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

CWP-24996-2017

Date of Decision: 24.03.2023

Bharat Petroleum Corporation Ltd.

..... Petitioner

Versus

The District Magistrate, Sangrur, Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Raman Sharma, Advocate,
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

1. The present writ petition has been filed by Bharat Petroleum Corporation Limited seeking quashing of the impugned orders dated 29.01.2014 (Annexure P-8) and 30.03.2017 (Annexue P-12) cancelling the No Objection Certificate issued to the petitioner by the respondent which is the District Magistrate, Sangrur, Punjab.

2. The brief facts of the present case are that the petitioner is a Government Company which is engaged in the exploration, refining and distribution of the petroleum products i.e. petrol, diesel, lubricants etc. through a network of dealers and distributors appointed by the Corporation. On 04.02.2003, the petitioner-Corporation issued an Advertisement for requisitioning the land for setting up of Petroleum Retail Outlets at various locations in the State of Punjab and Haryana including at Moonak (OML), Patran-Jakhal Road in District Sangrur, Punjab. One company in the name of M/s Dharam Chand Sant Lal through Mrs. Naresh Jain offered the required

land which was found suitable and a formal lease-deed was also executed on 18.11.2003. The aforesaid Company was appointed as *ad hoc* dealer for running a new set up of petrol pump at Patran-Jathal Road, Village Salemgarh, Tehsil Moonak, District Sangrur initially for a period of one year which was thereafter extended up to 31.03.2006. Thereafter, a dispute arose pertaining to the legality of grant of petrol pump dealership on *ad hoc* basis, since the Government of India directed that such Oil Companies may be operated only through their own officers and not through *ad hoc* dealership. Thereafter, the aforesaid action was also challenged but the petitions were dismissed and even civil suit filed by the petitioner was also dismissed. Thereafter, the *ad hoc* dealership license of the aforesaid Company was terminated w.e.f. 04.06.2009 vide termination letter dated 20.05.2009 (Annexure P-6).

3. Thereafter, in the year 2010, the entire area where the petrol pump was there got flooded due to floods in the river Ghaggar and the retail outlet could not be operated. When the effect of flood was finished, then the retail outlet was again operated by the petitioner-Company. However, on 29.01.2014, the No Objection Certificate (NOC) granted by the respondent-District Magistrate was cancelled vide Annexure P-8. The aforesaid order of cancellation of No Objection Certificate by the respondent was challenged by the petitioner-Company before this Court by filing a writ petition bearing CWP-14521-2014 *inter alia* on the ground that the order was passed without affording an opportunity of hearing. The aforesaid order dated 29.01.2014 vide Annexure P-8 was set aside and the case was remitted back to the District Magistrate, Sangrur with a direction that the District Magistrate

shall pass an order in accordance with law with regard to the No Objection Certificate after hearing the petitioner and other relevant parties including lessor, *ad hoc* dealer, if they are still having any right. The aforesaid order was passed by this Court on 07.04.2016. Thereafter, the respondent-District Magistrate again passed the impugned order dated 30.03.2017 vide Annexure P-12 after hearing all the concerned parties and canceled the No Objection Certificate granted to the petitioner-Company. The ground on the basis of which the No Objection Certificate was cancelled was that the place where the petrol pump is situated is prone to floods and in the year 2010, there were floods in the entire area due to breach of river Ghaggar and particularly the petrol pump of the petitioner in the present case is situated near Government buildings i.e. SDM Office, Moonak, Tehsil Complex, Judicial Complex, Warehouse, Grain Market, Market Committee and various other offices and it will not be proper to permit the continuation of the petrol pump at that place. The petitioner in the present case has challenged both the orders i.e. Annexures P-8 & P-12.

4. Learned counsel for the petitioner submitted that the petitioner-Corporation is a public sector undertaking and at the time when it had taken the land on lease for setting up of a petrol pump, a huge amount of Rs.78 lacs approximately was spent in setting up of the retail outlet and since the petitioner is a Government of India Enterprise, the amount involved is pertaining to the public exchequer and cannot be wasted due to non-existent grounds. He raised another argument by submitting that in the entire area there are other petrol pumps as well, which are operating and it will be discriminatory in case the NOC of the present petrol pump of the petitioner

is singled out and its NOC is cancelled on the ground of area being a flood prone area. He raised another argument by submitting that the NOC has been cancelled due to *mala fide* reasons, since the owners of the land from whom the lease was taken by the Company are interested in taking back their land and earlier they had filed petitions before this Court for challenging the action of the Government of India for changing the system of *ad hoc* retailership to company and since they themselves could not continue with the retail outlet and it was being managed by the Company, they were interested in their land and consequently the NOC was cancelled at their behest.

5. Another argument was raised by the learned counsel for the petitioner by submitting that the NOC was granted by respondent-District Magistrate under the provisions of Rule 144 of the Petroleum Rules, 2002. Rule 150 of the Petroleum Rules, 2002 provides for power of cancellation of NOC. He submitted that although power is vested in the District Magistrate for cancellation of NOC but it is limited only to the extent as provided in the aforesaid provision that it can be cancelled only if the District Authority or a State Government is satisfied that the licensee has ceased to have any right to use the site for storing petroleum. Furthermore, the District Authority or the State Government cancelling a No Objection Certificate shall record in writing the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned, a copy of the order cancelling the No Objection Certificate. He further submitted that the right to cancel a NOC is vested in the District Authority only when the licensee has ceased to have any right to use the site for storing petroleum and due to

no other reason. While referring to Rule 150, he submitted that the only ground on the basis of which, the NOC can be cancelled is as aforesaid whereas in the present case, the NOC has been cancelled on the ground that the area is a flood prone area and had witnessed floods in the recent past especially in the year 2010. On this ground the NOC has been cancelled for which the District Magistrate was not empowered under Rule 150 of the aforesaid Petroleum Rules, and therefore, the impugned order by which the NOC has been cancelled is liable to be set aside.

6. On the other hand, Ms. Akshita Chauha, learned DAG, Punjab submitted that when the earlier order (Annexure P-8) passed by the District Magistrate, Sangrur, it was a detailed order which was passed on the basis of a complaint received from Gram Panchayat of Village Salemgarh, Tehsil Moonak, District Sangrur that the petrol pump is situated in a flood prone area and during 2010, flood water to the extent of 5 feet had entered and the oil had come out of the oil tanks which can happen again and there is an apprehension of loss of life and property. Thereafter, the facts stated in the complaint were properly inquired into from the Sub Divisional Magistrate, Moonak, who had reported that during flood, the oil from the tanks come out and more particularly this petrol pump is located near habitation including the Judicial Complex and Judicial Houses as well. In July, 2010, 12000 liters of petrol and 27000 liters of diesel was lost in the flood water and there is a serious apprehension with regard to the same. There was another petrol pump at the distance of 200 meters which was being operated by Indian Oil Corporation which was shut down only because of the loss caused by floods and in future in case it is permitted to continue then it can cause loss to the

life and property. The persons, who were earlier running the petrol pump on *ad hoc* basis had also given their no objection and had stated that the NOC given to the petrol pump of the petitioner is liable to be cancelled in public interest. However, the aforesaid order (Annexure P-8) was challenged by the petitioner before this Court and this order was set aside by this Court vide orders dated 07.04.2016 on the ground that an opportunity of hearing was not given to the petitioner and the case was remitted back to the District Magistrate, Sangrur for filing a fresh order in accordance with law after hearing the relevant parties.

7. Learned State counsel further submitted that thereafter in compliance of the aforesaid orders passed by this Court, the District Magistrate provided opportunity of hearing to all the stakeholders including the petitioner and after hearing and considering the entire subject matter afresh, the impugned order vide Annexure P-12 was passed on 30.03.2017 by which it was again decided that the NOC is liable to be cancelled. She also submitted that so far as the challenge to Annexure P-8 is concerned, the same could not have been done in the present case since the aforesaid order has already been set aside in the earlier writ petition and at the most the petitioner could have challenged the fresh order dated 30.03.2017 (Annexure P-12). She further referred to the reply filed by the District Magistrate by which even an objection has been taken that against the order of cancellation, an appeal lies under Section 154 of the Petroleum Rules, but the same was not availed by the petitioner. She, therefore, has prayed for dismissal of the present petition.

8. I have heard the learned counsels for the parties.

9. The issue involved in the present case is primarily to challenge the order of cancellation of NOC by the respondent-District Magistrate vide Annexure P-12. So far as the challenge raised by the petitioner to the order dated 29.01.2014 vide Annexure P-8 is concerned, the same is not sustainable on the face of it in view of the fact that this order was earlier challenged in CWP-14521-2014 and this order was set aside by this Court and the matter was remitted back to the District Magistrate for passing a fresh order in accordance with law after hearing the relevant parties. The aforesaid order was passed by this Court on 07.04.2016 which has been reproduced in Para No.16 of the present writ petition, and therefore, the prayer of the petitioner for challenging the order (Annexure P-8) is misconceived and unsustainable.

10. So far as the objection raised by the learned State Counsel pertaining to the alternate remedy of appeal available to the petitioner is concerned, the same will also not come in the way for adjudicating the present petition in view of the fact that one of the prayers of the petitioner for challenging the aforesaid order was that the aforesaid order has been passed without the authority of law and also in view of the fact that the present writ petition is of the year 2017 which is almost 5 years ago and at this stage relegating the petitioner to avail alternate remedy of appeal will not be in the interest of justice.

11. The legality of the impugned order (Annexure P-12) is, therefore, required to be considered and tested in the present case. Before dealing with the arguments raised by the learned counsel for the petitioner, the reasons for cancellation of the NOC are required to be highlighted so that

the arguments raised by the learned counsel for the petitioner can be tested in the light of the reasons of cancellation. A perusal of the order (Annexure P-12) would show that in the year 2010 due to leakage of water in the petrol tanks on account of heavy floods at Village Salemgarh, the Sarpach and Panches of the Gram Panchayat made a complaint dated 22.10.2013 to the office of the District Magistrate that in July, 2010 due to heavy floods, two petrol pumps in the Village Salemgarh at Patran-Jathal Road, Moonak, the water had come up to 5 feet and the present petrol pump is also included in the aforesaid place. Due to this reason, diesel and petrol oozed out from the storage tank and inhabitants of the nearby villages were in fear that there may be a blast or fire at any time. DDR No.18, dated 17.07.2010 was got registered at Police Station Moonak. Thereafter, the SDM, Moonak recommended the cancellation of NOC of the present petrol pump of the petitioner vide letter dated 01.01.2014 and thereafter, due to the aforesaid reasons, the NOC was cancelled by the District Magistrate on 29.01.2014. The aforesaid order was set aside by this Court on the ground that no opportunity of hearing was given to the petitioner and with a direction to pass a fresh order with regard to issuance of NOC after hearing the petitioner and the other relevant parties and thereafter, in compliance with the aforesaid order, summons were issued to all the stakeholders including the petitioner-Corporation and the stand of all the respective stakeholders was considered. The members of the Panchayat had stated that when the floods had come, the entire village was full of water and the petrol of the petitioner-Company had spread in the water from the tanks and all the crops were damaged due to mixing of petrol in the water. Even after two years of the

floods the canopy shed of the petrol pump had also fallen down. The owners of the land also made the statement that they have no objection in case the NOC of the present petrol pump of the petitioner is cancelled and they will not claim anything from the company. The petitioner i.e. M/s Bharat Petroleum Corporation Limited stated in its statement to the concerned officer on 16.06.2016 that there are Government buildings like SDM Office, Moonak, Tehsil Complex, Judicial Complex, which are established opposite to the place of the petrol pump and appropriate arrangements have been made to save them from the unnatural floods, and therefore, there should not be any difficulty in continuing with the petrol pump. The SDM, Moonak, however, recommended for cancellation of NOC in the public interest. A separate report was also obtained from Xen Water Irrigation Construction Division, Sangrur, who also reported that if the water of Ghaggar passes from Moonak-Patran Road due to Floods, the Oil Tank of the petrol pump is downwarded and the tank of petrol pump will leak. Thereafter, on the consideration of the report of the SDM and the statements given by all the stakeholders, the District Magistrate came to the conclusion that the petrol pump is situated at 450 meters from the Village Salemgarh, Tehsil Moonak, which is a highly populated area and it is at a distance of 750 meters from the dense population of Village Salemgarh and in case due to floods in the river Ghaggar, water comes out on the Moonak-Patran Road then the tanks of this petrol pump will come under the water. Therefore, the NOC granted to the petitioner was cancelled.

12. On 23.01.2023 when the matter was heard by this Court then the learned counsel for the petitioner had submitted that the embankment to

the river Ghaggar has now been done and there is no threat of flood and the State counsel had sought time to seek instructions regarding current status and potential threat of floods to the area where the present petrol pump was set up. Thereafter, a status report by way an additional affidavit of District Magistrate, Sangrur dated 28.02.2023 was filed before this Court. The District Magistrate after seeking report from the Executive Engineer, Sangrur, Drainage-cum-Mining and Geology Division, Water Resources Department, Punjab stated that the petrol pump is located in front of Court Complex Moonak. In District Sangrur, river Ghaggar is 40 kms. in length from Khanauri to Village Karail and there is a risk of breach in bundhs of river Ghaggar. During the years 2010, 2015 and 2019, the area around this petrol pump was filled with flood water due to the breach in the embankments of the Ghaggar river. Due to the above floods situation, there is still a fear of water coming to this petrol pump site due to the non-completion of Phase-2 of the project and this petrol pump falls under the flood prone area. The relevant portion of the affidavit contained in Para 3 of the aforesaid affidavit is reproduced as under:-

“In compliance of the orders dated 23.01.2023 of the Hon’ble High Court, Answering Respondent vide letter no. 96/LPA dated 27.01.2023 asked the Executive Engineer/ Sangrur Drainage cum Mining Division, Sangrur to submit the status report. As per the report dated 30.01.2023 received from the Executive Engineer/ Sangrur Drainage cum Mining and Geology Division, Water Resources Department, Punjab, the petrol pump is located in front of the Court Complex Moonak. In District Sangrur, River Ghaggar is 40 km in length from Khanauri to Village Karail. The project of resectioning of river Ghaggar was prepared in two phases for the entire length. The

*length of 22.50 km (From Khanauri to Makroar Sahib) of Ghaggar river was widened in 2009 and embankments were constructed on both sides of it under Phase-1. But, Ghaggar river being an inter-state river, Haryana State raised the objections for the work of Phase-2 of Ghaggar river in 17.50 KM length from village Makroar Sahib to village Karail and the matter is pending in the Ghaggar standing Committee under the Central Water Commission (CWC). Due to this, the resectioning of river Ghaggar for 17.50 KM reach from Makroar Sahib to Karail could not be carried out. During every flood season, due to the huge water coming in river Ghaggar, there is a risk of breach in bundhs of River Ghaggar from Village Makroar Sahib to Karail in 17.50 KM length. During the years 2010, 2015 and 2019, the area around this petrol pump was filled with flood water due to the breach in the embankments of the Ghaggar river. Due to the above floods situation, there is still a fear of water coming to this petrol pump site due to the non completion of Phase-2 of the project and keeping this aspect in mind, this petrol pump falls under the flood prone area. Copy of the report is attached as **Annexure R-1.**”*

13. The first argument raised by the learned counsel for the petitioner was that the petitioner-Corporation is a public sector undertaking and had spent about Rs.78 lacs for setting up of the petrol pump which was public money, and therefore, the NOC could not have been canceled by the respondent-District Magistrate because it will amount to wastage of public money. The argument raised by the learned counsel for the petitioner cannot be accepted in view of the fact that the ground of cancellation of NOC is public safety whereby the place where the petrol pump had been set up had witnessed muliple floods in different years as stated in the impugned order

and there is a likelihood of re-occurrence of floods which may cause loss to life and property. Therefore, commercial interest even if it is of public sector undertaking cannot be given a preference over and above the public safety where an apprehension of threat to life and property of large number of people is involved.

14. Another argument raised by the learned counsel for the petitioner is that there are other petrol pumps which are also operating in that area. This argument would also be not sustainable in view of the fact that the NOC of the other petrol pumps is not in dispute in the present case and the continuation of those petrol pumps, if any, can be considered independently by the District Magistrate on their own merits on the basis of the place of location, and therefore, the mere fact that the other petrol pumps are operating in the same location cannot confer a right upon the petitioner to seek continuation of the present petrol pump at the cost of safety of life and property of the inhabitants of the place.

15. The next argument which was raised by the learned counsel for the petitioner was that the impugned order (Annexure P-12) has been passed at the behest of the owners of the land who wanted their land back, since earlier they were operating on *ad hoc* basis and the policy was changed by the Government of India and they lost in the earlier litigation and now in order to take back their land, the present order was passed by the District Magistrate at their behest. This argument raised by the learned counsel for the petitioner is also not sustainable particularly in view of the fact that in case the argument of the learned counsel for the petitioner is taken to be an allegation of personal *mala fide*, then no officer has been impleaded as party

in the present case in the personal capacity and therefore, in the absence of impleadment and allegation of personal *mala fide*, the same cannot be considered by this Court. However, in case the allegations are stated to be in the nature of legal *mala fide*, then the same would also be not sustainable in view of the fact that the impugned order (Annexure P-12) has been passed after hearing all the parties including the petitioner and the aforesaid order was passed on the basis of preservation of public safety which is based upon the past episodes whereby the petrol tanks of the petitioner's petrol pump had submerged in the water due to floods and petrol and diesel had come out and got mixed with water which caused potential threat to the inhabitants of the place. Even otherwise also the allegations of *mala fide* are not substantiated either in the pleadings or in the arguments raised by the learned counsel for the petitioner.

16. The next argument raised by the learned counsel for the petitioner is based upon a legal issue that the District Magistrate has power to issue No Objection Certificate under Rule 144 of the Petroleum Rules and a separate provision has been provided for cancellation of No Objection Certificate vide Rule 150 of the Petroleum Rules. However, cancellation of NOC has been made on a ground not available in Rule 150. The aforesaid Rules are reproduced as under:-

“144. No Objection Certificate- (1).Where the licensing authority is the Chief Controller or the Controller, as the case may be, an applicant for a new licence other than a licence in Forms III, XI, XVII, XVIII or XIX shall apply to the District Authority with two copies of the site-plan showing the location of the premises proposed to be licensed for a certificate to the

effect that there is no objection, to the applicant receiving a licence for the site proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application Form IX.

(2). Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly endorsed by him under his official seal.

(3). The Chief Controller or the Controller, as the case may be, may refer an application not accompanied by certificate granted under sub-rule (1) to the District Authority for his observations.

(4). If the District Authority, either on a reference being made to him or otherwise, intimates, to the Chief Controller or the Controller, as the case may be, that any licence which has been applied for should not, in his opinion, be granted, such licence shall not be issued without the sanction of the Central Government.

(5). The District Authority shall complete his inquiry for issuing NO OBJECTION CERTIFICATE (NOC) under sub-rule (1) and shall complete the action for issue or refusal of the NOC, as the case may be, as expeditiously as possible but not later than three months from the date of receipt of application by him.

150. Cancellation of no-objection certificate.- *(1) A no-objection certificate granted under rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the District Authority or the State Government is satisfied, that the licensee has ceased to have any right to use the site for storing petroleum:*

Provided that before cancelling a no-objection certificate, the licensee shall be given a reasonable opportunity of being heard.

(2). A District Authority or a State Government cancelling a no-objection certificate shall record, in writing, the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned, copy of the order cancelling the No Objection Certificate.”

17. An argument was raised by the learned counsel for the petitioner that under Rule 150 of the Petroleum Rules, the NOC issued by the District Magistrate under Rule 144 of the aforesaid Rules can be cancelled only on one ground i.e. when the licensee has ceased to have any right to use the site for storing petrol pump and for that purpose reasons should also be recorded. He has further submitted that in the absence of the aforesaid ground, the NOC cannot be cancelled on any other ground, and therefore, the present impugned order (Annexure P-12) is liable to be set aside being passed without the authority of law, since the aforesaid order has been passed not on the ground specified under Rule 150 but on the ground that the location of the petrol pump is a flood prone area.

18. The aforesaid argument raised by the learned counsel for the petitioner is also not sustainable. Rule 144 of the Petroleum Rules provides that No Objection Certificate is to be issued by the District Authority. Rule 150 of the Petroleum Rules provides for cancellation of No Objection Certificate, in case, the District Authority of the State Government is satisfied that the licensee has ceased to have any right to use the site for storing the petrol pump. The aforesaid Rule 150 of the Petroleum Rules only provides a provision in a specific situation where the licensee has ceased to have any right to use the site for storing the petrol pump, but it would not

mean that there can be no other reason or ground for cancellation of No Objection Certificate. On the other hand, Rule 144 of the Petroleum Rules is the provision by which No Objection Certificate is to be issued. Section 21 of the General Clauses Act, 1897 provides that a power to issue notification or order includes a power exercisable in a like manner to add, amend, vary or rescind any notification or order so issued. Section 21 of the General Clauses Act, 1897 is reproduced as under:-

“21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws.-Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.”

19. Rule 144 of the Petroleum Rules provides that a power is vested with the District Authority to issue No Objection Certificate and therefore, by virtue of Section 21 of the General Clauses Act, 1897, there is an inherent power to amend, vary or rescind the same more particularly when the order of issuance of No Objection Certificate is an administrative order. Therefore, it cannot be said that the No Due Certificate issued by the District Authority under Rule 144 of the Petroleum Rules can be cancelled or rescinded only under Rule 150. However, under Rule 150, only on a specific ground, the same can be cancelled but the power to cancel or rescind under Rule 144 has not been excluded under any provision or Rule, and therefore, the provision of Section 21 of the General Clauses Act will apply in the present case.

20. Apart from the above, the NOC has been cancelled purely on

the ground that the location of the petrol pump is a flood prone area wherein at the exact location of the petrol pump, there had been floods in the year 2010, 2015 and 2019 and the District Authority on the basis of various reports from the departments has an apprehension that in case the petrol pump is allowed to run on the same location, then it will pose threat to life and property of the inhabitants. This Court is of the view that Right to Life being a Fundamental Right and Right to Property being a Constitutional Right will always be a dominant factor whereas the commercial interest of the petitioner will be subservient to the same.

21. Consequently, the present petition is dismissed .

24.03.2023

Bhumika

(JASGURPREET SINGH PURI)
JUDGE

1. Whether speaking/reasoned:	Yes
2. Whether reportable:	Yes