

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 24.10.2019****CWP No.13087 of 2015 (O&M)**

Hindustan Petroleum Corporation Ltd.

...Petitioner

Vs.

The Divisional Commissioner, Ferozepur Division, Ferozepur

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Raman Sharma, Advocate, for the petitioner.

Ms. Simran Grewal, AAG, Punjab.

Mr. B.S.Sidhu, Advocate, for respondent No.3.

RAJIV NARAIN RAINA, J. (ORAL)

1. Short affidavit on behalf of respondents No.1 & 2 has been filed in Court, which is taken on record.

2. The admitted position in the affidavit is that the District Magistrate, Ferozepur had issued No Objection Certificate (NOC) to the petitioning Corporation on 23.06.2008 (Annex P-1) for developing and setting up of a New Retail Outlet (Petrol Pump) by Hindustan Petroleum Corporation Ltd. (HPCL) at Village Gumjal (FZR) on Gumjal Road, Khasra No.74/17, District Ferozepur. The petrol pump was being run by the dealer – respondent No.3, namely, Karmjeet Kaur. Her dealership was cancelled

vide Annex P-14 on 01.11.2012. Since then the parties have been in litigation. The termination order was not challenged by the dealer and has attained finality. The petitioning – HPCL has the lease deed over the land on which the Petrol Pump and its appurtenant land stands. There is sufficient period left for the expiry of the lease, which is until 2039.

3. After accepting the cancellation, respondent No.3 – ex-dealer filed a complaint to the Petroleum & Explosives Safety Organisation, Faridabad complaining that the Petrol Pump had deficiencies. She did not say that they did not exist even when she ran the Petrol Pump. The HPCL replied to the complaint giving reasons explaining that all the regulatory laws had been complied with and a valid explosive license had been issued by the Department concerned and the corporation had stepped into the shoes of the distributor to manage the Petrol Pump of which HPCL holds the license. There appears to be no obstruction in the way of the HPCL to run the Petrol Pump in accordance with law.

4. Not satisfied with the complaint to the Petroleum & Explosives Safety Organisation, respondent No.3 made another complaint to the District Magistrate one through the Gram Panchayat by reiterating the same thing. The matter was taken up and heard by the District Magistrate on 17.10.2013. The HPCL filed its replies on the same day and surprisingly on the same day, the District Magistrate passed an order withdrawing the NOC. The corporation is in court challenging the order

5. Mr. Raman Sharma, learned counsel appearing on behalf of HPCL, submits that under the rules and regulations, there is no power in the authority to withdraw a license, as it can only be cancelled against which the aggrieved party has available remedies of appeal. Rule 150 of the Petroleum

Rules, 2002 provide that NOC can be cancelled only 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. The District Magistrate has no power to withdraw the NOC, which is the reason given in the impugned order.

6. In the affidavit filed today, Rule 150 has been adverted to and reproduced, but its true meaning has been lost because in the analysis in passing the impugned order as it does not cancel, but only withdraws the NOC. Even assuming that cancellation and withdrawal are one and the same thing with one and the same effect, even then the District Magistrate exceeded its jurisdiction in passing the impugned order taking away control of the petitioning – HPCL over the Petrol Pump illegally and arbitrarily in excess of jurisdiction. If the withdrawal/cancellation leads to disuse of the Petrol Pump, it will be of no use to anyone and public interest will not be served.

7. In appeal, the Commissioner has endorsed the view of the District Magistrate without appreciating the fact that the HPCL is a Public Limited Corporation and an instrumentality of the State governed by law; it has leasehold rights over the property till 2039; and, it had cancelled the dealership by an order, which was not challenged by the dealer and which has become final. The District Magistrate could not have mechanically started proceedings on a complaint of a frustrated ex-dealer or the Gram Panchayat and then holding without sufficient thought paid to the material on record that the site was not according to the site plan. This is a whimsical conclusion based on irrelevant considerations while the relevant facts have been ignored. It has not been explained in the affidavit as to what is wrong

with the site plan duly passed in 2008 by a predecessor-in-interest of the District Magistrate taking a conscious decision after full application of mind while granting necessary approvals. In absence of any relevant material pointing out the exact defect in the site plan, the stand in the written statement cannot be accepted and I find is liable to be rejected.

8. I am constrained to say that the actions of the District Magistrate has led to a colossal financial loss to the HPCL, which cannot be compensated in any manner with the Petrol Pump lying shut since 2013. Irrelevant considerations have played their part in the orders of the District Magistrate and the Commissioner, while relevant considerations have been ignored. The orders are therefore arbitrary, perverse and not legally sustainable and are liable to be quashed.

9. Consequently, the instant petition is allowed. The orders passed by the District Magistrate and the Commissioner are set aside. Status ante is maintained from the date when the cancellation order was passed. The property is restored to the petitioning – HPCL to run its Petrol Pump. The HPCL would be at liberty to claim damages against the private respondent No 3 and the State/Gram Panchayat for the loss caused to it for 6 years by false, frivolous and vexatious complaints, in the appropriate Forum, if advised.

24.10.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes
Yes/No