



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

CIVIL APPLICATION (CAW) NO. 2602/2023

IN

WRIT PETITION NO. 7993/2017 (D)

**M/s Anjali Petrol Pump Vs. Union of India through its Secondary,
The Ministry of Shipping, Road Transport and Highways & Others**

WITH

CIVIL APPLICATION (CAW) NO.2993/2023

IN

WRIT PETITION NO. 7993/2017 (D)

**M/s Anjali Petrol Pump Vs. Union of India through its Secondary,
The Ministry of Shipping, Road Transport and Highways & Others**

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. A.M. Ghare, Advocate for Applicant / Respondent No. 7 in CAW No. 2602/2023

Mr. Abhay Sambre, Advocate for applicant / Respondent No.6 in CAW No. 2993/2023

Mr. M.R. Joharapurkar, Advocate for Petitioner

Mr. N.S. Deshpande, DSGI for Respondent Nos.1 to 3 / Union of India

Mr. V.A. Thakare, AGP for Respondents / State

**CORAM: AVINASH G. GHAROTE AND
SMT. M.S. JAWALKAR, JJ.**

DATED : 15th APRIL, 2024

Civil Application (CAW) No. 2602/2023 in Writ Petition No.7993/2017 is by the original respondent No.7 for modification of the judgment dated 17/01/2018. Civil Application (CAW) No. 2993/2023 is by the respondent No. 6 / BPCL for modification of the same judgment to the effect that the respondent No.7 would be liable to maintain a common

access to the service road of 7 meters width and will not start operating the petrol pump till the said condition is complied with. This undertaking was given in terms of Clause 4.6.3 of the guidelines of access, location and layout of road side fuel stations and service stations (IRC : 12-2009, Third Revision) in view of the fact that the petrol pump allotted to the respondent No.7 was within a distance of 300 meters from the one allotted to the petitioner. This was a situation when the concerned road was state highway, subsequently it has been taken over by the national highway in the year 2017 in pursuance to which, on an application made by the respondent No.7 to the Superintending Engineer National Highway Circle, Nagpur by communication dated 02/06/2023, the condition of access to the retail outlet allotted to the respondent No.7 as indicated above on account of Clause 4.6.3, was relaxed subject to the terms and conditions as contained therein (page 91). It is necessary to note, that this communication dated 02/06/2023 was challenged by the petitioner before this Court by way of Writ Petition No.5322/2022 in which by the judgment dated 11/7/2023 noting that there was no application preferred for modification or review

of the judgment dated 17/01/2018 in Writ Petition No. 7993/2017, the petition was disposed of by recording the statement of learned Deputy Solicitor General of India that final permission shall not be granted till undertaking given in Writ Petition No.7993/2017, is complied with.

2. The present application has been filed by the original respondent No.7 for relaxation of the undertaking as recorded in the judgment dated 17/01/2018.

3. It is necessary to note, that when the undertaking was given while disposing of the petition on 17/01/2018, the position was that the road was a state highway, which has subsequently been taken over by the national highway authority, who intend to construct a service lane, which would have access to all the commercial outlets abutting the service lane, including the retail outlet allotted to the respondent No.7. However, till such time, the service road is completed, by the communication dated 02/06/2023, the original condition as contemplated by Clause 4.6.3 has been relaxed. Though the application is vehemently opposed by Mr. Joharapurkar, learned counsel for the original petitioner, we do not see any reason as

to why, the subsequent change in circumstances and the relaxation accorded by the national highway by its communication 02/06/2023, cannot inure to the benefit of the petitioner. In that view of the matter, we modify the judgment dated 17/1/2018 by directing, that it would be permissible for the respondent No.7 to construct a temporary access road from the highway to the retail outlet allotted to it, subject to conditions as contained in para 12 (1 to 12) in the communication dated 02/06/2023. The judgment dated 17/01/2018 in Writ Petition No. 7993/2017 is accordingly modified to the above extent. Considering the circumstances no costs.

(SMT. M.S.JAWALKAR,J.)

(AVINASH G. GHAROTE,J.)