

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

**CWP No. 10320 of 2015 (O&M)
Date of decision : 22.11.2018**

Bharat Petroleum Corporation Ltd.

.....Petitioner

Versus

District Magistrate Jalandhar

...Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Raman Sharma, Advocate
for the petitioner(s).

Mr. Abhey Pal Singh Gill, AAG, Haryana.

Mr. H.K. Aurora, Advocate
for respondent No.2.

ARUN MONGA, J(ORAL)

The petitioner herein M/s Bharat Petroleum Corporation Limited which is an Oil Marketing Corporation (OMC) of Government of India governed by the notifications issued from time to time by Ministry of Petroleum and Natural Gas.

2. The question that arises in the present case is that does the District Magistrate have the power to cancel an NOC granted to operate a retail outlet of a dealer, on the ground of violation of conditions of licence granted by the OMC to its dealer.

3. Vide notification dated 05.09.2002 as Annexure P-14 herein the

Government of India decided to relax the condition of retail outlets earlier exclusively meant for 2/3 wheelers only and to convert the same into regular retail outlets. The relevant part of the said notification is extracted hereinbelow for ready reference:-

“I am directed to refer to Bharat Petroleum Corporation Ltd. (BPCL)'s letter No.RSHQ:2/3/wheller, dated the 22nd October, 2001 on the above subject and to say that the proposal of the Oil Industry, contained in that letter, for permitting them addition of HSD facility to lone-MS retail outlets and also to 2/3 wheeler outlets, thus converting the 2/3 wheeler outlets into regular retail outlets with HSD facility, has been under consideration of the Government. It has now been decided by the Government to permit, with immediate effect, the Oil Marketing Companies (OMCs) to take a decision – on commercial grounds- in the matter of:

Addition of HSD facility to their lone-MS retail outlets and;

(ii) Conversion of their 2/3 wheeler retail outlets into regular retail outlets with HSD facility.

2. The above permission shall be subject to the following conditions:-

(i) The OMCs will decide such cases on case to case basis, after taking consideration the viability factor, the public interest and the viability of the neighboring retail outlets- already set up/being set up/included in the marketing plans”.

4. That being the background, the NOC dated 23.02.2005 granted by respondent No.1/District Magistrate, Jalandhar vide Annexure P-2 to the petitioner for putting up a 2/3 retail outlet at Nehru Garden Road, Near

Shastri Market Jalandhar was cancelled vide impugned order Annexure P-12 dated 15.04.2015. The impugned order was passed on the following grounds:-

“I have perused the reports of Commissioner, Municipal Corporation, Jalandhar and Sub Divisional Magistrate Jalandhar-1. I have also perused the complaint submitted by Sh. Manudhir and reply given by Oil Company in this regard. From the perusal of reports, it is revealed that the Oil Company is violating the conditions imposed by Municipal Corporation, Jalandhar and conditions imposed by this office while issuing the NOC for setting up of this Retail Outlet. It is also found that NOC to the Oil Company was granted for 2/3 wheelers only, whereas, as per report of SDM, Jalandhar-1, the Oil Company is providing Oil to the four wheelers also. It is clear cut violations of the conditions of the NOC issued by this office. The oil company in his reply could not give any satisfactory reply on the basis of which any relief could be given to the company.

From the reports of Commissioner, Municipal Corporation, Jalandhar and Sub Divisional Magistrate, Jalandhar, it is amply proved that the oil compnay is running this Retail Outlet by violating the terms and conditions of NOC granted for setting up of this Retail Outlet. Therefore, on the basis of above mentioned facts and reports of Commissioner, Municipal Corporation Jalandhar and Sub divisional Magistrate Jalandhar-1. No Objection Certificate issued vide this office letter no.528/NOC/LA dated 23.02.2005 is hereby cancelled with immediate effect as per provision of Rule 150 of Petroleum Rules, 2002. A copy of this order be sent to all concerned for information and compliance”.

5. The learned counsel for the petitioner contends that the impugned order has been passed without granting any personal hearing to

the petitioner on a complaint filed by one Mr. Manudhir who claims to be State Co-Convenor, Human Rights Cell, Harman-nagar, Kapurthala alleging that the petitioner/BPCL is violating conditions imposed by respondent No.2 -Municipal Corporation, Jalandhar which was imposed at the time of granting of NOC for installing the retail outlets. The said complaint was sent to Municipal Corporation, Jalandhar for inquiry/report and the Commissioner, Municipal Corporation reported that the petitioner/BPCL has installed oil retail outlets in 50' X 60' areas, whereas, NOC was granted on the condition as the company will install this Retail Outlet in 60' X 60' area and paste thereon a recommendation has been made by the commissioner to cancel the NOC of the retail outlet. It is rather intriguing that while cancelling the NOC granted by respondent no.1 instead of dealing with the allegation as contained in the complaint and/or the report submitted by the Commissioner, Municipal Corporation, Jalandhar, the District Magistrate has primarily relied on the facts that since the NOC has been granted for grant to 2/3 wheelers only but as per the report of the SDM, Jalandhar (i) the petitioner/BPCL is providing oil to four wheelers also and therefore, the same amounts to violating the condition of the NOC issued by his office.

In view, thereof, respondent no.1 cancelled the NOC granted for operating retail outlet of petitioner company that too without granting any opportunity of being heard and the said cancellation has been assailed before this Court.

6. Learned counsel for the petitioner has also drawn the attention of this court to the site plan vide Annexure P-3 which reflects that the retail outlet is being operated in an area of 50.24 meter wide and 18.29 meter long which comes to 50' X 60'. The learned counsel contends that retail outlet has been built strictly in accordance with the site plan duly approved by Joint Chief Controller Explosive, Faridabad and the same is an uncontroverted position of fact.

7. Learned counsel for the petitioner further contends that respondent no.1 has exceeded his jurisdiction in law inasmuch as NOC can only be cancelled under Rule 150 of Petroleum Rules 2002, Chapter 7 thereof which deals with issue of licenses. The relevant Rule 150 extracted hereinbelow:-

“Cancellation of No Objection Certificate-(1) A no-objection certificate granted under Rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the District Authority or the State Government is satisfied, that the licensee has ceased to have any right to use the site for storing petroleum:

“Provided that before cancelling a no-objection certificate, the licensee shall be given a reasonable opportunity of being heard.
(2)A District Authority or a State Government cancelling a no-objection certificate shall record, in writing, the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned, copy of the order cancelling the No-Objection Certificate”.

The learned counsel for petitioner/OMC relies on a decision rendered by a Division Bench of this Court in case titled as, “***Bharat Petroleum Corporation Vs. State of Punjab and others***” reported as ***2006(1) RCR (Civil)328*** whereby it has been held NOC can be cancelled only in the event of licensee losing the right to use the site. The relevant para thereof is extracted hereinbelow :-

“6.A plain reading of the provision of sub-rule(1) of Rule 150 of the Rules provides that before cancelling a “No Objection Certificate”, the licensee shall be given a reasonable opportunity of being heard. This has admittedly not been done

in the present case. We also agree with the counsel for the petitioner that by not supplying a copy of order dated 31.12.2004, which is the basis of the impugned order, the petitioner has been denied an opportunity of being heard.

7. In the present case, the petitioner had been granted “No Objection Certificate” by the District Magistrate, Ludhiana and has thereafter incurred substantial expenditure in starting the retail outlet. Even if, it is open to argument as to whether “No Objection Certificate” had been granted without following the procedure, the principles of equity and fair play demand that the petitioner be granted a reasonable opportunity of being heard before “No Objection Certificate” granted to it is canceled. It has to be intimated about the lapse on its part and asked to furnish an explanation in respect of the same”.

It is thus clear that the District Magistrate is not empowered to cancel NOC without granting an opportunity of being heard.

8. Confronted with above, the learned counsel for respondent no.1, *per contra*, contends that even though notification (Annexure P-14) allows the conversion of 2/3 wheelers into 4 wheelers but there is nothing to show that pump of the petitioner has been actually converted from 2/3 wheelers to 4 wheelers. The said contention of the learned counsel for respondent no.1 is not legally tenable in view of the fact that notification, Annexure P-14, *ibid*, clearly states that the cases of conversion from 2/3 wheelers outlets to 4 wheelers outlets are to be decided by the OMCs on case to case basis, after taking into consideration the viability factor, the public interest and the viability of the neighboring retail outlets-already set up/being set up/included in the marketing plans. That being the position, it

is the OMC alone who shall decide conversion of 2/3 wheeler outlet into 4 wheeler outlet, albeit, subject to the parameters per notification P-14, supra. Another aspect herein is that the retail outlet in question has directly been set up by OMC itself. The same is not controverted, therefore, any conversion etc. is directly in the knowledge of the OMC itself. In any case, there is no question of District Magistrate assuming the power to decide the conversion of 2/3 wheelers into 4 wheelers retail outlets. The power exercised by the District Magistrate/respondent no.1 to cancel the NOC on the ground of conversion 2/3 wheeler into 4 wheeler, therefore, clearly exceeded his jurisdiction and the impugned order is accordingly set aside.

Writ petition is allowed with no order as to cost.

(ARUN MONGA)
JUDGE

22.11.2018
dkp

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No