

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

**PRESENT:
THE HON'BLE JUSTICE BIVAS PATTANAYAK**

**W.P.A. 25064 of 2016
CAN 5 of 2022
West Bengal Kerosene Agents' Welfare Association & Anr.
versus
Union of India & Ors.**

For the Petitioners	: Mr. Shyamal Sarkar, Senior Advocate Mr. Ramesh Dhara, Advocate Ms. Mousumi Choudhury, Advocate
For the Union of India	: Mr. Avinash Kankani, Advocate
For the State	: Mr. Sirsanya Bandopadhyay, Advocate Mr. Amrita Lal Chatterjee, Advocate
Heard on	: 14.12.2023, 15.01.2024, 17.01.2024, 18.01.2024, 19.01.2024
Judgment on	: 31.01.2024

Bivas Pattanayak, J. :-

1. This writ petition is filed by the petitioners under Article 226 of the Constitution of India for a direction upon respondent nos.1 to 4 to make allocation of kerosene oil to the State of West Bengal considering the per capita requirement on uniform basis at par with other States and not to make any further curtailment in the allocation of kerosene oil to the State of West Bengal.

2. The brief fact of the petitioners' case in a nutshell is as follows:

- (i) The petitioner no.1 is a trade association of Kerosene Oil Agents appointed by various Oil Companies, who are functioning under

licenses granted by the State of West Bengal in terms of West Bengal Control Order, 1968 and is a non-profit organization registered under the West Bengal Societies Registration Act, 1961.

(ii) The petitioner no.2 is also an agent of an Oil Company and General Secretary of petitioner no.1, the trade association of Kerosene Oil Agents.

(iii) The allocation of kerosene oil to the State Governments for distribution through Public Distribution System to the designated consumers is made by the Central Government.

(iv) The issue of allocation of kerosene oil by the Central Government to State Governments was referred to National Council of Applied Economic Research (in short 'NCAER'), which was duly sponsored by the Petroleum Planning and Analysis Cell, Ministry of Petroleum and Natural Gas.

(v) As per the report of NCAER there is no basis for allocation of kerosene oil to different State Governments by the Central Government. It also found that in States where there was more misuse and syphoning off to black market, the allocation was more. Accordingly, it made certain recommendation for uniform allocation of kerosene oil to different States and Union territories. However, till date, the same has not been implemented.

(vi) Several representations were made by the State of West Bengal indicating required allocation of kerosene oil to the designated consumers and in the year 2000 it was disclosed by the Government of

West Bengal that the requirement is 1,16,000 KL. However, the allocation of kerosene oil to the State of West Bengal has been reduced from time to time and drastically reduced in the year 2016-17 from 78,608 KL to 58,668 KL.

(vii) The petitioners apprehends that the allocation of kerosene oil may be further reduced which would cause hardship and inconvenience to the designated consumers under the Public Distribution System and also the members of petitioner no.1-trade association, whose right to trade is affected unreasonably by such reduction in allocation of kerosene oil.

(viii) The appointment of members of petitioner no.1-trade association were given upon proof of credibility and on providing adequate infrastructure such as procurement of land, construction of storage tanks, office, machineries and huge man power for running the Oil Agency Business and had to give an undertaking that they will remain full time engaged in the said business and thus with the reduction of allocation of kerosene oil the business of the members of petitioner no.1-trade association, which is their only source of livelihood, would be affected.

(ix) On 13th October, 2016, the petitioners made a representation before the Hon'ble Minister for Petroleum and Natural Gas with a request not to curtail allocation of kerosene oil any further.

(x) The members of petitioner no.1-trade association, who are agents, not only incurred fixed expenses for building the infrastructure but is

also incurring recurring expenses such as electricity bills, telephone bills, salary of workers, office expenses etc. which they could manage by paltry remuneration. However, due to curtailment of kerosene oil, their business is hampered to a great extent.

(xi) The aforesaid curtailment of quota of kerosene oil to State of West Bengal by the Central Government infringes the right to carry on business by the members of petitioner no.1-trade association unreasonably and is violative of Article 19 (1) (g) of the Constitution of India and also affect their right to life, which is violative of Article 21 of the Constitution of India.

(xii) Every consumer, under the Control Order, 1993 is entitled to equal quantity of kerosene oil per month and with reduction in such allocation, the consumers will be ultimately deprived of subsidised kerosene oil, which will jeopardize the Public Distribution System.

(xiii) On the above premises the petitioners filed the writ petition for a direction upon respondent nos.1 to 4 to make allocation of kerosene oil to the State of West Bengal considering the per capita requirement on uniform basis at par with other States and not to make any further curtailment in the allocation of kerosene oil to the State of West Bengal.

3. The respondent nos. 1, 2 & 4-Union of India filed their affidavit-in-opposition contending, *inter alia*, as follows:

(i) The writ petition is not maintainable as no fundamental right of the petitioner has been infringed.

(ii) While deciding the scale of distribution of PDS kerosene oil i.e. per capita allocation (PCA) to various segment of society, who are using LPG for cooking and electricity for illumination purposes, needs to be excluded by the respective State Governments, for the reason that the allocation of kerosene oil, which is an essential commodity under Essential Commodities Act, has been preserved only for economically weaker segment of the society, who cannot afford or who do not have access to LPG or grid generated electricity.

(iii) The per capita allocation (PCA) of PDS kerosene oil varies for State to State as the scale of PDS kerosene oil allocation to beneficiaries under various categories such as *Antyodaya Anna Yojana*, Below Poverty Line criterion is done by the State/Union territories Governments, on the assessment of actual requirement at the ground level, which may vary every quarter. Thus the per capita allocation (PCA) is determined by the State.

(iv) In this regard the answering respondent has got a study done in the year 2005 by the National Council of Applied Economic Research (NCAER) and such survey report is used to understand the trend and thereafter take considered policy decision taking into account other factors.

(v) The report of NCAER is merely an indicative study and not a policy of the respondent-Union of India and thus the allegation of the petitioner of gross discrimination by the answering respondent in the allocation of kerosene oil is misconceived.

(vi) As per data available as on 1st December, 2016, 128.29 lacs households are having LPG connections with LPG coverage of 56.20% in West Bengal. In other words, kerosene oil is only required for 43.80% i.e. 88.31 lacs non-LPG households.

(vii) The State Government has failed in its obligation to ensure that the kerosene oil meant for Public Distribution System, which is otherwise a scarce commodity and is meant only for economically weaker/backward section of the society, ought to have been distributed appropriately. There is anomaly of allocating highest per head allocation of kerosene in Kolkata district in contrast to highest LPG penetration of 118.46% in Kolkata district which clearly indicates the inadequate distribution. The State Government has made highest allocation of PDS kerosene oil to Kolkata where requirement of kerosene for cooking is almost nil.

(viii) The allocation of PDS kerosene is made by the respondent-Union of India while the per capita allocation (PCA) is decided by the respective State Governments. Therefore, the allegation of the petitioners on gross discrimination of allocation of kerosene oil to the State of West Bengal vis-à-vis other States is baseless.

(ix) The petitioners have failed to provide any data with regard to whether the allocation suffices to meet the cooking and illuminating requirement of such segment of population which on account of poverty/lesser resources/limited means is unable to have the access to LPG and grid generated electricity. Thus in the absence of current data,

there cannot be any challenge to the policy decision of the answering respondent.

(x) Since LPG is a cleaner and environment friendly fuel as compared to kerosene oil, the Government has aimed to expand the coverage of LPG for cooking purposes especially in rural and unserved areas to improve quality of life. Keeping in view the objective, the Government of India (MoP&NG) has been steadily reducing the quota of PDS Superior Kerosene Oil (SKO) and shifting to more health and environment friendly fuel like LPG and PNG. The Government of India as well as Public Sector Oil Marketing Companies is incurring huge subsidies on PDS kerosene oil and, therefore, it is essential to ensure that the subsidised PDS kerosene oil reaches the needy beneficiary group only.

(xi) The study of NCAER shows that about 38.64% of PDS kerosene is not reaching targeted end users in the country and it has also recommended restricting the subsidies on kerosene to BPL families only. The Dr. Rangarajan Committee constituted by the Government of India to formulate a long-term pricing policy of petroleum products has also recommended restricting PDS SKO subsidies to BPL families only.

(xii) As per NCAER report in the State of West Bengal there is estimated leakage/diversion of PDS kerosene oil of 19.1% of the total allocation of PDS kerosene oil to the State. The Economic Survey of 2014-15 of Ministry of Finance, Government of India also estimated leakage of 38% of total PDS kerosene oil allocation made to the State of West Bengal.

(xiii) As per census of 2011, only 2.1% households are using kerosene oil as the primary fuel for cooking purpose in the State of West Bengal as against national average of 2.9%.

(xiv) The PDS SKO allocation to various States/Union Territories including the State of West Bengal has been rationalised in 2010-11 broadly based on the factors such as increase in domestic LPG and PNG connections, non-lifting of PDS kerosene quota by the concerned States/Union Territories and a cap on the per capita PDS kerosene oil allocation for non-LPG and PNG population.

(xv) The relevant issue is not reduction of allocation of kerosene oil to the State of West Bengal but the real issue is cautious distribution of PDS kerosene oil to the relevant quarters. The Government of West Bengal is required to review the existing PDS kerosene network and take necessary action to streamline the same for better targeting of *bona fide* beneficiaries and preventing diversion of kerosene oil, if any, for unauthorised purposes. For special needs, the Government of West Bengal may opt for non-subsidised kerosene oil allowed to States/Union Territories.

(xvi) The SKO dealership is a business opportunity and not an offer of employment by the Oil Marketing Companies. Therefore, like any other business, it is subject to its own inherent risks. The petitioners cannot compel the State or its instrumentalities to do business with a person on his terms. Thus, it cannot be said that the right flowing out of

Article 19(1)(g) and the right to decent living as mandated by Article 21 is affected on account of reduction in the consumption of kerosene.

4. The respondent no.5, State of West Bengal has also filed its affidavit-in-opposition and contended as follows:

(i) For determining the allocation, the State relied on various parameters including the percentage of Scheduled Castes/Scheduled Tribes and number of families covered by the AAY schemes identified by the Socio-Economic Castes Census. Access to electricity and LPG was also taken into account while determining the per capita allocation (PCA) of SKO.

(ii) The Government of India, till date, has not disclosed any policy for rational and equitable distribution of SKO amongst various States. The State-wise allocation is made as per whims of the concerned authorities.

(iii) LPG connections or the number of consumers is no indication of LPG penetration. A family may have a LPG connection but it may not have the means to obtain the refill cylinders. The cost of refilling is beyond the reach of the majority of the poor people sought to be covered by the *Pradhan Mantri Ujjwala Yojna* (PMUY). The real indicator should be the per capita lifting of LPG cylinders by the consumers which has deliberately not been disclosed by the Government of India as it will show that there is a need for requirement of SKO for use as fuel for cooking purposes.

(iv) The State is also encouraging the use of alternative fuel like solar energy and biomass. However, even taking into account such other sources of fuel, the present allocation is much below the requirement of SKO and as such there is no scope for any further reduction in allocation of kerosene oil by the Government of India.

(v) The Government of West Bengal for proper distribution of SKO under PDS has already taken a policy decision considering various factors.

5. Mr. Shyamal Sarkar, learned senior advocate appearing on behalf of the petitioners submitted that the petitioners by filing the present writ petition have precisely raised their grievances that the respondent-Union of India is reducing the allocation of Superior Kerosene Oil (SKO) to the State of West Bengal without taking into consideration the actual need of the consumers. Under the Public Distribution System, the Central Government allots the Superior Kerosene Oil to the State Governments for its distribution to the designated consumers. There has been reduction in allocation of kerosene oil to the State of West Bengal with the passage of time. With the rise in population of the State, the number of beneficiaries has increased. Keeping in mind the aforesaid aspect, the Government of West Bengal made several communications to the Ministry of Petroleum and Natural Gas, Government of India for escalation of allocation of Superior Kerosene Oil. However, in spite of increasing the allocation to the State of West Bengal, the same has been reduced thereby affecting the livelihood of a large portion of the poor population of the State who are

dependent on the Superior Kerosene Oil. The issue of allocation of kerosene oil was referred to the National Council of Applied Economic Research (NCAER) duly sponsored by the Petroleum Planning and Analysis Cell, Ministry of Petroleum and Natural Gas. From the report of NCAER, it will appear that the allocated kerosene oil has been misused and siphoned off to black market by several States and upon comparative study it is found that the States with more misuse are allocated more kerosene oil. The State of West Bengal is one of the lowest in terms of misuse of PDS kerosene oil. The Hon'ble High Court in other writ petitions gave direction to the Central Government to consider the representation made by the Government of West Bengal for escalation of allocation of Superior Kerosene Oil. However, till date, nothing has been done. Though it is contended by the respondent-Union of India that since use of LPG in the household is in the rise, the requirement of kerosene oil is bound to come down, yet the Central Government has failed to take into account that a large population does not have the financial capacities to purchase LPG barrels for their monthly consumption. Every citizen is entitled to PDS kerosene oil which is the cheapest fuel and a good substitute of LPG. Availability of LPG cannot take away the citizens' right to get PDS kerosene oil. Further for getting LPG cylinder in remote areas one has to travel 10/15 kms., which is also a factor for not opting for LPG apart from the unaffordable price of LPG cylinder.

Moreover, referring to the decision of Hon'ble Supreme Court passed in ***Shivajirao Nilangekar Patil versus Dr Mahesh Madhav Gosavi and***

Others¹, he submitted that even though the petitioner might have moved in his private interest but when affairs relating public interest has been brought to the notice of the Court, it is the duty of the Court to the public that truth is inquired and unearthed. Further the traditional rigours on the concept of *locus standi* have been substantially watered down by the Apex Court in series of judgments especially in the field of public law proceedings. Relaxed rule of locus is accepted in our constitutional jurisprudence. To buttress his contention, he relied on the decision of this Court passed in **Nand Kishor Sonkar versus Howrah Municipal Corporation & Ors.**². Therefore, the challenge to the *locus standi* of the petitioner is misconceived one. Moreover, referring to the decision of this Court passed in **Organization of Indian Engineering Industries and Anr. versus State of West Bengal and Ors.**³ he submitted that the writ petition is maintainable, at the instance of a society registered under the Societies Registration Act, by the petitioner no.1-trade association on behalf of its members and the consumers.

Furthermore, the reduction in allocation of kerosene oil by the Central Government is without any rational or basis. The respondent-Union of India though pleaded that the reduction of allocation of SKO is result of a policy decision, yet no policy has been disclosed either for allocation of kerosene oil or reduction of allocation. In such premise, the writ petition should be allowed on the ground of non-traverse. In support of his

¹ (1987) 1 SCC 227

² 2004 SCC OnLine Cal 501

³ 2017 SCC OnLine Cal 20005

contention, he relied on the decision of Hon'ble Supreme Court passed in ***Bharat Singh and Others versus State of Haryana and Others***⁴.

Moreover, as per the PPAC report of June 2016 annexed to the affidavit-in-opposition to the supplementary affidavit the top barriers for LPG connections that have emerged in the State of West Bengal includes recurring cost, high initial cost, long waiting time for LPG refill, tedious process of application, long waiting time for LPG connections, and distance of distributor centre. Therefore, the kerosene oil still now remains a greater requirement of the poor population. He also indicated from the recent PPAC report that since the year 2021 the Central Government has stopped subsidy on SKO and hence the question of incurring huge subsidies does not arise at all.

In light of his aforesaid submissions, he prayed that necessary directions be passed upon the Central Government to frame a policy basing on the data, report of NCAER and also upon taking into consideration the per capita requirement of the State of West Bengal. He also sought for direction upon the Central Government for allotment of kerosene oil as per requirement of the State of West Bengal.

6. In reply to the contentions raised on behalf of the petitioners, Mr. Avinash Kankani, learned advocate appearing on behalf of the respondent nos. 1, 2 & 4, Union of India, at the outset, submitted that the members of the petitioner no.1-Trade Association, carrying on the business of agency have no legal or fundamental right to claim allocation of kerosene in the manner as they think fit and that no right of the petitioners have been

⁴ (1988) 4 SCC 534

infringed. The allocation of kerosene oil under the Public Distribution System is a policy decision of the Central Government which does not call for interference by this Hon'ble Court. There is also no indication as to how the fundamental rights of the petitioners have been violated by the impugned order of the Central Government. The petitioners herein cannot compel the Government, either Central or State or any of its instrumentalities, to allocate kerosene oil on the terms as the petitioners deem fit. There is no right flowing out of Article 19(1)(g) of the Constitution of India and the right to decent living as mandated by Article 21 as there is no violation of fundamental principles as stated in the said Articles. Thus, the petitioners are not at all aggrieved person. The existence of the right is implicit for exercising extraordinary jurisdiction by the High Court under Article 226 of the Constitution of India. It is well-established that a person, who is not aggrieved by the discrimination complained of, cannot maintain a writ petition. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***D. Nagaraj and Others versus State of Karnataka and Others***⁵.

Further identical writ petitions filed by Kerosene Dealers' Association before the Hon'ble Madras High Court in *W.P. Nos. 35491 & 35495 of 2019 (Tamil Nadu Kerosene Dealers Association and S. Kuppusamy versus Union of India and Others)* and Hon'ble Kerala High Court in *WP (C) No. 10742 of 2021 (Babychen Mukkadan and Others versus Union of India and Others)*, on the self-same ground, had been dismissed by the respective Courts. Thus, it cannot be said that the policy formulated by the oil companies is

⁵ (1977) 2 SCC 148

erroneous or the right flowing out of Article 19(1)(g) and the right to decent living as mandated in Article 21 of the Constitution of India is affected on account of increase in use of LPG and reduction in the consumption of kerosene oil. There is no restraint on the individual from carrying any other business or avocation and is also not prevented from applying for LPG distributorship like any other person. At the time of granting SKO dealership, no promise of compulsory minimum sale and assured income to the dealer was made.

He further submitted that the entire pleadings in the writ petition is regarding the loss of business which the petitioners will suffer in the event the kerosene oil quota is reduced. However, no argument was advanced on those pleadings in the writ petition and hence it is clear that the petitioners have chosen to abandon their claim. The petitioners in their affidavit-in-reply have taken the plea that the consumers as a whole will be affected by the reduction in quota of kerosene oil which is completely a new case in the form of a public interest litigation which the petitioners cannot do. Neither the State of West Bengal nor any consumer has come up before this Hon'ble Court espousing their grievance. The petitioners cannot be permitted to espouse the cause of a third person in the present litigation as the purported right of the petitioners is based as agents. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Chinta Lingam and Others versus Government of India and Other***⁶.

⁶ 1970 (3) SCC 768

The petitioner referring to PPAC report annexed to the supplementary affidavit urged that there are barriers in the State of West Bengal in providing LPG connections such as recurring cost, high initial cost, long waiting time for LPG refill, tedious process of application. However, it failed to rely on the latest data of the PPAC report which clearly shows that LPG connection enrolment and consumption has been second highest in the State of West Bengal throughout the country. Therefore, the argument that the people in the State of West Bengal cannot afford or do not use LPG is an assumption and is incorrect. Though it has been argued that on behalf of the petitioners that since the year 2021 the Central Government has stopped subsidy on SKO and hence the question of incurring huge subsidies does not arise at all yet the aspect whether there is presently any subsidy on kerosene oil or not does not improve the case of the petitioners. The point is that the petitioners have failed to demonstrate any legal right which entitles the petitioner to obtain kerosene oil or compel the government to supply the same to the petitioners as per their dictate. This Hon'ble court in the decision passed in ***Yeasin Molla and Others versus Union of India and Others***⁷ refused to entertain the writ petition on the pricing of the kerosene oil as the same being a policy decision, even though the same was filed by the ration card holders. The petitioners not being consumers or aggrieved persons are not entitled to maintain the present proceedings.

The respondents-Union of India were compelled to supply kerosene oil to the State of West Bengal at the subsidised rate from 2016 till the relevant

⁷ **2023 SCC OnLine Cal 2756**

period due to the interim order passed by this Hon'ble Court. In the event, the writ petition is dismissed, the petitioners are liable to reconstitute the loss suffered by the respondents on account of the interim order obtained by the petitioners against the reduction of quota of kerosene. To buttress his contention, he relied on the decision of Hon'ble Supreme Court passed in ***South Eastern Coalfields Ltd. versus State of M.P. and Others***⁸. Moreover, it is urged that a direction be given to the Comptroller and Auditor General of India to assess the loss of revenue suffered on account of supply of kerosene oil at the subsidised rate due to non-reduction of the allocation of PDS kerosene since October 2016 till the relevant date and direct the petitioners to make such payment to respondent no.1.

In *Shivajirao (supra)*, *Nand Kishor Sonkar (supra)* the petitioner therein was an aggrieved person however the petitioner in the present case is not an aggrieved person and thus the ratio of the aforesaid decision does not help the case of the petitioner.

Referring to *Bharat Singh (supra)* he submitted that the petitioner is not permitted to persuade a case which has not been pleaded in the writ petition and, therefore, the petitioner has abandoned its original claim.

In view of his aforesaid submissions, he prayed that the writ petition is liable to be dismissed.

7. Mr. Sirsanya Bandyapdhayay, learned advocate for the respondent no.5-State of West Bengal submitted that the State after considering various parameters including percentage of scheduled castes/scheduled Tribes, number of families covered under AAY schemes, accessibility to

⁸ (2003) 8 SCC 648

electricity and LPG determines the per capita allocation (PCA) of SKO. LPG connections or the number of consumers is no indication of LPG penetration. A family may have a LPG connection but it may not have the means to obtain the refill cylinders. The majority of poor people sought to be covered by the *Pradhan Mantri Ujjwala Yojna* (PMUY) cannot bear the cost of refilling of cylinders. The real indicator should be the per capita lifting of LPG cylinders by the consumers which has been not been disclosed by the Government of India, which could show the extent of requirement of SKO for use as fuel for cooking purposes. The State of West Bengal is encouraging use of alternative fuel such as solar energy and biomass, however taking into account such other sources of fuel, the allocation of SKO by the Government of India to the State of West Bengal is much below the requirement and therefore there is no scope for any further reduction of allocation of kerosene oil. The Government of India till date has not disclosed any policy for rational and equitable distribution of SKO amongst various States and the State-wise allocation of kerosene oil is made as per whims of the concerned authorities. He also indicated that the Government of West Bengal for proper distribution of kerosene oil under the Public Distribution System has already taken a policy decision considering various factors. In light of his aforesaid submissions, he prayed that the allocation of kerosene oil should not be reduced by the Government of India rather there is need to escalate the allocation bearing in mind that majority of poor people cannot afford to purchase LPG cylinders.

8. In reply to the contentions raised by the respondents-Union of India, Mr Sarkar, learned senior advocate for the petitioners submits that the petitioners in their affidavit-in-reply to the affidavit-in-opposition of the respondents-Union of India, have categorically pleaded that with the reduction of allocation of kerosene oil the majority of poor people of the State of West Bengal would be affected since they are unable to maintain the LPG connections due to their financial limitations. The statements as aforesaid made in the affidavit-in-reply is part of the pleadings of the petitioners and therefore it cannot be argued that the petitioners urged certain aspects which has not been pleaded by them and tried to make out a third case. To buttress his contentions, he relied on the decision of Hon'ble Supreme Court passed in ***Sri-La-Sri Subramana Desika Gnansambanda Pandarasannadhi versus State of Madras and Another***⁹. The petitioners are the agents who supplies SKO on the basis of license granted to them by the appropriate authority and upon reduction of allocation of SKO without there being any policy of the Central government in place, their trade and business would be affected which infringes the right of the petitioner to carry on such business and is violative of Article 19 (1) (g) of the Constitution of India and their right to life as mandated in Article 21 of the Constitution of India. Further the decisions cited on behalf of respondents-Union of India is factually distinguishable and one additional or different fact may make a world of difference between conclusions of two cases. In support of his contention, he relied on the decision of Hon'ble Supreme Court passed in ***Union of***

⁹ AIR 1965 SC 1578

India and Another versus Major Bahadur Singh¹⁰. He sought for passing appropriate direction in terms of prayers made in the writ petition.

9. Upon hearing the learned advocates for the respective parties and on perusal of the materials on record, it is found that in the present writ petition the petitioners being the agents of oil companies has sought for a direction upon the respondent-Union of India to make allocation of kerosene oil to the State of West Bengal considering the per capita requirement on uniform basis at par with other States and not to make any further curtailment in the allocation of kerosene to the State of West Bengal. Such prayer of the petitioners has been challenged by the respondent-Union of India precisely on twofold grounds, firstly, the petitioners being the agents and not the consumers, are not aggrieved persons and, therefore, there is no infringement of right under Article 19(1)(g) or Article 21 of the Constitution of India and moreover they have no *locus standi* to file such a writ petition challenging the reduction of allocation of kerosene oil and secondly, the reduction of allocation of kerosene oil to the State of West Bengal being a policy decision of the Central Government the same cannot be intervened by the court on the petition of the petitioners. Considering the contention of the writ petitioners and the rival contention made in the affidavit-in-opposition, following issues are involved in the present writ petition:

- (i) Whether the reduction of allocation of kerosene oil to the State of West Bengal by the Central Government violates the right of the petitioners to carry on trade or business enshrined under Article

¹⁰ (2006) 1 SCC 368

19(1)(g) of the Constitution of India and right to decent living mandated under Article 21 of the Constitution of India?

(ii) Whether the petitioners have any *locus standi* to file the writ petition?

(iii) Whether the Central Government should take a policy decision for allocation of kerosene oil to the State of West Bengal?

(iv) Whether the Central Government be directed to allocate kerosene oil as per requirement of the State of West Bengal?

10. With regard to the first issue whether such reduction of allocation of kerosene oil violates the right of the petitioners under Article 19(1)(g) and Article 21 of the Constitution of India, the contention of the writ petitioners made in their writ petition is to be looked into. From the facts averred in the writ petition, it is found that the petitioner no.1 is a trade association of Kerosene Oil Agents appointed by various oil companies, who are functioning under licenses granted by the State of West Bengal in terms of West Bengal Control Order, 1968. It is not in dispute that the Central government allots kerosene oil to the State Government to be distributed through the agents of oil companies to the consumers under the Public Distribution System. The government oil companies as defined in the Control Order of 1993 appoint dealers to sell kerosene oil to the nominated consumers of the State government or ration card holders under the Public Distribution System. The government oil companies have appointed the members of the petitioner no.1-trade association as dealers for respective areas in the State of West Bengal. The commission of an agent of an oil

company is fixed by the Central government which in the present case is Rs.714.18 paise per KL. The main contention so far the members of the petitioner no.1-Trade Association is concerned that due to reduction in allocation of kerosene oil, the trade/agency of the members of the petitioner no.1 is affected.

10.1. The Status of State Allocation since 2000 (Annexure 9 of the writ petition) is reproduced hereunder for better appreciation.

“Status of State allocation since 2000

<i>Period</i>	<i>Quota (KL) per month</i>	<i>Remarks (per month)</i>
<i>April 2000-March 2001</i>	<i>87437</i>	
<i>April 2001-March 2002</i>	<i>85178</i>	<i>Reduced 2259 KL</i>
<i>April 2002-December 2002</i>	<i>83178</i>	<i>Reduced 2000 KL</i>
<i>January 2003-March 2003</i>	<i>83395</i>	<i>Increased by 217 KL</i>
<i>April 2003-March 2004</i>	<i>81782</i>	<i>Reduced by 1613 KL</i>
<i>April 2004-March 2005</i>	<i>80122</i>	<i>Reduced by 1660 KL</i>
<i>April 2005-June 2005</i>	<i>80537</i>	<i>Increased by 415 KL</i>
<i>July 2005-March 2006</i>	<i>80538</i>	<i>Increased by 1 KL</i>
<i>April’06-June’09</i>	<i>80537</i>	<i>Decreased by 1 KL</i>
<i>July’09-Mar’10</i>	<i>80457</i>	<i>Reduced by 80 KL</i>
<i>April’10-Dec’10</i>	<i>80448</i>	<i>Reduced by 9 KL</i>
<i>Jan’11-Mar’11</i>	<i>80452</i>	<i>Increased by 4 KL</i>
<i>Apr’11-May’11</i>	<i>80448</i>	<i>Reduced by 4 KL</i>
<i>June’11</i>	<i>80376</i>	<i>Reduced by 72 KL</i>
<i>July’11-Mar’12</i>	<i>80384</i>	<i>Increased by 8 KL</i>
<i>Apr’12-Mar’13</i>	<i>80372</i>	<i>Reduced by 12 KL</i>
<i>April’13-Sep’13</i>	<i>80296</i>	<i>Reduced by 76 KL</i>
<i>Oct’13-Mar’14</i>	<i>80292</i>	<i>Reduced by 4 KL</i>
<i>April’14-Sep’14</i>	<i>80296</i>	<i>Increased by 4 KL</i>
<i>Oct’14-Dec’14</i>	<i>80292</i>	<i>Reduced by 4 KL</i>

<i>Jan'15-Mar'15</i>	<i>79976</i>	<i>Reduced by 316 KL</i>
<i>April'15-June'15</i>	<i>78612</i>	<i>Reduced by 1364 KL</i>
<i>Oct'15-Dec'15</i>	<i>78608</i>	<i>Reduced by 4 KL</i>
<i>April'16-June'16</i>	<i>74676</i>	<i>Reduced by 3932 KL</i>
<i>July'16-Sep'16</i>	<i>70,944</i>	<i>Reduced by 3732 KL</i>
<i>Oct'16-Dec'16</i>	<i>58,668</i>	<i>Reduced by 12276 KL</i>

Upon going through the aforesaid tabular chart, it is seen that there is reduction in allocation of kerosene oil from April 2000 till December 2016 excepting for period between January 2003 to March 2003, April 2005 to June 2005, July 2005 to March 2006, January 2011 to March 2011, July 2011 to March 2012, April 2014 to September 2014 when the quota was increased. It is also not in dispute that over the period of time there is reduction of allocation of kerosene oil to the State of West Bengal. Now it is to be seen whether such reduction of allocation of kerosene oil to the State of West Bengal by the Central Government infringes the right of the members of petitioner no.1-Trade Association enshrined under Article 19(1)(g) of the Constitution of India.

10.2. Article 19 (1) (g) of the Constitution of India confer on all citizens the right to practice any profession or to carry on any occupation, trade or business. This freedom means that every citizen has the right to choose his own employment or to take up any trade or calling, subject only to the limits as may be imposed by the State in the interests of the public welfare and the other grounds mentioned in clause (6). All activities contemplated under Article 19(1)(g) are essentially activities which enable a citizen to

generate economic benefits, which is the primary purpose and thrust of said Article. The object of using four analogous and overlapping words in Article 19(1)(g) is to make the guaranteed right as comprehensive as possible to include all the avenues and modes through which a man may earn his livelihood. The guarantee takes into its folds any activity carried on by a citizen to earn his living. “*Trade*” in its wider sense includes any bargain or sale, any occupation or business carried on for subsistence or profit, it is an act of buying and selling of goods and services. “*Business*” means and includes anything which occupies the time, attention of labour of a man for the purpose of profit. The members of the petitioner no.1-trade association are the agents for supplying kerosene oil to the nominated consumers or ration card holders of the State of West Bengal under license and for such trade or business they receive commission from the Central government. It is trite law that while a citizen has a fundamental right to carry on a trade or business, he has no fundamental right to insist upon the government or any other individual for doing business with him. It may be emphasised that the Constitution does not recognise promise or rights to business which are dependent on grants by State or business affected by public interest. **(See *Krishnan Kakkanth versus Government of Kerala and Others*¹¹).** What is guaranteed by Article 19(1)(g) is the right to pursue a calling or to carry on in occupation of one’s choice and not the right to hold a particular agency for gains, as in the present case, under an agreement. There is no case that the Central Government was bound under certain agreement to continue allocating

¹¹ (1997) 9 SCC 495

kerosene oil as per claim of the members of the petitioner no.1-Trade Association, namely the agents. Further at the time of granting SKO dealership, no promise of compulsory minimum sale and assured income was made to the dealers. The extent of allocation of kerosene oil by the Central Government to the State Governments is the prerogative of the government and falls within its exclusive domain. Thus, the members of the petitioner no.1-Trade Association who are agents cannot claim as of right the amount of kerosene oil to be allocated to the State of West Bengal. Hence the members of the petitioner no.1-trade association, being the agents for supplying kerosene oil, cannot complain of violation of Article 19(1)(g) merely because their trade/business of getting commission has been affected by the reduction of allocation of kerosene oil to the State of West Bengal by the Central Government. Since the right of the members of petitioner no.1-trade association has not been infringed, they cannot be termed as aggrieved person. At the same time, there is no infringement of decent living as mandated under Article 21 of the Constitution of India.

11. At this juncture, the next issue arises whether the members of petitioner no.1-Trade Association has *locus standi* to maintain a writ petition even if they are not the aggrieved person. Mr. Sarkar, learned senior advocate for the petitioners have urged, relying on *Shivajirao Nilangekar Patil (supra)* and *Nand Kishore Sonkar (supra)* that the traditional rigours on the concept of *locus standi* have been substantially watered down by the Hon'ble Apex Court in series of judgements specially in the field of public law proceedings and when affairs relating to public

interest has been brought to the notice of the court, it is the duty of the court to unearth the truth. *Per contra*, Mr. Kankani, learned advocate for respondents–Union of India relying on *D. Nagraj (supra)* argued that the existence of the right is implicit for exercising extraordinary jurisdiction by the High Court under Article 226 of the Constitution of India and it is well established that a person who is not an aggrieved cannot maintain a writ petition.

11.1. In order to appreciate the aforesaid issue, it would be profitable to refer to the observation of Larger Bench of Hon’ble Supreme Court in **S.P. Gupta versus Union of India and Another**¹² as hereunder:

“17. It may therefore now be taken as well established that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Art. 226 and in case of breach of any fundamental right of such person or determinate class of persons, in this Court under Art. 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.”

¹² **AIR 1982 SC 149**

11.2. Though the decision in *Nand Kishore Sonkar (supra)* is factually distinguishable but the proposition with regard to *locus standi* has been laid down as follows:

“51. The traditional rigours on the concept of locus standi have been substantially watered down by the Apex Court in a series of judgments especially in the field of public law proceedings. The judicial trend 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 judgement 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.

52. Today the concept of locus in public law proceedings are decided on facts and in the interest of justice and not on pre-conceived archaic rule of Anglo-Saxon vintage.”

11.3. Thus, it manifests that where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reasons or violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of person is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226 and in case of breach of any fundamental right of such person or determinate class of

persons, in the Supreme Court under Article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons. In view of a subsequent decision of a larger bench of Hon'ble Supreme Court in *S.P. Gupta (supra)* as reproduced hereinabove with regard to *locus standi* where a legal wrong or a legal injury is caused to a person or to a determinate class who are unable to approach the Court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under Article 226, the decision of three-judges Bench in *D. Nagaraj (supra)* that the existence of the right is implicit for exercising extraordinary jurisdiction by the High Court under article 226 of the Constitution of India and that a person who was not aggrieved cannot maintain a writ petition cannot be applied. Therefore, the question of *locus standi* to maintain a writ petition is relaxed to a great extent. The members of petitioner no.1-Trade Association in the present writ petition along with their grievance of loss of trade and business due to reduction of allocation of kerosene oil has also raised the issue of hardship and inconvenience to the designated consumers under the Public Distribution System due to such reduction in allocation. I find force in the submissions of Mr. Sarkar, learned senior advocate for the petitioners that a society can maintain a writ petition on behalf of its members relying on *Organization of Indian Engineering Industries (supra)*. Bearing in mind the aforesaid proposition I have no hesitation to hold that the petitioner no.1-Trade Association, a society, represented by petitioner no.2, its General Secretary have the *locus standi* to maintain the present

writ petition on behalf of its members as well as the designated consumers.

11.4. In *Shivajirao Nilangekar Patil (supra)* the petitioner in the writ petition was an aggrieved person. The petitioner appeared for an examination and was declared unsuccessful. There were serious allegations against the sitting Chief Minister of favouring his daughter above the petitioner. Keeping in mind the said facts, the Hon'ble Court observed that the allegations made in the petition discloses a lamentable state of affairs in one of the premier universities of India. The petitioner might have moved 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. The facts involved in the cited decision is quite distinguishable from the case at hand and therefore the ratio does not apply to the facts of the present case.

11.5. Mr. Kankani, learned advocate for respondent nos.1, 2 & 3-Union of India relying on *Chinta Lingam (supra)* and *Bharat Singh (supra)* urged that the entire pleadings in the writ petition is regarding the loss of business which the petitioners will suffer in the event the kerosene quota is reduced. However, no argument was advanced on those pleadings in the writ petition and hence it is clear that the petitioners have chosen to abandon their claim. The petitioners in their affidavit-in-reply have taken the plea that the consumers as a whole will be affected by the reduction in quota of kerosene oil which is completely a new case in the form of a public interest litigation which the petitioners cannot do. Neither the State

of West Bengal nor any consumer has come up before this Hon'ble Court espousing their grievance. The petitioners cannot be permitted to espouse the cause of a third person in the present litigation as the purported right of the petitioners is based as agents.

11.6. At the first instance upon going through the pleadings of writ petition it is found that the members of petitioner no.1-Trade Association in the present writ petition along with their grievance of loss of trade and business due to reduction of allocation of kerosene oil has also raised the issue of hardship and inconvenience to the designated consumers under the Public Distribution system due to such reduction in allocation. Therefore, it would not be correct to say that there is no foundation in the pleadings in the writ petition relating to hardship and grievance of the consumer as a whole. Further the effect of reduction in allocation of kerosene oil on the majority of poor people, who are unable to afford LPG cylinders, have also been pleaded in affidavit-in-reply which are part of pleadings as has been rightly argued on behalf of the petitioners relying on *Sri-La-Sri Subramana Desika Gnansambanda Pandarasannadhi (supra)*. Further argument has been pressed into service on behalf of the petitioner with regard to the grievance of the agents as well as of the consumers pertaining to reduction of allocation of kerosene oil. Thus, the aforesaid argument advanced on behalf of the respondents-Union of India does not stand to reason.

12. With regard to third issue whether the Central Government should frame a policy, it is found that challenge to the writ petition has been made

that the allocation of kerosene oil is a policy decision of the Central Government which should not be intervened by the Court. The petitioners in the writ petition has tried to make out a case that the reduction in the allocation of kerosene oil by the Central Government to the State of West Bengal is unreasonable and arbitrary without taking into account the factors which are directly related to allocation and is bereft of rational basis. The Central Government has neither followed the recommendation of National Council of Applied Economic Research (in short 'NCAER') and the present data. Due to such reduction in allocation the business of the members of petitioner no.1-trade association, which is their only source of livelihood, has been affected and caused hardship and inconvenience to the nominated consumers under the Public Distribution System. The respondent-Union of India in its affidavit-in-opposition has stated that with regard to the issue involved pertaining to allocation of kerosene oil, it has got a study done in the year 2005 through National Council of Applied Economic Research (NCAER) to examine the following issues namely (a) To study distribution of kerosene under the Public Distribution System by various States/Union Territories; (b) To assess the demand for Public Distribution System and free sale kerosene in various States/Union Territories; (c) To assess the demand for kerosene and LPG and to establish if there is any correlation between the requirement of kerosene and release of new LPG connections and (d) To determine the future trend in kerosene and LPG demand separately for urban and rural areas. It is also stated therein that the report of NCAER was a result of survey

conducted in order to collect statistics and assess the ground situation as prevalent across various States. The report is used only to understand the plot rates and thereafter take considered policy decisions after taking into account various factors. The NCAER in the year 2005 made the following recommendations (Annexure P2):

“RECOMMENDATIONS OF NATIONAL COUNCIL FOR
APPLIED ECONOMIC RESEARCH

1. *Although every state has two or three tiers of kerosene monitoring systems, this system is ineffective in controlling leakage and diversion of PDS kerosene. As a result, people are forced to buy kerosene from the market at more than double the PDS price. There is, therefore, an urgent need to overhaul the monitoring system.*
2. *We think that by involving the panchayati raj institutions in villages and user committees in urban areas, the problem could be solved to some extent. However, it is the state governments' responsibility to make sure that the kerosene meant for house holds reaches to retailers in right time and right quantity.*
3. *Although most of the BPL households are able to purchase their entire entitlement from PDS, some households are not able to purchase their entire entitlement from PDS. The reasons for this is poverty. It is difficult for a daily wage earner to purchase even five litres of kerosene at one time. Almost half of these households couldn't afford to buy their entire entitlement at one time and the rest use other, cheaper fuels, such as wood, crop waste, dung cake, etc.*
4. *Government should look into the frequency of kerosene disbursement to BPL households and the same may be changed from monthly/fortnightly to weekly*

basis for BPL cardholders. This will help daily wage earners in taking their weekly entitlement.

5. State specific duties are quite high in some states, but this problem is partially solved by implementation of state level VAT. However, with the implementation of VAT, prices have come down in the states where state level duties were high but have gone up when the state level taxes were low.

6. There should not be any inter-and intra-state differential in kerosene prices. States may consider having uniform retail selling price of kerosene throughout the state.

7. Different state governments follow different criteria for making allocations of PDS kerosene to different types of card holders. Generally, allocation depends on whether a household has a LPG connection or not. However, we found that the kerosene requirement of different types of cardholders is higher than their current level of consumption. The average current requirement of rural BPL card holders at the all-India level is 18 per cent more than their current level of consumption. Similarly, for APL and other card holders, the current requirement is higher by 13 and 24 per cent, respectively at the all-India level. In urban areas, the current requirement of BPL, APL and other card-holders is more than their current level of consumption by 12, 7 and 18 per cent, respectively.

8. Current household kerosene demand (inclusive of unmet demand) is nearly 93 per cent of sale of PDS kerosene. With proper monitoring, plugging in leakage in PDS kerosene distribution and reallocation of PDS kerosene across states, current level of sale of PDS kerosene would satisfy unmet kerosene demand.

9. Kerosene demand is sensitive to price as far as heating (cooking and water heating) is concerned.

Kerosene demand for lighting would not change with respect to a change in prices. Since, nearly 61 per cent consumption of kerosene is for lighting, there will not be much impact of a price change on kerosene demand. A one per cent increase in kerosene price would reduce kerosene demand for heating by 0.23 per cent and overall kerosene demand by 0.11 per cent. Thus, kerosene demand is relatively price inelastic. With increase in kerosene price, some rural households may shift to other non-commercial fuels, such as wood, crop waste, dung cake etc. In urban areas people would shift from kerosene to LPG. However, if the change in kerosene prices is gradual and not in two or three years, kerosene demand would not go down much.

10. The distribution of kerosene to households, should follow a similar methodology as followed in the case of PDS of grains. All households possessing APL cards should purchase kerosene at the market price (as economic cost to the Government) and subsidized PDS kerosene should only be made available to people with BPL, Annapurna, Antyodaya cards, etc only.

11. PDS kerosene is supplied for fishing in some coastal states. Kerala provide a sizeable amount of kerosene to fishing community from their PDS allocation. Kerosene requirement for fishing may be supplied at non-PDS price.

12. Taking out APL card holders from the purview of subsidies, PDS kerosene would amount to 41.2 per cent savings of current kerosene subsidy. If the leakage is controlled this saving can give enough scope to government to keep subsidized kerosene price for BPL families at lower level.”

12.1. Nothing has been placed at the instance of the respondents-Union of India to show that the recommendations made by NCAER in the year 2005

as aforesaid was considered for taking any policy decision by the Central government with regard to allocation of kerosene oil. It is pertinent to note that no policy decision till date could be shown with regard to allocation of kerosene oil to the State Governments has been taken by the Central Government. The assessment report with regard to survey on household cooking fuel usage and willingness to convert to LPG of June 2016 of Petroleum Planning and Analysis Cell annexed to the affidavit-in-opposition of the petitioners to the supplementary affidavit of respondent nos. 1, 2 & 4-Union of India shows the top barriers for LPG connections that have emerged in the State of West Bengal includes recurring cost (89%), high initial cost (87%), long waiting time for LPG refill (69%), tedious process of application (68%), long waiting time for LPG connections (67%), and distance of distributor centre (53%) and the estimated penetration of LPG is 46.4%. Be that as it may, the ready reckoner of Petroleum Planning & Analysis Cell shows LPG coverage in the State of West Bengal as on 1.10.2016 is 56.5% (Annexure 10 to the supplementary affidavit of respondent nos. 1, 2 & 4) and 98.7% (Annexure 11) as on 1.10.2020. The respondent nos.1, 2 & 4-Union of India along with their compilation has submitted a ready reckoner of Petroleum & Planning Analysis Cell for the period from April 2023 to September 2023. On the perusal of the said report pertaining to the State-wise active LPG connection as on 1.10.2023 it is found that in the State of West Bengal the active LPG connections is 267.81 Lakhs and under *Pradhan Mantri Ujjwala Yojna* (PMUY) it is 123.71 lakhs. It has been argued by learned advocates for the petitioners as well

as for State-respondent no.5 that LPG connections or the number of consumers is no indication of LPG penetration. A family may have a LPG connection but it may not have the means to obtain the refill cylinders. The cost of refilling is beyond the reach of the majority of the poor people sought to be covered by the *Pradhan Mantri Ujjwala Yojna* (PMUY). The real indicator would be the per capita lifting of LPG cylinders by the consumers. The LPG consumption report of March 2023 of Petroleum Planning & Analysis Cell submitted by respondents-Union of India with the compilation shows the consumption of LPG in State of West Bengal during FY 2022-2023 is 574 TMT which is second highest in the country. Thus, on comparative study of the data as above it goes without saying that the LPG connections in the State of West Bengal with the passage of time has increased. However, this Court is not oblivious to the fact that no policy decision has yet been taken by the Central Government for allocation of kerosene oil for public distribution.

12.2. “*Public Distribution System*” as defined in Control Order, 1993 as the system of distribution, marketing and selling of kerosene at a declared price through a distribution system approved by the Central Government or State Government. Therefore, it is primary duty of the Central Government to frame a policy for allocation of kerosene oil to the State Governments for distribution to the designated consumers.

12.3. Based on the principle of welfare state, the concept of sale of essential commodities through Public Distribution System has evolved and been made operational. The Hon’ble Supreme Court in ***Lala Ram (Dead)***

by Legal Representative and Others versus Union of India and Another¹³ observed as follows:

“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 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 the decent life. It refers to “greatest good of greatest number that the benefit of all that 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

¹³ (2015) 5 SCC 813

to promote the welfare of the people of the State by protecting all the 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. [(1972) 1 SCC 421], N. Nagendra Rao & Co. v. State of A.P. [(1994) 6 SCC 205 : 1994 SCC (Cri) 1609] and N. D. Jayal v. Union of India [(2004) 9 SCC 362].)”

12.4. Thus, it is the duty and obligation of a welfare state based on democratic setup to prepare plans and devise beneficial schemes for the good of the common people and accordingly the Central government must take necessary appropriate steps for framing a policy for allocation of kerosene oil for public distribution to designated consumers through Public Distribution System.

13. Coming to the last issue whether the Central Government be directed to allocate kerosene oil as per requirement of the State of West Bengal, Mr. Sarkar, learned senior advocate for the petitioner further relying on *Bharat Singh (supra)* argued that the writ petition should be allowed on the ground of non-traverse since the respondent-Union of India though pleaded that the reduction of allocation of SKO is result of a policy decision, yet no policy has been disclosed either for allocation of kerosene or reduction of allocation. At the outset, on going through the said

decision, it is found that the appeals before the Hon'ble Supreme Court were directed against the dismissal of writ petitions questioning the validity of the acquisition of land. The proposition laid down is that the facts not pleaded or evidence in support not annexed cannot be entertained. Whereas, in the present case a policy decision in allocation for kerosene oil is required to be taken by the Central Government as a welfare state. Thus, the fact is dissimilar. The proposition cannot be applied to hold that since policy decision has not been taken or disclosed, hence the prayer of the writ petitioner for allocation of kerosene oil should be allowed, even if such decision falls within the domain of Central Government.

13.1. Mr. Sarkar, learned senior advocate has further argued relying on *Major Bahadur Singh (supra)* that the facts of the cited decision of Madras High Court in *Tamil Nadu Kerosene Dealers Association (supra)* and Kerala High Court in *Babychen Mukkadan (supra)* are dissimilar. One additional or different fact may make a world of difference between conclusions in two cases. The proposition as advanced is substantial. However, bearing in mind the aforesaid on going through the decision of Madras High Court in *Tamil Nadu Kerosene Dealers Association (supra)* and Kerala High Court in *Babychen Mukkadan (supra)*, it is found that the facts are similar and the respective courts upon due consideration dismissed the writ petition filed by the dealers' association.

13.2. In *Yeasin Molla (supra)* the ration card holders challenged the reasonableness of soaring price of kerosene oil under Public Distribution

System. The court did not allow such prayer and directed the Central government to adopt and take a policy decision for fixing the rate of subsidized price of kerosene oil for the consumers. I find substance in the submissions of advanced on behalf of respondents-Union of India relying on aforesaid proposition that the allocation of kerosene oil is a policy decision of the Central Government.

13.3. In view of the above allocation of kerosene oil by the Central Government to the State of West Bengal being its policy decision, this Court cannot pass direction for fixing the extent of allocation of kerosene oil to the State.

14. Mr. Kankani, learned advocate for respondent-Union of India relying on *South Eastern Coalfields Ltd (supra)* has urged that in the event, the writ petition is dismissed, the petitioners are liable to reconstitute the loss suffered by the respondents for supplying kerosene oil at the subsidised rate from 2016 till the relevant period on account of the interim order obtained by the petitioners against the reduction of quota of kerosene. The facts involved in the decision cited is that the Union of India in terms of power conferred under Section 9(3) of Mines and Minerals (Regulation and Development) Act, 1957 enhanced the royalty payable on coal to Rs.120 per ton from Rs. 6.50 per ton. The State Government is entitled to collect royalty including enhanced royalty from the lessees i.e. the Coalfields. The Coalfields, in law, can pass on the burden of royalty upon the consumers/purchasers of coal by including the amount equivalent to the royalty in the price of the coal. The consumers/purchasers filed writ

petitions seeking their grievance. In the writ petitions orders were passed protecting the writ petitioners from the recovery of enhanced royalty. The High court disposed of the writ petitions holding the demand of enhanced royalty and liability too was there, only its enforcement was suspended. Challenging the said order, appeals were filed before the Hon'ble Supreme Court which dismissed the same applying the doctrine of restitution. The facts of the cited decision are dissimilar to the case at hand and as such do not apply to the present case.

15. In the present writ petition the court cannot fix the allocation of kerosene oil to the State of West Bengal. However, this court cannot be oblivious to the fact that the Central government has statutory duty to frame a policy for allocation of kerosene oil to the State of West Bengal.

16. Accordingly the instant writ petition is disposed of directing the Central government to adopt and take a policy decision for allocation of kerosene oil to the State of West Bengal for distribution to the designated consumers under the Public Distribution System.

17. With the aforesaid observation, the writ petition being no. **W.P.A. 25064 of 2016** stands disposed of on contest.

18. There shall be no order as to costs.

19. All connected applications, if any, stand disposed of.

20. Interim order, if any, stands vacated.

21. Urgent photostat certified copy of the order, if applied for, be given to the parties upon compliance of all necessary legal formalities.

(Bivas Pattanayak, J.)