

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.20935 of 2016 (O&M)

Date of Decision.27.01.2017

Sanjay Kumar

.....Petitioner

Vs

State of Haryana and others

.....Respondents

Present: Mr. B.K. Bagri, Advocate
for the petitioner.

Mr. Sandeep S. Mann, Sr. DAG, Haryana
for respondent Nos.1 and 2.

None for respondent No.3.

Mr. P.R. Yadav, Advocate
for the applicant in C.M. No.14162 of 2016.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

The petitioner is aggrieved of the impugned order dated 04.11.2015 (Annexure P-23) of the Deputy Commissioner whereby while entertaining the complaint of one Narender Singh Yadav, Advocate dated 08.04.2015 (Annexure P-18), refused to grant the NOC.

Mr. Bagri, learned counsel appearing on behalf of the petitioner submits that the petitioner, being a handicap person and having a physical handicap to the extent of 70% and aged 43 years, applied for allotment of retail outlet in pursuance of the advertisement caused by the Indian Oil Corporation. The interview for the aforementioned retail outlet was held on 18.12.2012 and thereafter, letter of intent dated 24.01.2013 (Annexure P-4) was issued.

The letter of intent was granted on the fact that the petitioner was leaseholder of land situated in Khewat No.263/338, Killa No.90/11, 12,

Oil Corporation called upon the petitioner to cancel the earlier lease deed as it was of a joint *khata* and the petitioner after cancellation of the previous lease deed dated 10.10.2011, executed a fresh lease deed No.109 dated 05.03.2013 (Annexure P-6) and mutation in that regard was also entered on 08.03.2013.

The Deputy Commissioner vide letter dated 30.05.2013 sought No Objection Certificate from the nine concerned departments. The aforementioned information was sought on the basis of request submitted by the Indian Oil Corporation. The following seven departments issued the No Objection Certificate on various dates:-

- (i) Station Fire Officer, Rewari.
- (ii) District Food and Supply Controller, Rewari.
- (iii) XEN Operation Division, DHBVNL, Rewari.
- (iv) Superintendent of Police, Rewari.
- (v) Haryana State Pollution Control Board
- (vi) District Town and Country Planner, Rewari
- (vii) Sub Divisional Officer (Civil), Rewari.

Yet after obtaining the NOCs from the aforementioned departments, the Deputy Commissioner did not grant the No Objection Certificate. The petitioner was constrained to file writ petition bearing No.7857 of 2014. The aforementioned writ petition was disposed of by this Court vide order dated 20.11.2014, which reads as under:-

“The petitioner before this Court is an allottee of a retail outlet of petroleum products from Indian Oil Corporation challenging the refusal to issue NOC by respondent No.4, on the ground that the location of the petrol pump falls within 300 meters from the road side which is against the IRC guidelines. The applicability of IRC guidelines and using the same to deny NOC was considered by a Division Bench of this Court in CWP No.6584 of 2006, decided on 10.08.2006, titled as Sanjeev Kumar Vs. State of Haryana. The Court held after reproducing the IRC guidelines:-

“In these circumstances, we are satisfied that a mere recommendation made by IRC for location and lay out of a motor fuel filling and service station cannot be treated to have a binding force so as to provide a power/jurisdiction to the District Magistrate to reject the claim of the applicant. The aforesaid recommendation at the most is in the nature of a guide-line. The competent authority (District Magistrate) is required to adjudicate the claim of an applicant, independently, keeping in view the facts and circumstances of the case, location of the proposed retail outlet and various other circumstances. The claim cannot be rejected mechanically on the basis of recommendation of IRC.”

The Division Bench also took note of the fact that several other instances brought forth in the writ petition where there have been locations of many outlets within a distance of 300 meters and denial of the same to the petitioner would be also discriminatory. The judgement referred to above is binding on this Court and I have no reasons to examine the objections taken by the State reiterating their decision as founded on the IRC guidelines and the justification for not issuing the NOC.

The impugned decision dated 18.02.2014, not to issue NOC is quashed and I direct respondent No.4 to issue the NOC if there is otherwise no dis-qualification for such issuance.

Writ petition is allowed to the above terms.

The appropriate order will be passed and communicated within a period of three weeks from the date of receipt of the copy of the order.”

It is only thereafter, one Narender Yadav, Advocate of District Court, Rewari submitted a complaint to the District Collector with regard to the lease deed without noticing the fact that the previous lease deed dated 10.10.2011 had already been cancelled. He submitted that necessity arose to cancel the lease deed dated 10.10.2011, so that there was no doubling of the lease of the land in favour of Indrawati and as well as Sanjay Kumar, as precisely the contents of the complaint dealt with the aforementioned facts.

The aforementioned cancellation of lease deed by Indrawati is a registered

document. Even the receipt regarding the same has also been placed on record as Annexure P-20.

The Deputy Commissioner without noticing the aforementioned fact vide impugned order dated 4.11.2015 rejected the NOC to the company for allotment of the petrol pump. The order impugned, reads as under:-

“Regarding the above cited subject your company allotted a petrol pump at village Dahina, District Rewari in Khewat No.263/338, Killa No.90//11, 12, 20/1 on dated 27.05.2013 and applied to this office for issuing No Objection Certificate at the proposed petrol pump site. The lease deed was registered by Sh. Krishan Kumar son of Sh. Jag Ram, resident of village Dahina, District Rewari vide Vasika No.109 dated 5.3.2013 at Sub Tehsil Dahina registered in the name of Sanjay Kumar son of Mahabir Singh, resident of village Gurwara, Tehsil and District Rewari which LOI is also issued by you in the name of Sh. Sanjay Kumar son of Sh. Mahabir Singh, resident of village Gurwara, Tehsil and District Rewari. Whereas the lease deed of the above described proposed site prior to this registered vide Vasika No.3003 dated 27.10.2010 in favour of Smt. Indrawati wife of Sh. Rajesh Yadav son of Sh. Bhim Singh, resident of Badali, New Delhi-110042 by Krishan Kumar son of Sh. Jag Ram resident of village Dahina. The above lease by you without cancellation of the earlier lease in the name of Indrawati by the allottee Sh. Sanjay son of Sh. Mahabir Singh, resident of village Gurwara, Tehsil and District Rewari issued LOI which was wrong. Regarding this complaint received from Sh. Narender Singh Yadav, Advocate, Chamber No.218, District Court, Rewari, the inquiry of the matter was conducted by District Revenue Officer, Rewari and the complaint was found correct. In these circumstances, due to non availability of the land for the allotment of above petrol pump the NOC cannot

be granted.

So the application regarding granting NOC to your company for allotment of petrol pump is rejected.

This is forwarded to your for information.”

This Court had issued notice of motion for 07.11.2016 on 05.10.2016. The State has filed the reply and submits that though the ground of rejection did not indicate the factum of having not obtained the NOC from the Forest Department but the said fact has been disclosed for the first time in the written statement.

During the pendency of the writ petition, a misc. application bearing No.14162 of 2016 has been moved through Mr. P.R. Yadav, Advocate for impleading the alleged complainant namely Narender Singh Yadav, Advocate, which has been objected to by the counsel appearing for the petitioner by making the following averments.

The applicant does not disclose his locus standi of submitting the complaint to the Deputy Commissioner and moving the application for impleadment, though in para 3 of the application, certain allegations of mala fide has been alleged/attributed on the part of the petitioner. No documentary evidence with regard to the contents of the application has been annexed. The applicant is neither a competitor nor was an applicant for the retail outlet. He has not disclosed his locus standi of submitting the complaint to the Deputy Commissioner nor any proof of residence or in respect of the land being leased out in favour of the petitioner. He is also not an affected party or there was any averment that any land belonging to him is erroneously encroached or leased out. He does not even fall within the definition of whistle blower.

It appears that his intention is nothing but an act of

aggrandizement, much less, an attempt to blackmail the petitioner. I do not deem it appropriate to delve upon further on the application for impleadment in the absence of any locus standi for the purpose of deciding the case by not taking into consideration the alleged averments of mala fide against the petitioner. Therefore, in view of the aforementioned observations, I do not deem it appropriate to allow the application bearing No.14162 of 2016 for impleadment of the applicant as respondent and the same, is hereby, dismissed. While dismissing the aforementioned application, I thought for a while to impose heavy costs upon the applicant for moving such a frivolous application and as well as attempting to delay the granting of No Objection Certificate by the Deputy Commissioner but considering the fact that he is a practicing Advocate, I simply dismiss the same.

There is no representation on behalf of respondent No.3-Indian Oil Corporation, despite service way back.

I have heard learned counsel for the parties and appraised the paper book. On perusal of the impugned order, it does not reveal regarding the stand taken in the written statement qua permission from the Forest Department. If all the seven departments have already given the permission, the permission from the Forest Department can always be obtained by the Indian Oil Corporation as per the prevailing Rules and Regulations.

The cancellation of the lease deed dated 28.04.2015 (Annexure P-19) was brought to the notice of the Deputy Commissioner but the same has not been adhered to, much less, pondered upon. It appears that the Deputy Commissioner was swayed away with the complaint made by Narender Yadav, resulting into rejection of the NOC.

The Indian Oil Corporation indicates all the clauses/terms in the brochure, one of terms deals with regard to field verification even after issuance of allotment and if it found any concealment, the letter of intent can always be, as per the terms, terminated or withdrawn. Once the Indian Oil Corporation has been satisfied, I am of the view that complaint of the private complainant could not have been entertained by the Deputy Commissioner, Be that as it may, the order under challenge lacks reasons, much less, application of mind, thus, does not stand the touchstone of reasonableness. Once the seven departments have already given No Objection Certificates and the same have not been refuted or rebutted by the respondent-State, they deemed to have settled the issue of allotment of retail outlet. In case the land is falling within the forest area or declared forest under the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986 or Indian Forest Act, 2006, the No Objection Certificate be taken from the Forest Department. If it does not so, I am, prima facie, of the view that No Objection Certificate from the Forest Department would not be necessary.

It would be totally in the domain of the Indian Oil Corporation to seek the aforementioned No Objection Certificate, if need arises. Resultantly, the impugned order is set aside and the writ petition stands allowed. In view of the setting aside of the impugned order, necessary consequential effect will automatically follow.

(AMIT RAWAL)
JUDGE

January 27, 2017

Pankaj*

Whether speaking/reasoned Yes

Whether reportable No