

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18284 of 2017

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1. Indian Oil Corporation Limited having its registered Office at Mumbai through its Chairman cum Managing Director.
 2. The General Manager, Indian Oil Corporation Limited, Bihar State Office, Marketing Division, Eastern Region, Loknayak Bhawan, Dak Bungalow Road, P.S.-Kotwali, Distt.-Patna.
 3. Senior Divisional Retail Sales Manager, Indian Oil Corporation Limited, Bihar State Office, Loknayak Bhawan, Frazer Road, Patna.
 4. Chief Divisional Retail Sales Manager, Begusarai Divisional Office, Indian Oil Corporation Ltd. Begusarai.

.... Petitioners

Versus

1. The State of Bihar, through the Chief Secretary Government of Bihar, Patna.
2. The Principal Secretary, Department, of Revenue and Land Reforms, Government of Bihar, Patna
3. The District Magistrate, Samastipur.
4. Suman Kumar, Son of Late Bhagya Narain Rai, Resident of Vill. & P.O.- Gauspur, Sarsauna, P.S.-N.H. Bangra, District-Samastipur Proprietor of Shri Balajee Automobiles, S.H.-49 Ababakarpur, P.O.-Manpura, P.S.-N.H. Bangra, District-Samastipur.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 18231 of 2017

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Suman Kumar, son of- Late Bhagya Narain Rai, resident of Village & P.O.- Gauspur, Sarsauna, P.S.- N.H. Bangra, District- Samastipur Proprietor of Shri Balajee Automobiles, S.H.- 49 Ababakarpur, P.O.- Manpura, P.S.- N.H. Bangra, District- Samastipur.

.... Petitioners

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The District Magistrate, Samastipur.
4. Indian Oil Corporation Limited, through General Manager, Bihar Sales Office, Indian Oil Corporation Limited, Lok Nayak Jaiprakash Bhawan, Patna.
5. General Manager, Bihar Sales Office, Indian Oil Corporation Limited, Lok Nayak Jai Prakash Bhawan, Patna.
6. Chief Divisional Retail Sales Manager, Begusarai Divisional Office, Indian Oil Corporation Ltd., Begusarai.

.... Respondents

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Appearance :

(In CWJC No.18284 of 2017)

For the Petitioners : Mr. K.D. Chatterjee, Sr. Advocate
Mr. Amlesh Kumar Verma
Mr. Amaresh Kumar Sinha, Advocates.

For the Private Resps. : Mr. Kumar Ravish
Mr. Kashyap Kaushal, Advocates.



For the Interveners : Mr. Abhay Kumar Singh, Advocate.
 Mr. Baidya Nath Thakur, Advocates.
 For the Respondents : Mr. Md. Khurshid Alam, AAG-12
 (In CWJC No.18231 of 2017)
 For the Petitioners : Mr. Kumar Ravish, Advocate.
 For the Respondents : Mr. Md. Khurshid Alam, AAG-12

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 06-03-2018

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. Both writ petitions have been filed with a common prayer for quashing the letter bearing no. 3148 dated 04.12.2017 whereby no objection granted under Rule 144 of the Petroleum Rules, 2002 for storage of petroleum products has been cancelled by the District Magistrate and the operation of the retail outlet in question has been directed to be closed; and for a direction to the respondents not to interfere with the operation of the retail outlet.

3. Both writ petitions involve common facts and issues and as such the broad facts of the case are referred to as stated in C.W.J.C. No. 18284 of 2017 for the sake of convenience. The petitioner of the said writ petition (hereinafter 'the Corporation' of convenience) selected the respondent no. 4 (the petitioner of C.W.J.C. No. 18231 of 2017) as its dealer ('the dealer') after following the due process of selection. A letter of intent came to be issued in favour of the dealer on 08.02.2013 and upon his compliance with the terms of the LOI, the petrol pump was commissioned in terms of an agreement dated 24.06.2013. For the purposes of receiving a licence for the proposed



site from the licensing authority, namely the Chief Controller or Controller of Explosives, Kolkata, the petitioner by letter dated 30.11.2012 along with two copies of the site plan made a request to the District Magistrate, Samastipur for grant of No Objection Certificate (for short 'the NOC') under Rule 144 of the Petroleum Rules, 2002 (for short 'the Rules'), clearly stating therein the relevant details of the land. On being satisfied about the right to site of the dealer, the District Magistrate granted the NOC under the Rules by letter dated 31.03.2013 in favour of the dealer. Upon issuance of the NOC, the licensing authority then finalized the issuance of license in Form-XIV for storage of petroleum products in the licensed premises shown in the approved site plan.

4. A show cause notice no. 2819 dated 23.10.2017 came to be issued by the District Magistrate to the Corporation, stating therein that the retail outlet had not been established as per site plan inasmuch as over and above the total area of 14 katha of land, a boundary wall has been constructed which was 2 feet wide in the East and 5.9 feet wide in the North and further that the no objection had been granted on Plot No. 209 (old)/Plot No. 417(new) and 418 (new) whereas the construction had only been made on Plot No. 417(new). It was further stated that box culvert had not been constructed. The petitioner submitted its reply dated 30.10.2017 to the show cause notice, clarifying that the requisite area of 45m x 45m had duly been constructed as per approved site plan and that the boundary wall in



question had been constructed by the dealer in order to protect his extra land which he had subsequently purchased and was over and above the land required by the Corporation. It was further stated that the culvert box had already been constructed by the dealer and as such the construction of the petrol pump and storage tanks had been made according to requirements to the satisfaction of the licensing authority.

5. The District Magistrate however by his impugned order dated 04.12.2017 cancelled the NOC on the ground that the condition of the NOC had been violated by establishing the petrol pump in deviation of the site plan and that the no objection from the Forest Department had not been submitted.

6. Mr. K. D. Chatterjee, learned Senior counsel for the Corporation, submits that the impugned order of the District Magistrate dated 04.12.2017 is wholly arbitrary, illegal and without jurisdiction. Reference is invited to Rule 150 of the Rules according to which the NOC granted under Rule 144 can be cancelled on the solitary ground that the licensee had ceased to have any right to use the site for storing petroleum, and on no other. It is submitted that there is not so much as even a whisper in the show cause notice or in the impugned order to the effect that the Corporation or the dealer had lost the right to site and as such the impugned order of cancellation has been passed on completely irrelevant and extraneous grounds. That apart, the impugned order has also travelled beyond the show cause notice with reference to the non-submission of any no objection from the Forest



Department as the Corporation was never confronted in this regard. Moreover, the ground with reference to alleged deviation from the site plan by reason of construction of boundary wall is equally arbitrary, unreasonable and untenable, considering that such boundary wall had been constructed on the extra land subsequently purchased by the dealer and in no way violated the approved site plan. Reliance is placed on the decision of the Hon'ble Apex Court in Yogesh Kumar and Ors. vs. Bharat Petroleum Corporation Limited and Ors., 1990 (4) SCC 49.

7. Mr. Kumar Ravish, learned counsel for the dealer (petitioner of C.W.J.C. No. 18231 of 2017) has adopted the arguments and submissions made by learned Senior counsel for the petitioner-Corporation in C.W.J.C. No. 18284 of 2017.

8. Learned counsel for the State appears and has sought to justify the action of the District Magistrate. It is submitted that the NOC has rightly been cancelled in view of the violations and shortcomings enumerated in the impugned order.

9. Having heard the parties and on a consideration of the materials on record, this Court finds considerable merit in the writ petitions. A bare perusal of Rule 150 discloses that the foundational condition for assumption of jurisdiction for cancellation of NOC by the District Magistrate is that the licensee had seized to have any right to use the site for storing petroleum. The Rule does not contemplate any other reason for cancellation of the NOC. In the instant case, neither the show cause notice nor the impugned order has made any averment



whatsoever that the Corporation or the dealer had ceased to have the right to site and as such the impugned order has clearly been passed on irrelevant and extraneous considerations. This aspect of the matter has been considered by the Hon'ble Supreme Court in Yogesh Kumar's case (supra) in the context of the corresponding Rule 151 of the Petroleum Rules, 1976, wherein it has been held as follows —

“4. The High Court has rightly observed that the District Authority under Rule 151 can cancel the 'No Objection Certificate' only when the licensee ceases to have any right to use the site for storing petrol. However, there are certain subsequent observations made by the High Court in the impugned judgment which might lead to an inference that so long as the licensee continues to have leasehold rights on the site, the 'No Objection Certificate' cannot be cancelled at all. That does not appear to be the correct position of law. On a reading of sub-rule (1) of Rule 151 it is clear that a 'No Objection Certificate' granted under Rule 144 can be cancelled wherever the licensee ceases to have any right to use the site for storing petrol and that right could be lost by a licensee either by his tenancy or right to the use of the site coming to an end or for any other reason whereby, in law, the right to use the site for storing petrol ceases.”

10. The exercise of power by the District Magistrate in cancelling the NOC must accordingly be held to be ultra vires the scope of power and jurisdiction vested in him under Rule 150 of the Rules.

11. That apart, the show cause notice did not call for any explanation from the petitioners with reference to non-furnishing of a no objection from the Forest Department but the same has been made a ground for passing the impugned order. The impugned order has thus traveled beyond the show cause notice which is impermissible in law and constitutes a violation of the principles of natural justice. The impugned order cancelling the NOC granted to the dealer must be



held to be illegal and without jurisdiction and is accordingly quashed.

12. Before parting with the judgment, this Court takes note of Interlocutory Applications No. 9353 of 2017 and No. 9049 of 2017 filed in the two writ petitions respectively at the instance of one Naveen Kumar @ Naveen Kumar Singh seeking to be impleaded as party respondent.

13. It is stated that the impugned order cancelling the NOC has been passed consequent upon the complaint of the intervener applicant who claims to have an immediate and close interest in the dispute involved. The claim of the intervener applicant is also said to be the subject matter of an earlier writ petition filed by him in C.W.J.C. No. 22910 of 2012 which is pending.

14. The intervener applicant has not disclosed the nature of his immediate and close interest in the present dispute and has merely stated that the impugned order has been passed on his complaint. Mere filing of complaint cannot invest a party with a right to be impleaded. Besides, the validity of the decision making process in passing the impugned order has been challenged on grounds of lack of jurisdiction and violation of natural justice and has to be tested on its own merits.

15. This Court is thus of the view that the intervener applicant has not made out a case for being impleaded in the present writ petitions, and his claim said to be already pending in C.W.J.C. no. 22910 of 2012 would be considered on its own merits in due course.



The interlocutory applications are accordingly rejected.

16. The writ petition stands allowed.

(Vikash Jain, J)

Md. Ibrarul/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	07.03.2018
Transmission Date	N.A.

