



Reserved



2026:AHC:159148-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 23761 of 2026

Rakesh Kumar Gupta

.....Petitioner(s)

Versus

Union of India and 3 others

.....Respondent(s)

Counsel for Petitioner(s)	: Phool Singh Yadav, Ram Pratap Yadav
Counsel for Respondent(s)	: A.S.G.I., Ajay Shankar, C.S.C., Dhurva Kant Chaturvedi

A.F.R.

Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

Delivered by Hon'ble Indrajeet Shukla, J.

1. Heard Mr. Ram Pratap Yadav, learned counsel for the petitioner, learned Additional Solicitor General appearing on behalf of respondent no.1/Union of India, Mr. Ajai Shankar, learned counsel for the respondent no.2 and Mr. Girijesh Kumar Tripathi, learned Additional Chief Standing Counsel for the respondent nos.3 & 4.

2. By means of the instant writ petition, the petitioner has prayed for issue of a writ in the nature of mandamus commanding the District

Factual Matrix

3. The facts giving rise to the instant writ petition are recapitulated as under:

3.1. The petitioner applied for the allotment of a retail outlet of the second respondent oil company and, accordingly, was issued a Letter of Intent dated 29.03.2024 by Reliance BP Mobility Limited, Eldeco Corporate Chambers 2, 9th Floor, Vibhuti Khand, Gomti Nagar, Lucknow (hereinafter referred to as the "oil company"). After the issue of the letter of intent, the petitioner was required to obtain and submit a 'No Objection Certificates' (NOCs) from various authorities, namely the Revenue Department, Electricity Department, Stamp Department, Fire Department, Pollution Control Board, and the National Highways Authority of India (NHAI). The No Objection Certificates issued by the respective authorities have been collectively brought on record as Annexure No. 2 to the present writ petition.

3.2. The second respondent/Oil Company, asked for a 'No Objection Certificate' from the office of District Magistrate concerned by virtue of its letter dated 01.07.2024. The District Magistrate's 'No Objection Certificate' for setting up a fuel retail outlet at Lalganj was not issued to the petitioner, despite a lapse of more than two years owing to apathetic attitude of the District Magistrate and his office including the red tapism involved in the decision making process which compelled the petitioner to knock the doors of this Court.

3.3. In the year 2024, when the District Magistrate's 'No Objection Certificate' was asked for, the prevalent policy was governed by a

Magistrate to issue the requisite 'No Objection Certificate' which is evident from the personal affidavit of none other than District Magistrate concerned, as figured in paragraph no.11 of the said affidavit, which unmistakably demonstrates that despite the revised policy, no decision was taken on the petitioner's application.

3.4. In the aforesaid factual background, this Court passed the following order dated 22.06.2026:

"The District Magistrate, Fatehpur will show cause by day after tomorrow why he has not granted NOC to the petitioner for the purposes of establishment of petrol and diesel outlet at Village Udhannapur, Tehsil Sadar, District Fatehpur.

Mr. D.K. Chaturvedi has appeared on behalf of the respondent-Union of India, whereas notice on behalf of the State respondent is accepted by Ms. Priyanka Midha, Additional Chief Standing Counsel.

Put up day after tomorrow.

To be taken up as fresh.

The Registrar (Compliance) is directed to communicate this order to the District Magistrate, Fatehpur through the learned Chief Judicial Magistrate, Fatehpur today."

4. This Court, being dissatisfied with the instructions furnished on behalf of the respondents, asked for assistance of District Magistrate concerned, since subsequent Government Order referred as 18.12.2025 could not persuade office of District Magistrate to give a quietus to the issue of grant of the requisite 'No Objection Certificate'. Consequently, On 24.06.2026, this Court passed below quoted order:

"Perused the instructions furnished by the District Magistrate, Fatehpur.

There are the matters which require serious clarification that have been left unexplained. In this case, the letter of intent was issued way back in the year 2024 and the government order, upon which the District Magistrate relies, is dated 18.12.2025.

Let all these matter be explained in-person by the District Magistrate, Fatehpur before this Court tomorrow at 2.00 p.m.

5. On 25.06.2026, the District Magistrate concerned filed her personal affidavit appending therewith the requisite 'No Objection Certificate'. Taking note of 'No Objection Certificate' issued in favour of the petitioner, this Court directed District Magistrate to take up the matter with the oil company for further recourse in pursuance to the letter of intent.

6. A perusal of the 'No Objection Certificate' brought on record by virtue of personal affidavit of the District Magistrate reveals that it is preceded by twin conditions. First, the sanction of a building plan/map for the entire area (measuring 4200 square metres) proposed to be utilised for the retail outlet is mandatory. The second limb of condition is deposit of process fees for sanction of the map. These conditions are said to be in terms of policy/Government order dated 18.12.2025.

Submissions Advanced On Behalf of Petitioner

7. The learned counsel for the petitioner strenuously urged that his fundamental right to carry on trade and business has been infringed on account of a hostile discrimination and apathetic attitude of office of District Magistrate, who swiftly made a clerk the scapegoat without realizing her responsibility, though she exhibited scant regard to the government orders issued for swift issue of a 'No Objection Certificate'.

8. The further submission advanced is, that the right to practise any profession or to carry on any occupation, trade or business is guaranteed by the virtue of Article 19(1)(g) of the Constitution of India, subject to the certain reasonable restrictions in terms of Article 19(6) but non taking any decision, by the District Magistrate for a period of more than two years, despite there being no plausible explanation for such inaction, constitutes an arbitrary and unreasonable exercise of power, which is

Submission Advanced on behalf of State-Respondents

10. Per contra, learned counsel for the State-respondents vehemently submitted that no further cause of action survives as the requisite 'No Objection Certificate' has already been issued pursuant to the receipt of police report dated 22.06.2026 and in terms of order dated 24.06.2026. The further submission is that the delay in the issue of a NOC was on account of the belated submission of a police report by the concerned police authorities. Since the requisite 'No Objection Certificate' could not be issued with promptitude on account of such delay, the concerned clerk has been taken to task by awarding him the punishment of a censure entry.

11. The record of this case, including the personal affidavit of the District Magistrate exhibits that there is no explanation/cause what to say reasonable and plausible cause regarding the non issue of a 'No Objection Certificate' for an indefinite period which could issued only be after the institution of instant petition, where also initially an attempt was made for protract litigation. Thus, in the background of this case, the principal question that arises for consideration is whether the failure to issue the 'No Objection Certificate' without any reasonable or plausible justification would attract the 'doctrine of malice in law'.

12. The Non-issue of 'No Objection Certificate' without any plausible cause, as evident from the personal affidavit submitted by the District Magistrate before this Court, who could not defend her inaction for a period of two years attracts the doctrine of malice in law and, by itself, indicates the mala fide and arbitrariness. Mala fide and arbitrariness are distinct manifestations arising from the same vice, with the latter being broader in scope and encompassing the former.

13. Any action taken wrongfully and intentionally, without just cause,

period of more than two years. Such unexplained inaction would definitely constitute malice in law.

14. Malice in fact requires proof of personal ill-will, or improper motive, whereas malice in law may be inferred when a public authority or an individual acts in deliberate defiance of the law or on extraneous/misconceived grounds. Malice in law in the instant case is writ large as the District Magistrate concerned had absolutely no explanation for the delay in issue of a 'No Objection Certificate' except slashing one petty clerk by her mighty sword.

15. There are authoritative pronouncements of the Supreme Court elucidating the doctrine of malice in law and its effect on the validity of administrative action.

16. It is well settled that malice in law does not necessarily imply personal ill-will, spite or animosity on the part of the authority concerned. Rather, it denotes an action taken without lawful justification, for an unauthorized purpose, or in disregard of the statutory scheme governing the exercise of power.

17. The following decisions of the Supreme Court authoritatively expounds the aforesaid principle:

18. In the case of **Ratnagiri gas and power Private Limited vs RDS Projects and others, 2013 (12) SCC 786**, the Supreme Court has held:

30. Coming then to the question whether the action taken by the appellant-RGPPL was vitiated by malice in law, we need hardly mention that in cases involving malice in law the administrative action is unsupportable on the touchstone of an acknowledged or acceptable principle and can be avoided even when the decision maker may have had no real or actual malice at work in his mind. The conceptual difference between the two has been succinctly stated in the following paragraph by Lord Haldane in Shearer v. Shields (1914) A.C. 808 quoted with approval by this Court Additional District Magistrate, Jabalpur v. Shivkant Shukla (1976) 2 SCC 521:

innocently. 'Malice in fact' is a different thing. It means an actual malicious intention on the part of the person who has done the wrongful act."

31. Reference may also be made to the decision of this Court in *State of AP & Ors. v. Goverdhanlal Pitti* (2003) 4 SCC 739 where the difference between malice in fact and malice in law was summed up in the following words:

"11. The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in fact". "Legal malice" or "malice in law" means 'something done without lawful excuse'. In other words, 'it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite'. It is a deliberate act in disregard of the rights of others'. [See Words and Phrases legally defined in Third Edition, London Butterworths 1989].

.Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. If at all, it is malice in legal sense, it can be described as an act which is taken with a oblique or indirect object..." (emphasis supplied)

32. To the same effect is the recent decision of this Court in *Ravi Yashwant Bhoir v. District Collector, Raigad and Ors* (2012) 2 SCC 407 where this Court observed:

"MALICE IN LAW:

37. This Court has consistently held that the State is under an obligation to act fairly without ill will or malice- in fact or in law. Where malice is attributed to the State, it can never be a case of personal ill-will or spite on the part of the State. "Legal malice" or "malice in law" means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. Mala fide exercise of power does not imply any moral turpitude. It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is

(emphasis supplied by us)

19. Reference may also be made to authority in the case of **West Bengal State Electricity Board Vs. Dilip Kumar Ray** reported in 2007 (14) SCC 568, wherein Supreme Court held:

"19. Malice in law. "Malice in law" is however, quite different. Viscount Haldane described it in Shearer Shields, (1914) AC 808 as: "A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with the innocent mind: he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of mind is concerned, he acts ignorantly, and in that sense innocently". Malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or from want of reasonable or probable cause. (See S.R. Venkatarcunan v. Union of India (1979) 2 SCC 491)

Analysis and Reasoning

20. The ambit of Article 14 of the Constitution of India was substantially expanded by the Supreme Court by including executive discretion under its ambit. In the case of **E.P. Royappa Vs. State of Tamilnadu**, (1974) 4 SCC 3, the Supreme Court held that Article 14 gives a guarantee against the arbitrary action of the State. The right to equality is antithetical to arbitrariness. They both are enemies of each other so the arbitrary action in not taking a prompt decision in utter disregard to the spirit of government orders are clearly indicative of the fact that the petitioner is a victim of red tapism in the bureaucratic set up in democracy. The relevant excerpts from **E.P. Royappa (supra)** is reproduced hereinbelow:

85. The last two grounds of challenge may be taken up together for consideration.

Though we have formulated the third ground of challenge as a distinct and separate ground, it is really in substance and effect merely an

is only an instance of the application of the concept of equality enshrined in Article 14. In other words, Article 14 is the genus while Article 16 is a species, Article 16 gives effect to the doctrine or equality in all matters relating to public employment. The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination.

Now, what is the content and reach of this great equalising principle? It is a founding faith, to use the words of Bose, J., "a way of life", and it must not be subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits.

From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and Constitutional law and is therefore violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment.

They require that State action must be based on equivalent relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles 14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice : in fact the latter comprehends the former. Both are inhibited by Articles 14 and 16.

(Emphasis added by us)

21. In the case of **Maneka Gandhi Vs. Union of India, (1978) 1 SCC 248**, the Constitution bench of the Supreme Court speaking through his lordship Hon'ble Mr. Justice P.N. Bhagwati, held that the concept of

Certificate' without any plausible cause is definitely unpardonable, if tested on the anvil of Article 14, 19(1)(g) read with Article 21 of the Constitution of India. The right to establish and operate a retail fuel outlet, subject to fulfillment of the statutory and regulatory requirements, constitutes an integral facet of the right to carry on trade and business guaranteed under Article 19(1)(g) of the Constitution. Where the establishment of such an enterprise is unjustifiably impeded by arbitrary and unexplained administrative inaction, the resultant deprivation also bears upon the individual's right to livelihood and to live with dignity, which forms an inseparable facet of Article 21 of the Constitution. The relevant paragraph from **Maneka Gandhi (supra)** is reproduced hereinbelow:

*56. Now, the question immediately arises as to what is the requirement of Article 14 what is the content and reach of the great equalising principle enunciated in this article. There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all-embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the majority in *E. P. Royappa v. State of Tamil Nadu* and *Anr. MANU/SC/0380/1973 : (1974)ILL J172SC* namely, that "from a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14". Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the best of reasonableness in order to be in conformity with Article 14. It must be "right and just*

22. The Supreme Court has read Articles 14, 19 and 21 together as an inseparable constitutional framework, popularly known as the doctrine of “*golden triangle*”. Since infringement of right to practice any profession or to carry any occupation, trade or business is guaranteed under Article 19(1)(g) of the Constitution of India, its infringement automatically attracts the tenets of Article 14 of the Constitution of India, since arbitrariness is antithetical to Article 14; and, as such, an arbitrary infringement of the right of occupation, trade or business in its natural course erodes and subverts the basic facet of Article 21 of the Constitution of India which guarantees right to live with dignity. Thus, an unjustified and arbitrary denial or delay in permitting a citizen to carry on a lawful trade or business must withstand the combined constitutional scrutiny of Articles 14, 19(1)(g) and 21 of Constitution of India.

23. Equality is a dynamic concept with many aspects and dimensions, and it cannot be cribbed, cabined and confined with traditional and doctrinaire limits. From a positive point of view equality is antithetical to arbitrariness. In fact, equality and arbitrariness are sworn enemies; one belongs to rule of law in a republic while the other, to the whims and caprices of an absolute monarch, who possess arbitrary discretion.

Conclusion

24. Before proceeding further, this Court must remark that the learned counsel for the petitioner endeavoured to impeach certain conditions carried in the 'No Objection Certificate', which we cannot examine in the absence of any challenge to such conditions at this stage. We notice that a clerk has been punished with a censure entry, when the higher officers were reminded of their duties. We would say that the action now taken to

decision-making, without any plausible cause, itself is an indication of malice in law, also exhibiting arbitrariness writ large.

25. Since the 'No Objection Certificate' has now been issued, nothing survives further for adjudication in this petition on merits.

26. The oil company/second respondent shall proceed further in the matter on the basis of Letter of Intent issued by them way back on 29.03.2024, contained as Annexure No. 1 to the writ petition, expeditiously.

27. We would expect the District Magistrate, Fatehpur/third respondent, whoever is incumbent, to act with promptitude in all matters where rights of citizens are involved and pay heed to proceedings of this case as a guide for the future and keep the Office of the District Magistrate responsive and in order.

28. Subject to the above remarks, this petition stands **disposed of**.

29. No order as to costs.

(Indrajeet Shukla,J.) (J.J. Munir,J.)

July 30, 2026

Mohit