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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9255 OF 2021

M/s Pande Petroleum,
Through its proprietary
Deviprasad Chunnilal Pande
Age-57 years, Occu-Business,
Gat No. 119, Dautpur,
Ta. Parali, Dist-Beed

...PETITIONER

VERSUS

- 1] The State of Maharashtra
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai-32.
- 2] The District Collector/
District Magistrate,
Beed at Beed
- 3] Bharat Petroleum Corporation
Ltd., through its Divisional Chief
Manager, Bharat Bhavan, 4 & 6,
Karimbhoy Road, Bellerd Estate,
PO Box No.688 Mumbai 400001
Through Divisional Chief Manager,
Bharat Petroleum Corporation Ltd.,
Solapur, Tq. & Dist-Solapur
- 4] Siddharam S/o Amrut Koli,
Age-36 years, Occu-Business,
R/o-At Post Vidyanagar Parali Vai,
Tq. Parali Vai., Dist-Beed
- 5] Suraj S/o Shivajirao Nagargoje,
Age-28 years, Occu-Agri.,
R/o-Irrigation Colony, Parali Vai.,
Tq. Parali Vai., Dist-Beed

... RESPONDENTS

AND

WRIT PETITION NO.10241 OF 2021

Bharat Petroleum Corporation
Through Territory Manager,

(2)

Achint Jagdish Bhavsar
Age : 51 years, Occu. Service as
Territory Manager, BPCL,
Solapur Territory Office,
At Post Pakni, Tal. North Solapur,
Dist. Solapur 413 255

... PETITIONER

VERSUS

- 1] The State of Maharashtra
Through its Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai – 32.
 - 2] The District Collector /
District Magistrate,
Beed at Beed
 - 3] Siddharam S/o Amrut Koli,
Age-36 years, Occu-Business,
R/o-At Post Vidyanagar Parali Vai,
Tq. Parali Vai., Dist-Beed.
 - 4] Suraj S/o Shivajirao Nagargoje,
Age-28 years, Occu-Agri.,
R/o-Irrigation Colony, Parali Vai.,
Tq. Parai Vai., Dist-Beed
 - 5] M/s Pande Petroleum,
Through its proprietary
Deviprasad Chunnilal Pande
Age-57 years, Occu-Business,
Gat No. 119, Dautpur,
Ta. Parali, Dist-Beed
 - 6] Jt. Chief Controller of Explosives,
Mumbai,
Petroleum & Explosives Safety Organization (PESO)
A-1 and A-2 Wing, 5th Floor, C.G.O. Complex,
CBD Belapur, Navi Mumbai (Maharashtra),
Mumbai : 400 614
- ... RESPONDENTS

AND

WRIT PETITION NO.1137 OF 2021

M/s Pande Petroleum
VERSUS

... PETITIONER

The Union of India and others

... RESPONDENTS

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....

Mr. S.B. Deshpande, Advocate h/f. Mr. S.S. Deshpande, Advocate for petitioner in WP/1137/2021 and WP/9255/2021;

Mr. S.B. Yawalkar, A.G.P. for respondent no. 2, 6, 8 to 10 (Respondent no. 1 and 2 in WP no. 9255/2021 and WP/10241/2021);

Mr. A.P. Bhandari, Advocate for respondent no. 11 (Respondent no. 3 in WP/9255/2021 and petitioner in WP/10241/2021);

Mr. V.D. Salunke, Advocate along with Mr. A.D. Wange, Advocate h/f. Mr. M.V. Salunke, Advocate for respondent no. 12 to 14 & respondent no. 4 in WP/9255/2021 and WP/10241/2021))

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**CORAM : RAVINDRA V. GHUGE
AND
S. G. MEHARE, J.**

DATE : 4th December 2021

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.)

1. Rule in first two petitions. Rule made returnable forthwith and heard finally by the consent of the parties.

2. Since Writ Petition No.1137 of 2021 is said to be on a completely distinct ground, as per the petitioner, the same is being segregated for a hearing to be conducted subsequently.

3. We have considered the strenuous submissions of the learned Advocates on 16.11.2021, 26.11.2021, 2.12.2021, 3.12.2021 and today.

4. After hearing the marathon submissions of learned Advocates Shri Sanjeev Deshpande and Shri Bhandari on behalf of

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the petitioners and Shri V.D. Salunke and the learned A.G.P. on behalf of the respondents, we find that it would be necessary for us to deal with the purpose and effect of Rules 144, 150, 152 and 154 of the Petroleum Rules framed under the Petroleum Act, 1934, which read as under:-

“144. No-objection certificate.—

(1) Where the licensing authority is the Chief Controller or the Controller, as the case may be, an applicant for a new licence other than a license in Forms III, XI, XVII, XVIII or XIX shall apply to the District Authority with two copies of the site-plan showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection to the applicant receiving a license for the site proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application Form IX.

(2) Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly endorsed by him under his official seal.

(3) The Chief Controller or the Controller, as the case may be, may refer an application not accompanied by certificate granted under sub-rule (1) to the District Authority for his observations.

(4) If the District Authority, either on a reference being made to him or otherwise, intimates, to the Chief

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Controller or the Controller, as the case may be, that any license which has been applied for should not, in his opinion, be granted, such license shall not be issued without the sanction of the Central Government.

(5) The District Authority shall complete his inquiry for issuing NO OBJECTION CERTIFICATE (NOC) under sub-rule (1) and shall complete the action for issue or refusal of the NOC, as the case may be, as expeditiously as possible but not later than three months from the date of receipt of application by him.

(6) Where the location of storage of petroleum is within the notified area of a Port or Airport under the control of the state, or establishment or Indian Space Research Organisation or Department of Atomic Energy, NO OBJECTION CERTIFICATE from the District Authority referred to in sub-rules (1) to (5) shall not be required:

Provided that consent for establishment of petroleum storage from the competent authority of concerned notified area or head of the establishment, as the case may be, is obtained.

150. Cancellation of no objection certificate.—

(1) A no objection certificate granted under rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the District Authority or the State Government is satisfied that the licensee has ceased to have any right to use the site for storing petroleum:

(6)

Provided that before cancelling a no-objection certificate, the licensee shall be given a reasonable opportunity of being heard.

(2) A District Authority or a State Government cancelling a no-objection certificate shall record, in writing, the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned, copy of the order cancelling the no-objection certificate.

152. Suspension and cancellation of licence.—

(1) Every license granted under these rules shall—

(i) stand cancelled, if the licensee ceases to have any right to the site for storing petroleum;

(ii) stand cancelled, if the no-objection certificate is cancelled by the District Authority or the State Government in accordance with sub-rule (1) of rule 150;

(iii) be liable to be suspended or cancelled by an order of the licensing authority for any contravention of the Act or of any rule thereunder or of any condition contained in such license, or by order of the Central Government, if it is satisfied that there are sufficient grounds for doing so:

Provided that—

(7)

(a) before suspending or cancelling a license under this rule, the holder of the license shall be given an opportunity of being heard;

(b) the maximum period of suspension shall not exceed three months; and

(c) the suspension of a license shall not debar the holder of the license from applying for its renewal in accordance with the provisions of rule 148.

(2) Notwithstanding anything contained in sub-rule (1), an opportunity of being heard may not be given to the holder of a license before his license is suspended or cancelled in cases—

(a) where the license is suspended by a licensing authority as an interim measure for violation of any of the provisions of the Act or these rules, or of any conditions contained in such license and in his opinion such violation is likely to cause imminent danger to the public:

Provided that where a license is so suspended, the licensing authority shall give the holder of the license an opportunity of being heard before the order of suspension is confirmed; or

(b) where the license is suspended or cancelled by the Central Government, if that Government considers that in the public interest or in the interest of the security of the State, such opportunity should not be given.

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(3) A licensing authority or the Central Government suspending or cancelling a license under sub-rule (1), shall record its reason for so doing in writing and shall furnish to the licensee a copy of the order cancelling the license.

154. Appeals.—

(1) An appeal shall lie against any order refusing to grant, amend or renew a license cancelling or suspending a license to—

(i) the Central Government, where the order is passed by the Chief Controller;

(ii) the Chief Controller, where the order is passed by a Controller;

(iii) the immediate official superior to the District Authority, where the order is passed by the District Authority;

(iv) the immediate official superior to officer appointed under rule 33 in the case of vessels licensed for the carriage of petroleum in bulk.

(2) An appeal against any order of the District Authority refusing to grant or cancelling a no-objection certificate shall lie to the authority which is immediately superior to the said District Authority.

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(3) Every appeal shall be in writing and shall be accompanied by a copy of the order appealed against and shall be presented within sixty days of the order passed.

(4) The Appellate Authority shall dispose of the appeal within 60 days of receipt of the appeal ”

CANCELLATION OF NOC U/R 150

5. In the case before us, two complainants, who are respondent nos.4 and 5 in the first petition and 3 and 4 in the second petition, lodged a complaint before the District Collector, Beed dated 22.7.2020, through an Advocate objecting to the No Objection Certificate (NOC) dated 15.11.2010 granted to the petitioner in the first petition to operate a retail outlet petrol/diesel pump, bearing No.2010/RB/Desk/1/POL/NOC/7, by the office of the District Magistrate. A host of allegations have been set out in the said complaint which has been supported by affidavits by both the complainants. When the complaint was lodged on 22.7.2020, the Resident Deputy Collector has posted a remark as follows:-

“ RDC

प्रकरण स्वीकारण्यात येत आहे. सुनावणी 04/08/20 4 pm ला ठेवा. ”

6. Based on the above, the first notice was issued by the Additional District Collector, Beed dated 1.8.2020 carrying the

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subject “सुनावणी नोटीस”. The subject indicates that the complaint filed by the two complainants, has been registered as an appeal and the hearing on the said appeal was posted on 4.8.2020, at 4.00 p.m. in the office of the District Collector. The two complainants and the Divisional Chief Manager of the BPCL were directed to appear in person or through an Advocate and file a reply. This first notice of hearing dated 1.8.2020 was apparently not issued to the petitioner petrol pump operator, in the first petition. We are informed by the learned Counsel representing the BPCL, petitioner in the second petition, that subsequently the pump operator also appeared in the proceedings and has filed his detailed written statement through an Advocate. We are informed that after a passage of six months, a notice of hearing has been issued to the pump operator along with the representing three Advocates, by the District Collector on 11.2.2021.

7. Pursuant to the above, the petitioners (respondents in the said complaint) have fully participated in the proceedings before the District Collector, have produced documentary evidence and have canvassed written submissions through learned Advocates. After a full participation in the said proceedings, the District Collector has passed the impugned order dated 3.8.2021 by which the no objection certificate issued to the RO dealer has been cancelled. In the light of this development, the RO dealer, petitioner in the first petition, has put-forth prayer clause (C) and (D) as under:-

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“(C) By appropriate writ order or directions, the judgment and order dated 03.08.2021 passed by the respondent No. 2 District Collector Beed in proceeding No. 1/2020 filed by the respondent No.4 and 5 may kindly be quashed and set aside and consequently the proceeding No.1/2020 filed by the respondent No.4 and 5 may kindly be dismissed.

(D) Pending the hearing and final disposal of this Writ Petition, the effect, operation, execution and implementation of the judgment and order dated 03.08.2021 passed by the respondent No.2 District Collector Beed in proceeding No.1/2020 filed by the respondent No.4 and 5 may kindly be stayed.”

8. Pursuant to the order dated 03.08.2021, the Joint Chief Controller of Explosives cancelled the license granted. Therefore, the BPCL also chose to challenge the orders dated 03.08.2021 and 18.08.2021 vide the second petition in which prayer clause (B), (C) and (D) are set out as under:-

“(B) By appropriate writ order or directions, the judgment and order dated 03-08-2021 passed by the respondent No. 2 District Collector Beed in proceeding No. 1/2020 (Exhibit G) filed by the respondent No.3 and 4 may kindly be quashed and set aside and consequently the proceeding No.1/2020 filed by the respondent No.3 and 4 may kindly be dismissed.

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(C) By appropriate writ order or directions, the communication/order dated 18.08.2021 issued by the Jt. Chief Controller of Explosives, directing cancellation of License no. P/WC/MH/14/6358 (Exhibit H) may kindly be quashed and set aside.

(D) Pending the hearing and final disposal of this Writ Petition, the effect, operation, execution and implementation of the judgment and order dated 03.08.2021 passed by the respondent No.2 District Collector Beed in proceeding No.1/2020 filed by the respondent No.3 and 4 may kindly be stayed and the petitioner be permitted to operate Retail Outlet through the respondent no.5, as was done before the passing of impugned order.”

9. Considering the factual matrix as recorded above, it is apparent that neither the RO dealer, nor the BPCL raised any objection as regards the manner in which the Resident Deputy Collector registered the complaint and directed issuance of notice or the form and manner in which the notice was issued. All the parties have, as noted above, fully participated in the proceedings leading to the first impugned order dated 03.08.2021. However, in these petitions, the petitioners have canvassed that the notice was not in proper form and was issued haphazardly. It needs mention that Rule 150 nowhere indicates as to how a District Authority,

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which is the District Collector, should set in motion the proceedings for cancelling the NOC.

10. We have noticed that the manner in which the District Collector has issued notice, was not in accordance with the scheme under the Petroleum Act and especially the Rules framed thereunder. Rule 150 requires a reasonable opportunity of hearing to the licensee before cancellation of the NOC granted under Rule 144. Prior to doing so, in our view, the District Collector should form an opinion that a hearing needs to be granted to the licensee in the light of the material discovered or the material available before him.

11. We have come across several provisions under different enactments wherein the competent authority is granted the power to initiate proceedings in a particular manner or on discovery of material or material being placed before it or on the basis of a complaint filed by someone. However, Rule 150 does not prescribe as to how the District Authority or the State Government should draw satisfaction that the licensee has ceased to have any right to use a site for storing petroleum. It is also not mentioned as to whether the District Authority or the State Government can suo-motu initiate such proceedings or whether such proceedings can be set into motion on the basis of a complaint.

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12. We have no hesitation in concluding that a citizen of this country, being a consumer of petroleum products, may be aggrieved by the quality of the material that is dispensed in such a retail outlet and such a citizen can lodge a complaint. The Petroleum Rules, 2002 do not provide for any citizen to challenge the NOC granted to a licensee under any particular provision. However, we need to record at this stage itself that as there is an appeal remedy granting a right to appeal to the petitioner, we would be leaving this issue open for the appellate authority to consider as to whether the two complainants had the locus standi to lodge a complaint on the grounds on which the complaint is founded.

13. Having noted from the record produced before us by the learned AGP from the office of the District Collector, we are of the view that the Rules are silent as regards the setting in motion the procedure for hearing the licensee so as to satisfy the District Authority or the State Government, to hold that the licensee has ceased to have a right to use the site for storing the petroleum. The Rules as are available need to be interpreted in a manner so as to ensure that the power of the District Authority or the State Government is not rendered redundant.

14. With the language and the phraseology used in Rule 150, our interpretation is that the District Authority/District Collector, cannot abdicate his jurisdiction or powers either to a Resident Deputy Collector or play into the hands of any complainant,

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meaning thereby that the moment a complaint is filed by any citizen, that the District Collector should not perfunctory issue notice of hearing to the licensee, as a routine course or as a formality. There could be hundreds of complainants who may lodge complaints with the District Collector. Though we do not wish to create any embargo on such a right of a citizen to voice a complaint, we surely feel that the office of the District Collector should not, by way of a formality, issue notice to the licensee stating that there is a complaint filed against the licensee and, therefore, the licensee should answer that complaint, without forming a prima-facie opinion and without listing out the grounds and material available against him.

15. This exactly has been done in the case in hand. The two complainants walked into the office of the District Collector, lodged a complaint, of course, with supporting material and the Resident Deputy Collector ordered that the complaint is accepted and a cryptic notice of hearing is issued to the licensee. For the manner in which this has been done, we are of the view that the District Collector, Beed abdicated his powers and commenced the hearing in the matter, as if he was duty bound to entertain the complaint filed by the complainants without application of mind. In our view, he should have considered the contents of the complaint and he should have directed his office to gather material as regards the allegations made and if he was convinced that such material was

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likely to satisfy him that the licensee had lost a right to use the site for the purpose mentioned in Rule 150, he should have listed out the grounds and the material on which a show-cause notice of hearing was to be issued to the licensee. The licensee is not obliged to answer every complaint filed by any bystander, without the grounds and the material made available to him by the District Collector.

16. In the instant case, the complainants are not those who have purchased any commodity from the RO dealership or have been disappointed with the quality of the products. The complainants before us are such who seem to have dug into the entire record of the RO dealership dating back to 2010 when the NOC was granted on 18.11.2010 and based on the same, they have sought the cancellation of the NOC under Rule 150. It was not a case of the District Collector himself basing his conclusion on the material available in or discovered by his office that the licensee had ceased to have a right to use the site as is provided.

CONCLUSION

17. We, therefore, conclude, to ensure and eliminate any possibility of the misuse of Rule 150, that the District Collector, prior to issuing a show cause notice to the licensee for cancellation of the NOC, shall list out the grounds and the material available

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before him in the show cause notice to the licensee and then direct the licensee to explain, as to why the NOC should not be cancelled.

CANCELLATION OF LICENSE U/R 152

18. The litigating parties have then canvassed at length on Rule 152 as regards the opportunity of hearing prior to cancellation of the license. This pertains to cancellation of the license which is granted by the Chief Controller of Explosives. Sub-Rule (1) of Rule 152 indicates that the license granted shall stand cancelled (i) if the licensee ceases to have any right to use the site for storing petroleum. It is further provided that (ii) such license would stand cancelled if the NOC is cancelled by the District Authority or the State Government, which is precisely an act to be performed by the Authority under Rule 150. It is then provided that (iii) such license is liable to be suspended or cancelled for any contravention of the Act or the Rules thereunder, as reproduced herein-above.

19. Shri Salunke has strenuously contended that no opportunity of hearing is required if an order is passed either under Rule 150 or if an independent order is passed under Rule 152(1)(i). He submits that if the NOC is cancelled by the Authority under Rule 150, there is no necessity to cause a further hearing as to whether the license should be cancelled or not. It should be mechanically cancelled.

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20. The learned Advocate for the BPCL contends that the right of hearing has not been expressly excluded prior to an order being passed by the Authority under Rule 150, before cancelling a license. The proviso is positioned below the three sub-clauses under Rule 152(1) and, therefore, unless expressly excluded, the right of hearing cannot be taken away.

21. We find from Rule 152(2), reproduced above, that the draftsmen of the Petroleum Rules, 2002 have specifically created a category of cases in which an opportunity of hearing prior to cancellation of the license is taken away. Such opportunity of hearing is refused under sub-Rule (2) in cases (a) and (b), which are reproduced above. A rider is applied on the powers of the Authority under sub-Rule (2), to avoid misuse of authority, under Rule 152(3), wherein the licensing authority or the Central Government has to record its reasons for doing so in writing and furnish a copy of the order, cancelling the license, to the licensee. As such, we find that the opening words of Rule 152(2) “notwithstanding anything contained in sub-Rule(1)” create a right in the licensing authority to refuse an opportunity of hearing to the licensee before suspending or cancelling his license, which excludes the entire sub-Rule(1) from its ambit. It further clarifies that only two category of cases, viz. (a) and (b), shall be those in which the affected licensee is not required to be heard.

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22. The law on 'express exclusion' is to be understood in strict sense of the terms and cannot bring within its fold 'implied exclusion'. By implied exclusion, no right of opportunity of hearing which is enshrined under the principles of natural justice, could be taken away by an implied meaning and/or by a deeming provision. A right of hearing is an integral part of the principles of natural justice which are not in codified form and it cannot be taken away unless such a right is expressly barred or prohibited. Rule 152(2) creates an express bar on a right of hearing only in two types of cases which do not include those cases falling under sub-Rule (1) of Rule 152, inasmuch as, the word 'notwithstanding' with which sub-Rule (2) begins, would exclude the cases under sub-Rule (1).

23. In **State of Rajasthan & ors. vs. Anand Prakash Solanki, (2003) 7 SCC 403**, the Honourable Apex Court concluded that the concept of appointment by transfer is not unknown to service jurisprudence. A power to appoint includes a power to revoke an appointment and also includes a power to make an appointment by transfer. Transfer is a normal incidence of service and can be exercised by the employer, unless expressly barred. In **Dayaram vs. Sudhir Batham & ors., (2012) 1 SCC 333**, the Honourable Apex Court held that the jurisdiction of a civil court will have to be expressly excluded.

24. In **M/s. Dharampal Satyapal Ltd. vs. Deputy Commissioner of Central Excise & ors., (2015) 8 SCC 519**, the Honourable Apex Court dealt with the jurisprudential foundation of natural justice and the necessity of incorporating it in administrative procedures to ensure fairness and good governance and, therefore, prevent miscarriage of justice. It is also held by the Honourable Supreme Court that principles of natural justice are held to be an integral part of Article 14 of the Constitution of India. It would be apposite to reproduce paragraph 24 onwards from M/s. Dharampal Satyapal Ltd. (supra), as under :-

“24. The principles have sound jurisprudential basis. Since the function of the judicial and quasi-judicial authorities is to secure justice with fairness, these principles provide great humanising factor intended to invest law with fairness to secure justice and to prevent miscarriage of justice. The principles are extended even to those who have to take administrative decision and who are not necessarily discharging judicial or quasi-judicial functions. They are a kind of code of fair administrative procedure. In this context, procedure is not a matter of secondary importance as it is only by procedural fairness shown in the decision making that decision becomes acceptable. In its proper sense, thus, natural justice would mean the natural sense of what is right and wrong.

26. Allan, on the other hand, justifies the procedural fairness by following the aforesaid principles of

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natural justice as rooted in rule of law leading to good governance. He supports Galligan in this respect and goes to the extent by saying that it is same as ensuring dignity of individuals, in respect of whom or against whom the decision is taken, in the following words:

"The instrumental value of procedures should not be underestimated; the accurate application of authoritative standards is, as Galligan clearly explains, an important aspect of treating someone with respect. But procedures also have intrinsic value in acknowledging a person's right to understand his treatment, and thereby to determine his response as a conscientious citizen, willing to make reasonable sacrifices for the public good. If obedience to law ideally entails a recognition of its morally obligatory character, there must be suitable opportunities to test its moral credentials. Procedures may also be thought to have intrinsic value in so far as they constitute a fair balance between the demands of accuracy and other social needs: where the moral harm entailed by erroneous decisions is reasonably assessed and fairly distributed, procedures express society's commitment to equal concern and respect for all."

27. It, thus, cannot be denied that principles of natural justice are grounded in procedural fairness which ensures taking of correct decision and procedural fairness is fundamentally an instrumental good, in the sense that procedure should be designed to ensure accurate or appropriate

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outcomes. In fact, procedural fairness is valuable in both instrumental and non-instrumental terms.

28. It is on the aforesaid jurisprudential premise that the fundamental principles of natural justice, including audi alteram partem, have developed. It is for this reason that the courts have consistently insisted that such procedural fairness has to be adhered to before a decision is made and infraction thereof has led to the quashing of decisions taken. In many statutes, provisions are made ensuring that a notice is given to a person against whom an order is likely to be passed before a decision is made, but there may be instances where though an authority is vested with the powers to pass such orders, which affect the liberty or property of an individual but the statute may not contain a provision for prior hearing. But what is important to be noted is that the applicability of principles of natural justice is not dependent upon any statutory provision. The principle has to be mandatorily applied irrespective of the fact as to whether there is any such statutory provision or not.

29. De Smith captures the essence thus-

"Where a statute authorises interference with properties or other rights and is silent on the question of hearing, the courts would apply rule of universal application and founded on plainest principles of natural justice".

30. Wade also emphasizes that principles of natural justice operate as implied mandatory requirements, non-observance of which invalidates the exercise of power.

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31. In Cooper v. Sandworth Board of Works (1863) 14 GB (NS) the Court laid down that:

'...although there is no positive word in the statute requiring that the party shall be heard, yet justice of common law would supply the omission of Legislature".

33. In his separate opinion, concurring on this fundamental issue, Justice K. Ramaswamy echoed the aforesaid sentiments in the following words:

"61. It is now settled law that the proceedings must be just, fair and reasonable and negation thereof offends Articles 14 and 21. It is well settled law that principles of natural justice are integral part of [Article 14](#). No decision prejudicial to a party should be taken without affording an opportunity or supplying the material which is the basis for the decision. The enquiry report constitutes fresh material which has great persuasive force or effect on the mind of the disciplinary authority. The supply of the report along with the final order is like a post mortem certificate with putrefying odour. The failure to supply copy thereof to the delinquent would be unfair procedure offending not only Articles 14, 21 and 311(2) of the Constitution, but also, the principles of natural justice."

25. In the case of **Chairman, Board of Mining Examination and Anr. v. Ramjee, 1977 (2) SCC 256**, the Honourable Apex Court observed as under:-

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"1..If the jurisprudence of remedies were understood and applied from the perspective of social efficaciousness, the problem raised in this appeal would not have ended the erroneous way it did in the High Court. Judges must never forget that every law has a social purpose and engineering process without appreciating which justice to the law cannot be done. Here, the socio-legal situation we are faced with is a colliery, an explosive, an accident, luckily not lethal, caused by violation of a Regulation and consequential cancellation of the certificate of the delinquent shot-firer, eventually quashed by the High Court, for processual solecisms, by a writ of certiorari.

13....Natural justice is no unruly horse, no lurking land mine, nor a judicial cure all. If fairness is shown by the decision maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt--that is the conscience of the matter....

14...We cannot look at law in the abstract or natural justice as a mere artefact. Nor can we fit into a rigid mould the concept of reasonable opportunity."

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26. In **Poonam v. State of U.P. and Ors., (2016) 2 SCC 779**, the Honourable Apex Court emphasized the need to embed principles of natural justice even when not embodied in a statute or in the rules framed thereunder. It was noted that as the administrative authority passed orders affecting the rights of the individuals, principles of natural justice need to be followed. It was thus held in paragraph 20 as under :-

"20. In this context the authority in [Sadananda Halo and Ors. v. Momtaz Ali Sheikh and Ors.](#) (2008) 4 SCC 619 is quite pertinent. The Division Bench referred to the decision in [All India SC and ST Employees' Assn. v. A. Arthur Jeen](#) (2001) 6 SCC 380 wherein this Court had addressed the necessity in joining the necessary candidates as parties. The Court referred to the principle of natural justice as enunciated in [Canara Bank v. Debasis Das](#) (2003) 4 SCC 557. We may profitably reproduce the same:

"63...Natural justice has been variously defined. It is another name for common sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form."

(26)

27. Considering the above, we are first dealing with the order passed by the licensing authority dated 18.08.2021. The said order is quite brief and is passed by the Controller of Explosives for the Joint Chief Controller of Explosives, Mumbai. Same is passed under Rule 152. There is no dispute as regards the licensing authority being the Chief Controller, in the light of item 5 of the First Schedule to the 2002 Rules. In the case in hand, the Controller of Explosives has passed an order for the Joint Chief Controller of Explosives, who is under the Central Government, holding for the Chief Controller. We find from Rule 154 as well as item 5 of the First Schedule, that the Chief Controller is the Authority granting the license. Under column 4, below the First Schedule in item 5, the licensing authority – the Chief Controller has authorized the Controller, to issue the license. It is in this capacity, as it appears from the impugned order, that the Controller of Explosives has passed an order, but, for and on behalf of Joint Chief Controller of Explosives, Mumbai. The parties are not aware as to whether the Chief Controller has delegated his authority for cancellation of license, to the Joint Chief Controller and/or to the Controller of Explosives. The maxim '*delegatus non potest delegare*' would permit the delegation of the authority only once. However, since this issue is not before us today, and since the impugned order is being set aside for a different reason, we are keeping this open.

(27)

28. There is no dispute that Rule 154 permits filing of an appeal against orders passed by particular authorities, before the enlisted higher authorities. In the case in hand, the order of cancellation of NOC passed by the District Authority is appellable before the immediate superior official, which is the Divisional Commissioner, Aurangabad under Rule 154(1)(iii). Rule 154 permits the filing of an appeal to the Divisional Commissioner and Rule 154(3) grants a period of sixty days from the date of the passing of the order, to prefer such an appeal. Rule 154(4) provides that the appellate authority should dispose off the appeal within sixty days from the date of its receipt.

29. It is, thus, obvious that the impugned order dated 18.08.2021 has been passed on the fifteenth day after the District Magistrate, Beed passed the order of cancellation of the NOC on 03.08.2021 under Rule 150. So also, no opportunity of hearing was granted to the licensee, as is required under Rule 152 (1). The impugned order reads thus:-

“ The NOC withdrawn by District Magistrate Beed vide letter no.2021/grihvibhag/petrol aadesh dautpur-01 dt. 3/8/2021 License stand cancelled under Rule 152(1) (ii) of PR 2002. You are advised to surrender the original license. Please inform this office if any representation/appeal submitted/applied to the appropriate authority for revocation of cancellation of NOC.”

(28)

30. Considering the above, it is obvious that the above impugned order dated 18.08.2021 was passed in undue haste, without waiting for the expiration of the appeal period and without granting an opportunity of hearing. As such, the same is quashed and set aside and Writ Petition No.10241 of 2021 is partly allowed. RULE is made partly absolute.

31. Insofar as the order passed by the District Collector dated 03.08.2021 under Rule 150 is concerned, we have interpreted the Rule as regards the procedure that the District Collector has to follow. However, we are not interfering in the said order in these two petitions for reasons more than one. Firstly, that the aggrieved parties have fully participated in the hearing, have contested the matter by engaging learned Advocates and have extensively dealt with the grievance voiced against them. The grounds raised are as regards whether the complaint would fall within the ambit of the powers of the District Collector under Rule 150, which can be certainly gone into by the appellate authority under Rule 154. Secondly, that merely because the manner in which the notice, as expected by us, has not been issued, would not be the ground for interfering in the impugned order since the District Collector appears to be oblivious to such interpretation of Rule 150 and may not have any precedence before him so as to follow such procedure.

32. The learned Advocate Shri Deshpande representing the RO dealer and Shri Bhandari representing the BPCL, in their two petitions have strenuously contended that this Court is not barred from entertaining the said issue. Though an alternate remedy is available, the jurisdiction of this Court is not ousted.

33. We are not discarding the submissions of the learned Advocates merely on account of there being a statutory remedy available. The Honourable Apex Court held in **Virudhunagar Hindu Nadargal Dharma Paribalana Sabai Vs. Tuticorin Education Society, 2019 SCC Online SC 1292** (Civil Appeal No.7764/2019, decided on 30.10.2019) and in **Genpact India Private Limited Vs. Deputy Commissioner of Income Tax and others, (2019) 419 ITR 440** that if a statutory remedy is available, the litigant ought to avail such remedy rather than rushing to the High Court. Moreover, we find that Rule 152 is a specific provision under the Rules enabling the aggrieved party to file an appeal within sixty days. The appellate authority can surely consider the grounds raised by these petitioners. They have not challenged the vires or legality of any provision or Rule which could be entertained only by the Writ Court exercising its extra-ordinary jurisdiction under Article 226 of the Constitution. All the grounds raised by these petitioners, to the extent of the order dated 3.8.2021, can be dealt with by the appellate authority.

(30)

34. In view of the above, as we find that a statutory remedy is specifically provided to deal with such matters and the said remedy cannot be by-passed by observing that it is an alternative remedy, we decline to entertain these two petitions to the extent of the order dated 3.8.2021. The first Petition No.9255 of 2021 is, therefore, disposed off. The second Petition No.10241 of 2021 is partly allowed.

35. Considering the above, the RO dealer and/or the petroleum company shall prefer their appeal on or before 20.12.2021. The Divisional Commissioner, Aurangabad shall convene a hearing at 3.00 p.m. on 20.12.2021. The original complainants before us, as well as these two petitioners, would remain present for the hearing. Copies of the appeals would be tendered to the original complainants in the said hearing itself and thereafter, the parties shall abide by the dates of hearing as may be fixed by the Divisional Commissioner.

36. We expect that the hearing in the proceedings would be concluded on or before 10.2.2022 and the Divisional Commissioner would proceed to deliver his order on 28.2.2022, at 3.00 p.m. All the litigating parties shall remain present on the date of pronouncement of order. Copies of the order shall be kept ready so as to be supplied to the parties between 3.00 p.m. to 5.00 p.m. on the same day by following the due procedure as is normally followed while issuing the copies of such orders.

(31)

37. Since Rule 154 provides for sixty days limitation period and as these parties have approached us by filing these petitions, we excuse the time spent by these petitioners before us and as such, the issue of delay, before the Divisional Commissioner, would not be a subject-matter of adjudication. All contentions of the petitioners and the respondents raised before us with regard to the order dated 3.8.2021, are kept open.

38. Rule is discharged in Writ Petition No.9255 of 2021.

39. Since we have segregated Writ Petition No.1137 of 2021 in the light of the statement made by the petitioner that it pertains to a distinct cause of action, the said proceedings would not come in way of the Divisional Commissioner in dealing with the appeal. List Writ Petition No.1137 of 2021 on 4.1.2022.

40. Since this order has been dictated in open Court and is likely to take time to be formalized and uploaded, parties shall act accordingly.

41. No order as to costs.

(S. G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)

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