

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION Nos.16876, 21367 and 31197 of 2017
COMMON ORDER:

The petitioners in these three writ petitions are separate but are in adjoining enjoyment of respective properties either by running a Hotel or an outlet of Hindustan Petroleum Corporation.

The petitioners herein are facing National Highway 202 and their facilities located in different survey numbers of Raigir Village, Bhongir Mandal, Nalgonda District.

Respondents 3 and 4 at the first instance granted "Provisional No Objection Certificate" subject to a few conditions for compliance by the petitioners to have access to National Highway 202. Through the following orders, No Objection Certificates were granted.

W.P.No.16876 of 2017

"No. RW/ HYD/ Misc-24/ Access/ PP/ NH-202/ S.No. 17/ 911

Dt:27.05.2015

To
The Project Director,
NHAI, PIU Hyderabad,
D.No.331/ 2RT, 2nd floor, P.S.Nagar,
Masab tank, Hyderabad –500 057

Sub: Proposal of access permission to Private Property M/s.Vivera Hotel at km.50/ 677 to km 50/ 796 (RHS) of Hyderabad – Boopalapatnam Section of NH-202(Old No NH-163) in Sy.No.28 of Raigir Village, Bhongir Mandal, Nalgonda District in the State of Telangana-Reg.

Please refer to your letter no. NHAI/ PU_HYD/ BOT/ AP/ 04/ 2015/ 902 dated 06.05.2015 forwarding therewith a proposal on the above mentioned subject.

2. The proposal has been examined on your recommendations; the proposal is accepted "in-principle" by Highway Administration (HA)/ RO, Hyderabad subject to the following conditions:

- (i) The issue of final formal permission including issuance of signed license deed would be subject to the certification by PD, NHAI, PIU Hyderabad that the constructions have been carried out in compliance with the provisions approved by Highway Administration. PD NHAI, PIU Hyderabad has mentioned in checklist as well as in his covering letter that the access to this property to be taken from the common service road which is being provided by M/s HPCL located at Km 51/300 to Km 51/345 on RHS of NH-202. Hence it is directed to issue the completion certificate after construction of access road as per proposed layout plan duly endorsing a copy to this office.
- (ii) The validity of the provisional NOC and the subsequent final approval shall be governed by para 11 of the Ministry's circular no. RW-NH-33023/ 19/ 99-DO-III dt.24.07.2013.
- (iii) The fresh license deed (duly indicating chainages of both new & old NH no.) in two originals drawn on new stamp paper as per Ministry's standard norms and duly signed by authorized signatory may also be furnished at the time of issue of final permission. However, the Retail Outlet shall not be energized before issue of final permission by the Competent Authority.
- (iv) There should be sufficient parking inside so that there is no overflow of vehicles on approach roads.
- (vi) The applicant shall install all the requisite road signs as per IRC: 67 & provide road markings as per IRC: 35 in accordance with the Ministry's guidelines and to the satisfaction of the PD, NHAI, PIU Hyderabad.
- (vii) The applicant shall arrange all the clearances including forest clearance required for constructing the proposed access as per approved drawing himself. The applicant shall also arrange for shifting of utilities if required at his own cost as per the direction of the concerned department.

3. It is requested, that requisite fee of Rs. 1.50 lakh in favour of "Regional Pay & Accounts Officer (NH), MORTH, Hyderabad" payable at Hyderabad by the licensee to the Government of India in consideration of agreement for the land for which license is issued as indicated in Para-5 of Ministry's circular no. RW-NH-33023/ 19/ 99-DO-III dated 24.07.2013 may be deposited within 30 days from the issue of this letter, failing which the "in-principle" approval now issued is deemed to be cancelled. The license deed shall be executed only after the deposit of the said fee in Central Revenue MH 1054.

4. Notwithstanding anything in the above, paras, the Provisional NOC issued shall stand to be cancelled under the following circumstances:

(i) If any document/information furnished by the applicant proves to be false or if the applicant is found to have willfully suppressed any information.

(ii) Any breach of the condition imposed by the Highway Administration or the officer authorized by the Administration on his behalf.

(iii) If at any later stage, any dispute arises in respect of the ownership of the land on which the fuel station is located or regarding the permission for change of land use.

5. This issue with the approval of the Regional Officer (Mort&H), Hyderabad.

Yours faithfully,

(M.K.R.Riran),
Executive Engineer
For Regional Officer

W.P.NO.21367 OF 2017

"No. RW/ HYD/ Misc-24/ Access/ PP/ NH-202/ S.No. 16/ 908

Dated:21.05.2015

To
The Project Director,
NHAI, PIU Hyderabad,
D.No.331/ 2RT, 2nd floor, P.S.Nagar,
Masab tank, Hyderabad –500 057

Sub: Proposal of access permission to Private Property M/s. Hotel Sankalp at km.51/ 549 - km 51/ 640 (RHS) of Hyderabad –Boopalapatnam Section of NH-202(Old No NH-163) in Sy.No.684/ B of Raigir Village, Bhongir Mandal, Nalgonda District in the State of Telangana-Reg.

Please refer to your letter No. NHAI/ PU_HYD/ BOT/ AP/ 04/ 2015/ 877 dated 29.04.2015 forwarding therewith a proposal on the above mentioned subject.

2. The proposal has been examined on your recommendations; the proposal is accepted "in-principle" by Highway Administration (HA)/ RO, Hyderabad subject to the following conditions:

i) The issue of final formal permission including issuance of signed license deed would be subject to the certification by PD, NHAI, PIU Hyderabad that the constructions have been carried out in compliance with the provisions

approved by Highway Administration. PD NHAI, PIU Hyderabad has mentioned in checklist as well as in his covering letter that the access to this property to be taken from the common service road which is being provided by M/s HPCL located at Km 51/300 to Km 51/345 on RHS of NH-202. Hence it is directed to issue the completion certificate after construction of access road as per proposed layout plan duly endorsing a copy to this office.

ii) The validity of the provisional NOC and the subsequent final approval shall be governed by para 11 of the Ministry's circular no. FW-NH-33023/ 19/ 99-DO-III dt.24.07.2013.

iii) The fresh license deed (duly indicating chainages of both new & old NH no.) in two originals drawn on new stamp paper as per Ministry's standard norms and duly signed by authorized signatory may also be furnished at the time of issue of final permission. However, the Retail Outlet shall not be energized before issue of final permission by the Competent Authority.

iv) There should be sufficient parking inside to that there is no overflow of vehicles on approach roads.

vi) The applicant shall install all the requisite road signs as per IRC: 67 & provide road markings as per IRC: 35 in accordance with the Ministry's guidelines and to the satisfaction of the PD, NHAI, PIU Hyderabad.

vii) The applicant shall arrange all the clearances including forest clearance required for constructing the proposed access as per approved drawing himself. The applicant shall also arrange for shifting of utilities if required at his own cost as per the direction of the concerned department.

3. It is requested, that requisite fee of Rs. 1.50 lakh in favour of "Regional Pay & Accounts Officer (NH), MORTH, Hyderabad" payable at Hyderabad by the licensee to the Government of India in consideration of agreement for the land for which license is issued as indicated in Para-5 of Ministry's circular no. FW-NH-33023/ 19/ 99-DO-III dated 24.07.2013 may be deposited within 30 days from the issue of this letter, failing which the "in-principle" approval now issued is deemed to be cancelled. The license deed shall be executed only after the deposit of the said fee in Central Revenue MH 1054.

4. Notwithstanding anything in the above, paras, the Provisional NOC issued shall stand to be cancelled under the following circumstances:

- (i) If any document/information furnished by the applicant proves to be false or if the applicant is found to have willfully suppressed any information.
- (ii) Any breach of the condition imposed by the Highway Administration or the officer authorized by the Administration on his behalf.
- (iii) If at any later stage, any dispute arises in respect of the ownership of the land on which the fuel station is located or regarding the permission for change of land use.

5. This issue with the approval of the Regional Officer (Mort&H), Hyderabad.

Yours faithfully,

(M. K. R. Kiran),
Executive Engineer
For Regional Officer"

Through Communication dated 25.05.2017 addressed to Senior Manager-RU, M/s.Hindustan Petroleum Corporation Limited, Warangal, the 4th respondent passed the following order in W.P.No.31197 of 2017 :-

"It may please be noted that the access permission was granted with a provision of 950m length 7m wide service road, BUT NOT AD LINES AS MENTIONED IN YOUR LETTER CITED. Further, at no point of time, the matter of objection by villagers is brought to the notice of NHAI.

As seen at the location, clear land is available, between the Temple & Road Boundary, for taking through the Service road. Temple located in a length of 10m & with a width of 3m, cannot be an obstruction, as service road is to be formed in a length of 900m.

Under the above circumstances and that your submissions are not in conformity with the provisional NOC granted as per Guidelines/ norms of MORT&h vide Lr.No.RW/ NH-33023/ 19/ 99-DO-III

dated 24.07.2013 & ground conditions, the request made by our Ir.
Dtd 09.05.2017 cannot be conceded to.”

The 4th respondent in view of present state of non-complying with the condition imposed in the NOC granted in favour of Sankalp Restaurant and M/s.Vivera Hotels & Resorts Private Limited, communicated the following orders in W.P.Nos.16876 of 2017 and 21367 of 2017.

“As stated in the reference cited that the Provisional NOC granted to above establishment is withdrawn, it is requested to remove the access made to the Highway, immediately.

The action taken report shall be sent in a week, positively.”

Hence, the writ petitions.

In all these writ petitions, this Court has granted interim stay of withdrawing No-Objection Certificates impugned in the respective writ petitions. Thereby, the petitioners are continuing to have access to National Highway 202.

The 4th respondent filed counter affidavits and also petitions to vacate the interim orders in all the three writ petitions.

Learned counsel appearing for parties are heard at great length.

During and in the course of hearing, learned counsel appearing for petitioners realizing the importance of safety of customers coming to respective premises and without joining issue of the objections raised in the counter affidavits, have requested the Court to permit the petitioners herein to submit revised

applications for grant of NOC and also permission to use National Highway 202, which would conform to the requirements of safety and security of vehicles moving on National Highway and also the vehicles coming and getting on to National Highway.

The counsel for petitioners to prove their *bona fides* have placed before the Court a few details in the form of additional affidavit and also the schematic road plan and E-mail addressed by the Chief Manager of HPCL.

From the present effort, it can be appreciated that the petitioners herein are desirous of using the National Highway and deceleration/acceleration road. The counsel requests time to re-submit fresh proposals for grant of NOC.

After perusing the details given by the petitioners, this Court is also of the view that the issue involves adherence of safety norms vis-à-vis fresh plans the petitioners would be submitting in this behalf.

As petitioners wish to conform to the reasonable requirements, I am satisfied the writ petitions can be disposed of by this order :-

(a) Interim orders granted on 11.05.2017, 19.09.2017 and 30.06.2017 shall remain in force for a period of three months from today.

(b) The petitioners are given liberty, by enclosing a copy of this order, to submit a fresh

revised lay out plan for sanction and approval by respondents 3 and 4.

(c) Respondents 3 and 4 are directed to make physical inspection and submit a report together with remarks on the proposals of petitioners to 1st respondent for consideration and decision.

(d) The 1st respondent within a period of two months from the date of receipt of report from respondents 3 and 4 considers and passes an order.

(e) As the issue involved safety of National Highway 202 and also the customers of petitioners, the decision is positively taken within the time granted for disposal, by this Court.

The writ petitions are disposed of accordingly. There shall be no order as to costs.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

S. V. BHATT, J

Dt: 21-12-2017

Note:

Issue C.C. in one week

(B/o)

Prv