

IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 275/2024

1. Bashir Ahmad Mir
S/O. Rustam Mir
2. Parvaiz Ahad Mir
S/O. Bashir Ahmad Mir
3. Shaheen Ahmad Mir S/O. Bashir Ahmad Mir
All residents of Gantmulla, Tehsil Narvaw & District
Baramulla.

...Petitioner(s)

Through: None

Vs.

1. Union of India through Secretary, Ministry of
Petroleum, New Delhi, India.
2. Chairman, Hindustan Petroleum Corporation,
Mumbai Tata Road India.
3. Divisional Manager, Hindustan Petroleum
Corporation Gandhi-Nagar, Jammu.
4. Deputy Commissioner, Baramulla.
5. Chairman, Pollution Control Board, J&K,
Srinagar.
6. Mohammad Sadiq Malik S/O. Haji Ghulam
Rasool Malik, R/O. House No. 306 Mohtalab
Khatikan Jammu. A/P Baba Gaffor Weight
Bridge Gantamulla Tehsil & District
Baramulla.

...Respondent(s)

Through: Mr. M.M. Dar, Advocate, for respondents for 2, 3 and 5
Mr. T.M.Shamsi, DSGI, for 1.

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

ORDER
27.05.2025

Oral:

1. Through the medium of instant petition, the petitioners have sought the following reliefs:-

“a. Issue a Writ of Mandamus commanding the official respondents to follow the Govt. guidelines and not to make any allotment without considering the contention of the Writ Petitioners in favour of the private respondent no. 5 for establishment of Petrol Retail Outlet at Gantamulla Baramulla.

2. The present petition has been filed by the petitioners jointly and they have prayed for similar relief against the respondents. Their grievance is that private respondent had applied for allotment of Petrol Retail Outlet vide Advertisement Notice dated 28th June, 2023, under OBC category in District Baramulla towards Uri NHI. Accordingly, the said respondent has taken the land measuring 01 Kanal 05 Marlas under Survey No. 997/962/184 min on lease basis from one Ghulam Ahmad Mir S/O Hafizullah Mir R/O Gantamulla Baramulla, which land is adjacent to the residential houses of the petitioners, where they are residing since long. It is the admitted case of the petitioners that the private respondent has been declared provisionally successful for allotment of Petrol Retail Outlet.
3. The further case of the petitioners is that petitioners including some other locals and the members of Masjid Committee approached the official respondents for stopping the establishment of proposed Petrol Retail on the ground that the same is in violation of the guidelines prescribed by the Government as the proposed land, as per the petitioners, is close to the residential area and also High Tension Line 11 KV is passing over the said land. Accordingly, the petitioners, in this regard, have filed some representation before the respondent no. 4, which has not been decided.
4. It is pleaded by the petitioners in the writ petition that private respondent no. 6, despite knowing the fact that the proposed land is close to the residential area, has raised the construction which is in violation of rules in vogue. It is further pleaded in the writ petition that as per the guidelines the Retail Outlet should be at least 50 Meters away from residential houses, school etc and 100 Meters away from River/Stream. However, the proposed site in question does not meet the stipulated

Criteria, therefore, the petitioners have prayed that the respondents be restrained from establishing proposed Petrol Outlet near the residential area.

5. The petitioners have further pleaded in the writ petition that since the respondents have failed to consider the representation of the petitioners/inhabitants of village Gantamulla Baramulla, which clearly demonstrates that they are trying to give undue benefit to the respondent no. 6 for establishment of proposed Retail Petrol Outlet near the residential area that too in violation of the guidelines governing the subject matter.
6. The record reveals that this Court vide Order dated 16th February, 2024, directed the respondents to accord consideration on the representation stated to have been filed by the petitioners by the next date of hearing and till the decision on the aforesaid representation was to be taken by the respondents, status quo was directed to be maintained with respect to the subject matter of the instant petition. The aforesaid status quo order continues to be in operation as on date.
7. *Per contra*, the reply stands filed on behalf of respondents 2 and 3 by Mr. M.Dar, learned counsel representing the Hindustan Petroleum Corporation. The respondents, while filing the reply, has taken a preliminary objection that on one hand, the petitioners have stated that they have approached the authorities including the respondents 4 and 5 and other Revenue Authorities and without waiting for the result of the said application, has simultaneously approached this Court through the medium of instant petition with a view to stall process of selection, which, however, is subject to the NOC to be granted by the respondent no. 4 after taking no objections from allied departments as is provided

under Rule 144 of the Petroleum Rules of 2002. For facility of reference, Rule 144 of the Petroleum Rules of 2002 is reproduced as under:-

Rule 144. No-objection Certificate.

1. *Where the licensing authority is the Chief Controller or the Controller, as the case may be, an applicant for a new license other than a license in Forms III, XI, XVII, XVIII, or XIX shall apply to the District Authority with two copies of the site-plan showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection, to the applicant receiving a license for the site proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application Form IX.*
 2. *Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly endorsed by him under his official seal.*
 3. *(3) The Chief Controller or the Controller as the case may be, may refer an application not accompanied by certificate granted under sub-rule (1) to the District Authority for his observations.*
 4. *(4) If the District Authority, either on a reference being made to him or otherwise, intimates to the Chief Controller or the Controller as the case may be, that any license which has been applied for should not, in his opinion, be granted, such license shall not be issued without the sanction of the Central Government.*
 5. *The District Authority shall complete his inquiry for issuing NO OBJECTION CERTIFICATE (NOC) under sub-rule (1) and shall complete the action for issue or refusal of the NOC, as the case may be, as expeditiously as possible as but not later than three months from the date of receipt of application by him..."*
8. After placing reliance upon the aforesaid Rule, 144 of the Petroleum Rules, 2002, Mr. M.M.Dar, learned counsel appearing for the respondents 2 and 3, submits that the instant petition is required to be dismissed being premature as the petitioner has come to this Court without waiting for the outcome of the decision which was to be taken in

the application for stalling the establishment of proposed Petrol Retail Outlet at Gantamula, Baramulla.

9. The respondents 2 and 3 have taken further stand in their objections that a suit has been filed by the respondent no. 6 before the Court of learned Sub Judge, Baramulla and the said respondent no. 6 has intentionally and willingly not made the respondents 2 and 3 party-respondents in the suit. In the said suit, it has also been reiterated that the selection for the said Petrol Retail Outlet will be subject to NOC granted by the respondent no. 4 and the role of the said authority will come only into existence when the letter of intent is issued in favour of the respondent no. 6, wherein he will be specifically directed to get the NOC from the respondent no. 4.
10. The respondents 2 and 3 in their objections have taken a stand that, admittedly, the application has already been preferred by the petitioners before the aforesaid respondent and the petitioners, without waiting for the outcome of the said application, has rushed to this Court by way of filing the instant petition, which, as per the respondents, is required to be dismissed. The respondents 2 and 3 have, accordingly, taken a specific stand that the instant writ petition is premature as the respondent no. 6 is yet to be confirmed and on the other hand he has been selected only in draw of lots and in the meantime, the Corporation conducts Land evaluation as well as field verification of the offered land and it was made clear that in case, the said offered land is found to be in violation of any of the norms, the candidature of the applicant shall be rejected and at the same time before the commissioning the Retail Outlet, NOC from respondent no. 4 is also required, who, on the basis of recommendations of various other departments shall accord NOC.

Lastly, the respondents have taken a specific stand that the selection process is still in process and no final conclusion is drawn.

11. Heard learned counsel for the respondents and perused the material on record.

12. At this stage, Mr. M.M.Dar, learned counsel appearing for the respondents 2 and 3 submits that the petitioners by getting the interim order in their favour have stalled the whole selection process and no fruitful purpose would be served to keep this writ petition alive and it is in nobody's interest even to continue the aforesaid interim direction. Accordingly, learned counsel submits that the interim direction is required to be vacated so that the requisite formalities are completed as the interim direction is harshly running against the interest of private respondent no. 6. He further submits that the issue involved in the instant petition pertains to the issuance of letter of intent dated 13th December, 2023, in pursuance to the Advertisement Notice dated 28th June, 2023 by the Oil Marketing Companies, wherein the respondent no. 6 has been declared successful in draw of lots conducted for the said location and the allegations leveled in the instant petition that the respondent no. 6 is being extended undue benefit and the Petrol Retail Outlet has been established against the guidelines are factually incorrect as the establishment of Petrol Retail Outlet is always subject to the NOCs to be obtained from various Authorities and the rules in vogue. There is no representation on behalf of the petitioners.

13. In view of the stand taken by the respondents, the interim direction dated 16th February, 2024, which is in nobody's interest, stands vacated/modified and the writ petition is accordingly **disposed of** with the following directions:-

- i) The respondents are directed to proceed further in the matter in accordance with the rules and take a final decision with respect to the allotment of retail outlet dealership for the location in question in favour of respondent No.6 keeping in view the fact that he has been declared successful vide allotment letter dated 13.12.2023 issued in pursuance of draw of lots conducted for the proposed location as per Advertisement Notice dated 28th June, 2023.
- ii) The respondents 2&3 are further directed to complete the entire process of land evaluation and field verification of the offered land within a period of six weeks from today subject to obtaining requisite NOCs by respondent No.6 from allied departments in conformity with Rule 144 of the Petroleum Rules, 2002 and subject to obtaining various NOCs from allied departments, the respondent No.4 shall accord consideration for issuance of NOC in case all the requisite formalities as envisaged under law are fulfilled and the same will be followed after issuance of letter of intent in favour of respondent No.6.

14. The writ petition is accordingly **disposed of** in the aforesaid terms along with all connected application and the interim direction also stands vacated.

(WASIM SADIQ NARGAL)
JUDGE