

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.9184 of 2011 (O&M)

Date of Decision: May 01, 2017

M/s Om Sai Filling Station Banchari, District Palwal

...Petitioner

Versus

Union of India & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Akshay Bhan, Senior Advocate with
Mr.Alok Mittal, Advocate,
for the petitioner.

Mr.Sunil K.Sahore, Advocate,
for respondent Nos.1 to 3.

Mr.Ashish Kapoor, Advocate,
for respondent Nos.4 to 6.

Mr.Rajbir Singh, AAG, Haryana,
for the State.

AMIT RAWAL, J. (Oral)

The petitioner-Om Sai Filling Station has approached this Court for seeking writ of certiorari for quashing of the order dated 31.3.2010 (Annexure P-20), vide which the Retail Outlet Dealership allotted to him vide letter dated 20.12.2003 (Annexure P-4) has been cancelled.

Mr.Akshay Bhan, learned Senior Counsel assisted by Mr.Alok Mittal, Advocate, representing the petitioner submits that in pursuance to an advertisement issued by the Indian Oil Corporation (for short "Corporation") for allotment of a Petrol Pump at Village Banchari, Tehsil and District Faridabad, situated on the National Highway, the Chief

Divisional Manager, Indian Oil Corporation vide letter dated 16.12.2002 (Annexure P-1) sought N.O.C.from General Manager, National Highway Authority of India (for short "N.H.A.I."). The Project Director, Corridor Management Unit of the N.H.A.I. intimated the General Manager that the site was inspected and it further recommended for the grant of N.O.C. for setting up of the Petrol Pump in favour of the Corporation vide aforementioned letter dated 31.1.2003 (Annexure P-2). However, vide letter dated 25.2.2003 (Annexure P-3), the Project Director informed the General Manager, N.H.A.I. that there was a gap of less than 300 meters but more than 100 meters and, therefore, recommended for relaxation of the condition owing to the fact that there was no availability of Petrol Pump in the vicinity and the local people were facing acute problem due to non-availability of the diesel and petrol. However, in the meantime, the petitioner had also submitted an application for awarding of the Retail Outlet Dealership, which was ultimately, on interview and having found meritorious, allotted to the petitioner vide letter dated 20.12.2003 (Annexure P-4).

He further submits that the petitioner, according to the terms and conditions of the Letter of Intent, was required to deposit an amount of Rs.5.00 lacs towards interest free security deposit and obtain N.O.C.from all the concerned departments, in essence N.O.C.from all the departments, i.e., SDM Hodal, District Faridabad, Fire Department of MC Palwal, District Town and Country Planning Department, Faridabad and Deputy Commissioner, Faridabad had been obtained, except N.O.C.from N.H.A.I. He further submits that there had been exchange of correspondences between the Corporation and the N.H.A.I.with regard to compliance of certain terms and conditions for the purpose of grant of N.O.C. without

involving the petitioner at any stage, therefore, the petitioner cannot be made liable for any delay in obtaining the N.O.C. from the N.H.A.I. Show cause notice was duly replied. No opportunity of hearing was given to the petitioner. The Corporation by taking into consideration the provisions of the Rules had cancelled the dealership of the petitioner on the ground that the dealership remained unused for a period of three years, thus, submits that without any fault of the petitioner, the dealership has been cancelled. In fact, the petitioner has been made to suffer owing to the tussle between the Corporation and the N.H.A.I.

Before I could call upon Mr. Ashish Kapoor, learned counsel representing the Indian Oil Corporation, this Court on the last date of hearing, called upon Mr. Kapoor to produce the file of correspondences between the N.H.A.I. and the Corporation. Mr. Kapoor has produced photocopies of the correspondences to intimate that vide letter dated 12.11.2008, N.H.A.I. had written to the Indian Oil Corporation Ltd., Gurgaon Divisional Office regarding compliance of certain conditions for issuance of N.O.C. The contents of the letter dated 12.11.2008 read thus:-

*“National Highways Authority of India,
(Ministry of Shipping, Road Transport & Highways)
CORRIDOR MANAGEMENT UNIT
764, Sector—29, Faridabad (Haryana) Tele Fax: 0129-
4140952
E-mail: mat@nhai.org
NHAI/CMU/MTR/19011/08/D/3386 Date 12.11.2008
To
DRSM
Indian Oil Corporation Ltd.
Gurgaon Divisional Office
Delhi Terminal Bijwasan*

New Delhi-110061.

Sub: NOC for putting up new Retail Outlet at Km 79.300 (RHS) on NH-2 (Delhi-Agra Section).

Ref: NHAI HQ letter no.NHAI/CM/RO/IBPCL/NH-2/Km 79.300/985 dated 05.11.2008.

Sir,

Please refer above cited letter regarding NOC proposal for putting up new retail outlet at Km 79.300 (RHS) on NH-2 at Mouza Banchari, Tehsil Hodal, Distt.Faridabad. Following was observed at Ministry Level.

“It has been observed that the above proposal for approach road to retail outlet of M/s.IBPCL at Km 79.300 (RHS) on NH-2 in Haryana was discussed in the meeting of relaxation committee held on 20.08.2008 based on the undertaking given by the oil company to extend the 203 m long service road proposed earlier by 97m at their own cost to make the total length of service road to 300m.

An undertaking may be given by the oil company for depositing the amount for construction of the above service road. Besides this the availability of ROW in the above location may be indicated so that the case could be further processed for relaxation.

You are requested to send required compliance and undertakings at the earliest for further processing of the case.

Thanking you,

Yours faithfully,

Project Director

CMU Mathura.”

In pursuance to the aforementioned letter, the demarcation and various other factors were done and ultimately vide letter dated 15.1.2010, complied with the requirement/conditions of the N.H.A.I. by making undertaking for depositing the amount with State PWD for construction of service road to make the total length to 300 meters, which is the requirement

for running the retail dealership. The contents of the letter dated 15.1.2010 read thus:-

“ *Indian Oil*

Marketing Division

Ref:IOCL/Banchari/KM 79.3/01 Dated 15.01.2010

Project Director,

CMU Mathura,

National Highway Authority of India,

764, Sector-29, Faridabad

Haryana.

Sub: NOC for putting new Retail Outlet at 79.300 (RHS) on NH-2 near Village Banchari, Distt.Palwal (Delhi-Agra Section).

Sir,

Please refer your letter no.NHAI/CMU/MTR/19011/08/D-13386 dated 12.11.2008 on the above subject, we are enclosing the following requisite documents as asked by your office:

- 1. Copy of availability of ROW in the above location as per revenue records from SDM, Hodal.*
- 2. Copy of undertaking for depositing the amount with State PWD for construction of service road to make the total length to 300m.*

You are requested to kindly further process the case for final NOC of the above location and enable us to commission the Retail Outlet at the earliest.

Thanking you,

Yours faithfully,

For Indian Oil Corporation Limited

Chief Divisional Retail Sales Manager,

Gurgaon Divisional Office,

Delhi Terminal, Bijwasan

New Delhi-110061

Encl: As above.

He further submits that thereafter the N.H.A.I. did not respond, which necessitated the Corporation to take the aforementioned impugned decision.

Mr. Sunil K. Sahore, learned counsel representing the N.H.A.I. submits that the record pertaining to any correspondences dated 15.1.2010 is wanting/missing and, therefore, no fault can be found with the N.H.A.I.. He further submits that the Corporation has never submitted the undertaking and, therefore, for want of the same, N.O.C. could not be issued. This fact has been denied by Mr. Kapoor as the letter reveals of submitting the undertaking, much less does not specify regarding photocopy or otherwise. He further submits that there is a communication received from the Ministry of Petroleum & Natural Gas dated 4.11.2010 issued to the Director (Mkt) IOC/HPCL/BPCL, Mumbai for revival of the terminated/inoperative Retail Outlet dealerships lying closed for five years, in essence power to restore the same has been vested to Board of Directors of the concerned Oil Company. The contents of the letter dated 4.11.2010 read thus:-

“
No.P-19011/1/2005-IOC
Government of India
Ministry of Petroleum & Natural Gas
New Delhi, the November 4, 2010

To

The Director (Mkt)
IOC/HPCL/BPCL,
Mumbai.

Subject:- Review of guidelines regarding revival of terminated and inoperative RO dealerships.

Sir,

I am directed to say that the issue of revival of

terminated and inoperative RO dealerships has been examined and it has been decided that para 3 of Annex-III of this Ministry's guidelines in the matter issued vide letter of even number dated 17.11.2005 may be modified as under:-

“Retail Outlet dealerships having valid Dealership Agreement, but have been lying inoperative for more than three years but less than 5 years, and depending upon the merit of the case, revival with the same constitution/after carrying out reconstitution and at the same location may be permitted with the approval of the Committee by the Board of the respective OMC.”

Yours faithfully,

(LALCHANDAMA)

Under Secretary to the Govt.of India,

Tel.23074369”

He further submits that in case this Court is inclined to grant the relief, the I.O.C. would not have the jurisdiction, but only the Board of Directors.

I have heard the learned counsel for the parties and appraised the paper book.

On reading of the letter dated 12.11.2008 and the response dated 15.1.2010, I am of the view that petitioner had been made to suffer for no fault of it as the tussle/misunderstanding between the Corporation and the N.H.A.I., resulted into passing of the impugned order. The authorities at the helm of affairs, particularly the oil agencies should not be so rigid in not obtaining the N.O.C. as owing to such fact, it is only the public at large, much less the petitioner, have suffered. The using of the fuel is also one of the essential commodities, which is required for day-to-day activities. It is for that purpose, the advertisement was issued as there was non-availability of the fuel to the local residents.

Be that as it may, the fact remains that the N.H.A.I. could not sit over the matter in not issuing N.O.C. for no fault of the petitioner. Rather, this Court at one point of time, impelled to call upon the Project Director for having not taken action, but it would have further stalled the decision of the lis.

It has also been apprised by Mr. Bhan that during the pendency of the writ petition, certain more land has been acquired.

Resultantly, I am of the view that the impugned order for want of N.O.C. cannot be attributed solely to the petitioner but in view of the reasons aforementioned. Therefore, the same is hereby set-aside.

Keeping in view the contents of the letter dated 4.11.2010, extracted above with regard to the revival of the dealership vis-a-vis the power to the Director (Mkt) IOC, I am of the view that the present writ petition can be disposed of in the following manner:-

- a) Owing to the acquisition of certain more land, the petitioner, by joining the Indian Oil Corporation, shall submit all the requisite documents to the Corporation for the purpose of making the pump operational;
- b) By taking requisite documents, the Corporation shall further submit the same to the N.H.A.I. forthwith and the N.H.A.I. thereafter shall ponder upon the application and in case of any clarification shall revert back to the Corporation if necessity arises or to the petitioner and thereafter issue the N.O.C. without any further loss of time preferably within two weeks thereafter;
- c) On receipt of the N.O.C. by the N.H.A.I., the Corporation

shall place the matter for revival of the dealership before the Board of Directors and the Board of Directors of the Corporation shall decide the matter in the most objective and pragmatic manner;

d) The petitioner shall also revise the N.O.C.already obtained from the departments indicated above;

e) After completion of the formalities, the Board of Directors shall consider the matter pragmatically and take a decision on restoration of the dealership in view of the letter dated 4.11.2010 within a period of another one month.

With the aforementioned observations, the writ petition stands disposed of.

May 01, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No