

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CWP 26491 of 2016

Date of Decision: May 31, 2017

Parmod Kumar and another

.....Petitioners

Vs.

UOI and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr. Chirag Wadhwa, Advocate for the petitioners.

Mr. A.K. Singla, AAG, Haryana.

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M.M.S. BEDI, J.

Vide annexure P-6 dated August 31, 2016, the District Magistrate, Yamuna Nagar, respondent No.3 refused to grant NOC to the retail outlet/ petrol pump of the petitioners on the basis of the report of respondent No.4, annexure P-4 dated August 2, 2016. The petitioners were declined the installation of Essar Oil Retail Outlet at the proposed site i.e. Khasra No. 27//24/2 on Jagadhri-Bilaspur- Sadhaura- Naraingarh- Raipur Rani Road (SH-01), near KM Stone No. 17, at Village Marwa Kalan, Tehsil Bilaspur, District Yamuna Nagar, Haryana, considering the same to be statutory violation of guidelines IRC -12- 2009 (annexure P-5).

The petitioners have, through instant writ petition, challenged the legality and propriety of the order annexure P-6 dated August 31, 2016 passed by respondent No.3 and letter dated August 2, 2016 (annexure P-4) issued by respondent No.4.

It is not disputed that pursuant to the expression of interest by the petitioners, respondent No.2 Company had appointed the petitioners as franchisee holder of Essar Oil Limited for the proposed site subject to the terms and conditions mentioned in the letter of appointment dated September 30, 2015, annexure P-1. All the concerned departments i.e. Haryana State Pollution Control Board, Fire Department, District Town Planner, District Food and Civil Supplies Department, Industrial Safety and Health Circle, Block Development and Panchayat Officer, Sub Divisional Officer, Bilaspur had granted No Objection Certificates for installation of the retail outlet/ Petrol Pump on the proposed site but vide letter annexure P-4 and order annexure P-6, the No Objection Certificate has been declined on the pretext that distance from intersection i.e. link road to Kapoori Kalan is required to be 300 meters as per IRC-12-2009 as such the proposed site does not fulfill the statutory requirement.

In the written statement filed by respondents No.3 and 4, a specific plea has been taken that IRC-12-2009 prohibits respondent No.4 to grant NOC for fuel stations. Besides this, a plea has been taken that Haryana PWD Code, Clause 4.4.3 (annexure R-1) envisages that NOC regarding petrol pump shall be checked in the light of Indian Roads Congress publication titled IRC: 12 which lays down guidelines for access, location and layout of roadside fuel stations and service stations. The

Government of Haryana vide notification dated October 19, 2009 (annexure R-2) has ordered that provisions of Haryana PWD Code shall be followed by PWD B&R Department.

In view of the above circumstances, the short question which is required to be considered is whether as per IRC-12-2009, which provides general conditions for sites that a minimum distance of 300 mts. has to be maintained from inter-section/ link road, are mandatory or directory. The guidelines for access, location and layout of roadside fuel stations and service stations (IRC-12-2009) have been appended as annexure P-5 which have been framed on the basic principle that the governing consideration for setting up fuel stations is to ensure free flow of traffic on the road along the fuel stations, minimum interference by the vehicles using the facilities and to ensure safety of the vehicles on the road.

The said guidelines came up for consideration before this Court in CWP No. 19287 of 2011, decided on October 22, 2013-**Charan Dass Vs. Union of India and others**, and CWP No. 11689 of 2012, decided on December 3, 2013-**Durga Dass Vs. Union of India and others**. In both the judgments, the guidelines issued by IRC have been held to be directory in nature. Besides this, the impugned letter annexure P-4 and impugned order annexure P-6 do not specifically mention that the free flow of traffic on the road would be hampered by the proposed fuel station or that safety of the vehicles would be effected. No Objection Certificate has already been granted by all other Departments.

In view of the above said circumstances, the order annexure P-6 dated August 31, 2016, based upon the report annexure P-4 dated August 2,

2016 are held illegal and are quashed. The petitioner would be entitled to install and operate the fuel station under the letter of appointment annexure P-1, dated September 30, 2015, unhampered by order annexure P-6 dated August 31, 2016 and the report annexure P-4 dated August 2, 2016.

Petition is allowed in the afore said terms.

May 31, 2017
sanjay

(M.M.S.BEDI)
JUDGE

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