

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.8502 of 2014

ORDER:

The action of the Engineer-in-Chief (R&B), Administration & National Highways, Hyderabad-2nd respondent in rejecting to issue no objection and access permission for approach road to the fuel station abutting NH-219 at Bodavaripalli village, Punganur mandal, Chittoor district is under challenge in the present writ petition.

2. In response to a notification issued, petitioner made an application on 2.7.2009 to the Hindustan Petroleum Corporation Limited-5th respondent herein for allotment of retail outlet dealership on NH-19 at Edigapalli, Chittoor district and the 5th respondent called the petitioner for interview held at Vijayawada on 25.9.2009 and selected the petitioner as per the norms issued by the 1st respondent vide proceedings No.RW/NH-33023/19/99-DO-III dated 25.9.2003. Thereafter, according to the petitioner, she completed all the formalities for establishment and the Superintending Engineer (R&B), NH Circle, Anantapur-3rd respondent on 26.7.2011 submitted proposals to the 2nd respondent-Engineer-in-Chief for grant of No Objection Certificate and access permission for approach road to the filling station. Subsequently vide Memo No.342/DCE-II(D)NH/DEE-6/AE-P2/2012 dated 15.5.2012, the 2nd respondent requested the 3rd respondent to submit one more copy of the proposal and population certified along with classification i.e. Rural/Urban and NOC from Tahsildar of Punganur, Chittoor district. Thereafter, proposals were submitted and the 2nd respondent vide proceedings No.RW/Hyderabad/Misc-24A/RO/Ant/545 dated 10.9.2013 returned the proposals for re-submission as per the new guidelines and thereafter 3rd respondent-Superintending Engineer on 21.1.2014 re-submitted the proposals to the 2nd respondent and the 2nd respondent-Engineer-in-

Chief vide Memo No.342/DCE-II(D)NH/DEE-6/AE-P2/2012 dated 27.1.2014 returned the proposals unapproved on the ground of non-compliance of the new guidelines dated 24.7.2013.

3. Calling in question, the validity of the said action, the present writ petition came to be filed. Responding to the notices issued by this Court, counter affidavit has been filed by the respondents 2 to 4, denying the averments in the affidavit filed in support of the writ petition and in the direction of justifying the questioned action.

4. Heard Sri B.S.Venkata Ramesh, learned counsel for the petitioner, learned Government Pleader for Roads and Buildings for respondents 1 to 4 and Sri M.Ravindranath Reddy for respondent No.5, apart from perusing the material available on record.

5. It is contended by the learned counsel for the petitioner that the impugned memo, rejecting the proposals is highly illegal, arbitrary, unreasonable and violative of Articles 14 & 19 (1) (g) of the Constitution of India. Learned counsel further submits that the action of the 2nd respondent in insisting on the compliance of the new guidelines cannot stand for the reason and as the notification was issued in 2009 and since the petitioner complied with all the formalities as per the guidelines in vogue as on the relevant date, the 2nd respondent grossly erred in rejecting the approval. To bolster his submissions, learned counsel for petitioner places reliance on the judgment in **K.Manjusree v. State of Andhra Pradesh and another**^[1].

6. Per contra, it is vehemently contended by the learned Government Pleader appearing for respondents 1 to 4 that there is no illegality nor there is any infirmity in the impugned action, as such the present writ petition is not maintainable and the petitioner is not entitled for any relief from this Court under Article 226 of the Constitution of India. It is the further submission of the learned Government Pleader that as per the new guidelines, which came into being with effect from 24.7.2013, the

petitioner is not entitled for any relief from this Court.

7. In the above back ground, now the issue that emerges for consideration before this Court is *"whether the questioned memo dated 27.1.2014 issued by the 2nd respondent, turning down the proposals is in accordance with law or whether it warrants any interference of this Court under Article 226 of the Constitution of India?"*

8. There is absolutely no controversy on the realities that the 5th respondent issued the notification in the year 2009 and the petitioner applied for dealership in the same year and the guidelines issued in the year 2003 were in vogue during the said relevant point of time. There is also no dispute with regard to the reality that HPCL-5th respondent vide Ref: KRO/CHTR/NH219/Punganur dated 26.7.2011 sent the proposals for NOC and access permission for approach road to the proposed outlet while enclosing seven (7) sets of drawings, showing site plan, key plan, proposed deceleration & acceleration roads, details of construction of approach road, drain and trap, cross sectional view, elevation and other details of proposed facilities and license agreement and check list complete in all respects. It is significant to note that after a lapse of approximately ten (10) months, the 2nd respondent by way of Memos dated 15.5.2012 and 28.2.2013 requested the Superintending Engineer and Executive Engineer to send another copy of the proposals. No plausible explanation is forthcoming as to why after such a length of time the 2nd respondent asked for another set of proposals and the reason obviously being misplacement of the proposals received earlier and the same can only be the inference which can be drawn from the material available on record. The material available on record further discloses that the Executive Engineer had taken more than one year to respond and to write a letter to the Deputy Executive Engineer vide Memo dated 16.8.2013. For the lapses on the part of the office of the 2nd respondent, the petitioner herein cannot be penalized on the ground that new guidelines came into force with effect from 24.7.2013.

9. Another contention raised by the learned counsel for the petitioner is that the respondents are not justified in taking shelter under the new guidelines, which came into force from 24.7.2013 and ought to have considered the issue under the 2003 guidelines, which were in vogue as on the date of notification in the year 2009. In support of the said contention, learned counsel for petitioner places reliance on the judgment of the Hon'ble Apex Court in *K.Manjusree v. State of Andhra Pradesh and another* (supra). In the said judgment, the Hon'ble Apex Court at para 33 held as under:

“33. The Resolution dated 30-11-2004 merely adopted the procedure prescribed earlier. The previous procedure was not to have any minimum marks for interview. Therefore, extending the minimum marks prescribed for written examination, to interviews, in the selection process is impermissible. We may clarify that prescription of minimum marks for any interview is not illegal. We have no doubt that the authority making rules regulating the selection, can prescribe by rules, the minimum marks both for written examination and interviews, or prescribe minimum marks for written examination but not for interview, or may not prescribe any minimum marks for either written examination or interview. Where the rules do not prescribe any procedure, the Selection Committee may also prescribe the minimum marks, as stated above. But if the Selection Committee wants to prescribe minimum marks for interview, it should do so before the commencement of selection process. If the Selection Committee prescribed minimum marks only for the written examination, before the commencement of selection process, it cannot either during the selection process or after the selection process, add an additional requirement that the candidates should also secure minimum marks in the interview. What we have found to be illegal, is changing the criteria after completion of the selection process, when the entire selection proceeded on the basis that there will be no minimum marks for the interview.”

10. In view of the principle laid down in the above authoritative pronouncement of the Apex Court, the impugned action, rejecting the proposals on the ground of change of guidelines subsequently and insistence on the compliance of the same, cannot be sustained in the eye of law. Therefore, this Court, in the facts and circumstances of the case, has no scintilla of hesitation nor any traces of doubt to hold that the

impugned action cannot stand for the twin tests of reasonableness and rationality.

11. For the aforesaid reasons, the writ petition is allowed, declaring the action of the 2nd respondent in rejecting to grant No Objection Certificate and access permission for approach road to the fuel station abutting NH-219 at Bodavaripalli village, Punganur mandal, Chittoor district by virtue of Memo No.342/DCE-II(D)NH/DEE-6/AE-P2/2012 dated 27.1.2014 as illegal and arbitrary and consequently the respondents 1 to 4 are directed to consider the proposals of the petitioner herein for establishment of fuel station in accordance with the guidelines dated 25.9.2003 and pass appropriate orders within a period of two months from the date of receipt of this order. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 2.9.2015
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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W.P.No.8502 of 2014

2.9.2015

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.8502 of 2014

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Between:

Smt.M.Malathi

... Petitioner

and

Government of India, rep. by its
Principal Secretary and others.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 2.9.2015

SUBMITTED FOR APPROVAL:

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THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

1. Whether Reporters of Local Newspapers
May be allowed to see the Judgment?

Yes/No
2. Whether the copies of judgment may be
Marked to Law Reporters/Journals?

Yes/No
3. Whether Their Lordship wish to see the
Fair copy of the judgment?

Yes/No

[\[1\]](#) (2008) 3 SCC 512