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

WRIT PETITION NO. 1442 OF 2019

Swaraj Kisanrao Borkar Aged about 29 years, Occupation: Nothing, R/o. Jaiswal Colony, Sindewhi, District – Chandrapur.	**.. Petitioner**

Versus

1. The Collector and District Magistrate, Chandrapur. 2. Divisional Commissioner, Nagpur Division, Nagpur. 3. Union of India, Through Ministry of Petroleum and Natural Gas.	**.. Respondents**

Mr. F.T. Mirza, Advocate for petitioner.
Mr. K.L. Dharmadhikari, Addl.G.P. for respondent Nos.1 & 2.

CORAM : MANISH PITALE, J.
DATE : 22.04.2022

ORAL JUDGMENT

Rule. Rule made returnable forthwith, heard finally with consent of the learned counsel appearing for the rival parties.

(2) By this writ petition and petitioner has challenged orders passed by the District Magistrate and Divisional Commissioner, whereby No Objection Certificate granted to the petitioner to establish a petrol pump stood cancelled, primarily on the ground that it violated norms and guidelines of Indian Roads Congress 2009, as regards distance permissible between two petrol pumps on the same road/carriage way.

(3) The facts leading up to filing of the present petition are that the petitioner applied for establishing a petrol pump i.e. a retail outlet under dealership of Indian Oil Corporation. The necessary formalities for allotment of the same were completed by the petitioner, which included No Objection Certificates from various departments, including Public Works Department etc. On the basis of having completed all documentary formalities and upon being found eligible, the respondent No.1 as the authorized officer granted the No Objection Certificate in favour of the petitioner.

(4) Subsequent thereto, on a complaint that the proposed site of the petrol pump was within 300 meters of such an outlet already established, proceedings were initiated in the matter. It is the case of the petitioner that while the outlet that the petitioner intended to operate pertained to a Government Corporation i.e. Indian

Oil Corporation, the other outlet which was said to have been established within the distance of 300 meters was that of a private company. On the proceedings being initiated for cancellation of No Objection Certificate, the petitioner contended before the respondent No.1 that the said proceedings ought not to be undertaken for the reason that the guidelines of which violation was alleged, were not properly interpreted and that in any case, once the No Objection Certificate was issued by the respondent No.1 it could be cancelled only in a specific circumstance. Nonetheless, by the impugned order dated 28.09.2018, the respondent No.1 proceeded to cancel the No Objection Certificate, on the basis that guideline No.4.6.1 of the Indian Roads Congress stood violated in the present case as another retail outlet of petrol was located within 300 meters of the site wherein outlet of the petitioner was established.

(5) Aggrieved by the said order, the petitioner filed appeal before the respondent No.2 – Divisional Commissioner. The appeal stood dismissed as the respondent No.2 agreed with the findings rendered by respondent No.1.

(6) In this petition notice came to be issued. The respondents appeared through counsel.

(7) Mr. Mirza, learned counsel appearing for the petitioner submitted that the impugned orders passed by respondent Nos.1 and 2 deserve to be set aside for more reasons than one. It was submitted that serious prejudice was caused by the impugned orders as the petitioner had spent huge amount of money in pursuance of the No Objection Certificate for establishing the aforesaid outlet. It was submitted the No Objection Certificate once granted could be cancelled only under one contingency as specified in Rule 150 of the Petroleum Rules, 2002, framed under the Petroleum Act, 1934. It was submitted that the only ground on which such a No Objection Certificate could be cancelled was that the licensee had ceased to have any right to use the site for storing petroleum. According to learned counsel for the petitioner such was not the case or even the allegation against the petitioner and that therefore, the No Objection Certificate could not have been cancelled. As regards the alleged violation of the norms and guidelines of Indian Roads Congress, particularly 4.6.1 thereof, it was submitted that on a proper appreciation of the facts of the present case

it would clear that the said guidelines would not apply, particularly because the outlet of the petitioner is located on a divided carriage way for which the prohibition of distance of 300 meters does not apply. Learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***Yogesh Kumar and others vs. Bharat Petroleum Corporation Ltd. and others (1990) 4 SCC 49***.

(8) On the other hand, Mr. K. L. Dharmadhikari, learned Assistant Government Pleader appearing for respondent Nos.1 and 2 submitted that the reasons stated in the orders passed by the said respondent were based on the interpretation of norms and guidelines of Indian Roads Congress, which were binding. According to the learned Assistant Government Pleader, the findings rendered against the petitioner could be said to be a possible interpretation of the said guidelines and that therefore, no interference is warranted. As regards the contentions raised on behalf of the petitioner based on Rule 150 of the Petroleum Rule, learned Assistant Government Pleader submitted that there could be no dispute regarding the said proposition for the reason that only one ground was available under the aforesaid Rule for cancellation of No Objection Certificate. Nevertheless, it was

submitted that considering the binding nature of the norms and guidelines of the Indian Roads Congress, the impugned orders deserved to be confirmed.

(9) Mr. Navlani, learned counsel appeared on behalf of respondent No.3.

(10) This Court heard the learned counsel for the parties and perused the material on record. In the present case, it is undisputed that a No Objection Certificate dated 02/05/2017, was indeed issued in favour of the petitioner by the respondent No.1, after having verified that No Objection Certificate had been issued by various departments including Public Works Department and other relevant departments. Rule 150 of the Petroleum Rules, pertains to cancellation of No Objection Certificate and it reads thus:

> *"150. Cancellation of no objection certificate –*
>
> *(1) A no objection certificate granted under rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the District Authority or the State Government is satisfied that the license has ceased to have any right to use the site for storing petroleum;*

Provided that before cancelling a no objection certificate, the licensee shall be given a reasonable opportunity of being heard.

(2) A District Authority or a State Government cancelling a no-objection certificate shall record, in writing, the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned, a copy of the order cancelling the no-objection certificate."

(11) A perusal of the aforesaid Rule clearly shows that there is only one contingency in which the No Objection Certificate granted in favour of a person can be cancelled. The said ground is that the person in whose favour such a No Objection Certificate is granted ceases to have any right to use the site for storing petroleum. It is not even the case of the respondent that the facts in the present case indicate the only contingency contemplated under Rule 150 of the aforesaid Rules. Therefore, there is substance in the contention raised on behalf of petitioner that the impugned order passed by the respondent No.1 cancelling the No Objection Certificate was wholly without jurisdiction and in the teeth of the aforesaid Rule.

(12) Nevertheless, to satisfy conscience of this Court, the material on record was perused in detail and it was examined whether guideline No.4.6.1 of the norms and guidelines of Indian Roads Congress would apply to the present case, even if the said norms and guidelines were to be treated as binding. Both respondent Nos.1 and 2 have relied upon the said guidelines to hold against the petitioner. The said guidelines read as follows:

4.6.1. Plain and rolling terrain in non-urban(rural) areas

(i) Undivided carriageway (for both sides of carriageway)	*300 m (including deceleration and acceleration lanes)*
(ii) Divided carriageway (with no gap in median at this location and stretch)	*1000 m (including deceleration and acceleration lanes)*

4.6.2. Hilly/mountains terrain and urban stretches

(i) Undivided carriageway (for both sides of carriageway)	*300 m (clear)*
(ii) Divided carriageway (with no gap in median at this location and stretch)	*300 m (clear)*

Note: *(i) The minimum distance of 300 m between two fuel station on both sides of the road is applicable for undivided carriageway only. In case of divided carriageway, 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 m.*

(ii) The distance between the fuel stations shall be measured between the tangent points of the access/egress roads of the fuel stations, as is applicable, in a direction parallel to the centre line of the nearest carriageway of the highway."

(13) A proper interpretation of the above quoted guidelines shows that the prohibition specified therein, in respect of two retail outlets within 300 meters, applies only to an undivided carriage way. In the present case, the impugned orders do not show that respondent Nos.1 and 2 have proceeded on the basis that the retail outlet in question is located on an undivided carriage way. In fact, in the writ petition at paragraph 17, after quoting the relevant guidelines, the petitioner has specifically stated that the outlet of the petitioners is situated on a divided carriage way and the outlet said to be within 300 meters of the retail outlet of the petitioner is located on the other side of the divided carriage way. In the reply filed on behalf of the respondents, the said assertion made on behalf of the petitioner has not been denied. Even otherwise, there is no material brought on record to indicate that the retail outlet of the petitioner is located on an undivided carriage way. The note appended to guideline No.4.6.1 clearly indicates that the case of the petitioner would not be covered under the prohibition contemplated therein, for the simple reason that the retail outlet of the petitioner is located on a divided carriage way.

(14) The aforesaid analysis of the material available on record shows that the respondent No.1 could not have cancelled the No Objection Certificate issued in favour of the petitioner. This finding a based on the presumption that the aforesaid norms and guidelines do apply and are binding and this is quite apart from the fact that, on an interpretation of Rule 150 of the Petroleum Rules and applying the law laid down by the Hon'ble Supreme Court in the case of *Yogesh Kumar (Supra)*, the respondent No.1 could not have exercised jurisdiction to cancel the No Objection Certificate already granted in favour of the petitioner, for the reason that the only contingency contemplated under Rule 150 of the Petroleum Rules was not satisfied in the present case.

(15) For the aforesaid reasons, it is found that the impugned orders are unsustainable. Accordingly, the writ petition is allowed. The impugned orders are quashed and set aside.

(16) Needless to say, the consequence of setting aside the impugned orders is that the No Objection Certificate dated 02.05.2017, issued in favour of the petitioner stands revived.

(17) Rule is made absolute in the above terms.

[MANISH PITALE J.]

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PRITY S GABHANE

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