

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR**

**CRIMINAL APPLICATION (APPLN) NO.3346 OF 2009**

Hindustan Petroleum Corporation Limited  
A company registered under the Companies  
Act, having its head office at 11, Jamshedji  
Tata Road, Mumbai, represented by Senior  
Regional Manager, Nagpur Retail Region,  
2<sup>nd</sup> Floor, Oriental Building, S.V. Patel Marg,  
Nagpur. .... **APPLICANT**

**...V E R S U S...**

1. State of Maharashtra through  
Sub-Divisional Magistrate,  
Chandrapur.
2. Head-Mistress,  
F.E.S. Girls' High School,  
Chandrapur.
3. National Petrol Pump through its  
Proprietor Devendra Gajananrao  
Dhakate, Near Patel High School,  
Chandrapur. .... **NON-APPLICANTS**

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Mr. V.V. Bhangde, Advocate for Applicant.  
Mr. N.R. Rode, APP for Non-Applicant 1/State.  
Mr. Anjan De, Advocate for Non-Applicant 2.

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**CORAM:**      **ROHIT B. DEO, J.**  
**DATE:**        **11<sup>th</sup> FEBRUARY, 2021.**

**ORAL JUDGMENT:**

The petitioner is assailing the order dated 22.10.2007

rendered by the Sub-Divisional Magistrate, Chandrapur in purported exercise of power under Section 133 of the Criminal Procedure Code, 1973 (Code) whereby the petitioner is directed to shift petrol pump from its present location and the judgment dated 12.8.2009, rendered by Additional Sessions Judge-1, Chandrapur in Criminal Revision 153/2007 whereby aforesaid order of the learned Sub-Divisional Magistrate, Chandrapur is maintained.

2. The petitioner is a company registered under the Companies Act, 1956 and is engaged in the business of refining and marketing of petroleum products.

3. It is not in dispute that the selection committee constituted to allot petrol pumps to interested candidates selected the non-applicant 3 as the dealer of the retail outlet (petrol and diesel) under open category.

4. Letter of intent was issued on 29.11.2004.

5. The applicant approached the District Magistrate, Chandrapur for the No Objection Certificate (NOC) envisaged under the Petroleum Rules, 2002 (Rules) which was duly received on 29.06.2005.

6. The applicant asserts that before issuing the NOC the

District Magistrate, Chandrapur made the necessary inquiry under Rule 144 sub-rule (5) of the Rules. The Chief Officer, Chandrapur submitted report dated 10.02.2005 vouching for the safety of the location of the petrol pump. The Chief Officer, Chandrapur opined that the establishment of the retail outlet would not cause any inconvenience to the residents. The Tahsildar, Chandrapur issued a public notice dated 16.02.2005 inviting objections from the public at large in respect of the proposed petrol pump. The applicant contends that no objection was received.

7. Notably, the Sub-Divisional Magistrate who is the author of the impugned order conducted an inquiry and submitted report to the District Magistrate stating that the site of the petrol pump was suitable and safe and that no inconvenience shall be caused to the residents of the locality. The Superintendent of Police, who was also requested to submit his views, stated that the location of the petrol pump shall not pose a traffic hazard and that there is no objection as such from any person to the proposed petrol pump.

8. The applicant avers that an application dated 18.05.2006 came to be filed before the Collector, Chandrapur

purportedly by residents of Bhanapeth complaining that the petrol pump is a source of nuisance. The non-applicant 2 also preferred application dated 28.07.2006 before the Sub-Divisional Officer, Chandrapur objecting to the petrol pump.

9. The applicant avers that without making any inquiry the Sub-Divisional Officer issued show cause notice to the applicant and its Sales Officer, which was followed by show cause notice dated 27.09.2006. The applicant submitted an elaborate reply dated 30.10.2006. The Sub-Divisional Magistrate then issued another show cause notice dated 04.12.2006 along with which was enclosed copy of the complaint dated 18.05.2006 purportedly made by the residents of the locality and the copy of the application dated 28.07.2006 made by the applicant 2. The notice alleges that the applicant did not disclose, in the map submitted to the District Magistrate, the location of the non-applicant 2 school in close proximity of the proposed petrol pump. The notice further states that the issue is not explosives as such, but traffic congestion and noise pollution and the applicant shall respond to the proposed closure or shifting of the petrol pump. The applicant submitted reply dated 05.12.2006. The applicant further appeared before the Sub-Divisional Magistrate on 02.01.2007.

The Sub-Divisional Magistrate was not available and the applicant left after recording its presence vide letter dated 02.01.2007.

10. The non-applicant 3 – dealer stopped lifting the petrol from the depot with effect from 10.01.2007 and inquiries by the applicant revealed that the Sub-Divisional Magistrate had passed an order dated 08.01.2007 restraining the dealer from lifting new stock of the petrol/diesel and from selling the petrol/diesel. The dealer was further directed to shift the petrol pump.

11. The applicant collected the necessary and relevant documents and approached the Sessions Judge, Chandrapur in criminal revision. The learned Sessions Judge, Chandrapur set aside the order of the Sub-Divisional Magistrate, *inter alia* on the ground of denial of fair opportunity. A finding is recorded that the Sub-Divisional Magistrate did not conduct the inquiry as required under Section 133 of the Code. The matter was remanded to the Sub-Divisional Magistrate to make due inquiry, record evidence and then pass suitable orders.

12. The applicant filed on record preliminary objections in the proceedings which commenced on remand, questioning the

very tenability of the proceedings. In the interregnum on 16.7.2007 the Sub-Divisional Magistrate, Chandrapur directed the Chief Officer, Nagar Parishad, Chandrapur and the concerned police station to inquire into the grievances purportedly made by the residents of Bhanapeth, Chandrapur. The applicant asserts that it could lay hands on the said letter only after passing of the order impugned and at no point in time the Sub-Divisional Magistrate conducted a participative inquiry.

13. The applicant has referred to certain events which occurred after the issuance of the letter *supra* which culminated in the order impugned. It would not be necessary to make a reference in detail to the pleadings. Suffice it to record, that the grievance of the applicant is that the entire process which culminated in the order impugned not only does violence to the statutory scheme, the principles of natural justice were not followed rendering the order of nullity. The applicant approached the Revisional Court vide Criminal Revision Application 153 of 2007 which is rejected by the Additional Sessions Judge, Chandrapur vide judgment dated 12.08.2009.

14. Mr. V.V. Bhangde would submit, and the submission is

not rebutted by the non-applicants, that the alleged inquiry was conducted behind the back of the applicant. The order impugned reveals that the authority himself conducted a spot inspection on 25.07.2007 and recorded statements of the persons mentioned in the order impugned. Mr. V.V. Bhangde points out that the spot inspection is not recorded in the order-sheet. The applicant was not informed of the proposed spot inspection. The statements allegedly recorded were not supplied to the applicant. Mr. V.V. Bhangde would submit that at every stage, the principles of natural justice are flouted. Closure of the petrol pump is a drastic step. The least which the authority was expected to do, was to make the applicant aware of the material on the basis of which the authority was inclined to take the view, which he did.

15. Mr. V.V. Bhangde's submission that the order impugned is rendered in violation of the principles of natural justice, is unexceptionable. In all fairness to the learned counsel appearing on behalf of the non-applicants, it is not even argued that the principles of natural justice were duly complied with.

16. In fairness to Mr. V.V. Bhangde, it must be recorded several other submissions are canvassed including the submission

that in view of the special legislation *inter alia* the Petroleum Act and the Rules, the learned Sub-Divisional Magistrate did have the jurisdiction under Section 133 of the Code to direct closure or shifting of the petrol pump. The only course available was for the authority under the said Act and the Rules to cancel the no objection certificate. It is also submitted that the mandatory procedure envisaged under Section 133 of the Code is not followed. In the light of the view which I have taken, it would not be necessary to make any definite observation on the other submissions which are canvassed. I propose to quash the orders impugned on the short ground of non-observance of the principles of natural justice and every other contention raised in this application, is kept expressly open.

17. The judgment and order impugned are quashed.

18. The application is allowed.

**JUDGE**