

Court No. - 21

Case :- CIVIL MISC REVIEW APPLICATION No. - 406 of 2023

Applicant :- Km. Urwashi Sharma

Opposite Party :- State Of U.P. And 5 Others

Counsel for Applicant :- Satyaveer Singh

Counsel for Opposite Party :- Santosh Kumar Singh

Hon'ble Manoj Kumar Gupta, Acting Chief Justice

Hon'ble Donadi Ramesh, J.

1. The applicant-petitioner is seeking review of the judgement dated 17.09.2021 passed by a Co-ordinate Bench dismissing the writ petition filed by the applicant-petitioner challenging the action of the State in denying her No Objection Certificate by Public Works Department for establishment of a petroleum retail outlet.
2. The case of the petitioner before the Writ Court was that the guidelines dated 20.09.2019, which had been issued after issuance of letter of intent would not apply. Under the said guidelines issued by the Public Works Department in line with the Government of India, Ministry of Road Transport and Highways Guidelines dated 25.09.2003, a minimal distance was provided between two retail outlets in order to ensure public safety in case of accidents. The Writ Court has held that since the guidelines were in public interest, therefore, the same would also apply to all pending applications.
3. Learned counsel for the applicant tried to contend that the view taken in this regard is not correct. He has placed reliance on another Division Bench judgement of this Court in ***Writ-C No.58534 of 2017 (Ashwani Kumar Singh vs. State Of U.P. and 7 Others)*** decided on 08.12.2017.
4. On the other hand, learned counsel appearing on behalf of the Petroleum Company (respondent no.6) submitted that the aforesaid issue was specifically considered by the Division Bench, which decided the writ petition. He submits that the applicant-petitioner cannot be permitted to re-agitate the same issue in review proceedings. In support of his submission, he has placed reliance on the judgement of the Supreme Court in ***Shanti Conductors Private Limited vs. Assam State Electricity Board and Others and other connected matters reported in (2020) 2 SCC 677.***
5. We have gone through the judgement under review and we find that the issue being raised by the applicant-petitioner has specifically been dealt with. The relevant observations from the said judgement are extracted below:

"The purpose of the guidelines was to ensure safety of the public while permitting the establishment of retail outlets on the road side. The distance between the two outlets have also been given to see that if one retail outlet catches fire, it may not affect the other retail outlets. Therefore, even the distance between the two retail outlets has also been provided. The purpose of the guidelines is for the safety of the public and to avoid possibility of accidents while granting NOC for the retail outlets.

It is unfortunate that State of U.P. has brought the guidelines in the year 2019 otherwise in all the states, guidelines, similar to the Government of India, were brought immediately so that the establishment of the retail outlet may not cause accidents. This Court refused to apply the guidelines of the Government of India dated 25.09.2003 as it was said to be applicable only for the national highways.

The Apex Court has applied the guidelines of 25.09.2003 as it is required for the safety of the public moving and to avoid other hazards on establishment of the retail outlets.

In view of the above, we find no reason for the State Government not to apply the guidelines dated 20.09.2019 on the applications considered subsequent to the issuance of the guidelines on the applications invited by the oil company prior to it. In fact, after issuance of the guidelines dated 20.09.2019, consideration of all the applications has to be in reference to it and otherwise the application submitted to the oil companies prior to the date of guidelines, if not governed by any parameters. It would be nothing but to invite accidents and other hazards inasmuch as even the retail outlets can be permitted without keeping the distance between the two and thereby if one outlet is caught fire, it may expose the other with serious consequences.

It is also when the guidelines have already been issued, consideration of the pending applications has to be strictly in adherence to it. It is the date of consideration which is relevant for grant of NOC and not the date of advertisement by the oil companies or submission of the application for consideration of the candidatures for establishment of retail outlets.

Accordingly, this Court does not endorse the order subsequently issued by the PWD to ignore the guidelines dated 20.09.2019 on the pending applications, if received by the oil companies prior to the date of guidelines. It is with the direction to the State Government to strictly adhere to guidelines dated 20.09.2019 to press the object for which guidelines were issued.

Taking into consideration that the site offered by the petitioners is hit by the guidelines and thereby NOC has been denied, we do not find any illegality therein.

The writ petitions are, however, disposed of with liberty to the petitioners to offer appropriate land for establishment of retail outlet which may be in consonance of the guidelines and accordingly the oil companies are directed to accept the alternate proposal of the land as per the advertisement. It would be as an exception and in given circumstances, the Government would also consider the case afresh for NOC on offer of alternative land by the petitioners."

6. In *Shanti Conductors Private Limited (supra)*, the Supreme Court has held that under the guise of review, the applicant-petitioner cannot be permitted to re-agitate and re-argue the questions, which have already been addressed and decided.

7. In *Parsion Devi vs. Sumitri Devi reported in (1997) 8 SCC 715*, it has been held that it is not permissible in exercise of review jurisdiction to correct the erroneous decision. A review petition cannot be treated to be "an appeal in disguise".

8. Having regard to the scope of review jurisdiction, we are of the considered opinion that the issue being raised by the applicant-petitioner would be beyond the realm.

9. Accordingly, the review application is hereby **rejected**.

(Donadi Ramesh, J.) (Manoj Kumar Gupta, A.C.J.)

Order Date :- 5.12.2023

Ankit.