

CWP Nos.8891, 21112 of 2010 & 335 of 2011

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

- (1) **CWP No.8891 of 2010**
Date of decision:26.02.2016
- Seema Mehta ...Petitioner
- Versus
- Union of India and others ...Respondents
- (2) **CWP No.21112 of 2010 (O&M)**
Date of decision:26.02.2016
- Bharat Petroleum Corporation Ltd. ...Petitioner
- Versus
- Union of India and others ...Respondents
- (3) **CWP No.335 of 2011 (O&M)**
Date of decision:26.02.2016
- Bharat Petroleum Corporation Ltd. ...Petitioner
- Versus
- The District Magistrate, Ambala and another ...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Ms. Geetanjali Devi, Advocate, for
Mr. Raman B. Garg, Advocate, for the petitioner
in CWP No.8891 of 2010.

Mr. Raman Sharma, Advocate,
for the petitioner(s) in CWP Nos.2112 of 2010 & 335 of 2011.

Mr. P.P.Chahar, DAG, Haryana.

Mr. M.L.Sarin, Senior Advocate, with
Mr. Vikas Suri, Advocate, for respondent No.2
in CWP No.335 of 2011.

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Rakesh Kumar Jain, J. (Oral)

This order shall dispose of three petitions bearing CWP No.8891 of 2010 titled as “Seema Mehta vs. Union of India and others” (hereinafter referred to as the “first petition”), CWP No.21112 of 2010 titled as “Bharat Petroleum Corporation Ltd. vs. Union of India and others” (hereinafter referred to as the “second petition”) and CWP No.335 of 2011 titled as “Bharat Petroleum Corporation Ltd. vs. The District Magistrate, Ambala and another” (hereinafter referred to as the “third petition”) as the facts and the issue involved in all these cases are interwoven.

Shorn of unnecessary details, the brief facts are that the petitioner-Bharat Petroleum Corporation Ltd. (hereinafter referred to as the “BPCL”) gave an advertisement dated 10.01.2003 for opening its retail outlet at village Saha, National Highway No.73, District Ambala. Pursuant to the aforesaid advertisement, various applicants offered their land for the said outlet, out of which the land of one Girish Chandra was taken on lease and, thus, he was selected to operate the petrol pump on ad-hoc basis till the regular selection of the allottee was made. During the currency of operation of the outlet, the Government of India issued a policy on 06.09.2006, as per which all Company Owned/Company Operated (COCO)/adhoc petrol pumps were ordered to be taken over by the (a) Special Scheme (Operation Vijay-Kargil), the Kargil allottees; (b) Discretionary quota scheme; (c) Corpus Fund Scheme (SC/ST category dealerships, women above 40 years of age without earning parents); and (d) other categories as prescribed in the marketing plans. This policy was challenged in the Delhi High Court

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by various persons including Girish Chandra who had filed CWP No.1858 of 2007, which was dismissed on 08.02.2008 and even the SLP filed by him was also dismissed on 31.07.2008. Thereafter, the present outlet was given to Seema Mehta, petitioner in the first petition, who is operating the said outlet since 19.02.2007. The first petition came to be filed because the Department of the Director General of Road Development and Special Secretary, Ministry of Road Transport and Highways raised an objection that the outlet being operated by the petitioner Seema Mehta has no access for ingress and outgress. In the first petition, notice of motion was issued on 14.05.2010.

The second petition was filed by the BPCL to declare the conduct of the respondents especially respondent No.2 as illegal in not granting approval to the proposal/recommendation made by various lower authorities for allowing access to the petrol pump of the petitioner and proceeding to disconnect the access on 09.11.2010 by digging the land in between. The second petition was filed because according to the petitioner, the distance from any intersection of the road to the outlet was 300 meters which was changed to 1000 meters on 07.10.2003, especially when the outlet was also operating at that time. This case was adjourned to 26.11.2010 to be placed before the same Bench who has been hearing the first petition.

While the second petition was pending, the BPCL filed the third petition to challenge the order dated 29.12.2010 passed by the District Magistrate, Ambala. In this case, a little bit background is necessary

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because the order dated 29.12.2010 was passed in view of an order passed by this Court in CWP No.11675 of 2010 on 06.07.2010, which reads as under:-

“The petitioner alleges that respondent No.5 is running a retail outlet without obtaining any “No Objection Certificate” from the Ministry of Shipping-cum-Road Transport and Highways. In this regard, the petitioner is said to have served the official respondents with a notice dated 30.11.2009 (Annexure P-5) to which there appears to be no response. Thereafter, an advance notice dated 26.04.2010 was also sent but that too has not been responded.

Having heard learned counsel for the petitioner and without expressing any views on the merits of the allegations made, I deem it appropriate to dispose of this writ petition with a direction to respondent Nos.2, 3 & 6 to take cognizance of the complaint made by the petitioner and dispose of the same in accordance with law/Government policy, within a period of one month from the date of receiving a certified copy of this order.

Ordered accordingly. Dasti.”

It is needless to mention that in the order dated 29.12.2010, the District Magistrate, Ambala had cancelled the No Objection Certificate issued to the BPCL with immediate effect because he had concluded that “*it is established beyond doubt that N.O.C. issued and obtained by the M/s Bharat Petroleum Corporation Limited for setting up a retail outlet at Saha is incomplete even as on date and also proves manipulations to the extent that N.O.C. issued for the other petrol pump, i.e. Hindustan Petroleum Corporation Ltd. in response to their application dated 10.01.2003 from Town & Country Planning Department, Ambala was manipulated and deliberately put to use and replaced for the issuance of NOC to M/S Bharat Petroleum Corporation Limited probably with the connivance of this office.*”

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Besides this, required N.O.C. from National Highway Authorities-73 has not been found to be obtained till date. Therefore, it is concluded that M/s Bharat Petroleum Corporation Limited has not fulfilled the required conditions/formalities to be eligible to have N.O.C. for the above mentioned outlet at village Saha". The District Magistrate further ordered that "to ascertain the possibility of involvement/connivance of the staff of the office of Deputy Commissioner, Ambala, if any, Additional Deputy Commissioner, Ambala will hold enquiry and submit report in this case".

In the third petition, notice of motion was issued on 07.01.2011 and it was ordered that *"the retail outlet shall be allowed to operate till further orders"*. The second petition, which was ordered to be listed before the same Bench who had passed the order in CWP No.21112 of 2010, was ordered to be heard on 12.01.2011 with the third petition. In view thereof, all the petitions are being decided together.

It is pertinent to mention that the Additional Deputy Commissioner, Ambala, submitted his report to the Deputy Commissioner, Ambala, vide Memo No.ADC(A)-2011/4351 dated 19.09.2011, observing that *"the reference letter no.225-30/PLA dated 29.01.03 has been tempered/shown as 429-35/PLA dt. 10.03.03 which seems a clear cut case of tempering the records. Without the receipt of all verification reports from various depts., the NOC was issued by the then dealing Asstt. and Superintendent of D.C. Office. After inspection of records, it can be very well established that there seems the connivance of the staff (then Assistant & Superintendent) of Deputy Commissioner's office"*. The aforesaid report

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dated 19.09.2011 was taken on record as Mark `X' on 15.01.2013 and is thus a part of the record of the third petition.

Counsel for respondent No.2 have raised two objections, namely, the impugned order dated 29.12.2010, having been passed under Rule 151 of the Petroleum Rules, 2002 (hereinafter referred to as the “Rules”) is amenable to appeal under Section 154(2) of the Rules and as the report of the Additional Deputy Commissioner (Mark `X') has not been challenged, therefore, it is established as for now on record that the NOC, being claimed by the BPCL in their favour and on the basis of which the outlet is operating at present, was an act of fraud.

On the other hand, counsel for the petitioner has submitted that no fraud has been played by the BPCL who is not responsible if there is any cutting/overwriting in the record maintained by the District Magistrate, Ambala for issuance of the NOC. He has also tried to explain that there were two applications for the same site; one by Hindustan Petroleum Corporation Limited and another by the present petitioner-BPCL and perhaps because the NOC was already issued to the HPCL on the same site which was not further processed, then may be under some misunderstanding or whatever, the officials of the office of the District Magistrate, Ambala have used that very NOC for the purpose of issuance of NOC to the BPCL.

Counsel for the respondents have also submitted that the facts involved in all these cases require elaborated evidence not only to fix the responsibility of the persons who have committed the alleged tempering but also to find out as to whether there is any involvement of the BPCL in

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issuance of the said NOC/letter dated 10.02.2003 in which the cuttings/overwritings are in existence.

Faced with these facts and circumstances, emanating from the records of the case(s), learned counsel for the petitioner(s) have prayed that they may be allowed to withdraw all these writ petitions, with liberty to file a civil suit for declaration and permanent injunction in order to challenge all the letters/orders/reports coming in the way of the BPCL and also the document which has been tempered with. They have also prayed that they may be allowed one month's time to file the said civil suit and till then, the BPCL, who has also invested a huge amount in installation and operation of the present outlet, may be allowed to continue its outlet at the spot.

Counsel for the respondents have raised no objection to the prayer made by counsel for the petitioner(s).

Consequently, all the three writ petitions are hereby dismissed as withdrawn, with liberty to the petitioner(s) to file the civil suit in order to challenge the order dated 29.12.2010, inquiry report Mark 'X', letter dated 10.02.2003 issued by the BD&PO, Saha to the Deputy Commissioner, Ambala, action of the Ministry of Road Transport and Highways who are not allowing the petitioner(s) access because of the distance, which is being claimed by the petitioner(s) on the basis of the old guidelines or any other letter/order which is coming in the way of the petitioner. In case the petitioner(s) files the suit within a period of one month, then the order of stay granted by this Court on 07.01.2011 in the third petition would operate till the period of one month from today. The petitioner(s) would be at

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liberty to file an application for stay before the Civil Court, which shall be independently decided. The petitioner(s) shall also implead Ram Krishan Sharma, respondent no.2 in the third petition, in the civil suit, who would be entitled to raise all sort of objections, in accordance with law. In the Civil Suit, the petitioner(s) shall move an appropriate application for condonation of delay, if any, but the question of alternate remedy would not be raised and the Civil Court shall decide the suit uninfluenced by any finding recorded by this Court on merits or otherwise.

February 26, 2016
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(Rakesh Kumar Jain)
Judge