

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

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**CWP No.15696 of 2017(O&M)
Date of Decision:19.09.2023**

Dharmender Kumar and another

....Petitioners

vs.

Union of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Sanjeev Kodan, Advocate
for the petitioners

Mr. R.S.Longia, Senior Standing Counsel
for Union of India

Mr. Raman Sharma, Addl. A.G.Haryana

Mr. Ashish Kapoor, Advocate
for respondent No.3

Mr. Saurabh Dalal, Advocate
for respondent No. 4

JAGMOHAN BANSAL, J. (ORAL)

1. The petitioners through instant petition under Articles 226/227 of the Constitution of India are seeking setting aside of order dated 28.06.2017 (Annexure P-12) whereby representation of the petitioners dated 03.05.2017 (Annexure P-11) seeking cancellation of allotment of retail outlet to respondent No. 4 has been declined by respondent No. 3-Indian Oil Corporation (in short "IOC"). The petitioners are further seeking direction to respondent No. 2 to

comply with directions issued by Ministry of Road Transport and Highways (in short “MoRTH”) and Indian Road Congress.

2. The petitioners applied and ultimately got retail outlet of Essar Oil Limited. The petitioners installed retail outlet in 2015 at village Kablan, State Highway No. 22, District Jhajjar. IOC with intent to install its petrol pump filed an application dated 12.01.2017 (Annexure P-4) before District Forest Officer, Jhajjar and application dated 12.01.2017 (Annexure P-5) before Officer Incharge, Wild Life Department. IOC also filed an application under Rule 144 of Petroleum Rules before District Magistrate. NOC came to be issued to respondent No.3- IOC. Retail outlet was allotted to respondent No. 4 by Respondent No. 3- IOC. The respondent No. 4 on the basis of NOC issued by District Magistrate and LOI by IOC, installed petrol pump in 2018 and since then the Retail outlet is operating.

3. Learned counsel for the petitioners submits that IOC in contravention of instructions dated 25.09.2003 issued by MoRTH has allotted petrol pump to respondent No. 4 who thereafter commenced its operation. The respondent No. 3 has further violated instructions of Indian Road Congress. As per instructions dated 25.09.2003 issued by MoRTH, there should be distance of 1000 meters between two petrol pumps. The IOC in gross violation of instructions of MoRTH and IRC has installed petrol pump.

4. Counsel for respondent No. 3 and State submits that instructions dated 25.09.2003 issued by MoRTH are not applicable because both the retail outlets are located at State Highway. Instructions dated 25.09.2003 are applicable to National Highways. The instructions of Indian Road Congress are not binding unless and until adopted by State Government. The retail outlet of the petitioners is operating since 2015 and of respondent No. 4 since 2018 and at this stage, there seems no reason to close petrol pump of respondent No. 4.

5. I have heard learned counsel for the parties and perused the record.

6. From the perusal of record, it transpires that petitioners have not challenged NOC issued by District Magistrate. The petitioners are challenging allotment letter issued by IOC. No petrol pump can be installed unless and until there is NOC issued by District Magistrate who issues NOC on the basis of clearance certificates issued by different departments including Forest, PWD, Fire, Municipal Committee/Corporation etc. The allotment letter issued by the oil company is irrelevant unless and until NOC is issued by District Magistrate. No certificate can be issued by District Magistrate unless and until he is satisfied that there is compliance of rules & regulations and instructions issued by Union as well as State Government. The petitioners are not assailing NOC issued by District Magistrate. In the absence of assailing NOC issued by District Magistrate, it cannot be concluded that petrol pump has been installed in violation of instructions issued by Union or State Government. It is District Magistrate who is competent authority to look into this aspect and pass an appropriate order. This Court cannot look into disputed questions of facts i.e. suitability of land or location. The respondents are claiming that instructions dated 25.09.2003 (Annexure P-6) of MoRTH stand substituted by Instructions of 2013 and these are applicable to National Highways, thus, there is no question of violation because outlets in question are located at State Highway.

7. The petition sans merit and deserves to be dismissed. Accordingly, dismissed.

(JAGMOHAN BANSAL)
JUDGE

19.09.2023
paramjit

Whether speaking/reasoned: Yes
Whether reportable: Yes/No