IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11452 OF 2010

* M/s.B.H.Agrawal
A registered Partnership Firm,
Through its Partner

Shri Babulal Hanumandas Agrawal
Age: 46 years, Occu.: Business,
R/o.3218, Agra Road,
Opposite Shere Punjab, Dhule ... **Petitioner**

Versus

1. The State of Maharashtra,
Through its Principal Secretary,
Food, Civil Supplies and
Consumer Protection Department,
Mantralaya, Mumbai.

2. The Hon'ble Minister,
Food, Civil Supplies and
Consumer Protection Department,
Mantralaya, Mumbai.

3. The Collector, Nandurbar,
Dist.Nandurbar.

4. The District Supply Officer,
Nandurbar, Dist.Nandurbar.

5. M/s.Kutubali Noorjibhai
and Company, Shahada,
Dist.Nandurbar.
Through its Partner,
Shri.Khalil Khurshid Nurani,
Age: 45 years, Occ.Business,
R/o.Lonkheda, Tq.Shahada,
Dist.Nandurbar.

6. M/s.Natvarlal Devchand Shah & Co.
A Registered Firm,
Through it's Partner
Rasiklal s/o.Bhuderbhai Doshi,
Age: 80 years, Occu.: Business,
R/o.Ghee Bazar, Nandurbar,
Dist.Nandurbar. ... **Respondents**

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Mr.P.S.Dighe, Advocate for the petitioner.
Mr.Y.G.Gujarathi, AGP for respondent Nos.1 to 4.
Mr.R.R.Mantri, Advocate for the respondent Nos.5.
Mr.M.G.Kolhar, Advocate for the respondent No.6.

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WITH
WRIT PETITION NO.11196 OF 2010

* M/s.Natwarlal Devchand Shah & Co.
A Registered Firm,
Through it's Partner
Rasiklal Bhudarbhai Doshi,
Age: 83 years, Occu.: Business,
R/o.Nandurbar, Tal.Nandurbar,
Dist.Nandurbar. .... **Petitioner**

Versus

1. The State of Maharashtra,
Through, the Secretary,
Food and Civil Supplies and
Consumer Protection Department,
Mantralaya, Mumbai.

2. The Collector, Nandurbar.

3. Mr.B.H.Agarwal,
A Registered Partnership Firm,
Through it's Partner,
Babulal Hanumandas Agrawal,

Age: 49 years, Occu.: Business,
R/o.Plot No.3218, Agra Road,
Oppo. Sher-e-Punjab Hotel,
At.Po.Tal.& Dist.Dhule. ... **Respondents**

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Mr.R.R.Mantri, Advocate for the petitioner.
Mr.Y.G.Gujarathi, AGP for respondent Nos.1 & 2.
Mr.P.S.Dighe, Advocate for the respondent No.3.

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WITH
WRIT PETITION NO.11202 OF 2010

* Kutub Ali Noorjibhai & Company,
A Registered Firm, Through it's Partner,
Tayyab Haider Ali Noorani,
Age: 45 years, Occu.: Business,
R/o.Lonkheda, Tal.Shahada,
Dist.Nandurbar. ... **Petitioner**

Versus

1. The State of Maharashtra,
Through the Secretary,
Food and Civil Supplies and
Consumer Protection Department,
Mantralaya, Mumbai.

2. The Collector, Nandurbar.

3. Mr.B.H.Agarwal,
A Registered Partnership Firm,
Through it's Partner,
Babulal Hanumandas Agrawal,
Age: 49 years, Occu.: Business,
R/o.Plot No.3218, Agra Road,
Oppo. Sher-e-Punjab Hotel,
At.Po.Tal. & Dist.Dhule. ... **Respondents**

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Mr.R.R.Mantri, Advocate for the petitioner.
Mr.Y.G.Gujarathi, AGP for respondent Nos.1 & 2.
Mr.P.S.Dighe, Advocate for the respondent No.3.

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CORAM : R.D.DHANUKA &
SUNIL K.KOTWAL, JJ.

RESERVED ON : 27th September, 2017
PRONOUNCED ON : 13th October, 2017

Judgment [Per R.D.DHANUKA, J.]:-

1] By the consent of the parties, all the three petitions were heard together in view of the identical facts and are being disposed of by this common Judgment.

2] The relevant facts for the purpose of deciding these three petitions are as under:-

3] Writ Petition No.11452 is filed by M/s.B.H.Agrawal, *inter alia*, praying for a Writ of Certiorari and prays that the impugned order dated 27.10.2010 passed by the respondent No.2 confirming the order dated 16.9.2010 passed by the respondent No.3-Collector, be quashed and set aside.

4] Writ Petition No.11202 has been filed by M/s.Kutub Ali Noorjibhai & Company *inter alia*, praying for a Writ of Certiorari and prays that the quota of respondent No.3 i.e. M/s.B.H.Agarwal at 180 K.Ltrs. per month decided by the Collector, Nandurbar, which order is confirmed by learned Minister for Food and Civil Supplies and Consumer Protection Department, Mantralaya, Mumbai, be quashed and set aside.

5] Writ Petition No.11196 of 2010 has been filed by M/s.Natwarlal Devchand Shah & Co., *inter alia*, praying for a Writ of Certiorari and prays for quashing and setting aside quota of 180 K.Ltrs. per month decided by the Collector, Nandurbar and which order is confirmed by the learned Minister, Food and Civil Supplies and Consumer Protection Department, Mantralaya, Mumbai. The petitioner in this Writ Petition also prays for a Writ of Mandamus for an order and direction against the authority to allot 235 K.Ltrs., kerosene to be increased to 275 K.Ltrs. based on total allotment for Nandurbar District and to allow equal distribution quota in excess of 675 K.Ltrs. after allotting 275 K.Ltrs. to the petitioner for the present in the ratio as prescribed in the Government Circular dated 20.5.1999.

6] The learned counsel appearing for the parties have addressed this Court mainly in Writ Petition No.11452 of 2010 and thus the facts in the said Writ Petition are summarized as under:-

7] M/s.Kutub Ali Noorjibhai and Company and M/s.Natwarlal Devchand Shah are respondent Nos.5 & 6 respectively in Writ Petition No.11452 of 2010 filed by M/s.B.H.Agarwal. It is the case of the petitioner M/s.B.H.Agarwal that the petitioner was appointed as wholesale dealer by Bharat Petroleum Corporation Ltd., by executing an agreement under the provisions of Maharashtra Kerosene Dealers Licensing Order, 1966, which agreement has been renewed by the petitioner from time to time. On 24.2.1999, the State Government issued a Circular in respect of fixing quota of Kerosene agents of the Company and it was decided to allot equal quota to all the kerosene agents. In so far as the respondent No.5 is concerned, the said Company was granted license in the year 1961 for supplying kerosene for Dhule District, which is now known as Nandurbar District. Respondent No.6 was granted similar license in the year 1969.

8] In the month of February, 1999, the kerosene quota for

Nandurbar District was increased by 100 K.Ltrs. The petitioner accordingly started getting kerosene quota of 252 K.Ltrs. per month.

9] On 20.5.1999, the Government issued directions by issuing a Circular indicating kerosene quota of 275 K.Ltrs. per month to the holders of dealership prior to 1975, 225 K.Ltrs. per month to the dealers appointed between 1976 to 1985 and 125 K.Ltrs. per month to the dealers appointed after 1985. Under the said Circular, the past performance and pendency of criminal cases against such dealers was also taken into account.

10] Some time in the year 1999, several writ petitions came to be filed in this High Court at Principal Bench challenging the validity of the said Circular dated 20.5.1999. The petitioner herein filed Writ Petition bearing No.5773 of 1999 in Bombay High Court. The respondent Nos.5 & 6 also filed separate petitions. There were interim orders passed by the Principal Bench in the said Writ Petition No.5773 of 1999 and other companion petitions. The Aurangabad Bench also passed similar interim orders based on the interim orders passed by the Principal Bench. The Division Bench of the Bombay High Court upheld the validity of Circular dated 20.5.1999 and held that senior most dealer was entitled to more quota and the said Circular was not arbitrary. It was also held that not granting more quota to senior dealers would amount to discrimination and would be an arbitrary action.

11] On 23.9.1999, the State Government issued a Circular and thereby modified Circular dated 20.5.1999 in respect of fixing quota. It is the case of the petitioner that by the said Circular, it was decided to allot the quota to the wholesale dealers as they were getting in 1999. On 13.10.1999, the State Government issued another Circular in respect of fixing of quota in a situation where korosene quota of the District was reduced or increased due to policy of the Central or State Government.

12] In the month of November, 1999, the respondent No.3-Collector reduced the kerosene quota of the petitioner from 250 K.Ltrs. to 228 K.Ltrs., and increased the quota of respondent Nos.5 and 6. Being aggrieved by the said decision on the part of the respondent No.3, the petitioner filed a Writ Petition bearing No.5773 of 1999, inter alia, praying for a direction to allot equal quota to the petitioner and the respondent Nos.5 and 6 and also challenged the validity of the Circular dated 13.10.1999.

13] On 10.12.1999,, the Writ Petition came to be admitted. The Court granted interim relief directing the authorities to maintain quota of the petitioner as was allotted to the petitioner from May-September, 1999. It is the case of the petitioner that the petitioner started getting quota of 252 K.Ltrs. On 31.12.2004, the respondent increased quota of the petitioner from 252 K.Ltrs. to 312 K.Ltrs. per month.

14] On 18.9.2008, the respondent No.1 cancelled the order dated 31.12.2004 and reduced the quota of the petitioner to 228 K.Ltrs. The petitioner filed Writ Petition Nos.161 of 2009 and 331 of 2009 before this Court inter alia, challenging the letter dated 18.9.2008 by which the quota of the petitioner was reduced. On 20.3.2009, this Court admitted the said Writ Petitions bearing Nos.161 of 2009 and 331 of 2009 and granted interim relief directing to allot the quota to the petitioner as was directed by the order dated 10.12.1999 in Writ Petition No.5773 of 1999.

15] On 23.7.2010, this Court dismissed the Writ Petition

No.5773 of 1999 filed by the petitioner and also disposed of the Writ Petition Nos.161 of 2009 and 331 of 2009 directing the Collector to re-determine the kerosene quota of the petitioner and the respondent Nos.5 & 6 in view of the Circular issued by the State Government. The petitioner appeared before respondent No.3 and submitted its detailed representation to maintain the quota of 252 K.Ltrs. on 18.8.2010. On 16.9.2010, the respondent No.3 passed an order and fixed the quota of the petitioner of 180 K.Ltrs. while the quota of respondent Nos.5 & 6 was fixed at 192 K.Ltrs. and 204 K.Ltrs. respectively.

16] Being aggrieved by the said decision taken by the respondent No.3-Collector, the petitioner filed the revision application on 05.10.2010 before the respondent No.2, the learned Minister, Food and Civil Supplies and Consumer Protection Department, Mantralaya, Mumbai. The learned Minister passed an interim order on 19.10.2010 granting stay to the order dated 16.9.2010 passed by the Collector. By an order dated 27.10.2010, the learned Minister, Food and Civil Supplies and Consumer Protection Department, dismissed the said revision application filed by the Petitioner and confirmed the order passed by the respondent

No.3-Collector. The petitioner, therefore, filed this Writ Petition No.11452 of 2010 inter alia, praying for quashing and setting aside orders passed by the Collector as well as by the learned Minister. The respondent Nos.5 & 6 are also partly aggrieved by the said order passed by the Collector filed Writ Petitions for various reliefs.

17] Mr.P.S.Dighe, learned counsel for the petitioner in Writ Petition No.11452 of 2010 invited our attention to various Circulars issued by the State Government from time to time. He also invited our attention to various orders passed in various Writ Petitions filed before the Principal Bench as well as Aurangabad Bench, which are on record of this proceedings filed by the parties.

18] It is submitted by the learned counsel that the learned Collector as well as the learned Minister have considered only the Circular dated 13.10.1999 in the impugned orders and did not consider Circular dated 23.09.1999. He submits that in the said Circular dated 23.9.1999, it was specifically provided that the quota of the kerosene should be given as was allotted in the month of February, 1999. The respondent Nos.2 and 3, however, acted arbitrarily by increasing the business capacity and past performance of the petitioner while reducing quota of the petitioner. He submits that learned Collector did not give sufficient reasons in the said order dated 16.9.2010 while rejecting the the contentions raised by the petitioner. He submits that Circular dated 13.10.1999 could be implemented only in a situation where the kerosene quota of Nandurbar District was increased or reduced due to policy of the State Government or Central Government. It was not the case of the petitioner in this case that kerosene quota of the Nandurbar District has been increased or decreased and thus Circular dated 13.10.1999 could not have been considered by the respondent No.2 & 3 respectively.

19] It is submitted by the learned counsel for the petitioner that the respondent Nos.2 & 3 have totally misinterpreted the guidelines for considering the capacity and past performance while fixing quota of the petitioner and respondent Nos.5 & 6.

20] The next submission of the learned counsel for the petitioner is that the petitioner had already lifted the kerosene quota allotted to him within the time prescribed, whereas the respondent No.6 had not lifted the kerosene quota within the time prescribed on several occasions and had applied for extension. He submits that though the business capacity of the petitioner in running the said business of the kerosene was much more than the capacity of respondent Nos.5 & 6, the respondent Nos.2 & 3 allotted less quota of kerosene to the petitioner and reduced the same than what was supplied earlier.

21] It is submitted by the learned counsel that the respondent No.3 considered the work capacity mentioned in the Circular dated 13.10.1999 on the basis of storage capacity, though the learned Collector could have considered the business capacity and not storage capacity. He submits that after considering capacity and past performance of the petitioner, the respondent No.3 ought to have fixed the quota of the petitioner as 250 K.Ltrs. as was allotted to the petitioner till August, 2010. He submits that the learned Minister did not apply his mind independently and erroneously upheld the order passed by the learned Collector and thus, the said order deserves to be set aside.

22] It is submitted by the learned counsel for the petitioner that the respondent Nos.2 & 3 ought to have considered as to whether the kerosene quota had been lifted in the past was not due to non-lifting of prescribed quota by any other dealer. He submits that the finding of the Collector about storage capacity of the petitioner as lesser than the storage capacity of respondent No.6, is totally erroneous. The respondent No.6 had not lifted kerosene quota for quite some time.

23] The petitioner and respondent Nos.5 & 6 were acquitted in the criminal proceedings. The petitioner was acquitted during the pendency of the petition on 20.2.2011. Respondent No.6 was already acquitted when the Collector has passed the impugned order. He submits that quota was to be fixed by the respondent No.1 before Circular dated 13.10.1999, which did not provide for quota based on seniority and past performance. He submits that since the respondent No.3 has released more quota in respect of respondent Nos.5 & 6 contrary to the applicable Circulars and guidelines, the impugned orders passed by the respondent Nos.2 & 3 respectively are arbitrary and illegal. He submits that as a matter of record, the authority has not even implemented the impugned order passed by the respondent No.3 and has not been supplying the kerosene even to the extent provided in the impugned order. He submits that

Circular dated 13.10.1999 issued by the respondent No.1 is still in force, which has to be applied by the respondent No.1.

24] Mr.R.R.Mantri, learned counsel for respondent No.5 on the other hand submits that petitioner has not produced any document to show that the quota even as per the order of the learned Collector is not made available to the petitioner. He submits that though according to the applicable Circular, the petitioner is entitled to only 20% quota of the kerosene, the petitioner has been allotted quota of more than 31% thereby allotting about 11% excess quota. He submits that all these issues raised by the petitioner have been already decided by this Court in the Writ Petition filed in the year 2000.

25] It is submitted by the learned Counsel for respondent No.5 that as per Government Circular dated 20.05.1999, the ratio for the allotment of monthly quota to the dealer had been fixed on the basis of total allotment of 675 KL. The petitioner was thus not entitled to more than 106 KL of kerosene since the petitioner was the dealer having got dealership only in the year 1986. He submits that his client was entitled to monthly quota between 275 KL to 235 KL.

The learned Collector, Nandurbar however re-determined the quota of his client at 204 KL only. It is submitted that the Collector himself had held that the respondent No.5 is senior most having dealership since 1961 and M/s N.D. Shah had dealership since 1969 whereas the petitioner had dealership since 1986 only.

26] It is submitted that the learned Collector rightly found that the petitioner had got pending criminal case whereas the respondent Nos.5 and 6 had been acquitted. He submits that the collector, however, illegally held that the past performance of all the three dealers was equal. The impugned order passed by the Collector was contrary to the judgment delivered by this Court on 01.02.2000 and also the decision rendered by this Court in Writ Petition No. 5773 of 1999. He submits that his client being the senior most dealer amongst the three dealers was thus entitled to receive the quota of 275 KL or at any rate of 235 KL per month considering the total allotment of kerosene quota to the district.

27] It is submitted that in accordance with the Government Circular the pro-rata monthly quota to be allotted to the dealers having dealership before 31.12.1975 was entitled to 275 KL. He submits that even if the present monthly quota of total 576 KL is allotted to Nandurbar, the respondent No.5 would be entitled to 235 KL of kerosene per month and the petitioner would be entitled to not more than 106 KL. Even if there is any increase in the quota above 675 KL, the remaining quota has to be distributed equally amongst three dealers. It is submitted that the petitioner was junior most dealer having got the dealership after 1985 and thus though he was entitled to 106 KL of quota, he was allotted more quota of kerosene which was liable to be reduced in view of pending criminal prosecution. It is submitted that the learned Collector as well as the learned Minister totally overlooked and did not follow the judgment delivered by this Court and have wrongly allotted 180 KL quota to the petitioner.

28] Mr. Mantri, learned Counsel for respondent No.5 invited our attention to various orders passed by this Court in the earlier Writ Petitions filed by the parties. He submits that by an order dated 01.02.2000 passed by the Principal Bench of this Court in Writ Petition No.3777 of 1999 and others, the quota to be allotted to each dealer has been already decided. He submits that the validity of the Circular dated 20.05.1999 is already upheld by this Court and could not have been ignored by the learned Collector as well as the learned Minister.

29] It is submitted by the learned Counsel that the storage capacity of his client is much more than the storage capacity of the petitioner and thus the petitioner is not entitled to compete with his client. He submits that no conviction of his client was pending on the date of order passed by the learned Collector or by the Minister.

30] It is submitted that if the quota is not lifted by one dealer, such quota is given to another dealer. The order passed by the learned Collector is contrary to the circular providing quota to the dealers according to seniority. He submits that according to such circular, his client and respondent No.6 were entitled to quota of 40% each, whereas the petitioner was entitled to quota of 20% only. He submits that there is no change in the policy for allotment of quota run by State Government. The petitioner as well as respondent Nos.5 and 6 are thus entitled to the quota in the same ratio mentioned aforesaid even in future till such policy of supplying quota to the dealers is revised by the State Government.

31] Mr. M.G. Kochar, learned Counsel for respondent No.6 adopted the argument advanced by Mr. R.R. Mantri and submits that the order passed by learned Collector as well as by the learned Minister are perverse partly and that part of the order deserves to be set aside. The quota which was allotted to the respondent Nos.5 and 6 in past according to the circular dated 20.05.1999 thus shall be restored.

32] Mr. Gujrathi, learned A.G.P. invited our attention to the affidavit-in-reply dated 22.04.2016 filed by the respondent No.4 and tried to defend the order passed by the learned Collector as well as by the Minister. Learned A.G.P. placed reliance on several circulars issued by the State Government from time to time deciding the quota of kerosene to be allotted to the dealers. He submits that there are three wholesale dealers of Bharat Petrolium Corporation Limited in the district of Nandurbar who are carrying on such business of supplying kerosene i.e. the petitioner, respondent No.5 and respondent No.6. The storage capacity of the petitioner is 15 KL whereas the storage capacity of respondent No.5 and respondent No.6 is 76.39 KL and 75 KL respectively. He submits that as per seniority, the storage capacity and taking into consideration the past performance, the quota of the dealer is fixed. He submits that respondent Nos.5 and 6 are senior than the petitioner and they have also more storage capacity than the petitioner. The decision was thus rightly taken by the learned Collector about fixation of quota of kerosene. He submits that if supply of kerosene is reduced by the Central Government, the District Collector has to reduce the supply of quota of that month to the dealers.

33] It is submitted by the learned A.G.P. that the quota of kerosene is rightly fixed by the Collector in accordance with the Government policy and based on such policy, the petitioner, respondent No.5 and respondent No.6 are allotted 30.31%, 35.26% and 33.40% quota respectively from April 2015 to March 2016.

34] Mr. Mantri, learned Counsel for the petitioner in Writ Petition No. 11202 of 2010 and in Writ Petition No. 11196 of 2010 repeated the submissions which were made by him while opposing the petition filed by petitioner in Writ Petition No.11452 of 2010 in support of his case in these petitions.

35] In so far as Writ Petition No. 11202 of 2010 filed by the petitioner in that Writ Petition who is respondent No.5 in Writ Petition No. 11452 of 2010 is concerned, it is submitted by Mr. Mantri, that the learned Minister totally failed to apply his mind to the orders passed by this Court and did not consider that M/s B.H. Agrawal was facing criminal charge and thus its performance could not be equated with the performance of his client. The learned Minister also did not consider the storage capacity while dismissing the revision application. He submits that the State Government thus shall be directed to allot 235 KL of monthly quota of kerosene to his client which shall be increased upto 275 KL. He submits that after allotting 275 KL to his client, he should be allotted equal distribution in excess of 675 KL. He submits that the State Government shall be directed not to allot monthly quota of kerosene in excess of 106 KL to the petitioner M/s B.H. Agrawal.

36] In so far as Writ Petition No. 11196 of 2010 is concerned, it is submitted that the quota of 189 KL per month fixed in favour of the petitioner i.e. M/s B.H. Agrawal shall be quashed and set aside and the State Government shall be directed to allot 235 KL of weekly quota of kerosene to his client M/s Natwarlal Devchand Shah and Company (petitioner in Writ Petition No. 11196 of 2010) and the said quota shall be increased upto 205 KL based on total allotment of Nandurbar district and to allot by equal distribution to the quota in excess of 675 KL after allotting 275 KL to his client in the ratio described in the Government circular dated 20.05.1999.

37] It is submitted by the learned Counsel that inspite of the fact that the validity of Government circular dated 20.05.1999 has been upheld, the learned Collector on 16.09.2010 redetermined the quota of M/s. Natwarlal Devchand Shah and Company (respondent No.6 in Writ Petition No. 11452 of 2010 filed by M/s B.H. Agrawal) and redetermined the quota of the petitioner i.e. M/s. B.H. Agrawal at 180 KL contrary to the said circular. It is submitted that the learned Minister rejected all the three revisions filed by all the three dealers though the order was issued only in respect of the petitioner. The learned Minister had heard all the three revisions after consolidation of all the matters, but did not give details of the other revision applications while passing an order only in the revision filed by the petitioner M/s. B.H. Agrawal. He submits that the order passed by the learned Minister shows total non application of mind. Criminal charges against the petitioner M/s. B.H. Agrawal was still pending and thus his performance could not be equated with the charges of the other two dealers. The learned Collector also did not take into consideration storage capacity of the parties while redetermining the quota.

38] Learned Counsel for the petitioner M/s. B.H. Agrawal submits that the learned Collector while passing the impugned order had erroneously reduced the quota of his client to 180 KL by considering the circular dated 13.10.1999 and thus misinterpreted the guidelines framed in the said circular while determining the business capacity for wholesale dealers. He submits that the business capacity could be considered only in respect of the lifting of quota by dealer every month. The quota, which was allotted to the respondent No.5 had been left on several occasions and thus the business capacity of the petitioner was more efficient than the respondent No.5 which criteria was not considered by the learned Collector while fixing the quota. He submits that the guidelines provided under circular dated 20.05.1999 had been modified by circular dated 23.09.1999 and thus the learned Collector was bound to consider the guidelines provided under the said circular dated 23.09.1999 and accordingly the petitioner was eligible to get 252 KL kerosene quota per month. He submits that the pendency of the criminal prosecutions against the dealer can be considered only while increasing kerosene quota of the dealer and not while reducing quota of the dealer.

39] Mr. Mantri, the learned Counsel for respondent No.5, in re-joinder, submits that there was no such circular dated 23.09.1999 as sought to be canvassed by the petitioner having any binding effect. The parties were thus governed by the circular dated 20.05.1999, the validity whereof was upheld by tis Court.

40] It is not in dispute that all the three dealers are partly aggrieved by the orders by the learned Collector and also the learned Minister and have accordingly filed separate petitions impugning the same order to some extent.

41] We have considered rival submissions made by the learned Counsel for the parties and have given our anxious consideration to those submissions made by the learned Counsel.

42] It is not in dispute that in the earlier round of litigation, by an order and judgment dated 23.07.2010, the validity of the

Government Circular dated 20.05.1999 was upheld by this Court. This Court had directed the Collector to redetermine the quota of all the three dealers as per its order on or before 31.08.2010.

43] It is not in dispute that M/s. B.H. Agrawal, at the relevant time was facing criminal prosecution under Section 3 read with Section 7 of Essential Commodities Act, which was registered as Regular Criminal Case 166/2000 and was pending in the Court of the learned Judicial Magistrate, First Class. As per the said Government Circular dated 20.05.1999, the ratio for the allotment of monthly quota to the dealers was to be considered, taking the basis of the total allotment of 675 KL. A perusal of the impugned order dated 16.09.2010 passed by the learned Collector indicates that the learned Collector had clearly observed that the respondent No.5 i.e. Kutubali Noorjibhai and Company was the senior most dealer having dealership since 1961. Respondent No.6 i.e. M/s. N.D. Shah had dealership since 1969, whereas the petitioner i.e. M/s. B.H. Agrawal was taking dealership since 1986.

44] The Collector noticed in the impugned order that the petitioner M/s. B.H. Agrawal had got pending criminal case, whereas the respondent Nos.5 and 6 had been acquitted. A perusal of the order, however, indicates that though the learned Collector had rendered a finding that respondent Nos.5 and 6 were senior to the petitioner and the petitioner was having a criminal case pending against it whereas the respondent Nos.5 and 6 were acquitted, the learned Collector erroneously observed that the past performance of all the three dealers was equal. The finding rendered by the learned Collector, in our view, is totally contrary to the judgment delivered by this Court on 01.02.2000 and also in case of Writ Petition No. 5773 of 2009.

45] The impugned order passed by the Collector is also contrary to the order dated 23.07.2010 passed by the Division Bench of this Court upholding validity of the Government Circular dated 20.05.1999. In our view, the learned Collector as well as the learned Minister thus could not have decided contrary to the decision of this Court dated 23.07.2010 and contrary to the conditions prescribed in the Government Circular dated 20.05.1999.

46] A perusal of the record clearly indicates that the kerosene quota allotted to the petitioner M/s. B.H. Agrawal was larger than what it was entitled to being the junior most in the seniority and not having complied with all the conditions in the circular dated 20.05.1999, whereas the learned Collector as well as the learned Minister have awarded more quota of kerosene to the petitioner and which order is prejudicial to the interest of the respondent Nos.5 and 6. In our view, Mr. Mantri, the learned Counsel for respondent No.5 and Mr. Kochar, learned Counsel for respondent No.6 are right in their submission that the quota was required to be allotted in the ratio of 40:40:20 amongst the respondent No.5 i.e. Kutub Ali Noorjibhai and Company, M/s Natwarlal Devchand Shah and Company and M/s B.H. Agrawal respectively.

47] It is not in dispute that the Division Bench of this Court in the earlier round of litigation had also upheld the validity of the subsequent/modified circular dated 23.09.1999 and the circular clarifying the position dated 13.10.1999. This Court while passing an order on 23.07.2010 in Writ Petition No. 161 of 2009 and other companion petitions had specifically directed the Collector to redetermine the kerosene quota after hearing all the parties, in pursuance of the Government Circular dated 20.05.1999 as modified by the circular dated 23.09.1999 and clarified by the order dated 13.10.1999. A perusal of the order passed by the Collector, which is confirmed by the learned Minister however clearly indicates that the said order dated 23.07.2010 passed by this Court has been totally overlooked by the learned Collector as well as by the learned Minister and both the authorities took totally contrary view. In our view, respondent Nos.5 and 6 are not granted quota of kerosene according to the terms and conditions of the aforesaid circulars and are thus partly affected by the impugned orders passed by the learned Collector as well as the Minister.

48] In our view, the stand taken by the respondent No.4 in the affidavit-in-reply and also across the bar is contrary to the terms and conditions of those circulars. A perusal of the record clearly indicates that the claim of M/s. B.H. Agrawal for equal quota with the respondent Nos.5 and 6 was specifically rejected by this Court in the order passed in Writ Petition No. 5773 of 1999 and thus the said issue cannot be raised by the petitioner again.

49] A perusal of the order dated 01.02.2000 passed by the Division Bench of this Court in Writ Petition No. 3777 of 1999 and various companion petitions clearly indicates that this Court, while construing the circular dated 20.05.1999, clearly held that the ratio of quota fixed under the said circular was on the basis of length or experience gained by the dealer, longer the dealership more quota was provided. It is held that the said ratio was fixed in such a manner so as to ease the difficulty faced by such dealers for dealing in kerosene in long term and having more customers and enable them to serve their customers properly. This Court also rejected the contention of the rival dealers that there was violation by fixing the quota on the basis of slab which was in turn based upon the experience and length of dealership. This Court lastly held that on the contrary treating all dealers as equal would be violative of equality clause which may affect the service to the customers.

50] Though the parties are getting kerosene quota in terms of the order passed by the learned Collector which order is upheld by the learned Minister without application of mind and though the parties are getting kerosene quota in a particular ratio decided by the learned Collector and learned Minister during pendency of this petition, it is not possible at this stage to adjust the excess quota utilised, if any, by the petitioner or the less quota allotted to the respondent Nos.5 and 6 during all these years. It is not in dispute that there is no change in policy for allotment of quota or change in the existing circulars issued by the State Government during the pendency of these petitions.

51] In our view, the interest of justice would be met with if the future allotment of quota is based on the ratio of 40:40:20 between the respondent No.5, M/s. Kutubali Noorjibhai and Company, respondent No. 6 M/s. Natwarlal Devchand Shah and Company and the petitioner M/s. B.H. Agrawal respectively on the basis of total allotment of 675 KL and if there is any increase in the quota above 675 KL, the remaining quota shall be distributed amongst these three dealers equally.

52] In our view, the impugned order passed by the learned Collector and the learned Minister in so far as allotting more quota than the aforesaid ratio to the petitioner and allotting less quota to respondent Nos.5 and 6 than the quota for what they are entitled to, under the aforesaid three circulars, thus deserves to be set aside. In our view, the parties were entitled to be allotted quota as aforesaid in the ratio of 40:40:20 prior to the date of passing the impugned order and also would be entitled to in the same ratio in future as directed with clarification in para 51 aforesaid.

53] We, therefore, pass the following order.

ORDER

(a) The impugned order dated 27.10.2010 passed by the learned Minister, Food, Civil Supplies and Consumer Protection Department and the order dated 16.09.2010 passed by the learned Collector, Nandurbar, District Nandurbar are set aside.

(b) It is declared that M/s. Kutub Ali Noorjibhai and Company, M/s. Natwarlal Devchand Shah and Company and M/s B.H. Agrawal were entitled to allotment of kerosene quota in the Nandurbar District in the ratio of 40:40:20 respectively and would be entitled to the kerosene quota in the same ratio henceforth also on the basis of total allotment of 675 KL and if there is any increase in the quota above 675 KL, then remaining quota shall be distributed equally amongst these three dealers, till any new policy is announced by the State / Central Government for allotment of kerosene quota.

(c) Writ Petition No.11196 of 2010, Writ Petition No. 11202 of 2010 and Writ Petition No. 11452 of 2010 are disposed of accordingly.

(d) Rule is made absolute in aforesaid terms.

(e) There shall be no order as to costs.

(SUNIL K. KOTWAL, J.) **(R.D. DHANUKA, J.)**

Spt/