

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

WPA/9735 of 2022

Yeasin Molla & Ors.

-Vs-

Union of India & Ors.

For the Petitioners: Mr. Shyamal Sarkar, Sr. Adv,
 Mr. Ram Anand Agarwala,
 Mr. Kumar Gupta,
 Ms. Nibedita Pal,
 Mr. Ananda Gopal Mukherjee,
 Ms. Sonam Ray,

For the respondent No2. 2 to 4:
 Mr. Saptangshu Basu, Sr. Adv.
 Mr. Amit Kumar Nag,
 Mr. Partha Banerjee,

For Union of India: Mr. Sanajit Ghosh,
 Mr. Rivu Dutta,
 Mr. Rhitam Chatterjee,

For the State: Mr. Sirsanya Bandopadhyay, Adv.,
 Mr. Arka Kumar

Hearing concluded on: 7 August, 2023.

Judgment on: 12 September, 2023.

BIBEK CHAUDHURI, J. : –

1. The petitioners are the ration card holders and members of Priority Household under the National Food Security Act, 2015. The instant writ petition is filed according to an assertion made by the petitioners, in representative capacity, on behalf of all ration card holders of West Bengal and accordingly the petitioners seek leave under Rule 12 of the Rules

framed by this Court relating to applications under Article 226 of the Constitution of India.

2. The above statement/submission made by the petitioners clearly suggests that they have filed the instant writ petition in representative capacity to protect the interest of all the ration card holders in the State of West Bengal. Therefore, at the outset a question arises as to whether the instant writ petition ought to be treated as a public interest litigation. It is needless to say that a public interest litigation is usually entertained by a Court for the purpose of public injury, enforcing public duty, protecting social rights and vindicating public interest. The real purpose of entertaining such application is the vindication of the Rule of Law, effective access to justice for the economically weaker classes and meaningful realization of fundamental rights. Above observation was made by the Hon'ble Supreme Court in **Malik Borthers vs. Narendra Dadhich & Ors** reported in **(1999) 6 SCC 552**. In **People's Union for Democratic Rights & ors. vs. Union of India** reported in **AIR 1982 SC 1473**, the Hon'ble Supreme Court was pleased to hold that public interest litigation is essentially a cooperative or collaborative effect on the part of the petitioner, the State or public authority and the Court to secure observance of the constitutional or legal rights, benefits and privileges conferred upon the vulnerable sections of the community and to reach social justice to them. The State or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, as those who are in a

socially and economically disadvantage position, as the petitioner who initiates the litigation. The State or public authority should, in fact welcome it, as it would give an opportunity to right a wrong or to redress and injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the State or the public authority.

3. Bearing the above principle in mind it is possible to decide that the instant writ petition should be dealt with as a public interest litigation.

4. In the instant writ petition the petitioners have challenged the reasonableness of soaring price of kerosene oil under Public Distribution System. In my considered opinion the petitioners can challenge fixation of price of an essential commodity even without filing a public interest litigation, on the plea that the entire concept of Public Distribution System was envisaged to distribute essential commodities which are specifically stated in the schedule, in a subsidized price to financially downtrodden people so that they can live their life with dignity. If price of any essential commodity which is distributed through Public Distribution System is constitutionally on the rise making the same, out of the reach of the petitioners, they can approach the constitutional court for issuance of prerogative writ.

5. Thus, I hold that the instant writ petition is maintainable in its present form and law.

6. It is the case of the petitioners that the Central Government made and published the Kerosene (Restriction on Use and Fixation of Ceiling Price) Order, 1993 (hereafter referred to as the 1993 Control Order)

7. Clause 2(d) of 1993 Control Order defines declared prices as:-

“(d) “declared price” in relation to kerosene sold under the public distribution system, means the maximum selling price declared by the Central Government from time to time with reference to an area and shall include such other charges, rates, duties and taxes prescribed:

(i) by the State Government or District Collector in the case of an area in a State; or

(ii) by the Administrator of the Union Territory in the case of an area in a Union Territory”.

8. It is also urged by the petitioners that the Targeted Public Distribution System (Control) Order, 2015, was made to implement the National Food Security Act, 2015 for the benefit of the targeted poorest families of the country. Apart from 1993 Control Order there is no other statutory or delegated legislation providing for the price mechanism of Kerosene to be sold under the Public Distribution System. Presently the price of kerosene is being fixed by Oil Marketing Companies at their whims and fancies as Central Government has failed to notify any declared price. On the other hand, the price of petroleum products mainly petrol (commercially known as Motor Spirit or MS), diesel (commercially known as High Speed Diesel or HSD) and kerosene (commercially known

as Superior Kerosene Oil or SKO) was brought under Administered Price Mechanism (APM) effective from July, 1975-2002. Various oil pool accounts were maintained with the objective to –

- a. Ensure stability in selling price;
- b. Insulate consumers against international price fluctuations; and,
- c. Subsidization of consumer price of products for Public Distribution System namely, “Kerosene” and “domestic LPG” by cross subsidization from other products like petrol, aviation turbine fuel and indigenous crude oil.

9. Subsequently, on and from 1st April, 2002, the APM system was dismantled and the Government decided to provide subsidy on distribution of kerosene under PDS and domestic LPG at specified flat rate under the budget.

10. To fix the said budgetary subsidy the Government formulated “PDS Kerosene and Domestic LPG Subsidy scheme” Petrol and diesel were de-controlled with effect from 26th June, 2010 and 19th October, 2014. Accordingly, the price of petrol and diesel are fixed by the Oil Marketing Companies dependent on the market demand supply mechanism or commercial principles. However, the consumers of kerosene and domestic LPG were insulated from the impact of unprecedented high international oil prices by the Oil Marketing Companies. The under recoveries on PDS kerosene and domestic LPG were loaded on various other petroleum

products. Since the year 2020-21, subsidy on PDS kerosene has been abolished along with under recovery system. The subsidy abolish can be understood from the following chart:-

Major head	Actual 2020-21	Revised 2021-22	Budget 2022-23	Percentage change
LPG subsidy	35,195	6,517	5,813	-11%
Kerosene subsidy	3,259	Nil	Nil	Nil

11. It is the case of the petitioners that in India large segment of population are still dependent upon kerosene. Only 10 States/Union Territories have become kerosene free States/Union Territories. The poorer a State, higher the consumption of kerosene oil. The petitioners also alleged that though attempts were made to popularize LPG by various schemes like Ujjala, PMUY by giving deposit free connections with the free refill and stove, but the survey of Petroleum Planning and Analysis Cell (PPAC), a wing of Ministry of Petroleum and Natural Gas, being custodian of statistical records, shows that most of the consumers under PMUY Scheme failed to refill LPG due to high price and are still dependent on kerosene. For last few years, the Central Government has stopped declaring the prices of PDS kerosene under Clause 2(d) of the 1993 Control Order. The price of PDS kerosene is now been declared by the Oil Marketing Companies and such price differs from one company to another.

12. It is the case of the petitioners that the Central Government is under statutory obligation under Clause 2(d) of the 1993 Central Order to declare the price of PDS kerosene but the authority of the Central Government has been delegated to oil marketing companies and they are fixing the price of PDS kerosene in order to gain profit without considering the need of the poor people. It is also stated by the petitioners that if the price rising graph is examined in respect of kerosene oil the following factors appear.

- a. Upto February, 2022 the price of kerosene (Rs.49.21) was historically less than petrol (Rs.35.62).
- b. From December, 2021 to March, 2022, the price of petrol was constant i.e Rs.53.62, however, the price of kerosene went up from Rs.44.29 to 55.83.
- c. In the months of April and May, 2022, the price of petrol was Rs.61.87 whereas the price of kerosene went up to Rs.70.07 in the month of April and 72.49 in the month of May respectively.
- d. In the month of April, 2022, the price of petrol went up from Rs. 53.62 to Rs.61.87, i.e. about 15% whereas the price of kerosene went up from Rs.55.83 to Rs.70.07, the increase was about 27%.

13. Thus, the price of petrol is being kept constant over a period of time but the price of kerosene is being increased every month. The oil marketing companies are deliberately keeping the price of petrol, a rich men's fuel, constant or capped, but are loading the under recovery towards petrol into the price of kerosene, an essential commodity and also a poor men's fuel, distributed under Public Distribution System through Fair Price Shops. Thus, the kerosene becomes out of reach of the poor people. Price of kerosene is being increased unreasonably and arbitrarily in violation of 1993 Control Order and also the Targeted Public Distribution System (Control) Order, 2015 and Article 14 of the Constitution of India. In case of Distribution of State largesse, a constitutional duty is cast upon the distribution agency to act fairly and to uphold the Fundamental Rights and Directive Principle of the State Policy of the Constitution of India and not to saddle the poor with the burden of reach. Thus, failure on the part of the Central Government to maintain the price of kerosene oil within the reach of poor people, the decision of the Central Government to transfer the pricing system of kerosene oil to the oil companies is unreasonable, illegal and improper and violative of Article 14, 19(1)(g), 21 and 300A of the Constitution of India. Therefore, the petitioners have prayed for issuing the following writs:-

“A Writ of and/or in the nature of Mandamus do issue commanding the Central Government, the respondent no. 1, to frame guideline or policy for fixation of price of kerosene

under PDS in a transparent manner and fix the price according to such guideline within a reasonable period;

Direction be issued directing the respondents and each of them to revise the price of kerosene as was prevailing in February 2022 till guideline for fixation of price of kerosene is framed by Central Government;

Rule NISI in terms of prayers (a), (b) and (c) above and to make the Rule absolute if no cause or insufficient causes are shown;

An appropriate order be granted directing the respondents and each of them to cap the price of kerosene as was prevailing in February 2022 till disposal of the instant application;

Ad-interim order be passed in terms of prayer (e) above;

Costs of and incidental to this application be borne by the respondents;

Such further or other order or orders be passed or direction or directions be given as may be deemed fit by this Hon'ble Court.”

14. The respondent No.5, Union of India through the Under Secretary to the Ministry of Petrol and Natural Gas, Government of India has been contesting the instant writ petition by filing an affidavit-in-opposition. It is stated on behalf of the Union of India that with the increase in domestic LPG and PNG connections and electricity coverage, there has been substantial reduction in the dependency on kerosene. It is to be noted that since LPG is a cleaner and environment friendly fuel as compared to kerosene, the Government of India has aimed to expand the coverage of LPG for cooking purposes especially in rural/un-served areas to improve

the quality of life of individuals and has been successful in doing so. The Government of India has been reducing the quota of kerosene through the Public Distribution System and shifting more towards health and environment friendly fuels like LPG and PNG in larger public interest across all States/Union Territories. It is further submitted that many States/Union Territories, such as Andhra Pradesh, Punjab, Haryana, Andaman and Nicobar Islands, Dadra and Nagar Haveli, Puducherry, Rajasthan, Daman & Diu and Uttar Pradesh have become kerosene free. Besides the NCT of Delhi and Chandigarh were already kerosene free from third quarter of 2013-14 and first quarter of 2016-17 respectively. In case of West Bengal consumer of kerosene oil has been reduced to a considerable extent. While in 2021-2022, 704016 kilo liters kerosene was consumed in West Bengal in 2022-23, 462696 kilo liters kerosene has been used. Thus, there was reduction of 34.27 kilo liters a day in respect of user of kerosene oil from the last financial year. The respondent No.1 further contends that the quota of kerosene oil supplied to the State of West Bengal was around 40% of the country's allocation made in the year 2021-22. It is further contended on behalf of the Union of India that distribution of kerosene under PDS aimed at serving, cooking and illumination needs of eligible households in the country. Ministry of Petroleum and Natural Gas has been rationalizing the allocation of PDS kerosene across all the States from 2010-11 as there is increasing domestic LPG and PNG connection and improved coverage of electricity across to the country, resulting in reduction of PDS kerosene usage for

cooking and illumination purpose. It is also stated that the policy of Central Government is to fix the price of kerosene under PDS in a transparent manner and with the end in view, a scheme was formulated in the year 2002 which came into force on and from 1st April, 2002 and as such the question of framing any further guideline or policy for fixing the price of kerosene oil does not arise. Clause 7 provides that the cost price of PDS kerosene will be calculated on import parity basis. The elements and methodology of the import parity pricing is enumerated in Annexure 1 of the 2002 scheme. It is further stated by the respondent No.1 that as part of reforms in the kerosene subsidy regime Direct Benefit Transfer in PDS Kerosene Scheme, 2016 was introduced by Government of India. The detailed methodology for calculating the cost price of PDS as provided in Annexure 1 of the “PDS Kerosene and Domestic LPG Subsidy Scheme, 2002” has been transplanted in “Direct Benefit Transfer in PDS kerosene Scheme, 2016. Paragraph 5.1 of 2016 DBTK scheme states that “non-subsidized price” is the price (i.e. price for a depot termed as ex-depot price) calculated on import parity basis as per methodology given in the PDS kerosene and domestic LPG as subsidy as amended from time to time. Therefore, though PDS kerosene and domestic LPG subsidy scheme, 2002 is no longer in vogue as on date, yet all the principles of the pricing methodology have been enshrined in DBTK Scheme, 2016. The Ministry vide letter dated 3rd March, 2020 and 31st March, 2020 instructed Government oil companies that retail selling price of PDS kerosene is to be maintained at NIL under the recovery level. These instructions issued

by the Ministry are valid till further orders. It is also stated on behalf of the respondent No.1 that the distribution of PDS kerosene within the state is the responsibility of the respective State Government. The responsibility of the identification of the beneficiary, including setting eligibility criteria for kerosene allocation and distribution of household also vests in the hands of the State Government. It is contended on behalf of the respondent No.1 that PDS kerosene is required to be preserved only for the economically weaker segment of the society who cannot afford or could not have access to LPG or the grid generated electricity. Therefore, number of beneficiaries for the State of West Bengal is required to be calculated after deducting per capita allocation of the society who are using the LPG for cooking and electricity for illumination purpose. In the State of West Bengal, kerosene is allocated through dealers based on the instruction from the Director of Consumer Goods, West Bengal and further distribution of kerosene is under the control of the Director of Consumer Goods, West Bengal. The retail selling price of PDS kerosene is controlled by the respective State Government upon consideration of the duties/taxes levied by the State Government and the delivery charges upto the consumer distribution point. The market price of petrol and diesel are determined by the oil companies on market driven factors and international price of petrol product. Thus, it is submitted on behalf of the Union of India that the petitioners did not have any scope to make any prayer for changing the policy decision of the Central Government and no writ lies for change of policy decision.

15. Respondent No.2, Hindustan Petroleum Corporation, respondent No.3 Indian Oil Corporation and respondent No.4 Bharat Petroleum Corporation have filed separate affidavits in opposition against the instant writ petition. The specific case of the above named respondents is that the distribution of PDS kerosene within the State is the responsibility of the representative State Government. The responsibility of the identification of Actual Beneficiary including BPL category of population also normally vests in the hands of the respective State Government. The oil companies also state that the price mechanism of PDS kerosene including payment of subsidy are laid down in “PDS Kerosene and Domestic LPG Subsidy Scheme”, 2002 which came into force on and from 1st April, 2002.

16. According to the said scheme the subsidy would be provided on the sales made throughout the country by the participating companies, the quantity of PDS kerosene on which subsidy will be allowed for each State is limited to the allocations made by the Ministry of Petroleum and Natural Gas, subject to actual quantity sold. The said scheme further provides that the oil companies would make change/revision in the issue prices of PDS kerosene on their own on account of the following changes in costs prices:-

- a) “Any variation in the cost price vis-à-vis the cost price effective on 1st April, 2022 due the changes in the product price in the international market, OCAN freight and England freights will be given effect by participating companies on monthly basis;
- b) Any change in the rate of duty of customs shall be given effect to from the date of such change;

- c) Changes in the marketing margins (storage/distribution costs and return investments) will be made on yearly basis and passed on the consumer prices at the beginning of the financial year.
- d) Any elements, other than above, amongst the elements given in Annexure I & II of the said Scheme, that may be allowed by the Ministry of Petroleum & Natural Gas.

The said scheme further provides that the retail selling prices will change with the changes in the issue price on account of factors stated above. It further provides that the retail selling prices will also change as per the following with subsidy amount being passed on to the consumers:

- a) Changes made in the dealers'/distributors' commission and/or delivery charges, declared by the companies after the date of the previous revision in consumer prices will be passed on at the time of price revision under the aforesaid clause;
- b) Any change in the rate of statutory levies like duty of excise, sales tax, entry tax/octroi etc. and imposition of any new levy shall be given effect from the date of such change or imposition, as the case may be, by adjusting the consumer prices."

17. The answering respondents further state that market price of petrol and diesel are determined by the answering respondents based on market driven factor and international price of petroleum product and not crude oil. PDS kerosene and Ex-Storage point price PDS are controlled by the Central Government and is revised on the advice of the Ministry of Petroleum and Natural Gas from time to time. The retail selling price of PDS kerosene is controlled by the respective State Governments upon consideration of the duties/taxes levied by the State Government and the

delivery charges up to the consumer distribution point. The respondents further state that they allocated kerosene through dealer based on the instruction from the director of the consumer goods, West Bengal and further distribution of kerosene is under control of the Director of the Consumer Goods, West Bengal. Therefore, the oil companies cannot take any independent decision for fixing or enhancing of kerosene oil violating PDS Kerosene and Domestic LPG Subsidy Scheme, 2002.

18. Respondent No.5, the State of West Bengal has filed a separate affidavit in opposition on behalf of the State of West Bengal. The deponent is the Deputy Director, Consumer Goods, Food and Supplies Department. It is the specific case of the State respondent that in India, kerosene is supplied through PDS at the subsidized price. In the rural area of West Bengal it is meant to supplement the household for the purpose of illumination requirements as well as cooking gas in West Bengal. There is a vast area where there is no state electricity connection. The economic and financial constraint for households to shift from kerosene based cooking to LPG put the individual citizens of this State not to opt for LPG connection. Moreover, the exorbitant cost of large size cylinders is beyond the reach of the poorest of poor. The retail price determine of basic price (fixed by Oil Marketing Companies, Government of India) of superior kerosene oil in Kolkata and Bidhannagar areas had increased from Rs.48.55 per liter in January, 2022 to Rs.107.53 per liter in July, 2022. Thus, the increase is 121%. Pursuant to that the selling price of SKO under PDS is fixed considering the purchasing capacity of general public.

But in last few months, the basic price of SKO has been increased in such a fashion that it has been made out of the reach of the beneficiaries under PDS, which will be evident from the chart given below:

Sl. No.	Months	Basic price of SKO	Retail Selling Price of SKO including GST (Rs.)
i.	January, 2022	41.30	48.55
ii.	February, 2022	49.21	57.09
iii.	March, 2022	55.83	64.24
iv	Aril, 2022	70.07	79.62
v	May, 2022	72.49	82.54
vi	June, 2022	76.96	92.30
vii	July, 2022	90.26	107.53
viii	August, 2022	78.00	93.50
ix	September, 2022	74.34	89.30
x	October, 2022	70.71	85.15
xi	November , 2022	73.28	88.09
xii.	December , 2022	72.76	87.49
xiii.	January, 2023	62.25	78.89
xiv.	February, 2023	68.24	82.31

19. It is also mentioned by the respondent No.5 that total number of beneficiaries of kerosene oil under PDS in the State of West Bengal is

8,82,26,292 which includes NSFA beneficiaries. The number of digital ration card holders in special areas are 1,05,17,013 with entitlement of 1000 ml per head per month, number of digital ration card holders is 7,77,09,279 with entitlement of 500 ml per head per month. In vast areas of the State of West Bengal the people do not have the capacity to even purchase kerosene oil under PDS as a result of its exorbitant high price. Therefore, the respondent No.5 supports the case of the petitioners.

20. The petitioners have filed separate affidavits in reply against the affidavit in opposition filed by the respondent No.1, 2, 3 and 4. In the affidavits in reply they mostly reiterate their case made in the writ petition.

21. The petitioners have also filed supplementary affidavit elucidating their case and the contesting respondents have filed affidavit in opposition against the supplementary affidavit.

22. It is submitted by Mr. Shyamal Sarkar, learned Senior Counsel on behalf of the petitioners that the petitioners have made out a case that the price of petrol and diesel which are rich man's fuel were kept constant at Rs.61.87 and Rs.62.14 respectively. But the price of kerosene was increased on multiple occasions from Rs.32.50 to Rs.90.26. Section 2(d) of the Kerosene (Restriction on Use and Fixation of Selling Price) Order 1993 confers jurisdiction on the Central Government to declare the maximum selling price of kerosene oil with reference to an area and shall include such other charges, rates, duties and taxes prescribed. The said provision gives a blanket power to the Central Government and there is

no other guideline how such price is to be fixed. It is also submitted by Mr. Sarkar that from the affidavits in opposition file by the Union of India and Oil Companies as well as the State Government, it is clear that the respective oil companies are determining the price of kerosene for PDS. The 1993 Control Order exclusively empowers the Central Government to fix the price of PDS kerosene. As a result of shifting the responsibility of fixing the price of kerosene oil in the hands of the oil companies price of PDS kerosene is being enhanced. The oil companies are determining the price of PDS kerosene based on the price of product in the international oil market and not based on crude oil prices.

23. On the other hand, it is pointed out by Mr. Sarkar that the oil companies were fixing price of PDS kerosene on the basis of 2002 subsidy scheme which was abolished with effect from 31st March, 2015 and thereafter, under “Direct Benefit Transfer in PDS Kerosene Scheme 2016.” The subsidy scheme of 2002-2016 is related to calculation of “subsidy” only, to be paid by the Central Government to the oil marketing companies and has nothing to do with fixation of price of PDS kerosene. Under 1993 Control Order the Central Government was under obligation to fix the price of PDS kerosene. By virtue of the subsequent schemes, the exclusive power of Central Government cannot be delegated to the oil companies. It is also submitted by Mr. Sarkar that the guidelines or scheme are advisory in nature and cannot partake the character of a statute. Any guidelines or scheme cannot be contrary to the statute. Therefore, 2002 or 2016 scheme cannot override the statutory provision of

1993 Control Order. Moreover, 2002 Subsidy Scheme came to an end on 31st March, 2015 and subsidy on kerosene was then abolished on and from 31st March, 2020. The said fact can be ascertained from Annexure “R-2” of the affidavit in opposition filed by the Central Government, affirmed on 17th March, 2023.

24. It is pointed out by Mr. Sarkar that in course of hearing, a confusion was sought to be created on the basis of Annexure 1 of the 2002 Subsidy Scheme wherein a methodology for calculation of cost price of PDS kerosene on import parity basis is laid down. It was alleged that the same methodology was being followed in 2016 Subsidy Scheme. 2002 Subsidy Scheme provides for subsidy as difference between the cost price and issue price. The cost price is determined as per the methodology given in Annexure -1 which is not at all relevant in view of the statement made by the Indian Oil Corporation in its affidavit in opposition in paragraphs 5(H) and 12 stating as follows:-

“The answering respondent is determining the price of PDS kerosene based on the prices of the product in the international oil market, the exchange rate of INR vs. USD and not based on crude oil prices.”

25. Thus it is clear that the price of PDS kerosene is being fixed neither on the basis of cost price nor on the basis of issue price as per 2002 scheme but only on the basis of the price of kerosene in the international market. It is contended on behalf of the petitioners that the Central

Government has taken a hyper technical plea that the writ petition is not maintainable as it has to be a public interest litigation to be heard by a Division Bench. However, it is submitted by Mr. Sarkar, learned Senior Counsel on behalf of the petitioner that the petitioners are the consumers of PDS kerosene. They are the sufferers of legal wrong or injury which has been cast on them and the said persons by reason of poverty, helplessness or disability has filed the instant writ petition which is absolutely maintainable under its present form before this Court. The pre-condition under Rule 56 is not applicable in the present writ petition and this case cannot be converted to a public interest litigation. The petitioners are personally interested and therefore the plea that the instant writ petition is not maintainable cannot be sustained. In support of his contention Mr. Sarkar refers to a decision of the Division Bench of this Court in the case of **Nand Kishor Sonkar vs. Howrah Municipal Corporation & Ors.** reported in **(2005) 3 CHN 140**. In paragraph 51 of the said judgment the Division Bench had the opportunity to deal with the concept of locus standi which has been substantially watered down by the Apex Court in a series of judgments especially in the field of public law proceedings. This judicial trend which started with the Constitution Bench decision of the Apex Court in **Fertilizer Corporation Kamgar Union's**, case, **AIR 1981 SC 344**, was further developed and continued in the subsequent Constitution Bench judgment in **S.P. Gupta's case**, **AIR 1982 SC 149** and in various other cases. Relaxed rule of locus is accepted in our constitutional jurisprudence. The concept of locus standi

in public law proceedings are decided on facts and in the interest of justice and not on any pre-conceived archaic rule of Anglo-Saxon vintage. The argument on the locus of the appellant, as raised by the learned Counsels for the respondents, would have had a semblance of relevance, if the respondent No.1 followed Clause 2(d) of 1993 Control Order. But, that is not the situation here. The Central Government has passed the bottom of fixing the price of kerosene oil to the hands of oil corporations. The petitioners in the instant writ petition have claimed the decision of the Central Government as unjust, unfair and cannot take place in 'the clean world of law'.

26. Therefore, when unfair treatment in violation of Article 14 is the complaint, the court cannot deliver the complainant off "at the gates". Rather, it is court's duty to examine the grievance and reach a finding on merits. This is the role which today courts, especially dealing with to be law proceedings, are expected to discharge, rather than remain a mute spectator of injustice and unfairness indulged by the State or its agencies.

27. In **Dr. Mahesh Madhav Gosavi vs. Shivajirao Nilangekar Patil & Ors.** reported in **(1987) 1 SCC 228**, the Hon'ble Supreme Court in paragraph 36 held as hereunder:-

"36. The allegations made in the petition disclose a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved in his private interest but enquiry into the conduct of the examiners of the Bombay University in one of the highest medical degrees was a matter of public interest. Such state of affairs having been brought to the notice of the Court, it was the duty of the Court to the public that the truth and the validity of the allegations made

be inquired into. It was in furtherance of public interest that an enquiry into the state of affairs of public institution becomes necessary and private litigation assumes the character of public interest litigation and such an enquiry cannot be avoided if it is necessary and essential for the administration of justice.”

28. It is submitted by the learned Advocate for the respondent No.1, Union of India that the Central point of allocation against the respondent No.1 is that the Central Government has the statutory duty under 1993 Kerosene Control Order to fix the selling price of PDS kerosene but the Central Government has failed to fix the price of kerosene oil under 1993 Control Order and left the same.

29. It is submitted by the learned Advocate for the Union of India that “declared price” mentioned in Clause 2(d) of the 1993 Control Order in relation to kerosene means the maximum selling price declared by the Central Government, from time to time with reference to an area and include such other charges, rates, duties and taxes prescribed. However, Clause 2(d) is required to be read with Clause 4(1)(c) of 1993 Control Order which says that no dealer having stocks of kerosene supplied under the Public Distribution System at the business premises including the place of storage shall sale, distribute or supply kerosene at a price higher than that fixed by the Government or government oil company. Thus, not only the government but also government oil company has been authorized to fix the price of PDS kerosene under 1993 Control Order. The pricing of PDS kerosene was initially brought under Administrative Price Mechanism (APM), when the pricing of petroleum products was

shifted from import parity principles to cost plus principles. Under APM, various oil pool accounts were maintained with the objective to (i) ensuring stability in selling price (ii) insulated consumers against international price fluctuation etc. However, the said mechanism was cancelled and the government decided to fix/control the price of PDS kerosene by providing subsidy at specified flat rate under the budget. The Ministry of Petroleum and Natural Gas, thereafter issued a notification on 28th January, 2003 formulating a scheme for distribution of post APM subsidy on PDS kerosene and domestic LPG called as “PDS Kerosene and Domestic LPS Subsidy Scheme, 2002” which came into force with effect from 1st April, 2002. In the Subsidy Scheme 2002 policy, fixation of price of kerosene in a transparent and fair manner has been laid down and as such framing of any further guideline or policy on such score does not arise. Clause 7 of the said subsidy scheme provides that the cost price of PDS kerosene will be calculated on import parity basis. The methodology of import parity pricing is enumerated in Annexure 1 of 2002 scheme. However, the price of PDS kerosene is being maintained at NIL under the recovery level since March, 2020 as a policy decision of government of India. As a part of the reforms in kerosene subsidy regime, Direct Benefit Transfer in PDS kerosene scheme, 2016 was introduced by the Government of India. However, the detailed methodology for calculating the cost price of PDS Kerosene as provided in Annexure 1 of 2002 Scheme has been transplanted in direct benefit transfer in PDS Kerosene Scheme, 2016. The 2016 Scheme states that non-subsidized price is the cost price

calculated on import parity basis as per methodology given in the scheme of 2002 and as amended from time to time. Therefore, though subsidy scheme of 2002 is no longer in vogue as on this date, yet all the principles of pricing methodology have been enshrined in DBTK Schemed, 2016. It is further submitted by the learned Advocate for the respondent NO.1 that the Government of India has been duly taking decision regarding pricing of PDS kerosene from time to time. By a letter dated 30th June, 2016 the Government of India informed the public sector oil marketing companies that in accordance with the decision dated 25th June, 2010 by all the empowered group of Ministers, it has been decided to authorize public sector oil marketing companies to increase retail selling price of PDS kerosene by 25 paise per liter per month for 10 months. Thereafter, another instruction was issued to the oil companies by the Government of India on 31st July, 2017 authorizing the government oil companies to revise retail selling price of PDS kerosene by Rs.0.25 each liter per fortnight excluding GST till elimination of under recovery or further orders whichever is earlier. Vide letter dated 3rd March, 2020 and 31st March, 2020 the Central Government instructed government oil companies that retail selling price of PDS kerosene is to be maintained at NIL under recovery level. It is the policy of Central Government that the amount of subsidy per selling unit will be equal to the difference between cost price and issue price per selling unit and will be computed ex-depot for PDS kerosene and ex-bottling plant for domestic LPG. Thus, the retail selling price will change with the changes in the issue price on account of change

in the rate of duty on customers, variation in the cost price due to the change in the product price in the international market, ocean freight and inland freight payable by the participating company, on monthly basis, changes in the market margins on early basis and any other element. Thus, the policy of the Central Government for fixation of price of kerosene under PDS in a transparent manner is already in place under the scheme of 2002. Presently the price of kerosene is not at all being fixed by the oil marketing companies at their whim or fancies and the Central Government has not failed to notify any declared price as alleged. Price of kerosene is being fixed in accordance with 2002 scheme and the oil companies cannot and does not fix the price according to their own whims fancies.

30. Learned Advocate for the petitioners in support of his submission refers to the decision of the Hon'ble Supreme Court in **Shivajirao Nilangekar Patil vs. Dr. Mahesh Madhav Gosavi & Ors.** reported in **(1987) 1 SCC 277**. In the said report of the Central Government Administrated Law, the Government of India has altogether been deciding the price and the oil companies and are simply implementing the decision of the Government of India as far as practicable with regard to pricing of kerosene oil. In **Nand Kishor Sonkar vs. Howrah Municipal Corporation & Ors.** reported in **(2004) OnLine Cal 501**, it has been held that the Government of India is determining the price of PDS kerosene as per rule.

31. In **Madras Port Trust vs. Hymanshu International by its Proprietor Venkatadri (Dead) by L.R.s** reported in **(1979) 4 SCC 176**, it

was held that if a government or public authority takes up a technical plea, the court has to decide it and if the plea is well-founded it has to be upheld by the court.

32. The learned Advocate for the respondent No.1 also relies upon another decision of the Hon'ble Supreme Court in **Rajendra Shankar Shukla & Ors. vs. State of Chhattisgarh & Ors.** reported in (2015) 10 SCC 400 and **Uttam Singh Duggal & Co. Ltd. vs. United Bank of India & Ors.** reported in (2000) 7 SCC 120. Referring to the said judgments it is contended by the learned Advocate for the respondents that there has been no delegation by Government of India as records pricing of PDS kerosene. The Government itself has been deciding the price of PDS kerosene in India and the 2002-2006 Rules have been framed by the Government of India directly in accordance with legislative policy. Such legislative policy cannot be questioned before this Court under Article 226 of the Constitution. Though, the writ petitioners made a prayer for a direction upon the Central Government to formulate a policy to fix the maximum selling price of PDS kerosene, the petitioners have challenged various provisions of 2002 scheme being in violation of 1993 Control Order. Such relief cannot be granted in favour of the petitioners.

33. Respondents No.2-4 practically reiterates the submission made by the learned Advocate for the respondent No.1. I have heard the learned Counsels for the petitioners and the respondents. I have also carefully perused the writ petition, affidavit-in-opposition, affidavits-in-reply and all the documents supported by the parties in respect of their respective

cases. It is not in dispute that by virtue of 2002 Subsidy Scheme, it is contended on behalf of the Central Government as well as the oil companies that the price of PDS kerosene is based on the prices of the product in the International Oil Market and not based on crude oil prices. It is also not in dispute that 2002 Subsidy Scheme was abolished with effect from 31st March, 2015 under “Direct Benefit Transfer in PDS Kerosene Scheme, 2016”.

34. The Central Government is under obligation to consider if Direct Benefit Transfer Scheme, 2016 is helpful to the user of PDS kerosene, because under the said scheme subsidy does not reach up to the end point of the purchaser. Subsidy is being paid by the Central Government to the oil marketing companies so that the oil marketing companies can fix the price of kerosene oil at some subsidize rate. However, the ground relate is that today the price of kerosene oil has increased to Rs.107 per liter and at the end of the day the price of kerosene oil is higher than the price of petrol and diesel. The Central Government must consider that the end users of kerosene oil are the poorest of poor people of this country. As a result of soaring price of kerosene oil, it is the hard reality in many of the villagers in the state of West Bengal, that they are illuminating their home at night burning dry branches of leave and straw. They cannot afford to purchase kerosene at Rs.107 per liter.

35. In the case of **Ashoka Smokeless Coal India (P) Ltd & Anr. vs. Union of India & Ors.** reported in **(2007) 2 SCC 640**, validity of e-auction was questioned by the writ petitioners in respect of sale of coal in different

High Courts. Several Special Leave Petitions were filed there against by the parties. The Hon'ble Supreme Court was pleased to find that there was four categories of consumers who were aggrieved by introduction of the scheme of e-auction: (i) Non-core linked consumers who were manufacturers of smokeless coal; (ii) non-core sector consumers who were manufacturers of various products wherein coal is a raw material; (iii) hard coke owners, although a non-core linked category but who had been recommended for being included in core category; and (iv) coal traders.

36. It was held by the Hon'ble Supreme Court that coal, being such a vital product to Indian industries and the common man, its nationalization was necessary for realization of the ideals contained in Article 39(b) of the Constitution. In terms of the Nationalization Acts the coal companies as also the Union of India were bound to take action in furtherance of the task of achieving the purport and object for which coking coal mines and the coal mines were nationalized. Parliament thought it fit to enact the Nationalization Acts to distribute the resources vested in the State to subserve the common good. Coal is an essential commodity and Section 3(1) of the Essential Commodities Act, 1955 was enacted inter alia for securing equitable distribution and availability of essential commodities at fair price. The Union of India and the coal companies do not deny or dispute that they are part of the "State" within the meaning of Article 12 of the Constitution. They have also not raised any contention that the constitutional obligations in terms of Article 39(b) are not required to be complied with. The coal companies as also the

Central Government, therefore, have constitutional and statutory obligations to fulfill. Coal, despite partial deregulation having regard to the 2000 Order, is still a regulated commodity.

37. While fixing a fair and reasonable price in terms of the provisions of the Essential Commodities Act, it is essential that price is actually fixed. Such price fixation is necessary in view of the fact that coal is an essential commodity. It is, therefore, vital that price is actually fixed and not kept variable. Fixation of price of coal is of utmost necessary as it is a mineral of grave national importance. Non-availability of coal and consequently, the other products may lead to hardship to a section of citizens. It may entail closure of factories and other industries which in turn would lead to a loss to the State exchequer as it would be deprived of its taxes. It will lead to loss of employment of a large number of employees and would be detrimental to the object of the Central Government to encourage small-scale industries. Paragraph 192 to 194 are absolutely relevant for the purpose of this case and are reproduced below:-

“192. We, in the peculiar facts and circumstances of this case, are of the opinion that it may not be difficult to find out as to who the genuine consumers are. So far as owners of the hard coke ovens are concerned, they are members of the association and their identity can easily be verified.

193. However, discussions made hereinbefore should not be taken to lay down a law that the Central Government and for that matter the coal companies cannot change their policy decision. They evidently can; but therefore there should be a public interest as contradistinguished from a mere profit motive. Any change in the policy decision for cogent and valid reasons is acceptable in law; but such a change must take

place only when it is necessary, and upon undertaking of an exercise of separating the genuine consumers of coal from the rest. If the coal companies intend to take any measure they may be free to do so. But the same must satisfy the requirements of constitutional as also the statutory schemes; even in relation to an existing scheme e.g. Open Sales Schemes, indisputably the coal companies would be at liberty to formulate the new policy which would meet the changed situation. E-advertisement or e-tender would be welcome but then therefore a greater transparency should be maintained.

194. For the reasons aforementioned, Civil Appeals Nos. 2972 and 2975 of 2005 being devoid of any merits are dismissed. Civil appeal arising out of SLP (Civil) No. 24034 of 2005 is allowed and the impugned judgment of the Madhya Pradesh High Court is set aside. No separate order is required to be passed on Civil Appeal No. 5547 of 2004 arising out of the judgment and order of the Calcutta High Court as the said case would also be governed by this judgment. All other appeals, writ petition and transferred cases are disposed of with the aforementioned observations and directions.”

38. Similarly, kerosene oil is an essential commodity which has been categorized by the petitioners as “Poor Man’s Fuel.” This Court appreciates the laudable policy of the Central Government that the Central Government has been trying to put an aid of subsidy based economy. At the same time, it is the onerous duty of the State to consider the financial ability of the consumers who are using kerosene oil sold in public distribution system. It is clear from the submission made by the learned Advocate for the Union of India that price of PDS kerosene is fixed on the element and methodology of import parity pricing and not on the basis of the cost price of crude oil. Import parity pricing depend on the price of the product in the international market, ocean freights and inland

freights. The oil companies changes the price of PDS kerosene on the basis of changes in the product price in the international market. On the basis of the product price there is obvious change of customs duty and the price of kerosene is fixed on the basis of a complicated methodology stated in Annexure 1 and Annexure 2 of the Scheme of 2002.

39. Learned Advocate for the respondents admits in course of argument that Direct Benefit Transfer in PDS Kerosene System, 2016 introducing payment of subsidy directly to the consumers has not been implemented by the Central Government as yet because the consumers of kerosene oil are mainly the residence of unorganized sector and it is the task for the Central Government to pay subsidy to kerosene oil subscribers.

40. 1993 Control Order defines “Public Distribution System” as the system of distribution, marketing or selling of kerosene at declared price through a distribution system approved by the Central or State Government. Therefore, it is the primary duty of the Central Government to declare the price of PDS kerosene for distribution. This power cannot be delegated to the oil companies.

41. The concept of sale of essential commodities through Public Distribution System is based on the principle of welfare state. In paragraph 9 **of Lala Ram (Dead) by Legal Representative & Ors. vs. Union of India & Ors.** reported in **(2015) 5 SCC 813**, the Hon’ble Supreme Court was pleased to hold:-

“9. A welfare State denotes a concept of Government, in which the State plays a key role in the protection and promotion of

the economic and social well being of all of its citizens, which may include equitable distribution of wealth and equal opportunities and public responsibilities for all those, who are unable to avail for themselves, minimal provisions for a decent life. It refers to “greatest good of greatest number and the benefit of all and the happiness of all”. It is important that public weal be the commitment of the State, where the State is a welfare State. A welfare State is under an obligation to prepare plans and devise beneficial schemes for the good of the common people. Thus, the fundamental feature of a welfare State is social insurance. Anti-poverty programmes and a system of personal taxation are examples of certain aspects of a welfare State. A welfare State provides State-sponsored aid for individuals from the cradle to the grave. However, a welfare State faces basic problems as regards what should be the desirable level of provision of such welfare services by the State, for the reason that equitable provision of resources to finance services over and above the contributions of direct beneficiaries would cause difficulties. A welfare State is one, which seeks to ensure maximum happiness of maximum number of people living within its territory. A welfare State must attempt to provide all facilities for decent living, particularly to the poor, the weak, the old and the disabled i.e. to all those, who admittedly belong to the weaker sections of society. Articles 38 and 39 of the Constitution of India provide that the State must strive to promote the welfare of the people of the State by protecting all their economic, social and political rights. These rights may cover, means of livelihood, health and the general well-being of all sections of people in society, specially those of the young, the old, the women and the relatively weaker sections of the society. These groups generally require special protection measures in almost every set up. The happiness of the people is the ultimate aim of a welfare State, and a welfare State would not qualify as one, unless it strives to achieve the same. (See also *Dantuluri Ram Raju v. State of A.P.*, *N. Nagendra Rao & Co. v. State of A.P.* and *N.D. Jayal v. Union of India.*)”

42. Thus it is the duty of the welfare state based on democratic set up that the Central Government must take some proactive step so that the users of kerosene oil can purchase within their financial means.

43. Direct Benefit Transfer in PDS Kerosene Scheme, 2016 in Clause 5.3 defines “subsidized price” as the price that is fixed by the Central Government from time to time excluding sales tax/Vat, local levies, dealer commission etc.

44. Therefore, it is the duty of the Central Government to fix subsidized price under PDS Kerosene Scheme, 2016. The oil companies cannot fix the price of kerosene in the manner on the basis of import party pricing.

45. At the same time this Court is not unmindful to note that though the Central Government has the statutory duty to fix subsidized price of kerosene oil for the end users, it involves a policy decision to be taken jointly by the Department of Finance and the Department of Petroleum and Natural Gas, Government of India.

46. In the instant writ petition the court cannot fix selling price of kerosene oil. Therefore, the instant writ petition is disposed of directing the Central Government to adopt and take a policy decision for fixing the rate of subsidized price of kerosene oil for the consumers.

47. The State Government is also directed to impose minimum rate of taxes, cess and other duties to fix the selling price of kerosene to the poorest of the poor citizens of our country who really need kerosene oil to illuminate their homes and prepare their food burning cow dung, coal etc with the help of kerosene oil.

48. With the above observation the instant writ petition is disposed of on contest.

(Bibek Chaudhuri, J.)