

CWP No.19813 of 2011

[1]

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

**CWP No.19813 of 2011
Date of decision:18.09.2017**

Parlad Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. B.S.Bhalla, Advocate,
for the petitioner.

Ms. Sunint Kaur, AAG, Punjab.

Rakesh Kumar Jain, J.

In response to an advertisement issued by the Hindustan Petroleum Corporation Limited (hereinafter referred to as the "Corporation"), the petitioner applied for allotment of a retail outlet dealership at Moga-Ferozepur Road on National Highway-95, KM 77-79, OML in District Ferozepur on 19.12.2003, for which interview was held on 16.06.2004 and vide letter dated 01.07.2004, the Corporation proposed to offer the retail outlet dealership to the petitioner. The Senior Sales Officer, Ferozepur of the Corporation sent a representation to the Deputy Commissioner, Moga (respondent no.2 herein) for grant of 'No Objection Certificate' for the aforesaid site. The Ministry of Environment and Forests, Government of India, sent a letter to the Principal Secretary (Forests) and the Principal Chief Conservator of Forests of all the States and Union Territories regarding utilization of the land for approach/exit road to petrol pumps, as per which the

condition of distance of 5 Kms. between two petrol pumps with respect to diversion of forest land was abolished. However, on 21.03.2005, Divisional Forest Officer, Faridkot issued a notice to the Deputy Commissioner, Moga, asking him to cancel the conditional 'No Objection Certificate' issued to the petitioner on the ground that due to installation of the petrol pump, 28 trees of the Forest Department and 55 trees of plantation were affected and that there is another petrol pump within the area of 4 Kms. On 22.06.2005, the Senior Sales Officers of the Corporation submitted an affidavit for fencing and plantation by the user agency at its own costs and, thereafter, the Divisional Forest Officer, Faridkot, sent a letter to the Conservator of Forests, Ferozepur for seeking permission under the Forest Conservation Act, 1980 (hereinafter referred to as the "Act") from the Government of India. The Conservator of Forests, Ferozepur sent the said request to the concerned authorities to grant approval as the user agency had undertaken to deposit the amount of Net Price Value (NPV) and Compensatory Afforestation. It is alleged that the Executive Engineer, Central Works Division, PWD (B&R), Ferozepur issued 'No Objection Certificate' on 20.09.2005 for construction of approach road for setting up of a new fuel station at the site in question. However, when no action was taken by the concerned authorities at the hands of the Government of India for grant of approval under the Act, the petitioner made a representation again to the Divisional Forest Officer bringing to his notice that the instructions dated 15.07.2004, issued by the Government of India, is not applicable as the petrol pump was allotted to the petitioner on 01.07.2004. However, it is alleged that the Divisional Forest Officer, without considering the representation of the petitioner, sent a letter to the Forest Range Officer,

Moga stating that if the user agency is using the area without getting approval from the Government of India, then proceedings against the user agency under the Act be initiated.

The petitioner has, thus, prayed for the issuance of a writ in the nature of *certiorari* for quashing the orders dated 11.07.2007 and 15.07.2011 issued by respondent no.3 asking the petitioner to deposit the amount and also asking respondent no.2 to cancel the 'No Objection Certificate' issued to the petitioner.

Learned counsel for the petitioner has submitted that the petitioner is ready and willing to pay the Net Price Value (NPV) and the cost of Compensatory Afforestation to the tune of ₹4,19,200/- but he is not liable to pay ₹8,30,000/-, calculated on account of 10 times penalty because the Compensatory Afforestation Scheme has not been framed.

On the other hand, counsel for the respondents has submitted that 10 times penalty has been imposed strictly as per and regulations issued by the Government of India vide letter dated 16.02.2006 in which it was clearly mentioned that *“in addition the normal compensatory afforestation, ten times penal compensatory afforestation scheme may be prepared and amount may be realized from the user agency”*.

Since the petitioner was insisting that there is no Compensatory Afforestation Scheme because in the letter dated 16.02.2006, relied upon by the petitioner, it has been mentioned that the Compensatory Afforestation Scheme may be prepared, therefore, vide order dated 25.05.2017, respondent no.3 was directed to be present in the Court for assistance and in pursuance thereof, Baljeet Singh, Divisional Forest Officer, Sri Muktsar Sahib came

present in the Court on 04.08.2017 and also filed his affidavit dated 03.08.2017. In the said affidavit, he has referred to the letter dated 16.02.2006 issued by the Government of India and contended that it has been specifically directed by the Government of India that the State Government, in addition to the normal compensatory afforestation, should also charge 10 times penalty on account of compensatory afforestation from the user agency. Accordingly, 10 times compensatory afforestation has been charged.

I have heard learned counsel for the parties and examined the available record with their able assistance.

The petitioner is ready and willing to pay ₹4,19,200/-, assessed for the total financial outlay, i.e Net Price Value and Compensatory Afforestation. However, respondent no.4, vide its letter dated 27.06.2005, referred the case of the petitioner to the Principal Chief Conservator of Forests, Punjab for getting permission under the Act from the Government of India. In the said process of getting permission in view of the letter dated 16.02.2006 issued by the Government of India, the respondents had charged 10 times Penal Compensatory Afforestation cost. The petitioner, thus, has to pay Net Price Value of ₹93,840/-, Compensatory Afforestation Costs of ₹83,000/- and the Penal Compensatory Afforestation of ₹8,30,000/-, total amount of ₹10,06,840/-. The argument of the petitioner that the 10 times Compensatory Afforestation Scheme was to be prepared is inconsequential because vide letter dated 16.02.2006, the Government of India had directed the State Government that in addition the normal Compensatory Afforestation, it should charge 10 times Penal Compensatory Afforestation from the user agency, which has been rightly charged. The word “scheme” is a misnomer in this condition, otherwise

the respondents could have charged the costs of Compensatory Afforestation at the normal rates and not with the 10 times penalty because of the de-forestation at the hands of the Corporation for the purpose of setting up the fuel station.

Thus, in my considered opinion, there is no merit in the present petition and hence, the same is hereby dismissed, though without any order as to cost.

September 18, 2017
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(Rakesh Kumar Jain)
Judge

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