

(1993) 09 GAU CK 0018

Gauhati High Court

Case No: Civil Rule No. 1998 of 1993

Bipin Chandra Kalita

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision: Sept. 24, 1993

Acts Referred:

- Constitution of India, 1950 - Article 226, 226

Citation: (1994) 1 GLJ 264

Hon'ble Judges: R.K.Manisana Singh, C.J. and N.G.Das, J

Bench: Division Bench

Advocate: Sheikh Mukhtar, S.Kataki, K.H.Choudhary, D.N.Choudhary, Advocates
appearing for Parties

Judgement

R.K. Manisana, C.J. (Acting)

1. In this petition under Article 226 of the Constitution of India, the petitioner BC Kalita has challenged the grant of permit by the Government of Assam, under section 5 of the Rice Milling Industry (Regulation) Act, 1958 ("Act" for short), in favour of the sixth respondent Narayan Kalita. The petitioner is carrying on ricemilling operation under a valid licence in the name and style of "BK Rice Mill" at Bariah in the district of Kamrup. On 16.3.93, the Government of Assam granted the sixth respondent a permit for establishment of a new ricemill. The permit would be valid for one year from the date of its issue. Licence as is provided under section 6 is yet to be granted for carrying on rice milling operation in the rice mill in question. According to the petitioner, the new rice mill is within 1 KM from his rice mill. The petitioner has challenged the grant of permit for establishment of the new rice mill on the ground of violation of the Act and Rules framed thereunder, Executive Instructions and Circulars.

2. The question which arises for consideration is whether an owner of a rice mill holding a licence for carrying on rice milling operation has locus standi to challenge

the grant of permit in favour of a rival in the trade, under Article 226 of the Constitution of India.

3. In *Rice and Flour Mills vs. TN Gowda*, (1970) 3 SCR 846 : AIR 1971 SC 246, the Court has held that a rice mill owner has no locus standi to challenge, under Article 226, the setting up of a new ricemill by another, even if such setting up be in contravention of section 8(3)(c) of the Act, because no right vested in such an applicant is infringed.

4. In *Jasbhai Motibhai Desai vs. Roshan Kumar*, AIR 1976 SC 578, a proprietor of a cinema theatre holding a licence for exhibiting cinematograph films challenged "No Objection Certificate" granted, under Rule 6 of the Bombay Cinema Rules, 1954, by the District Magistrate in favour of a rival in the trade. The petitioner therein stated his cause of action that "he owns a cinema theatre in Mehmabad which has small population of about 15000 persons and there is no scope for more than one cinema theatre in the town." In the context of the statement made, the Court observed :

...Setting up of a rival cinema house in the town will adversely affect his monopolistic commercial interest, causing pecuniary harm and loss of business from competition. Such harm or loss is not wrongful in the eye of law, because it does not result in injury to a legal right or a legally protected interest, the business competition causing it being a lawful activity."''

5. In the present case, the petitioner has, in his petition stated that "rights and interests of the petitioner would be seriously jeopardised as for that locality one rice mill is enough for all practical purposes in view of the relevant provisions of law". Therefore, the instant case falls within the ratio the decisions of the Supreme Court cited above. For the reasons stated, the of petitioner who is a rice mill owner has no locus standi to challenge, under Article 226, the setting up of a new rice mill by sixth respondent

6. In the result, the petition is dismissed. Stay order stands vacated. No costs