

CWP No.2675 of 2015 (O&M)

[1]

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

**CWP No.2675 of 2015 (O&M)
Date of decision:06.12.2017**

M/s Dr. Daya Singh Kisan Sewa Kendra ...Petitioner

Versus

State of Haryana and others ...Respondents

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Birender Singh Rana, Senior Advocate, with
Mr. Parveen Kaushik, Advocate, for the petitioner.

Mr. Ashok Muthreja, DAG, Haryana.

Mr. Virender Soni, Advocate,
for respondents no.2 & 3.

Mr. Raman Sharma, Advocate,
for respondent no.6.

Mr. Sharad Chaudhary, Advocate,
for respondent no.12.

Rakesh Kumar Jain, J. (Oral)

The petitioner is running a Kisan Sewa Kendra (KSK) retail outlet of the Indian Oil Corporation Limited (IOCL) at village Kapoori, District Bhiwani. He is aggrieved against the issuance of Letter of Intent dated 04.10.2013 by respondent no.6 to respondent no.12 for running a retail outlet at the location between village Mori & Kapoori on Dadri-Kanina Road, District Bhiwani, allegedly 244 meters away from its fuel station, though on the other side of the road, contrary to the guidelines dated 15.07.2004 issued by the Government of India, Ministry of Environment and Forests. It is alleged that the Letter of Intent issued to respondent no.12 is in violation of the

Indian Forest Act, 1927, Forest (Conservation) Act, 1980 and the guidelines issued by the Government of India, Ministry of Environment and Forest from time to time while granting permission for diversion of forest land for non-forest purposes and also the guidelines laid down for Access, Location and Layout of Roadside Fuel Stations and Service Stations (Third Revision) of Indian Roads Congress, 2009. The relevant provisions of the guidelines dated 15.07.2004 issued by the Government of India, Ministry of Environment and Forest are reproduced as under:-

“The minimum distance between 2 fuel stations on each side of the road should not be less than 5 Kms, outside the city, limits on highways. If 2 or more fuel stations are to be constructed in close proximity or adjacent to each other for some reasons, a common access and exist shall be provided. However, this condition shall not apply if no tree felling is involved.”

According to the petitioner, at the time when the fuel station was allotted to him in village Kapoori, he had sworn an affidavit that there is no petrol pump within 5 Kms. on both sides of the road. It is also submitted that the instructions dated 15.07.2004 have further been explained by the Government of Haryana on 06.04.2010 by stating that the fuel station should not be within 5 Kms. on either side of the road from the proposed site. It is also the case of the petitioner that as per the data available, the fuel station of respondent no.6 cannot be set up without felling trees, though it is provided in the instructions dated 15.07.2004 that the condition of minimum distance of 5 Kms. between two fuel stations on each side of the road would not apply if no falling of trees is involved.

On the other hand, in the reply filed by respondents no.5, 10 and 11 through the Divisional Forest Officer, Forest (T), Bhiwani, it is alleged that

on receipt of the complaint, a three members committee was constituted comprising of the officials of the Revenue and Forest Departments and the officials of Hindustan Petroleum Corporation Limited (HPCL) and the said Committee had concluded in its report that in the installation of an outlet of Hindustan Petroleum Corporation Limited on Dadri-Kanina Road (MDR-124) at RD.34.98 (RHS) with mustil/kila no.58/13/1 at village Kapoori, Tehsil Charkhi Dadri, District Bhiwani, there is no involvement of felling of trees for outgress and ingress of proposed retail outlet and in this way, the guidelines of the Ministry of Environment & Forest dated 15.07.2004 have not violated.

In the reply filed by Executive Engineer, Provincial Division, PWD B&R Branch, Charkhi Dadri, District Bhiwani on behalf of respondents no.4, 8 and 9, the following averments have been made:-

“4. That no objection certificate for setting up retail outlet in respect of Smt. Suman W/o Sh. Arun Respondent No.12 has been issued by the answering respondent as per IRC:12-2009 guidelines. Both the retail outlets are on opposite side of the road. The clear horizontal distance between the two plots is 244 meter but horizontal distance in this case is to be measured between the entry points of both plots as per IRC:12-2009 (General Condition 4.6) annexed as annexure R-1 which comes to 319 meter. The site plan annexed as annexure R-2. The horizontal distance between entry points of both the proposed and existing outlets is 319 meter measured as per IRC:12-2009 GUIDELINES FOR ACCESS, LOCATION AND LAYOUT OF ROAD SIDE FUEL STATION AND SERVICE STATIONS (Third Revision) hence, the present writ petition is likely to be dismissed on this account only.”

In the reply filed by respondent no.12, it is alleged that the permission has been given by the Government of India, Ministry of Environment, Forest and Climate Change vide its letter dated 29.01.2015 with regard to diversion of 0.0128 Ha. Forest land for access to retail outlet of

HPCL along with Dadri-Kanina Road, with certain conditions which have allegedly been fulfilled by respondents no.12.

The Government of India has also filed its reply, in which the following averments have been made:-

“3. That in the instant case, on the recommendations of the State Government of Haryana, vide letter No.4376-va-5-2014/18288 dated 12.12.2014, the competent authority in the Ministry of Environment, Forests and Climate Change, Northern Regional Office at Chandigarh accorded approval under Section 2 of the Forest Conservation Act, 1980 for the diversion of 0.0128 hectare forest land for access to retail outlet of Hindustan Petroleum Corporation Limited along Dadri-Kanina road near mile stone 38 R/side at village Kapuri, under Forest Division and District Bhiwani, Haryana vide F.No.9-HRB287/2014-CHA dated 27th January, 2015 on the basis of No Objection Certificate (NOC) issued by Executive Engineer, Provincial Division, PWD (B&R) Br. Charkhi-Dadri which was also cross checked by calculating the distance between the new and nearest petrol pump using Geographical Positioning System (GPS) information provided by the State Government.”

In the reply filed by respondent no.6, a preliminary objection has been raised about the *locus standi* of the petitioner to maintain the present petition. Reliance has been placed upon a decision of the Supreme Court rendered in the case of **Mithilesh Garg, etc. etc. vs. Union of India and others etc. etc.**, 1992(1) SCC 168 and it is submitted that since the fuel station of respondent no.12 is on the other side of the road, therefore, the guidelines dated 15.07.2004, which requires the minimum distance between 2 fuel stations on each side of the road should not be less than 5 Kms. outside the city, limits on highways, are not applicable and so as the letter dated 06.04.2010, relied upon by the petitioner, purported to have been issued by the

Government of Haryana, by which the provisions of the guidelines dated 15.07.2004 has been changed with the words from “each side of the road” to “either side of the road”.

In reply to the preliminary objection raised by respondent no.6 about the *locus standi* of the petitioner to maintain the present petition, counsel for the petitioner has relied upon a decision of the Supreme Court rendered in the case of **Sai Chalchitra vs. Commissioner, Meerut Mandal and others**, (2005) 3 Supreme Court Cases 683 to contend that even the rival in the trade has a *locus standi* to maintain the petition if the license is given to the rival in the trade in violation of the Act and the Rules.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that there is no merit in the present petition as the same was filed on the allegations that the fuel station by respondent no.6 in favour of respondent no.12 is being installed in violation of the guidelines of the Government of India dated 15.07.2004 but the said guidelines are not being violated because it is categorically provided therein that the minimum distance between two fuel stations has to be maintained upto 5 Kms. if the outlet is being installed on the same side of the road but in the present case, the fuel station is being installed on the other side of the road. Moreover, there is a categorical reply filed on behalf of respondents no.5, 10 and 11 that the Committee of the officials of the Revenue, Forest and HPCL have concluded in their report that there is no felling of trees for the outgress and ingress of the proposed outlet. The reply filed by respondents no.4, 8 and 9 also shows that there is no violation of the Indian Road Congress guidelines and that the Government of India, Ministry of Environment, Forest and

Climate Change has already granted permission for the diversion of the forest land on certain conditions.

Thus, the entire agitation of the petitioner seems to be a pure and simple business rivalry, which otherwise is also not there because fuel station of the petitioner is on the one side of the road and the fuel station of respondent no.6, for respondent no.12, is being installed on the other side of the road, therefore, it is not going to affect the business prospectus of the petitioner.

Thus, in view of the aforesaid facts and circumstances, the present petition is hereby dismissed being denuded of any merit, though without any order as to costs.

December 06, 2017
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(Rakesh Kumar Jain)
Judge

Whether speaking / reasoned:	Yes/No
Whether Reportable:	Yes/No