

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

CRIMINAL WRIT PETITION 1030 OF 2017

Deepak Sundarlal Murarka,
age 48 yrs, Occ. Business,
r/o. Murarka House, Near Tower
Chowk, Tah. Dist. Akola

..... **PETITIONER**

...VERSUS...

1. M/s. Harjimal Onkarmal
a Registered Partnership Firm,
through its Partners –
Mr. Mayur s/o. Gopal Murarka,

2. Mayur Gopal Murarka,
aged 36 yrs, Occ. Business,

3. Govind Madanlal Murarka,
aged 65 yrs, Occ. Business,
r/o. Near Tower, Shrawagi
Plots, Akola Tq. Dist. Akola

No. 1 to 3 r/o. Murarka Petrol Pump
Gandhi Chowk, Tah. Dist. Akola

4. District Magistrate
Collector Office, Tah. Dist. Akola

5. Abhijit Sharadchandra Mulay,
aged 42 yrs, occ. Tax Practice,
r/o. Alsi Chowk, Beside Nishant
Towers, M.G. Road,
Tah. Dist. Akola

6. Manoj Mohanlal Bilala,
aged adult, Occ. Business,
R/o. Gita Nagar Bye-pass, Akola
Tah. Dist. Akola

..... **RESPONDENTS**

Mr. U.J. Deshpande, counsel for petitioner.
Mr. M.G. Sarda, counsel for respondents 1 to 3.
Mr. M.K. Pathan, APP for respondent 4/State.

CORAM: **ROHIT B. DEO, J.**
DATE: **09th March, 2021.**

ORAL JUDGMENT:

Heard Mr. U.J. Deshpande, the learned counsel for the petitioner, Mr. M.G. Sarda, the learned counsel for the respondents 1 to 3 and Mr. M.K. Pathan, the learned APP for respondent 4/State.

2. The petitioner is assailing the judgment dated 4.10.2017, rendered by the Additional Sessions Judge-2, Akola in Criminal Appeal 121/2016, whereby, in purported exercise of power under Rule 154(2) of the Petroleum Rules, 2002 (“Rules”), the appeal preferred by respondents 1 to 3, challenging the communication dated 13.6.2016, issued by the District Magistrate, Akola, informing the Joint Chief Controller of Explosives that no ‘no objection certificate’ (“NOC”) was issued to the petroleum service station of M/s. Harjimal Onkarmal – a partnership firm on

plot 33/1, sheet 40-A of Akola, was allowed.

3. The petitioner contends that respondent 1, which is a registered partnership firm, is operating a petrol pump at Akola without valid NOC since 1.9.1961. The contention is premised on the assertion that the NOC was initially issued in the name of individual Mr. Harjimal Onkarmal on 16.4.1959. Mr. Harjimal Onkarmal expired on 26.5.1959 and the respondents 2 and 3 Mr. Mayur Murarka and Mr. Govind Murarka are operating the petrol station illegally in the name of respondent 1 – firm.

4. The petitioner contends that the Joint Chief Controller of Explosives, acted pursuant to the petitioner's complaint and directed the District Magistrate to submit report. It is then contended that the Additional District Magistrate, Akola reported that the petrol pump was being operated without valid NOC and the said view was approved by the District Magistrate, Akola, who accordingly submitted a report dated 17.6.2013 to the Joint Chief Controller of Explosives. The petitioner contends that the office of the Joint Chief Controller of Explosives issued notice to respondent 1 to show cause why action should not be initiated for cancelling the licence granted under the Rules, in view of the

opinion of the District Magistrate that there was no valid NOC.

5. The petitioner contends that instead of filing reply to the show cause notice with the office of the Joint Chief Controller of Explosives, the respondent firm preferred an appeal purportedly under Rule 154 before the Divisional Commissioner assailing the enquiry report dated 10.6.2013, submitted by the Additional District Magistrate and which was approved by the District Magistrate. The petitioner objected to the tenability of the appeal on the ground that the appeal assailed an enquiry report and not an order rendered by the District Magistrate. The Divisional Commissioner rejected the objection vide order 24.2.2014 and directed the petitioner to respond to the memo of appeal on merits.

6. The petitioner contends that the order of Divisional Commissioner rejecting the objection was assailed in Writ Petition 2374/2014. This Court allowed the petition vide order dated 27.7.2015 and held that the appeal preferred by the respondent 1-firm under Rule 154 of the Rules, challenging the report dated 10.6.2013 and its approval by the District Magistrate dated 15.6.2013, is not maintainable. This Court granted liberty to

respondent 1 to assail the legality and validity of the enquiry report dated 10.6.2013 and the approval dated 15.6.2013 in an appropriate proceedings.

7. The petitioner avers that in view of the judgment in Writ Petition 2374/2014, the appeal preferred by the respondent 1 was dismissed by the Divisional Commissioner vide order dated 18.9.2015.

8. The petitioner then contends that vide communication dated 13.6.2016 addressed to the Joint Chief Controller of Explosives, the District Magistrate, Akola referred to the earlier communication dated 17.6.2013 and reiterated that no NOC was issued in the name of respondent 1 to operate petrol pump on plot 33/1. The District Magistrate asserted that the question of rendering an opinion in respect of NOC in the name of respondent 1 firm did not arise since no NOC was ever issued in favour of the firm.

9. The petitioner avers that the communication dated 13.6.2016 was assailed by respondents 1 to 3 in Criminal Appeal 121/2016, which was entertained by the Additional Sessions

Judge-2, Akola and decided vide judgment dated 4.10.2017. The petitioner contends that the Additional Sessions Judge – 2, Akola committed a jurisdictional error in entertaining the appeal questioning the opinion rendered by the District Magistrate, in purported exercise of power under Rule 154(2) and in remanding the matter to the District Magistrate for fresh consideration and decision and deciding whether the respondent 1 - firm lost the right to site or not.

10. The short submission of the learned counsel for the petitioner Mr. U.J. Deshpande is that the learned Additional Sessions Judge was not clothed with the jurisdiction to entertain appeal much less under 154(2) of the Rules in as much as the communication dated 13.6.2016 is not an order cancelling the NOC. Mr. U.J. Deshpande would submit that the learned Additional Sessions Judge, Akola failed to notice that he was not the superior authority of the District Magistrate and assumed jurisdiction under Rule 154(2) which he did not possess.

11. In the memo of petition, several other grounds are raised inter alia the ground that a fact that the respondent 1 was not possessing NOC since the NOC to operate the petrol pump

was issued in the name of an individual Mr. Harjimal Onkarmal and upon his death, the NOC ceased to be in existence. However, since the only submission which is advanced during the the course of hearing is the tenability of the appeal, it is not necessary to dilate on the other contentions raised in the body of petition, and the same are left open for the appropriate forum to consider, if such an occasion arises.

12. Mr. M.G. Sarda, the learned counsel for the respondents 1 to 3 has placed on record summary of the oral submissions. The respondents 1 to 3 contend that the communication dated 13.6.2016 in effect cancels the NOC, and therefore, the appeal preferred under Rule 154(2) of the Rules is clearly maintainable. Extension of the submission is, that the District Magistrate is empowered to cancel the NOC only under Rule 150 of the Rules and in the absence of any other provision dealing with cancellation of NOC, the communication dated 13.6.2016 is in effect an order under Rule 150, and as a necessary corollary, the appeal preferred under Rule 154(2) of the Rules is maintainable.

13. Dealing with the submission that the superior

authority of the District Magistrate is the Divisional Commissioner and not the Sessions Judge, respondents 1 to 3 contend that in Writ Petition 2374/2014, the petitioner herein asserted that the superior authority of the District Magistrate is the Session Judge and not the Divisional Commissioner and, while deciding Writ Petition 2374/2014, this Court observed thus:

“9. The respondent No.1 while holding the appeal to be maintainable misdirected itself by observing that under the hierarchy prescribed under the Maharashtra Land Revenue Code 1966, a superior Authority could entertain the appeal. It is well settled that the right to prefer an appeal has to be conferred by a statute and in absence of any such statutory provision, there is no right whatsoever to file an appeal. The rejection of the preliminary objection by the respondent No.1, therefore, cannot be sustained.”

14. In my considered view, the petition deserves to be allowed on the short ground that the learned Additional Sessions Judge committed a jurisdictional error in entertaining the appeal in purported exercise of power under section 154(2) of the Rules.

15. Rule 154 reads thus:

154. Appeals - (1) *An appeal shall lie against any order refusing to grant, amend or renew a licence cancelling or suspending a licence to -*

(i) the Central Government, where the order is passed by the Chief Controller;

(ii) the Chief Controller, where the order is passed by a Controller;

(iii) the immediate official superior to the District Authority, where the order is passed by the District Authority;

(iv) the immediate official superior to officer appointed under rule 33 in the case of vessels licenced for the carriage of petroleum in bulk.

(2) An appeal against any order of the District Authority refusing to grant or cancelling a no-objection certificate shall lie to the authority which is immediately superior to the said District Authority.

(3) Every appeal shall be in writing and shall be accompanied by a copy of the order appealed against and shall be presented within sixty days of the order passed.

[(4) The Appellate Authority shall dispose off the appeal within 60 days of the receipt of the appeal.]

16. A plain reading of section 154 in the context of the factual matrix, would show that unless there is an order refusing to grant, amend or renew a licence or an order cancelling or suspending a licence, or an order refusing to grant or cancelling a NOC an appeal under Rule 154 is not maintainable. Further, it is equally clear that if the order is passed by the Chief Controller, the appeal lies before the Central Government, if the order is passed by Controller, the appeal lies before the Chief Controller and if the

order is passed by the District Authority, the appeal lies before the authority immediately superior to the District Authority.

17. The seminal issue which is involved is whether the communication dated 13.6.2016, issued by the District Magistrate, Akola is an appealable order. It would be apposite to reproduce the said communication in its entirety.

“To,

Jt. Chief Controller of Explosives,
A/1, A/2-wing, 5th Floor, CGO Complex,
C.B.D. Belapur, Navi Mumbai-400 614.

Subject : Regarding NOC to Petroleum Service station of M/s HarjimalOnkarmal, Partnership firm, Akola at Plot No 33/1, Sheet No. 40A Akola town District Akola and status of NOC issued to Shri HarjimalOnkarmal, Akola.

Reference : Your letter dt. 23/9/2015 & Dt. 28/10/2015.

As per your earlier letters dated 27/08/2012 & 19/10/2012 this office by letter No.Desk 2/H.A/Home/WS 361/2013 dt. 17/06/2013 had informed you the opinion of this Office in respect of NOC issued to Shri Harjimal Onkarmal Akola. That, after your letter detail enquiry was conducted by this Office and the conclusion of the enquiry was informed to you in the following terms;

“From the above facts it is seen that after the date of death of Shri Harjimal Onkarmal the NOC issued by the District Magistrate Akola on 16/04/1959 is not valid. So it is clear from the wordings of Rule 157 of Petroleum Rules 2002 and the above pointed facts that the questions whether the NOC No.2490/IV/Dated 16/04/1959 is valid or not for any of the firm Harjimal Onkarmal including the so called Firm M/s Harjimal Onkarmal does not arise for consideration of this Authority”.

You can refer the above quoted text from the letter, dated 17.06.2013 issued to you. It is intimated to you that, an appeal bearing No.25/Petroleum/Akola/2013 was filed by M/s Harjimal Onkarmal Akola against the proposal, dated 10/06/2013, which was approved by the District Magistrate, Akola on 15.06.2013 before the Hon'ble Division Commissioner, Amravati. The maintainability of the said appeal was challenged in the Hon'ble High Court of Bombay, Bench Nagpur vide Writ Petition No.2374/2014. The Hon'ble High Court held that, appeal is not maintainable and therefore, dismissed the appeal by the Judgment and Order, dated 27.07.2015. The Divisional Commissioner, Amravati on the basis of the Order of the Hon'ble High Court also dismissed the appeal filed before it by Judgment and Order, dated 18.09.2015.

Therefore, it is now clear that the NOC issued by District Magistrate, Akola bearing No.2490/IV/Dated 16/04/1959 is not valid after the date of death of Shri Harjimal Onkarmal i.e. 26.05.1959 as it was automatically lapsed/cancelled on death of Shri Harjimal Onkarmal and therefore, it cannot be used for the purpose of issuing licence to any petroleum service station.

The Office has never issued any NOC to Petroleum service station of M/s Harjimal Onkarmal, Partnership firm, Akola on Plot No.33/1, Sheet No.40-A of Town Akola, District Akola, therefore, this office cannot give any type of opinion in respect of the NOC, which was not issued and not in existence.

District Magistrate
Akola”

18. The communication dated 13.6.2016 is in response to letters dated 23.9.2015 and 28.10.2015 addressed by the Joint Chief Controller of Explosives to the District Magistrate presumably, calling upon the District Magistrate to give his opinion in respect to the NOC issued in favour of Mr. Harjimal Onkarmal. The text and tenor of the communication dated 13.6.2016 is that vide the earlier letters dated 27.8.2012 and 19.10.2012, the District Magistrate had submitted prima facie opinion in respect of the NOC issued in favour of Mr. Harjimal Onkarmal and at the instance of Joint Chief Controller of Explosives, an elaborate enquiry was conducted and the conclusion of the enquiry was informed to the said authority vide letter dated 17.6.2013. The communication dated 13.6.2016 then refers to the decision of the Commissioner which is set aside by this Court while allowing Writ Petition 2374/2014 and then observes that it is now clear that the

NOC issued by the District Magistrate, Akola ceased to be in existence after the death of Mr. Harjimal Onkarmal on 26.5.1959 and cannot be the basis of issuing licence. The said letter dated 13.6.2016 then concludes with the assertion that the District Magistrate has never issued any NOC to the petroleum service station of the respondent 1 – firm, and therefore, no opinion can be given in respect of a NOC which is not issued and not in existence.

19. Plain reading of the communication dated 13.6.2016 would reveal that, as a fact, the District Magistrate refused to give an opinion on the premise that his stand was already made clear in the proposal dated 15.6.2013, which was approved by the District Magistrate on 15.6.2013, and that no opinion could be given qua a NOC not in existence. Apart from the reference to the finding recorded by this Court in Writ Petition 2374/2014, the communication dated 13.6.2016 says nothing, and does nothing, in addition to what was already said in the communication / report dated 15.6.2013 which was duly considered by this Court. While deciding Writ Petition 2374/2014, this Court notes the submission of the learned counsel appearing for the petitioners, thus:

“5. Shri A. A. Naik, learned Counsel appearing for the petitioners submitted that the appeal as filed under Rule 154 of the Rules sought to challenge the report dated 10.6.2013 and approval granted to it on 10.6.2013. He submitted that no appeal was maintainable against the said report as submitted or against its approval. As there was no order either refusing to grant, amend or renew licence, the appeal itself was not maintainable. He referred to various other Rules and submitted that passing of an order was duly contemplated and only when an order as contemplated by the said Rules was passed that an appeal would be maintainable. He further submitted that in the impugned order, said aspects have not been considered and after turning down the objection regarding maintainability, observations on merits have also been made. He, therefore, submitted that the objection raised by the petitioners ought to have been upheld.

6. Shri M. G. Sarda, learned Counsel appearing for the respondent No.3 supported the impugned order. According to him, in view of the complaints made by the petitioners and the respondent No.4, the aforesaid report had been prepared. After hearing the contesting parties, it had been found by the Additional District Magistrate that the petroleum outlet had been running illegally for 53 years. He further submitted that as the said report was communicated to the Joint Chief Controller of Explosives on 10.6.2013, the same had an adverse effect on the interests of the respondent No.4. He, therefore, submitted that under Rule 154 of the Rules, the appeal was maintainable. He also submitted that as per the hierarchy mentioned under the Maharashtra Land Revenue Code 1966, the respondent No.1 was competent to entertain the appeal.

Shri S. M. Bhagde, learned Assistant Government Pleader appearing for respondent Nos.1 & 2 supported the impugned orders”.

20. This Court considered the rival submissions thus:

“7. I have carefully considered the respective submissions and I have also gone through the documents placed on record. Chapter VII of the Rules prescribe the procedure in the matter of grant of licence, no objection certificate and their renewal, suspension or cancellation. The remedy of appeal has been provided by the Rule 154(1). Said Rule being relevant, the same is being reproduced as under:

“154. Appeals -- (1) An appeal shall lie against any order refusing to grant, amend or renew a licence, cancelling or suspending a licence to -

- (i) the Central Government, where the order is passed by the Chief Controller;*
- (ii) the Chief Controller, where the order is passed by a Controller;*
- (iii) the immediate official superior to the District Authority, where the order is passed by the District Authority;*
- (iv) the immediate official superior to officer appointed under rule 33 in the case of vessels licenced for the carriage of petroleum in bulk.”*

Aforesaid provision indicates that an appeal is maintainable against any order refusing to grant, amend or renew a licence or if the licence is either suspended or cancelled. The provisions of Rule 141 to Rule 153 prescribe various modalities in that regard. Whenever the no objection certificate has to be refused or cancelled or a licence has to be refused, suspended or cancelled, the Rules contemplate passing of an order by the concerned authority. The remedy of appeal provided by Rule 154(1) would have to be viewed in that context.

8. *The facts of the present case indicate that on the complaints made by the petitioners for stopping the petroleum outlet run by respondent No.3, an enquiry was held by the respondent No.2 –Additional District Magistrate on the basis of which he submitted a proposal to the District Magistrate. This proposal was thereafter approved by the District Magistrate who then forwarded the same to the Divisional Commissioner. In the communication dated 17.6.2013 issued by the District Magistrate, said report has been referred to as an enquiry report. The conclusion drawn by the Additional District Magistrate in the report is regarding validity of the no objection certificate dated 16.4.1959. In the light of the scheme of Chapter VII, the report as prepared by the Additional District Magistrate on 10.6.2013 cannot be said to be an order either refusing to grant or amend or renew the licence. Said proposal also cannot be considered as an order cancelling or suspending the licence. It is merely a report/proposal prepared by the Additional District Magistrate in view of complaints received by said Authority and also in view of directions issued by the respondent No.1 on 17.9.2012. Merely because said report has been forwarded to the Joint Chief Controller of Explosives, the same cannot be termed as an order passed under the Rules. Similarly, merely because the parties were heard before the report/proposal was prepared, the same would also not change its character. It has been understood to be a proposal submitted to the District Magistrate and after its approval, it has been treated as a report of enquiry. Even the Authorities have not termed the said proposal or the report as an order. It, therefore, cannot be said that the report/proposal dated 10.6.2013 was an order passed that could be subjected to appeal.*

9. The respondent No.1 while holding the appeal to be maintainable misdirected itself by observing that under the hierarchy prescribed under the Maharashtra Land Revenue Code 1966, a superior

Authority could entertain the appeal. It is well settled that the right to prefer an appeal has to be conferred by a statute and in absence of any such statutory provision, there is no right whatsoever to file an appeal. The rejection of the preliminary objection by the respondent No.1, therefore, cannot be sustained.”

21. This Court recorded a categorical finding that the report of the Additional District Magistrate dated 10.6.2013 and the approval thereof by the District Magistrate vide communication dated 15.6.2013, is not “an order passed” against which an appeal lies under Rule 154.

22. In view of the finding recorded, which presumably has attained finality, respondents 1 to 3 cannot be heard submitting that the communication dated 13.6.2016 is an appealable order. As observed supra, there is no difference whatsoever in the text, tenor or content or the substance of the earlier communications which are considered by this Court while deciding Writ Petition 2374/2014 and the communication dated 13.6.2016 which respondents 1 to 3 challenged before the Divisional Sessions Judge in an appeal under Rule 154(2).

23. The other submission that, the learned Sessions Judge

is not the Authority immediate superior to the District Authority, is equally formidable. The expression “District Authority” is defined under Rule 2(x) of the Rules thus:

2(x) “District Authority” means ---

(a) in towns having a Commissioner of Police, the Commissioner or a Deputy Commissioner of Police;

(b) in any other place, the District Magistrate;

The learned Additional Sessions Judge-2 decided the said issue vide separate order dated 25.8.2016 and inter alia held that under the scheme of the Code, the District Magistrate is subordinate to the Court of Session. The Additional Sessions Judge went a step ahead and found that the Court of Session is the authority immediately superior to the District authority (emphasis supplied). Misinterpreting the order in Writ Petition 2374/2014, the learned Additional Sessions Judge – 2 observes that in the said decision it is held that an order under Rule 154 could not be challenged before the Revenue Commissioner, and therefore, the statutory appeal would lie before the Court of Sessions. The learned Additional Sessions Judge did not notice, that while holding the appeal to be not tenable, this Court held that the communication impugned was not an appealable order.

This Court was not considering whether the Revenue Commissioner was the appellate authority under Rule 154. The petition was allowed and the order of the Revenue Commissioner was quashed in view of the finding that the communication impugned was not an order contemplated by Rule 154(1). However, it is not necessary to express any decisive observation on the contention that the Additional Sessions Judge was not the immediate superior authority envisaged under Rule 2(x)(b) of the Rules, and therefore, the communication impugned, assuming arguendo to be an order, could not have been challenged in appeal preferred before the Sessions Court.

24. In my considered view, the petition is liable to be allowed on the short ground that the communication dated 13.6.2016, issued by the District Magistrate, Akola was not an order as would make the same amenable to the remedy of appeal under Rule 154(2) of the Rules.

25. The judgment impugned dated 4.10.2017, rendered by the Additional Sessions Judge-2, Akola in Criminal Appeal 121/2016, is quashed.

26. Rule is made absolute in the aforestated terms.

JUDGE

NSN/Belkhede