

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

**CWP No.16109 of 2011
Date of decision: 30.08.2016**

Prem Chand Bansal

... Petitioner

Vs.

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Manoj Bajaj, Advocate
for the petitioner.

Mr. R.K. Doon, AAG, Haryana.

RAMESHWAR SINGH MALIK, J. (ORAL)

Present writ petition is directed against the show cause notice dated 18.08.2011 (Annexure P-11), (incorrectly typed as Annexure P-18 in the prayer clause), whereby no objection certificate earlier issued in favour of the respondent-Petroleum Corporation, vide Annexure P-9 dated 17.03.2011 for permitting the petitioner to set up a retail out, was sought to be cancelled.

Notice of motion was issued and in compliance thereof, written statement on behalf of respondents No.3 and 4 was filed. A separate written statement was filed on behalf of respondent No.2. Petitioner filed his replication to the written statement filed by respondent No.2.

Heard learned counsel for the parties.

Twin issues that fall for consideration of this Court, in the instant

writ petition, are; (1) whether petitioner on his part concealed any material fact from the notice of the respondent authorities at any point of time, before issuance of no objection certificate and (2) whether the respondent authorities had been taking contradictory stands at different stages and their action was arbitrary on the face of it.

Taking the first issue first, it is neither pleaded nor argued case on behalf of the respondents that petitioner made any effort, to conceal any material fact from the notice of the respondent authorities, either before or after issuance of the no objection certificate dated 17.03.2011 (Annexure P-9). It goes without saying that before issuing the no objection certificate vide communication (Annexure P-9), all the official respondents satisfied themselves that the petitioner was meeting all the requirements, laid down under the relevant guidelines.

In para 2 of the preliminary submissions of the written statement filed on behalf of respondent No.2, numerous departments have been mentioned whose consent was sought by the District Magistrate, Yamuna Nagar-respondent No.2, before issuing no objection certificate (Annexure P-9). Every department has satisfied itself that all the norms were being fulfilled by the petitioner and also the respondent-Petroleum Corporation, for issuance of no objection certificate. It is nobody's case that no objection certificate was issued despite their being any objection raised by any department. Having said that, this Court feels no hesitation to conclude that answer to the first issue noticed hereinabove, is and has to be in the negative, in favour of the petitioner and against the respondents. Ordered accordingly.

Coming to the second issue, a bare perusal of numerous documents

and the written statements filed on behalf of the respondents, would make it crystal clear that they themselves were not certain about their stand taken. In fact, different stands were being taken at different points of time, as per their own suitability. The objection, if at all, was about requirement of distance of 300 meters in respect of intersection at rural roads/approach roads. Again, it is neither pleaded nor argued case on behalf of the respondents that how much less distance was available in the case of the petitioner, than the required distance of 300 meters.

Vide communication dated 23.06.2011 (Annexure P-13), Engineer-in-Chief, Haryana, PWD (B&R), Chandigarh, in an inter-departmental communication, has taken the stand in para 4 thereof that the IRC. 12.1983 (the relevant guidelines) may be followed. Para 4 of this communication dated 23.06.2011 (Annexure P-13) reads as under: -

“For access to fuel stations service stations and rest areas in new cases, Morth circular No.RW/NH-33023/19/99-DO-iii Dated 25.9.2003 and IRC. 12.1983 may be followed as guide lines.”

This communication was issued just about two months before issuing the impugned show cause notice (Annexure P-11) and about three months later than issuing no objection certificate dated 17.03.2011 (Annexure P-9). If that was the correct position that the District Magistrate was supposed to follow guidelines known as IRC. 12.1983, then there would have been no objection of any kind, whatsoever, against the petitioner.

However, at a later point of time, respondents sought to allege that it were not the guidelines of 1983 but of the year 2009 which were supposed to be followed. Even if said stand taken by the respondents is taken to be true, they

themselves have falsified the same by replying to the RTI application vide Annexure P-18. The information sought vide Annexure P-17 dated 17.08.2011, is as under: -

“When IRC-12-2009 guide lines have been implemented by the Govt.”

This RTI application (Annexure P-17) was replied by communication dated 21.09.2011 (Annexure P-18) and the reply reads as under:-

“Reference Your Office Memo No.183-RTI-2011/2593 dated 23.8.2011.

No such instruction have been issued in this regard by Government.”

When confronted with the abovesaid fact situation borne on the official record, learned counsel for the State had no answer and rightly so, it being a matter of record. Under these circumstances, it can be safely concluded that the respondents have miserably failed to make out a case that petitioner was not meeting the requirement of minimum distance of 300 meters, as per the latest IRC guidelines of 2009. It is so said because firstly; respondent authorities have admitted in their communication (Annexure P-18) that no such instructions have been issued in this regard by the Government. Secondly, nobody has carried out the exact measurement at the site to say that it was less than 300 meters.

In fact, respondents want this Court to draw adverse inference against the petitioner and that too without any basis for the same. It was least expected from the respondent authorities that they must have clarified this

material aspect of the matter, in the impugned show cause notice itself, so that either the respondent-Petroleum Corporation or the petitioner would have met the said objection raised against them. Further, even after filing the present writ petition, none of the respondent authorities have tried to clarify this aspect, while referring to the exact measurement at the site. Thus, without referring to the mandatory or directory nature of guidelines of 1983 or 2009, it is unhesitatingly held that the respondents have been contradicting themselves, changing their stand from time to time, thereby proceeding on an arbitrary approach.

During the course of hearing, learned counsel for the State could not point out any relevant instructions or orders issued by the State, which might have been violated by the petitioner or by the respondent-Petroleum Corporation, enabling the respondent authorities to issue the impugned show cause notice, for canceling the no objection certificate earlier issued. Petitioner is operating retail outlet at the site for the last about five years without there being any kind of objection against the working of the petitioner. It goes without saying that while dealing with valuable right of the citizens, the respondent authorities are expected to proceed strictly in accordance with law and also as per the principles of natural justice. Learned counsel for the State also could not substantiate any of his arguments in this regard. Since the instant writ petition is being decided on the basis of its own peculiar facts and circumstances, judgments of this Court relied upon by learned counsel for the petitioner are not being referred, for the reason that they are not required as such. In view of what has been discussed hereinabove, second issue is also decided in favour of the petitioner and against the respondents.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the impugned communication dated 18.08.2011 (Annexure P-11) is arbitrary on the face of it and the same cannot be sustained. Accordingly, impugned show cause notice dated 18.08.2011 (Annexure P-11) issued by respondent No.2 is hereby set aside. In the circumstances of the case, present writ petition deserves to be accepted.

Resultantly, with the abovesaid observations made, instant writ petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

30.08.2016
vishnu

Whether speaking/reasoned Yes/No

Whether reportable Yes/No