

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

WEDNESDAY, THE 04TH DAY OF SEPTEMBER 2019 / 13TH BHADRA, 1941

WA.No.2112 OF 2018

AGAINST THE JUDGMENT DATED 10.10.2018 IN WP(C)13363 OF 2018 OF
HIGH COURT OF KERALA

APPELLANTS/PETITIONERS:

- 1 RAJU SEBASTIAN,
AGED 55 YEARS
S/O. ITTIAVIRA DEVASIA, BPCL DEALER, ST. ALPHONSA
FUELS, BHARANANGANAM, PIN - 686 578.
- 2 SUNIL KUMAR P.S.,
AGED 43 YEARS
S/O.SOMAN, IOC DEALER, MEENAKSHI FUELS, PARACKAL
THEKKATHIL, EDAPPARIYARAM P.O., ELANTHOOR,
PATHANAMTHITTA, PIN- 689 643.
- 3 ANIYAN ABRAHAM,
AGED 59 YEARS
S/O.P.K.ABRAHAM, IOC DEALER, P.K.ABRAHAM AND SONS,
VADASERIKARA, PIN- 689662.
- 4 SOUPARNIKA FUELS,
IOC DEALER, KULANADA P.O., PANDALAM, PATHANAMTHITTA
DISTRICT, PIN- 689503, REPRESENTED BY ITS MANAGING
PARTNER, M.R.RAJENDRAN NAIR, AGED 62, S/O.LATE
K.RAMAKURUP.
- 5 GRACY ABRAHAM,
AGED 56 YEARS
D/O.ABRAHAM, IOC DEALER, ROYAL FUELS , PALLIPPADI,
MYLAPRA P.O., PATHANAMTHITTA, PIN- 689 671.
- 6 ASHWIN REJI,
AGED 26 YEARS
S/O.REJI P.EASOW, IOC DEALER, PALACKAMANNIL FUELS,
THEODICAL P.O., PIN- 689 613, PATHANAMTHITTA
DISTRICT.

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- 7 ASHA PRASAD,
AGED 45 YEARS
D/O.V.K.BALAKRISHNAN, IOC DEALER, GURUKRIPA FUELS,
AYROOR SOUTH P.O., RANNY TALUK, PATHANAMTHITTA,
PIN- 689 611.
- 8 SHINY SAMUEL,
AGED 46 YEARS
D/O.K.E.VARGHESE, IOC DEALER, KAYSONS FUELS, RING
ROAD, PATHANAMTHITTA, PIN- 689645.
- 9 K.C.RAJAN, S/O.KADAKKETH CHANDI
AGED 73 YEARS
IOC DEALER, KALLUVILA FUELS, POOVANPARA,
KONNI P.O., PATHANAMTHITTA, PIN- 689661.
- 10 KAIRALY FUELS,
IOC DEALER, KUMBAZHA P.O., PATHANAMTHITTA,
REPRESENTED BY ITS MANAGING PARTNER, DHANYA
LAKSHMI, AGED 36, W/O.K.HARI KUMAR.
- 11 K.S.ABRAHAM AND CO.,
IOC DEALER, PAZHAVANGADI P.O., RANNI,
PATHANAMTHITTA, PIN- 689 673, REPRESENTED BY ITS
PARTNER, ABU ZACHARIAH, AGED 43, S/O.ZACHARIAHA.
- 12 ROY MATHEW,
AGED 56 YEARS
S/O.LATE GEORGE MATHEW, IOC DEALER, POYANIL FUELS,
KOZHENCHERRY P.O., PATHANAMTHITTA, PIN- 689 641.
- 13 RADCO FUELS,
IOC DEALER, RAMANCHIRA, MUTHOOR P.O., THIRUVALLA-
689107, REPRESENTED BY ITS MANAGING PARTNER,
PRANANNS MENON, AGED 61, W/O.N.S.MENON,
- 14 PRIYANKA FUELS,
IOC DEALER, KULASEKHARAPATHY, KUMBAZHA ROAD,
PATHANAMTHITTA, PIN- 689645, REPRESENTED BY ITS
PARTNER, P.A.ABRAHAM, AGED 52, S/O.P.I.ABRAHAM,
- 15 GRACY BABU,
AGED 62 YEARS
W/O.BABU P.THOMAS, IOC DEALER, PALAZHI FILLING
STATION, NEAR HIGH SCHOOL JUNCTION, M.C.ROAD,
ADOOR, PIN 691523.

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16 KOTTAYAM AND IDUKKI DISTRICTS PETROL DEALERS
ASSOCIATION,
KODIMATHA, KOTTAYAM, REPRESENTED BY ITS PRESIDENT,
LUKE THOMAS, (FILING THIS WRIT APPEAL ON BEHALF OF
ITS 105 MEMBERS) .

BY ADVS.
SRI.SANTHOSH MATHEW
SRI.ARUN THOMAS
SRI.JENNIS STEPHEN
SRI.VIJAY V. PAUL
SMT.KARTHIKA MARIA
SMT.VEENA RAVEENDRAN
SRI.ANIL SEBASTIAN PULICKEL

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA,
REPRESENTED BY SECRETARY TO GOVERNMENT, MINISTRY OF
PETROLEUM AND NATURAL GAS, SHASTRI BHAVAN, NEW
DELHI - 110 001.
- 2 BHARAT PETROLEUM CORPORATION LIMITED,
REPRESENTED BY ITS CHAIRMAN AND MANAGING DIRECTOR,
BHARAT BHAVAN, 4 AND 6 CURRIMBHOY ROAD, BALLARD
ESTATE, MUMBAI- 400001.
- 3 THE TERRITORY MANAGER (RETAIL) ,
BHARAT PETROLEUM CORPORATION LIMITED, RETAIL
TERRITORY OFFICE, IRIMPANAM, ERNAKULAM, PIN-
682309.
- 4 INDIAN OIL CORPORATION LTD. ,
REPRESENTED BY ITS CHAIRMAN, 3079/3, J.B.TITTO
MARG, SADIQ NAGAR, NEW DELHI- 110049.
- 5 CHIEF GENERAL MANAGER,
INDIAN OIL CORPORATION LTD. , KERALA STATE OFFICE,
PANAMPILLY AVENUE, PANAMPILLY NAGAR, COCHIN-
682036.
- 6 HINDUSTAN PETROLEUM CORPORATION LTD. ,
REPRESENTED BY ITS CHAIRMAN, PETROLEUM HOUSE, 17,
JAMSHEDJI TATA ROAD, MUMBAI, MAHARASHTRA- 400020.
- 7 SENIOR REGIONAL MANAGER,
HINDUSTAN PETROLEUM CORPORATION LTD. , COCHIN
REGIONAL OFFICE, TATAPURAM, COCHIN- 682018.

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R1 BY SRI.JAISHANKAR V.NAIR, CGC
R2-7 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R2-7 BY ADV. SRI.P.GOPINATH MENON
R2-7 BY ADV. SRI.K.JOHN MATHAI
R2-7 BY ADV. SRI.JOSON MANAVALAN
R2-7 BY ADV. SRI.KURRYAN THOMAS
R2-7 BY ADV. SRI.PAULOSE C. ABRAHAM

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19-08-2019,
ALONG WITH WA.2118/2018, THE COURT ON 04-09-2019 DELIVERED THE
FOLLOWING:

W.A.Nos.2112/2018
&
2118/2018

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.K.ABDUL REHIM

&

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

WEDNESDAY, THE 04TH DAY OF SEPTEMBER 2019 / 13TH BHADRA, 1941

WA.No.2118 OF 2018

AGAINST THE JUDGMENT DATED 10.10.2018 IN WP(C) 12202/2018(A) OF
HIGH COURT OF KERALA

APPELLANTS/PETITIONERS:

- 1 NANA AUTO FUELS
BPCL DEALER,
NEAR EAST FORT,
THIRUVANANTHAPURAM - 695036,
REPRESENTED BY ITS MANAGING PARTNER,
S.M.KHAN,
AGED 70,
S/O MOHAMMED KHAN
- 2 BABUKUTTY PHILIPOSE,
AGED 66 YEARS
S/O.T.K. PHILIPOSE, PROPRIETOR, EXCEL FUELS, RING
ROAD, PATHANAMTHITTA-689645.
- 3 PRATHEESH FUELS,
IOC DEALER, ADOOR-691523, REP.BY ITS MANAGING
PARTNER, A.M.SAJI, AGED 64, S/O. A.M.MATHEW.
- 4 R.RAJESH,
AGED 51 YEARS
S/O.RAVEENDRANATHAN, REVEENDRANATHAN AND SON, IOC
DEALER, THALYOLAPARAMBU-686605, KOTTAYAM DISTRICT.
- 5 LUKE THOMAS,
AGED 61 YEARS
S/O. THOMAS, MATTATHILPARAMBIL FUELS, IOC PAMAPADY,
KOTTAYAM-686502.

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- 6 K.E.S AND COMPANY,
IOC DEALER, MUNDAKKAYAM, KOTTAYAM-686513, REP. BY ITS
MANAGING PARTNER, TOM SCARIYAH, AGED 62 YEARS,
S/O. K.E. SCARIYAH.
- 7 JUBY ALEX,
AGED 39 YEARS
S/O. K.A. PHILIP, PROPRIETOR, PHILIP AUTO CARE, HPC
DEALER, KURICHI-686532, KOTTAYAM.
- 8 M.M. SAYED MOHAMMED,
AGED 78 YEARS
S/O. MOHAMMED THAMPI, PROPRIETOR, AL-AMEEN
CORPORATION, HP DEALERS, KANJIRAPALLY-686507.
- 9 JAYASREE RAJAGOPAL,
AGED 54 YEARS
D/O. GOPINATHA MENON, PALLICKATHODU FUELS AND
LUBRICANTS, ANICKAD P.O, KOTTAYAM-686503.
- 10 SHEEBA RAJU,
AGED 53 YEARS
W/O. RAJU, KEERTHY PETROLEUM, IOC DEALER,
MUNDAKKAYAM P.O, KARINILAM, KOTTAYAM-686513.
- 11 BOBBY GEORGE,
AGED 53 YEARS
M/S. NEBUS SERVICE STATION, B.P.C. DEALER,
MUNDAKAYAM, KOTTAYAM-686513.
- 12 P.A. SHANAVAS ,
AGED 51 YEARS
S/O. P. ABDUL RAZAK, M/S. P. ABDUL RAZAK AND CO.,
IOC DEALERS, KANJIRAPALLY, KOTTAYAM-686507.
- 13 JYOTHEENDRANATHAN NAMPOOTHIRI K.N,
AGED 55 YEARS
S/O. A.N. NARAYANAN ELAYATHU, M/S. SURYAGAYATHRI
FUELS, IOC DEALERS, MARANGATTUPILLY P.O,
KOTTAYAM-686635.
- 14 M.G.M. ENTERPRISES,
INDIAN OIL DEALERS, PUTHUPPALLY, KOTTAYAM-686011,
REP. BY ITS MANAGING PARTNER, EAPEN JACOB, AGED 59,
S/O. P.M. JACOB.

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- 15 SUNISHKUMAR P.S,
AGED 42 YEARS
S/O. P.A. SUKUMARAN, M/S. CHAITHANYA FUELS, VAZHOOR
P.O, KODUNGOOR, KOTTAYAM-686504.
- 16 LALITHA K.NAIR,
AGED 58 YEARS
D/O. RAMACHANDRAN NAIR, M/S. INDRANEELAM FUELS,
INDIAN OIL DEALER, VAZHOOR ROAD, KARUKACHAL,
KOTTAYAM-686540.
- 17 ANNAMMA JOSE,
AGED 72 YEARS
D/O. DEVASIA, M/S.ROBIN PETROLEUM, INDIAN OIL
DEALERS, PULICKAL KAVALA P.O, KOTTAYAM-686515.
- 18 ABHILASH T.C,
AGED 33 YEARS
S/O. SARATH, ABHILASH FUELS, INDIAN OIL DEALERS,
INDUSTRIAL ESTATE NAGAR P.O, THENGANA ,
CHANGANASSERY-686106.
- 19 SEBASTIAN MATHEW,
AGED 61 YEARS
S/O. K.K. MATHEW, KAILATH FUELS, MANACKACHIRA
A.C.ROAD, CHANGANASSERY,PIN-686101.
- 20 T.K.BABY,
AGED 59 YEARS
S/O. KURIAN, BHARATH TRANSPORT CO, B.P.C DEALER,
PERUVA P.O, PIN-686610.
- 21 RENJITH KUMAR P.B,
AGED 53 YEARS
S/O. K.BHASKARAN PILLAI, M/S. BHASKAR AND COMPANY,
BHARAT PETROLEUM DEALERS, THENGANA, PERUMPANACHY
P.O, CHANGANASSERY, KOTTYAM-686536.

BY ADVS.

SRI.SANTHOSH MATHEW

SRI.ARUN THOMAS

SRI.JENNIS STEPHEN

SRI.VIJAY V. PAUL

SMT.KARTHIKA MARIA

SMT.VEENA RAVEENDRAN

SRI.ANIL SEBASTIAN PULICKEL

W.A.Nos.2112/2018
&
2118/2018

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RESPONDENTS/RESPONDENTS :

- 1 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT,
MINISTRY OF PETROLEUM AND NATURAL GAS,
SHASTRI BHAVAN,
NEW DELHI -110001
- 2 BHARAT PETROLEUM CORPORATION LIMITED,
REP.BY ITS CHAIRMAN AND MANAGING DIRECTOR, BHARAT
BHAVAN, 4 AND 6 CURRIMBOY ROAD, BALLARD ESTATE,
MUMBAI-400001.
- 3 THE TERRITORY MANAGER (RETAIL) ,
BHARAT PETROLEUM CORPORATION LIMITED, RETAIL
TERRITORY OFFICE, IRIMPANAM, ERNAKULAM, PIN-682309.
- 4 INDIAN OIL CORPORATION LTD,
REP.BY ITS CHAIRMAN, 3079/3, J.B.TITTO MARG, SADIQ
NAGAR, NEW DELHI-110049.
- 5 CHIEF GENERAL MANAGER,
INDIAN OIL CORPORATION LTD, KERALA STATE OFFICE,
PANAMPILLY AVENUE, PANAMPILLY NAGAR, COCHIN-682036.
- 6 HINDUSTAN PETROLEUM CORPORATION LTD,
REP.BY ITS CHAIRMAN, PETROLEUM HOUSE, 17, JAMSHEDJI
TATA ROAD, MUMBAI, MAHRASHTRA-400020.
- 7 SENIOR REGIONAL MANAGER,
HINDUSTAN PETROLEUM CORPORATION LTD, COCHIN
REGIONAL OFFICE, TATAPURAM, COCHIN-682018.

R1 BY ADV. SHRI.P.VIJAYAKUMAR, ASG OF INDIA
R2-7 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR
R2-7 BY ADV. SRI.P.GOPINATH
R2-7 BY ADV. SRI.K.JOHN MATHAI
R2-7 BY ADV. SRI.JOSON MANAVALAN
R2-7 BY ADV. SRI.KURYAN THOMAS
R2-7 BY ADV. SRI.PAULOSE C. ABRAHAM

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 19-08-2019,
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FOLLOWING:

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“CR”

C.K.ABDUL REHIM
&
R.NARAYANA PISHARADI, JJ.

W.A.Nos.2112 of 2018
&
2118 of 2018

Dated this the 4th day of September, 2019

J U D G M E N T

R.Narayana Pisharadi, J

The appellants are the petitioners in the writ petitions, W.P. (C) No.12202 of 2018 and W.P.(C) No.13363 of 2018. They assail the judgment of the learned Single Judge in the above writ petitions.

2. The appellants are persons who conduct petroleum retail outlets on the basis of the dealership agreements executed by them with the oil marketing companies by name Bharat Petroleum Corporation Limited, Indian Oil Corporation Limited and Hindustan Petroleum Corporation Limited, who are the second, fourth and the sixth respondents in the writ petitions.

The appellants alleged that, as per Ext.P2 circular, the oil marketing companies mentioned above demanded them to furnish the sales tax returns, bank account statements and income tax returns pertaining to their dealership. They alleged that the oil marketing companies threatened that, on failure to furnish the above information, the supply of petroleum products to them would be discontinued. The appellants contended that they are not bound to furnish the above information to the oil marketing companies and that compelling them to furnish the above information infringes their right to privacy which is a fundamental right.

3. Bharat Petroleum Corporation Limited (the second respondent) filed counter affidavit in the writ petitions contending that a policy decision was taken by the company to require the dealers to furnish information including income tax returns, sales tax returns and bank account details with a view to ensure that the outlets are not operated on benami basis. The company also contended that the dealers are bound to adhere to all the directions issued by it and that the company has got the right to

demand the income tax returns, sales tax returns and bank account statements from the dealers. It was also contended that the demand made for furnishing the information did not infringe any right to privacy as alleged by the writ petitioners.

4. Indian Oil Corporation Limited (the fourth respondent) filed counter affidavit in the writ petitions contending that it has not issued any circular as Ext.P2 and that it has not demanded sales tax returns, income tax returns and bank account statements from the dealers. At the same time, the company contended that, certain other information was sought from the dealers with a view to curb the operation of the retail outlets on benami basis. The company also contended that, as per the dealership agreement executed by the dealers, the company has got a right to demand the income tax returns, sales tax returns and bank account statements from the dealers, though no such demand has been made now.

5. The learned Single Judge found that, the contention that the requirement mentioned in Ext.P2 circular would violate the personal rights of the writ petitioners, is without any

substance and hence the reliefs sought in the writ petitions cannot be granted. The learned Single Judge found that the writ petitioners have voluntarily availed dealership from the oil companies and therefore they are liable to provide the details as sought for by the companies in terms of the agreement. The learned Single Judge further found that, the details sought by the companies are with respect to the dealership and not with regard to any personal matters of the writ petitioners. However, the learned Single Judge disposed of the writ petitions by issuing the following directions:

"However, in case the petitioners have any specific complaint with regard to the nature of the documents sought for by them and in case they can point out any instance where the documents sought for have no connection with the dealership in question or the agreement executed by them, those individual dealers who are aggrieved by specific demands can approach the respondents filing a representation pointing out their difficulty in producing any personal data sought for and seeking consideration of any alternate arrangements. In case a representation of that

nature is filed by any of the petitioners or members of the 16th petitioner in W.P.(C) No.13363/2018, the same shall be considered by the respondents and orders shall be passed thereon after hearing the persons who have filed such representation as well. It is made clear that the details including income-tax returns, sales-tax returns and Bank statements in respect of the dealership as sought for are liable to be furnished by the petitioners. However, three weeks time will be granted for the petitioners to produce the same, in case, such returns have not already been submitted."

The aforesaid judgment is under challenge in these appeals.

6. We have heard Sri.Santhosh Mathew, learned counsel for the appellants and also Sri.P.Gopinatha Menon, learned senior counsel who appeared for respondents 2 to 7.

7. Ext.P2 is the copy of the circular dated 15.02.2018 issued by the Bharat Petroleum Corporation Limited (second respondent) to the retail outlet dealers. As per this circular, the second respondent directed the retail outlet dealers to submit the sale tax return, the income tax return and the bank statement for the financial year 2016-2017 pertaining to their dealership.

8. Learned counsel for the appellants submitted that the appellants are ready to furnish the sales tax return to the oil marketing companies and that no challenge is being made in the writ appeals against the demand made for furnishing such information.

9. The appellants have not produced any material to find that the Indian Oil Corporation Limited and the Hindustan Petroleum Corporation Limited have demanded them to furnish any income tax returns or bank account statements.

10. Indian Oil Corporation (the fourth respondent) has produced a copy of Ext.R4(a) circular dated 09.05.2013 issued by it, requiring the dealers to furnish certain information. Learned counsel for the appellants submitted that the appellants are ready to furnish the information required by the Indian Oil Corporation in Ext.R4(a) circular and that no challenge is made against the demand made for furnishing such information. However, the fourth respondent has raised a contention that, though it has not now made any demand for furnishing the income tax returns or bank account statements of the dealers, it

has got every right to do so as per the dealership agreement executed by the dealers.

11. Learned counsel for the appellants extensively referred to various passages contained in the judgment of the Hon'ble Supreme Court in **K.S.Puttaswamy v. Union of India : (2017) 10 SCC 1** in support of his contention that, the compulsion made to furnish details of bank accounts and the income tax returns of a person infringes the right to privacy, which is a fundamental right.

12. In **K.S.Puttaswamy** (supra), the Supreme Court has held that, the right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 of the Constitution of India and as a part of the freedoms guaranteed by Part III of the Constitution. However, the Apex Court has further held that the right to privacy is not absolute. It was thus held:

"Like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy is not an absolute right. A

law which encroaches upon privacy will have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the three-fold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality which ensures a rational nexus between the objects and the means adopted to achieve them”.

13. **K.S.Puttaswamy** (supra) holds that any action by the State or its agencies which curbs or restricts the right to privacy of a citizen shall pass each of the following three tests: (1) test of legality, that is, such action must have a legislative or statutory basis (2) test of need and necessity, that is, such action shall serve a definite purpose in public interest and (3) test of proportionality, that is, such action shall be at the minimum level required to achieve the object.

14. Do the details of the bank account of a person constitute private and personal information? There is an element of confidentiality between a bank and its customers in relation to the latter's banking transactions (See **District Registrar and Collector v. Canara Bank : AIR 2005 SC 186**). In **Ram Jethmalani v. Union of India : (2011) 8 SCC 1**, it was held as follows:

"The revelation of details of bank accounts of individuals, without establishment of prima facie grounds to accuse them of wrong doing, would be a violation of their rights to privacy. Details of bank accounts can be used by those who want to harass, or otherwise cause damage, to individuals. We cannot remain blind to such possibilities, and indeed experience reveals that public dissemination of banking details, or availability to unauthorized persons, has led to abuse. The mere fact that a citizen has a bank account in a bank located in a particular jurisdiction cannot be a ground for revelation of details of his or her account that the State has acquired. Innocent citizens, including those actively working towards the betterment of the

society and the nation, could fall prey to the machinations of those who might wish to damage the prospects of smooth functioning of society. Whether the State itself can access details of citizens bank accounts is a separate matter. However, the State cannot compel citizens to reveal, or itself reveal details of their bank accounts to the public at large, either to receive benefits from the State or to facilitate investigations, and prosecutions of such individuals, unless the State itself has, through properly conducted investigations, within the four corners of constitutional permissibility, been able to establish prima facie grounds to accuse the individuals of wrong doing. It is only after the State has been able to arrive at a prima facie conclusion of wrong doing, based on material evidence, would the rights of others in the nation to be informed, enter the picture. In the event citizens, other persons and entities have credible information that a wrong doing could be associated with a bank account, it is needless to state that they have the right, and in fact the moral duty, to inform the State, and consequently the State would have the obligation to investigate the same, within the boundaries of constitutional permissibility. If the State fails to

do so, the appropriate courts can always intervene”.

15. There can be no doubt with regard to the fact that details of the bank account of a person constitute personal and private information. The statement of account of a person in a bank would reveal the amount in deposit in the bank and the amounts deposited and withdrawn in the past. It would give a clear picture of a person's financial capacity. It would disclose the cash transactions which a person had with third parties. It would reveal the amount transferred to and received by a person from another. It may show the loans availed of by a person from the bank. Habits of a person, his life style, his association with other persons and many other personal matters can be deduced from a close scrutiny of his bank account for some period. Therefore, we have no hesitation to hold that details of the bank account of a person constitute personal information and that any demand made to disclose such information amounts to infringement of his right to privacy.

16. True, the information would already be available with the bank. But, it does not change the nature and character of the information. Privacy attaches to the person and not the place where the information is kept. The right to privacy is not lost as a result of confidential information being parted with by the customer to the custody of the bank. Parting with information to the bank does not destroy its privacy. Moreover, the bank is under obligation to maintain secrecy of such information unless disclosure of it is required by law. The relationship between a bank and the customer is fiduciary in nature.

17. Ext.P2 circular also contains a demand for furnishing the income tax returns of the dealers. In **Girish Ramchandra Deshpande v. Central Information Commissioner: (2013) 1 SCC 212**, in the context of Section 8 of the Right to Information Act, the Apex Court has held that, the details disclosed by a person in his income tax returns are personal information.

18. Any information which discloses remittances made to the Income Tax Department towards discharge of tax liability would constitute personal information. A demand for furnishing

income tax returns filed by a person would constitute invasion of the privacy of a person.

19. Learned senior counsel for respondents 2 to 7 contended that, the demand made by the second respondent in Ext.P2 circular for furnishing the income tax returns and the statement of bank account of the dealers, pertains only to their dealership and not in respect of other personal matters of the dealers. Learned senior counsel would contend that, furnishing such information pertaining only to the dealership of the appellants would not infringe their right to privacy. This contention cannot be accepted. Income tax returns or the bank account statements of a person would contain many other information. It will not be possible to segregate the details regarding the dealership of the appellants from such records and to furnish them to the second respondent.

20. Now the question arises whether the demand made by the second respondent to the dealers to furnish their statement of bank account and the income tax return would withstand the three-fold test as envisaged in **K.S.Puttaswamy** (supra). The

first requirement is that there must be a law in existence to justify an encroachment on privacy. No person can be deprived of his life or personal liberty except in accordance with the procedure established by law. The existence of law is an essential requirement. Learned senior counsel for respondents 2 to 7 cannot point out any law which gives a right to the oil marketing companies to demand such information from the retail dealers. In fact, in the counter affidavit filed by the second and the fourth respondents, they have not pleaded that the demand for furnishing the income tax returns and details of bank accounts of the dealers has got any statutory basis. The second respondent has not been able to show any statutory provision which permits the company to issue a circular as Ext.P2. Therefore, the demand made by the second respondent to the dealers as per Ext.P2 circular, for furnishing the income tax returns and the details of the bank accounts of the dealers, does not pass the first test envisaged in **K.S.Puttaswamy** (supra). In such a situation, it is not necessary to consider whether the demand made by the second respondent in Ext.P2 circular would pass the

other two tests.

21. Learned senior counsel for respondents 2 to 7 would contend that, as per the dealership agreement executed by the retail dealers, the oil marketing companies have every right to seek information relating to income tax returns and bank account of the dealers, and that the dealers have got an obligation to furnish such information with respect to the safe practices and marketing discipline.

22. The aforesaid contention is without any merit. On the basis of a contract between an individual and a body corporate, right to privacy of that individual cannot be infringed. A contract entered into between two parties, even if one party is a State, cannot be said to be a law.

23. Respondents 2 to 7 would contend that the information regarding income tax returns and the bank account of the dealers would be necessary to ensure that no retail outlet is being conducted on benami basis. In other words, the contention is that, furnishing the above details is necessary for curbing the practice of conducting retail outlets on benami basis.

As noticed earlier, the tests of necessity and proportionality need not be considered when the demand made for furnishing the information does not pass the test of legality.

24. The discussion above would show that the judgment of the learned Single Judge cannot be sustained in law. The learned Single Judge has gone wrong in entering into a finding that the information required by the second respondent in Ext.P2 circular is only with regard to the dealership conducted by the appellants and not with regard to any other information and therefore the right to privacy of the appellants is not infringed. Moreover, the learned Single Judge has not considered whether the action of the second respondent demanding information relating to the income tax returns and the bank account of the dealers has got any legal sanction and whether it passes the first test envisaged in **K.S.Puttaswamy** (supra).

25. Consequently, we allow the appeals and set aside the impugned judgment in the writ petitions. We hold that the second, fourth and the sixth respondents have got no right to require the appellants to furnish their income tax returns and

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the bank account statements, as a condition for continuing the petroleum retail dealership granted to them. Ext.P2 circular issued by the second respondent is hereby quashed. The writ petitions are disposed of as above. No costs.

(sd/-)

C.K.ABDUL REHIM, JUDGE

(sd/-)

R.NARAYANA PISHARADI, JUDGE

jsr/27/08/2019

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PS to Judge