

**In the High Court at Calcutta
Civil Appellate Jurisdiction
Appellate Side**

**The Hon'ble Mr. Justice Sabyasachi Bhattacharyya
And
The Hon'ble Mr. Justice Supratim Bhattacharya**

**F.M.A. No. 686 of 2025
with
IA No: CAN 1 of 2025
And
IA No: CAN 2 of 2025**

**Prasanta Kumar Bhattacharya and Anr.
Vs.
The Hindustan Petroleum Corporation Limited and Ors.**

For the appellants : Mr. Anirban Bose,
Mr. Sourath Dutta,
Mr. Amar Krishna Saha,
Mr. Satyajit Senapati,
Mr. Nayan Chowni.
Ms. Smita Singh
Mr. Rahul Nag

For the respondent No.1 to 4 : Mr. Biswanath Chatterjee,
Ms. Sayonee Bera,
Mr. S.K. Pathak.
Mr. Soham Krishna Chatterjee
Mr. S. Basu

Heard on : 22.01.2026, 29.01.2026,
12.02.2026, 19.02.2026

Reserved On : 19.02.2026

Judgment on : 02.03.2026

Sabyasachi Bhattacharyya, J.:-

1. The present appeal has been preferred against a judgment dated March 13, 2025 passed in WPA No. 2924 of 2025, dismissing the said writ petition.
2. The backdrop of the case is as follows:
3. On November 5, 2020, a Letter of Intent was issued by the respondent no.1/corporation in favour of and writ petitioners/appellants, granting license to the latter to run a retail petrol pump/dealership outlet. Pursuant thereto, on November 30, 2025, a formal Letter of Appointment (LOA) was issued in favour of the appellants for MS/HSD retail outlet dealership at a location within 5 Km from Kalachara Post Office towards Arambagh on State Highway 15, in the District of Hooghly, West Bengal under the 'Open Category'. On the same day, a dealership agreement was also entered into between the parties in that regard.
4. On January 31, 2025, an LOA was issued in favour of the respondent no.6 in respect of another plot of land located on the same State Highway, between Chanditala-II BDO Office and Bank of India, Duttapur Branch, on both sides of the State Highway. Consequentially, a dealership agreement was also entered into between the respondent/HPCL (Hindustan Petroleum Corporation Limited) and respondent no.6.

5. The appellants challenge such grant dealership to the respondent no.6 primarily on the ground of legitimate expectation and violation of Article 19(1)(g) of the Constitution of India.
6. Learned counsel for the appellants argues that Clause 7 of the dealership agreement of the appellants, which permits the respondent no.1/HPCL to appoint any dealer at any place as they deem fit, is unconscionable and arbitrary, since it provides unfettered rights to one of the parties to the contract while saddling the other (appellants) with numerous terms negating them from conducting any other business.
7. Secondly, the appellants contend that through the execution of the dealership agreement in favour of the appellants, HPCL has created an expectation of benefit arising expressly from their administrative decision to enter into such dealership. Thus, the appellants have a reasonable cause to have legitimate expectation, based on established practice, to benefit from the retail dealership, as recognized by the legal relationship between the parties. It is contended that the grant of license to respondent no.6 violates such legitimate expectation.
8. In support of his submissions, learned counsel for the appellants cites *Rajeev Suri v. Delhi Development Authority & Ors.*, reported at (2022) 11 SCC 1.
9. Learned counsel for the appellants further contends that although the respondent no.1/HPCL seeks to argue that the award of fresh license was a policy decision, no specific policy has been placed before this Court, whereas it was well established that any public policy promulgated has to be reasonable and non-arbitrary. It is contended

that the distribution of State largesse, including but not limited to licenses and dealerships, stands on a different footing than that of a private individual as they require a higher degree of fairness in action. Such distribution, it is submitted, cannot be prompted by arbitrary or irrational policies.

- 10.** In support of the above proposition, learned counsel cites *Punjab State Cooperative Milk Producers Federation Limited & Anr. v. Balbir Kumar Walia & Anr.* reported at (2021) 8 SCC 461 and *State of Madhya Pradesh v. Mala Banerjee* reported at (2025) 7 SCC 698.
- 11.** It is next contended alternatively by the appellants that even if the respondent no.1/HPCL had the power to grant fresh license, the same is not an unfettered right and has to be exercised reasonably, without being tainted by any arbitrariness, capriciousness or whims.
- 12.** In the present case, the grant of license to respondent no.6, it is argued, is arbitrary in nature. In such context, learned counsel cites *B.P. Singhal v. Union of India and Anr.* reported at (2010) 6 SCC 331 and *ABL International Ltd and Anr. v. Export credit Guarantee Corporation of India ltd. and Ors.* reported at (2004) 3 SCC 553.
- 13.** Learned counsel for the appellants submits that the administration of State Highways cannot operate in a vacuum of law. Since there exists no notification that governs the placement of retail dealerships on State Highways, it is contended that the respondent no.1 cannot have the benefit of such absence of law. Even if the provision for making the such law exists, this Court, it is argued, ought to step in and fashion remedies in the form of directives or guidelines as it deems appropriate

where there is a vacuum in law-making, in order to protect the fundamental and other Constitutional rights of the appellants.

- 14.** Learned counsel cites *Dayaram v. Sudhir Batham & Anr.* reported at (2012) 1 SCC 33 and *Chairman, Rajasthan State Road Transport Corporation and Ors. v. Santosh and Ors.* reported at (2013) 7 SCC 94 in support of the above proposition.
- 15.** Learned counsel for the appellants lastly argues that the impugned action of the respondent no.1 has violated the right of the appellants to practise their trade and business. The award of fresh license of the respondent no.6, it is submitted, deeply impacts the livelihood of the appellants, which in turn affects their right to life.
- 16.** Learned counsel appearing for the appellants submits that the contract between the parties is a standard form of contract, the benefit of which should be afforded to the appellants to safeguard their business. The appellants cite, in support of such proposition, *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.* reported at (1985) 3 SCC 485 and *Senior Divisional Commercial Manager, South Central Railways & Ors. v. S.C.R. Caterers, Dry Fruits, Fruit Juicestalls, Welfare Association & Anr.* reported at (2016) 3 SCC 582.
- 17.** Thus, the appellants argue that the impugned judgment, whereby their writ petition was dismissed, ought to be set aside.
- 18.** While controverting the submissions of the appellants, the learned counsel appearing for the respondent nos. 1 to 4 submits that during pendency of the writ petition before the learned Single Judge, an LOA and a dealership agreement, both dated January 31, 2025, have been

issued and executed respectively by the HPCL in favour of the respondent no.6.

- 19.** Learned counsel for the respondent nos. 1 to 4 submits that the Guidelines/Norms dated March 26, 2020, for grant of permission for construction of access fuel stations, wayside amenities, connecting roads, other property, rest area complexes and such other facilities, sought to be relied on by the appellants before the writ court and this court, is not at all applicable in respect of a State Highway. The HPCL, it is submitted, only has to obtain a 'No Objection' Certificate from the concerned District Magistrate for grant of dealership licenses, which has been done in the present case.
- 20.** The dealers who are appointed have to obtain explosive license, fire license and license under the West Bengal Motors and Spirit and High Speed Diesel (LRS) Order, 2020 from the respective departments of the Government of India and the Government of West Bengal, which have also been obtained by respondent no.6.
- 21.** The appellants' case of infringement of Article 19(1)(g) of the Constitution, it is argued, has not been substantiated at all. It is argued that National Highways come under the List I of the Seventh Schedule of the Constitution of India, whereas State Highways come under List II of the Seventh Schedule. Under List III (Concurrent List), State Highways are not enumerated.
- 22.** Thus, it is contended that the Guidelines pertaining to National Highways, issued by the Central Government or its instrumentalities, are not binding with regard to State Highways at all.

- 23.** Relying on Section 2(c)(ii) of the West Bengal Highways Act, 1964 (for short, “the State Act”), it is argued that the said Act, governing State Highways, specifically excludes National Highways from its operation. Under Section 2(2) of the National Highways Act, 1956 (hereinafter referred to as “the Central Act”), on the other hand, the Central Government may, by notification in the Official Gazette, declare any other highway to be a National Highway and on the publication of such Notification, such Highways shall be deemed to be specified in the Schedule thereof. Thus, no provision relating to National Highways can be made applicable to State Highways.
- 24.** It is further argued that the dealership agreement dated November 30, 2020, between HPCL and the appellants, has not been challenged in the present *lis*; rather, the appellants have been enjoying the full benefit under such agreement and are generating substantial revenue therefrom. Thus, the appellants cannot now turn around and challenge a clause of the said agreement.
- 25.** Learned counsel for the HPCL cites *Nataraja Agencies, rep. By its Proprietor G Natarajan, Dealer, Indian Oil Corporation Ltd., Pondicherry vs. The Secretary, Ministry of Petroleum & National Gas, Government of India, New Delhi Others*, reported at 2005 (1) CTC 394, where it was held that the writ petitioner/appellant therein had no *locus standi* at all to complain against setting up of a rival retail outlet by the 4th respondent therein near his place of business on the ground that it could affect the business interest of the writ petitioner/appellant. It was further held that merely because some of the customers may switch

over to the rival retail outlet does not mean that public interest will suffer; rather, in the opinion of the court, it would benefit the customers when there is competition.

26. Learned counsel, in support of the proposition that the court should not resort to second-guessing in case of Government contracts and tenders unless there is arbitrariness of *mala fides* but must defer to the understanding and appreciation of the tender documents of the Government, cites the following judgments:

- i) *Galaxy Transport Agencies Contractors, Traders, Transports & Suppliers v. New J.K. Roadways, Fleetowners & Transport Contractors & Others*] reported at 2020 SCC OnLine Sc 1035 [= (2021) 16 SCC 808],
- ii) [*Agmatel India Pvt. Ltd. v. Resoursys Telecom & Others*]. -DB, Reported at (2022) 5SCC 362,
- iii) [*N.G. Projects Ltd. v. Vinod Kumar Jain & Ors.*]-DB reported at (2022) 6 SCC 127, and
- iv) [*Bansidhar Construction Pvt. Ltd v. Bharat Cooking Coal Ltd and Others*]-DB reported at (2024) 10 SCC 273

27. Learned counsel next cites *Mithilesh Garg and Ors v. Union of India and Ors.* reported at (1992) 1 SCC 168 where it was held that the right under Article 19(1)(g) of the Constitution does not extend to shutting out competition; public interest, it was held, is served by healthy competition and the legislative policy under the Act cannot be challenged on such grounds.

28. As such, learned counsel submits that the appeal ought to be dismissed.

Legitimate Expectation

- 29.** The doctrine of legitimate expectation, as discussed in *Rajeev Suri (supra)*¹, cited by the appellants themselves, was opined by the Hon'ble Supreme Court not to convey a tangible right but to be a mere expectation of fair and reasonable treatment. It was held that the legitimacy of the expectation would strictly depend upon the facts and circumstances of the case, particularly on whether or not the absence of a procedural step had led to failure of fairness. Legitimate expectation was held to be a *locus-based* principle and not meant to assuage the expectation of those whose interests are unaffected by the decision. The Hon'ble Supreme Court observed that it is easy to form an expectation, but difficult to find a legitimate basis for such expectation.
- 30.** More importantly, in *Rajeev Suri (supra)*¹, the Hon'ble Supreme Court observed that such expectation gets developed only on the basis of an established practice in the context of the decision being taken and in the context of the body taking the decision. In the said case, the Hon'ble Supreme Court held that the petitioners had not demonstrated any practice which has been deviated from.

¹ *Rajeev Suri v. Delhi Development Authority & Ors.*, reported at (2022) 11 SCC 1.

- 31.** Applying the same tests to the present case, the appellants, with their eyes wide open, entered into a commercial transaction with the HPCL by obtaining the license to run a retail fuel outlet/dealership, for the purpose of earning profits. The terms of the said licence were crystallised in the dealership agreement dated November 30, 2020. Thereafter, the appellants merrily continued to take full advantage of the license obtained under such agreement, and to earn revenue therefrom by operating their fuel business till January 31, 2025, when an LOA was issued and a dealership agreement entered into between HPCL and the respondent no.6, a rival dealer of the appellants.
- 32.** Thus, the rights of the appellants, if any, emanate in the present case exclusively from the dealership agreement entered into between the parties, of which the appellants took full advantage all along by reaping benefits therefrom. Hence, there is no scope of applying the doctrine of legitimate expectation, since the appellants have miserably failed to show any “established practice” of whatsoever nature (which is a *sine qua non* for claiming legitimate expectation) pertaining to restrictions regarding distance in grant of dealership licenses adjacent to State Highways in the State of West Bengal.
- 33.** The Notification dated September 25, 2003, issued by the Government of India, Ministry of Road Transport and Highway, relied on before the learned Single Judge in the writ petition, was issued by the Central Authorities entirely in respect of National Highways. Admittedly, there are no regulations stipulating the minimum distance between fuel retail outlets adjacent to State Highways, nor do the provisions of the

aforesaid Central Notification apply to State Highways. Hence, there is no “established practice” restricting opening up of new retail fuel outlets within any particular distance from the existing outlets in respect of State Highways. Thus, even going by the ratio of *Rajeev Suri (supra)*², the doctrine of legitimate expectation is not applicable to the present case at all.

Clause 7 of the dealership agreement dated November 30, 2020 between HPCL and the appellants

Clause 7 of the aforesaid dealership agreement is set out below:

“Nothing contained in this agreement shall be construed to prohibit the Corporation from making direct and/or indirect sales to any person whomsoever or from appointing other dealers for the purpose of direct or indirect sales at such place or places as the Corporation may think fit. The dealer shall not be entitled to any claim or allowance for such direct or indirect sales.”

- 34.** Although not referred to in the written notes of arguments of the appellants, learned counsel for the appellants relied on two decisions during his oral arguments, which are considered below.
- 35.** In *Vijay Bank and Anr. v. Prashant B Narnaware*, reported at (2025) AIR SC 2820, it was held that restrictive covenants in public sector employment contracts for minimum tenure or liquidated damages upon

² *Rajeev Suri v. Delhi Development Authority & Ors.*, reported at (2022) 11 SCC 1.

premature resignation are valid if reasonable and not unconscionable, unfair or against public policy.

- 36.** However, the context of the said judgment is entirely different from the present case, as we are dealing in the case at hand with a commercial contract between the appellants, who are commercial entities, and the HPCL/respondent no.1, and not an employment contract. The premise of the *Vijay Bank (supra)*³ judgment was the bar under Section 27 of the Indian Contract Act, which is set out below:

“27. Agreement in restraint of trade, void.—Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1.—Saving of agreement not to carry on business of which good-will is sold.—One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein: provided that such limits appear to the Court reasonable, regard being had to the nature of the business.”

* * * * *

- 37.** The restraint on the employees of Government instrumentalities in the public sector, with regard to minimum tenure of service and default clauses of payment of liquidated damages, was under consideration in the said judgement. However, the Hon’ble Supreme Court observed in the said decision that such restrictive covenant was neither unconscionable nor unfair or unreasonable and therefore was not in contravention of public policy. The ratio laid down in the said report

³ *Vijay Bank and Anr. v. Prashant B Narnaware*, reported at (2025) AIR SC 2820

has nothing to do with the context of the present case and, as such, the reliance on the same by the appellants is misplaced.

- 38.** Again, in *Central Inland Water Transport Corporation Limited And Anr. v. Brojo Nath Ganguly and Anr.*, reported at (1986) 3 SCC 156, the question which fell for consideration before the Hon'ble Supreme Court was whether allegedly arbitrary termination rules which violate public policy and Article 14 would be deemed to be void. The context of consideration there was a challenge to Rule 9(i) of the Central Inland Water Transport Corporation Limited's Service Rules allowing termination of permanent employees' services with three months' notice or pay in lieu thereof without assigning reasons or holding an enquiry. The said Rule was held, in the context of gross inequality of bargaining power between the Corporation and its employees, to be unconscionable and opposed to public policy, thus being void under Section 23 of the Indian Contract Act.
- 39.** However, there is no applicability of Section 23 of the Indian Contract Act at all in the present case. The dealership agreement between the parties is a commercial contract and the appellants have taken full advantage thereof for at least a period of more than four years before challenging the same. It is not the allegation of the appellants that they have been restricted in reaping the fruits of the said agreement by retail sales of fuel in any manner whatsoever by the respondent no.1/HPCL. Accordingly, the appellants, who took advantages all along of the provisions of the dealership agreement, cannot now resale and challenge an essential clause of the said contract. Even otherwise, Clause 7 does

not incorporate any restriction whatsoever to the unfettered sale of fuel from the appellants' retail outlet in terms of the dealership agreement with HPCL. Rather, Clause 7 retains the otherwise-available right of the HPCL to make direct and/or indirect sales to any person whomsoever and from appointing other dealers for the purpose of such sales at such place or places as the Corporation may think fit. A bare reading of the said clause, thus, only finds a reflection and reiteration of the rights which were already available to HPCL and no imposition of any fetter whatsoever on the business being done by the appellants. Thus, there is nothing "unconscionable" about Clause 7 and, as such, the said clause cannot be permitted to be challenged by the appellants by culling out the same from the rest of the dealership agreement, particularly after the appellants having acted on the same and having derived the benefit of the dealership agreement all along.

Whether any fundamental right of the appellants has been violated

- 40.** In order to be violated, the appellants had to plead in the first place a fundamental right of theirs which has been infringed by grant of license to respondent no.6, furnishing cause of action for a writ petition.
- 41.** By mere grant of dealership to a different entity, the right of the appellants under Article 19(1)(g) of the Constitution cannot be said to have been curtailed in any manner whatsoever.
- 42.** Article 19 (g)(1) of the Constitution recognises the fundamental rights to all citizens to practice, *inter alia*, any trade or business. However, the

right to practice any trade or business does not include the right to earn more profit, which falls within the domain of *laissez faire* market competition. The profits of business are governed by market forces in commercial matters and do not, *per se*, form the basis of any fundamental or legal right of a trader/businessperson to earn more profits as opposed to other rivals.

- 43.** In such context, a reference to the Division Bench judgment of the Madras High Court in *Nataraja Agencies (supra)*⁴ would be profitable. The Madras High Court, by relying on *Mithilesh Garg (supra)*⁵, held that a rival businessman cannot file a writ petition challenging the setting up of a similar unit by another businessman, on the ground that the establishment of a rival business close to his business place would adversely affect his business interests, even in the setting up of a new unit is in violation of law. The Division Bench of the Madras High Court further considered that in *Mithilesh Garg (supra)*⁶, the Hon'ble Supreme Court followed its earlier decision in *The Nagar Rice and Flour Mills and Ors. v. N.T Gowda and Bros and Ors.*, reported at 1970 (1) SCC 575, where it was held that a rice mill owner has not *locus standi* to challenge under Article 226 the setting up of a new rice mill by another, even if such setting up is in contravention of the concerned Act, because no right vested in such applicant is infringed.

⁴ ***Nataraja Agencies rep. By its Proprietor, G Natarjan, Dealer, Indian Oil Corporation Ltd., Pondicherry vs. The Secretary, Ministry of Petroleum & National Gas, Government of India, New Delhi Others* reported at 2005 (1) CTC 394,**

⁵ ***Mithilesh Garg and Ors v. Union of India and Ors.* reported at (1992) 1 SCC 168**

- 44.** In *Mithilesh Garg (supra)*, which was relied on by the Division Bench of the Madras High Court, the Hon'ble Supreme Court categorically observed, in a case where stage carriage operators on different routes holding permits granted by the Regional Transport Authority had challenged the liberalisation of private sector operations in the route transport field, that there was no threat of any kind whatsoever from any authority to the enjoyment of the existing carriage operators' right to carry on their occupation. They were held to be in full enjoyment of fundamental rights guarantee under Article 19(1)(g) of the Constitution and it was observed that there was no infringement of such right at all.
- 45.** Again, in *The Nagar Rice and Flour Mills (supra)*⁷, the challenge to grant of permits to set up business of rice mills to new entrants in the field by existing mill owners was turned down on similar lines.
- 46.** Following the above principles, no fundamental or legal rights of the appellants have been infringed at all by grant of license to respondent no. 6 and, as such, the contention of the appellants regarding their perceived infringement of Article 19(1)(g) of the Constitution is illusory and not tenable.
- 47.** In fact, in the event grant of similar dealership was refused to respondent no. 6, the latter could have alleged infringement of Article 14 of the Constitution of India by such refusal in an arbitrary and unreasonable manner.

⁷ *The Nagar Rice and Flour Mills and Ors. v. N.T Gowda and Bros and Ors.*, reported at 1970 (1) SCC 575

Applicability of the Notification dated September 25, 2003, issued by the Government of India, Ministry of Road and Transport of Highways and the argument of 'legal vacuum'

- 48.** Section 2 (c) of the State Act clearly excludes National Highways from the purview of the said Act. The scheme of the State Act clearly indicates that it is the said statute which governs State Highways. Admittedly, the infraction of the perceived rights of the appellants, alleged herein, pertain to a State Highway and, as such, governed by the said Act.
- 49.** On the other hand, Section 2(2) of the Central Act governs National Highways. Learned counsel for the HPCL is also justified in pointing out that whereas National Highways are covered by List I (Union list) of the Seventh Schedule of the Constitution and State Highways by List II (State list), State Highways are not included under List III (Concurrent List).
- 50.** Thus, there is not an *iota* of doubt that the Notification issued on September 25, 2003 by the Ministry of Road Transport and Highways, Government of India pertains only to National Highways.
- 51.** The “legal vacuum” argument of the appellants is flimsy, since in the first place there is no vacuum in field of administration of State Highways. The Courts have traditionally resorted to judicial activism by filling in gaps and issuing directives/guidelines in order to ensure the protection and preservation of fundamental rights of citizens where there is a void in legislation in the concerned field. In the present case, the lack of any specific rules stipulating the minimum distance between

two fuel outlets adjacent to State Highways does not infringe any fundamental, Constitutional or legal right of fuel outlet dealers or the public at large. Rather, such lack of restrictions would encourage competition among similarly-placed dealers, which would ultimately benefit the public at large by ensuring quality control and better prices.

- 52.** It is a matter of policy of the State as to whether or not to impose restrictions regarding setting up of rival businesses within particular zones marked by distance. Courts, it is well-settled, ought not normally to enter into the domain of exclusive policy decisions of the State through the device of judicial review, particularly where there is no infraction or infringement of any legal or Constitutional right and there is no palpable arbitrariness or unreasonableness in State action/inaction.
- 53.** None of the judgments cited by the appellants are relevant at all in the present context.
- 54.** The reliance of the appellants on *Dayaram (supra)*⁸ is entirely misplaced in the context. In the said judgment, the Hon'ble Supreme Court was considering a legislative vacuum in respect of benefits extended to the Scheduled Castes and Tribes.
- 55.** In fact, the judgments relied on by the Hon'ble Supreme Court in *Dayaram (supra)*⁸ were all in the context of situations where there was a legal vacuum in respect of enforcement of fundamental rights, particularly in respect of the marginalized sections of Society. The

⁸ *Dayaram v. Sudhir Batham & Anr.* reported at (2012) 1 SCC 33

Hon'ble Supreme Court had stepped in to fill up the vacuum by issuing appropriate directions in such cases.

- 56.** In the case of *Chairman, Rajasthan State (supra)*⁹ as well, the Hon'ble Supreme Court was considering a legal vacuum regarding complete liability of providing compensation in a vehicular accident. In the said context, the Hon'ble Supreme Court took into account cases where the courts in India issued certain directions to meet such exigency, some of them admittedly legislative in nature, only to fill up the existing vacuum, till the legislature enacts a particular law to deal with the situations.
- 57.** In the present case, however, the State Legislature has deliberately chosen, in its wisdom, not to pass any specific law imposing restrictions on free trade through the grant of dealerships and licenses to retail fuel outlets to commercial entities, by imposing fetters in respect of distance between different such outlets. The matter pertains entirely to the economic policy of the State and there cannot be any assumption that such policy is tainted by unreasonableness and/or arbitrariness. In fact, the lack of restrictions in the present case encourages competition, which has been upheld by the Hon'ble Supreme Court in the judgments referred to above.
- 58.** In *Olga Tellis (supra)*¹⁰, the Hon'ble Supreme Court was dealing with the Constitutional right of the pavement dwellers and inhabitants of slums

⁹ *Chairman, Rajasthan State Road Transport Corporation and Ors. v. Santosh and Ors.* reported at (2013) 7 SCC 94

¹⁰ *Olga Tellis & Ors. v. Bombay Municipal Corporation & Ors.* reported at (1985) 3 SCC 485

in the city of Bombay to a life of dignity. The Hon'ble Supreme Court observed that men and women who were living in the midst of filth and squalor had come to the Court to ask for a judgment so that they cannot be evicted from their squalid shelters without being offered alternative accommodation. The situation of the petitioners therein cannot, by any stretch of imagination, be compared with that of the present appellants, who are fully commercial entities earning profits from a retail fuel outlet.

- 59.** In the *S.C.R. Caterers' Case (supra)*¹¹, a catering policy decision of the Railways in not granting renewal of license was under challenge on the ground of arbitrariness, unreasonableness and unfairness and discrimination, invoking Article 14 of the Constitution. In such context, the Hon'ble Supreme Court upheld the principle that public property is to be dealt with for public purpose and public interest.
- 60.** As opposed thereto, in the present case we are looking at the so-called right of an individual commercial entity to earn more profits from a retail fuel outlet. The right to carry on such business and earn profits therefrom is not even affected by the impugned action, but similar right has been conferred on a business rival of the appellants. There is no public element involved at all here; rather, the public interest would be subserved if competition is encouraged by granting licenses to multiple entities, which would enure to the benefit of the public at large by

¹¹ ***Senior Divisional Commercial Manager, South Central Railways & Ors. v. S.C.R. Caterers, Dry Fruits, Fruit Juicestalls, Welfare Association & Anr. reported at (2016) 3 SCC 582.***

increasing competition and, thereby, ensuring the standard and quality of the products sold as well as the reasonableness of the price of such products.

61. As discussed above, there is no infringement of the fundamental right of the appellants to do business, as envisioned in Article 19(1)(g) of the Constitution, since nothing in the impugned act of grant of license to respondent no.6 infringes the right of the appellants to do business from their retail outlet/dealership in an unfettered manner.
62. The reliance of the appellants of *B.P. Singhal (supra)*¹², is also misplaced, since there is not arbitrariness or capriciousness in the grant of license to respondent no. 6 at all.
63. In *Punjab State Cooperative Milk Producers Federation (supra)*¹³ and *State of Madhya Pradesh (supra)*¹⁴, the Hon'ble Supreme Court was considering reasonableness and equality in the distribution of the State largesse. Such distribution, in the present case, is not arbitrary at all. Mere grant of dealership/license to operate a retail fuel outlet to a rival businessperson, standing on a similar footing as the appellants, cannot be said to be so unreasonable or arbitrary as to taint such grant of license or dealership to respondent no. 6.
64. Thus, there is no scope of legislation by the judiciary, since there is no vacuum in legislation in the first place, nor there being any

¹² ***B.P. Singhal v. Union of India and Anr. reported at (2010) 6 SCC 331***

¹³ ***Punjab State Cooperative Milk Producers Federation Limited & Anr. v. Balbir Kumar Walia & Anr. reported at (2021) 8 SCC 461***

¹⁴ ***State of Madhya Pradesh v. Mala Banerjee reported at (2025) 7 SCC 698.***

arbitrariness or unreasonableness involved. As held above, it would rather be violative of Article 14 of the Constitution if a licence was refused to the respondent no. 6, which stands on similar footing as the appellants.

- 65.** HPCL had relied on several judgments, including *Bansidhar Construction (supra)*¹⁵, *N.G. Projects (supra)*¹⁶, *Galaxy Transport (supra)*¹⁷ as well as *Agmatel India Pvt. Ltd. (supra)*¹⁸, which reiterate the well-settled legal proposition that the State or Government agencies have a play in the joint in the matter of grant of tenders. Although the principle that an employer is entitled to decide as to what would be the proper interpretation of a tender term may not be directly applicable in the present case, at the same time, the extremely limited scope of interference by the courts in judicial review with the grant of dealerships and tenders has been recognized in the said reports.
- 66.** Thus, in the present case, particularly due to the lack of any arbitrariness or discriminatory attitude on the part of the State or its instrumentality, the HPCL, there was no scope of interference by the writ court at all.

¹⁵ ***Bansidhar Construction Pvt. Ltd v. Bharat Cooking Coal Ltd and Others***-DB reported at (2024) 10 SCC 273

¹⁶ ***N.G. Projects Ltd. v. Vinod Kumar Jain & Ors.***-DB reported at (2022) 6 SCC 127,

¹⁷ ***Galaxy Transport Agencies Contractors, Traders, Transports & Suppliers v. New J.K. Roadways, Fleetowners & Transport Contractors & Others***- FB reported at 2020 SCC OnLine Sc 1035/ (2021) 16 SCC 808,

¹⁸ ***Agmatel India Pvt. Ltd. v. Resoursys Telecom & Others***. -DB, Reported at (2022) 5SCC 362,

Effect of the Notification dated September 25, 2003 issued by the Government of India, Ministry of Road Transport and Highways

- 67.** As held above, the September 25, 2003 Notification, subsequently substituted by the Notification dated June 26, 2020, speaks about the norms for location, layout and access to fuel stations along National Highways, and does not have any effect on State Highways at all.
- 68.** Even otherwise, Item 6 of Clause 2.2 of the said Notification, discussed at length by the learned Single Judge, does not altogether prohibit issuance of dealerships to new entrants within a particular distance from existing locations of dealerships. What it does is merely to restrict such grants unless all such fuel stations are provided access through a common service road of 7.0m width and not directly through the National Highway. Even access for fuel stations at closer proximity than the stipulated distance is permitted by the said Clause, provided entries/exits for both the fuel stations are provided through a service road of 7.0m width having sufficient length, further additional length of such service road being constructed at the cost of the latter fuel station owner/company seeking grant of permission for access to the facility.
- 69.** Thus, apart from the said norms not being applicable to the State Highways, even the said norms themselves do not impose an unfettered prohibition on setting up of new fuel stations within any particular distance but permit such setting up subject to certain restrictions.
- 70.** Hence, from no point of view can the said provisions be invoked at the behest of the appellants to seek a complete prohibition regarding grant

of license to respondent no.6 or other business competitors of the appellants.

- 71.** Even otherwise, by their conduct, the appellants have not only acquiesced to, but have relied upon, their dealership agreement with the HPCL by operating their business in terms of the said agreement all along, without there being any infringement of their fundamental right to conduct such business at any point of time.

CONCLUSION

- 72.** In view of the above discussions, this Court does not find any illegality in the impugned judgment, whereby the writ petition of the appellants was dismissed.
- 73.** Accordingly, FMA No. 686 of 2025 is dismissed on contest, thereby affirming the impugned judgment dated March 13, 2025 passed in WPA No. 2924 of 2025.
- 74.** CAN 1 of 2025 and CAN 2 of 2025 are also disposed of consequentially.
- 75.** There will be no order as to costs.
- 76.** Urgent certified copies, if applied for, be supplied to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)

I agree.

(Supratim Bhattacharya, J.)