

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

203

CWP-20197-2014

Date of Decision: 24.01.2024

Ujjwala Lathar

...Petitioner

Versus

Indian Oil Corporation Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr.B.S.Rana, Sr. Advocate with
Mr.Nayandeep Rana, Advocate
for the petitioner.

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

Mr. Rajesh Kumar Jangra, Advocate
for respondents No.5 and 6.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of No Objection Certificate dated 27.08.2014 (Annexure P-6) whereby respondent No.4 has permitted respondents No.5 and 6 to set up petrol pump. The petitioner is further seeking setting aside of letter of intent dated 22.03.2013 (Annexure P-3) issued by respondent No.2-Indian Oil Corporation (for short 'IOC') in favour of respondents No.5 and 6.

2. The petitioner is owner of Hindustan Petroleum Petrol Pump in the name and style of 'Uma Filling Station'. The said petrol pump is located

at National Highway No.65 at Jhumpa Kalan, Tehsil Siwani, District Bhiwani.

3. Pursuant to advertisement of Indian Oil Corporation, the respondents No.5 and 6 applied for the allotment of petrol pump. The respondents No.5 and 6 came to be selected and respondent-IOC issued letter of intent in favour of them. As required under Rule 144 of Petroleum Rules, 2002 (for short '**Rules**'), the respondent-IOC applied for NOC to District Magistrate, Bhiwani who sought opinion of different Government departments. Different Government-authorities including Forest, PWD, Fire Department issued their no objection. The proposed petrol pump was to be set up at National Highway, thus, respondents were required to have NOC from NHAI. The respondent-IOC applied for NOC to NHAI which in turn vide letter dated 21.10.2013 granted permission for one year subject to conditions enumerated in the said communication. The Deputy Commissioner, Bhiwani on the basis of NOC granted by different departments issued NOC dated 27.08.2014 in terms of Rule 144 of the Rules. The respondents No.5 and 6, in October' 2014 set up their petrol pump which since then is operating.

4. Learned counsel for the petitioner submits that NHAI as well as Deputy Commissioner has granted NOC in violation of guidelines dated 25.09.2003 issued by Ministry of Road Transport and Highway (MoRTH). As per aforesaid guidelines, the petrol pump at National Highway cannot be set up if distance between proposed site and intersection with rural roads with carriage way width of 3.5 or more is less than 300 meters. The distance

in the case of respondents is less than 300 meter, thus, NHAI as well as District Magistrate have granted permission in violation of binding instructions of Central Government. The respondent is relying upon instructions of 2013 which are inapplicable to petitioner because event of advertisement and LOI took place prior to 2013. The petitioner preferred civil suit which was dismissed on account of jurisdiction and appeal before Commissioner was filed and withdrawn during the pendency of the petition, thus, there is no concealment of facts.

5. *Per contra*, learned counsel for the respondents submits that the petitioner preferred an appeal before Divisional Commissioner, Hisar against the impugned NOC which was later on withdrawn. The impugned order dated 27.08.2014 is an appealable order and petitioner had preferred appeal, thus, act of the petitioner amounts to concealment of facts. The guidelines of 2013 make it clear that distance is required to be maintained in respect of concrete (*Pacca*) road and it is not applicable in case of earth tracks (*kachha* road). The Division Bench of this Court in **Kulwant Rai Kataria vs. State of Punjab and others, LPA No.1744 of 2012, decided on 03.11.2012** has held that instructions dated 25.09.2003 issued by Central Government are not statutory in nature and these are not mandatory like a statute.

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. The conceded position emerging from record is that respondents No.5 and 6 pursuant to advertisement of respondent-IOC applied for allotment of petrol pump. The guidelines of 2003 were in vogue

at the time of advertisement as well as issuance of letter of intent. IOC applied for NOC in terms of Rule 144 of Petroleum Rules, 2002 to District Magistrate and NOC was issued on 27.08.2014. The guidelines of 2013 came into force prior to issuance of NOC by District Magistrate. The NHAI issued NOC vide communication dated 21.10.2013 and it was on temporary basis for a period of one year. The said permission till date has not been withdrawn by NHAI. The respondents No.5 and 6 set up their petrol pump in October' 2014 and since then it is operating. The petitioner is also having petrol pump in the vicinity of petrol pump of respondents No.5 and 6.

8. As per petitioner, the petrol pump has been set up in violation of guidelines dated 25.09.2003 and application of the respondents seeking NOC was bound to be considered in terms of guidelines of 25.09.2003. The Deputy Commissioner could not rely upon the guidelines of 24.07.2013.

9. The petitioner concededly filed appeal against the impugned NOC (Annexure P-6) and the said appeal has been withdrawn. As per Rule 154 of Petroleum Rules, 2002, order passed by Deputy Commissioner in terms of Rule 144 of the Petroleum Rules, is an appealable order. The petitioner concededly filed appeal against impugned order, however, it was withdrawn. The appeal was filed after filing writ petition before this Court. The Divisional Commissioner vide order dated 09.01.2014 stayed the impugned order. The respondents pointed to Divisional Commissioner that there is concealment of fact on the part of the petitioner and stay has been wrongly granted. The Divisional Commissioner vide order dated 18.10.2014 vacated the stay considering the fact that the petitioner has approached High

Court and an interim order dated 26.09.2014 has been passed. The relevant extracts of the order dated 28.10.2014 passed by Divisional Commissioner, Hisar are reproduced as below:

“6. The grant of interim stay in court cases is a very ticklish issue, which requires skillful and tactful handling. Here very fine balance of interest of all the parties is required to be made. Generally, if interim stay is granted, then plaintiff almost always, tries to waste time of the court by refusing to cooperate or move ahead with further proceeding in the main application. However, it is also observed that whenever interim stay is not granted, then respondent also, generally tries to waste the time of the court by all sort of conceivable means. In all cases, one party or another suffers due to prolonged stay. Therefore, a fine balance is needed to balance the interest of each party in grant of stay or in vacation of stay.

7. It is undisputed that on the date of consideration of stay application, i.e. on 09.10.2014, the High Court order dated 26.09.2014 was concealed before this court by the appellant. It was also concealed that appellant first tried to his luck before civil court for getting a suitable injunction order. After having unsuccessful, he tried to get 'status quo' order from High Court. But again, he becomes unsuccessful. Then after concealing his earlier two attempts, appellant got succeeded in getting ex-parte stay order from this court for same cause of action. However, any litigant cannot be allowed 'forum shopping' among various authorities, courts and tribunals till desirable injunction order is procured.

8. *In 2013(196)-DLT-385, it is held that forum hunting or forum shopping indubitably leads to not only: multiplicity of proceeding, but also the abuse of process of court. Courts have to discourage such practice with a heavy hand.*

9 *Further, both parties have stated same reasons of loss of business for either request of granting of stay, or request for vacation of stay. Since, appellant as well as respondent No. 2 & 3 are competitors over the similar product in same market, therefore, loss of business to one person will naturally result in roughly similar gain of business to her competitor. Of course, public loss is also to be calculated if it is found that National Highway instruction dated 24.07.2013 is violated. But even if such an instruction is indeed found to be violated at a later stage, then also assessed cost can always be recovered from respondent. Hon'ble High Court has already ruled in its order dated 26.09.2014, that any construction by respondents on the site, which is contrary to norms, will not create any indefeasible right in them. It is also recorded that respondents can set up Petrol Pump at their own risk.*

10. *Therefore, in the light of above said discussion; there is no ground to continue with the stay order, which was any way going to be inoperative after three days from now. Whatever respondents will do after vacation of stay, will not create any right to them and they will do construction, operation etc. on the site, only at their own risk.*

11. *Therefore, the stay is vacated. The case is fixed for argument on maintainability of this appeal. So, parties*

are directed to come to this court for preliminary hearing on 13.11.2014.”

10. The aforesaid appeal came to be withdrawn in view of pendency of writ petition before this Court. The petitioner, on the one hand, approached this Court and on the other hand, filed appeal before the appellate authority and secured *ex-parte* stay. The petitioner filed civil suit apart from appeal before appellate authority and writ petition before this Court. The civil suit, on the ground of jurisdiction, was dismissed vide order dated 10.09.2014. This indicates act and conduct of the petitioner.

11. The petition may be dismissed on the sole ground of forum shopping because it is settled proposition of law that whosoever approaches Court must come with clean hands. Nobody can be permitted to pollute the holy water of justice.

12. The petitioner is a competitor of respondent Nos.5 and 6 and he has filed present petition to inhibit them from operating their petrol pump. Anybody can bring in the knowledge of Court illegality committed or to be committed by authorities. In the case in hand, intent of the petitioner is not to stop alleged illegality on the part of the authorities whereas intent is to avoid competition. The petitioner is trying to use every possible judicial forum to halt operations of respondent Nos.5 and 6. Judicial process cannot be used to stop healthy competition in the guise of allegation of violation of any instruction issued by Government.

12.1 In ***Nagar Rice & Flour Mills & Ors v. N Teekappa Gowda & Bros Ors. (1970) 1 SCC 575***, the Hon’ble Supreme Court considered the

issue of the locus standi of a rival trader to impeach the grant of fresh license or permission that increases competition in the petitioners area of trade. The Apex Court held that the provisions of Section 8(3)(c) of the Rice Milling Industry Regulation Act, 1958 are merely regulatory and if not complied with, the appellants may probably be exposed to a penalty but the competitors in the business cannot seek to prevent the appellants from exercising their right to carry on business because of the default nor can the rice mill of the appellants be regarded as a new rice mill. The Court clarified that a person cannot claim independently of any restriction imposed by a law referable to Article 19 of the Constitution that any other person shall not carry on business or trade so as to affect his trade or business adversely. The relevant extracts of the judgment read as :

9. Section 8(3)(c) is merely regulatory, if it is not complied with the appellants may probably be exposed to a penalty, but a competitor in the business cannot seek to prevent the appellants from exercising their right to carry on business, because of the default, nor can the rice mill of the appellants be regarded as a new rice mill. Competition in the trade or business may be subject to such restrictions as are permissible and are imposed by the State by a law enacted in the interests of the general public under Article 19(6) but a person cannot claim independently of such restriction that another person shall not carry on business or trade so as to affect his trade or business adversely. The appellants complied with the statutory requirements for carrying on rice milling operations in the building on the new site. Even assuming that no previous permission was obtained, the

respondents would have no locus standi for challenging the grant of the permission, because no right vested in the respondents was infringed.

X X X X

11. The appellants had been carrying on business in milling rice for more than 30 years and the mill was by reason of the proposal to submerge the site in the Sharavathi Hydro-Electric Project had to be shifted from its location. The State allotted another piece of land to the appellants and did not acquire their machinery and permitted erection of their rice mill building on the new location, this was done with a view to cause minimum hardship to the appellants arising in consequence of the proposed construction of the dam resulting in submerger of their land. The State also granted permission to the appellants to change the location under the Rice Milling Industry (Regulation) Act, 1958. The permission cannot be said to be granted without consideration of the relevant circumstances.

12. The appeal is allowed and the petition filed by the respondent N. Teekappa Gowda and brothers is ordered to be dismissed with costs throughout in favour of the appellants.

12.2 In ***Mithilesh Garg etc. v. Union of India and others, (1992) 1 SCC 168***, a three Judge Bench of Apex Court had occasion to advert with challenge laid by existing stage carriage operators to route permits granted to various transport operators. The Court turned down pleas of the existing operators and held :

“6. As mentioned above the petitioners are permit holders and are existing operators. They are plying their

vehicles on the routes assigned to them under the permits. They are in the full enjoyment of their fundamental right guaranteed to them under Article 19(1)(g) of the Constitution of India. There is no threat of any kind whatsoever from any authority to the enjoyment of their right to carry on the occupation of transport operators. There is no complaint of infringement of any of their statutory rights. Their only effort is to stop the new operators from coming in the field as competitors. We see no justification in the petitioners' stand. More operators mean healthy competition and efficient transport system. Overcrowded buses, passengers standing in the aisle, persons clinging to the bus doors and even sitting on the rooftop are some of the common sights in this country. More often one finds a bus which has noisy engine, old upholstery, uncomfortable seats and continuous emission of black smoke from the exhaust pipe. It is, therefore, necessary that there should be plenty of operators on every route to provide ample choice to the commuter public to board the vehicle of their choice and patronise the operator who is providing the best service. Even otherwise the liberal policy is likely to help in the elimination of corruption and favouritism in the process of granting permits. Restricted licensing under the old Act led to the concentration of business in the hands of few persons thereby giving rise to a kind of monopoly, adversely affecting the public interest. The apprehensions of the petitioners, that too many operators on a route are likely to affect adversely the interest of weaker section of the profession, is without any basis. The transport business is bound to be ironed out ultimately by the rationale of demand and supply.

Cost of a vehicle being as it is the business requires huge investment. The intending operators are likely to be conscious of the economics underlying the profession. Only such number of vehicles would finally remain in operation on a particular route as are economically viable. In any case the transport system in a State is meant for the benefit and convenience of the public. The policy to grant permits liberally under the Act is directed towards the said goal. The petitioners who are already in the business want to keep the fresh entrants out of it and as such eliminate the healthy competition which is necessary to bring efficiency in the trade.

(Emphasis supplied)

14. A conspectus of guidelines of 2003 and 2013 discloses that restriction of distance is not applicable in case of intersection of *kachha* road. In the instructions of 2003, it was specifically provided that there should be minimum specified distance between proposed site and intersection with rural road of earth tracks i.e. *kachha* road whereas there is no such restriction in 2013 guidelines. The relevant extracts of the 2003 guidelines as well as 2013 are reproduced as below:

“2003 Guidelines

6.1 For the siting of fuel stations along National Highways, its minimum distance from an intersection would be:

6.1.1 Non-Urban (Rural) Stretches.

1. Plan and Rolling Terrain

(i) Intersection with NHs/ SHs/ MDRs 100m

(ii) Intersection with Rural Roads with carriageway width of 3.5m or more 300m

(iii) *Intersection with Rural Roads and All other earth tracks with Carriageway width less than 3.5m
100m*

Guidelines of 2013

4.5 In order to provide safe length for weaving of traffic, fuel stations along National Highways shall be located at the minimum distance from an intersection (gap in the central median be treated as intersection) as given below. For single carriageway section, these minimum distances would be applicable for both sides. All the distances shall be measured between the tangent points of the curves of the side roads at intersections / the median openings and the access / egress roads of the fuel stations, as is applicable, in a direction parallel to the centre line of the nearest carriageway of the National Highway.

4.5.1 Non-Urban (Rural) Stretches

<i>1.</i>	<i>Plain and Rolling Terrain</i>	<i>Distance</i>
<i>(i)</i>	<i>Intersection with NHs/SHs/MDRs</i>	<i>1000 m</i>
<i>(ii)</i>	<i>Intersection with Rural Roads/approach roads to private and public properties</i>	<i>300 m</i>

15. The petitioner is objecting applicability of 2013 guidelines on the ground that event of advertisement as well as LOI took place prior to instructions of 2013, thus, respondent cannot claim benefit of instructions of 2013. The contention of the petitioner cannot be countenanced. The authorities are bound to take care of instructions which are in vogue at the time of deciding application. The instructions are regulatory in nature and these are meant for the convenience of public as well as regulating the

traffic. The instructions dated 24.07.2013 have noticed guidelines of 25.09.2003 and it has been specifically mentioned that existing norms and guidelines have been modified. The relevant extracts of the guidelines dated 24.07.2013 read as :

“Ministry had issued separate guidelines on access permission to Fuel Stations, Service Stations; Rest Areas etc. vide Circular No. RW/NH-33023/19/99-DO-III dated 25.09.2003/17.10.2003, & access permission to Private Properties etc. along National Highways vide Circular No. RW/NH-33023/19/99-DO-III dated 31.08.2000. With the improvement in the National Highway network, a greater need for road safety of the users has been felt along with stricter enforcement of the guidelines. It has also been decided that unified norms for access to Fuel Stations, Service Stations, Private Properties, Rest areas and other such facilities along the National Highways may be evolved.

2. Accordingly, the existing Norms and guidelines have now been modified and the unified Guidelines/Norms are enclosed at Appendix-I & Appendix-II. The Norms at Appendix-I will be applicable for access permission to all Fuel stations, Service stations, Rest areas, etc. and Norms at Appendix-II will be applicable for access. permission to Private Properties from the date of the issue of this Circular. These norms shall be followed for seeking and granting permissions for the access to National Highways.”

16. From the perusal of above-cited paragraphs of instructions dated 24.07.2013, it is quite evident that authorities were bound to decide

application of the respondents in terms of guidelines of 24.07.2013 instead of guidelines of 25.09.2003. Thus, contention of petitioner that instructions of 2013 have been wrongly invoked is misconceived and deserves to be turned down.

17. There is another aspect of the matter. The respondents were issued NOC by Deputy Commissioner in 2014 and they have set up their petrol pump. The NHAI issued NOC in 2013 which is still valid. The respondents are operating their petrol pump since 2014 without any objection raised by District Administration as well as NHAI. It indicates that as per opinion of NHAI and State authorities, there is no violation of guidelines issued by State & Central Government. This Court in the absence of any glaring illegality on the part of authorities cannot halt operation of a running petrol pump. Availability of two pumps is in the interest of public at large. Healthy competition is always in the interest of society as well as all stakeholders.

18. In the wake of above discussion and findings, this Court is of the considered opinion that the petition *sans* merit, thus, deserves to be dismissed and accordingly dismissed.

(JAGMOHAN BANSAL)
JUDGE

24.01.2024
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>