

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY
W.A.No. 1146 OF 2014

JUDGMENT: *(per Hon'ble Sri Justice M.Satyanarayana Murthy)*

The unsuccessful petitioner before the single judge in W.P.No. 32674 of 2013 preferred this appeal challenging the dismissal order dated 18-07-2014.

2. For convenience of reference, the ranks given before the single judge in W.P.No. 32674 of 2013 will be adopted throughout this order.

3. The petitioner-M/s. The Andhra Pradesh LPG (Cooking Gas) Dealers' Association challenged the notification issued by respondent Nos. 1 to 6, published in daily newspaper on 15-09-2013, calling for applications for enlistment of new LPG distributors in the entire state of Andhra Pradesh (undivided). In the said notification, the respondents called for applications for enlistment as distributors at 499 locations specifying reservation, guidelines for eligibility criteria and selection process for selection of LPG distributors proposed to be selected. The main ground for challenging the notification is that hardship and suffering to the existing distributors.

Respondent Nos. 1 to 6 identified 499 locations. Out of 499 locations, 440 locations are against restructuring, 48 locations are newly identified markets and 11 are against terminated distributorships. The petitioner association challenged the said notification on the ground that if those 499 distributors are appointed, it would adversely affect the existing distributors' business since those locations are in addition to the locations identified under RGGLV Project.

4. Having heard learned counsel for the petitioner and the respondents, the learned single judge dismissed the Writ Petition at the stage of admission on the ground that the petitioner association has no *locus standi* to file Writ

Petition and that a similar question was already decided by a Division Bench of this Court in W.P.No. 22372 of 2007.

5. Aggrieved by the dismissal order, the unsuccessful petitioner preferred this appeal on various grounds mainly contending that

- (a) The order in W.P.No. 22373 of 2007 would not operate as *res judicata* since the issue involved in the said Writ Petition is totally different from the issue involved in the Writ Petition before the learned single judge but the learned single judge, on erroneous appreciation of facts, dismissed the Writ Petition by applying the principle of *res judicata*;
- (b) The learned single judge did not consider the failure of respondent Nos. 1 to 7 in filing the guidelines issued by the 8th respondent for the year 2013 while issuing the impugned notice and, apart from that, the petitioner raised several issues (notification issued under Rajiv Gandhi Gramin LPG Vitarak (RGGLV) for giving rural LPG Distributorship infringing the regular distributorships, capping on subsidized domestic cylinders, selection of locations etc.,) which respondent Nos. 1 to 7 have not taken into reckoning while issuing the impugned notification. Thus, the guidelines issued by the 8th respondent in the year 2013 were the issues in the earlier litigation in W.P.No. 22372 of 2007 but the present issue is unconnected to the issue in the earlier matter;
- (c) The learned single judge did not advert to the various contentions raised by the petitioner demonstrating the violation of the respondents' own guidelines while issuing the impugned notification and erroneously dismissed the Writ Petition.

6. During hearing, Sri S.R.Ashok, learned senior counsel for the petitioner, would contend that the issue involved in W.P.No. 22372 of 2007 is

totally different from the issue involved in the present Writ Petition but the learned single judge, applying the principle of *res judicata*, dismissed the Writ Petition. The learned single judge did not consider the various contentions raised in the Writ Petition challenging the notification issued by respondent Nos. 1 to 6 for enlistment of distributorship which adversely affects the business of the members of the petitioner association. If those aspects are adverted to, the learned single judge would not have dismissed the Writ Petition. Finally, it is contended that the issue involved in the earlier Writ Petition was only with regards to area of operation of business *i.e.* territorial limits of the distributors but the direct issue in the present Writ Petition is with regards to reducing the supply. Therefore, the issue in the present Writ Petition is not directly and substantially in issue in the earlier Writ Petition but the learned single judge did not appreciate this contention and committed an error in dismissing the Writ Petition on the sole ground that the petitioners' claim is barred by *res judicata* and prayed to set aside the order under challenge.

7. Sri B.Mayur Reddy, learned counsel for the respondents, strenuously contended that the petitioner, being the association of distributors, has no *locus standi* to file the Writ Petition and appeal thereto since no injury is complained to the petitioner and that the same issue with regards to *locus standi* came up for consideration in the earlier Writ Petition between **Andhra Pradesh LPG Dealers Association Vs. Union of India (UOI), Rep. by its Secretary, Ministry of Petroleum and Natural Gases and others**^[1]. This Court succinctly held that the appellant herein, the petitioner in the earlier Writ Petition, has no *locus standi* to file the Writ Petition and dismissed. In the earlier Writ Petition, the parties were the same, of course the proceedings questioned in the earlier litigation is different. Moreover, when an issue is raised and finally decided between the same parties, more particularly about competence of the petitioner to file Writ Petition, which attained finality, cannot be re-agitated by filing separate Writ Petition. Therefore, the issue of

competency to file Writ Petition *i.e. locus standi* was already decided between the same parties almost on the identical issue which attained finality. On the sole ground, the appeal is liable to be dismissed without adverting to any other aspect.

8. Finally, learned counsel for the respondents would contend that in the agreement for dealership of LPG (cooking gas), the dealers agreed not to question the authority of the oil companies from enlisting additional dealership *etc.*, and produced Photostat copy of the agreement for perusal of this Court and almost all the companies are maintaining the same *pro forma*. The agreement between Sri Saibaba Agencies and Hindustan Petroleum Corporation Limited dated 03-07-2009 under clause 2 (ii) which deals with provision for appointment of additional dealers restricting the right of dealers to question the appointment of one or more additional dealers in the same territory *etc.*,. When once the dealers agreed for certain conditions in standard form of contract, the association of dealers are estopped to question the authority of the oil companies to appoint one or more additional dealers in the same territory *etc.*,. On this ground also, the Writ Petition is liable to be dismissed. Finally, it is contended that the decision under challenge is for the benefit of public and it is a policy decision taken by the oil companies with regards to commercial transaction *i.e.* distribution of LPG cooking gas within certain local areas to appoint additional dealers for the same locality. Normally, the Court must be slow to interfere with such policy decisions for the benefit of the public while exercising power under Article 226 of the Constitution of India. Therefore, the appeal deserves to be dismissed on this ground also and prayed to dismiss the appeal confirming the order under challenge.

9. Considering rival contentions, perusing the order under challenge and the material connected thereto, the sole point that arises for consideration is:

"Whether the petitioner is competent to challenge the public notice issued by the respondents dated 15-09-2013 calling for applications

for enlistment of new LPG distributors in the State of Andhra Pradesh and whether the finding in Andhra Pradesh LPG Dealers Association Vs. Union of India (UOI), Rep. by its Secretary, Ministry of Petroleum and Natural Gases and others operates as res judicata?"

10. **In Re. Point:**

Admittedly, the petitioner is an association of Liquid Petroleum Gas (Cooking Gas) Dealers in the state of Andhra Pradesh registered under the provisions of the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 Fasli (Act 1 of 1350 F.). During hearing, learned senior counsel for the petitioner brought to the notice of this Court about registration of the society and the certificate enclosed to the Writ Petition No. 22903 of 2007, which is available on record as part, shows that the petitioner association obtained certificate of registration No. 271 of 1974. Therefore, the fact remains that the petitioner is a registered society. The main grievance of learned senior counsel is that the issue involved in the Writ Petition, against which the present appeal is preferred, is totally distinct from the issue involved in the earlier litigation in ***Andhra Pradesh LPG Dealers Association*** (1st *supra*) and the cause of action is also different but the parties are one and the same. When the issue involved in the earlier litigation is different, the findings recorded in the earlier litigation would not operate as *res judicata*; the bar to entertain the present Writ Petition and the appeal thereto by applying the principles of *res judicata* under Section 11 of the Code of Civil Procedure (for short, 'C.P.C.') would not estop and that the findings of the Court regarding *locus standi* in the earlier litigation will not come in the way of the petitioner-appellant to claim relief in the present Writ Petition.

11. *Per contra*, learned counsel for the respondents contended that the earlier litigation was between the same parties except nature of the proceedings questioned in the earlier litigation and the present litigation. In the earlier litigation, the respondents therein questioned *locus standi* of the

same association, who is the petitioner-appellant in the present appeal; the Court framed an issue regarding *locus standi* and recorded a finding which attained finality. Therefore, the finding regarding *locus standi* of the present association in the earlier litigation in ***Andhra Pradesh LPG Dealers Association*** (1st *supra*) interdicts the petitioner to claim relief in the present Writ Petition in view of Section 11 of C.P.C. and placed reliance on several judgments of Apex Court in support of his contention.

12. The requirement of *locus standi* of a party to any litigation is mandatory. The existence of the legal right of a person which is alleged to have been violated constitutes the foundation for invoking the jurisdiction of the Court. Injury to person, property, body, mind or reputation arising from violations, actual or threatened, is the basis of entitlement to judicial remedies. Legal right or legally protected interests of the person seeking such redressal must be shown. The concept of legal standing provides an explanation of the eligibility of the party seeking judicial review. While considering *locus standi* of any party, the Court may take into consideration existence of an actual case, issue, contest or controversy; provisions of the Constitution or any law shown to be, or intended to be in protection of any right or interests; the infringement of or an adverse impact on such right, or interests owing to the action or conduct under challenge, and the scope for redressability for remedial measures that can be granted by Courts.

13. If the party, who approached the Court, satisfies the above requirements, such person can be deemed to have standing in the litigation that means *locus standi*. In the present case, the petitioner did not show any harm by a legal wrong caused by administrative action of the oil companies or State which adversely affected the rights of the petitioner association. If really any harm or injury is caused by legal wrong committed by the oil companies to the petitioner association, the petitioner may be aggrieved by such action. Therefore, injury either direct or indirect is relevant to determine *locus standi* of the petitioner in the litigation. The Apex Court, in ***British***

India Steam Navigation Company Vs. Jasjit Singh^[2]; ***Himanshu Kumar Vs. Jyoti Prakash***^[3]; and ***Mohd. Hanif Vs. State of Assam***^[4], held that the tests that may be applied for determining standing in private or individual interest pursuits may not be strictly applied in all cases of litigation in public interest. However, the commonality of some factors for determination of standing in both cases may be restated. Thus (1) A real grievance or injury must exist; (2) The impact of State action must be demonstrated; (3) Access to justice in substantive or procedural terms must be shown to be involved; (4) The demand to do justice and the failure to rectify the wrong is a relevant factor; (5) The inappropriateness, futility, inadequacy, onerous or burdensome nature of alternative administrative processes, may have to be established. In the present case, the petitioner association did not show any injury or harm either directly or indirectly to it in its individual capacity or in private capacity on account of the administrative action for allotment of additional dealership in the same area by the respondents. In such a case, the petitioner association cannot be said to have *locus standi* to maintain the petition before this Court since no harm or injury caused to the petitioner society on account of administrative action in private or individual litigation.

14. Learned counsel for the respondents, in support of his contention that the petitioner association has no *locus standi*, placed reliance on several judgments of this Court including the judgment of a single judge of this Court in ***Andhra Pradesh LPG Dealers Association*** (1st *supra*). In ***The Nagar Rice & Flour Mills and others Vs. N.Teekappa Gowda & Brothers and others***^[5], the Apex Court (Three Judges Bench per Shah, J.) considered the issue of the locus standi of a rival trader to impeach the grant of fresh license or permission that increases the competition in the petitioners' area of trade. In para No. 10, dealing with the contention of the respondents that a permission granted to the appellants to locate a new rice mill within the vicinity of the respondents' rice mill was in contravention of Section 8 (3) (c)

of the Rice Milling Industry (Regulation) Act, 1958, the Apex Court held that

"The provisions of Section 8 are merely regulatory and if, not complied with, the appellants may probably be exposed to a penalty, but the competitors in the business cannot seek to prevent the appellants from exercising their right to carry on business because of the default, nor can the rice mill of the appellants be regarded as a new rice mill. The Court clarified that a person cannot claim, independently of any restriction imposed by a law referable to Article 19 (6) of the Constitution that any other person shall not carry on business or trade so as to affect his trade or business, adversely."

This decision was referred to with approval and followed by the Supreme Court (Four Judges Bench) in **Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and others**^[6]. A Division Bench of this Court in **Rajappa Kawati V. G.Hanumantha Rao**^[7] relied on the decision in **Jasbhai Motibhai Desai** (8th *supra*) to hold that the Writ Petitioners had no *locus standi* to contest an approved scheme of nationalization of mofussil routes alone without nationalizing town services. In **J.Raghupathi Vs. State of Andhra Pradesh**^[8], one of the guidelines issued by the Indian Oil Corporation was challenged and held that a rival trader has no *locus standi* to impeach the competition involving in the trade is a theme which substrates another judgment in **Coastal Papers Limited Vs. Government of India**^[9]. **M.S.Jayaraj Vs. Commissioner of Excise**^[10] is at apparent variance with the line of judgments referred *supra*. However, the judgments in **The Nagar Rice & Flour Mills and others** (7th *supra*) and **Jasbhai Motibhai Desai** (8th *supra*) are applicable to the present facts of the case and, relying on the above judgments, this Court in **Andhra Pradesh LPG Dealers Association** (1st *supra*) concluded that the petitioner has no *locus standi*. Therefore, by applying the principles laid down in catena of decisions referred *supra* including the judgment between the rival parties to the present appeal, we have no hesitation to hold that the petitioner association has no capacity to question the action of the oil companies by filing Writ Petition and the said decision has become final.

15. Though the challenge in the earlier Writ Petition is different, this finding with regard to *locus standi* of the petitioner would certainly operate as *res judicata* for the reason that an issue was framed in the earlier litigation and decided by competent Court having jurisdiction. At this stage, it is relevant to refer to Section 11 of C.P.C. According to Section 11 of C.P.C., no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court. On close analysis of Section 11 of C.P.C., it is clear that if an issue before the Court which directly and substantially in issue in the earlier matter and decided between the same parties or between the parties under whom they are claiming decided finally, it operates as a bar to raise the same issue.

16. To constitute a matter as *res judicata*, the following conditions must exist:

- (i) The matter directly and substantially in issue in the subsequent proceedings must be the same which was directly and substantially in issue either actually or constructively in the earlier proceedings.
- (ii) The former proceeding must have been one between the same parties or between parties under whom they or any of them claim.
- (iii) The parties must have litigated under the same title in the former proceedings.
- (iv) This Court which decided the former proceeding must have been a Court competent to try the subsequent proceedings or the proceedings in which such issue is subsequently raised.

- (v) The matter directly and substantially in issue in the subsequent proceeding must have been heard and finally decided by the Court in the earlier proceeding.

17. The principle of *res judicata* is based on the need of giving a finality to judicial decisions. The principle is based on public policy. The literal meaning of "res" is "everything that may form an object of rights and includes an object, subject-matter or status" and "*res judicata*" literally means "a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgments". "*Res judicata pro veritate accipitur*" is the full maxim which has, over the years, shrunk to mere "*res judicata*", which means that *res judicata* is accepted for truth. The doctrine contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence "*interest reipublicae ut sit finis litium*" (it concerns the State that there be an end to law suits) and partly on the maxim "*nemo debet bis vexari pro uno et eadem causa*" (no man should be vexed twice over for the same cause). In ***Dr. Subramanian Swamy Vs. State of Tamil Nadu and others*** with ***Sabhayanagar Temple Vs. State of Tamil Nadu and others*** with ***T.Sivaraman and others Vs. State of Tamil Nadu and others***^[11], the Supreme Court discussed the philosophy of *res judicata* which is a matter of procedure and, while relying several judgments of Apex Court, held that when a matter was already decided with regard to management of temple in the earlier proceedings, the same would operate as *res judicata*. The Apex Court relied on the judgments in ***Shah Shivraj Gopalji Vs. ED-, Appakadh Ayiassa Bi and others***^[12] and ***Mohanlal Goenka Vs. Benoy Kishna Mukherjee and others***^[13] to hold that even an erroneous decision on a question of law attracts the doctrine of *res judicata* between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as *res judicata*.

18. In ***Smt. Raj Lakshmi Dasi and others Vs. Banamali Sen and***

others^[14], the Apex Court while dealing with the doctrine of *res judicata* referred to and relied upon the judgment in **Sheoparsan Singh Vs. Ramnandan Singh**^[15], wherein it had been observed as under:

"..... the rule of res judicata, while founded on ancient precedents, is dictated by a wisdom which is for all time Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijnanesvara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for this purpose the text of Katyayana, who describes the plea thus: 'If a person though defeated at law, sue again, he should be answered, "you were defeated formerly". This is called the plea of former judgment.'..... And so the application of the rule by the Courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law".

In **Satyadhyan Ghosal and others Vs. Smt. Deorajin Debi and another**^[16], the Apex Court explained the scope of principle of *res judicata* observing as under:

"The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation, when a matter whether on a question of fact or a question of law has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvas the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct."

From the law declared by Supreme Court in catena of decisions referred *supra*, it is clear that when an issue was decided between the same parties in former suit, which attained finality, the same cannot be re-agitated in the subsequent proceedings. In the facts of the above judgment, the dispute is with regard to administration of temples and the same issue was decided by competent Court in earlier judgments and attained finality.

Therefore, the same issue cannot be raised again in the subsequent proceedings. However, in para No. 35 of the judgment, the Supreme Court observed that

"Explanation to Order XLVII, Rule 1 of Code of Civil Procedure, 1908, provides that if the decision on a question of law on which the judgment of the Court is based, is reverse or modified by the subsequent decision of a superior court in any other case, it shall not be ground for the review of such judgment. Thus, even an erroneous decision cannot be a ground for the court to undertake review, as the first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and in absence of any such error, finality attached to the judgment/order cannot be disturbed."

In view of the principles enunciated in the judgments referred *supra*, the petitioner association, who was the petitioner in the earlier petition, cannot re-agitate the same since the finding with regard to *locus standi* attained finality.

19. Learned counsel for the respondents also placed reliance on ***Orissa Power Transmission Corporation Limited and others Vs. Asian School of Business Management Trust and others***^[17], wherein the Supreme Court, while considering public interest, held that

"The first petition which could be treated as one filed under Article 227 of the Constitution was dismissed by the High Court by assigning detailed reasons including the one that larger public interest outweighed the individual interest of Respondent 1. However, while deciding the writ appeal, the Division Bench overlooked this vital factor and ordered shifting of the transmission line."

In the same judgment, the Supreme Court relied on ***Ramchandra Dagdu Sonavane Vs. Vithu Hira Mahar***^[18] to hold that

"It is well known that the doctrine of res judicata is codified in Section 11 of the Code of Civil Procedure. Section 11 generally comes into play in relation to civil suits. But apart from the codified law, the doctrine of res judicata or the principle of res judicata has been applied since long in various other kinds of proceedings and situations by courts in England, India and other countries. The rule of constructive res judicata is engrafted in Explanation IV of Section 11 of the Code of Civil Procedure and in many other situations

also principles not only of direct res judicata but of constructive res judicata are also applied, if by any judgment or order any matter in issue has been directly and explicitly decided, the decision operates as res judicata and bars the trial of an identical issue in a subsequent proceedings between the same parties."

The principle laid down in the above judgment would directly applicable to the present facts of the case since the issue involved in the earlier Writ Petition and the present appeal is one and the same i.e. with regard to *locus standi*. Hence, on this ground also, the claim of the petitioner society is hit by the doctrine of *res judicata*.

20. Learned senior counsel for the petitioner, contending that the finding relating to *locus standi* would not operate as *res judicata*, placed reliance on ***Madhavi Amma Bhawani Amma and others Vs. Kunjikutty Pillai Meenakshi Pillai and others***^[19], wherein the Apex Court held as follows:

"This shows that the sphere of res judicata as enshrined in Section 11 C.P.C. is not exhaustive, it is ever growing. One such example of its growth is exhibited by the incorporation of Explanation VIII in Section 11 by means of the amending Act in 1976. The submissions made are broadly under two heads: firstly under the broad and general principle of res judicata in view of Explanation VIII and secondly, whether in proceedings for the grant of succession certificate, any adjudication or issue decided therein would operate as res judicata to suit proceedings. In order to apply the general principle of res judicata the court must first find, whether an issue in a subsequent suit, was directly and substantially in issue in the earlier suit or proceedings, was it between the same parties, and was it decided by such court. Thus there should be an issue raised and decided, not merely any finding on any incidental question for reaching such a decision. So if no such issue is raised and if on any other issue, incidentally any finding is recorded it would not come within the periphery of the principle of res judicata."

However, the learned single judge did not agree with the submission of the learned senior counsel for the petitioner and held that the claim of the petitioner is barred by *res judicata* since the issue regarding *locus standi* became final. Undoubtedly, the action of the oil companies under challenge in the present Writ Petition and the appeal thereto and in the earlier Writ Petition is different but the legislature, in its wisdom, incorporated Section 11

of C.P.C. making it applicable even to an issue. As such, when an issue was raised in the former suit and decided finally, the same cannot be re-agitated in view of bar under Section 11 of C.P.C. If the application of Section 11 of C.P.C. is limited only to entire suit or proceedings (without extending to any issue), the contention of the learned senior counsel can be accepted. However, from the plain language used in Section 11 of C.P.C., the bar under Section 11 of C.P.C. is extended even to any issue. Therefore, we find no legal force in the argument of the learned senior counsel for the petitioner. Even after reappraisal of entire material available on record with reference to law laid down by Apex court and this Court, it is clear that when once a finding with regard to *locus standi* was recorded by the learned single judge on contest in the earlier Writ Petition, which attained finality, now cannot re-agitate by the petitioner against the same respondent in subsequent Writ Petition.

21. No doubt the proceedings challenged in the earlier Writ Petition is somewhat little different than the proceedings challenged in this matter. In the earlier Writ Petition, the decision taken by the oil companies with regard to area of operation was challenged but, in the present Writ Petition, the decision taken to reduce the percentage of business and enlistment of additional dealers is under challenge. In both the cases, the oil companies took a decision to enlist additional dealers in the same area but difference is area of operation was not questioned in the earlier Writ Petition; and reduction of quantum of supply of cylinders and appointment of new dealers were questioned in the present Writ Petition. Cause of action in the proceedings under challenge in the two Writ Petitions is not a ground to come to a different conclusion than the conclusion of the learned single judge for the reason that *locus standi* of the petitioner in both the petitions was challenged before the learned single judge and, basing on ***Andhra Pradesh LPG Dealers Association*** (1st *supra*) between the same parties, an issue was framed with regard to *locus standi* and held against the Writ

Petitioner and non-suited the association. The same question was raised before the learned single judge of this Court. However, applying the principle of *res judicata*, the learned single judge dismissed the Writ Petition as it is barred by the principle of *res judicata*.

22. Learned counsel for the respondents would submit that the decision taken by the oil companies for enlistment of additional dealers for distribution of LPG cooking gas in the area where dealership was already allotted to some of the members of the petitioner association is only in the interest of public and to cater the minimum needs of the consumers within the vicinity. Therefore, the decision is only in the public interest. Consequently, Courts would be slow to interfere with such decisions and placed reliance on ***Rajasthan State Industrial Development and Investment Corporation and another Vs. Diamond and Gem Development Corporation Limited and another***^[20], wherein the Apex Court held that Court should generally not exercise its Writ jurisdiction to enforce contractual obligations and Writ should not be issued merely because it is lawful to do so. In the same judgment, the Supreme Court reiterated the doctrine of estoppel. Taking advantage of the principle of estoppel, learned counsel for the respondents contended that the dealers entered into an agreement, which is in the standard form, where the oil companies reserve their right, without any, reference to or consent of the dealer, to appoint one or more additional dealers in the same territory referred to in Clause 1 (a) above and such additional dealer or dealers shall be entitled to make sales of HP Gas in the same territory without any objection from the dealer and the dealer shall not be entitled to claim any overriding remuneration, commission or allowance for the purpose. In view of this clause, the dealers cannot now go back and contend that the oil companies shall not appoint new dealers on the principle of estoppel.

23. It is further contended that the petitioner is an association of LPG cooking gas dealers and only few of its members are distributing LPG in the

areas notified for enlistment of additional dealers. As such, the petitioner society is not the person who suffered injury on account of the decision. In such a case, the petitioner society is disentitled to claim any relief by way of Writ of *mandamus*. Learned counsel for the respondents contended that the decision taken by the oil companies is not arbitrary, supported by reasoning and, in support of his contention, placed reliance on ***Food Corporation of India*** (6th *supra*), wherein the Supreme Court held that:

"Non-arbitrariness, fairness in action and due consideration of legitimate expectation of affected party are essential requisites for a valid State action. State or its instrumentality if acted arbitrarily and unfairly, the same can be set aside. Whether expectation is legitimate is a question of fact which has to be determined not according to the claimant's perception but in the larger public interest. A decision in the matter is open to judicial review. A bona fide decision would satisfy the requirement of non-arbitrariness."

Even if this principle is applied to the present facts of the case, as the decision for appointment of new dealers is taken in the larger public interest to serve the minimum needs of the public *i.e.* consumers of cooking gas, the same cannot be set aside on the ground of arbitrariness.

24. Learned senior counsel for the petitioner contended that when the administrative action is against the standards and procedures laid down by Government and the decision is totally in utter disregard of standards, the said decision would invalidate the action unless based on some valid principles; such action is liable to be set aside and placed reliance on ***Ramana Dayaram Shetty Vs. International Airport Authority of India and others*** ^[21], wherein the Apex Court held as follows:

"It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them."

There is no quarrel about the principle laid down in the above judgment. However, the learned single judge dismissed the petition only on the ground that the petitioner has no *locus standi* as the issue of *locus standi* was

already decided by the learned single judge in the earlier judgment between the same parties and it is hit by doctrine of *res judicata* and the present appeal is only an *intra* Court appeal with limited jurisdiction. Hence, all these contentions necessitate no examination, when the Court is in concurrence with the finding of the learned single judge, in view of our discussion in the earlier paras.

25. In view of our discussion, we find no merits in the Writ Appeal and it deserves to be dismissed.

26. In the result, the Writ Appeal is dismissed. Pending miscellaneous petitions, if any, in this Writ Appeal shall stand dismissed in consequence. No order as to costs.

RAMESH RANGANATHAN, J.

M.SATYANARAYANA

MURTHY, J.

Date: 09th March, 2015.

JSK

[\[1\]](#) 2009 (1) ALT 268

[\[2\]](#) AIR 1964 SC 1451

[\[3\]](#) AIR 1964 SC 1636

[\[4\]](#) (1969) 2 SCC 782

[\[5\]](#) 1970 (1) SCC 575

[\[6\]](#) (1976) 1 SCC 671

[\[7\]](#) 1995 (3) ALT 878 (D.B.)

[\[8\]](#) AIR 1998 SC 1681

[\[9\]](#) 1995 (1) ALT 381

[\[10\]](#) (2000) 7 SCC 552

[\[11\]](#) AIR 2015 SC 460

[\[12\]](#) AIR 1949 PC 302

[\[13\]](#) AIR 1953 SC 65

[\[14\]](#) AIR 1953 SC 33

[\[15\]](#) AIR 1916 PC 78

[\[16\]](#) AIR 1960 SC 941

[\[17\]](#) (2013) 8 SCC 738

[\[18\]](#) (2009) 10 SCC 273

[\[19\]](#) (2000) 6 SCC 301

[\[20\]](#) (2013) 5 SCC 470

[\[21\]](#) (1979) 3 SCC 489