

GAHC010279762023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/18/2024

M/S A K DAS AND SONS
A PROPRIETORSHIP FIRM HAVING ITS OFFICE AT NH 27/31 VILL
HELANARPAM P.O HOWLY BAKSA BTAD ASSAM REP BY ITS SOLE
PROPRIETOR MR. AJAY KUMAR DAS AGED ABOUT 62 YEARS RESIDING
AT HOWLY TOWN WARD NO. 2 P.O HOWLY DIST. BARPETA ASSAM

VERSUS

UNION OF INAID AND 6 ORS.
REP BY THE SECRETARY TO THE MINISTRY OF ROAD TRANSPORT AND
HIGHWAY TRANSPORT BHAWAN PARLIAMENT STREET NEW DELHI
110001

2:UNDER SECRETARY
TO THE MINISTRY OF PETROLEUM AND NATURAL GAS GOVT OF INDIA
SHASTRI BHAWAN NEW DELHI 110001

3:NATIONAL HIGHWAYS AUTHORITY OF INDIA
REP BY ITS CHAIRMAN HAVING ITS REGIONAL OFFICE AT HEDFI HOUSE
4TH FLOOR G S ROAD DISPUR GUWAHATI 781006 ASSAM

4:THE DISTRICT MAGISTRATE CUM DEPUTY COMMISSIONER
BAKSA
BTAD ASSAM

5:JIO BP
RELIANCE BP MOBILITY LTD FORMALLY RELIANCE PETROLEUM REP
BY ITS VICE PRESIDENT P AND C HAVING HIS REGISTERED OFFICE AT
3RD FLOOR MAKER CHAMBERS IV 222 NARIMAN POINT MUMBAI
MAHARASHTRA INDIA PIN 400021

6:AREA MANAGER

JIO BP RELIANCE BP MOBILITY LTD BIJAY CRESCENT BUILDING ABOVE
RELIANCE TRENDS RUKMINIGAON G S ROAD GUWAHATI ASSAM 781022

7:SHAI DUL ISLAM
S/O KHALIUR RAHMAN R/O MISSION ROAD WARD NO. 3 BARPETA ROAD
BARPETA ASSAM PIN 78131

For the petitioner (s) : Mr. D. Das, Sr. Advocate

Mr. K. MOhammed, Advocate

For the respondent (s) : Mr. R. K. D. Choudhury, Dy. SGI
Mr. C. Baruah, SC, NHA I
Mr. J. Roy, Sr. Advocate
Mr. A. H. M.R. Choudhury, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

09.08.2024

Heard Mr. D. Das, the learned senior counsel assisted by Mr. K. Mohammed, the learned counsel for the petitioner. Mr. R. K. D. Choudhury, the learned Deputy S.G.I. appears on behalf of the respondent No.1; Mr. C. Baruah, the learned Standing Counsel, NHA I appears on behalf of the respondent No.3; Mr. J. Roy, the learned senior counsel appears on behalf of the respondent Nos.5 & 6 and Mr. A.H.M.R. Choudhury, the learned counsel appears on behalf of the respondent No.7.

2. This Court taking into account the issue involved had passed an order on 06.08.2024 making a particular query. The dispute involved in the instant proceedings has also been clearly delineated in the said order. Under such circumstances, the said order dated 06.08.2024 is reproduced hereinunder:-

“ Heard Mr. D Das, the learned senior counsel assisted by Mr. K Mohammed, the learned counsel appearing on behalf of the petitioner. Mr. C Baruah, the learned standing counsel, NHA I appears on behalf of the respondent No.3, Mr. J

Roy, the learned senior counsel appears on behalf of the respondent Nos.5 and 6 and Mr. AHMR Choudhury, the learned counsel appears on behalf of the respondent No.7.

2. The issue involved in the instant writ petition pertains to as to whether the respondent No.7, who is proposing to set up a retail outlet for distribution of petroleum products should be permitted to set up its retail outlet within a distance less than 1000m/1KM meters from the retail outlet already set up by the petitioner.

3. Mr. D Das, the learned senior counsel appearing on behalf of the petitioner has referred to a map enclosed as Annexure-3 to the writ petition, showing that the distance between the retail outlet of the petitioner with that of the proposed retail outlet to be set up by the respondent No.7 is 203 meters. He submitted drawing the attention of this Court to the guidelines issued by the Ministry of Road Transport and Highways that the distance between the two fuel stations in respect to undivided carriageway is 300 meters, whereas for divided carriageway is 1000 meters. He submitted that there is an exception to the maintenance of the said distance, in a case where access/egress for all such fuel stations are provided through a common service road of 7.0 meters width and not directly to the National Highway. In addition to that access to the fuel station with close proximity with the distance so mentioned may be allowed provided entry/exit for both the fuel stations are provided through a service road of 7.0 meter width having sufficient length, further additional length of such service road shall be constructed at the cost of the latter fuel station owner/company seeking grant of permission for access for the facility. The learned senior counsel appearing on behalf of the petitioner submitted that without there being a 7.0meter width service lane constructed by the respondent Nos.5, 6 and 7, the question of granting permission for setting up of the said petrol pump by the respondent No.7 does not arise.

4. It is seen that an affidavit-in-opposition has been filed by the National Highway Authority of India. In the said affidavit, it has been mentioned that the NOC/in-principle approval for NHAI has not been issued to the proposed Reliance

BP Mobility Limited till date in regard to setting up of the said proposed petrol pump in such close vicinity of the petitioner's petrol pump and in that regard, the Project Director, PIU, Bongaigaon had written a letter dated 22.03.2024 to the Regional Officer NHA Regional Officer, NE Guwahati stating inter alia that the proposal for in-principal approval of the retail outlet fuel station located in the left hand side boundary of the National Highway 27 in Kilometer 1011.016 at village Helonarpam, Mouza-Howly under the Revenue Circle, Barnagar in the district of Baksa sub-judice, as such the in-principle approval may not be processed for approval till finalization of the Court's case. It has also been mentioned in the said affidavit that the respondent No.5 had given a commitment to create a service road to form clustering with additional land at the cost of the proposed Reliance BP Mobility Limited vide undertaking No.38AA-369942 dated 17.08.2023, signed by the Senior General Manager, Assam & North East State Office, Reliance BP Mobility Limited. The said undertaking had been enclosed to the said affidavit. The said undertaking being very pertinent is reproduced hereinunder:

“UNDERTAKING

I, Shri Raja Das, Senior General Manager, Reliance BP Mobility Limited, a Company registered under the provisions of the Companies Act, 2013, having it's registered office at 3rd floor, market Chambers 1V 222, Nariman Road, Mumbai, 400021 and it's Assam & North East State Office, Bijay Crescent 3rd Floor, Rukminigaon, G.S. Road, Guwahati 781006, Assam do hereby undertake,

- 1. This is to certify that Reliance BP Mobility Limited will be provided a common service road of 7.0m width and 154 m length between the two fuel sections, to entry/exit for both the Fuel Station also the existing Box culvert of 2.00 m wide will be extended on service road, further the cost of such service road and extended Culvert be borne by Reliance BP Mobility Limited.*

This undertaking is pertaining to the proposed Fuel Station (Retail Outlet) in the plot of land abutting on the left hand side boundary of NH 27 in Kilometer 1011.016 and covered by Dag No. 561 Survey No / Patta No. 268 of the Village: Helonarpam in the Mouza; Howly, under Revenue Circle of Barnagar PO: Howly & PS: Gobardhana in the District: Baksa (BTAD), Pincode; 781316 and I sign this undertaking on this 17th day of August 2023, at Guwahati, District; Kamrup (M), Assam."

5. *This Court had also perused the affidavit-in-opposition filed by the respondent No.3. It is not clear from the said affidavit as to whether as per the respondent No.3, the undertaking so given is in consonance with Clause 2.2 of the appendix-I of the guidelines issued by the Ministry of Road Transport and Highways dated 26.06.2020.*
 6. *Mr. C Baruah, the learned counsel appearing on behalf of the National Highway Authority of India submits that he would obtain instruction in that regard.*
 7. *List the matter again on 09.08.2024.*
 8. *Liberty is given to the parties to mention the matter for upgradation.*
 9. *The ad-interim order so passed on 05.01.2024 is extended after hearing both the parties and the same is converted to an interim order. The said interim order shall continue till the next date fixed.*
 10. *Mr. RKD Choudhury, the learned Dy.SGI, who represents the respondent No.1 is also directed to obtain instruction(s) in respect to the above order.*
 11. *The Registry shall show the name of Mr. RKD Choudhury, the learned Dy.SGI in the cause list."*
3. Pursuant to the said order passed, Mr. C. Baruah, the learned Standing Counsel appearing on behalf of the NHAI has obtained instructions as to whether the undertaking so given by the Senior General Manager of the respondent No.5 would be in accordance with Clause 2.2 of the Appendix-I of the guidelines issued by the Ministry of Road Transport and Highways dated the 26.06.2020.
4. During the course of hearing, Mr. C. Baruah, the learned Standing Counsel appearing on behalf of the NHAI has produced before this Court an instruction issued by the Project Director, NHAI which was sent via email to him. Taking into account its importance, the contents of the said email is reproduced hereinunder:-

“Sir,

Kindly find the reply to above trailing main as below:

As per MoRTH Guidelines Appendix-I, Clause No.2.2, it has been already mentioned in Affidavit of respondent No. 3 that proposed Reliance BP Mobility Limited vide an undertaking No.38AA-369942 dated 17/08/2023 signed by GM, Assam NE office has given commitment to create a service road to forms clustering with additional length at the cost of proposed Reliance BP Mobility Limited, which is in consonance with clause 2.2 of Appendix-I of MoRth Guidelines.

Upon getting in-Principle approval from NHAI and completion of common service road, Crash Barrier or separator fully along with completion of others norms & guidelines. The Reliance BP Mobility Limited, Retail outlet will be eligible to get NOC from the competent Authority.

*O/o The Project Director
NHAI, PIU-Bongaigaon,
Dolaigaon, Majpara
Near Namghar
Bongaigaon-783380
Assam”*

5. From the above quoted reply so given vide the email, it transpires that the undertaking so given by the Senior General Manager of the respondent No.5 is in terms with Clause 2.2 of the Appendix-I of the MoRTH guidelines.
6. The learned senior counsel appearing on behalf of the respondent Nos.5 & 6 further submitted that the respondent Nos.5 & 6 would be bound by the undertaking so given. The learned senior counsel appearing on behalf of the petitioner further submitted that he has no objection if the due permission is accorded to the respondent Nos.5, 6 & 7 for setting up of the retail outlet provided the undertaking so given is duly complied with.

7. Under such circumstances, in view of the consensus arrived at amongst the parties, this Court therefore disposes of the instant writ petition with the direction to the respondent authorities, more particularly the respondent No.3 to process the necessary in-Principle approval and the NOC only upon due compliance with the undertaking so given and in consonance with Clause 2.2 of the Appendix-I of the MoRTH guidelines and other norms.

8. Taking into account the above directions, the interim order passed earlier has been rendered redundant.

JUDGE

Comparing Assistant