

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7945 of 2017

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Krishna Kumar Chandna, Son of Late Rishi Lal Chandna, Resident of
Mohalla- Bengali Tola, P.S.- Samastipur Town, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Environment & Forest, Government of Bihar, Patna.
2. The Chief Conservator-cum-Nodal Officer, Forest (Conservation), Government of Bihar, Patna.
3. The Deputy Conservator of Forest (Central), Ministry of Environment, Forest and Climate Change, Govt. of India, Regional Office (East Central Zone), Bunglow No.A-2, Shyamali Colony, Ranchi.
4. The Indian Oil Company Limited through Marketing Division, Senior Divisional Retail Sales Manager, Begusarai Divisional Office, Begusarai.
5. The District Magistrate, Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Subodh Kumar Jha, Advocate. Mr. Awadhesh Kumar Singh, Advocate.
For the State	:	Mr. Dhurjati Kumar Prasad, GP-14.
For the UOI	:	Mr. Ram Anurag Singh, CGC.
For the IOC	:	Mr. Ankit Katriar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Heard Mr. Subodh Kumar Jha, learned counsel along

with Mr. Awadhesh Kumar Singh, learned counsel appearing on

behalf of the petitioner; Mr. Dhurjati Kumar Prasad, learned

GP-14 for the State; Mr. Ram Anurag Singh, learned counsel for

the Union of India and Mr. Ankit Katriar, learned counsel for the

Indian Oil Corporation.

2. The petitioner has filed the writ petition for the
following reliefs:

“That in this writ application the above



named sole petitioner prays for issuance of appropriate writ/order/direction restraining the Respondents from stopping operation of retail outlet owned and operated by the petitioner within the district of Samastipur. The petitioner further prays for quashing communication issued by Respondent No.3 as contained in Letter No. FP/BR/Others/24297/2013/1183/A dated 17.04.2017 whereby and where under, inter alia, it has been directed to stop the operation of retail outlet.”

3. The petitioner was granted license by the Oil Company namely Indian Oil Corporation to run a petrol pump in the name and style of Ashirvad Fuels, Samastipur located on Khata No. 647, 410, Khesra No. 6256 (New), 4156 (Old) situated in village – Mordiba, P.S. - Mufassil, District – Samastipur established on lease rent taken by the retail outlet owner – the petitioner.

4. The IOCL had issued letter of intent vide letter dated 29.08.2012 in favour of the petitioner for setting up retail outlet on the approved site. Petitioner applied to the District Magistrate, Samastipur for issuance of NOC. The petitioner had also applied for issuance of NOC to be obtained from the Department of Environment and Forest, and NOC by Road Construction Department, Government of Bihar and other statutory clearance like fire and explosive etc. The District



Magistrate, Samastipur vide memo no. 1460 dated 31.03.2013 granted NOC with a condition that NOC from Forest Department and Public Works Department is also required to be submitted. Respondent No. 2 vide memo no. FC 107 dated 23.02.2015 issued NOC on payment of net present value and subject to the condition that the petitioner shall deposit compensatory afforestation amount. The Public Works Department issued NOC in favour of the petitioner vide its communication contained in memo no. 743 dated 11.02.2014. Petitioner's outlet was examined and a communication was sent to the petitioner contained in memo no. FC - 35 dated 14.01.2016, wherein it was proposed that penal compensatory amount should be levied against petitioner. The petitioner's petrol pump was commissioned on 10.07.2013 and since then the petitioner's petrol pump is operating.

5. On 17.04.2017 a letter (Annexure 1) was issued to the petitioner from Dy. Conservator of Forest Central (Respondent No. 3) to stop the work on alleged violation of law. The objections raised as per the site inspection report of the Dy. Conservator of Forests (DCF) are that there is no tree present on the site and as per the measurement of the field, the total land used for entry and exit path of the fuel station is 123 sq. mt. or



0.0123 Hectare. The Deputy Conservator of Forests, Begusarai in this regard had submitted Site Inspection Report dated 22.02.2014 and thereafter he had informed to the Principal Secretary, Department of Environment and Forest, Government of Bihar for taking appropriate action and doing needful in this regard.

6. The Principal Secretary, Department of Environment and Forest, Government of Bihar, Patna had not furnished the requisite information with respect to the objections raised by the Ministry of Environment, Forest and Climate Change, Regional Office, Ranchi within the time prescribed. Then vide Letter dated 17.04.2017, the Deputy Conservator of Forests (Central) had again reminded the Principal Secretary, Department of Environment and Forest, Government of Bihar, Patna to provide following requisite documents:

- Action taken report on erring officials. Report on whether the work in violation is still in progress or not. If yes, then it should be stopped immediately and a report should be submitted in this office.

- Penal Compensatory Afforestation Scheme of 200 trees plantation along with 10 years maintenance.

- Geo-referenced map of the forest land proposed for diversion in shape file format.

- Toposheet map in 1:50,000 scale with mentioning the proposed site along with the signature of concerned DFO and user agency.

- Part-I with mentioning the date of signing.

- Part-II in original.



- Part-III, Part-IV and Part-V with mentioning name of the signing authority.
- FRA certificate in original

7. Learned counsel appearing on behalf of the petitioner submitted that 75 petrol pumps were operating in the State of Bihar without obtaining NOC from Forest Department of which a list was prepared by the competent authority after the present writ petition was filed by the petitioner and none of the above 75 petrol pumps were ordered to be closed down or stop the work except the petitioner. The application for NOC from Forest Department of all the above 75 petrol pumps has been issued recently which was pending from 13.07.2010 to 25.08.2017.

8. Learned counsel further submitted that in the counter affidavit of Respondent no.02 it is stated that recommendation of proposal of the petitioner for stage-I has been approved and the matter of approval of Stage-II level is pending before the Ministry of Environment for payment of NPV, CA & PCA.

9. He further submitted that the petitioner has already deposited NPV amount on 02.11.2015 and undertakes to deposit the amount of CA & NPA, which was not deposited earlier as the petitioner was not informed or directed to deposit



CA & NPA amount.

10. Mr. Dhurjati Kumar Prasad, learned GP-14 appearing on behalf of the State submitted that the requirement of furnishing 'No Objection Certificate' from the Forest Department is pending with respect to the petitioner's petrol pump and 75 other petrol pumps from period 13.07.2010 to 25.08.2017. The matter of approval of stage-I is pending before the Ministry of Environment for payment of NPV, CA and PCA, therefore, the petitioner was not informed or directed to deposit CA and NPA amount. He submitted that the petitioner in his supplementary affidavit has admitted that he is ready to deposit the amount of CA and NPA immediately on being informed by the competent authority and taking the said excuse the petitioner has been operating the petrol pump till date. Learned counsel for the State, however, admits that the petitioner was never communicated any time before the filing of the counter affidavit that the matter is pending before the Ministry of Environment, Forest and Climate Change for stage-I approval on the basis of audit objection which required the amount of NPV, CA and PCA to be deposited by the petitioner. He further submitted that the counter affidavit was filed on 06.04.2018, and in spite of the said fact, the petitioner has not fulfilled requirement till date.



Learned counsel in this regard has relied on Para-7 of the counter affidavit, which is reproduced hereinafter:

“7. That it is humbly stated that letter as contained in Annexure-4 to the writ petition is not NOC issued by the Government and Forest Department as stated by the petitioner, it is a letter written by the respondent no.2 to the Principal Secretary, Environment and Forest Department, Government of Bihar for forwarding the proposal of the petitioner for diversion of forest land to the Ministry of Environment, Forest and Climate Change, Govt. of India which is the final authority for the same. Hence, the petitioner’s claim that the statutory clearance has been obtained, is not correct. In fact, the recommendation of the proposal for stage-I approval the fact that the protected forest has been used by the user agency and provision of penal compensatory afforestation was suggested in the recommendation. The matter is pending at Ministry of Environment, Forest and Climate Change for Stage-I approval which requires the amount of NPV, CA and PCA to be deposited. Hence claim of the petitioner that all statutory clearances have been taken is not correct.”

11. *Per contra*, Mr. Ram Anurag Singh, learned counsel appearing on behalf of Ministry of Environment, Forest and Climate Change, Government of India submitted that the site inspection report of DCF has already been brought on record by way of Annexure-I and subsequent to that the Principal Secretary, Department of Environment and Forest, Government of Bihar was also directed to furnish required



documents and in absence of those documents submitted by the Principal Secretary, the petitioner has been allowed to operate petrol pump unauthorizedly without fulfilling the requisite criteria as contained in the Guidelines issued long back vide Memo No. FC-106 dated 19.03.2013 by the respondent no.2 after deliberation between the State Government and the Central Government, which provides for in what manner the NPV has to be assessed and how much amount has to be deposited for compulsory afforestation. Considering the conditions contained in the said memo, the Deputy Conservator of Forest (Central) had issued Letter dated 17.04.2017 to be complied on the part of the Principal Secretary, Department of Environment and Forest and in spite of filing of the counter affidavit filed on behalf of the State Government or on behalf of the District Magistrate, Samastipur and the respondent no.5 – the Divisional Forest Officer, the conditions have not been fulfilled till date. He further submitted that a very vague statement has been made on behalf of the petitioner in the supplementary affidavit that the petitioner has already deposited the NPV amount on 02.11.2015. He submitted that there is doubt that the said amount has been deposited by the petitioner in view of the letter dated 17.04.2017 addressed to the Principal



Secretary, Department of Environment and Forests, Government of Bihar. Respondent no.4 has also filed counter affidavit, but the same is vague and it appears they have deliberately not given any specific response to the statement made in the counter affidavit filed on behalf of the Central Government.

12. Heard the parties.

13. The petitioner is licensee of Oil Company namely Indian Oil Corporation Limited, which pursuant to the advertisement dated 24.09.2011 inviting opening of retail outlet has allotted retail outlet dealership to the petitioner with certain terms and conditions. The Oil Company after being satisfied that the petitioner fulfills all the criteria had issued Letter of Intent on 29.08.2012, which also contained certain terms and conditions. The State Government vide notification dated 16.02.1994 had notified certain area in the location of the site of the petrol pump as reserved forest area. The petitioner was required to make payment of Net Present Value (NPV) for issuance of 'No Objectivity Certificate' for opening of retail outlet of Indian Oil Corporation. The District Magistrate on the basis of the inspection report contained in Letter No. 434 dated 13.03.2013 submitted a report with respect to the revenue records relating to the land for opening of petrol pump and had



granted 'No Objection Certificate' in that regard. The petitioner had furnished 'No Objection Certificate' after installation of Fire Fighting System and was required to submit 'No Objection Certificate' from the Environment and Forest Department, Government of Bihar in view of the fact that the site has been notified as reserve forest area. Though the petitioner had undertaken to submit 'No Objection' from the Forest Department as well as PWD department, but in spite of the several communications made to the petitioner, as well as, to the Senior Divisional Retail Sales Manager, IOC, Begusarai, the clearance certificate duly issued by the Forest Department and PWD department for running of the outlet were not submitted, instead a conditional NOC was granted by the District Magistrate, Samastipur vide Letter No. 1460 dated 31.03.2013 that the same would be cancelled, in case 'No Objection' is not submitted within a period of three months. The petitioner and the Oil Company did not fulfill the aforesaid condition. **A show cause was issued to the Senior Divisional Retail, Sales Manager, IOC, Begusarai** vide Letter No. 1.02/12-17 dated 23.06.2017 by the District Magistrate, Samastipur that legal action will be taken against the retail outlet dealer in accordance with the law for having violated the provision of law



and terms and conditions. The petitioner instead of having fulfilled the aforesaid conditions preferred the present writ petition and considering the case primarily on the ground that the petitioner was afforded no opportunity of hearing before taking such legal action against him by the District Magistrate.

14. This Court vide order dated 30.05.2017 had passed an interim order not to take coercive step for closure of the petrol pump outlet of the petitioner till further order of this Court.

15. The District Magistrate has filed a counter affidavit in which there is no denial that a show cause was issued to the Oil Company. Certain facts with respect to the fulfillment of required conditions for obtaining 'No Objection Certificate' has been pleaded. The respondent no.5 – the District Magistrate has given no statement with respect to the action taken by the respondent no.1 in response to the communication made by the Deputy Conservator of Forest (Central) vide letter dated 17.04.2017 nor the Oil Company has taken any steps to file show cause in this regard pursuant to the letter dated 23.06.2017 issued by the District Magistrate, Samastipur. A very vague statement has been made on behalf of the respondent no.5 without taking note of the letter dated 17.04.2017. The Principal



Secretary, Department of Environment and Forest has been impleaded as respondent no.1, at the same time, in the counter affidavit filed on behalf of respondent nos. 2 and 3 duly sworn by the Divisional Forest Officer is also devoid of any statement regarding compliance of the requirement and its fulfillment as contained in Letter dated 17.04.2017. A vague statement has been made by the petitioner in Para-14,15 and 16 of the supplementary affidavit that the petitioner undertakes to deposit the amount of NPV, CA and PCA for issuance of 'No Objection Certificate'. The counter affidavit filed on behalf of the Oil Company is vague without giving any information what steps were taken after granting dealership.

16. I am constrained to observe that the Oil Company which is running the business of petrol pump and generate income out of same for common cause has failed to give details about steps taken after the site of the petrol pump have been notified as Notified Forest Area. Afforestation scheme has to be adopted by the Oil Company and the dealership is granted only after the applicant has fulfilled all the requisite criteria contained in the Advertisement and the Letter of Intent. Complete ignorance by the Oil Company in this regard entail that they are responsible for the cause of



environmental disaster and appropriate action is required to be taken.

17. The petitioner has claimed that he had deposited the NPV amount on 02.11.2015. The said fact has not been controverted by the respondents. The Oil Company by granting permission and the District Magistrate by granting conditional NOC vide letter No. 1460 dated 31.03.2013 have themselves violated their own advertisement and the several circulars of the State Government and the Central Government, especially issued by the Ministry of Environment, Forest and Climate Change respectively by allowing operation of petrol pump in an illegal manner.

18. This Court vide order dated 30.05.2017 had already directed not to take steps for closure of petrol pump on account of the default, which cannot be said to have been committed solely by the petitioner. The different departments of the State Government and the Oil Company who were required to submit all the requisite documents and papers mentioned in letter dated 17.04.2017 (Annexure-II) have failed to comply.

19. Under the above facts and circumstances, I direct the petitioner, the Oil Company and the respondent nos.1 to 3 to take steps to submit all the requisite documents sought



for by the Ministry of Environment, Forest and Climate Change, Regional Office, Ranchi vide letter dated 17.04.2017 within a period of 15 days from the date of communication of this order.

20. In case of failure to take action within the aforesaid period, the interim relief granted to the petitioner shall lose its force. The petitioner in that case for inaction on the part of any of the respondents can avail remedy in accordance with law.

21. The writ petition is accordingly, stands disposed of.

(Purnendu Singh, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	02.04.2024
Transmission Date	N.A.

