

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

WRIT PETITION 5322 OF 2022

Kamlesh s/o. Manohar Valechha,
aged about 33 years, Occ. Business,
Proprietor M/s. Anjali Petrol Pump,
R/o. Ram Nagar, Bajar Chowk,
Gondia, Tahsil District Gondia

....PETITIONER

...VERSUS...

1. Union of India,
through its Secretary, The Ministry
of Shipping, Road Transport and
Highways, (S&R) (P&B) Section,
Transport Bhawan 1,
Parliament Street,
New Delhi 110 001

2. Union of India,
Through its Secretary,
the Ministry of Petroleum &
Natural Gas, Shastri Bhawan,
New Delhi 110 001

3. Regional Officer, Ministry of
Road Transport & Highways,
Room No. 508 & 509, Konkan Bhawan,
5th Floor, Sector 6, C.B.D. Belapur,
Navi Mumbai 400 614

4. Superintending Engineer (NH),
National Highway Circle, Nagpur,
Bungalow No. 39/1, Civil Lines,
Nagpur 440 001

5. State of Maharashtra,
through its Secretary, Urban
Development Department,
Mantralaya, Mumbai 32

6. Collector, Gondia,
Tahsil and District Gondia,

7. Bharat Petroleum Corporation Ltd.,
through its Manager, Regional Office,
At Sanni Side, 7, Chitnis Marg,
Civil Lines, Nagpur 440 001

8. Rakesh s/o. Dhamraj Rangari,
Aged about 33 years, Occ. Business,
Near Sai mandir, Khaparde Colony,
Kudwa, Tahsil & District Gondia 441 614

9. The Member Secretary,
Maharashtra State Pollution Control
Board, Kalpataru Poiint,
3rd & 4th Floor Siion, Matunga
Scheme Road No. 6, Opposite
Cine Planer, Sion Circle,
Sion East, Mumbai 400 022 (M.S.)

..RESPONDENTS

Mr. M.R. Joharapurkar, counsel for petitioner.
Mr. N.S. Deshpande, DSGI for respondents 1to4.
Mr. M.K. Pathan, AGP for respondents 5 & 6.
Mr. Abhay Sambre, counsel for respondent 7.
Mr. V.R. Borkar, counsel for respondent 8.
Mr. S.S. Sanyal, counsel for respondent 9.

CORAM:- ROHIT B. DEO & M.W. CHANDWANI, JJ.

DATE : 11.07.2023

JUDGMENT (Per: Rohit B. Deo, J.)

Rule.

2. Rule made returnable forthwith. Heard finally
with consent of the parties.

3. Petitioner claims to be allottee of petrol pump from private entrepreneur. Petitioner is assailing the No Objection Certificate (NOC) dated 8.3.2022, issued by the third respondent – Regional Officer, Ministry of Road Transport and Highways for access permission from National High Way 753 to the petrol pump outlet of the eighth respondent. The crux of the submissions canvased is that the NOC is contrary to the guidelines issued on 26.6.2020. We note that the guidelines on which reliance is placed by learned counsel Mr. M.R. Joharapurkar do enable the authority to relax the norms, which in the present case, has been done subject to certain conditions.

4. However, we are not required to look into the narrative of the petitioner and the counter narrative of respondent 8, who are businessmen and competitors. We find that the issue involved is sufficiently dealt with by a Coordinate Bench which decided Writ Petition 7993/2017 by judgment dated 17.1.2018. We may extract the relevant passage in the said judgment.

“On hearing the learned counsel for the parties and on a reading of the policy that provides the norms pertaining to the location of fuel stations along national highways, it appears that though normally a minimum distance of 300 meters should be maintained between two fuel stations, as per clause 4.6.3, if two or more fuel stations are to be located in close proximity for some reasons they could be grouped together to have a common access through a service road of 7 meters width. The said clause further provides that any objection from the existing fuel station owner against granting of access permission from the highway for the proposed new fuel station is to be overruled and access needs to be granted. In this case, we find that the respondent No. 7 had applied in pursuance of the advertisement issued by the respondent No. 6 before 7.8.2014. At the relevant time, the fuel station of the petitioner was not located at the place where it is now located. The respondent No. 7 had arranged for the proposed site of the fuel station and had submitted the necessary documents to the respondent No. 6 before 7.8.2014. By a private agreement that the petitioner had entered into with Essar Oil Limited, dated 13.11.2014 the fuel station was sought to be allotted in favour of the petitioner. The petitioner actually started operating the fuel station in December, 2016 before which the respondent No. 7 had received the letter of intent and a no objection certificate. Clause 4.6.3 would come into play in this case. We do not wish to put the respondent No. 7 to a loss merely because some time was spent in the completion of the formalities and the letter of intent was issued in his favour on 20.8.2016 though the process of selection had started on 7.8.2014. This is

not a case where the respondent No. 7 had sought for the location of his fuel station at a location that is within a distance of 300 meters from an existing fuel station. On the day the respondent No. 7 had applied, no fuel station was in existence within a distance of 300 meters from the proposed site where he intended to locate his fuel station. In view of clause 4.6.3 the respondent No. 7 would be liable to maintain a common access through a service road of 7 meters width. The respondent No. 7 has stated that he would not start operating the petrol pump till the said condition is complied with. If that be so, it cannot be said that the action on the part of the concerned respondents in granting the no objection certificate to the respondent No. 7 is bad in law. The said permission is in consonance with clause 4.6.3 of the relevant policy on which the petitioner has also relied”.

5. It is not in dispute that while the provisional permission which is impugned is issued on 8.3.2022, the guidelines which are considered by the Coordinate Bench in the judgment supra did incorporate similar provisions.

6. Learned counsel Mr. M.R. Joharapurkar would however, invite our attention to the observation of the Coordinate Bench that in view of clause 4.6.3 of the extant guidelines, respondent 8 is obligated to maintain a common

access through service road of 7 meters width and that respondent 8 undertook that he would not start operating the petrol pump till the said condition is complied with.

7. We note the statement of the learned Deputy Solicitor General of India Mr. N.S. Deshpande that no final permission shall be granted till the undertaking which is noted by the Coordinate Bench is complied with.

8. At this stage, learned counsel Mr. V.R. Borkar would submit that the circumstances have drastically changed. The undertaking was given when the road was State highway. Considering the change in circumstances, the requirement and the undertaking have lost relevance. We are afraid, we would not be in a position to disregard the observations of the Coordinate Bench and the undertaking given. We further note that there is no application preferred by eighth respondent to seek modification or review of the judgment dated 17.1.2018 in Writ Petition 7993/2017.

9. In this situation, we dispose of the petition by recording the statement of the learned Deputy Solicitor General of India Mr. N.S. Deshpande that final permission shall not be granted till the undertaking supra given to the Coordinate Bench in Writ Petition 7993/2017 is complied with.

10. The petition is disposed of in the aforestated terms.

(M.W. Chandwani, J.)
belkhede

(Rohit B. Deo, J.)