondent Nos. 4, 5 and 6 which led to the issuance of the license in favor of the Respondent No. 6 is

completely baseless. He further submits that the fair price shop licenses are issued by the Food, Civil supplies and Consumers Affairs, Government of

Assam and the respondent nos. 4 and 5 have no authority to issue the said license. He additionally submits that the communication dated 9/8/1998

issued by the Under Secretary to the Government of Assam on the basis of which the petitioner contends that the issuance of the license to the

respondent No. 6 cannot be done without the approval of the Government cannot be made applicable to the facts of the instant case in as much as the said communication dated 09/11/1998 was a communication issued to the Deputy Commissioner as well as the Sub-Divisional Officers for not to issue fresh license without obtaining prior approval from the Government at a time when there was a ban imposed. But at present there is no ban imposed in issuance of fresh licenses.

12. Mr. S. K. Das, the learned counsel appearing on behalf of the respondent No. 6 in W.P. C. No. 3543/2020 submitted that the issuance of license

to the Respondent No. 6 had been done by the authorities concerned, taking into consideration the various allegations made by the consumers attached

to the petitioner on account of non-distribution of articles in time, short distribution than the allotted quantity, demanding more price and mis-behavior

etc. He further submitted that the petitioner by issuing the no objection dated 2/6/2020 had given his consent if the dissatisfied consumers are tagged

with any other dealer or by appointment of a new dealer. He further submitted that even after curtailing 580 consumers from the petitioner, the

petitioner still continues to have 943 consumers attached to his fair price shop. As regards to the contentions made by the petitioner to the effect that

fair price shop had to have a minimum 1000 consumers for the economic viability of the said fair price shop, he submits that the perusal of Annexure

â?" 1 and 2 of the writ petition would clearly go to show that there are various fair price shop dealers who are having consumers even less than 500.

13. Mr. A.A.R. Karim, the learned counsel appearing on behalf of the respondent no. 6 submits that the respondent No. 6 was issued a license for the

greater interest and convenience of the public. After taking into account the report dated 24/7/2020 given by the Circle Officer, Bawaguri Revenue

Circle wherein it was found that the distance of the fair price shop of the petitioner from the village was 3.04 km and the distance of the proposed fair

price shop of the respondent No. 6 was 1.25 km from the village. He further submitted that the petitioner has no locus standi to file the instant petition

on the ground that no legal right of the petitioner has been affected. He further submits that a writ in the nature of certiorari as has been sought for by

the petitioner ought not to be issued to eliminate healthy competition in the business in as much as an action taken by the State for issuance of license

to the respondent No. 6 may impact the commercial interest of the petitioner but the same would not be a legal wrong for issuance of a writ in the

nature of certiorari or in other words it is the submission of the learned counsel for the petitioner that the petitioner is not a person aggrieved and

has no locus standi to challenge the grant of license to the respondent No. 6.

14. I have heard the learned counsel for the parties and have also perused the materials on record.

15. From the materials before this Court and the contentions raised by the parties that the points arising for adjudication which are involved in the

instant case are (a) Whether the petitioner has the locus standi to challenge the issuance of license to the respondent No. 6 ? and (b) Whether a

right accrues upon the petitioner to challenge the issuance of license to the respondent No. 6 on the ground of non-compliance to the communication

dated 9/11/1998 issued by the Government of Assam as well as the communication dated 18/8/1994 and on the basis of which various orders have

been passed by this Court ? Both the points can be dealt with together.

16. For the purpose of understanding the purport of the communication dated 18/8/1994 on the basis of which the petitioners claim that the

consumers attached to the petitioners fair price shop should be reduced, it is relevant to quote the said communication as herein under :-

GOVERNMENT OF ASSAM

FOOD AND CIVIL SUPPLIES (A) DEPARTMENT

Memo No. 24/94/17 Dated Dispur, the 18th Aug 1994 From : Sri T.K. Pathak, ACS,

Under Secretary to the Govt. of Assam

To : All Deputy Commissioners/Sub-Divisional Officers

Sub- Fair Prices Shop

Sir,

I am directed to inform you that Govt. has decided to fix the population limit of Fair Price Shop as follows :-

1. Population limit for Fair Price Shop in Rural Areas in Plain District 800/1000

2. Minimum population in rural areas of Hill District 500.

3. Population limit for Fair Price Shop in Urban Areas 1000-1200

Nos.

You are requested to stick to the population limit as indicated above in respect of Fair Price Shop in Rural and Urban areas.â??

17. What transpires from a reading of the said communication that a decision was taken by the Government to fix the population limit of fair price

shop. Sl. No. 1 and Sl. No. 3 uses the expression â??population limitâ? for fair price shop in rural areas in plain districts and in urban areas

respectively However, Sl. No. 2 uses the expression â??minimum populationâ? in rural areas of hill districts. The term â??population limitâ? would

mean the upper most limit or in other words the permissible population that can be attached to a ration shop. If the said expression â??population

limitâ? is understood in the said context then in that regard for fair price shop in rural areas in plain districts, the permissible population or the

consumers that can be attached to a fair price shop would be between 800 to 1000 and not more than that. If the said interpretation is taken then it

would be seen that from a perusal of Annuxures- 1 and 2 of W.P.(C) No. 3543/2020 except a few persons like the petitioners, all other persons have

consumers attached within the permissible limit. Under such circumstances, the contention of the petitioner that the curtailing of the consumers who

were previously attached to the petitioners would be in violation to the communication dated 18/8/1994 is totally misconceived. At this stage it may

also be relevant herein to mention that though various orders have been referred to as passed by this Court but the said orders had been passed

directing the concerned respondent authorities to issue licenses in consonance to the said communication dated 18/8/1994. Under such circumstances,

issuance of the license to the Respondent No. 6 in both the writ petitions cannot be said to be in violation to the communication dated 18/8/1994.

Further to that, it is also relevant to take note of that the said communication dated 18/8/1994 was issued in the year 1994 and thereupon various

changes have been brought into as regards the Public Distribution System i.e. the issuance of the Public Distribution System (Control) Order, 2001 by

the Central Government and the various schemes issued by the appropriate Government viz., Anantha Anna Yojana, Priority Rice Commodities

Scheme, the schemes under the National Food Security Act etc which may require more and more licenses to be issued for the purpose of

implementing the various schemes under the Public Distribution System. It is absolutely within the discretion of the appropriate Government to adopt a policy by which the beneficiaries of the Public Distribution System are best served and the licenses like the petitioners herein cannot have a say in that regard.

18. The second contention on the basis of which the petitioners claim that the issuance of licenses to Respondent No. 6 in both the writ petitions was not in accordance with law is on the basis of a communication dated 09/11/1998 issued by the Under Secretary to the Government of Assam, Food and Civil Supplies to the various Deputy Commissioners and Sub-Divisional Officers whereby keeping into account a ban imposed by the then Government a direction was issued not to issue fresh license without obtaining prior approval of the Government. In the instant cases, the licenses which have been issued to the Respondent No. 6 have been issued on the directions of the Government and the Government had taken a particular stand that the said licenses have been issued for the purpose of greater interest and convenience of the public of the locality and under such circumstances the contention of the petitioners in that regard of issuance of the licenses to the Respondent No. 6 in both the writ petitions to be in violation to the communication dated 9/11/1998 is also on the face of it misconceived.

19. In the backdrop of the above, therefore what requires to be looked into is what is the legal right of the petitioners on the basis of which the petitioners have sought for cancellation of the licenses issued to the Respondent No. 6. It is no longer *res integra* that the writ petition under Article 226 of the Constitution of India is maintainable either for the purpose of enforcing a statutory or legal right or when there is a complaint by the writ petitioner that there has been a breach of a statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement on the basis of which the writ jurisdiction is resorted to. It is implicit in the exercise of such extra ordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right is the foundation of the exercise of the said jurisdiction by the Court. A legal right in that context means an entitlement arising out of legal rules. Thus it may be defined as an advantage, or a benefit conferred

upon a person by the rule of law. For filing a writ petition or having the standing to file the writ petition the writ petitioner has to be a person

aggrieved. The expression 'person aggrieved' does not include the person who suffers from psychological or an imaginary injury. A person

aggrieved must therefore necessarily be one whose rights or interest had been adversely affected or jeopardized and the said person has to show

that he has suffered a legal injury. However, in exceptional circumstances, if the actual persons aggrieved, because of ignorance illiteracy,

inarticulation or poverty are unable to approach the Court and a person, who has no personal agenda or object in relation to which he can grind his

own axe by approach the Court than the court may examine the issue and in exceptional circumstances even if his bona fide are doubted, but the

issues raised by him, in the opinion of the Court requires consideration, the Court may proceed suo motto in such respect. In the instant case however

the same is not the issue and the petitioner in order to maintain his writ petition has to show that he has suffered some legal injury.

20. The Supreme Court in the case of The Nagar Rice and Flour Mills and others v. N.Teekappa Gowda and Bros. and others)) reported in (1970) 1

SCC 575 observed at paragraph 9 as herein under :-

'9. Section 8 (3) (c) is merely regulatory : if it is not complied with the appellants may probably be exposed to a penalty, but a competitor in the

business cannot seek to prevent the appellants from exercising their right to carry on business, because of the default, nor can the rice mill of the

appellants be regard as a new rice mill. Competition in the trade or business may be subject to such restrictions as are permissible and are imposed by

the State by a law enacted in the interests of the general public under Art. 19 (6), but a person cannot claim independently of such restriction that

another person shall not carry on business or trade so as to affect his trade or business adversely. The appellants complied with the statutory

requirements for carrying on rice milling operations in the building on the new site. Even assuming that no previous permission was obtained, the

respondents would have no locus standi for challenging the grant of the permission, because no right vested in the respondents was infringed.'

21. The Supreme Court further in another judgment in the case of Jesbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed and Ors. reported in

1976 1 SCC 671 while dealing with the question of the requirement of a person to be a "person aggrieved" for the purpose of issuance of a writ

of certiorari at paragraph Nos. 44 to 51 observed as under :-

"44. The Act and the Rules recognise a special interest of persons residing, or concerned with any institution such as a school, temple, mosque etc.

located within a distance of 200 yards of the site on which a cinema house is proposed to be constructed. The appellant does not fall within the

category of such persons having a special interest in the locality. It is not his case that his cinema house is situated anywhere near the site in question,

or that he has any peculiar interest in his personal, fiduciary or representative capacity in any school, temple etc. situated in the vicinity of the said site.

It cannot therefore be said that the appellant is "a person aggrieved" on account of his having a particular and substantial interest of his own in the

subject matter of the litigation, beyond the general interest of the public. Moreover the appellant could not be said to have been, in fact, aggrieved. As

already noticed, he, despite adequate opportunity, never lodged any objection with the District Magistrate, nor went in revision before the State

Government. Thus the present case is not in line with the decisions which are within the ratio of *Queen v, Justices of Surrey* (supra).

45. Having seen that the appellant has no standing to complain of injury, actual or potential, to any statutory right or interest, we pass on to consider

whether any of his rights or interests, recognised by the general law, has been infringed as a result of the grant of No-objection Certificate to the

respondents ? Here, again, the answer must be in the negative.

46. In Paragraph 7 of the writ petition, he has stated his cause of action, thus:

The petitioner submits that he owns a cinema theatre in Mehmadabad which has about a small population of 15000 persons as stated above and there

is no scope for more than one cinema theatre in the town. He has, therefore, a commercial interest in seeing to it that other persons are not granted a

no-objection certificate in violation of law.

47. Thus, in substance, the appellant's stand is that the setting up of a rival cinema house in the town will adversely affect his monopolistic commercial

interest, causing pecuniary harm and loss of business from competition. Such harm or Loss is not wrongful in the eye of law, because it does not result

in injury to a legal right or a legally protected interest, the business competition

causing it being a lawful activity. Juridically, harm of this description is called *damnum sine injuria*, the term *injuria* being here used in its true sense of an act contrary to law(1). The reason why the law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to society at large.

48. In the light of the above discussion, it is demonstrably clear that the appellant has not been denied or deprived of a legal right. He has not sustained injury to any legally protected interest. In fact, the impugned order does not operate as a decision against him, much less does it wrongfully affect his title to something. He has not been subjected to a legal wrong. He has suffered no legal grievance. He 'has no legal peg for' a justifiable claim to hang on. Therefore he is not a 'person aggrieved' and has no locus standi to challenge the grant of the No-objection Certificate.

49. It is true that, in the ultimate analysis, the jurisdiction under Article 226 in general, and certiorari in particular, is discretionary. But (1) Salmond on Jurisprudence by Fitz-Gerald. p. 357 para 85. in a country like India where writ petitions are instituted in the High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon. The broad guide lines indicated by us, coupled with other well established self-devised rules of practice, such as the availability of an alternative remedy, the conduct of the petitioner etc., can go a long way to help the courts in weeding out a large number of writ petitions at the initial stage with consequent saving of public time and money.

50. While a Procrustean approach should be avoided, as a rule the Court should not interfere at the instance of a 'stranger' unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact on public interests. Assuming that the appellant is a 'stranger', and not a busybody, then also, there are no exceptional circumstances in the present case which would justify the issue of a writ of certiorari at his instance. On the contrary, the result of the exercise of these discretionary powers, in his favour, will, on balance, be against public policy. It will eliminate healthy competition in this business which is so essential to raise commercial morality; it will tend to perpetuate the appellant's

monopoly of cinema business in the town; and above all, it will, in effect, seriously injure the fundamental rights of respondents 1 and 2, which they have under article 19(1) (g) of the Constitution, to carry on trade or business subject to 'reasonable restrictions' imposed by law.

51. The instant case falls well-nigh within the ratio of this Court's decision in Rice and Flour Mills v. N. T. Gowda(1), wherein it was held that a rice mill-owner has no locus standi to challenge under Article 226, the setting up of a new rice-mill by another even if such setting up be in contravention of s. 8(3)(c) of the Rice Milling Industry (Regulation) Act, 1958 because no right vested in such an applicant is infringed.â??

22. From a perusal of both the judgments as quoted hereinabove and applying the same to the present facts and circumstances, it would be seen that

the petitioners stand is that granting of licenses to the Respondent No. 6 in both the writ petitions would amount to setting up of rival fair price shops

which would adversely affect the petitioner monopolistic commercial interest which they have been enjoying for last more than 30 years and thereby

causing pecuniary harm and loss of business from the competition. This harm or the pecuniary loss which would be occasioned to the petitioners

cannot be regarded as wrongful in the eye of law because it does not result in an injury to a legal right or a legally protected interest in as much as, the

business competition is a lawful activity and any interference thereof would be a negation to the fundamental right of the respondent No. 6 under

article 19 (1) (g) of the Constitution of India.

23. On a specific query being made to the counsel of the petitioners as to whether the provisions of Public Distribution System (Control) Order 2001

or the Assam Public Distribution of Articles Order, 1982 or even the licenses issued to the petitioners confer any right upon the petitioners on the basis

of which the petitioners can claim that within the operational areas of the petitioners no licenses can be issued or for that matter there cannot be any

curtailment of the consumers attached to the petitioners. The learned counsel for the petitioners failed to show from the provisions of the said Orders

or any other statutory rule or legal rules or law within the meaning of Article 13 of the Constitution of India which gives any legal right to have a fair

price shop in the same locality and there cannot be any further issuance of fair price shop licenses in the said locality. Consequently, this Court is

therefore of the opinion that the petitioners do not have the locus standi as the petitioners are not "persons aggrieved" to initiate the instant proceeding under Article 226 of the Constitution of India.

24. Consequently, both the writ petitions stand dismissed. However, no costs.