

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

WRIT PETITION NO.14405 OF 2017

Prakash Singa Gavit,
Age : 37 years, Occupation : Agri,
R/o Bhamaramal, Tal. Navapur,
District : Nandurbar.

...PETITIONER

-VERSUS-

1. The Union of India.
Through the Secretary,
Petroleum Department,
New Delhi.
2. The Indian Oil Corporation Ltd.,
A Company owned by Government of India
Duly registered under the Companies Act,
1956, having its registered office at
and Regional Office at Jyotinagar,
Aurangabad (M.S.).
3. The Hindustan Petroleum Corporation Ltd.,
A company owned by Government of India
duly registered under the Companies Act,
1956, having its Regional Office at
CIDCO, Aurangabad (MS).
4. The Bharat Petroleum Corporation Ltd.,
A company owned by Government of India
duly registered under the Companies Act,
1956, having its Regional Office at
MIDC, Jalgaon (MS).
5. The State of Maharashtra.
Through the Secretary,
Tribal Development Department,
Mantralaya, Mumbai-32.

6. National Commission for Scheduled
Tribe, 6th Floor, B Wing,
Loknayak Bhavan, Khan Market,
New Delhi-110003.
Through its Assistant Director.

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Shri M.S. Kulkarni, Advocate h/f Shri R.R. Sancheti, Advocate
for the petitioner.

Shri A.G. Talhar, ASGI, for respondent No.1.

Shri A.P. Bhandari, Advocate for respondent No.2.

Ms.Anjali Dube (Bajpai), Advocate for respondent No.3.

Shri S.S.Kulkarni, Advocate for respondent No.4.

Shri S.G. Sangle, AGP for respondent No.5.

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**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

**Reserved on :- 21st August, 2021
Pronounced on :- 03rd September, 2021**

JUDGMENT (*Per Ravindra V. Ghuge, J.*):-

1. By this petition, the petitioner has put forth prayer
clauses AA, B, C and D as under :-

“AA. *Issue writ of mandamus or any other appropriate writ order or direction and direct the respondents to implement the recommendations of the National Commission for Scheduled Tribes as per the review meeting Annexure P-1 so far as petro product dealership in tribal area of Maharashtra is concerned.*

B. *Issue writ of certiorari or appropriate writ and call for the record and proceedings of the advertisement dated 31.08.2017 published by*

respondent No.2 to 4 as also the guidelines of June 2017, for selection of LPG Distributorship and on its perusal or otherwise, quash and set aside the entire selection procedure, reservation/ earmarking of the aforementioned location for other category except S.T. be quashed and set aside.

- C. Issue writ of certiorari or appropriate writ and call for the entire material including the Unified Guidelines for selection of LPG Distributorship framed in June, 2017 by respondent No.2 to 4 and quash and set aside the above clauses of the said guidelines.*
- D. Issue writ of mandamus directing the respondents to re-advertise the above locations in the villages and locations notified under PESA Act, to the Scheduled Tribe candidate only.”*

2. On 13.12.2017, this Court (Coram : P.B. Varale and S.K.Kotwal, JJ) had passed the following order:-

- “1. Heard learned counsel for the petitioners. Challenge in these petitions is to an advertisement issued in Daily newspaper Lokmat/Times of India dated 1.9.2017/ 31.8.2017 for appointment of the L.P.G. Distributors. The learned counsel for the petitioners submitted that, the similarly situated persons approached the Division Bench of this Court at Nagpur Bench challenging the very advertisement i.e. the advertisement dated 1.9.2017 by way of Writ Petition No.6844/2017 and other writ petitions. The learned counsel invited our attention to the order passed by the Division Bench at Nagpur Bench on 6.11.2017. The same is placed on record at Exhibit C.*
- 2. Mr. Bhandari, learned counsel waives service for respondent No.1 Indian Oil Corporation Ltd. and prays for two weeks time to take instructions and file reply. Two weeks time granted to Mr.*

Bhandari, learned counsel to file reply. Notice to other respondent/s made returnable on 10th January 2018.

3. *In view of the order passed by the Division Bench at Nagpur Bench, the respondents are permitted to complete the process of selection of L.P.G. Dealer, however, no orders be issued to the selected person/s.”*

3. There is no dispute that Writ Petition No.6844/2017 and other connected petitions were dismissed by this Court at Nagpur.

4. On 27.06.2018, this Court (Coram : R.M.Borde and A.M.Dhavale, JJ) had passed the following order :-

“1 *The issue, that has been raised in the instant petition, is:*

As to whether Respondents No.2, 3 and 4 – Petroleum Corporations are bound to provide reservation in the matter of appointing LPG distributors in the difficult (durgam) areas, which are brought under the applicability of provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (for short, 'the PESA Act').

- 2 *The petitioner contends that the advertised location Bhamarmal, Tq. Navapur, is brought under the coverage of the PESA Act and similarly most of the places in Sakri, Shirpur, talukas of Dhule district and the areas forming part of Nandurbar district, Taloda, Dhadgaon, Akkalkua, Akruni, Navapur and Shahada talukas, are populated with Scheduled Tribe community population. It is contended that the culture, traditions as well as local language of Adivasis is distinct. It is the contention of the petitioner that since the provisions of PESA Act are made applicable to the Scheduled areas, it*

is incumbent upon the Respondent-Corporations to provide reservation in favour of Scheduled Tribe population on par with the provision of reservation made in respect of various categories in North -Eastern States of Arunachal Pradesh, Meghalaya, Nagaland and Mizoram.

3 *The petitioner has invited our attention to Section 4(m)(iv) of the PESA Act, which provides that while endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self -government, a State Legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with “the power to manage village markets by whatever name called ”.*

4 *We are doubtful as to whether the issue relating to appointment of distributors in difficult (durgam) areas covered by the PESA Act, would be regulated by the above mentioned provision. The fact, however, remains that the culture, traditions and language of the Adivasi population is distinct.*

5 *The Unified Guidelines for Selection of LPG Distributors, framed by the Petroleum Corporations, provide for reservation in terms of Clause 4 and the Policy of Reservation, as provided in Clause 4, applies to the States except Arunachal Pradesh, Meghalaya, Nagaland and Mizoram. The reservation provided for Scheduled Castes and Scheduled Tribes in the matter of appointment of distributors is to the extent of 22.5%, whereas, reservation provided in respect of various categories of North-Eastern States of Arunachal Pradesh, Meghalaya, Nagaland and Mizoram, is ranging between 49% to 63% for Scheduled Tribe category and 21% to 27% for Scheduled Tribes (Women) category. The reservation*

provided for Scheduled Tribe category in the North-Eastern State is ranging between 70% to 90%.

6 *There can be no disagreement that Nandurbar district and most of the parts of Dhule district are inhabited by mostly tribal population. The contention of the petitioners is that the areas of the State, which are brought under the provisions of PESA Act, are mostly populated by the tribal population, shall have to be extended the treatment in the matter of reservation for appointment of LPG Distributors on par with the North-Eastern States.*

7 *The argument, prima facie, appears to be in consonance with the Directive Principle of State Policy reflected in Article 46 of the Constitution of India. It is provided in Article 46 that the State shall promote, with special care, the education and economic interests of the weaker sections of the people, and, in particular of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitations. The provisions of Article 244 provides that the provisions of the Fifth Schedule shall have applicability to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram. The categories of Scheduled Tribes have been given a special treatment under the Constitution of India.*

8 *So far as the matter of appointment of LPG distributors for sale of petroleum products in the tribal areas is concerned, as has been recorded above, the culture, traditions and language of the tribal population is quite unique and it would be appropriate that an individual from the tribal population, who is part of the said culture, tradition and knows the*

language, shall be extended business opportunity.

9 *The aforesaid issue, raised in the instant petition, deserves to be considered. The parties to the petition may address on the issue raised, as aforesaid, and if deemed appropriate, may file their replies.*

10 *Stand over to 29th August, 2018.”*

5. After a considerable hearing on 04.12.2018 on the motion of the Petroleum Companies that the injunction granted by this Court on 13.12.2017 needs to be vacated, that this Court (Coram : Prasanna B. Varale and Mangesh S. Patil, JJ) passed a further order as under :-

“Heard Mr Mantri, learned Counsel appearing with Mr Sancheti, learned Counsel for the petitioner, Mr Deshpande, learned Asstt. Solicitor General of India for respondent No.1, Mr Bhandari, learned Counsel for respondent No.2, Smt. Bajpai, learned Counsel for respondent No.3, Mr Kulkarni, learned Counsel for respondent No.4 and Mr Dande, learned Asstt. Govt. Pleader for respondent No.5.

2. *It may not be necessary for us at this stage to refer to the other details, suffice it to say that the petition challenges the advertisement dated 31st August, 2017, published for selection of the LPG distributorship.*

3. *On 13th December, 2017, it was submitted before this Court that the interim order is passed on 6th November, 2017 by the Division Bench at Nagpur Bench. Time was sought for filing reply on behalf of respondent No.2 - Indian Oil Corporation Ltd. In view of these facts, respondents were permitted to complete necessary process of selection of LPG dealers with rider that no orders be issued to the selected person/s.*

4. *The Division Bench of this Court, on 27th June, 2018, referred to the issue raised in the petition and then there are certain observations of this Court referring to the object and scope of the petition. It would be useful for our purposes to refer to the important observations in the order dated 27th June, 2018 and the same read at para No.8 thus:*
“8 So far as the matter of appointment of LPG distributors for sale of petroleum products in the tribal areas is concerned, as has been recorded above, the culture, traditions and language of the tribal population is quite unique and it would be appropriate that an individual from the tribal population, who is part of the said culture, tradition and knows the language, shall be extended business opportunity.”
5. *Learned Counsel appearing on behalf of respective petroleum companies, namely, Indian Oil Corporation Ltd., Hindustan Petroleum Corporation Ltd. and Bharat Petroleum Corporation Ltd. submitted before us that though the advertisement was issued for the locations at Sr. No.85, 86, 90, 91 and from 190 to 199 and out of these places, for some of the places the advertisement was issued for selecting candidates from open category in the selection process, the candidates selected are the persons belonging to scheduled tribes category. As such, this selection takes care of the observations of this Court made in the order dated 27th June, 2018 at para 8.*
6. *Learned Counsel appearing on behalf of the respective petroleum companies submit that in view of the interim order passed by this Court, though the persons are selected, the oil companies are unable to proceed further in the matter in the selection process. The joint request is made by the learned Counsel for the respective petroleum companies to permit them to proceed further in the matter wherein the selected candidates are belonging to scheduled tribes category and that an opportunity would be available to these persons to start their business and also cater the needs of the local area in respect of petroleum products.*
7. *Our attention is invited to the respective affidavits.*

First Mr Kulkarni, learned Counsel for respondent No.4 - Bharat Petroleum Corporation Ltd., Jalgaon invited our attention to the affidavit-in-reply filed on behalf of the company through Mr Amit Narula, Territory Manager (LPG), Bharat Petroleum Corporation Ltd., Jalgaon. Para 11 of the affidavit-in-reply refers to the locations. It is submitted before us that that for Sr. No.85, location Jangathi, though the advertisement was published for selecting candidates from open category, one Mr Dhansing Tembrya Valvi s/o Tembrya Damja Valvi is the selected candidate, who belongs to scheduled tribes category. Similarly, for location Malgaon at Sr. No.90, even though the selection was for open category, one Miss. Noori Amit Padvi w/o Shri Amit Vasant Padvi is the selected candidate from open women category, who is belonging to scheduled tribes category. Similarly, for location Moramba at Sr. No.191, though it was for open category, the selected candidate is a lady, namely, Smt. Gita Sukhdeo Gavit, w/o Shri Sukhdeo Jethya Gavit, who is belonging to scheduled tribes category.

8. *It is then submitted by Mrs Bajpai, learned Counsel appearing on behalf of respondent No.3 - Hindustan Petroleum Corporation Ltd., Aurangabad that insofar as location Katri at Sr. No.87 is concerned, the selected candidate is one Mukeshkumar Kella Valvi, who is also belonging to scheduled tribes category. Then for location Molgi at Sr. No.190, the selected candidate is Mr Gangadharsingh Natvarsingh Padvi belonging to scheduled tribes category as well as for location Astamba at Sr.No.192, the selected candidate is Smt. Mamata Kiran Valvi, who is also belonging to scheduled tribes category.*

9. *Mr Bhandari, learned Counsel for respondent No.2 – Indian Oil Corporation Ltd., Aurangabad submitted before us that insofar as location Mokas at Sr.No.86 is concerned, though it was for open category, the selected candidate is Miss Jyoti Jaywant Valve, who belongs to scheduled tribes category and for location Pimpale at Sr. No.198, the selected candidate is one Mr Pravin Vijaysingh*

Gavit, who also belongs to scheduled tribes category.

10. *Considering all aforesaid aspects, we are of the opinion that there shall not be any impediment for permitting respective petroleum companies to proceed further in the matter of these selected scheduled tribes candidates and we make it clear that insofar as these candidates referred to by us above, the interim order dated 13th December, 2017 would not come in way of petroleum companies to proceed further in the matter, subject to further scrutiny by these companies as per the Regulations of the companies. We further make it clear that the selection of these persons, the permission granted to the respective oil companies to proceed further and commission the distributorship in respect of location and the selected persons is subject to final outcome of the petition, keeping the rights and contentions of the respective parties open for further hearing in the petition.*

Post the petition for further consideration after Christmas vacation.”

6. On 11.12.2018 and 14.12.2018, this Court further relaxed the injunction and permitted the appointment of LPG distributorship to a few more locations. By yet another order dated 14.10.2019, this Court further relaxed the injunction and allowed the grant of LPG distributorship to another selected candidate in the “Durgam Kshetra” (inaccessible area).

7. The learned advocate for the petitioner Shri Kulkarni has addressed us on the maintainability of this petition in the light of the objections raised by the respondents, as well as on the merits. He submits that the present petitioner belongs to the

Scheduled Tribe and is a resident of Bhamarmal, Taluka Navapur, District Nandurbar, which is covered by the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996 (for short, “the PESA Act”). There are several villages which have been covered by the presidential order dated 02.12.1985 issued under Article 244 and the fifth schedule of the Constitution of India. It is conceded that insofar as the impugned advertisement dated 31.08.2017 is concerned, the petitioner is not an applicant and has not preferred to apply pursuant to the advertisement for seeking LPG distributorship. It is also conceded that this petition is not registered as a PIL. It is also stated that the petitioner is not seeking any relief for himself in this petition, though he may be benefited if this petition is entertained by granting hundred percent reservation to the Scheduled Tribes in LPG distributorship for locations in all such villages which are notified as scheduled villages as per the presidential order dated 02.12.1985.

8. The learned advocates for the Petroleum Companies submit that on the one hand, this petition is filed purely for an academic purpose as the petitioner is not seeking any relief for himself. He has put forth a spacious plea that if the advertisement

is struck down and if there is 100% reservation for Scheduled Tribes in locations chosen by the Petroleum Companies for LPG distributorship in the scheduled villages, he may also apply. On the other hand, the petitioner who could have applied pursuant to the advertisement with relation to any location falling in the scheduled villages and reserved for scheduled tribes, himself did not choose to make such an application and he has kept himself away from the allotment process. In this backdrop, this petition need not be entertained.

9. The learned advocates for the Petroleum Companies further submit that several litigants had challenged the same advertisement in Writ Petition Nos.14406/2017 to 14410/2017 and 448/2018. By order dated 25.06.2018, all these Writ Petitions have been dismissed by this Court at Aurangabad. This petition survived the order of dismissal as it was contended that all the scheduled areas in the State of Maharashtra, comprising of the Scheduled Tribes, could be treated at par with Arunachal Pradesh, Meghalaya, Nagaland and Mizoram where there is 100% reservation for Scheduled Tribes under the impugned advertisement. As such, this petition was segregated. Nevertheless, as this petition is not a PIL and there is no personal

interest of the petitioner or no legal injury is personally caused to him, this petition cannot be entertained as it virtually amounts to entertaining a petition filed by a stranger.

10. In Writ Petition No.448/2018 filed by ***Vishal Prabhakar Deshmukh vs. Union of India and others*** and connected Writ Petition Nos.14406 to 14410/2017, this Court, while dismissing the petitions filed for challenging the same advertisement on the ground of business exigencies, held in paragraphs 9, 10 and 11 as under :-

“9 *From reading relevant clause in the agreement, it is clear that the Corporation has reserved its right, without any reference or consent of the distributor, to appoint one or more additional distributors in the same territory. It is further contended that the Petroleum Corporations are covering rural areas and remote villages in the matter of supplying cooking gas and reaching out to the rural markets. Apart from fulfilling the objective to supply cooking gas cylinders to the rural masses at their door steps, same shall be considered to be eco-friendly step. Shifting of the pattern of cooking system from biogas, wood and kerosene to alternate system i.e. user of cooking gas also serves the purpose of maintaining greener areas in villages. It is contended by the respondents that the whole purpose of advertisement in gramian and durgam (rural and remote/difficult) areas is to reach out to the rural areas of the Maharashtra and to supply LPG to poorest of poor persons. The Unified Guidelines, on which reliance is placed, does not confer any right on the petitioners to claim distributorship for the villages within periphery of 15 Kms area so as to preclude the Oil Companies from appointing one or more LPG*

distributors. There are certain areas where distributorship is not reached and the areas are described as Hilly region, forest area, tribal inhabited area, sparsely populated, disturbed areas, islands, Left Wing Extremism (LWE) affected area, etc. Since the essential commodity is being reached at the doorsteps of needy persons in remote areas and considering larger public interest, complaint made by the petitioners qua existing distributors from the rural and durgam areas on the ground that economical advantages to the petitioners would be lost, cannot be a matter of consideration by the Corporation. Some of the petitioners, who claim to be beneficiaries, cannot be permitted to challenge the policy. The beneficiaries of the policy formulated by the Petroleum Corporations/ Companies are the public at large. Grant of distributorship to the petitioners is a transaction of commercial nature. The distributors are paid commission which facilitates them to make profit. The aspect of commercial viability based on the commercial transactions need not be looked into at the cost of larger public interest, by this Court in exercise of extraordinary writ jurisdiction.

10 *It is not a matter of controversy that the petitioners have agreed to the terms contained in the agreement permitting the Petroleum Corporation/ Company to appoint distributors within the area of operation of the petitioners.*

11 *Apart from this, the clause contained in the unified guidelines, on which reliance is placed by the petitioners, does not debar the Petroleum Corporation/ Company from appointing new dealers/distributors within the periphery of 15 Kms from the location of existing distributors. The object of appointing distributors in the rural and durgam areas is to provide essential commodity to the masses at their door steps. Considering the aforesaid object, objection raised by the petitioners on the ground of economical viability does not deserve to be considered.”*

11. It was finally concluded in **Vishal Prabhakar**

Deshmukh (supra), that the Petroleum Companies desire to allot the LPG distributorship in rural and remote/ difficult areas (Durgam Kshetra), which is a positive step in the larger public interest. The Petroleum Companies are providing essential commodities to the rural masses at their doorsteps and such policy, which is in the larger public interest of the rural population, should not be stalled on the grounds canvassed by the petitioners since they have no legal right to seek prohibition against the Petroleum Companies to appoint new distributors.

12. We find from the contentions of the parties that the petitioner, without applying in response to the impugned advertisement and without being an aggrieved party, has filed this petition on hypothetical grounds that if the impugned advertisement is set aside, the petitioner would, in future, apply for a LPG distributorship after there is 100% reservation in LPG distributorship allotment for locations in the scheduled villages. On such premises, we are afraid that we cannot entertain this petition.

13. In ***Bhagwan s/o Rambhau Karankal vs. The State of Maharashtra***, Writ Petition No.4419/2006 (Aurangabad Bench), the learned Advocate General of Maharashtra had canvassed that

a challenge put forth without seeking any relief from the Court would be an empty challenge as it would render the petition untenable. In Civil Writ Petition No.3077/2020 (Nagpur Bench) filed by ***Vijaysingh Gajrajsingh Chauhan versus the Governor of Maharashtra and others***, the submissions of the learned Advocate General were reproduced in the order passed by the Nagpur Bench in paragraphs 3 and 4, which read as under :-

“3. The challenge is at the behest of the petitioner, who is an Advocate by profession. Mr. Ashutosh Kumbhakoni, learned Advocate General has raised a preliminary objection regarding the locus of the petitioner, to raise such a challenge. He contends that the petitioner, does not have any cause of action to challenge the validity of the amendments to the Act of 2006. The petition does not disclose any cause of action, no averments are there as to what right of the petitioner has been affected and reliance is placed on Kusum Ingots & Alloys Ltd. Vs. Union of India and another, (2004) 6 SCC 254. He further submits that the Court always decides an issue on a cause and does not decide any issue academically or in the air. Reliance is placed upon Jotun India Private Limited Vs. Union of India and Ors., 2018 SCC OnLine Bom 6400 and United Forum and others Vs. The Union of India and others, 2018 SCC OnLine Bom 2221 to contend that there should be a real and genuine challenge arising out of the facts and circumstances of the case and no jurisdictional or issue of constitutional validity should be considered in abstract, unless the aggrieved party or its cause is otherwise represented, which is absent in the present matter. Relying upon State of Bihar Vs. Rai Bahadur Hurdut Roy Moti Lal Jute Mills and another, AIR 1960 SC 378, he submits that if the facts admitted or proved do not attract the impugned provisions then there is no occasion to

decide the issue about the vires of the provisions and in such a case any decision on the said question would be purely academic and Courts should be reluctant to decide constitutional points merely as matters of academic importance. Further relying upon State of Uttar Pradesh Vs. Kartar Singh, AIR 1964 SC 1135 he submits that in case the validity of the rule is to be challenged, foundational facts necessary to sustain such a plea, ought to be first laid out which is absent.

4. *Learned Advocate General further contends that the present matter not being a public interest litigation but a writ petition filed by the petitioner, the requirement to disclose a cause of action, is mandatory. He further submits that the petitioner does not fall within the expression “aggrieved person” and neither does he have any direct grievance, for which reliance is placed upon Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra and others, (2013) 4 SCC 465. Further contentions are that there is no executable prayer; the petition merely seeking a declaration is not maintainable. He further submits that only para 54 in the petition, remotely suggests of any cause of action, which does not satisfy the requirement of law of any cause in the petitioner. The petition therefore according to him is not maintainable and is required to be dismissed on that count alone.”*

14. The Nagpur Bench in ***Vijaysingh Gajrajsingh Chauhan (supra)*** concluded that the right to approach a court of law by a party, is intrinsically linked to a cause of action which has accrued in favour of such a party. The approach to this Court is always for seeking redressal of a grievance or to assert an entitlement or right, the denial of which gives rise to a cause of

action to a party whose right is affected by any such cause of action. It was further held that that the traditional view as to a cause of action is always personal to a party.

15. In *the State of Bihar vs. Rai Bahadur Hurdut Roy Moti Lal Jute Mills and another*, AIR 1960 SC 378, the Honourable Supreme Court held in paragraph 7 as under :-

“7. On behalf of the appellant Mr. Lal Narain Sinha has contended that the High Court was in error in holding that the proviso to S. 14A violates either Art.20(1) or Art.31(2) of the Constitution. He has addressed us at length in support of his case that neither of the two articles is violated by the impugned proviso. On the other hand, the learned Solicitor General has sought to support the findings of the High Court on the said two constitutional points; and he has pressed before us as a preliminary point his argument that on a fair and reasonable construction, the proviso cannot be applied to the case of the first respondent. We would, therefore, first deal with this preliminary point. In cases where the vires of statutory provisions are challenged on constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine whether the impugned statutory provisions are attracted; if they are, the constitutional challenge to their validity must be examined and decided. If, however, the facts admitted or proved do not attract the impugned provisions there is no occasion to decide the issue about the vires of the said provisions. Any decision on the said question would in such a case be purely academic. Courts are and should be reluctant to

decide constitutional points merely as matters of academic importance.”

16. In *the State of Uttar Pradesh vs. Kartar Singh*, AIR 1964 SC 1135, the Honourable Supreme Court held in paragraphs 15 and 16 as under :-

“15. The standards themselves, it would be noticed, have been prescribed by the Central Government on the advice of a Committee which included in its composition persons considered experts in the field of food technology and food analysis. In the circumstances, if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any a priori reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Article 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Article 14 the burden is on him to plead and prove the infirmity is too well established to need elaboration. If, therefore, the respondent desired to challenge the validity of the rule on the ground either of its unreasonableness or its discriminatory nature, he had to lay a foundation for it by setting out the facts necessary to sustain such a plea and adduce cogent and convincing evidence to make out his case, for there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification of the zones and the prescription of the minimum standards to each zone, and where we have a rule framed with the

assistance of a committee containing experts such as the one constituted under Section 3 of the Act, that presumption is strong, if not overwhelming. We might in this connection add that the respondent cannot assert any fundamental right under Article 19(1) to carry on business in adulterated food stuffs.

16. *Where the necessary facts have been pleaded and established, the Court would have materials before it on which it could base findings, as regards the reasonableness or otherwise or of the discriminatory nature of the rules. In the absence of a pleading and proof of unreasonableness or arbitrariness the Court cannot accept the statement of a party as to the unreasonableness or unconstitutionality of a rule and refuse to enforce the rule as it stands merely because in its view the standards are too high and for this reason the rule is unreasonable. In the case before us there was neither pleading nor proof of any facts directed to that end. The only basis on which the contention regarding unreasonableness or discrimination was raised was an a priori argument addressed to the Court, that the division into the- zones was not rational, in that hilly and plain areas of the country were not differentiated for the prescription of the minimum Reichert values. That a distinction should exist between hilly regions and plains, was again based on a priori reasoning resting on the different minimum Reichert values prescribed for Himachal Pradesh and Uttar Pradesh and on no other. It was, however, not as if the entire State of Himachal Pradesh is of uniform elevation or even as if no part of that State is plain country but yet if the same minimum was prescribed for the entire area of Himachal Pradesh, that would clearly show that the elevation of a place is not the only factor to be taken into account.”*

17. Considering the averments in the petition in hand and the prayer clauses put forth in the backdrop of the settled position of law, we find that the petitioner has preferred this petition on speculation that if this Court approves 100% reservation for the Scheduled Tribes in matters of grant of LPG distributorship in the scheduled areas, his village may acquire a distributorship location and he may then compete with other persons belonging to the Scheduled Tribes and then he may acquire an allotment. We find such submissions to be quite far fetched. Unless this petition was a PIL, such contentions of the petitioner without having a cause of action, would amount to indulging in litigation sheerly on speculation.

18. So also, a similar challenge on the ground that the BPCL regular/ rural retail outlets in two villages in the scheduled areas should be allotted only to the Scheduled Tribe people and not to any other person, has been dealt with by the learned Single Judge of the High Court of Andhra Pradesh in Writ Petition Nos.47615 and 48202/ 2018 and Writ Petition No.339/2019, vide judgment dated 19.02.2018. The said challenge was negated.

19. In our view, if the challenge was put forth by the petitioner in view of a legal injury suffered by him, this petition

could have been considered. In the absence of any legal injury, we would not invoke our jurisdiction under Article 226 of the Constitution of India.

20. It also cannot be lost sight of fact that the locations announced by the Petroleum Companies in various scheduled areas, cater to the needs of the residents of several villages including the petitioner's village. The Petroleum Companies have announced that the applicants belonging to the Scheduled Tribe category would be given preference considering the needs of the tribals in such areas. Several candidates belonging to the Scheduled Tribe category have applied for such distributorship and there is no dispute that many applicants belonging to the Scheduled Tribe category in the “Durgam Kshetra” (farflung hilly areas) have been selected and allotted the distributorship. Surprisingly and without any reason, the petitioner voluntarily chose to remain away from the advertisement and did not apply for obtaining a distributorship.

21. In the above circumstances and considering the law laid down in the above referred cases and in *United Forum and others vs. the Union of India and others, 2018 SCC Online Bom. 2221* and *Jyotun India Private Limited vs. Union of India and*

others, 2018 SCC Online Bom. 6400, the challenge must be real and genuine in the backdrop of the facts put forth in a case. In short, a challenge to an advertisement purely for academic purposes without the petitioner filing a PIL, ought not to be entertained. This petition does not put forth any legal injury suffered by the petitioner and does not espouse a personal cause.

22. As such, this Writ Petition is dismissed.

23. We, however, find it appropriate to record that the dismissal of this petition would not mean that a Public Interest Litigation Petition would be shut out if filed by a person in public interest and which satisfies the prescribed requirements of law as are laid down in the Bombay High Court Public Interest Litigation Rules, 2010.

24. At this juncture, the learned Advocate for the petitioner prays for continuation of interim relief.

25. The learned Advocates for the respondents opposed the same on the ground that a public cause is being defeated and in fact, this petition is non-productive.

26. We have already held in this judgment that the petitioner has come before us without a personal cause and the petition is filed on speculation. So also, by various orders passed

during the pendency of this petition, the interim relief has been vacated in relation to many locations for LPG distributorship. As such, we are not inclined to continue the interim relief. The request is, therefore, rejected.

27. No costs.

kps (S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)