

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5160 OF 2023

Smt.Bibi Hafiz Jamal d/o Kalimullah Khan,
Age-42 years, Occu-Business,
R/o Opposite Ikon Hospital,
Unique House, VIP Road,
Ganesh Colony, Aurangabad

-- PETITIONER

VERSUS

1. The State of Maharashtra,
Through Secretary,
Public Works Department,
Mantralaya, Mumbai - 32.
2. The Superintendent Engineer,
Public Works Department,
Circle, Aurangabad.
3. The Executive Engineer,
Public Works Department,
Division, Aurangabad.
4. Sub Divisional Engineer,
Public Works Department,
Phulambri, Dist.Aurangabad.
5. The District Collector,
Collector Office,
Aurangabad
6. Yogesh s/o Arvind Kolte,
Age-35 years, Occu-Business,
R/o. Nidhora Takli, Kolte,
Tq. Phulambri, Dist.Aurangabad

7. The Regional Manager,
Bharat Petroleum Corporation
Limited, At Post Akolner,
Tq. and Dist. Ahmednagar

8. The Assistant Director,
Town Planning, Jalna Road,
Aurangabad

9. The Divisional Commissioner,
Divisional Commissioner Office,
Delhi Gate, Aurangabad

-- RESPONDENTS

Mr.S.S.Kazi h/f Ms.Fatema S.Kazi, Advocate for the Petitioner.
Mr.P.K.Lakhotiya, AGP for Respondent Nos. 1 to 5 and 9.
Mr.VP.Bakal, Advocate for Respondent No.6.
Mr.A.P.Bhandari, Advocate for Respondent No.7.

(**CORAM : RAVINDRA V. GHUGE AND
Y. G. KHOBRADE, JJ.)**

DATE : JULY 19, 2023

ORAL JUDGMENT : (Per *Ravindra V. Ghuge, J.*)

1. Rule. Rule made returnable forthwith and heard finally by
the consent of the parties.

2. The Petitioner has put forth prayer clauses B, C, D and E as
under :-

*"B. By issuing of writ of mandamus or any other writ or direction in like
nature, the impugned judgment and order dated 16.12.2022 passed by*

respondent no.5 in favour of respondent no.6 be quashed and set aside.
C. Pending hearing and final disposal of this petition, the execution and implementation of the impugned judgment and order dated 16.12.2022 passed by respondent no.5 in favour of respondent no.6, be stayed.
D. Ad-interim relief in terms of prayer clause 'C' above be granted.
E. The respondent be directed to maintain status-quo as on today in respect of the construction of petrol pump."

3. The learned Advocate for the Petitioner Mr.S.S.Kazi, opened his arguments by referring to the guidelines for access, location and layout of road side Fuel Stations and Service Stations (3rd revision) published by the Indian Roads Congress, 2009. He drew our attention to Clause 4.5.1(1)(ii) which prescribes "*intersection with Rural Roads / approach roads to private and public properties - 300 mtrs.*" He then drew our attention to Clause 4.5.3, which reads as, "***There shall not be any median gap on a divided carriageway within a distance of 300 mtrs. on each side of the fuel station. This minimum distance i.e. 300 mtrs. shall be measured between the start of the median gap and the nearest tangent point of the access / egress road of the fuel station, as is applicable, in a direction parallel to the centre line of the nearest carriageway of the highway. This stipulation shall be applicable for such median gaps, which are located neither in front or nor in***

proximity of any intersection or intersecting roads. For intersecting road median gaps or median gaps in proximity of intersections, the provisions stipulated under para 4.5.1 and para 4.5.2 shall apply."

4. It is his contention that the permission granted to Respondent No.6 to erect a petrol pump, is violative of the said provisions. He then drew our attention to the conditions set out in the certificate issued by the Executive Engineer, P.W.D. and by referring to Annexure-2 to Appendix 1:3, he contends that the inference "YES" recorded below the column "Whether confirming to MoRTH Norms", is incorrect and illegal in the light of the guidelines published by the Indian Roads Congress in 2009.

5. At this juncture, since we called upon the learned Advocate Mr. Bakal, representing Respondent No.6 Allottee, as to what is his reaction to the said submission, he specifically stated that the learned Advocate for the Petitioner is taking the Court for a ride. The entire procedure that is followed by the Petroleum Company, as well as by the PWD, is under The Maharashtra PWD Guidelines for issuing NOC for Access permission to Fuel Stations and Private properties / Other

Establishments (other than Fuel Station) along State Roads, 2021. To support his contention for refuting the submissions made by the learned Advocate for the Petitioner, he drew our attention to the proceedings before the District Collector, in which the parties had referred to the 2021 Norms and not to the 2009 Norms.

6. With the above fact situation, we confronted Mr.Kazi as to why has he led us to believe that the norms of the Indian Roads Congress, 2009 would alone be applicable, he tried to cover up by stating that he has got confused and had no intention of misleading the Court.

7. We then asked him whether 2021 Norms and 2009 Norms would co-exist and would operate simultaneously ? His answer was that the 2021 Norms would be applicable, but he cannot confirm this statement.

8. We feel sorry to record that the learned Advocate, knew fully well that the Petitioner had relied upon the 2021 Norms as being applicable and had put forth his pleadings before the Collector. Not

only did he consume the time of the Court by exclusively referring to the 2009 guidelines, but practically made us to believe that he has a good case under the 2009 Norms. The learned Advocate should be more careful.

9. The learned Advocate has then drawn our attention to the 2021 Norms, more specifically Clause 4.1 (3), which provides for distance of intersection with any category of road and median gap and submits that 240 mtrs. is the Norm, unlike 300 mtrs. under the 2009 guidelines. He has then referred to the format of the check list, which is affirmative of the proposal of Respondent No.6 and contends that, when the minimum distance of 240 mtrs. is applicable, the Authorities have to record either "YES" or "NO".

10. He then draws our attention to the report of the inspection conducted on 05.05.2021 and contends that the said report is signed by the Sub-Divisional Officer, P.W.D. Phulambri, but not signed by the Executive Engineer, P.W.D. The said report approves the proposal of the Petitioner and recommends approval for access permission and NOC.

11. He then draws our attention to the check list pertaining to Respondent No.6 and submits that the decision of the Authority in concluding that the form / proposal is in conformity with MoRTH Norms, is again incorrect. The learned Advocate has then drawn our attention to the communication dated 25.10.2021 by the Assistant Director, Town Planning, Aurangabad, addressed to the District Collector, by which the recommendation of Respondent No.6 and the NOC was stayed. We are informed by the learned Advocate for the Petroleum Company, as well as the learned Advocate representing Respondent no.6 Allottee, that the same Officer has subsequently examined the proposal and issued a communication dated 11.10.2022 on the basis of the inspection and upon noticing that Respondent No.6 is situated at a site that is opposite to the site on which the Petitioner operates his petrol pump, in as much as, the road distance between the site and the State Highway would be more than 240 mtrs, since Respondent No.6 has been directed to lay a service road and with this condition, the distance between the site of the petrol pump and the State Highway would be around 1200 mtrs.

12. The learned Advocate representing the Company relies upon a judgment delivered by a Co-ordinate Bench of this Court (Coram : N.W.Sambre and S.G.Chapalgaonkar, JJ) dated 11.04.2023 in **WP No.1983/2020 filed by Sachin Navnath Dahiwal Vs. Bharat Petroleum Corporation Limited, Through the State Coordinator and others** and points out that the said petition was dismissed for the reason that a challenge at the behest of a business competitor and that too when the Statutory Authorities have arrived at a decision, which is on inspection conducted by the Experts, should not be interfered with by the High Court.

13. He further submits that this petition should not be entertained for the primary reason that the Petitioner is a business competitor. He has posed a challenge in this Petition only to disrupt the business of Respondent no. 6 so that there would be no competition. No personal legal injury has been caused to him. A writ petition in the absence of a legal injury, cannot be entertained.

14. He further submits that the Petitioner had earlier approached this Court in WP Nos.10546/2022 and 619/2023. This

Court (Coram : Mangesh S.Patil and S.G.Chapalgaonkar, JJ.) expressed their disinclination to grant any type of relief to the Petitioner and the Petitioner, therefore, sought leave to withdraw these petitions to approach the Appellate Authority. This has been recorded in the order dated 16.01.2023. On a motion for speaking to the minutes of the said order, this Court recorded in it's order dated 18.01.2023 that all the contentions of the parties are kept open.

15. We have noticed from the reports of experts before us, which we have discussed in the foregoing paragraphs that the distance of the site is to be calculated from the State Highway or the National Highway, as the case may be. Experts consider these entire features while considering the proposal and also take into account the acceleration lane, deceleration lane, the intersection with any category of road/median gap, distance from Check barrier / toll plaza / Railway level crossing and the distance of start of an approach road of ROB (Road over bridge).

16. We find a remark by the experts indicating that the site of the Respondent No.6 is on the opposite side towards Wadod Bazar.

There is a relaxation provided under the 2021 guidelines by directing the proposed allottee to construct/lay a service road of definite specification. In the instant case, Respondent no.6 has been directed as *‘Owner will construct service road of required length 135 mtrs. and 7.0 mtrs. width at his own risk and costs’* and it was also recorded that the Village Road on the opposite side towards Pirbawada is at a distance of 302 Mtrs. With this service road to be laid as a condition imposed on Respondent No.6, the distance between his site and the State road would be close to 1200 Mtrs, approx.. The material before us indicates that the decision of the Statutory authorities and the Company, is based on the experts applying their mind to the proposal.

17. The learned AGP justifies the report of the PWD by drawing our attention to Clause 4.6.1 of the Indian Roads Congress, 2009 guidelines for the purpose of reference and indicates that whether there is an undivided carriage way (for both sides of carriage way), the distance between the fuel station and the road has to be 300 Mtrs. He then refers to Note (i) which indicates that the minimum distance of 300 mtrs between 2 fuel stations on both sides of road is applicable to undivided carriage way only. In case of divided carriage way, with no

gap in medians, the distance restriction is not applicable on the opposite side of the fuel station and the minimum distance between the 2 fuel stations on the same side shall be 100 mtrs. These provisions have been incorporated in the 2021 Maharashtra PWD guidelines and points out from Note (4) that the criterion for minimum distance between two fuel stations on both sides of the State Road is applicable for undivided carriage way. In case of divided carriage way, with no gap in medians, the distance restriction is for same side and is not applicable to a new site on the opposite side of the Fuel Station.

18. He then points out the specific entry, which reads as :-

"However, access for fuel stations at closer proximity may be allowed provided entry / exit for both the Fuel Stations are provided through service road of 7.0 M width having sufficient length, further additional length of such service road shall be constructed at the cost of the latter Fuel Station Owner or Oil/Gas Company seeking grant of permission for access for the facility."

19. The learned AGP, therefore, submits that the condition of laying a service road of 7 meters width with the required distance of 135 meters, has been imposed upon Respondent No.6 and with the said

condition, the permission has been granted, which is in conformity with the 2021 Norms, more particularly Note (4), which is referred to above.

20. It is, thus, clear and in view of the pronouncement in Sachin Navnath Dahiwal (supra), that when experts have taken a decision with proper scrutiny and have imposed conditions upon Respondent No.6 to lay a service road, which makes the distance between the road and the fuel pump site, surely more than 240 meters (according to the PWD), almost 1200 meters, would indicate that the challenge of the Petitioner would not be sustainable. On merits, this petition has to fail.

21. In so far as the contention of the learned Advocate for the Petroleum Company that this petition should not be entertained at the behest of a business competitor and costs be imposed, we find that as there is no personal injury caused to the Petitioner. The distance between the 2 fuel stations, which are on the opposite sides of the State Highway, is beyond 1 km, actually being 1.5 Kms. This is permissible under the guidelines applicable. This petition deserves to be dismissed primarily on the ground that such petition at the behest of a business

competitor, ought not to be entertained.

22. We, therefore, accept the contention of the learned Advocate for the Petroleum Company that such petitions should not be entertained, in the facts and circumstances of this case. We make it clear that we have dealt with the merits of the matter since the learned Advocate for the Petitioner canvassed all the grounds and insisted for an order, when it was asked as to whether the Petitioner would desire to withdraw this petition. It was categorically stated that the Petitioner prays for a speaking order on all the grounds and contentions put forth.

23. **This Petition is, therefore, dismissed on both counts with costs.** Rule is discharged.

24. The learned Advocate for the Petitioner submits on instructions from the Petitioner, who is present in the Court, that instead of passing an order of imposing costs, the Petitioner would voluntarily deposit Rs.15,000/- on or before 31.07.2023. The statement is accepted.

25. The Registry shall transfer Rs.7,500/- each to Infant India, Anandwan, 659/Infant Hill, in front of Bindusara Dam, N.H.211, Pali, Beed-431122 and Orphanage Home i.e. "Shantivan", Arvi, Tq.Shirur Kasar, Dist. Beed "Bhavani Vidhyarthi Kalyan Pratishthan, Arvi".

(Y. G. KHOBRAGADE, J.)

(RAVINDRA V. GHUGE, J.)