

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9611-2016

Date of decision : 27.03.2019

Laxmi Bharat Gas Gramin Vitrak, Bathinda

...Petitioner

Versus

Deputy Commissioner-cum-District Magistrate and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Surinder Garg, Advocate for the petitioner(s).

Mr. Vikas Mohan Gupta, Addl.A.G., Punjab.

Ms. Charu Sharma, Advocate for respondent No.2.

Respondent for respondent No.3 proceeded against *ex parte*
vide order dated 05.08.2016.

JITENDRA CHAUHAN J. (ORAL)

The petitioner assails the order dated 13.01.2016 (Annexure P-11), passed by respondent No.1, whereby, the petitioner was directed to shift the LPG godown from the alleged abadi area.

The petitioner set up an LPG Distributorship after taking requisite licence(s)/permission(s) from the Petroleum and Explosives Safety Organization, the Divisional Fire Officer, Fire Brigade, Bathinda, etc.

It is submitted that respondent No.3, who is nursing a grudge against the petitioner, gave a representation dated 10.09.2015 (Annexure P-8) to the authorities including respondent No.1 for removal of the godown

alleging that the same has been constructed in a densely populated area. Thereafter, respondent No.3 approached this Court by filing CWP-20915-2015 seeking direction to the official respondents to remove the godown of the petitioner. The same was disposed of by this Court with a direction to respondent No.1 herein to look into the matter and take appropriate action as per law. It is submitted that respondent No.3 has also been obstructing the petitioner in carrying out his daily business and a complaint in this regard was submitted by the petitioner to the DSP, Bathinda, on 08.01.2016 (Annexure P-10). To the utter surprise of the petitioner, he received order dated 13.01.2016 (Annexure P-11), passed by respondent No.1 directing the petitioner to shift his godown to some safer place against the principles of natural justice.

It is submitted that the impugned order dated 13.01.2016 is illegal and arbitrary inasmuch as the committee constituted to submit report with regard to the allegations levelled by respondent No.3 has submitted a one-sided report as the petitioner was neither given any prior notice nor opportunity of hearing to put up his case. Moreover, no notice was issued to the Bharat Petroleum Corporation Ltd. to explain under what circumstances the construction of the godown was allowed. Even the Joint Chief Controller of Explosives as well as the office of the Fire Brigade, Bathinda, who issued requisite approvals to the petitioner was not associated. In fact, when the petitioner started operating from the godown in question in the year 2012, some of the persons constructed their houses in the immediate vicinity.

On the other hand, learned State counsel submits that even at the time of construction of the godown in question, some structures/houses were already in existence at that place. The petitioner did not show said construction in the site plan submitted by him before the Joint Chief Controller of Explosives.

Heard.

The grant of permission for construction of godown for storing the LPG cylinders is governed by the provisions of Gas Cylinder Rules, 2004. Rule 48 mandates for requirement of no objection certificate from various authorities, Rule 49 deals with the application of licence and Rule 50 deals with the grant of licence and after following the said procedure the petitioner was given permission to construct the Godown. Form F under the heading licence relates to storage of compressed gas cylinders and Clause 5 deals with particular distance in between the store & the adjoining property. As per Clause 5 of Form F, if the storage capacity of the godown is 4001 to 6000, the minimum distance from the adjoining property should be 6 metres from the godown being constructed. Relevant Clause 5 of Form F is reproduced as under:

“ *'Form F'*

XXX XXX XXX XXX XXX

5. The following distances shall be kept clear at all times, between any building public place, public road or any adjoining property which may be built upon and the storage shed used for the storage of liquefied petroleum gas cylinder:-

Quantity of compressed as in cylinder	Minimum distance to be kept clear
Kg	Metres
0-100	-
101-2000	3
2001-3000	4
3001-4000	5
4001-6000	6
6001-8000	7
8001-10000	8
10001-12000	9
12001-20000	12
Over 20000	15

Provided that the distance specified above may be reduced by the Chief Controller (i) where scree walls are provided or other special precautions taken, or (ii) where there are special circumstances which in the opinion of the Chief Controller would justify such reduction.”

It is not in dispute that the petitioner set up the gas agency after he was found suitable by the Bharat Petroleum Corporation Limited. It is also admitted fact that before starting operation, the petitioner obtained necessary approval/permission from four different agencies as per the Rules/standard procedure. It is apparent from the perusal of the impugned order (Annexure P-11) that the petitioner was not given any opportunity to explain his case. Furthermore, neither the Bharat Petroleum Corporation Ltd which had allotted the gas agency to the petitioner, nor the other agencies which had granted approval to the petitioner before starting operations, were associated by the fact-finding committee.

In view of the above, the instant petition is allowed and impugned order dated 13.01.2016 (Annexure P-11) is set aside. However, respondent No.1 free to initiate/re-initiate the proceedings, if any, after due notice to the petitioner as well as all the agencies with whose approval and sanction the petitioner had been operating the gas agency in question.

It is further noticed that the complaint against the petitioner moved by respondent No.3 appears to be motivated as despite service the complainant did not cause appearance. The Court feels that the petitioner has been made to suffer without any fault, its livelihood is severely threatened and also causing hardship and inconvenience to all the consumers of the petitioner. Therefore, costs of ₹25,000/- are imposed upon respondent No.3 to be paid to the petitioner within a period of three months from the date of receipt of a certified copy of this judgment.

Registry is directed to send a copy of this judgment to respondent No.3 for compliance.

27.03.2019*atulsethi***(JITENDRA CHAUHAN)
JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No