

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1983 OF 2020**

**SACHIN NAVNATH DAHIWAL
VERUS
BHARAT PETROLEUM CORPORATION LIMITED THROUGH
THE STATE CO-COORDINATOR AND OTHERS**

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Mr. R. R. Deshpande h/f Ms. Priyanka R. Deshpande, Advocate for the Petitioner.

Mr. Anand P. Bhandari, Advocate for Respondent Nos.1 and 2.

Mr. Rajendra S. Kasar, Advocate for Respondent No.3.

Mr. S. S. Deve, Advocate for Respondent No.4.

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**CORAM : NITIN W. SAMBRE AND
S. G. CHAPALGAONKAR, JJ.**

RESERVED ON : 03.04.2023.

PRONOUNCED ON : 11.04.2023

FINAL ORDER:-

1. Heard the respective counsels.

2. The challenge in the petition is to the communication dated 3rd December, 2019 issued by respondent no.2 to the Territory Manager of respondent no.1-Bharat Petroleum Company whereby it is informed to the petitioner that after receipt of the clarification from the National Highway Authority of India i.e. respondent no.4 the land offered by respondent no.3 is held to be satisfying the Norms of National Highway Authority of India, subject to the construction of the service road and as such, the proposal of respondent no.3 in relation to land offered by him for setting up retail outlet of respondent-Oil Company came to be cleared.

3. The facts necessary for deciding the petition are as under:

The petitioner claims to be the owner of land admeasuring 20R, 0H 09.75R and 31R from land block nos.109 and 110.

According to the petitioner respondent no.3 also claims to be owner of land out of block no.110 (part).

The petitioner and respondent no.3 in response to the advertisement issued by respondent no.2 on November 25, 2018 in various newspapers applied for allotment of retail outlet dealership to be installed on either side on Kalyan-Vishakhapattanam Highway, village Taluka Pathardi, Dist. Ahmednagar, State of Maharashtra.

According to the petitioner, the land offered by him is admeasures 55 meters in front and of adequate depth having total area of 1575 sq. meters. The petitioner claims that the land which was offered by respondent no.3 is located on the intersection of the National Highway No.222 and Nimbodi village road connecting the said National Highway. In such an eventuality, the land offered by the petitioner should have been given additional weightage as the land of respondent no.3 is not fit for installation of the retail outlet. According to the petitioner for the very same location, in earlier round of litigation, same land as that of petitioner was offered by one Priyanka Navnath Dahiwal, so also respondent no.3 offered very same land which is subject matter of petition. However, vide communication dated March 10, 2017, land of respondent no.3 was found to be not fit for the purpose of the installation of the very same retail outlet. According to the petitioner, though said Priyanka Dahiwal contested the aforesaid issue as to the feasibility of the land of

respondent no.3 in Writ Petition No.13827/2017 unsuccessfully, however, the land of respondent no.3 was not approved as could be inferred from the communication referred above issued by the respondents.

It is the case of the petitioner that after re-advertisement, the land of the petitioner is cleared without there being any change in the factual matrix and as such, he is left with no other option but to question the said decision of the Oil Company.

4. Learned counsel for the petitioner Mr. Deshpande, so as to substantiate his contentions would invite attention of this Court to the dimensions of the respective lands offered by the petitioner and respondent no.3, so also its location qua the National Highway No.222. According to the learned counsel for the petitioner, the land offered by the petitioner is in accordance with the norms laid down by the National Highway Authority viz. Indian Roads Congress (I.R.C.) Guidelines. According to him, the requirements under the I.R.C. Guidelines has to be held to be mandatory as has been provided in the instructions issued by the Ministry of Road Transport and Highways on 24th July, 2013. He would further urge that, the enclosure to the aforesaid communication, the guidelines of Indian Roads Congress, 2009 in categorical terms provides for requirement for the retail outlet location to be operated on the intersection of the National Highways and village roads. As such, he would urge that, not only the petitioner's land offered is satisfying all the norms, but the land offered by respondent no.3 which is admittedly located on intersection of the village road and National Highway does not have the appropriate clearance from the center of the road. That

being so the decision of the respondent thereby accepting the proposal of respondent no.3 qua the land offered for installation of the retail outlet is illegal and contrary to the law. Mr. Deshpande would rely on the judgment of the Apex Court in the matter of ***Indian Oil Corporation Ltd. and Ors. Vs. Arti Devi Dangi and Anr.*** delivered on ***October 14, 2015*** in ***Special Leave Petition (Civil) No.22012/2014*** so as to substantiate his claim that in the case in hand even if the guidelines of I.R.C. have no mandatory force still in the backdrop of tender conditions such I.R.C. guidelines has to be held to be binding having guiding force in the matter of selection of the land for retail outlet. According to him, the decision of respondent no.2 in permitting respondent no.3 to make his land viable based on the recommendations of National Highway Authority of India is without any authority of law and jurisdiction. As such, he would urge that not only the land proposal of respondent no.3 is liable to be rejected, but he has to be held to be disqualified for the selection as a dealer of respondent no.1 for the outlet in question and the proposal of the petitioner needs to be accepted by issuing Writ of Mandamus.

5. Learned counsel for respondent nos.1 and 2 Mr. Bhandari, learned counsel for private respondent viz. respondent no.3 Mr. Kasar and learned counsel for respondent no.4-National Highway Authority of India Mr. Deve would support the order impugned. According to the learned counsel for the respondents, the proposal of respondent no.3 was not only looked into by respondent no.2 Bharat Petroleum Corporation but also by an expert body of National Highway Authority of India. The said Authority has recommended the site of respondent no.3 to be qualified for installation of the retail outlet, even if the same is

located on the intersection of the National Highway and village road subject to the compliance of certain conditions. Learned counsel has accordingly drawn support from not only recommendations of the National Highway, but also the expert opinion i.e. consulting Architect. As such, it is claimed that the Writ jurisdiction cannot be invoked to substitute the expert's opinion. It is further claim that, the petitioner cannot invoke a remedy of Writ jurisdiction in the given set of facts wherein the relationships are contractual in nature.

6. We have appreciated the aforesaid submissions.

7. The admitted facts are both the parties i.e. the petitioner and respondent no.3 in response to the advertisement issued by respondent no.2 on November 25, 2018 submitted their proposal to be selected as retail outlet dealer based on the land which was offered by them. The location of the land as offered and mentioned in the petition is not a disputed fact.

8. The contention of the petitioner is the land offered by respondent no.3 is not in tune with the requirements as per the norms/guidelines of the I.R.C., the direction issued by the National Highway Authority of India vide its Circular dated 24th July, 2013.

9. He has also claimed that in earlier round of litigation for the very same location the proposal of land of respondent no.3 was rejected and without there being any change in the factual matrix, the land of respondent no.3 is cleared for the installation of the retail outlet.

10. The fact remains that, the land offered by respondent no.3 appears to be 40 gunthas, which is leased out to respondent no.2-Oil Company for 29 years as could be inferred from the pleadings of respondent nos.1 and 2 in their affidavit-in-reply. It appears that, in response to the earlier advertisement of 2017 though the land of respondent no.3 was held to be not satisfying the required norms, however respondent no.3 in wake of the Circular dated 24th March, 2013, so also the Indian Roads Congress Guidelines has sought clarification from the National Highway Authority. Accordingly, respondent no.2 after considering the expert's opinion i.e. the Technical Officer of the National Highway Authority, the Architect has formed a satisfaction that the land offered by respondent no.3 meet with the norms prescribed not only by I.R.C. guidelines, but also the Circular issued by the National Highway Authority of India. In support of the aforesaid findings, reliance can be placed on the communication issued to respondent no.3 by respondent no.4-National Highway Authority of India on November 18, 2019. Vide the said communication based on the consultation drawn from an Architect by the National Highway Authority, even though the site offered by respondent no.3 does not satisfy all norms, however, the provision of service road of approximately length of 1390 meters having width of 5.5 meters will satisfy the compliance of the guidelines and the norms issued by the Ministry of Road Transport and Highways.

11. As such, in the matter of accepting the site offered by respondent no.3, not only the National Highway Authority, but also a consulting Architect has cleared the acceptance of site of respondent no.3 which was duly accepted by respondent nos.1 and

2. Once respondent nos.1 and 2 has formed an opinion that the site offered by respondent no.3 can be said to be satisfying the norms with a rider of complying with certain conditions, this Court in Writ jurisdiction need not to re-appreciate the said decision drawn by the experts. The specific pleadings by the National Highway Authority in paragraph nos.7 and 9, are worth to be relied upon which reads thus:

“7. The deponent further states that, as per IRC 2009 clause 4.6.3 if two or more fuel station are to be sited in close proximity for some reasons it would be grouped together to have a common access through service road of 7.00 m width and connected to highway through acceleration and deceleration lanes.

9. The respondent further submits that, on this ground in order to cater for deceleration and acceleration of the vehicles using petrol pump provision of service road other than main carriageway of National Highway would avoid disturbances of vehicles using petrol pump to traffic of National Highway. In anticipation of this Empanelled Architect Shri. Kshitij Dhande has done the submission that service road of length 366 m or 650 m may have to be constructed similar to the provisions if the distance between two petrol pumps comes out to be less than criteria.”

12. In this background, it cannot be said that respondent nos.1 and 2 have committed illegality in accepting the proposal qua the land offered by respondent no.3 for installation of the retail outlet.

13. In this background, if we appreciate the contention of the petitioner based on the judgment of the Apex Court in the matter of ***Indian Oil Corporation Ltd. and Ors.*** (supra) what can be noticed in the backdrop of the observations of the Apex Court in paragraph no.8 is respondent nos.1, 2 and 4 have not given go by to the guidelines of the I.R.C. and the guidelines

issued by the Ministry of Road Transport and Highways, but has adhered to the same subject to compliance of certain conditions. In view of the above, it cannot be said that the decision of the respondents is contrary to the aforesaid judgment of the Apex Court in the matter of *Indian Oil Corporation Ltd. and Ors.* (supra).

14. Apart from the above, the claim of the learned counsel for the petitioner that without there being any change, the site of respondent no.3 was accepted, which was rejected in earlier point of time is also liable to be rejected in the backdrop of the recommendations of the expert body i.e. National Highway Authority of India and Architect.

15. In this background, this Court is of the view that the petitioner has failed to demonstrate any illegality in the matter of issuance of impugned communication. The respondent nos.1 and 2 have carried out proper factual investigation with the aid of technical experts and this Court need not to go into the said issue in its extraordinary jurisdiction.

16. Once respondent nos.1 and 2 have found that the land offered by respondent no.3 is meeting with the prescribed requirements, we need not to substitute our own judgment to the same.

17. In this background, the petition fails, as such, stands dismissed.

(S. G. CHAPALGAONKAR)
JUDGE

(NITIN W. SAMBRE)
JUDGE