

**THE HON'BLE THE CHIEF JUSTICE SRI THOTTATHIL B. RADHAKRISHNAN
AND
THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

WRIT APPEAL No.207 of 2019

JUDGMENT: *(per the Hon'ble Justice Sri A.Rajasheker Reddy)*

This appeal, under Clause 15 of Letters Patent, is preferred against the order dated 12.02.2019 passed by the learned Single Judge in W.P.No.41671 of 2017. By the said order, the learned Single Judge allowed the writ petition and directed the Indian Oil Corporation Limited, the appellants herein, to process the proposal of the writ petitioners, the respondents herein, to locate the outlet at the alternative site for establishment of retail outlet if there is no other impediment on the said proposal and a decision shall be taken for establishment of the retail outlet as expeditiously as possible, preferably within a period of three weeks from the date of receipt of a copy of that order.

2. Learned counsel for the appellant-Corporation submits that the learned Single Judge has not considered the aspect of financial viability when the petroleum outlet is established on the right side of the road, whereas initial notification states that the establishment should be at the left side of the National Highway from Hyderabad to Vijayawada at Dharmojigudem Village. He further submits that the alternative land offered by the writ petitioners is falling outside the advertised location and therefore, the same cannot be accepted.

3. On the other hand, Sri V. Ravinder Rao, learned Senior Counsel appearing for the respondents/writ petitioners, submits that the change of location was necessitated due to the objection raised by the National Highways Authority and that is beyond the control of the writ petitioners and that as per the policy guidelines of the appellant-Corporation and orders of the Government of India, it is permissible to relocate the retail outlet in the alternative land, if it is within the advertised location and that the land proposed by the writ petitioners is within the advertised location.

4. The aforesaid submission of the learned counsel for the appellants i.e., financial viability was neither raised in the counter affidavit filed by the Corporation in the writ petition nor argued before the learned Single Judge. However, what is stated in the counter affidavit filed in the writ petition is that the notification was issued fixing the site at the left side of the National Highway at Dharmojigudem Village.

5. Admittedly, the writ petitioners have not asked for change of the location on their own and it is only on account of the objection raised by the National Highways Authority, they requested the Corporation for relocating the retail outlet. The objection raised by the National Highways Authority is that 'Truck Bay' was located within 100 meters of the proposed outlet, whereas minimum distance to be maintained is 300 meters. The alternative site proposed by the writ petitioners is within the advertised location/stretch as

observed by learned Single Judge. The only difference is that the earlier site is on the left side of the road and the proposed site is on the right side of the road. As per the policy of the Corporation and the orders of the Government, there is flexibility on the issue of relocation of the retail outlet as long as it is falling within the advertised location or stretch, if location originally proposed cannot happen for the reasons beyond the control of the applicant. Since the Corporation has not expressed any apprehension about viability in terms of business before learned Single Judge and only objection raised by it is that the site is not on the same side, we are of the view that the learned Single Judge has rightly allowed the writ petition after giving cogent reasons. We, therefore, see no reason to interfere with the impugned order in this intra-Court appeal.

6. The writ appeal is, accordingly, dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

Date: 19.03.2019

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