

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 12102 of 2012

Date of Decision: January 31, 2017

Neetu Parmar

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Sanjay Vashisth, Advocate
for the petitioner.

Mr.A.K. Yadav, Addl.A.G., Haryana,
for respondents No.1, 2 and 4.

Mr. Raman Sharma, Advocate
for respondent No.3.

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M.M.S. BEDI, J.

The petitioner through instant petition under Articles 226/227 of the Constitution of India has sought issuance of a writ in the nature of certiorari quashing the order annexure P-12 dated June 7, 2012 passed by District Magistrate-cum-Deputy Commissioner, Bhiwani declaring "No Objection Certificate" of District Magistrate issued earlier on February 21, 2012, annexure P-4 as inoperative on the ground that it is violative of rules

of natural justice and the provisions of the Petroleum Rules, besides being discriminatory. The jurisdiction of the District Magistrate to cancel the order of No Objection granted earlier has also been questioned in the present writ petition.

Petitioner claims that she is a dealer of Hindustan Petroleum Corporation Ltd. Vide order dated February 21, 2012, respondent No.4 had issued No Objection Certificate under Rule 144 of the Petroleum Rules, 2002 but the same has been declared inoperative.

In the reply filed by respondent No.3, Hindustan Petroleum Corporation Ltd. admitted that the District Magistrate had issued No Objection Certificate annexure P-2 but the competent authority under the Rules to issue No Objection Certificate for setting up a retail outlet, is District Magistrate who has exercised his statutory power by issuing "No Objection Certificate" annexure P-4. The reason for declaring the No Objection Certificate illegal is that the distance of the intersection road to the fuel pump in question from intersection is 82 mtrs. which does not fulfill the guidelines issued by IRC from time to time and the distance of petrol pump from nearest petrol pump is 100 meters which violates the condition No.7 of NOC issued by PWD (B&R) vide letter No. 598 dated February 10, 2011. The operative part of the order annexure P-12 reads as follows:-

"The undersigned had considered the reply filed by
Executive Engineer, PWD (B&R) Bhiwani vide dated
29.5.2012 and Hindustan Petroleum Corporation Ltd.,

vide reply dated 30.5.2012 and found that respondent No.4 has violated the following terms and conditions as reported by Executive Engineer, PWD (B&R), Bhiwani:-

1. The distance of the intersection road to the fuel pump in question from intersection is 82 mtrs. Which does not fulfill the guidelines issued by IRC from time to time that is mentioned in condition No.1 as attached.
2. Distance of petrol pump from nearest petrol pump is 100 meters which violates the condition No.7 of NOC issued by PWD (B&R) vide letter No. 598 dated February 10, 2011 as mentioned earlier.

It is pertinent to mention that NOC was issued subject to the undertaking that they will be bound by the terms and conditions.

From perusal of relevant record and site plan, the undersigned has reached to the conclusion that the No Objection Certificate issued by District Magistrate Office vide Memo. No. 226 PLA dated 21.2.2012 deemed to be inoperative.”

The main grievance of the petitioner is that there exists a petrol pump of Essar Company across the road and the said pump dealer is creating all the problems and hindrances to the smooth operation of the petrol pump of the petitioner on account of competition. The said dealer had filed a suit through his employee Ram Rattan in the Court of Civil Judge (Senior Division), Bhiwani as Suit No. 52 of February 26, 2011 titled as Ram Rattan Vs. State of Haryana etc. which was dismissed by the Civil Court, Bhiwani on August 20, 2011 vide order annexure P-8. As no interim relief was granted to said person, another person, namely, Sunny, another employees, filed CWP No. 5662 of 2012 to curtail the running of the petrol pump of the petitioner. The said writ petition was disposed of requiring the concerned authorities to consider the grievance of the said petitioner. While deciding the representation filed by the aforesaid writ petitioner, respondent No.4 issued notice to respondent No.2.

The order annexure P-12 dated June 7, 2012 is patently an illegal order having been passed in contravention to the rules of natural justice. Even the reasons under Rule 151 (1) of the Petroleum Rules, 1996 are not mentioned i.e. the petitioner has ceased to have any right to use the site for storing petroleum. Neither any show cause notice was issued to the petitioner nor fair opportunity was given to the petitioner to show cause as to why the No Objection Certificate should not be withdrawn. Even if the rules of natural justice are not incorporated in the Statute, these have to be read

into as no person can be caused any prejudice without having been afforded a reasonable opportunity of hearing.

Order dated June 7, 2012 is hereby quashed as the order passed by the District Magistrate, Bhiwani without giving an opportunity of hearing to the petitioner and the reasons under Section 151 (1) of the Petroleum Rules, 1996 are not mentioned in the order i.e. the petitioner has ceased to have any for storing petroleum.

Mr. Brijender Kaushik, Advocate has sought intervention claiming that his client is running another petroleum outlet, near the outlet which was allotted to the petitioner and the prejudice will be caused to the intervener, in case, the petitioner is permitted to continue with the running of the outlet.

I have considered the contentions of the intervener and I am of the opinion that as no relief having been claimed against the intervener there is no reason to permit the intervener to oppose the writ petition or get himself impleaded as a party.

In view of the above circumstances, this petition is allowed.
The order dated June 7, 2012 is hereby set aside.

January 31, 2017
sanjay

(M.M.S.BEDI)
JUDGE

Whether speaking/ reasoned:	Yes/ No.
Whether reportable:	Yes/No.