BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SOUTHERN ZONE SITTING AT CHENNAI

(Under Section 18(1) read with Section 14 (1) of
the National Green Tribunal Act, 2010)

ORIGINAL APPLICATION No. 176 of 2020 (SZ)

IN THE MATTER OF

V.B.R. Menon, B.E (Mech), MBA (IIMA), LLB,
Advocate,
K.K. Nagar, Chennai – 600 078 … Applicant

-Vs-

1. The Commissioner of Police,
   Trichy City Police Office
   Tiruchirapalli – 620 020 and others … Respondents

INDEX TO COMPILATION OF SC JUDGMENTS UPHOLDING LOCUS STANDII OF EVEN RIVAL BUSINESSMEN WHEN VIOLATION OF ACT AND RULES ARE PRESENT

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2000 CJ(SC) 928

SUPREME COURT OF INDIA (FROM KERALA)

M. S. Jayaraj V/S Commissioner of Excise, Kerala

Decided On: 29 September 2000

Hon'ble Judges: K. T. Thomas, R. P. Sethi, JJ

Appeal No/Type: Civil Appeal No 5614 of 2000

Advocates: P. Krishna Murthy, M. T. George, C. S. Vaidyanathan, E. M. Sardul Anam, Fazlin Anam, G. Prakash, Beena Prakash, Jyothish A. P

Result: Appeal dismissed.

Acts Referred:

(A) Constitution Law - Constitution of India, Article 226 –
(B) Kerala Abkari Act, 1077, Section 29 –
(C) Kerala Abkari Shops (Disposal in Auction) Rules, 1974, Rule 6, Rule 6(2)

Kerala Abkari Shops (disposal In Auction) Rules, 1974 - Rule 6(2) - Constitution Of India, Article 226 - Powers For The Excise Commissioner - Shifting Of Shops - Appeal To Quash The Order Of The Commissioner - The High Court Held That Rule 6(2) Of The Auction Rules Contains Such Powers - Contention - No Locus Standi - Division Bench Not Allowing The Objection - The Order Passed By The Excise Commissioner In Favour Of The Appellant Is Without Authority Of Law - It Has Been Rightly Struck Down By The High Court - Appeal Dismissed. kerala Abkari Shops (disposal In Auction) Rules, 1974 R.6, imppara 15,16,17,18,19,20

Eq. Citation: AIR 2000 SC 3266, AIR 2000 SCW 3674, 2000 KHC 716, 2000 (159) Taxation 569, 2000 (3) KerLT 820, 2000 (3) KLT 820, 2000 (6) Scale 674, 2000 (7) SCC 552, 2000 (7) SLT 330, 2000 (7) Supreme 105, 2000 (72) ECC 7, 2000 (9) SRJ 228, 2000 JT 487, 2001 (1) KerLJ 53, 2001 (1) KLJ(NOC) 53

JUDGEMENT

THOMAS, J.

1. Leave granted.

2. A bidder in auction for the privilege of vending foreign liquor within a circumscribed range was permitted by the Excise Commissioner to have his domain shifted to another range. On hearing the said news a hotelier who is doing business in the latter range was distressed and she quickly approached the High Court for thwarting the said move. At the first round the hotelier failed to checkmate the bidder as a single Judge of the High

Court declined to grant the relief prayed for by her. However, she succeeded on the second round, when a Division Bench of the High Court, on the appeal filed by her, quashed the order of the Excise Commissioner. This appeal by Special Leave is by the aforesaid bidder for restoration of the benefit which he secured from the Excise Commissioner.

3. In the State of Kerala, the right to sell foreign liquor is restricted by statutory provisions. The Government of Kerala has formulated rules for it under the Kerala Abkari Shops (Disposal in Auction) Rules, 1974 (for convenience it would be referred to as the "Auction Rules"). The Government has the authority, under the said rules to notify in the Gazette the limits of each area (range) wherein the shop or shops could be located for vending such foreign liquor. Officers are authorised by the Government to auction the right to vend foreign liquor from each such shop and for such period as may be fixed. Person who offers the highest bid would normally be preferred for conferring the privilege to vend foreign liquor and licence would be issued to him for that purpose. Among the different types of licence only two are relevant for the purpose of this case. One is called "Licence for the privilege of possession of Indian made Foreign Liquor for sale to public in sealed bottles without the privilege of consumption on the premises". As the said licence is to be issued in Form FL-1 it can be termed as such hereinafter. The other is called "Hotel (Restaurant) Licence" and it is to be issued in Form FL-3. (It can be referred to as such hereinafter).

4. FL-3 licence consists of the privilege to sell foreign liquor for consumption within a room specifically approved for the purpose to residents in the hotel or boarding houses, including their guests. FL-1 licence is for the privilege of selling liquor in sealed bottles containing a quantity above 180 ml.

5. For the facts in this case the following events are to be narrated :

On 13-3-2000 appellant participated in the auction held in respect of a shop to be located within a range called "Changanassery Excise Range" consisting of the areas falling within the limits of Changanassery Municipality. Appellant was the highest bidder and he quoted above Rs. 63 lakhs. On his being chosen for the licence appellant remitted a portion of the bid amount on the same day.

6. He failed to find out a suitable place to locate the shop within the boundaries of Changanassery Excise Range. Hence he applied to the first respondent (Commissioner of Excise, Kerala) for permission to locate the shop outside the said range. On the same day the application was forwarded by the second respondent (Assistant Excise Commissioner of the district) with a recommendatory note. The Excise Commissioner granted permission to the appellant on 12-4-2000 for shifting the shop to another range called Karukachal which comprises of the areas falling within Karukachal Panchayat. (That range is situate next to the Changanassery range). The third respondent, who is running the hotel and restaurant at Karukachal and who obtained FL-3 licence to supply foreign liquor in peg measurements to patrons visiting the hotel, filed a writ petition before the High Court under Article 226 of the Constitution for quashing the aforesaid permission granted by the first respondent. Third respondent contended mainly that the Excise Commissioner had no authority to pass such an order. In defence of the permission so granted the Excise Commissioner and the second respondent relied on Rule 6(2) of the Auction Rules.

Learned single Judge of the High Court, while dismissing the writ petition, held that Rule 6(2) of the Auction Rules contains such powers for the Excise Commissioner to pass. He also held that the order granting permission to locate the shop outside the limit of the originally shown range is not proved to have been vitiated by any mala fides.

7. Third respondent filed an appeal before the Division Bench of the High Court and learned Judges of the Bench reversed the order passed by the single Judge holding that the Commissioner of Excise has no power or jurisdiction under Rule 6(2) to transfer an Abkari or foreign liquor shop outside the limits notified in the Gazette under Rule 4 of the Auction Rules. The Division Bench did not seriously take the objection raised by the present appellant that writ petitioner had no locus standi to challenge the order of the Excise Commissioner. However, learned Judges observed that the writ petitioner is a licensee having FL-3 licence and was running a hotel-cum-restaurant in Karukachal Panchayat and hence the order permitting the appellant to shift the shop to Karukachal Panchayat would affect her rights. Resultantly the Division Bench quashed the order of the Excise Commissioner though learned Judges granted two weeks' time to dispose of the stock of liquor acquired by the appellant for the purpose of selling the same in exercise of the licence granted to him.

8. Shri P. Krishnamurthy, learned Senior Counsel, who argued for the appellant, adopted a two-pronged onslaught on the judgment of the Division Bench of the High Court. First is that the High Court ought not to have entertained the writ petition filed by the third respondent as she is a rival businesswoman who cannot have locus standi to file the petition. Second is that the Division Bench failed to trace the power of the Excise Commissioner which power has been conferred on him by the first proviso to Rule 6(2) of the Auction Rules. Shri C. S. Vaidyanathan, learned Senior Counsel who argued for the third respondent, contended that the locus standi of the third respondent for moving the High Court is no concern now as the learned single Judge of the High Court had already entertained the writ petition and decided it on merits only. Alternatively, learned Counsel contended that the third respondent is not, in fact, a rival businesswoman and she need be regarded only as a resident of Karukachal Panchayat who is entitled to assail any order passed by a statutory authority in violation of law. Without prejudice to such contention learned Counsel made an endeavour to support the interpretation placed by the Division Bench of the High Court on Rule 6(2) of the Auction Rules.

9. Shri P. Krishnamurthy, learned senior counsel relied on the decisions of this Court in the Nagar Rice and Flour Mills v. N. Teekappa Gowda and Bros., (1970) 1 SCC 575 : (AIR 1971 SC 246), Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed, (1976) 1 SCC 671 : (AIR 1976 SC 578), Thammanna v. K. Veera Reddy, (1980) 4 SCC 62 : (AIR 1981 SC 116), Dr. Duryodhan Sahu v. Jitendra Kumar, (1998) 7 SCC 273 : (1998 AIR SCW 3467 : AIR 1999 SC 114), in order to bolster up his contention that the third respondent had no locus standi to maintain a petition under Article 226 of the Constitution in respect of the impugned order passed by the Excise Commissioner.

10. It is not discernible from the Judgment of the learned single Judge whether appellant had raised the issue of locus standi before him. But appellant did raise it before the Division Bench. In this appeal also he endeavoured to contend that the right of the third respondent is not affected by the order passed by the Excise Commissioner as the licence granted to her is only for selling liquor in small quantity and that too only to those persons who visit the hotel and restaurant, whereas the appellant is not permitted to sell it like that. We too feel that if the business of the third respondent is to be carried on in accordance with the rules such business cannot affect the business of the appellant. In that view of the matter appellant would not be a rival trader or a rival business contender for the third respondent. Perhaps bearing in mind this aspect the third respondent maintained the stand in the counter-affidavit filed in this Court that her objection against the order of the Excise Commissioner is as a citizen of Karukachal Panchayat and she is entitled to raise such objection.

11. In this context we noticed that this Court has changed from the earlier strict interpretation regarding locus standi as adopted in Nagar Rice and Flour Mills v. N. Teekappa Gowda and Bros., (1970) 1 SCC 575 : (AIR 1971 SC 246) and Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed, (1976) 1 SCC 671 : (AIR 1976 SC 578) and a much wider canvass has been adopted in later years regarding a person's entitlement to move the High Court involving writ jurisdiction. A four Judge Bench in Jasbhai Motibhai Desai (AIR 1976 SC 578) (supra) pointed out three categories of persons vis-a-vis the locus standi : (1) a person aggrieved; (2) a stranger; (3) a busybody or a meddlesome interloper. Learned Judges in that decision pointed out that any one belonging to the third category is easily distinguishable and such person interferes in things which do not concern him as he masquerades to be a crusader of justice. The Judgment has cautioned that the High Court should do well to reject the petitions of such busybody at the threshold itself. Then their Lordships observed the following (para 37 of AIR) :

"The distinction between the first and second categories of applicants, though real, is not always well demarcated. The first category has as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of 'persons aggrieved'. In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be persons aggrieved."

12. A recent decision deliverd by a two Judge Bench of this Court (of which one of us is a party - Sethi, J.) in Chairman, Railway Board v. Chandrima Das, (2000) 2 SCC 465 : (2000 AIR SCW 649 : AIR 2000 SC 988 : 2000 Cri LJ 1473) after making a survey of the later decisions held thus (para 17 of AIR, Cri LJ) :

"In the context of public interest litigation, however, the Court in its various judgments has given the widest amplitude and meaning to the concept of locus standi. In People's Union for Democratic Rights v. Union of India (1982) 3 SCC 235 : (AIR 1982 SC 1473 : 1982 Lab IC 1646) it was laid down that public interest litigation could be initiated not only by filing formal petitions in the High Court but even by sending letters and telegrams so as to provide easy access to Court. (See also Bandhua Mukti Morcha v. Union of India, (1984) 3 SCC 161 : (AIR 1984 SC 802 : 1984 Lab IC 560) and State of H. P. v. A Parent of a Student of Medical College, (1985) 3 SCC 169 : (AIR 1985 SC 910) on the right to approach the Court in the realm of public interest litigation. In Bangalore Medical Trust v. B. S. Muddappa (1991) 4 SCC 54 : (1991 AIR SCW 2082 : AIR 1991 SC 1902) the Court held that the restricted meaning of aggrieved person and the narrow outlook of a specific injury has yielded in favour of a broad and wide construction in the wake of public interest litigation. The Court further observed that public spirited citizens having faith in the rule of law are rendering great social and legal service by espousing causes of publc nature. They cannot be ignored or overlooked on a technical or conservative yardstick of the rule of locus standi of the absence of personal loss or injury. There has, thus, been a spectacular expansion of the concept of locus standi. The concept is much wider and it takes in its stride anyone who is not a mere busybody."

13. In the light of the expanded concept of the locus standi and also in view of the finding of the Division Bench of the High Court that the order of the Excise Commissioner was passed in violation of law, we do not wish to nip the motion out solely on the ground oflocus standi. If the Excise Commissioner has no authority to permit a liquor shop owner to move out of the range (for which auction was held) and have his business in another range it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the writ petition has strictly no locus standi. So we proceed to consider the contentions on merits.

14. Chapters 1 to 4 of the Auction Rules contain various regulations regarding fixation of the limit of each range, how to conduct the auction for each or lot of shops etc. Chapter 5 of the Auction Rules contains two rules (Rule 6 and Rule 6A) under the title "General Conditions applicable to licensees of toddy, arrack or foreign liquor 1 shops". Though Rule 6 consists of 39 sub-rules we are concerned only with the first three of them. hence those three sub-rules are extracted herein :

"6(1) No licensees of any toddy, foreign liquor shop shall be permitted to sell or possess toddy or foreign liquor or cocobrandy outside the local limits specified in his licence.

(2) No toddy or foreign liquor shop notified in the gazette under Rule 4, shall be located outside the notified limits, but with the previous sanction of the Assistant Excise Commissioner it may be removed from one place to another within such limits. However, no such shop shall be located in or removed to place within an area declared as a project area. No toddy shop shall be located within 400 meters and no Foreign Liquor 1 shop shall be located within 200 meters from an educational Institution, Temple, Church, Mosque, Burial ground, Harijan Colonies or Tribal Colonies :

Provided the Excise Commissioner may for sufficient reasons to be recorded in writing and subject to such conditions as he may deem necessary to impose, order to remove from any place, any toddy shop or Foreign Liquor 1 shop to a place outside the limits specified in this sub-rule :

Provided further that if any educational institution, Temple, Church, Mosque or burial ground comes into existence subsequent to the grant of licence, it shall not disentitle such shops for continuance :

(3) It shall be competent to the Board of Revenue to order the transfer of shops from one site or locality to another site or locality or to alter the specified limits of any shop even during the currency of the contract or to order any shop to be closed in the interest of public peace or morality or on grounds of expediency and in such an event of transfer, alteration or closure, the contractor shall have no claim for compensation."

15. The repeated usage of the negative expression "no" in sub-rules (1) and (2) looms large therein. By such usage the legislature has imposed absolute ban on certain activities e.g. "no licensee shall be permitted to sell foreign liquor outside the local limits specified in his licence" as in sub-rule (1) and "no foreign liquor shop shall be located outside the notified limits" as in sub-rule (2). Then again "no foreign liquor shop shall be located" within the distance fixed as from certain institutions. There is no proviso nor any explanation as for sub-rule (1) but the proviso is placed only below sub-rule (2). Therefore, sub-rule (1) must work out by itself unexpanded or unrestricted by any other clause.

16. The first proviso to sub-rule (2) is intended to refer to sub-rule (2) above. This can be discerned from two indications. One is the fact that the said proviso has been placed in the said sub-rule only. Second is that its scope is restricted to a place "outside the limit specified in this sub-rule". The contention of the appellant is that the above words can have relation to the limits specified in sub-rule (1) because the limit envisaged in the second sub-rule is practically the same as the limit indicated in sub-rule (2).

17. We have difficulty to accept the said contention for more than one reason. If the rule making authority had intended it to be so they would have effortlessly used the words "outside local limits specified in the licence" in the proviso because the same words have been used in sub-rule (1). As the proviso gives powers to the Excise Commissioner to order removal of a shop to a place "outside the limits specified in this sub-rule" it can only refer to the limits specified in that sub-rule and not elsewhere. It must be noted in this context that sub-rule (2) specifies certain limits such as "within 400 meters" (for toddy shops) and "within 200 meters" (for FL-1 shops) from certain institutions mentioned therein. It is with reference to those limits which are specified in sub-rule (2) that the proviso confers power on the Excise Commissioner to pass order for removal.

18. Otherwise the absolute ban incorporated in sub-rule (1) would become meaningless. It is also worthy to notice that the only exception from the ban contained in sub-rule (1) is provided in sub-rule (3), extracted above. A superior authority like the Board of Revenue alone was vested with that power in "the interest of public peace or morality or on grounds of expediency."

19. (Shri P. Krishnamurthy submitted that the Board of Revenue in Kerala stood abolished in 1997 and in that place Government is substituted in statutes). If so, even for the Government to order transfer of a shop from one locality to another it cannot be done unless there is existence of the exigency indicated in sub-rule (3). How could it be conceived that a subordinate officer can do it without any such exigency.

20. We, therefore, concur with the interpretation placed by the Division Bench of the Kerala High Court on the scope of the proviso to Rule 6(2) of the Auction Rules. It means that Excise Commissioner has no authority to permit shifting of a foreign liquor shop from one range to a totally different range. Consequently the order passed by the first respondent, Excise Commissioner in favour of the appellant is without authority of law and it has been rightly struck down by the Division Bench of the High Court. Accordingly we dismiss this appeal.

21. Learned counsel for the appellant lastly made a plea that the amount deposited by him pursuant to the bid, should be refunded to him as the appellant was not able to operate the foreign liquor shop mainly on account of the unauthorised order passed by the Excise Commissioner. It is open to the appellant to make the application for such refund. We direct the Government to pass orders thereon within one month from the date of such application.

Appeal dismissed.

V.B.R.Menon,
advocate,
Chennai,
Tamilnadu

2004 CJ(SC) 783

SUPREME COURT OF INDIA

Mehsana District Central Co-Operative Bank Limited & Others V/S State of Gujarat and others

Decided On: 28 January 2004

Hon'ble Judges: S. N. Variava, H. K. Sema, JJ

Appeal No/Type: Special Civil Application No 3040 & 3041 of 1998

Advocates: R. N. Trivedi, K. G. Vakharia, Mahendra Anand, Dushyant Dave, Mahesh Agrawal, Rishi Agrawal, Mannu Krishnan, E. C. Agrawal, Vivek Yadav, Ramesh Singh, Areena Gupta, Hemantika Wahi, H. S. Parihar, Kuldeep Parihar

Result: Appeal dismissed.

Acts Referred:

(A) Banking Law - Banking Regulation Act, 1949, Section 2, Section 5(b), Section 6(1)(a)
(B) Constitution Law - Constitution of India, Article 226, Article 254(2)

Banking Regulation Act - Section 5(b) And Section 6(1)(a) - Gujarat Co - Operative Societies Act, 1961 - Section 71 - There Is No Conflict As The State Act Received The Assent Of The President. Prohibition In State Act Not To Invest The Funds Of Co - Operative Bank Out Side Falling Section 71 (a) To (f) Is In The Interest Of Depositors Of Co - Operative Banks And It Prevails Over The Provisions Of Banking Regulation Act - Investment Of Funds Of Bank In Mutual Funds Is Violation Of The Provisions Of The Act - Public Interest Litigation> - If There Is Any Allegation Of Violation Of Statutory Rules Which Have Been Brought To The Notice Of The Authorities And If The Concerned Authorities Do Not Perform Their Statutory Obligation, As In The Present Case, Any Aggrieved Citizen Can Always Bring To The Notice Of The High Court About The Inaction Of The Statutory Authorities And In Such Event It Would Always Be Open To The High Court To Pass An Appropriate Order As Deemed Fit And Proper In The Facts And Circumstances Of The Case -banking Regulation Act, 1949 S.2,s.5,s.6,s.5(b),s.6(1)(a), Gujarat Co-operative Societies Act, 1961 S.71(1)(a),s.71(1)(b),s.71(1)(c),s.71(1)(d),s.71(1)(e),s.71(1)(f), imppara 3-15

Eq. Citation: 2004 ACJ 203, AIR 2004 SC 1576, AIR 2004 SCW 731, 2004 BankJ 402, 2004 KHC 441, 2004 ROL 38, 2004 WLC(SC)CVL 339, 2004 (1) ACE 644, 2004 (1) BankCLR 705, 2004 (1) GLH 731, 2004 (1) JT 628, 2004 (1) SCR 1125, 2004 (118) CC 507, 2004 (118) CompCas 507, 2004 (16) AllIndCas 169, 2004 (16) IndLD 577, 2004 (2) GLR 1205, 2004 (2) ISJ(Banking) 251, 2004 (2) KCCR 203, 2004 (2) RCR 102, 2004 (2) RecCivR 102, 2004 (2) Scale 155, 2004 (2) SCC 463, 2004 (2) SLT 420, 2004 (2) Supreme 330, 2004 (2) UJ 1079, 2004 (2) UPLBEC 1561, 2004 (3) SRJ 212, 2004 (4) BCR 948

[+] **Cases Referred (1)**

[+] **Case Cited In (25)**

JUDGEMENT

1. This appeal is against the judgment and order dated 16-4-1998 passed by the Division Bench of the High Court. The facts of this case may be briefly recited :

> The appellant-Society was registered under the Gujarat Co-operative Societies Act, 1961 (hereinafter referred to as 'the Act'). It was carrying on banking activities. Sections 71(1)(a) to (f) of the Act enumerates various institutions in which a Co-operative Bank is to make investments. Clause (g) of Sec. 71(1) empowers the State Government to permit any society to invest the funds in any institution other than those mentioned in clauses (a) to (f) of the Section. Section 71 of the Act is relevant for the purpose of disposal of the present appeal. We shall be dealing with this Section in detail at an appropriate time. The appellant-Bank sought permission of the State Government to invest funds in an institution outside those falling under clauses (a) to (f) of Sec. 71(1) of the Act. However, the Government declined the request. In spite of the refusal, the appellant-Bank invested the funds in Mutual Fund, which was outside the purview of clauses (a) to (f) of Sec. 71 of the Act. It is stated that for noncompliance with Sec. 71 of the Act, notices were issued to the appellants calling for an explanation as to why action should not be initiated against them as contemplated under the Act. It is also stated that the appellants have not filed their replies to those notices and the matter is still pending with which we are not concerned in this appeal.

2. The appellant-Bank undisputedly is a Co-operative Bank and is also a Central Co-operative Bank. The Banking Regulation Act, 1949 was amended by Central Act 23 of 1965, which came into force with effect from 1-3-1966. By the aforesaid amending Act, Part V was inserted in the Banking Regulation Act, 1949, providing for application of the Act to Co-operative Banks.

3. Mr. K. G. Vakharia, learned Senior Counsel for the appellants, contended that Sec. 5(b) of the Banking Regulation Act, 1949 defines "banking" and provides that "banking" means the accepting, for the purpose of lending or investment 'deposits of money from the public. He further argued that sub-sec. (l)(a) of Sec. 6 of the Banking Regulation Act, 1949 provides for business of banking companies which will include Co-operative Banks. He, therefore, urged that the appellant-Bank is entitled to be engaged in banking business in terms of the norms contemplated under Secs. 5 and 6 of the Banking Regulation Act and not

4. The whole contention of the learned Senior Counsel for the appellants is based on repugnancy and inconsistency between the Central Act and the State Act. In other words, the conflict is between Sec. 71 of the Gujarat Co-operative Societies Act and Secs. 5(b) and 6(1)(a) of the Banking Regulation Act. To answer the aforesaid question it will be relevant to make a quick survey of the relevant provisions of the Gujarat Co-operative Societies Act and the Banking Regulation Act.

5. To appreciate the controversy in proper perspective Secs. 5(b) and 6(1)(a) of the Banking Regulation Act and Sec. 71 of the Gujarat Co-op. Societies Act are extracted :

"Sec. 5. Interpretation : In this Act, unless there is anything repugnant in the subject or context, -

(b) 'banking' means the accepting, for the purpose of lending or investment, of deposit of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise;

Sec. 6. Forms of business in which banking companies may engage : (1) In addition to the business of banking, a banking company may engage in any one or more of the following forms of business, namely-

(a) the borrowing, raising, or taking up of money; the lending or advancing of money either upon or without security; the drawing, making, accepting; discounting, buying, selling, collecting and dealing in bills of exchange, hoondees, promissory notes, coupons, drafts, bills of lading, railway receipts, warrants, debentures, certificates, scrips and other instruments, and securities whether transferable or negotiable or not; the granting and issuing of letters of credit, traveller's cheques and circular notes; the buying, selling and dealing in bullion and specie; the buying and selling of foreign exchange including foreign bank-notes; the acquiring, holding, issuing on commission, underwriting and dealing in stock, funds, shares, debentures, debenture stock, bonds, obligations, securities and investments of all kinds; the purchasing and selling of bonds, scrips or other forms of securities on behalf of constituents or others, the negotiating of loans and advances; the receiving of all kinds of bonds, scrips of valuables on deposits or for safe custody or otherwise; the providing of safe deposit vaults; the collecting and transmitting of money and securities;"

"Sec. 71. Investments of fund : (1) A society may invest, or deposit its fund,-

(a) in a Central Bank, or the State Co-operative Bank,

(b) in the State Bank of India,

(c) in the Postal Savings Bank,

(d) in any of the securities specified in Sec. 20 of the Indian Trusts Act, 1882 (II of 1882),

(e) in shares, or security bonds, or debentures, issued by any other society purpose by the Registrar, and on such conditions as the Registrar may from time to time impose,

(g) in any other mode permitted by the rules, or by general or special order of the State Government.

(2) Notwithstanding anything contained in sub-sec. (1), the Registrar may, with the approval of the State Co-operative Council, order a society or a class of societies to invest any funds in a particular manner, or may impose conditions regarding the mode of investment of such funds." (Emphasis supplied)

6. We may also extract clause (7) and clause (19) of Sec. 2 of the Gujarat Co-operative Societies Act :

"Sec. 2. (7) 'Co-operative Bank' means a society registered under this Act and doing the business of banking, as defined in clause (b) of sub-sec. (1) of Sec. 5 of the Banking Companies Act, 1949 (X of 1949);

(19) 'society' means a Co-operative society registered, or deemed to be registered, under this Act,"

7. Section 2 of the Banking Regulation Act, 1949 reads as under:

"Sec. 2. Application of other laws not barred : The provisions of this Act shall be in addition to, and not, save as hereinafter expressly provided, in derogation of the Companies Act, 1956 (I of 1956), and any other law for the time being in force." (Emphasis supplied)

8. We may also notice that while introducing the Gujarat Co-operative Societies Act, 1961 (Gujarat Act X of 1962), the aims and objects of the Act were to consolidate and amend the law relating to Co-operative societies in the State of Gujarat. The synopsis reads as follows :

(1) Act complete Code falling in Entry 32 of List II of Schedule VII not repugnant under Art. 254.

(2) Object of Co-operative Movement.

(3) Resolution pertaining to internal management cannot be held illegal.

9. The Gujarat Co-operative Societies Act was assented to by the President on 1-3-1962.

10. The Constitution Bench of this Court in M. Karunanidhi v. Union of India, 1979 (3) SCC 431 had considered the question of repugnancy and inconsistency between the Central Act and the State Act and held that before any repugnancy can arise the conditions which must be satisfied are :

"24. (1) That there is a clear and direct inconsistency between the Central Act and the State Act.

(2) That such an inconsistency is absolutely irreconciliable.

(3) That the inconsistency between the provisions of the two Acts is of such a nature as to bring the two Acts into direct collision with each other and a situation is reached where it is impossible to obey the one without

71 of the Act is not in derogation of any other law such as the Banking Regulation Act but in addition to it. In the instant case, the State Act being the dominant legislation under Art. 254(2) the intendment of the legislature that there is no repugnancy between the State Act and the Central Act is clearly expressed due to the assent by the President in view of the provisions of Sec. 71 of the State Act providing restrictive mode of investment by the Co-operative Bank. Section 71 was brought to the statute-book with a view to strengthen the already existing law, namely, the Banking Regulation Act and to safeguard the interest of the members of Co-operative Banking business by discouraging the members from investing in the institutions other than those specified in clauses (a) to (f) of Sec. 71, without prior sanction of the State Government. Therefore, it would not be apt to say that either the legislature or the President intended to create any repugnancy between these two Acts. The fact that the assent of the President was sought for, could be in addition to and not in derogation of any other law such as the Central Act. It is also clear from the language employed in Sec. 2 of the Banking Regulation Act that the provisions of the Act were in addition to and not in derogation of any other law for the time being in force.

12. On conjoint reading of Secs. 2, 5 and 6 of the Banking Regulation Act and Sec. 71 of the Gujarat Co-operative Societies Act, in our view, there is no repugnancy or inconsistency between the State Act and the Central Act which satisfies the test set out by this Court in M. Karunanidhi case, 1979 (3) SCC 431. The contention of the learned Counsel for the appellants is not well founded. The appeal is devoid of merits and is accordingly dismissed.

13. This appeal is directed against the judgment and order dated 17-4-1998 passed by the Division Bench of the High Court in Spl.C.A. No. 5473 of 1997 (P.I.L.).

14. Briefly stated the facts are :

> A complaint was filed by the respondents herein to the effect that the Central Co-operative Bank is governed by the provisions contained in the Gujarat Co-operative Societies Act, 1961 and Rules framed thereunder. It is further alleged that Mehsana District Central Co-operative Bank had violated the provisions contained in Sec. 71 of the Gujarat Co-operative Societies Act by investing large sums in undertakings other than those enumerated in Secs. 71(a) to (f). Consequently, Mehsana District Central Co-operative Bank had lost substantial amount. Though the matter had been brought to the notice of the State Government, the Registrar of Co-operative Societies and the District Registrar, no action had been initiated against Mehsana District Central Co-operative Bank and the members of the Board of Directors. A prayer was also made for issuance of a writ of mandamus directing the authorities under the Gujarat Co-operative Societies Act to initiate necessary proceedings against the respondents/appellants herein for having committed breach of the provisions contained in Sec. 71 of the Act. It was further alleged that Mehsana District Central Co-operative Bank had invested a sum of Rs. 95 crores in four different establishment which do not fall within the ambit of institutions enumerated in Secs. 71(a) to (f) of the Act without the approval of the State Government or the appropriate authority.

15. Mr. Mahendra Anad, learned Senior Counsel contended that the High Court ought not to have entertained the petition in the form of P.I.L., as the petition had been preferred by a person no other than the business rival of the appellants due to clash of interest. We see no substance in the contention.

16. In the facts and circumstances stated above, the High Court by the impugned order issued a writ of mandamus, directing Respondents 4 and 5 to take appropriate action against the appellants in accordance with the provisions contained in the Gujarat Co-operative Societies Act and the Rules framed thereunder. We do not see any infirmity in the impugned order. The Acts and Rules are made to be followed and not to be violated. When the statute prescribes the norms to be followed, it has to be in that fashion. Converse would be contrary to law. If there is any allegation of violation of statutory rules which have been brought to the notice of the authorities and if the authorities concerned do not perform their statutory obligation, as in the present case, any aggrieved citizen can always bring to the notice of the High Court the inaction of the statutory authorities and in such event it would always be open to the High Court to pass an appropriate order as deemed fit and proper in the facts and circumstances of the case. In the present case, the facts as alluded above, would clearly reveal that the High Court was clearly justified in issuing a writ of mandamus, which cannot be faulted.

17. These two appeals are dismissed being devoid of merits. Parties are asked to bear their own costs.

2005 CJ(SC) 1156

SUPREME COURT OF INDIA (FROM ALLAHABAD)

Sai Chalchitra V/S Commissioner, Meerut Mandal

Decided On: 17 February 2005

Hon'ble Judges: Ashok Kumar Mathur, Ashok Bhan, JJ

Appeal No/Type: Civil Appeal No 5959 of 1999

Result: Appeal allowed.

Acts Referred:

(A) Constitution Law - Constitution of India, Article 226

Constitution Of India, 1950 - Art.226 - U.p. Cinema (regulation ? Of Exhibition By Means Of Video) Rules, 1988 - U.p. Cinemas ? (regulation) Act, 1955 - S.7 (1-a)(a)(b) And (c) - Writ - ? Maintainability - Locus Standi - Right To File Writ Petition - ? Petition For Cancellation Of Trade Licence Of Opposite Party - ? Hence, High Court Clearly Erred In Dismiss In The Writ Petition ? Filed By The Appellate On The Ground Of Locus Stand: - Held The ? Appellant On The Being In The Same Trade As R.no.3 Has Right To ? Seek The Cancellation Of Licence Granted To R.3 Being In ? Violation Of Act And Rules - Appeal Allowed -?constitution Of India Art.226, Uttar Pradesh Cinema (regulation Of Exhibition By Means Of Video) Rules, 1988 Uttar Pradesh Cinemas (regulation) Act, 1956 imppara 1,2,6

Eq. Citation: 2005 (1) WbLR 1004, 2005 (100) CLT 167, 2005 (2) CalLT 167, 2005 (2) MhLJ 900, 2005 (2) MPWN 105, 2005 (3) MPLJ 14, 2005 (3) ~~SCC 683~~, 2005 (5) AllMR 632, 2005 (5) BCR 452

JUDGEMENT

1. The appellant herein, who was the writ petitioner before the High court, filed the writ petition in the High Court of Judicature at Allahabad, challenging the order passed by the Commissioner, Meerut Mandal wherein the Commissioner had set aside the order passed by the District Magistrate cancelling the licence given to Prakash Palance Video Parlour, Respondent 3 to run a video parlour.

2. The main grievance of the appellant before the High Court was that prakash Palance Video Parlour, Respondent 3 was situated within 350 metres from Sai Chalchitra and hence no licence could be granted to Respondent 3 to run a video parlour under the U. P. Cinema (Regulation of Exhibition by means of Video) Rules, 1988. It was also asserted that the exhibition of video films by Respondent 3 had badly affected the cinema business of the appellant as the video parlour was situated very close to the cinema hall of the appellant. It was also submitted that the grant of licence in favour of respondent 3 was in violation of the provisions contained in Sections 7 (1-A) (a) , (b) and (c) of the U. P. Regulation of Cinema Act, 1955. Under section 7 (1-A) , licence could be cancelled or revoked on the following grounds:

> "(A) that the licence was obtained through fraud or misrepresentation; or (b) that the licensing authority or the State Government while considering the application or appeal, as the case may be, under Section 5 was under a mistake as to a matter essential to the question of grant or refusal of licence; or (c) that the licensee has been guilty of breach of the provisions of this act or the rules made thereunder or of any conditions or restrictions contained in the licence, or of any direction issued under sub-section (4) of section 5; or"

3. The writ petition was contested by the State of U. P. as well as respondent 3.

4. Learned Single Judge, before whom the writ petition came up for hearing, dismissed the writ petition on the locus standi of the appellant to file the writ petition without going into the other questions of law. It was observed that the appellant could not raise a grievance against his rival in the trade particularly when the rival in trade, as in the instant case, was exhibiting cinematograph films much before the appellant was granted the licence. It was held that the appellant had not been denied or deprived of its legal right to exhibit the films and, therefore, he had not sustained any legally protected interest. It was also observed that the order of the Commissioner did not operate as a decision against the appellant as the appellant had not suffered any legal wrong. The writ petition filed by the appellant was held not to be maintainable.

5. After hearing the counsel for the parties, we are of the opinion that the high Court clearly erred in dismissing the writ petition filed by the appellant on the ground of locus standi. The appellant being in the same trade as respondent 3 has a right to seek the cancellation of the licence granted to respondent 3 being in violation of the Act and the Rules.

6. For the reasons stated above, the judgment impugned before us is set aside and the case is remitted back to the High Court for a fresh decision in accordance with law. The High Court would decide the matter afresh without being influenced by any of the observations made in this order. All contentions on facts and law are left open to the parties. Appeal allowed with no order as to costs.

ANNEXURE - 4

FORM NO. J(2)

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURIDICTION
ORIGINAL SIDE

Present:
THE HON'BLE JUSTICE ANIRUDDHA BOSE

W.P. No. 962 of 2010
Rananjoy Bhattacharya
VS.
Union of India & Ors.

Advocates for the private Respondent No. 8:	Mr. Arindam Sinha Ms. Manika Kalra Mr. Abhishek Gupta
Advocates for the State:	Mr. S. Talukdar Mrs. Debjani Ray Mrs. Debjani Ghosh
Advocates for the HPCL:	Mr. Debajyoti Dutta Mr. Rakhsanda Qamar
Judgment On:	19th March, 2013.

ANIRUDDHA BOSE, J.:-

1. The controversy involved in this proceeding arises out of a selection process initiated by a notice published by the Hindustan Petroleum Corporation Ltd., (HPCL) inviting applications for appointment of dealers in respect of various retail outlets for petroleum products in different parts of this State. The dispute in this proceeding relates to a location disclosed against serial No. 21 in the list of sites disclosed in the advertisement. The location is described as "Bhojerhat between KM stone 15-17 on SH3" in the district of 24 parganas (south). The requirements which individual applicants were required to fulfill were disclosed in the said notice itself in a form of notes. In this proceeding, the subject of controversy revolves around Clause VII of these notes relating to location requirement. This clause stipulates:-

"*vii In case the land offered is on National Highway, the same should meet the NHAI guidelines contained in Govt. of India, Ministry of Road Transport & Highways No.RW/NH-33023/1999-DO-IIIdt. 25.09.03/17.10.03 and further amendments if any, failing which the offered land will not be considered for evaluation as above and the candidate will be treated at par with those candidates who have not offered land. The offered site should also meet IRC 12/2009 and norms of statutory bodies like forest, explosive etc. and land should be convertible for commercial and petrol pump use.*"

2. The respondent No. 8 had been selected for this retail outlet and notice of appointment has been given to him. The writ petitioner alleges that selection of respondent No. 8 was improper in that there was no compliance of the provisions of IRC 12/2009 pertaining to the site offered by the respondent No. 8. IRC12/2009 is the title given to guidelines for access, location and layout of a roadside fuel stations and service stations formulated by the Indian Roads Congress in the year 2009. No specific violation of individual norms contained in the IRC 12/2009 has been pointed out in the writ petition. In course of hearing, however, learned counsel for the petitioners sought to make out a case that there was violation of Clause 4.5.1 of this Code which stipulates:-

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

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

4.5.1 Non-urban (Rural) stretches

1) Plain and Rolling Terrain

(i) Intersection with NHs/SHs/MDRs/City Roads	*1000 m*
(ii) Intersection with Rural Roads/approach road to Private and public properties	*300 m*
2) Hilly/Mountainous Terrain	
(i) Intersection with NHs/SHs/MDRs	*300 m*
(ii) Intersection with all other roads and tracks	*100 m"*

3. Prior to filing of the writ petition, query was raised by the petitioner with the special Public Information Officer ADM(G) office of the District Magistrate, south 24 parganas under the provisions of section 6 of the Right to Information Act 2005 seeking information on various counts pertaining to selection in respect of the retail outlet at the said location. Two of these queries could be connected to the stipulations of Clause 4.5, which are:-

"*4.Who is the authority for carrying out measurement of the distance from aforesaid site on Basanti Highway (State Highway III) to Bhojerhat intersection and whether such measurement been carried out by the said authority? Kindly provide certified copies of documents.*

5.Whether IRC : 12-2009 being Guidelines for Access, Location and Layout of Roadside Fuel Stations and Service Stations (3rd Revision) framed by the Indian Roads Congress, been considered?"

4. There was no specific reply to these queries but, the matter was endorsed to the "Special L.A.O." of the district by the Additional District Magistrate with a copy of the communication marked for the petitioner. As the petitioner did not get any response, he filed a further complaint with the Appellate Authority. In the Writ Petition, there is no indication as to whether any information was disclosed by the Appellate Authority or not. In course of hearing, however, the petitioner has come with a specific complaint that the aforesaid location of the retail outlet is within thousand meters of an intersection point on the State Highway. At the initial stage, the maintainability of the petition was questioned, and it has been urged by the respondents that the petitioner has no locus standi to bring this action as he was a business rival to the selected candidate. On behalf of the oil company, again at the initial stage it was urged that the IRC norms to be followed were in respect of retail outlets located on the National Highways only. This was the construction sought to be given to Clause VII of the advertised norms, to which I have referred to in the earlier part of this judgment. Subsequently, however, the oil company changed their stance and in a supplementary affidavit affirmed by one Zakir Hossain Molla, the Chief Regional Manager of the oil company, it has been conceded that the aforesaid IRC norms was applicable to all National Highways, State Highways and District Highways as well.

5. On the question of locus of the writ petitioner, it was sought to be established by the petitioner that he was desirous of establishing a retail outlet at the said location but because he could not apply in response to the advertisement as the land he could offer within the advertised location was within the prohibited distance stipulated in Clause 4.5.1 of the aforesaid IRC norms. In a supplementary affidavit affirmed by him on 2nd August, 2010, he has indicated that he was offered land in that location but could not progress in view of the distance restriction contained in the IRC norms. He has also stated in this affidavit that he had investors who were willing to extend to him the support for establishing a retail outlet in that location. Learned counsel on behalf of the petitioner has drawn my attention to a letter issued by the Additional District Magistrate 24th parganas (south) to the oil company on 4th June, 2010, requesting the company to submit permission and agreement from the competent authority of the Public Works Department that the selected site conformed to the aforesaid specification. In this matter, records were directed to be produced by the State, from where it appears that no objection certificate followed by a selling certificate on 30th April, 2012, in favour of the selected candidate were issued by the District Magistrate.

6. The question I shall deal first is as to whether the petitioner has the locus to maintain this writ petition or not. Relying on two judgments of the Hon'ble Supreme Court, ***Nagar Rice & Flour Mills Vs. N. Teekappa***

Gowda & Brothers [(1970)1 SCC 575] & ***Jasbhai Motibhai Desai Vs. Roshon Kumar*** [(1976)1 SCC 671], it has been argued on behalf of the respondents that to maintain a writ petition under Article 226 of the Constitution of India, the applicant must have legal right, and a business rival does not have any legal right to question permissions or no objections granted to another trader, even if such grant is in violation of statutory provisions. In both these cases, complaints of violation of statutory rules were not taken cognizance of by the Supreme Court as the complainants were trade rivals. On the other hand, on behalf of the petitioner, reference has been made to the decision of the Supreme Court in the case of ***M.S. Jayaraj Vs. Commissioner of Excise & Ors***. [(2000)7 SCC 552]. Considering the above referred two judgments of the Supreme Court, as well as several other authorities on the point of right to sue, it has been held in this judgment:-

"14.In the light of the expanded concept of the locus standi and also in view of the finding of the Division Bench of the High Court that the order of the Excise Commissioner was passed in violation of law, we do not wish to nip the motion out solely on the ground of locus standi. If the Excise Commissioner has no authority to permit a liquor shop owner to move out of the range (for which auction was held) and have his business in another range it would be improper to allow such an order to remain alive and operative on the sole ground that the person who filed the writ petition has strictly no locus standi. So we proceed to consider the contentions on merits."

7. This principle was reiterated by the Supreme Court in a later judgment, ***Sai Chalchitra Vs. Commissioner*** [(2005)3 SCC 683]. The ratio of this judgment has also been followed by a Division Bench of this Court in the case of ***Bimal Barman & Ors. Vs. State of West Bengal & Ors***. [(2009)2

CHN 442]. In this judgment, it was held by the Division Bench that guardian of a ward studying in a school had the locus to question the appointment of a teacher in the same school on the ground that he did not fulfil the eligibility criteria. On behalf of the petitioner, the judgment of the Supreme Court in the case of ***Mehsana District Central Cooperative Bank Ltd., & Ors. Vs. State of Gujarat & Ors.*** [(2004)2 SCC 463] was also referred to. It has been held in this judgment:-

"16.In the facts and circumstances stated above, the High Court by the impugned order issued a writ of mandamus, directing Respondents 4 and 5 to take appropriate action against the appellants in accordance with the provisions contained in the Gujarat Cooperative Societies Act and the Rules framed thereunder. We do not see any infirmity in the impugned order. The acts and Rules are made to be followed and not to be violated. When the statute prescribes the norms to be followed, it has to be in that fashion. Converse would be contrary to law. ***If there is any allegation of violation of statutory rules which have been brought to the notice of the authorities and if the authorities concerned do not perform their statutory obligation, as in the present case, any aggrieved citizen can always bring to the notice of the High Court the inaction of the statutory authorities and in such event it would always be open to the High Court to pass an appropriate order as deemed fit and proper in the facts and circumstances of the case. In the present case, the facts as alluded above, would clearly reveal that the High Court was clearly justified in issuing a writ of mandamus, which cannot be faulted****."*
(emphasis added)

8. Learned counsel for the petitioner contended that the oil company had no power to relax the eligibility criteria after publication of the advertisement, as in such cases many persons coming within the relaxed criteria would have been deprived of their right to participate in the selection process. In the event there was post-publication relaxation of eligibility criteria, a person who did not respond to the advertisement as he was not fulfilling the eligibility criteria could approach the Court questioning such relaxation. Supreme Court in the case of ***Ramana Dayaram Shetty Vs. International Airport Authority of India*** [(1979)3 SCC 489] was relied upon by him on this point:-

" 34. It is, therefore, obvious that both having regard to the constitutional mandate of Article 14 as also the judicially evolved rule of administrative law, respondent 1 was not entitled to act arbitrarily in accepting the tender of respondents 4, but was bound to conform to the standard or norm laid down in paragraph 1 of the notice inviting tenders which required that only a person running a registered IInd Class hotel or restaurant and having at least 5 years' experience as such should be eligible to tender. It was not the contention of the appellant that this standard or norm prescribed by respondent 1 was discriminatory having no just or reasonable relation to the object of inviting tenders, namely, to award the contract to a sufficiently experienced person who would be able to run efficiently a IInd Class restaurant at the airport. Admittedly the standard or norm was reasonable and non-discriminatory and once such a standard or norm for running a IInd Class restaurant should be awarded was laid down, respondent 1 was not entitled to depart from it and to award the contract to respondents 4 who did not satisfy the condition of eligibility prescribed by the standard or norm. if there was no acceptable tender from a person who satisfied the condition of eligibility, respondent 1 could have rejected the tenders and invited fresh tenders on the basis of a less stringent standard or norms, but it could not depart from the standard or norm prescribed by it and arbitrarily accept the tender of respondent 4. When respondent 1 entertained the tender of respondents 4 even though they did not have 5 years' experience of running a IInd Class restaurant or hotel, it denied equality of opportunity to others similarly situate in the matter of tendering for the contract. There might have been many other persons, in fact the appellant himself claimed to be one such person, who did not have 5 years' experience of running a IInd Class restaurant, but who were otherwise competent to run such a restaurant and they might also have competed with respondents 4 for obtaining the contract, but they were precluded from doing so by the condition of eligibility requiring five years' experience. The action of respondent 1 in accepting the tender of respondents 4, even though they did not satisfy the prescribed condition of eligibility, was clearly discriminatory, since it excluded other persons similarly situate from tendering for the contract and it was alos arbitrary and without reason. The acceptance of the tender of respondents 4 was, in the circumstances, invalid as being violative of the equality clause of the Constitution as also of the rule of administrative law inhibiting arbitrary action."

9. A Division Bench judgment of the Orissa High Court in the case of ***Dilip Kumar Prusti Vs. Collector & District Magistrate, Sambalpur*** reported in AIR 1997 Orissa 30 was also cited on behalf of the petitioner, in which it has been observed:-

"Sri Y. Mohanty, learned counsel for the petitioner assailing the grant of 'No Objection Certificate' has submitted that he has no grievance with regard to resitement but he is aggrieved with regard to the mode and manner of resitement. He is aggrieved because of carrying out of resitement in contravention of the procedure. He fairly concedes that once the Indian Oil Corporatin has agreed on principle for resitement, he cannot challenge and to that extent the petitioner has no locus standi. But, it is his submission that his Company has not conceded to the place of resitement and therefore, he cannot be denied the right to challenge the same as he is substantially affected and becomes a person aggrieved. We find that the decision of the Oil Companies is that they had agreed on principle for the resitement of O. P. No. 4 outlet but in actuality no place was mentioned. In absence of fixation of a specific place by way of resitement, it cannot be presumed that an unanimous decision by all the Oil Companies agreed to resitement subject to fixation of the place in accordance with the norms governing the field. If the installation or fixation is contrary to the norms and by such contravention if the petitioner is affected, indubitably, he becomes a person aggrieved and thereby has the locus standi to challenge such grant of 'No Objection Certificate', as such a grant alone can give rise to installation."

10. In the instant case, complaint of the petitioner is that he was denied a level playing field as there was departure from the publicized norm to accommodate the petitioner. On the question of locus, in the case of ***Jasbhai Motibhai Desai*** (supra), an existing owner of a cinema theatre applied before the High Court invoking the Court's Constitutional Writ jurisdiction for quashing a no-objection certificate granted to another person seeking to establish a similar theatre in the same locality. The complaint was on the ground of breach of certain Rules. When initially objections were invited from the general public, the applicant did not lodge any complaint. In the case of ***Nagar Rice & Flour Mills*** (supra), again, an existing rice mill owner was complaining against permission given to another person to set up a rice mill in the vicinity of the former's mill. It was in the factual context the Supreme Court held, in the case of ***Jasbhai Motibhai Desai*** (supra), following the earlier authority of ***Nagar Rice & Flour Mills*** (supra):-

"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 injuria being here used in its true sense of an act contrary to law. The reason why the law suffers a person knowingly to inflict hard 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 suffered no legal grievance. He has no legal peg for a justiciable 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."

11. The other point argued by the petitioner was that the oil company had no power to relax the rules. It was submitted on behalf of the petitioner that in the absence of specific provision empowering the oil company to relax the norms, it was not permissible on their part to alter the location norm. The authorities relied on this point was judgment of the Supreme Court in the case of ***Sanjay Kumar Manjil Vs. Chairma, U.P.S.C. & Ors.*** [(2006)8 SCC42] and ***Bedanga Talukdar Vs. Saifudallah Khan & Ors.*** [(2011)12 SCC 85]. In the case of ***Mehsana District Central Cooperative Bank Ltd., & Ors.*** (supra) the aforesaid observation was made in connection with a public interest litigation. But, in the instant case, the petitioner has been able to demonstrate violation of his legal right against discrimination. The ratio of the decisions of the Supreme Court in the cases of ***Jasbhai Motibhai Desai*** (supra) and ***Nagar Rice & Flour Mills*** (supra) do not apply in the facts of the present case. The petitioner here is not an existing owner of a retail outlet objecting to setting up of a new outlet, on fear of loss or prejudice on account of competition. The petitioner is a potential applicant for a retail outlet who could not fulfil the advertised location criteria. After selection process is over, he has come with a complaint that the location criteria had been relaxed. If his allegation is found to be correct, that would result in direct discrimination, resulting in a situation which the Supreme Court found arbitrary in the case of ***Ramana Dayarm Shetty*** (supra). If norm is prescribed in the advertisement for selection, and subsequently there is departure from that norm then those who were excluded from participation in the selection process for not satisfying such norm in my opinion, would be entitled to maintain an action so that he is able to complete with similarly placed rivals.

12. On behalf of the private respondent it was argued that it is permissible on the part of the selecting body to relax non-essential norms. In this regard, an unreported judgment of a Division Bench of this Court delivered in MAT 128 of 2009 on 18th March, 2010, was relied upon. This judgment was delivered applying the principles evolved by the Supreme

Court in the case of ***B.S.N. Joshi Vs. Nair Coal Services Ltd.*** (AIR 2007 SC 437). It was held in this case:-

"71.While saying no, however, we would like to observe that that having regard to the fact that a huge public money is involved, a public sector undertaking in view of the principles of good corporate governance may accept such tenders which is economically beneficial to it. It may be true that essential terms of the contract were required to be fulfilled. If a party failed and/or neglected to comply with the requisite conditions which were essential for consideration of its case by the employer, it cannot supply the details at a latter stage or quote a lower rate upon ascertaining the rate quoted by others. Whether an employer has power of relaxation must be found out not only from the terms of the notice inviting tender but also the general practice prevailing in India. For the said purpose, the court may consider the practice prevailing in the past. Keeping in view a particular object, if in effect and substance it is found that the offer made by one of the bidders substantially satisfies the requirements of the conditions of notice inviting tender, the employer may be said to have a general power of relaxation in that behalf. Once such a power is exercised, one of the questions which would arise for consideration by the superior courts would be as to whether exercise of such power was fair, reasonable and bona fide. If the answer thereto is not in the negative, save and except for sufficient and cogent reasons, the writ courts would be well advised to refrain themselves in exercise of their discretionary jurisdiction."

13. In this proceeding, however, I do not think the location specification is a non-essential condition. Compliance of the location norm was mandated in the eligibility criteria itself. In my opinion, the course prescribed ought to have been followed and the oil company had no authority to deviate from this Court. The ratio of the Supreme Court in the case of ***B.S.N. Joshi & Sons Ltd.*** (supra) does not confer carte blanche power to a selector to deviate from the selection norm. First, there ought to be substantial compliance of the eligibility criteria. Then deviation, if any, would have to be as per past practise. Thirdly, exercise of such power would be subject to judicial scrutiny on the tests of fairness, reasonableness and bona fide.

In the instant case, the oil company has not brought to my notice any past practise permitting such deviation from the location norms.

14. The question, however, arises now is as to whether the outlet for which appointment has been given to the respondent No. 8 actually offends any provision of the said Code and whether the minimum distance of 1000 meters from an intersection point on the State Highway has been breached or not. On behalf of the private respondents, it was urged that his outlet does not come within 1000 meters from any intersection point on the State Highway, though it may come within the aforesaid distance of a "T-junction". That measurement of the location of the private respondent's outlet from the nearest intersection point on the highway is not before me and I do not think the Writ Court ought to venture in to such factual controversy. On behalf of the State administration, who had given clearance for the site, no specific stand was taken before this Court on the point of compliance of IRC:12-2009 norms by the office of the District Magistrate, in respect of the no-objection certificate issued.

15. In this matter, I have come to a finding that the petitioner is entitled to approach this Court with his complaint that there was postadvertisement relaxation of norms, and he would not be nonsuited on the ground of having no locus standi to agitate this cause. But as regards his actual complaint on merit, for the reasons disclosed in the earlier part of this judgment, it is not possible for me to actually come to a finding as to whether there has been any deviation from the disclosed norms in this case. Another authority, reported in [(2007)2 SCC 536] was cited, but I do not consider it necessary to apply the ratio of this authority for adjudication of the present proceeding.

16. I accordingly dispose of this writ petition directing the Chief Engineer, Public Works Department, Government of West Bengal to measure the distance of the retail outlet of the respondent No. 8 from the nearest intersection point crossing through the State Highway and if it is found that the said intersection point is within the distance norm prescribed in IRC 12/2009, then appointment of the petitioner shall be terminated and there shall be fresh advertisement inviting applications for a retail outlet at that point. Otherwise, the appointment of the respondent No. 8 shall stand validated.

17. There shall be no order as to costs.

18. Urgent certified photocopy of this order be made available to the parties, if applied for, subject to compliance with all necessary requisite formalities.

(ANIRUDDHA BOSE, J.)

Reserved for Judgment on 09.12.2021

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL SOUTHERN ZONE SITTING AT CHENNAI

(Under Section 18(1) read with Section 14 (1) of the National Green Tribunal Act, 2010)

Original Application No. 176 of 2020 (SZ)

V.B.R. Menon,
B.E (Mech), MBA (IIMA), LLB,
Advocate,
Flat No: 4B, Brook Dale Apartments,
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K.K. Nagar, Chennai – 600 078

... Applicant

And

The Commissioner of Police,
Trichy City Police Office
Pudukkottai Main Road,
Subramaniapuram,
Tiruchirapalli – 620 020
and Ors

Respondents

INDEX TO COMPILATION OF SUPREME COURT JUDGMENTS

V.B.R Menon, B.E, MBA(IIMA), LLB,
(Ms – 23 / 2012)
Applicant - in - Person
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