

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No. 24682 of 2023 (O&M)

Reserved on : 08.01.2024

Date of Decision :30.01.2024

M/s Ugala Filling Station and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present: Mr. Prateek Sodhi, Advocate, for the petitioners.

Mr. Rajbir Singh, Deputy Advocate General, Haryana,
for respondent nos. 1 to 7.

Mr. Ashish Rawal, Advocate, for respondent no. 8-UOI.

Mr. Raman Sharma, Advocate, for respondent no.9.

Mr. S. P. Arora, Advocate, for respondent no. 10.

SANJEEV PRAKASH SHARMA, J.

The petitioners, who are running a fuel station allotted to them by the Bharat Petroleum Corporation Limited (hereinafter to be referred as 'the BHPCL'), seek to restrain opening of another fuel station in the nearby premises to be opened by respondent no.9- the Hindustan Petroleum Corporation Limited (hereinafter to be referred as 'the HPCL'),, which has been allotted to respondent no. 10. Fuel station is already opened at the location: Ugala, SH-4, Shahbad Adhoya Road, District Ambala, Haryana, by the petitioner.

2. Brief facts which can be culled out from the present petition are that the HPCL issued an advertisement on 25.11.2018 for allotment of regular/ rural retail outlet dealership in various districts of Haryana including District Ambala. It

has come on record that respondent no.10 had applied for the said retail outlet and was intimated on 18.07.2019 that his name having been declared as successful and was awarded dealership subject to compliance of terms and conditions issued by the HPCL in this record. Letter of Intent (LOI) was issued to respondent no.10 on 10.09.2019. As per the terms and conditions, the HPCL will develop the retail outlet at the location between villages Adhoi and Ugala on the site to be taken on lease/ purchased by the HPCL with appropriate structures, storage tanks and pumps.

3. The petitioner alleges that before setting up a retail outlet of petrol pump, the necessary permissions were required to be taken from various government departments such like Forest Department, PWD, etc. They are required to conform to the Indian Roads Congress (hereinafter to be referred as 'the IRC') guidelines in order to get NOC from the PWD. It is stated that as per IRC-12-2016 guidelines, the minimum distance between the fuel station and the intersection with rural roads/ approach roads to private and public properties should be 300 meters. The petitioners asserted that guidelines are mandatory in nature. It is alleged that their site, as located, does not conform to the IRC guidelines. It is further submitted that as per the NOC issued by respondent nos. 4 and 5, condition was imposed in the NOC itself that in case of non-compliance of IRC guidelines, NOC will be considered to have been withdrawn/ cancelled. The respondents have allegedly concealed the facts before applying for NOC. It is alleged that NOC granted by respondent nos. 4 and 5 on 27.02.2020 was issued without actually visiting the site.

4. Learned counsel for the petitioners asserted that two passages are running within a distance of 200 meters from the retail outlet. One passage is

leading to Chhabra Rice Mills at an approximate distance of about 25 meters and the other passage/ *Gohar* is at a distance of 200 meters from the site proposed, therefore, learned counsel for the petitioners submitted that the NOC ought to be cancelled and the respondents should not be allowed to set up fuel station. However, the petitioners' counsel submits that there were instructions and guidelines issued under the Forest (Conservation) Act, 1980, which are required to be followed for grant of permission to axe the trees on the forest land for diversion of forest land for non-forest purposes and for diversion of forest land for access to the retail outlet, which have been flouted by the respondents.

5. The permission to axe the trees on the forest land for diversion of forest land for non-forest purposes was wrongfully granted and the same is in contravention of the guidelines and instructions issued by the Forest Advisory Committee which lays down that the minimum distance between two fuel stations, on each side of the road, should not be less than 5 kilometers. The instructions further provided that if two or more fuel stations are to be constructed in close proximity or adjacent to each other, a common exit and access shall be provided but the same would not apply if no tree felling is involved. It is further submitted that earlier guidelines issued on 15.07.2004 came up for examination of this Court in CWP No. 19287 of 2011 - **Charan Dass vs Union of India and others**, decided on 22.10.2013 and which held the said guidelines to be directory in nature. Whereafter vide guidelines dated 18.03.2010, it was further clarified that entire periphery of the establishment should be lined up with free plantation. Further guidelines/ norms dated 12.04.2013 for access permission to fuel stations were issued by the Government of India, Ministry of Road Transport & Highways which provided that minimum distance between two fuel stations along the National

Highway for undivided carriageway would be 300 meters and for divided carriageway would be 1000 meters. It is further submitted that the said guidelines were again revised on 11.07.2014, 24.11.2015 and the respondents vide letter dated 28.03.2019 issued a handbook of guidelines for effective and transparent implementation of the provisions of the Forest (Conservation) Act, 1980, applicable from 08.03.2019. However, in these guidelines too the requirement of maintaining a distance of 5 kilometers between two fuel stations has been continued. It is alleged that the respondents have violated the said guidelines while proposing the new outlet. It is further alleged that permission to axe 32 trees and 9 plants was granted and the Forest Department also gave permission to establish petrol pump, although the same was mindlessly established without following the guidelines relating to keeping minimum five kilometer distance.

6. The petitioners preferred CWP No. 11276 of 2020 assailing the permission granted by the Forest Department whereafter the respondents were granted final order dated 02.12.2020 with respect to NOC. Another petition was filed by them bearing CWP No. 5576 of 2021 assailing the NOC granted by the PWD but the order of granting NOC on 02.12.2020 was not challenged as the petitioners were not aware of the same. It is stated that both the writ petitions were decided by the Court vide common order dated 21.09.2023 dismissing the petitions holding that the order of granting final NOC dated 02.12.2020 was not under challenge and the orders challenged were appealable, granted liberty to the petitioners to prefer appeal. The petitioners preferred appeal before the Commissioner and it is stated that the post of Commissioner was being held by the mother of respondent no.10, who did not pass any order on the appeal.

7. The petitioners preferred CWP No. 22557 of 2023 in the circumstances seeking issuance of writ in the nature of certiorari for quashing of the NOC as well as for restraining the respondents from granting retail outlet and for restraining them from cutting the trees. Learned Single Bench of this Court disposed of the writ petition vide order dated 05.10.2023 with directions to the appellate authority to decide the appeal within a period of two weeks. LPA was preferred against the said order bearing LPA No. 1442 of 2023 wherein the Division Bench directed the Commissioner, Karnal Division, to be the appellate authority to decide the petitioners' appeal. Thereafter, the appellate authority dismissed the appeal vide order dated 14.10.2023. The petitioners have filed the present writ petition assailing the order dated 14.10.2023 and further prayed for quashing of NOC dated 02.12.2020, and the NOC dated 27.02.2020 and the order dated 28.07.2020 whereby permission was granted to the respondent for diversion of forest land by axing 32 trees and 9 plants for access and establishment of retail outlet along Kala Amb- Shahbad Road (SH-4).

8. The HPCL in its written statement has raised preliminary objection of maintainability of the writ petition and submitted that in terms of Order XI Rule 16 CPC read with Rule 30 of the writ rules applicable to the Writ Jurisdiction (Punjab and Haryana High Court) Rules, 1976, the pleadings which are unnecessary, scandalous, frivolous or vexatious or which can tend to prejudice, embarrass or which is otherwise abuse of the process of the Court can be struck down. It is stated that the pleadings quoted in para 26 wherein the petitioners challenged the discretionary of the Single Judge by terming the same as erroneous and derogatory and pleaded to scandalise the process of the Court and prayed to struck down the pleadings. It is further submitted that the competitor in business has no right to

maintain the writ petition before this Court. Law in **Nagar Rice & Flour Mills and others vs N. Teekappa Gowda and Brothers and others** 1970 (3) SCR 846 and **Mithilesh Garg etc. etc. vs. Union of India and others** AIR 1992 SC 443 has been cited in support of the said submissions.

9. Learned counsel for the HPCL submitted that IRC guidelines of 2016 are only directory in nature and the judgment passed in CWP No. 15939 of 2012 - **Kulwant Rai Kataria vs State of Punjab**, decided on 21.08.2012 has been cited with the order dated 03.11.2012 passed in LPA No. 1744 of 2012. Respondent no. 9 has also objected to the maintainability of the writ petition on the ground of concealment and submitted that access permission has been granted by the Forest Department in terms of the order passed by the Government on 06.05.2016 which has not been placed on record by the petitioners, although the same was placed by the petitioners in the earlier writ proceedings initiated by him. The requirement of not allotting setting up of second petrol pump within five kilometer, if the tree cutting is involved, is stated to be no more in existence as the guidelines which were existing earlier were superseded by the instructions dated 11.07.2014. It is also stated that the tree cutting was carried out upon requisite cost and compensation towards compensatory plantation. It is further submitted that the Principal Chief Conservator of Forests, Haryana, had allowed the setting up of the retail outlet while issuing certain directions and conditions in its order dated 28.07.2020, which have been followed.

10. Respondent no. 10 has also filed its independent reply and has made similar pleadings. An affidavit has been filed by the Executive Engineer, Provincial Division No. 2, PWD (B&R) Branch, Ambala Cantt on behalf of respondent nos.1 to 3 stating that the NOC was granted by the respondents in

conformity with the IRC guidelines. It is stated that the way to Chhabra Rice Mill is a consolidation path of 3 karam and the same does not come in the category of road. Similarly the *Gohar* to fields also does not come in the category of road/ intersection as per the guidelines / instructions and has relied on Note (b) to the guidelines. It is reiterated that No Objection Certificate has been issued strictly in accordance with the IRC guidelines, and therefore, the appeal of the petitioner was rightly rejected.

11. This Court noticed that the NOC issued to **respondent nos. 9 and 10** stipulates condition no.19, which is as under:-

“19. That there should be no violation of norms pertaining to intersection prescribed in IRC: 12-2016/ latest edition as applicable. The NOC will be considered withdrawn/ cancelled in case of non compliance of this condition.”

12. IRC: 12-2016 guidelines are unified guidelines for access permission to fuel stations, private properties, rest area complexes and such other facilities along the National Highways. As per the introduction, the Transport Planning and Traffic Engineering Committee has decided to update comprehensively the guidelines for access permission to fuel stations, private properties, rest area complexes and such other facilities along national highways with the purpose to ensure free flow of traffic on the roads and minimum interference by the vehicles using the facilities and safety of vehicles and pedestrians on the roads. As per clause 3.1 of scope of IRC: 12/2016 guidelines it has been mentioned that owing to its merits, various agencies other than national highways are warranted to follow these guidelines/ norms for seeking and granting permission for the access to fuel stations, private properties, rest area complexes etc. along all categories of roads i.e. State Highways, Major District Roads, Rural Roads and Municipal roads etc.

13. Appendix-I to IRC: 12-2016 guidelines lays down the general conditions/ norms for location/ sitting, layout and access to fuel stations along the national highways. Clause 3.5, 3.5.1, 3.5.2 and 3.6.3 of IRC:12-2016 read as under:-

“3.5 *In order to provide safe length for weaving of traffic, fuel stations along National Highway shall be located at the minimum distance from an intersection (gap in the central median be treated as intersection) as given below. For single carriageway section, these minimum distance would be applicable for both sides. All the distances shall be measured between the tangent points of the curves of the side roads at intersections/ the median openings and the access/ egress roads of the fuel station as is applicable, in a direction parallel to the centre line of the nearest carriageway of the National Highway.*

3.5.1 *Non-Urban (Rural) Stretches*

1	Plain and Rolling Terrain	Distance
	(i) Intersection with NHs/ SHs/ MDRs	1000 m
	(ii) Intersection with Rural Roads/ approach roads to private and public properties	300 m
2	Hilly/ Mountainous Terrain	
	(i) Intersection with NHs/ SHs/ MDRs	1000 m
	(ii) Intersection with Rural Roads/ approach roads to private and public properties	300 m

3.5.2 *Urban Stretches*

1	Plain and Rolling Terrain	Distance
	A Urban Area with population of more than 20,000 and less than one lakh	
	1. Intersection with any category of roads of carriageway width of 3.5 m and above	300 m
	(i) Intersection with any roads of carriageway width of less than 3.5 m	100 m
	B. Urban Area with population of one lakh and above	
	(i) Intersection with any category of road (irrespective of carriageway width)	100 m
	II Hilly and Mountainous Terrain	

	(i) Intersection with any category of road (irrespective of carriageway width)	100 m
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3.6.3. *If two or more fuel stations are to be sited in close proximity for some reasons these would be grouped together to have a common access through a service road of 7.0 m width and connected to the highway through acceleration, deceleration lanes. From these considerations, the permission for the new fuel stations would be considered only if it either in proximity to the existing one so that the common access can be provided or the new one located at a distance of more than 1000 m. Any objection from NH for the proposed new fuel station are to be overruled and access to all fuel stations in case of clustering, shall invariably be from the service road only. Wherever longer service road exists which may itself act as deceleration/ acceleration lane, no separate deceleration/ acceleration lane is required.”*

14. Thus, from the above it is apparent that the aforesaid guidelines are essential for National Highways, however, they are to be followed generally for the State Highways and single carriageway, Major District Roads, Rural Roads and Municipal roads etc. functioning in the States. Admittedly, the concerned road is a State Highway. This Court, however, finds that the clause relating to intersection with rural roads, approach roads to public and private properties has to be at a distance of 300 meters. As per the affidavit filed by the Executive Engineer, the *Gohar* and the passage to the Chhabra Rice Mill do not fall within the definition of rural road or approach road, and therefore, it has been stated that the guidelines have been strictly followed.

15. While sitting in the Rajasthan High Court, I had the occasion to examine the issue regarding applicability of IRC 2016 guidelines in S. B. Civil Writ Petition No. 12208 of 2018 and after examining all the aspects vide judgment dated 06.09.2021, it was held that the norms essentially connote guidelines and cannot be said to be of statutory character and would not, therefore, be mandatory

and relaxation can be given by the State authorities with reference to the circumstances.

16. I have been told that the said judgment is under challenge before the Division Bench.

17. Leaving the aforesaid as independently if this Court examines the present case, it finds that so far as the IRC guidelines are concerned, the same would be treated as mandatory for National Highways but can be treated only as directory for State Highways, District Roads, etc. The State and Local authorities would be required to build roads as per the local requirement keeping in mind broadly the guidelines laid down for National Highways and departure would not result in declaring the action as bad in law because the guidelines are not essential meant for State Highways or District roads. It has been advised to follow the same norms for State Highways as well as for the District Roads but from the plain reading of the Appendix-1 to the guidelines, it is apparent that it would be completely impracticable to apply *mutatis mutandis* to said guidelines to State Highways/ roads, and therefore, it would be directory in nature.

18. Thus, while NOC has been granted and the Executive Engineer has also reached to the conclusion that there is no violation of IRC guidelines, this Court rejects the contention of the petitioners that on violation of IRC guidelines in *stricto sensu*, the NOC should be cancelled.

19. The question then arises with regard to the violation of the various guidelines relating to establishment of petrol pump. In this regard, this Court finds that the Ministry of Environment, Forests & Climate Change issued directions on the subject of diversion of forest land for non-forest purposes under the Forest

(Conservation) Act, 1980. In the said letter it has been stated that the Ministry has received certain representations for amendment of certain provisions of the guidelines issued earlier on 15.07.2004, 08/09.12.2004, 10.02.2005 and 18.03.2010 and the Ministry decided to supersede the earlier guidelines with direction to adopt the procedure laid down in their letter dated 11.07.2014. It was directed that the requirement for diversion land for construction of acceleration/ de-acceleration land and exit/ entry openings shall be based on approved layout plan provided in the guidelines issued by the Ministry of Road, Transport and Highways. The guidelines as existing on 23.07.2013 were enclosed. The condition of keeping two petrol pumps apart at the distance of 5 kilometer has been done away with and essentially the Forest Department adopts the IRC guidelines of 2016. If NOC has been granted under IRC guidelines 2016, the Forest Department would allow the access and construction of existing and re-opening for establishment of fuel station.

20. It is to be noticed that thereafter on 24.11.2015, the Ministry of Environment, Forest and Climate Change also observed that the parameters of National Highway as laid down in the guidelines would be different for the category of roads other than the National Highways and the same guidelines would not be feasible and a clarification has been sought by the Forest Department from the Ministry of Road, Transport and Highways. Thereafter, handbook of guidelines for effective and transparent implementation of the provisions of Forest (Conservation) Act, 1980 were issued on 28.03.2019 which includes approach/ exit roads to petrol pumps. The said guidelines have authorised a Senior Officer not below the rank of a Divisional Forest Officer having jurisdiction over the forest land proposed to be diverted to pass order for tree cutting and commencement of

work of a linear project in forest land, subject to full realization of funds for compensatory afforestation.

21. As per the reply filed by respondent no.9, due compensation amount has been deposited. In view thereof, this Court finds that no interference is warranted in the establishment of petrol pump on the road SH-4, between Villages Adohi and Ugala, at Village Ugala, Tehsil Barara, District Ambala, Haryana.

22. This Court also finds that the petitioner-company is a competitor and has merely taken up the cause in order to remove competition and maintain monopoly on the road relating to retail outlet of petrol pump. Therefore, it cannot be said that his petition is *pro bono* but this Court does not hold that the petition is not maintainable as even an individual citizen can approach the Court, if there has been violation of the norms lays down by the Forest Department and any construction is done in contravention of the Forest Act

23. In view of the aforesaid findings, no case for interference is warranted. The writ petition is found to be devoid of merits and is accordingly dismissed.

24. All pending applications shall stand disposed of accordingly.

25. No costs.

30.01.2024
vs

(SANJEEV PRAKASH SHARMA)
JUDGE

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>