

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 11363 of 2025

Sarkar Fuel Station & Anr.
Vs.
The Union of India & Ors.

With

WPA 7776 of 2024

Animesh Baidya
Vs.
Union of India & Ors.

For the writ petitioners	:- Mr. Atarup Banerjee, Adv. Mr. Sourav Basu, Adv. Mr. Rajdeep Pramanik, Adv. Ms. S. Roy, Adv. [in both the writ petitions]
For the Union of India	:- Ms. Debjani Ghosal, Adv. [in WPA 11363 of 2025] Mr. Sanajit Kumar Ghosh, Adv. Mr. Guddu Singh, Adv. [in WPA 7776 of 2024]
For IOCL	:- Mr. Amit Kr. Nag, Adv. Mr. Partha Banerjee, Adv. Mr. Y. Bhattacharyya, Adv. [in both the writ petitions]
For NHAI	:- Ms. Manika Roy, Adv. Ms. Ankita Choudhury, Adv. Mr. Atanu Sur, Adv. [in both the writ petitions]
For the respondent no. 7	:- Mr. Pratik Dhar, Sr. Adv. Mr. Samir Halder, Adv. Ms. Cardina Roy, Adv. [in WPA 11363 of 2025]

Heard on :- 17.07.2025
Judgment on :- 29.07.2025

Amrita Sinha, J.:-

1. The aforesaid two writ petitions have been filed praying for similar relief. The writ petitions are, accordingly, taken up for consideration analogously and disposed of by a common judgment.
2. Sarkar Fuel Station, the petitioner no. 1 in WPA 11363 of 2025, claims to be a partnership firm which is running a petrol pump situated beside NHAI-12 (old NH-34) upon obtaining approval from National Highways Authority of India (NHAI) from the year 2021. Animesh Baidya, the petitioner in WPA 7776 of 2024, has averred that he is associated with a petrol pump beside NH-12 (old NH-34).
3. Both the petitioners are aggrieved by the decision taken by NHAI in granting permission to Indian Oil Corporation Limited (IOCL) for setting up of a large format retail outlet on the self-same highway and they pray for a direction upon NHAI to recall the said sanction memo.
4. Submission of the petitioners is that the said permission is contrary to the guidelines/norms laid down by the Government of India, Ministry of Road Transport and Highways dated 26th June, 2020 relating to grant of permissions for construction of access to fuel stations, wayside amenities connecting roads, other properties, rest area

complexes and such other facilities. The said guidelines are meant to be followed without any deviations.

5. It has been submitted that the minimum distance required to be maintained in between two fuel stations have not been adhered. According to the guidelines in respect of rural stretches of national highways an undivided carriageway has to be 300 metres and for divided carriageway it is 1000 metres. The restriction shall not apply in cases where access/egress for all fuel stations is provided through common service road of 7-metre width and not directly to national highway.
6. The petitioners submits that the distance between the petrol pump of the petitioner and the petrol pump which will be set up at the proposed site does not maintain the minimum distance as per the guidelines. The aforesaid discrepancy was brought to the knowledge of NHAI and the said authority, for resolving the dispute, has requested IOCL to stop the construction of approaches within NHAI row.
7. Prayer has been made to restrain NHAI from giving final approval to the sanction issued to IOCL for setting up of the petrol pump.
8. IOCL has filed a report annexing the guidelines for selection of dealers for regular and rural retail outlet. The guidelines disclose the manner for identification of locations for setting up of retail outlets. It mentions that regular retail outlets shall be located on highways (National Highways/State Highways etc.) and urban/semi urban areas

(within municipal limits of a town). Rural retail outlets are located in rural areas but not on highways (National Highways/State Highways etc.) and outside municipal limits of a town.

9. IOCL contends that, there is no requirement of maintaining the minimum distance in between two retail outlets if the outlet is set up in urban/semi urban areas. In the instant case, place has been identified for setting up of regular retail outlet in accordance with the guidelines. As the outlet does not fall within the rural area, the minimum distance criteria will not apply.
10. Here, the proposed location is under the jurisdiction of Alal Gram Panchayat having population of 34244 as per 2011 census. Information was sought for from the urban local body/ authority specifying whether the proposed fuel station falls within the urban/ municipal town having population of twenty thousand or more and the census report suggests that the population in the area is more than twenty thousand. IOCL asserts that all guidelines have been followed for identification of the said place for setting up of the regular retail outlet.
11. It has been submitted that IOCL already issued letter of intent in favour of Samir Sarkar, respondent no. 7 in WPA 11363 of 2025, way back in the year 2021. No objection was raised when construction was started, but now when the fuel station will be made functional, the writ petitions have been filed.

12. The private respondent submits that there is no requirement of maintaining any minimum distance between two regular retail outlets which falls within the urban area. The private respondent, in accordance with the sanction granted by IOCL, already completed construction of the retail outlet and is in the process of making the same operational.
13. It has been argued that the petitioner ought not to be allowed to stall the functioning of the regular retail outlet of the private respondent which has been set up strictly in accordance with the sanction granted by IOCL. According to the private respondent, the petitioners are fearing competition and apprehends that they may be financially prejudiced if another fuel station is set up nearby.
14. Prayer has been made to dismiss the writ petition and permit the private respondent to start operation of the regular retail outlet.
15. In support of the aforesaid submission learned counsel representing the private respondent relies on the judgment delivered by a five-judge bench of the Hon'ble Supreme Court in the matter of ***State of Orissa -vs- Madan Gopal Rungta*** reported in ***(1951) SCC 1024*** wherein the Court held that the existence of the right is the foundation of the exercise of jurisdiction of the Court under Article 226 of the Constitution. Issuing of writ or direction by the Court is founded only on its decision that a right of the aggrieved party under Part III of the Constitution has been infringed. It has been submitted that none of

the fundamental rights of the petitioners have been infringed and, accordingly, the writ petition is liable to be dismissed.

16. Reliance has also been placed on the judgment delivered by the Hon'ble Supreme Court by a three-judge bench in the matter of ***Mithilesh Garg & Ors. Vs. Union of India & Ors.*** reported in **(1992) 1 SCC 168** wherein the Hon'ble Supreme Court took note of an earlier decision passed by the Court in ***Jasbhai Motibhai Desai vs. Roshan Kumar*** reported in **(1976) 1 SCC 671** wherein the Court held that as a rule the Court should not interfere at the instance of a stranger unless there are exceptional circumstances involving miscarriage of justice having an adverse impact on public interest.
17. In *Mithilesh Garg* (supra) the Court also took note of an earlier decision in the matter of ***The Nagar Rice and Flour Mills & Ors. vs. N. Teekappa Gowda & Bros. & Ors.*** reported in **(1970) 1 SCC 575** wherein it was held that a rice mill owner has no locus standi to challenge under Article 226, the setting up of a new rice mill by another, as no right vested in the applicant is infringed.
18. It has been submitted that both the petitions have been filed by litigants who want to stall the running of business by the private respondent. It has been asserted that none of the guidelines of NHAI has been infringed or violated. None of the constitutional rights of the petitioners have either been violated or infringed.

19. According to the private respondents, there is no cause of action for filing the instant writ petition. It has been submitted that in view of the restraint order passed by the Court, the private respondent is not in a position to start operation of the retail outlet despite having requisite permissions and licenses for running the same. The private respondent is incurring huge financial loss for not being able to run the business. Prayer has been made to permit the private respondent to run his business.
20. Learned advocate representing NHAI submits that to resolve the issue, IOCL has been requested to stop the construction of the approaches within NHAI row.
21. I have heard and considered the submissions made on behalf of all the parties.
22. It appears that the petitioners raise issues with the sanction granted by IOCL in favour of the private respondent to set up, run and operate the regular retail outlet on the National Highway. As per the guidelines of IOCL relating to identification of locations, regular retail outlets may be permitted to be set up on Highways either National or State and urban/ semi urban areas within municipal limits of a town.
23. As per the guidelines of NHAI, the stretch on the National Highway with a population of more than twenty thousand has to be categorized as urban stretches. For setting up of the regular retail outlet in any urban stretch, there is no requirement of maintaining a minimum

distance between two fuel stations. It is only when the fuel station is set up on the rural stretches of the National Highway, that there is a requirement of maintaining minimum distance.

24. The sheet anchor of the petitioners' case is that there is not much population in the area and if two fuel stations are permitted to run at such close proximity, then the petitioners will suffer huge financial loss.
25. Learned advocate for the petitioners strenuously tries to convince the Court that the area falls within the local limits of the gram panchayat. As per the NHAI guidelines it is only when the National Highway passes through a town of population of twenty thousand and more, the stretch shall be categorized as urban stretches. As per the report received from the land authority population strength of the subject gram panchayat as per the 2011 census is 32244, which is far above the threshold strength of twenty thousand.
26. In the matter of Sarkar Fuel Station, the petitioner relied upon a certificate dated 13th June, 2022 issued by the Pradhan of the gram panchayat in support of the submission that the population in the area is less than twenty thousand. It has been noticed that the subject certificate was issued in respect of only one panchayat and not in respect of the area where the fuel station has been set up.
27. The Pradhan of the same gram panchayat, by another certificate dated 10th August, 2022, has intimated the Chief Manager (RS) IOCL, that

the population of the gram panchayat as per the 2011 census is 34244 only. An area with population of above twenty thousand has to be treated as an urban area in terms of the guidelines published by NHAI and the same does not have any restriction of setting up two fuel stations in close proximity.

28. It appears that the requirement of maintaining a particular distance in between two fuel stations is required in areas with less population where the number of vehicular movement will be comparatively less than an area having more population. In places with higher population, more fuel stations will be required to cater to the public at large. Keeping the public interest in mind NHAI has not imposed any restrictive clause regarding maintaining minimum distance between two fuel stations in urban areas.
29. In view of the clarification given by the BDO, the place where the retail outlet is proposed to be set up has to be taken as an urban area which does not require maintaining a minimum distance between two fuel stations.
30. The Hon'ble Supreme Court has laid down in *The Nagar Rice and Flour Mills (supra)* that a competitor in business cannot seek to prevent the rival party from exercising right to carry on business. The competition in trade or business may be subject to such restrictions as are permissible and are imposed by the State by a law enacted in the interest of the general public under Article 19(6) of the

Constitution, but a person cannot claim independently of such restriction that the other party shall not carry on business or trade so as to affect his trade or business adversely.

31. In *Mithilesh Garg (supra)* the Court emphasised that Article 19 (1) (g) of the Constitution guarantees to all citizens the right to practice any profession, or to carry on any occupation, trade or business subject to reasonable restrictions imposed by the State under Article 19 (6) of the Constitution. In the instant case, there is no restriction for setting up two fuel stations on the National Highway in the urban area.
32. The letter of intent was issued in favour of the private respondent long ago. Relying on the said letter of intent, the private respondent has proceeded to make construction for running the retail outlet. When the private respondent has taken steps for operationalisation of the retail outlet, the petitioners intend to put a spanner to the same.
33. NHAI has also not been able to show any error on the part of IOCL in granting sanction / permission to the private respondent to set up the regular retail outlet at the subject place.
34. It does not appear that any of the fundamental rights of the petitioners to carry on business is infringed by the private respondent if he runs his business in accordance with the permission/licence issued by the competent authorities. The petitioners are apprehending competition from the private respondent and fears that there may be a dip in the financial gain being made by the petitioners but the same cannot be a

reason for the Court under Article 226 of the Constitution to restrain a private party from carrying on business in accordance with law.

35. Madan Gopal Rungta (supra) laid down that to invoke the writ jurisdiction, infringement of fundamental right has to be established. Here, it does not appear that any of the fundamental rights of the petitioners has been infringed requiring interference by the writ Court.
36. In view of the above, the Court is not inclined to pass any order in favour of the petitioners as prayed for. Both the writ petitions fail and are hereby dismissed. The interim order stands vacated.
37. No costs.
38. Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)