

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPC No. 3634 of 2019**

Rishabh Agrawal S/o Vinod Kumar Agrawal Aged About 30 Years
R/o Ward No. 07, Sakti, Police Station Sakti , District - Janjgir
Champa, Chhattisgarh.

---- Petitioner**Versus**

1. The Commissioner Bilaspur, Division, District Bilaspur Chhattisgarh.
2. The Collector District - Janjgir Champa Chhattisgarh.
3. Anand Agrawal S/o Shri Rupchand Agrawal R/o Shakti, Tehsil Shakti, District Janjgir - Champa Chhattisgarh.
4. Hindustan Petroleum Corporation Limited Through The Managing Director, Reg. Office -17, Jamshed Ji Tata Road, Mumbai, Pin Code 400020 (M.H.)

---- Respondents

For Petitioner	:	Mr. Prateek Sharma, Advocate Mr. Tushar Dhar Diwan, Advocate
For State	:	Mr. Ayaz Naved, G.A. Mr. P. Acharya, Panel Lawyer
For respective Respondents	:	Mr. Ali Asgar, Advocate Mr. Prasoon Agrawal, Advocate

Hon'ble Shri Justice P. Sam Koshy**Order on Board****23/10/2019**

1. The challenge in the present writ petition is to the impugned order Annexure P/1 dated 25.09.2019, passed by the Commissioner, Bilaspur division, Bilaspur.
2. The facts of the case in brief is that the respondent No.4 Petroleum Corporation had issued an advertisement on 12.10.2014 for allotment of a Petrol and Diesel Outlet. The letter of intent was also issued in this regard on 22.03.2018. The petitioner being interested to open a retail out applied for grant of NOC for the allotment of a

retail outlet. As per the requirement, the concerned Gram Panchayat, Borda, Janpad Panchayat Sakti, District Janjgir-Champa has to given a no objection. Initially two meetings were held, one on 08.08.2016 and another on 23.08.2016 and on both the dates, the Gram Panchayat passed a resolution in favour of the petitioner granting no objection. Thereafter, objections were called by the SDM in respect of application submitted by the petitioner on the basis of the NOC granted by the Gram Panchayat. There were large number of objections filed and all these applications were identical in nature and the SDM vide his order dated 21.12.2018 after due consideration rejected each of the objections.

3. It is pertinent to mention that this rejection of all the objections were not challenged by any third party before any Authority or Court of law. However, the Food Officer reverted the case back to the SDM on the ground that the resolutions of the Gram Panchayat were of a date before the objections were called from the general public. After the Food Officer having reverted the matter back to the SDM, fresh NOC was sought from the Gram Panchayat on 12.01.2019. Accordingly, a Gram Sabha was held on 22.01.2019 and the resolution was passed in favour of 11:3, though the resolution was passed 11:3, but the Gram Sabha made an endorsement to the effect that since of the three persons, who had objected to the issuance of NOC, one of them was the Sarpanch, therefore the resolution has to be treated as not passed.
4. This action on the part of the Gram Sabha was questioned in writ petition i.e. WPC No. 351/2019. The said writ petition was allowed

on 04.02.2019 holding that the resolution has to be treated as having passed by counting only the votes casted. The High Court held that the view of the Sarpanch being in minority would not in any manner treated as a veto power for treating the resolution of the Gram Sabha to have failed. The SDM was directed to treat the resolution to have been passed in favour of the petitioner. The SDM again made a recommendation in favour of the petitioner. The SDM has made a recommendation on 02.03.2019 in the light of the observations made by this Court in WPC No. 351/2019, but the Gram Panchayat later on passed another resolution. This time opposing the demand of the petitioner for grant of NOC. This action on the part of the Gram Panchayat was again questioned by the petitioner before this Court in WPC No. 1761/2019 and this Court as an interim measure stayed the effect and operation of the resolution of the Gram Panchayat dated 06.03.2019 vide its interim order dated 16.05.2019. Meanwhile, the Collector granted the NOC in favour of the petitioner on 27.05.2019. After the Collector having granted the NOC on 27.05.2019, the writ petition filed by the petitioner i.e. WPC No. 1761/2019 was withdrawn on 03.06.2019.

5. The respondent No.3 has now filed an appeal before the Commissioner, Bilaspur division, Bilaspur under **Order 16** of the **Chhattisgarh Motor Spirit and High Speed Diesel Oil (Licensing and Control) Order, 1980**. The learned Commissioner vide order dated 25.09.2019 i.e. the impugned order allowed the appeal preferred by the respondent No.3 and set-aside the order of the Collector dated 27.05.2019, which has led to the filing of the present writ petition.

6. The primary challenge to the impugned order is that the appeal of the respondent No.3 was firstly without any authority of law and secondly the appeal itself was not maintainable and lastly the Commissioner did not have any power of appeal against an order granting NOC to the petitioner.

7. Perusal of the impugned order would show that it has been entertained as an appeal under Order 16 of the Order of 1980. For ready reference the order 16 of the Order of 1980 is reproduced herein under:

“16. Appeal. (1) Any person aggrieved by any order of the licensing authority refusing to grant, reissue or renew a licence or cancelling or suspending a licence or forfeiting the security deposited by the licensee under the provisions of this order, may appeal to the Commissioner or Additional Commissioner of the Division within 30 days of the date of the receipt by him of the order of the licensing authority.”

8. It would be relevant at this juncture to appreciate the fact that the Order of 1980 is primarily in respect of granting of license to a dealer in Motor Spirit and High Speed Diesel. The order 16 clearly reflects that an appeal under Order 16 would lie only against the order of the Licensing Authority under the provisions of this Order of 1980. Granting of NOC or the proceedings drawn by the SDM were not under the provisions of the Order of 1980, but were on the provisions of the Petroleum Act of 1934 and the Petroleum Rules of 2002.

9. In the given facts and circumstances of the case, all that this Court has to decide is whether the appeal of the respondent No.3 was maintainable before the Commissioner, Bilaspur division or not and whether the Commissioner had the jurisdiction to decide an appeal against an order not under the Order of 1980.

10. There is no dispute so far as the proceedings drawn by the SDM being one under Petroleum Rules of 2002, which are the Rules framed under the provisions of Petroleum Act of 1934 and so far as the order 16 of the Order of 1980 is concerned as has been stated above it is confined to an appeal arising out of an order passed under the Order of 1980. Thus apparently the Commissioner does not have the power to hear an appeal invoking Order 16 of the Order of 1980 for testing the veracity of an order of the Collector passed under the Petroleum Act and the Petroleum Rules.

11. In view of the aforesaid facts and circumstances, this Court is of the view of the impugned order Annexure P/1 passed by the Commissioner, Bilaspur division, Bilaspur is ***per-se ab-initio void*** and is not sustainable and the same therefore deserves to be and is accordingly set-aside.

12. Since this Court is allowing the writ petition only on the ground of competency and jurisdiction of the learned Commissioner, this Court is not venturing into the other objections so far as locus of the respondent No.3 in preferring the appeal, etc. Leaving the said issue open to be dealt with at an appropriate stage in an appropriate proceeding, the present writ petition stands allowed and the impugned order Annexure P/1 stands set-aside/quashed.

Sd/-
(P. Sam Koshy)
Judge

Ved