

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

**CWP No.17933 of 2018 (O&M).
Date of Decision: 15.07.2019**

Ujjwala Lather

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. Sanjay Kaushal, Sr. Advocate with
Mr. Vivek Khatri, Advocate,
for the petitioner.

Mr. Vikrant Pamboo, DAG Haryana.

Mr. Ashish Kapoor, Advocate,
for respondent Nos. 5 & 6.

Ms. Sonia Madan, Advocate
for respondent No.7.

Mr. Kshitij Sharma, Advocate and
Mr. Subhash Godara, Advocate,
for respondent No.9.

JITENDRA CHAUHAN J.

Through the instant civil writ petition, the petitioner has sought quashing of impugned order dated 25.12.2017 (Annexure P-18) passed by respondent No.4 vide which permission for issuance of 'NOC' in favour of respondent No.9 was granted and; the order dated 15.05.2018 (Annexure P-21) vide which the appeal of the petitioner was rejected.

The petitioner is the owner of HP Petrol Pump in the name and style “Uma Filling Station” situated on National Highway No.52, at Jhumpa Kalan, Tehsil Siwani, District Bhiwani installed in the year

2009. It is contended by the learned Senior counsel that the action of the respondents in allotting petrol pump to respondent No.9, has resulted into direct loss to the business of the petitioner. In this regard, guidelines dated 17.10.2003 (Annexure P-1) were issued by Ministry of Road Transport and Highways. As per the guidelines dated 15.07.2004 issued by Government of India (Annexure P-2), the distance between two fuel stations on the Highways should not be less than 5 kms. The petrol pump allotted to respondent No.9 is just abutting the petrol pump of the petitioner. On the representation made by the petitioner, respondent No.4 passed a well reasoned order dated 14.08.2017 (Annexure P-14) cancelling the 'NOC' issued in favour of respondent No.9. However, vide order dated 23.10.2017 (Annexure P-17) appeal filed by respondent No.9 was accepted and the matter was remanded back to the District Magistrate with a direction to pass a speaking order taking into consideration the objections and facts raised by respondent No.9 and after going through the facts and record carefully and after taking evidence of the parties on the basis of merit. Thereafter, the District Magistrate, Bhiwani, in compliance of the order dated 23.10.2017 (Annexure P-17), heard both the parties after taking their evidence and came to the conclusion that 'NOC' can be issued for the revised site plan vide order 25.12.2017 (Annexure P-18).

It is further contended by the learned senior counsel that there is no provision for granting any temporary permission to a person who is going to instal a petrol pump without complying with all the

norms and guidelines whereas, respondent No.9 has violated the guidelines issued by the Ministry of Road Transport & Highways which was in the knowledge of respondent No.7 but despite that 'NOC' has been granted to respondent No.9. It is further contended by the learned senior counsel that respondent No.9 had damaged the standing trees and in this regard, a case was filed against him by the Forest Department. That complaint is pending against him before the Special Environmental Court at Kurukshetra.

On behalf of respondent No.7-the Highway Authority of India, it is contended that guidelines dated 17.10.2003 (Annexure P-1) have been modified by new guidelines vide circular dated 24.07.2013 (Annexure R-7/1). It is further contended that as per para Note (i) to para 4.6 of the appendix-I to the revised guidelines, in case of divided carriage-way, with no gap in medians, the distance restriction is not applicable on the opposite side of the fuel station and the minimum distance between two fuel stations on the same side shall be 1000 meter unless the access is through service road. The stretch of the highway in the present case is a divided carriage-way and the access to the petrol fuel stations is through service road and as such there is no restriction whatsoever on the distance between two fuel stations as per the applicable guidelines. It is further submitted that temporary access permission has been granted to respondent No.9 at this stage subject to completion of construction of service lane. The respondent No.7 also had sought comments of M/s Consulting Engineers Group Limited,

Hisar, who are independent engineers, wherein it was intimated that the access permission for petrol pump of the respondent No.9 had been recommended keeping in view all safety norms of traffic as per relevant guidelines of Ministry issued vide circular dated 24.07.2013. It is further contended that the construction of the said service lane is held up due to the delay and hindrance being created by the petitioner and in fact, the respondent-authority has written a letter dated 19.09.2018 (Annexure R-7/8) to Hindustan Petrol Corporation Limited informing the latter about the encroachment done by the petitioner. It has been further contended that instead of removing the encroachment, the petitioner started making unreasonable demand.

On behalf of respondent No.9, it is contended that the petitioner has a business rivalry. The allotment was made in accordance with the relevant statutory rules and there is no violation thereof. The writ petition is not maintainable in the absence of any infringement of any right of the petitioner. It is further contended that the petitioner has concealed the factum of civil suit having been decided against her. Learned counsel has placed on record a copy of the order dated 17.03.2016 which is taken on record as Mark-A. It is further contended that the petitioner had applied for information to the National Highway Authority of India, in response to which the authority had clearly informed that the 'NOC' was granted under the revised guidelines-norms dated 24.07.2013, yet the petitioner has filed the petition on the basis of the policy of 2003 which stood superseded-

modified. Moreover, the guidelines dated 15.07.2004 (Annexure P-2) also stood superseded by guidelines dated 11.07.2014 (Annexure R-3). It is further contended that the 'NOC' has been granted on the basis of the revised site plan, as also shown in the report dated 25.11.2014 (Annexure R-1) and the same was well within the knowledge of the petitioner. It is further contended that respondent No.9 stands acquitted vide judgment dated 08.01.2019 passed by Special Environmental Court, Kurukshetra (Annexure R-9/1).

On behalf of Forest Department, it is contended that as per the report sent by Range Forest Officer, Siwani dated 30.10.2013 there are three trees standing in the ingress/egress of the proposed petrol pump. In the revised site plan (Annexure R-2), no tree felling was involved. It has specifically been mentioned in the report that 8 trees and 3 plants are standing in the D-area of the petrol pump and the same have already been included in the proposal of widening of road.

I have heard the learned counsel for the parties and have gone through the case file carefully.

The petitioner has alleged certain violations in setting up of petrol pump by respondent No.9. The respondents have brought on record that the guidelines dated 17.10.2003 (Annexure P-1) have been modified by new guidelines vide circular dated 24.07.2013 (Annexure R-7/1). As per para Note (i) to para 4.6 of the appendix-I to the revised guidelines, in case of divided carriage-way, with no gap in medians, the distance restriction is not applicable on the opposite side of the fuel

station and the minimum distance between two fuel stations on the same side shall be at least 1000 meter unless the access is through service road. The stretch of the highway is a divided carriage-way and the access to the petrol fuel stations is through service road and as such there is no restriction whatsoever on the distance between two fuel stations. The temporary access permission has been granted to respondent No.9 subject to completion of construction of service lane. As per the comments of M/s CEG, Hissar, the access permission for petrol pump of respondent No.9 had been recommended keeping in view all safety norms of traffic as per relevant guidelines of Ministry issued vide dated 24.07.2013 (Annexure R-7/1). The construction of the service lane has been stalled because of the resistance by the petitioner herself and hence, she cannot be allowed to derive benefit from her own wrong. In the revised site plan (Annexure R-2), no tree felling was noticed. There is a report that eight trees and three plants are standing in the D-area of the petrol pump and the same have already been included in the proposal of widening of road. Respondent No.9 stands acquitted by Special Environmental Court, Kurukshetra vide judgment dated 08.01.2019 (Annexure R-9/1).

Moreover, in terms of the impugned order dated 15.05.2018 (Annexure P-21), the petitioner was given the liberty to approach the concerned department by which 'NOC' and the permission certificate have been issued in favour of respondent No.9 and therefore, the legality can be challenged before competent officer

of the concerned department. The matter does not end here. Even as per the order dated 17.03.2016 (Mark-A), a detailed reference has been made to the various provisions of the Petrol and Natural Gas Regulatory Board Act, 2006, to hold that it is the Petrol and Natural Gas Regulatory Board which is competent to exercise the powers of a civil Court and consider and decide such matters effectively. The petitioner has neither approached the aforesaid authorities nor disclosed about the order dated 17.03.2016 (Mark-A) in her writ petition which is a concealment of a material fact from this Court which also calls for an adverse inference against the petitioner.

In **Malkiat Singh Vs. State of Punjab and others CWP**

No. 18423 of 2014 decided on 05.09.2014, it was held as under:-

“3. There is something more fundamental about entertaining a petition at the instance of the person who is himself a petrol dealer and who finds the location of the 10th respondent as constituting a fetter in his own business prospects. In competition obtains better value of services and a petrol pump dealer cannot have a monopoly in a place and complain of another new entrant in the same location. There could be no bona fides in such type of actions brought at the instance of a competitor complaining of the location on alleged harm to public interest. A Division Bench of the Orissa High Court held in Narapan Mallich Vs. Union of India and others in AIR 2008 Ori 54 that an existing retail outlet dealer of one oil company functioning the same area has no locus standi to object the setting up another company.

The Bench ruled that oil companies are forced to establish retail outlets at location of their choice, if found viable, within any distance of any existing retail outlet subject to no objection from local authorities. The Kerala High Court in Mary Ulahannan Vs. Union of India 2011 (3) KLT 570 2011 (6) RCR (Civil) 750 came to same conclusion regarding locus standi and laid down two other tenets; (i) If eligibility to have an outlet is found on the basis of NOC, it cannot be marked down by 'Distance Rules' or 'Quantum Rule' (ii) Writ is not an appropriate remedy for intervention. I am in respectful agreement with both the decisions."

In view of above, no ground for interference is made out.

Dismissed.

15.07.2019.

SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No