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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 521 of 2019**

(Arising out of order dated 04.10.2019 passed in Writ Petition (C) No.3633 of 2019 by the learned Single Judge)

Ku. Nivedita Soni D/o. Shri Laxmi Prasad Soni Aged About 25 Years R/o. Jaijaipur Main Road, Tahsil Jaijaipur, District Janjgir-Champa Chhattisgarh.

---- Appellant**Versus**

1. Yogesh Kumar Agrawal S/o. Shri A.K. Agrawal Aged About 35 Years R/o. Main Road Jaijaipur, Tahsil Jaijaipur, District Janjgir-Champa Chhattisgarh.
2. Indian Oil Corporation Limited Through- Its General Manager, Indian Oil Bhawan, Jail Road, 16 Arera Hills, Bhopal Madhya Pradesh.
3. Senior Regional Manager Indian Oil Corporation Limited, Rajiv Gandhi Marg, Telibandha, Raipur Chhattisgarh.
4. State of Chhattisgarh Through- The Collector, District Janjgir-Champa Chhattisgarh.
5. Food Officer Office of Collector, District Janjgir-Champa Chhattisgarh.

---- Respondents**Writ Petition (C) No. 3633 of 2019**

Yogesh Kumar Agrawal S/o Shri A.K. Agrawal Aged About 35 Years Resident of At Main Road Jaijaipur, Tahsil Jaijaipur, District- Janjgir-Champa Chhattisgarh.

---- Petitioner**Versus**

1. Indian Oil Corporation Limited Through Its General Manager, Indian Oil Bhawan, Jail Road, 16 Arera Hills, Bhopal Madhya Pradesh.
2. Senior Regional Manager Indian Oil Corporation Limited, Rajiv Gandhi Marg, Telibandha, Raipur Chhattisgarh.
3. State of Chhattisgarh Through Collector District Janjgir-Champa Chhattisgarh.
4. Food Officer Office of Collector, District Janjgir-Champa Chhattisgarh.
5. Ku. Nivedita Soni D/o Shri Laxmi Prasad Soni Aged About 25 Years Resident of At Main Road Jaijaipur, Tahsil Jaijaipur, District- Janjgir-Champa Chhattisgarh.

---- Respondents

Writ Appeal No.521 of 2019

For Appellant : Shri Syed Majid Ali, Advocate
 For Respondent No.1 : Shri Anand Dadariya, Advocate
 For Respondents/IOCL : Shri N. Naha Roy, Advocate
 For Respondent/State : Shri Vikram Sharma, Advocate

Writ Petition (C) No.3633 of 2019

For Petitioner : Shri Anand Dadariya, Advocate
 For Respondents/IOCL : Shri N. Naha Roy, Advocate
 For Respondent/State : Shri Vikram Sharma, Advocate
 For Respondent No.5 : Shri Syed Majid Ali, Advocate

Hon'ble Shri P. R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

Judgement on Board

P. R. Ramachandra Menon, Chief Justice

18.11.2019

1. The appeal arises from an interim order passed by the learned Single Judge of this Court in Writ Petition (C) No.3633 of 2019 on 04.10.2019 whereby further steps with regard to the installation of a Petroleum outlet by the Appellant, based on the clearance given from the different segments came to be interdicted.
2. When the matter came up for consideration before this Court on 14.11.2019, we raised a doubt as to whether the appeal was maintainable, by virtue of statutory bar under proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006. The learned counsel for the Appellant pointed out that the writ Petitioner was absolutely having no *locus standi* to file the writ petition; that it was belated by more than five years; that no prejudice was caused to him; that he was not an applicant

for granting the outlet and that the writ petition was filed only to stall the proceedings with malicious intention, as he was running another retail outlet, nearby. So far as the Appellant was concerned, huge investment was made based on the 'Letter of Intent' and Petroleum products have been purchased and brought to the unit, which is stored there; which apart from affecting the economic base of the Appellant, who has borrowed huge amounts from different corners, also affects the safety and security.

3. The learned counsel mentioned that as far as the Appellant is concerned, though the interim order was sought to be vacated by filing I.A. No.02 of 2019, the same was not taken up for hearing and has been simply adjourned; which virtually makes the interim order final. It is in the said circumstance, that the Appellant has moved to this Court by filing the appeal. In view of the said submission, we wanted to ascertain the course and events in the light of the law declared by a Full Bench of this Court in Writ Appeal No.255 of 2016 explaining the scope of the proviso to Section 2(1) of the Chhattisgarh High Court (Appeal to Division Bench) Act, 2006 and the Registry was directed to have the writ petition also to be listed along with the appeal. It is accordingly, that both the matters are listed for consideration.
4. Heard the learned counsel appearing for both the sides, including the learned counsel for the Petroleum company and the Government.
5. Learned counsel for the writ Petitioner submits that the appeal preferred against the interlocutory order is not maintainable. It is contended that the writ Petitioner is an 'aggrieved party', as he is also running a retail outlet in the nearby locality. The advertisement issued for starting a retail unit at the

location, was contrary to the mandate of the relevant guidelines issued in this regard, (Annexure P/3 guidelines) which clearly stipulates that a 'Rural retail outlet' as notified in Annexure P/1 advertisement could not be started in the Municipal areas. The learned counsel also points out that, as per Annexure P/2 Gazette notification dated 03.09.2008, the place in question had already been included as part of 'Nagar Panchayat', which is governed by the Municipalities Act and it is not a 'rural area'. This being the position, the notification should have been issued by the Respondent-Corporation only for a 'Regular retail outlet' and not for a 'Rural outlet'. In support of the contention to sustain the 'locus' of the writ Petitioner, reliance is sought to be placed on the ruling of a Full Bench of the Madras High Court in the matter of **R. Lakshminarayanan v. V.A. Maruthappa Nainar** reported in **AIR 1970 Mad 136 (FB)**.

6. With regard to the delay involved, the learned counsel for the writ Petitioner submits that, various particulars were sought to be collected by filing a petition before the authorities under the Right to Information Act, 2005, specifically raising three points, as given below :-

“1. Whether serial no. 95 jaijaipur H.P.C.L petrol pump to 3 km. both side Baradwar Hasaud Road advertised on 18.10.2014 was rural retail outlet to be commissioned in rural area.

2. Whether the Site/Land offered by Ku. Nivedita Soni/ LOI holder for the above mentioned location falls in Nagar Panchayat Jaijaipur Distt. Janjgir Champa (C.G.).

3. Whether the said location was wrongly advertise as stretch of 3.K.M. falls under Nagar Panchayat Jaijaipur.”

Answer was provided to the writ Petitioner to the effect that the 'area' clearly falls in the Nagar Panchayat and hence it is contended that, this substantially supports the case of the Petitioner that no 'Rural retail outlet' was permissible in the said area. The learned counsel points out that the 'Letter of Intent' was issued in the year 2017 and the 'No Objection Certificate' was issued only in August 2019. Since there is an inherent/ basic defect, preventing opening of 'Rural outlet' in the area, the subsequent events and proceedings cannot be of any help to the 5th Respondent in the writ petition (who is the Appellant in the writ appeal) and hence the proceedings are *per se* wrong and illegal in all aspects.

7. The learned counsel for the 1st Respondent/IOCL submits that the idea and understanding of the writ Petitioner is wrong and misconceived. It is pointed out that the rules/guidelines (Annexure P/3) sought to be relied on by the writ Petitioner is of the year 2018, which do not have any application to the advertisement issued way back in the year 2014. With reference to the relevant guidelines and the proceedings brought on record, the learned counsel submits that, as per the policy of the Petroleum company with regard to the location of the retail outlet, the only stipulation as it existed and governed the field in 2014, when the advertisement was issued, was that no 'Rural retail outlet' shall be located on the side of the National Highways or State Highways and nothing more. The condition was modified only in the year 2018, as per Annexure P/3, to the effect that no such retail outlet was to be located on the side of the

National Highways or State Highways and also the places situated within the 'Municipal areas'; which rider was conspicuously absent in the earlier guidelines. The learned counsel points out that the decision rendered by the Madras High Court (FB) sought to be relied on by the writ Petitioner is not applicable and the writ petition is not liable to be entertained, being devoid of any merit.

8. The learned counsel for the Respondent/State submits that the State is only a formal party.

9. The prayers raised in the writ petition are in the following terms :-

“10.1 That this Hon'ble Court may kindly set aside location number 95 in the advertisement (ANNEXURE P-1) in the interest of justice.

10.2 That the respondent State be directed to reconsider the NOC in the light of objections raised by petitioner.

10.3 Any other relief, which this Court thinks fit and proper may kindly be granted.”

10. The first and foremost point to be considered is whether the Petitioner is having any 'locus' to challenge the allotment.
11. Admittedly, the writ Petitioner did not participate in the proceedings for selection, pursuant to the advertisement issued in the year 2014. Insofar as he had no intention to participate in the process of selection, whether it be a 'Regular retail outlet' or a 'Rural retail outlet', he cannot be heard to say that no outlet shall be permitted to be commenced at the location concerned. The dictum sought to be relied on (as rendered by the Full Bench of the Madras High Court) considered the 'question' raised in the

opening paragraph, which is to the following effect :-

“The short question for consideration by the full Bench in this batch of writ appeal is whether a licensee of an existing rice mill has *locus standi* to apply for a writ of *cettiorari* to quash the grant of a permit for the establishment of a new rice mill in the locality, under the Rice Milling Industry (Regulation) Act, Act XXI of 1958 (herein after referred to as the Act.)”

The said case was with regard to the claim raised by the Rice Mill owners against the setting up and operation of new Rice Mills contrary to the guidelines/norms/rules issued. The prejudice stated to be caused to the existing rice mill owners was considered with reference to the economic data input and such other relevant aspects in the light of the control others and it was accordingly, that the matter was finalized by the Full Bench. It was held that an existing Rice Mill owner, who has objected to the installation of a fresh Rice Mill in the locality and contends that he has been prejudicially affected by the grant of permit for installation of a fresh Rice Mill, will be justified in applying to issue a writ of Certiorari under Article 226 of the Constitution of India; if the law is wrongly administered.

12. Coming to the instant case, the only case projected by the Petitioner so as to sustain the 'locus' is that, as per the relevant norms, particularly, with reference to Annexure P/2 gazette notification issued, the area concerned was not to be considered as a 'Rural area', being part of the Nagar Panchayat and hence, the Petroleum outlet should have been notified only as a 'Regular retail outlet' and not a 'Rural retail outlet'. Interestingly, it is to be noted that, there is no dispute or objection that no outlet is liable to be

started at the location. Whether it is a 'Regular retail outlet' or a 'Rural retail outlet', in what manner will it prejudice the rights and interests of the writ Petitioner was sought to be explained; to which, the learned counsel submits that the norms and process of selection would be different. We find it difficult to appreciate the said proposition. Once the outlet is set up and it commences operation, there will be regular sale from that outlet. If such an outlet is run by a person identified to run it as 'Rural outlet' or whether it is run by another person selected and identified as per different set of norms to run it as 'Regular outlet', it will not and cannot result in any adverse consequences to the nearby retailer, i.e. the writ Petitioner, with reference to the quantum of sales. In other words, insofar as the writ petitioner does not raise any proposition that no outlet is liable to be started at the location, the challenge raised with reference to the law declared by the Full Bench of the Madras High Court is having no footing at all. We hold that the said judgement does not come to the rescue of the writ Petitioner.

13. Another aspect to be noted is that the writ Petitioner, admittedly had not chosen to participate in the selection proceedings (whether it for Rural outlet or Regular outlet) pursuant to the Annexure P/1 advertisement dated 18.10.2014. Insofar as no relief is sought for, to be granted in favour of the writ Petitioner, it assumes the colour and characteristic of a 'Public Interest Litigation'. It could be noted that the writ petition is not styled as a 'Public Interest Litigation' and the requirements in this regard, as per the relevant rules are not satisfied. As such, it cannot be considered as a 'Public Interest Litigation'.

14. It is to be noted that the advertisement, as mentioned already, was issued way back in the year 2014. The writ Petitioner sought to challenge the said advertisement (Annexure P/1) by filing the writ petition only in the year 2019 i.e. after five years. It is stated that the Petitioner had to collect various factual particulars by resorting to the remedy under the Right to Information Act, 2005. However, the application in this regard, as borne out by the records produced, was submitted only on 11.09.2019. This clearly shows that the writ Petitioner was virtually sleeping over the issue, who woke up from slumber only after five years, choosing to challenge the course and proceedings for the alleged violation of his fundamental rights. The discretionary jurisdiction of this Court is never to extend relief to such a person who was taking rest on armchair, unmindful of his rights and liberties in this regard. We find support from the ruling rendered by the Hon'ble Supreme Court in the matter of **Rabindra Nath Bose and Others v. Union of India and Others** reported in **AIR 1970 SC 470**. For this reason also, the writ petition is not liable to be entertained.
15. With regard to the merit involved (as to the contents of Annexure P/3 guidelines of the year 2018 and the guidelines which were made applicable for selection in connection with the advertisement issued in the year 2014), it is worthwhile to have the relevant clauses extracted for immediate reference. The earlier guidelines which governed the field at the time of issuance of Annexure P/1 advertisement in the year 2014, read as follows :-

“IDENTIFICATION OF LOCATIONS

Location for setting up Retail Outlets are identified by the respective oil company based on commercial /

minimum volume considerations. Accordingly, Regular/ Rural outlets are set up by the oil companies as under:-

Regular ROs : Location on Highways (NH/SH) and Urban/Semi Urban areas

Rural Ros : Locations in Rural areas but not on Highways (NH/SH)”

The relevant norms as per Annexure P/3 guidelines issued in the year 2018, read as under :-

“IDENTIFICATION OF LOCATIONS

Location for setting up Retail Outlets are identified by the respective oil company based on commercial / minimum volume considerations. Accordingly, Regular and Rural outlets are set up by Oil Marketing Companies (OMC) as under:-

(i) Regular ROs : Location on Highways (National Highways/State Highways etc.) & Urban/Semi Urban areas (Within Municipal Limits of a town)

(ii) Rural ROs : Locations in Rural areas but not on Highways (NH/SH etc.) and outside Municipal Limits of a town.”

16. Even a casual reading of the relevant clauses extracted above, gives a crystal clear idea that the 'Rural retail outlets' were to be located in the rural areas, but not on Highways (National Highway / State Highway). This was modified to some extent only in the year 2018, as per Annexure P/3 guidelines, when it was stated that, in respect of 'Rural retail outlets', the locations have to be in rural areas, but not on Highways (National Highways/State Highways etc.) and were to be outside Municipal limits of a town. It clearly shows that the newly added words 'outside Municipal limits of a town' were not there, in the earlier guidelines, which virtually permitted the 'Rural retail outlets' to be located in Municipal limits as well; but for stipulating that it shall not be on the side of the Highways (National

Highway / State Highway), even if it was located in such areas.

17. The places where outlets are to be located are identified based on the 'Policy' formulated by the Petroleum Distributor Company, depending on the various requirements, which of course, includes the commercial viability as well. It is not for the Court to find out whether the Petroleum company was right in stipulating the norms or evolving the Policy as aforesaid, insofar as no statutory prohibition is brought to our notice. In the said circumstance, we are of the firm view that the writ Petitioner is not entitled to have any relief from this Court. The writ petition fails and it is dismissed.
18. In view of the dismissal of the writ petition, there is no scope for considering the merit in the writ appeal, either factual or legal. The writ appeal also stands dismissed, as a natural consequence.

Sd/-

(P.R. Ramachandra Menon)
Chief Justice

Sd/-

(Parth Prateem Sahu)
Judge