

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24366 of 2018

Umesh Paswan, Son of late Nanda Paswan, R/o village- Muradpur, Ward No. 13, P.S.- Rosera, District- Samastipur

... .. Petitioner

Versus

1. The State Of Bihar through the Secretary, Road Construction Department, Bihar, Patna
2. The Chief Engineer (Mechanical), North Bihar Wing, Road Construction Department, Bihar, Patna
3. The Superintending Engineer, Road Construction Department, Road Circle, Darbhanga
4. The Executive Engineer, Road Division, Rosera, Samastipur
5. The District Magistrate, Samastipur
6. The In-Charge Officer, District General Section, Samastipur
7. The Indian Oil Corporation Ltd. (IOCL), through its General Manager, Dak Bunglow Road, Patna
8. The Senior Divisional Retail Sales Manager, Indian Oil Corporation (MD), Begusarai Divisional Office, Begusarai (Bihar)

.. ... Respondents

Appearance :

For the Petitioner/s	:	Mr. Prashant Sinha, Advocate
For the Respondent/s	:	Mr. Amit Prakash- GA13
		Mr. Sanjay Kumar AC to Ga-13
For IOCL	:	Mr. Ankit Katriar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 16-04-2019 Heard learned counsel for the petitioner and learned counsel representing the State.

The petitioner in the present case is seeking quashing of the letter dated 31.10.2018 issued under the signature of the Chief Engineer (Mechanical), North Bihar Wing, Road Construction Department, Bihar, Patna by which the petitioner has been communicated that the proposal for the grant of 'No Objection Certificate' (in short 'NOC') for establishment of Retail Outlet of Indian Oil Corporation Ltd. ('IOCL') has been refused on the ground of intersection with Rural Roads at a distance of 150



meters. The petitioner is praying for a Mandamus directing the respondent authorities to grant 'NOC' and permission for opening the Retail Outlet of Indian Oil Corporation Ltd. (IOCL) for Kisan Seva Kendra on the proposed site as the 'LOI' has been issued in favour of the petitioner vide letter dated 14.02.2017 under the signature of the Senior Divisional Sales Manager, IOCL (MD), Begusarai.

The basic contention of learned counsel representing the petitioner is on the strength of a learned co-ordinate Bench judgment of this Court in C.W.J.C. No. 12190 of 2016 and other analogous matters in which after consideration of the submissions, the learned co-ordinate Bench took note of the fact that during pendency of the said case the then Engineer-in-Chief-Additional Commissioner-cum-Special Secretary had issued a letter no. 4770 dated 24.08.2017 with respect to the fixation of length and distance of intersection was prescribed. The contents of the letter were in two part, the first dealt with the size of the land fixed by the Oil Companies while issuing the advertisement on or before 23.12.2015, the Chief Engineer had accepted the same but with respect to the fixation of length and distance of intersection the 'NOC' was refused saying that they do not confirm the condition fixed by the Indian Road Congress in the year 2015. It is in these conditions that the learned co-ordinate Bench took a



view that the authority concerned while considering the different applications should have applied the guidelines and specifications of land and intersection whatever prevalent during the relevant time with respect to size of the land and the distance of intersection.

In view of the submissions on behalf of the petitioner, this Court called upon the Chief Engineer, Mechanical to look into the judgment of this Court as contained in Annexure '7' to the writ application and in case he was convinced that the case of the petitioner is covered by Annexure '7', a fresh order be passed.

In view of the order dated 18.02.2019 passed by this Court, the Chief Engineer, Mechanical has done some exercise and finally came out with his letter no. 168 dated 05.04.2019, once again rejecting the request of the petitioner to grant 'NOC'. The order was brought on record with a supplementary counter affidavit on behalf of respondent nos. 2 to 4 on 10.04.2019. On that date this Court passed the following order:

“A supplementary counter affidavit on behalf of the respondent nos.2 to 4 has been filed today. It is submitted that now the Chief Engineer, North, Road Construction Department has considered the proposal of 'no objection certificate' for opening of a petroleum outlet of the petitioner and the same has been rejected vide letter no.1168 dated 05.04.2019 in the light of the Departmental order contained in letter no.4770



dated 24.08.2017. Learned counsel for the petitioner submits that Annexure-I to the affidavit filed today would show that for purpose of rejection of request of the petitioner the Chief Engineer has relied upon Departmental letter no.4770 dated 24.08.2017 which is in respect of intersection of national highways with rural roads. Learned counsel submits that Annexure-A to the counter affidavit of respondent nos.1 to 4 is the guidelines/norms issued by the Ministry of Road Transport and Highways which will be relevant in case where intersection is that of national highways with rural roads, but in the present case since no national highways is involved and the intersection is between the two rural roads, the said guidelines/norms has to be considered. Learned counsel for the State submits that this aspect of the matter will require him to get instruction from the Chief Engineer, North, Road Construction Department. In the aforesaid view of the matter, let this case be listed on 16th April, 2019 under the same heading when clarity with regard to the aforesaid submission of the learned counsel for the petitioner must be provided on behalf of the State, failing which this application shall proceed on the basis of the materials available on the record and final order shall be passed.”

Today a supplementary affidavit has been filed on behalf of respondent nos. 1 to 4. Attention of this Court has been drawn towards the statements made in paragraph 13 and 14 of the



supplementary counter affidavit together with Annexure 'J' thereof. Learned counsel for the State submits that the roads in question are the Major District Road and Rural Roads and in respect of these roads also guidelines as contained in Annexure 'J' will apply as it is not confined to the National Highway only. To demolish the argument of the petitioner, learned counsel for the State submits that a bare perusal of the clause 4.5.1. of Annexure 'J' would show that it provides a minimum distance from an intersection for National Highways, State Highways, Major District Roads and in case of Rural Roads in plain and rolling terrain, the distance from the intersection with National Highways, State Highways, Major District Roads can be reduced to 300 meters in place of 1000 meters. It is submitted that there is a categorical statement of the respondent authorities that they were following this guidelines on the date of issuance of N.I.T. in the present case.

Learned counsel for the petitioner has, at this stage, taken a submission that the respondent authorities are unable to show that they had adopted the guidelines as contained in Annexure 'J' to the supplementary counter affidavit. It is submitted that in absence of such adoption, the respondent authorities should not have rejected the request of the petitioner on the basis of the general conditions provided in the guidelines under



clause 4.5.1.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that in the supplementary counter affidavit there is a categorical statement in paragraph 17 that even before issuance of the letter at Annexure 'D', the Road Construction Department, Government of Bihar was issuing 'NOC' for establishment of Fuel Stations by the different Oil Companies following the guidelines issued by the Indian Road Congress as contained in Annexure 'J'. It is, therefore, specific statement that at the time of issuance of N.I.T. (Annexure P/1 to the writ application) the guidelines of the Indian Road Congress Annexure 'J' was being followed by the Road Construction Department, Government of Bihar.

A rejoinder to the counter affidavit has been filed on behalf of the petitioner, however, nothing could be brought to the notice of this Court to demonstrate that the stand of the respondent is incorrect. The contention of learned counsel for the petitioner is that he may find out some of the cases in which the respondent authorities have granted 'NOC' without following the guidelines of the Indian Road Congress as contained in Annexure 'J'. In the opinion of this Court, the plea of the petitioner based on this ground is in the nature of a plea of negative discrimination which cannot fetch a writ of Mandamus in his favour.



The Court is convinced from Annexure 'J' to the supplementary counter affidavit that the guidelines of the Indian Road Congress normally provides the length of the intersection of the Rural Roads being 300 meters, the same is being followed by the Road Construction Department, Government of Bihar since before the date of N.I.T. in this case. In such circumstance, this Court finds no arbitrariness on the part of the respondent authorities in rejecting the request of the petitioner to grant 'NOC'. So far as the reliance placed on Annexure '7' is concerned, this Court finds that what has been brought before this Court in form of Annexure 'J' duly supported by the specific statement in paragraph 14 and 17 of the supplementary counter affidavit of the State were not available before the learned co-ordinate Bench of this Court, therefore, in the given pleading on record, this Court has reasons to take the view as above.

This writ application has, thus, no merit, it is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

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