

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

CWP No.27251 of 2015
Date of decision : 03.02.2017

Seema Makkar

...Petitioner

Versus

Union of India and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. O.P. Goyal, Sr. Advocate with
Ms. Shallie Mahajan, Advocate for the petitioner.

Mr. K.K. Chahal, Advocate for UOI.

Mr. Sudesh Sahi, Advocate for
Mr. Aman Arora, Advocate for respondent No.2.

Mr. Yatinder Sharma, Addl. A.G. Punjab
for respondent Nos.3 to 6.

AMIT RAWAL, J. (Oral)

The petitioner has approached this Court by seeking following
relief:-

“Civil Writ petition under Article 226/227 of the Constitution of India for issuance of a writ of certiorary for quashing letter dated 19.8.2015 (Annexure P-21) vide which the NOC have been refused by the Executive Engineer Respondent No.6 and also for a writ of mandamus directing the respondent No.6 to grant NOC to the petitioner so that she is able to set up retail outlet dealer at the site of Sahnewal Dehlon Road, District Ludhiana and also for any other writ, order or direction which this Hon'ble Court deems fit and proper in the circumstances of the case may also be issued.”

Mr. O.P. Goyal, learned Sr. Counsel assisted by Ms. Shallie Mahajan, learned counsel appearing on behalf of petitioner submits that Executive Engineer, Provl. Division Office, PWD B&R Branch, Ludhiana has refused to grant permission by writing a letter to the District Controller, Food, Civil Supplies and Consumer Affairs, Ludhiana, on the premise that retail outlet was sought to be allotted at Sahnewal-Dehlon Road, District Ludhiana. Fuel Station is part of Major District Road and in view of para Nos.4.2 and 4.5 of IRC 12-2009 guidelines, which prescribes the distance between the existing and the proposed retail outlets as the distance from a road inter-section, NOC as sought has been refused. He has drawn the attention of this Court to the order dated 20.12.2016 passed by this Court, whereby State was directed to file an affidavit as to whether guidelines contained in Annexure R-6/2 are mandatory or directory in nature.

He further submits that in pursuance to the aforementioned order, affidavit dated 27.01.2017 filed on behalf of respondent Nos.5 and 6, in this Court, reveals that the guidelines are directory in nature. He has drawn the attention of this Court to para Nos.2 and 5 of the same, which reads as under:-

“2. That it is respectfully submitted that so far as the respondents are concerned, these instructions are mandatory in nature for them. However, in para No.19 of the writ petition, the petitioner has proceeded to state that the Division Bench of this Hon'ble Court in LPA No.1573 of 2014 decided on 22.9.2014 has held that the IRC guidelines are only directory in nature. It is in this view of the matter, that the deponent at para no.18 of its reply filed on behalf of respondent Nos.5 and 6, has proceeded to state that even

though this Hon'ble Court has proceeded to hold these guidelines to be directory in nature but these have acquired the status of the policy of the Government of India and are being followed in the entire country.

5. *That the deponent has not come across a judgment passed by the Hon'ble Supreme Court of India in this regard."*

The stand taken in the affidavit reveals that guidelines are not mandatory in nature but directory in nature, therefore, they would not have binding force and effect. In this regard, he has also drawn the attention of this Court to the decision dated 22.09.2014 rendered by this Court in LPA Nos.1573 and 1574 of 2014, by relying upon the findings rendered in para Nos.3 to 5, which reads thus:-

"3. These guidelines prescribed the distance between the existing and the proposed retail outlets as also the distance from a road intersection etc. It is undeniable that in Charan Dass's case (supra), the learned Single Judge viewed that those guidelines are directory in nature and cannot be applied mechanically. The District Magistrate, Panipat, though filed LPA No.302 of 2014 in Charan Dass's case but then voluntarily implemented that judgment whereupon the letters patent appeal was dismissed as withdrawn on 10.03.2014. The judgment in Charan Dass's case having been allowed to attain finality, the learned Single Judge, in our considered view, has rightly reiterated his view in the instant case that the guidelines laid down by IRC-12-2009 are directory in nature and the 'No Objection Certificate' ought not to have been denied to the respondents only on the basis of those guidelines save there is no other legal impediment.

4. *We see no reason to differ with the view taken by the*

learned Single Judge.

5. No statutory back-up behind the guidelines in question has been pointed out. It is also not explained that if distance between the road intersection/existing outlet or the proposed outlet is 280 meters (instead of 300 meters as proposed in the guidelines), how the road safety is likely to be jeopardized. Be that as it may, there are the issues that may be gone into by the authorities while reconsidering the respondent's prayer in accordance with the directions issued by the learned Single Judge. At this stage, learned counsel for the respondent-caveator states that the decision of the learned Single Judge has also been given effect and the appellant has already issued the 'No Objection Certificate' on the basis of which the retail outlet has started functioning. However, it is stated that in LPA No.1574 of 2014, the decision of the learned Single Judge has not been given effect till date."

Mr. Yatinder Sharma, Addl. A.G. Punjab representing the respondent Nos.3 to 6 submits that keeping in view the stand taken and as well as judgment, authorities will reconsider the matter, in case any appropriate direction is issued.

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

Keeping in view the findings rendered by the Division Bench and as well as the stand taken in the affidavit, I am of the view that letter dated 19.08.2015 (Annexure P-21) refusing the NOC on the reasons stated is no longer sustainable, much less, is able to the stand on the touchstone of the reasonableness as the guidelines relied upon are directory in nature.

Decision on this point has already been rendered.

It is strange that authorities do not comply and adhere with the direction issued by this Court from time to time. Authorities should deal with the matter in most pragmatic and with open mind.

Impugned order does not deal with the objections raised by the petitioner qua roadside being on the National Highway or otherwise.

Matter is remitted back to the authorities below. Entire exercise should be done within a period of two months from the date of receipt of certified copy of the order.

Mr. O.P. Goyal, Sr. Advocate has drawn the attention of this Court to the written statement filed by Union of India particularly para No.3 to contend that Union of India had no role to play with regard to the guidelines. It is only the company who frame on its own. It is strange that the State on its own assume the character and nature of the guidelines as policy of the Government which has emphatically been denied. The stand taken by the respondent No.1 in reply reads thus:-

“3. That from the facts stated in the memo of the writ petition and the reliefs sought it may be seen that no action/order of Union of India is under challenge.”

Resultantly, impugned letter dated 19.08.2015 (Annexure P-21) is set aside.

With the aforementioned observations, present writ petition is disposed of.

03.02.2017

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No