IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA-1725 of 2018 (O&M)
Date of Decision: 27.01.2020

Bharat Petroleum Corporation Ltd.

... Appellant

versus

National Highways Authority of India & Anr.

... Respondents

CORAM : HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ARUN MONGA

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

Mr. Arun Gosain, Advocate
for respondent No.2

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***ARUN MONGA*, J.**

1. Short controversy requiring adjudication herein is whether a pre-existing petrol pump commissioned in the year 1999, way prior to the enactment of National Highways Act, 2002 (for short, the 'Act') can retrospectively be inflicted with a penalty of Rs.25,00,000/- for not seeking prior approval under the Act, *ibid,* from the Ministry concerned?

2. Appellant-Bharat Petroleum Corporation Limited (for brevity, BPCL) is aggrieved by the judgment rendered by learned Single Judge dated 28.08.2018 whereby the aforesaid penalty imposed vide impugned order dated 19.04.2016 has been upheld. Learned Single Judge relied on guidelines dated 24.07.2013 issued by the Ministry concerned and also observed that BPCL being merely a lease-holder of the land in question, is not the owner of the petrol pump and, therefore, writ petition filed by petitioner/appellant herein deserved to be dismissed. For ready reference, relevant extract of learned Single Judge order is reproduced hereinbelow:-

> "*The petitioner not being the owner of the land and only a lease holder had been running the retail outlet without taking NOC from the Ministry wherein it was mandated for all the existing fuel station to regularize the fuel station which has not obtained prior permission from the Ministry subject to deposit of penalty of Rs.25 lakh. Further, vide order dated 30.11.2017, liberty was given to the petitioner to the effect that in case the petitioner deposit the penalty of Rs.25 lakh within four weeks, then respondents shall process the application of the petitioner for the purpose of expansion of the site for access to the petrol pump, however, the petitioner has failed to do so. Since the petitioner is not the owner of the land and in view of the guidelines issued by the Ministry, the instant petition is dismissed.*"

3. Succinct factual matrix, as adumbrated by learned Single Judge is that the appellant BPCL had set up the retail outlet after obtaining the requisite "No Objection Certificate" dated 07.09.1998 from the District Magistrate, Ludhiana in terms of Rule 144 of Petroleum Rules. The, then pre-requisites which were *sine qua non* for according the NoC were duly complied with by the BPCL. Sometime on or around 06.03.2014, BPCL moved an application before the District Magistrate for granting NoC for expansion of petrol pump in respect of extra land contiguous to existing retail outlet site. The Project Director and Manager Technical, National Highway Authority of India(respondent herein) after finding all the requisite conditions to be in order, recommended the expansion proposal of BPCL to the competent authority for necessary sanction. However, the said proposal was declined and instead the appellant was asked to deposit a penalty of R.25,00,000/- in terms of guidelines dated 24.07.2013 *ibid.* The said penalty was imposed ostensibly on the ground that petrol pump had been commissioned without approval of the Ministry.

4. It would be apposite to reproduce the relevant extract of said guidelines, before proceeding further:-

> "*Sub: Guidelines/Norms for access permission to Fuel Stations, Private Properties, Rest Area Complexes and such other facilities along National Highways.*
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> "*Sir, Ministry had issued separate guidelines on access permission to Fuel Stations, Service Stations; Rest Areas etc. vide Circular No. RW/NH-33023/19/99-DO-III dated 25.09.2003/17.10.2003, & access permission to Private Properties etc. along National Highways vide Circular No. RW/NH-33023/19/99-DO-III dated 31.08.2000. With the improvement in the National Highway network, a greater need for road safety of the users has been felt along with stricter enforcement of the guidelines. It has also been decided that unified norms for access to Fuel Stations, Service Stations, Private Properties, Rest areas and other such facilities along the National Highways may be evolved.*
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> *2. Accordingly, the existing Norms and guidelines have now been modified and the unified Guidelines/Norms are enclosed at Appendix-I & Appendix-II. The Norms at Appendix-I will be applicable for access permission to all Fuel stations, Service stations, Rest areas, etc. and Norms at Appendix-II will be applicable for access permission to Private Properties, from the date of the issue of this Circular. These norms shall be followed for seeking and granting permissions for the access to National Highways."*
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> *3 to 6 xxx*
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> *7. In case of existing fuel stations constructed as per Ministry's norms but for which prior approval has not been obtained from the Ministry, a penalty of Rs. 25,00,000/- shall be imposed on the Oil Company to regularize such fuel stations. However, in case of fuel stations existing on newly declared National Highways, there shall be no penalty but, such Oil Companies shall have to pay the processing fee of Rs. 10,000/- to the Highway Administration and will be granted 6 months' time to*

comply with the Ministry's norms. If the deviations from Ministry's norms are non-rectifiable, such cases shall be dealt on case to case basis.

xxx"

"APPENDIX – I

(Enclosure to Ministry of Road Transport & Highways letter no. RW/NH-33023/19/99-DOIII dated the 24th July, 2013)

I- NORMS FOR LOCATION, LAYOUT AND ACCESS TO FUEL STATIONS ALONG NATIONAL HIGHWAYS.

1. These norms have been finalized in conformity to IRC: 12, ' Guidelines for Access, Location and Layout of Roadside Fuel Stations and Service Stations' and in substantial modification to the Ministry's Circular No. RW/NH-33023/19/99-DOIII dated 25.09.2003/17.10.2003 on "Norms for the Access for Fuel Stations, Service Stations and Rest Areas along National Highways". These norms shall be applicable to all new fuel stations with effect from the date of issue of this Circular."

(emphasis supplied)

5. In the aforesaid background, the conceded factual position that emerges from perusal of the pleadings and the record appended thereto is that the retail outlet in question was commissioned by BPCL in the year 1999 way prior to promulgation of the National Highway Act in year 2002.

6. Having heard the rival contentions of learned counsel appearing for the respective parties, we are of the view that appeal deserves to be allowed.

7. A glance over the guidelines date 24.07.2013 *ibid* would reveal that it was in continuation of earlier guidelines dated 17.10.2003 issued by the Ministry of Road Transport and Highways, whereby certain modifications were carried out as per Appendix I in respect of access permission to all fuel stations, service stations and rest areas. Perusal of Appendix I reveals that the same is applicable to new fuel stations. The norms envisaged therein are to be

followed by the new fuel stations with effect from the date of issuance of the circular/ guidelines dated 24.07.2013. However, para No.7 of the said guidelines provide that pre-exiting fuel stations/ retail outlet commissioned as per norms notified by the Ministry for which prior approval has not been obtained by the Ministry, a penalty of Rs.25,00,000/- be imposed to regularize such retail outlets. It is in this context that commissioning of the retail outlet in question in the year 1998/99 after getting all the requisite permissions of the relevant time, attains significance viz-a-viz imposition of penalty pursuant to clause 7 of the guidelines(supra) vide impugned order dated 19.04.2016, which was assailed in the writ proceedings.

8. While learned Single Judge opined that petitioner-Bharat Petroleum Corporation Limited (appellant herein) is merely a lease holder and being not owner of land where fuel station is commissioned, is not entitled to guidelines dated 24.07.2013 issued by the Ministry. There is no dissent by learned Single Judge either on interpretation of guidelines that these shall be applicable to those fuel stations where prior approval has not been taken or that the fuel station in question is not pre-existing prior to guidelines or that the prior approval was not taken by Bharat Petroleum Corporation Limited before commissioning its fuel station. Notwithstanding, the learned Single Judge held that since Bharat Petroleum Corporation Limited is not owner of land and in view of guidelines issued by the Ministry dismissed the petition. With due respect, all that the guidelines envisage is that "in case of existing fuel station" and not whether the existing fuel station is commissioned by owner of the land and/or by lessee of the land. The guidelines merely contemplate a pre-existing fuel station and that is not disputed herein. The learned Single Judge, to that extent, seems to have gone beyond the scope of the guidelines while dismissing the petition, on the ground that Bharat Petroleum Corporation Limited is not owner of the land. In any case, the issue

whether Bharat Petroleum Corporation Limited is an owner or a lessee is insignificant, since indisputably the prior approval for commissioning of fuel station was granted by the competent authority, way back in the year 1999, after following due legal procedure.

9. Adverting now to the guidelines, as already stated, the guidelines dated 24.07.2013 were in continuation of the earlier existing guidelines dated 17.10.2003. We are, therefore, of the opinion that retrospective effect envisaged under Clause 7 of guidelines dated 24.07.2013 relates to the retail outlets set up after 17.10.2003 and before 24.07.2013 qua which prior approval was not obtained from the Ministry in terms of norms conveyed vide guidelines dated 17.10.2003. There is no gain saying in observing that guidelines dated 17.10.2013 were applicable to all the retail outlets across board which were set up after the said guidelines came in force. As a corollary, penalty of Rs.25,00,000/- envisaged in terms of guidelines dated 17.10.2013 cannot be imposed on retail outlets commissioned prior to 17.10.2003.

10. Another aspect which is noteworthy herein is that concededly the penalty has been imposed on the ground that Oil Company has to take NoC from Ministry for granting access to its retail outlet from national highway. The access to the Oil Company/ its retail outlet can only be provided if the retail outlet is first regularized by paying penalty of Rs.25,00,000/- so as to entitle itself for getting access to the National Highway. The said reasoning adopted by the competent authority while passing the impugned order also does not stand judicial scrutiny as same flies in the face of the admitted position that retail outlet is located in the service lane and not on the National Highway. The access to the retail outlet is pre-existing through 8 Mtrs. Road which was constructed under Six Laning Project of the Highway.

11. As an upshot of the discussion above and the reasoning contained therein, the appeal is allowed. The order dated 28.08.2018 passed by learned Single Judge is set aside. Consequently, writ petition filed by the appellant-petitioner is allowed and order dated 19.04.2016 impugned in the writ petition is quashed. BPCL is at liberty to seek expansion of its retail outlet commissioned in 1999 in accordance with applicable norms.

12. No order as to costs.

(JASWANT SINGH)
JUDGE

(ARUN MONGA)
JUDGE

January 27, 2020
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Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No