

GAHC010132362022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4457/2022

NOBIN HAZARIKA AND 3 ORS
S/O- LATE XENA HAZARIKA,
R/O- K.B ROAD, PANIGAON,
P.S- PANIGAON,
DIST- LAKHIMPUR, ASSAM

2: KANNATH PHUKAN
S/O- LATE KAMAL PHUKAN

R/O-SOLALGAON

PANIGAON

P.S- PANIGAON

DIST- LAKHIMPUR
ASSAM

3: PARESH DUTTA
S/O- LATE AKANMAN DUTTA

R/O- K.B ROAD
PANIGAON

P.S- PANIGAON

DIST- LAKHIMPUR
ASSAM

4: KAILASH MEDHI
S/O- LATE TANKESWAR MEDHI

R/O- K.B ROAD
PANIGAON

P.S- PANIGAON

DIST- LAKHIMPUR
ASSA

VERSUS

THE UNION OF INDIA AND 6 ORS
REP. BY THE SECRETARY , MINISTRY OF ROAD TRANSPORT AND
HIGHWAYS, GOVERNMENT OF INDIA, TRANSPORT
BHAWAN,PARLIAMENT STREET, PIN-110001, NEW DELHI

2:THE DEPUTY COMMISSIONER
LAKHIMPUR
NORTH LAKHIMPUR
ASSAM

3:THE CIRCLE OFFICER
NORTH LAKHIMPUR REVENUE CIRCLE
LAKHIMPUR
PIN-787001
ASSAM

4:THE NATIONAL HIGHWAYS AUTHORITY OF INDIA
REP. BY ITS CHAIRPERSON
G-5 AND 6
SECTOR-10
DWARKA
NEW DELHI-110075

5:THE EXECUTIVE ENGINEER
NATIONAL HIGHWAYS AUTHORITY OF INDIA
LAKHIMPUR TOWN

P.S AND P.O-NORTH LAKHIMPUR

DIST- LAKHIMPUR
ASSAM

6:THE NAYARA ENERGY LIMITED.
REP. BY ITS MANAGING DIRECTOR
2ND FLOOR
SUBHAM RED STONE
RUKMINIGAON
G.S ROAD
GUWAHATI-781022
ASSAM

7:THE DIVISIONAL MANAGER
NAYARA ENERGY LIMITED
JORHAT DIVISION
JORHAT
PIN-785001
ASSA

Advocate for the Petitioner : MR. JYOTIRMOY ROY

Advocate for the Respondent : SC, NHAI

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 12.06.2024

Date of Judgment : 12.06.2024

Judgment & order(Oral)

Heard Mr. J. Roy, learned senior counsel, assisted by Ms. N. Ahmed, appearing on behalf of the petitioners. Also heard Mr. S. S. Roy, learned CGC, appearing on behalf of respondent No. 1; Mr. P. Saikia, learned Government Advocate, appearing on behalf of respondents No. 2 & 3; Ms. R. Borah, learned counsel, appearing on behalf of respondents No. 4 & 5; and Mr. P. P. Dutta, learned counsel, appearing on behalf of respondents No. 6 & 7.

2. The grievance raised by the petitioners in the present proceeding, is with regard to the issuance by the Deputy Commissioner, Lakhimpur, of a No Objection Certificate(NOC), dated 11.06.2022, to the respondent No. 6, herein, for setting up of a Petroleum Retail Outlet at village Panigaon in the district of Lakhimpur.

3. The petitioners, herein, who have projected themselves to be social workers and have instituted the present proceeding, raising a grievance with regard to the establishment by the respondent No. 6 of a Petroleum Retail Outlet at Village Panigaon in the district of Lakhimpur and the consequences thereof on the people of the locality. The petitioners have projected that at the same area, there was a fully functional Petroleum Retail Outlet in the name and style of "M/s. Padumani Kishan Sew Kendra" which is being operated by the IOC Ltd., and accordingly, the permission granted by the Deputy Commissioner to the respondent No. 6 for setting up of a new Petroleum Retail Outlet close to the existing "M/s. Padumani Kishan Sew Kendra", would have an adverse effect on the people of the locality if any untoward incident occurs in any of the fuel stations on account of its close proximity which is stated to be around 200 mtrs. only.

The petitioners in the writ petition have also contended that the No Objection Certificate(NOC) as issued by the Deputy Commissioner in the matter to the respondent No. 6, was so issued without taking into consideration the fact that the PWD road passing by, is now being contemplated to be converted to a National Highway and accordingly, in the event, the National Highway is so notified; the functioning of a new Petroleum Retail Outlet by the respondent No. 6's Company would lead to a hazardous situation in case of any untoward incident occasioning in any of the two fuel stations now coming into operation at such close proximity.

It was further contended that although objections were raised by the

petitioners and the local residents of the area against the proposal for setting up of a new Petroleum Retail Outlet by the respondent No. 6's Company at such a close proximity to the already existing Petroleum Retail Outlet i.e. "M/s. Padumani Kishan Sew Kendra", however, the Deputy Commissioner while issuing the No Objection Certificate(NOC), dated 11.06.2022, had not taken the same into consideration. The No Objection Certificate(NOC), dated 11.06.2022, having been so issued and inspite of repeated objections raised; the district authorities having not recalled the said No Objection Certificate(NOC), the petitioners have instituted the present proceeding.

4. Mr. Roy, learned senior counsel appearing for the petitioners, has submitted that setting up of the Petroleum Retail Outlet by the respondent No. 6's Company at Village Panigaon would have the effect of 2(two) Petroleum Retail Outlets being functional at a distance of around 200 mtrs. from each other which situation would not be conducive in-as-much as in the event of any untoward incident taking place in any of the proposed Petroleum Retail Outlets, would lead to a situation wherein the life and property of the people residing nearby, would be at grave risk and danger.

5. Mr. Roy, learned senior counsel, has submitted that in the area, there is a Petroleum Retail Outlet operating in the name and style of "M/s. Padumani Kishan Sew Kendra" under the IOC Ltd. and accordingly, considering the fact that the PWD road is already being proposed to a National Highway (2 Lane); the setting-up of the Petroleum Retail Outlet by the respondent No. 6 at a close proximity of around 200 mtrs. from the existing and fully operational Petroleum Retail Outlet, would be against the public interest.

6. Mr. Roy, by taking this Court through the communication, dated 03.03.2022, issued by the Addl. Deputy Commissioner(LA), Lakhimpur, has submitted that the joint survey for acquisition of land for the purpose of construction of the proposed National Highway from North Lakhimpur to Majuli was required to be undertaken, which indicates that the decision has already been arrived at by the authorities for construction of the said National Highway and accordingly, without considering the said aspect of the matter; the Petroleum Retail Outlet has been permitted to be set up by the respondent No. 6 solely basing on the report submitted by the Circle Officer, North Lakhimpur Revenue Circle, which was contended to have been so submitted without there being a proper examination of the factors required to be considered for setting up a Petroleum Retail Outlet at a particular area.

7. Mr. Roy, learned senior counsel, has further submitted that the guidelines of the Indian Road Congress pertaining to the setting-up of Petroleum Retail Outlets on National Highways were not factored in while issuing the No Objection Certificate(NOC), in question, by the district administration to the respondent No. 6 for setting up of a new Petroleum Retail Outlet at Village Panigaon. It has been further contended that no application has been submitted by the respondent No. 6 seeking access permission along the National Highway for a common service road from the National Highway authorities and also no application was so submitted by the said respondent No. 6 before the said authorities for assessing the viability of the installation of a fuel station keeping in view the safety of the people and property as available in the said area.

8. In view of the above position, Mr. Roy, learned senior counsel for the petitioners, has submitted that this Court would be pleased to interfere with the No Objection Certificate(NOC), dated 11.06.2022, as issued by the Deputy Commissioner, Lakhimpur, in favour of the respondent No. 6, herein, for setting up of a new Petroleum Retail Outlet at Panigaon Village.

9. Per contra, Mr. Saikia, learned Government Advocate, appearing on behalf of respondents No. 2 & 3, has submitted by referring to the affidavit filed in the matter that the objections as raised by the people of the area were thoroughly examined through the land revenue officials of the North Lakhimpur Revenue Circle and the No Objection Certificate (NOC), in question, was issued based on field verification report of the Circle Officer, North Lakhimpur Revenue Circle, vide his communication, dated 15.03.2022, and also on receipt of legal opinion from the Government Advocate, Lakhimpur. It was further contended that the road existing wherein the existing fuel station and the proposed fuel station of respondent No. 6 is now to be set up; is not so situated adjacent to a National Highway but is so situated adjacent to a PWD road maintained by the State Government. It is accordingly submitted by Mr. Saikia, learned Government Advocate, that the No Objection Certificate(NOC), in question, so issued in the matter by the Deputy Commissioner(now District Commissioner) is again subject to procurement of other licenses and clearances of Fire & Emergency Services Station, Lakhimpur, as well as also procurement of explosive license as mandated in the matter for setting up of a Petroleum Retail Outlet in an area.

10. Mr. Saikia, learned Government Advocate, has accordingly submitted that the writ petition has been so instituted without there being any basis and the

same accordingly, requires to be dismissed *in limini*.

11. Mr. Dutta, learned counsel appearing for respondents No. 6 & 7, at the outset, has raised an objection with regard to the locus of the present petitioners in instituting the present proceeding assailing the setting up of a Petroleum Retail Outlet by the respondent No. 6 at Village Panigaon and it was contended that the petitioners cannot be deemed to be persons aggrieved in-as-much neither their fundamental or legal rights have been violated in the matter of setting up of a Petroleum Retail Outlet by the respondent No. 6. It was also contended that the Letter of Intent(LoI) having been issued by the respondent No. 6 to one Mr. Syed Ahsad Hussain for operating the Petroleum Retail Outlet and he having not been arrayed as a party respondent in the present proceeding, no effective order can be passed by this Court in the matter in the absence of the Letter of Intent(LoI) holder and accordingly on this count also, the writ petition is required to be dismissed.

12. Mr. Dutta, learned counsel, has also contended that the respondent No. 6's Company had on the selection of said Mr. Syed Ahsad Hussain, issued an Letter of Intent(LoI) to him with regard to setting-up of a Petroleum Retail Outlet at Village Bakalgaon and Panigaon in the district of Lakhimpur, on 25.10.2021. Thereafter, the respondent No. 6 had applied before the district administration for issuance of a No Objection Certificate(NOC) on 15.11.2021. The District Administration after having satisfied itself and also after meeting the objections raised in the matter, proceeded to issue the No Objection Certificate(NOC) to the respondent No. 6, herein, on 11.06.2022. Thereafter, it is contended that the petroleum and explosive license were obtained from the concerned

organization on 23.03.2023 along with the No Objection Certificate(NOC) from the Director of Fire and Emergency Services, Guwahati, on 16.06.2023.

13. Mr. Dutta, learned counsel, has submitted that the said Petroleum Retail Outlet is being so set up only after the statutory licenses and clearances as mandated in the matter was so obtained by the respondent No. 6, herein, and the petitioners can have no grievance with regard to the same.

14. The learned counsel has submitted that the present writ petition and the contentions as made therein, reveals that the same has been instituted at the behest of the person operating the existing Petroleum Retail Outlet i.e. "M/s. Padumani Kishan Sew Kendra". The learned counsel has also submitted that the said Petroleum Retail Outlet was determined to be not sufficient to cater to the needs of the people of the locality and accordingly, the decision to establish the Petroleum Retail Outlet at the said area, was so arrived at.

15. With regard to the apprehension raised by the petitioners in the writ petition of the catastrophic effect that would occasion on the people and property in the area in the event of any untoward incident occasioning in the fuel stations was contended to be totally misconceived in-as-much as each of these factors were duly considered by the appropriate statutory authorities while proceeding to grant to the respondent No. 6, the requisite licenses and clearances. It was further contended that the Petroleum Retail Outlet, in question, also being set up by the respondent No. 6, strictly complying with the requirements of the Right of Way(RoW) from a PWD road in rural areas; the same would not require any interference from this Court.

16. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

17. A preliminary objection having been raised by Mr. Dutta, learned counsel for the respondents No. 6 & 7, pertaining to the locus of the petitioners, herein, to institute the present proceeding; the said issue would require a consideration by this Court before the other issues on merit, is taken up for such consideration.

18. The petitioners, herein, have instituted the present proceeding for cancellation of the No Objection Certificate (NOC) as issued in favour of the respondent No. 6 for setting up of a Petroleum Retail Outlet at Village Panigaon. It is no longer *res integra* that a 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 respondent authorities. Therefore, there must be a judicially enforceable right available for enforcement on the basis of which the writ jurisdiction can be 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 a right is the foundation of the exercise of the said jurisdiction of 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 a rule of law. For filing a writ petition or having the standing to file the writ petition, the petitioner has to be the "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 of interest has 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 "person aggrieved" because of ignorance, illiteracy, in articulation of 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 approaching the Court, then 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 moto* in such respect.

19. In the case on hand, the above is not the position and the petitioners, therefore, have to show that they have suffered legal injury to maintain the present proceeding.

20. The Hon'ble Supreme Court in the case of ***Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed & 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, had concluded as follows:

"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, grieved. 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.

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 para 7 of the writ petition, he has stated his cause of action, thus:

"The petitioner submits that... he owns a cinema theatre in Mohmadabad which has about a small population of 15,000 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. 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 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.*

*49. It is true that in the ultimate analysis, the jurisdiction under Article 226 in general, and *certiorari* in particular is discretionary. But 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 guidelines 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 Nagar Rice and Flour Mills v. N. T. Gowda wherein it was held that a ricemill owner has no locus standi to challenge under Article 226, the setting up of a new ricemill by another – even if such setting up be in contravention of Section 8(3)(c) of the Rice Milling Industry (Regulation) Act, 1958 – because no right vested in such an applicant is infringed."

21. The emphasis as made by the petitioners in the matter with regard to the existing Petroleum Retail Outlet and the apprehension raised by Mr. Dutta, learned counsel for the respondents No. 6 & 7 that the present writ petition was so instituted to protect the business interests of the existing Petroleum Retail Outlet i.e. "M/s. Padumani Kishan Sew Kendra"; it is seen that the power of judicial review cannot be permitted to be invoked to protect the private interest at the cost of public interest. [Refer decision of the Hon'ble Supreme Court in the case of **Central Coal Fields Limited v. SMF**, reported in **(2016) 8 SCC 622.**]

22. In this connection, a reference is made to the decision of the Rajasthan High Court in the case of **Rajasthan Petroleum Dealers' Association through its Secretary, Jaipur v. Union of India**, wherein, vide order, dated 20.09.2011, passed in SB(Civil) Writ Petition No. 10441/2010, the said Court had concluded

as follows:

"15. The present writ petition is nothing but a camouflage to prevent possible competition by other retail outlets. The discretion and freedom of OMCS to set up more outlets with the expansion of road network and consumer markets has neither been disputed nor it can possibly be disputed. From the material placed on record before this Court by the respondent Union of India and OMCs, it is clear that there is no breach of any guidelines, which are not even statutory in nature, by the OMCs while inviting applications for such retail outlets. The allegation that lesser sale targets have been fixed for such applicants than the standard quota does not make out any ground for prohibiting the OMCS for allotting such retail outlets. In their replies, the OMCs have clearly come out with a case that they undertook the cost benefit analysis for each retail outlet to be opened by comparison of possible sales with actual sales of existing retail outlets and profit to be earned by it and it is only upon finding such economic viability for such new proposed retail outlet that such advertisements have been issued with the approval of the Board of Directors of respective OMCs at the highest level and there is no arbitrariness or illegality pointed out in the decision making process. A fair and legitimate competition coupled with the need of increased number of retail outlets with the expansion and development of road network and consumer market cannot be denied or disputed."

23. The petitioners in the present proceeding, have not been able to demonstrate that any legal right of theirs, were so violated in the action on the part of the Deputy Commissioner, Lakhimpur, in issuing the No Objection Certificate(NOC), in question, to the respondent No. 6 for setting up of a Petroleum Retail Outlet at Village Panigaon. The petitioners have also not brought on record any material to demonstrate that issuance of the said No Objection Certificate(NOC) was in violation of any statutory provisions governing the field. The decision of the Hon'ble Supreme Court in the case of **Jasbhai Motibhai Desai**(supra) has categorically held that only a person who has suffered or suffers from a legal injury, can challenge the act/action/order accepted by a court of law. It has further laid down that there must be a judicially enforceable right for the enforcement and existence of such a right, is a condition precedent for invoking the writ jurisdiction of this Court.

24. In the present case, the petitioners not having been able to demonstrate

that they have suffered or suffers from any legal injury or there has been a breach of any statutory duty on the part of the respondents, herein, the petitioners cannot be said to be “persons aggrieved”, having locus to file the present writ petition.

25. This Court opines that the respondent No. 6 in establishing the said Petroleum Retail Outlet in the village Panigaon, was exercising its fundamental and legal right in the matter and the same having not infringed upon the fundamental and legal right of the operator of the existing Petroleum Retail Outlet i.e. “M/s. Padumani Kishan Sew Kendra” at the area and the said operator not having approached this Court, in this connection; this Court does not find any error on the part of the Deputy Commissioner, Lakhimpur, in issuing the No Objection Certificate(NOC), in question, to the respondent No. 6 and the petitioners having already been concluded to be not “persons aggrieved”, do not have the locus to assail such No Objection Certificate(NOC) so issued in the matter to the respondent No. 6 by the Deputy Commissioner, Lakhimpur, vide the No Objection Certificate (NOC), dated 11.06.2022.

26. Accordingly, it is held that the writ petition is not maintainable. Consequently, the writ petition stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant