

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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CWP-10738-2023 (O&M)

Date of Decision : 14.07.2023

M/s Manchanda Filling Station

..... Petitioner

Versus

Union of India and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.Anil Malhotra, Advocate
for the petitioner.

Mr. Ashish Rawal, Advocate
for respondents No.1 and 2.

Mr. Raman Sharma, Addl.A.G., Haryana
for respondents No.3 to 6.

Mr. Keshav Partap Singh, Advocate
for respondent No.7.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Article 226 of Constitution of India is seeking setting aside of Letter of Intent dated 02.11.2021 (Annexure P-1) and NOC granted by respondent No.6 to respondent No.3 for setting up a new petrol pump at Khasra No.111/13/1, 14/1/1 at village Pehowa.

2. Mr.Anil Malhotra, Advocate *inter alia* contends that the petitioner is running retail outlet of Indian Oil Corporation for last 33 years. Mr. Inder Singla is sole proprietor of petitioner i.e. Manchanda Filling Station. The respondent No.3 by filing false documents has secured clearance from different State Government agencies including NOC from

District Magistrate in terms of Rule 144 of Petroleum Rules. The

guidelines issued by Ministry of Road Transport & Highways (MORTH) prescribes minimum distance of 300 meters between two petrol pumps. The State of Haryana has adopted guidelines of MORTH, thus, distance between two petrol pumps must be at least 300 meters. The distance admittedly between petrol pump of the petitioner and proposed petrol pump is less than 300 meters, thus, the State authorities misusing their position have granted NOC. Pehowa is a small town and establishment of two petrol pumps within distance of 300 meters is going to create traffic problem. The forest department after filing of writ petition has carried out measurement of distance between petrol pump of the petitioner and proposed site and found that distance between both is 223 meters. An official of BPCL has filed wrong undertaking before authorities still NOC has been granted. The petitioner being owner of petrol pump which is situated within 300 meters from the proposed site is going to be directly effected, thus, he has right to approach this Court invoking writ jurisdiction.

3. Mr. Raman Sharma and Mr. Keshav Parap Singh, Advocates for respondents No.3 to 7 submit that there was petrol pump at site in question since 1987 and it was re-located at national highway on account of dispute between owners of the land. The said petrol pump worked without any interruption from 1987 to 2021. At the time of establishment of said pump, all the permissions were sought and never came to be challenged. For more than 30 years, petrol pump of the petitioner and pump of respondent at proposed site operated in-tandem, however, petitioner never challenged NOC or LOI issued by the authorities. The petitioner is trying to make hay while temporary closure of existing pump. The present petrol

pump is not on national highway whereas it is located at Other District Road (ODR) and guidelines of MORTH are applicable to petrol pumps located at national highways. In the case of pump located at ODR, the State instructions are applicable. The guidelines issued by IRC are directory in nature and State is not bound by these instructions. The State Government has issued its own instructions and as per these instructions, the State is competent to grant relaxation to the extent of 25% of distance between two petrol pumps. The department of forest issued NOC vide its communication dated 17.02.2023, however, during the pendency of present petition in connivance with petitioner, has wrongly measured the distance and concluded that distance between both sites is 223 meters. They have conducted measurement in the absence of respondents. Despite holding that the distance between both pumps is 223 meters, the forest department has concluded that there is no violation on the part of interested parties.

4. Mr. Ashish Rawal, Advocate for respondent No.2 submits that officials of the forest department had initially relied upon statements of State officials as well as private parties, however, after filing of present petition, they have re-measured the distance and found that distance between both pumps is 223 meters. The allegation of State that officials of forest department had acted in connivance is totally false and baseless. They have called for all the parties, however, interested parties opted not to join proceedings, thus, they were compelled to conduct measurement in the absence of interested parties. They have finally issued clearance certificate because no violation of law was found.

5. I have heard arguments of learned counsel for the parties and with their able assistance perused the record.

6. The conceded position emerging from the record is that the petitioner is operating petrol pump for more than 30 years. There was petrol pump at the disputed site since 1987 and it operated till 2021. The said pump was owned by BPCL and pump in question is also allotted by BPCL. The State instrumentalities including District Magistrate in terms of Rule 144 of Petroleum Rules has issued NOC. The State authorities are supporting their act and conduct. They have opted to support NOC as well as clearance granted by different departments.

7. Sole allegation of petitioner is that respondents-authorities without following guidelines of MORTH, IRC and even their own instructions have issued NOC to BPCL which in turn has established petrol pump at the site in question.

8. In view of statement of learned State counsel and counsel for other respondents, the petrol pump has already commenced w.e.f. 04.07.2023. They have already made first sale. Learned counsel for the petitioner disputes this fact, however, this Court does not find any ground to disbelieve statement of at least State counsel.

9. The petitioner is operating pump for more than 30 years and respondent-BPCL was also having its pump since 1987. The said pump continued till 2021. The petitioner never objected establishment of said pump during this long period of three decades. The State authorities by applying their mind has issued NOC. It is not a case that one officer has applied its mind and thereafter mechanically issued clearance. It is a case where 09 different authorities issued clearance certificate and thereafter District Magistrate in terms of Rule 144 of Petroleum Rules has issued no objection certificate. The State has categorically stated that pump in

question is not located at national highway and it is located at ODR. The pumps located at ODR are not governed by MORTH. The State has made its own guidelines and as per those guidelines, the State is competent to grant relaxation to the extent of 25% of prescribed distance. The State is supporting its action. It appears that petitioner to avoid competition has preferred present writ petition and only endeavour of the petitioner is to get rejected NOC and halt establishment of petrol pump in the vicinity of the petitioner. The petitioner has not been denied any fundamental or vested right, warranting interference by this Court. It is not a case of violation of fundamental rights especially right of business and trade guaranteed by Article 19(1)(g) of the Constitution of India. There is no endowment of negative fundamental right. The petitioner has no right to claim to deny right of business and trade to any other person. As noticed earlier, it is a case where different Government authorities have applied their mind, thus, on the asking of petitioner especially when a pump was in operation since 1987, this Court cannot interfere and set aside permissions granted by the different authorities.

10. The present petition sans merit and deserves to be dismissed and accordingly dismissed.

14.07.2023
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(JAGMOHAN BANSAL)
JUDGE

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>