

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14682 of 2023

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M/s Rahul Service Station through its Partner Dharmendra Singh, aged about 51 years (Male), Son of Late Indradev Singh, Resident of Village- Surheri, P.S.- Muffasil, District- Gaya at present residing at Mohalla- Shivpuri Colony, Road No. 01, P.S.- Muffasil, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary Road Construction Department Bihar, Patna.
2. Engineer-in-Chief, Road Construction Department Bihar, Patna.
3. Chief Engineer, South Road Construction Department Bihar, Patna.
4. Superintendent Engineer, Road Construction Department Magadh Road Circle, Gaya.
5. District Magistrate, Gaya.
6. Executive Engineer, Road Construction Department Path Pramandal-1, Gaya.
7. Bharat Petroleum Corporation Ltd., Anisabad, Patna through its Regional Manager, Regional Office, Bihar, Patna
8. Sumit Kumar, Son of Jitendra Kumar, Resident of Village- Sureri, P.S.- Muffasil, District- Gaya.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 4524 of 2024

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Sumit Kumar, aged about 30 years, Male, S/o Jitendra Kumar, resident of Village Surhari, P.O. Bhadeji, P.S. Mufassil, Distt. Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary.
2. The Secretary, Department of Transportation, Government of Bihar.
3. The District Transport Officer, Gaya.
4. The Secretary, Road Construction Department, Government of Bihar.
5. The Engineer-in-Chief, Road Construction Department, Government of Bihar.
6. The Executive Engineer, Road Division - 1, Gaya, Road Construction Department, Government of Bihar.
7. The District Magistrate, Gaya.
8. Bharat Petroleum Corporation Ltd., through its Chairman, Bharat Bhawan, 4 and 6 Currimbhoy Road, Ballard Estate, P.O. - 688, Mumbai.



- 9. State Head Bharat Petroleum Corporation Ltd., Ashiana Chamber, 3rd Floor, Exhibition Road, Patna.
- 10. Territory Manager (Retail), Bharat Petroleum Corporation Ltd., Patna.

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 14682 of 2023)

- For the Petitioner/s : Mr. Shailendra Kumar Singh, Advocate.
Mr. Amit Ranjan, Advocate.
Mr. Sanjeev Kumar, Advocate.
- For the Respondent/s : Mr. Uday Shankar Sharan Singh, GP 19 with
Mr. Swapwl Kumar Singh, AC to GP-19.
- For the BPCL : Mr. Siddhartha Prasad, Advocate.
Mr. OM Prakash Kumar, Advocate.

(In Civil Writ Jurisdiction Case No. 4524 of 2024)

- For the Petitioner/s : Mr. Ankit Katriar, Advocate.
- For the Respondent/s : Mr. Abbas Haider, SC -6.
- For the BPCL : Mr. Siddhartha Prasad, Advocate.
Mr. OM Prakash Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

9 23-01-2025 Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the following reliefs:-

“For issuance of appropriate writ/s, order/s direction/s for quashing the order dated 18.09.2023 contained in letter No. 2874 issued by the Chief Engineer, South Road Construction Department, Bihar, Patna by which the no objection certificate issued by the District Magistrate contained in Memo No. 801 dated 12.07.2022 for establishment of a new retail outlet under BPCL at Mauza Surheri, Plot No. 157 Khata No. 257 P.S. Muffasil, District Gaya has been upheld



and approved which is against the guidelines issued by Ministry of Road Transport and Highways (MORTH) Government of India, New Delhi as contained in circular No. 33032 dated 26.06.2020 and further for quashing the above said objection certificate dated 12.07.2022.”

3. It is the case of the petitioner that the Respondent No. 8 has been issued the No Objection Certificate (NOC) by the authority without adhering to the guidelines issued by the Respondent-Bharat Petroleum Corporation Limited (hereinafter referred to as ‘the Corporation’).

4. Learned counsel appearing on behalf of the petitioner has stated that as per the guidelines issued by ‘the Corporation’ the authorities are obligated to verify as to whether the minimum distance of 300 meters is maintained between the existing retail outlet and the proposed retail outlet sought to be established by the Respondent No. 8. That as per the said guidelines, the minimum distance between two retail outlets should be 300 meters but in this particular case, even though the distance is only 273 meters, the authorities have gone ahead and issued the No Objection Certificate (NOC) for establishment of the retail outlet by the Respondent No. 8. Learned counsel has stated that the above action of the respondents in issuing the No Objection Certificate (NOC) is illegal and contrary to the



guidelines issued by 'the Corporation' themselves. Learned counsel has stated that the guidelines issued by 'the Corporation' are mandatory in nature and they ought to have been followed strictly without any deviations but in this particular case, the authorities for reasons best known have permitted the Respondent No. 8 to establish the retail outlet by issuing the No Objection Certificate (NOC) even though the distance between the retail outlet belonging to the petitioner and the newly sought to be established retail outlet is only 273 meters. Learned counsel has, therefore, prayed this Hon'ble Court to set aside the issuance of the No Objection Certificate (NOC) issued to the petitioner.

5. Per contra, the learned counsel appearing on behalf of the Respondent-Corporation as well as the private Respondent No. 8 has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that the present writ petition filed by the petitioner is not maintainable as the petitioner is trying to scuttle the establishment of the retail outlet by the respondents. That the petitioner being a business rival cannot settle his scores before this Court more specifically under Article 226 of the Constitution of India. Learned counsel has drawn the attention



of this Court to the various guidelines issued by the 'the Corporation' most specifically Clause 4.6 and Clause 4.6.3 wherein it is stated that a retail outlet can be established even if the distance is less than 300 meters, in case, a service road is provided. Further it is stated by the learned counsels that the guidelines issued by the authorities are directory in nature and not mandatory. Learned counsel has stated that the purpose and the aim of issuing the guidelines is to see that no accidents take place, if the retail outlet is directly abutting the highway. That in this particular case the No Objection Certificate (NOC) issued in favour of the Respondent No. 8, is a conditional one and as per the said condition, the petitioner can establish a retail outlet only after he has provided a service road. When queried by this Court, learned counsel appearing on behalf of the Respondent No. 8, on instructions from his client, has fairly stated that the Respondent No. 8 is willing to abide by the conditions imposed by 'the Corporation' and he will not operate the retail outlet till the service road as mandated under the guidelines more specifically Clause 4.6 and Clause 4.6.3 has been fulfilled. Learned counsel has, therefore, prayed this Hon'ble Court to dismiss the present writ petition.

6. Further, the learned counsel for the Respondent No.



8 has stated that CWJC No. 4524 of 2024 is filed by the Respondent No. 8 challenging the action of 'the Corporation' in issuing the Memo No. 801 dated 12.07.2022 whereby the authorities have sought to impose a two year holiday for the establishment of the retail outlet. Learned counsel has stated that due to the pendency of CWJC No. 14682 of 2023 filed by the petitioner and the interim orders granted by this Court on 19.10.2023, the petitioner is not able to take further steps for opening the retail outlet. Learned counsel has stated if some reasonable time is given to him, the petitioner in CWJC No. 4524 of 2024 will abide by the conditions imposed while issuing the No Objection Certificate (NOC) and, therefore, prayed this Hon'ble Court to allow the CWJC No. 4524 of 2024.

7. A perusal of the documents more particularly the guidelines issued by 'the Corporation' more specifically Clause 4.6 and Clause 4.6.3 which reads as under:-

“Clause 4.6- The minimum distance between two fuel stations would be as given below:-

Clause 4.6.1- Plain and rolling terrain in non-urban (rural) areas;

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|------|--|-------|--|
| (i) | Undivided carriageway (for both sides of carriageway) | 300m | (Including deceleration and acceleration lanes). |
| (ii) | Divided carriageway (with no gap in median at this location and stretch) | 1000m | (Including deceleration and acceleration lanes) |



Clause 4.6.3- *If two more fuel stations are to be sited in close proximity for some reasons, these would be grouped together to have a common access through a service road of 7.0m width and connected to the highway through acceleration, deceleration lanes. From these considerations, the permission for the new fuel stations would be considered only if it is either in proximity to the existing one so that the common access can be provided or the new one located at distance of more than 1000m. Any objection from the existing fuel station owner against granting of access permission from the highway for the proposed new fuel station are to be overruled and access to all fuel stations in case of clustering, shall invariably be from the service road only.”*

8. A perusal of the above guideline reveals that there is absolutely no embargo for establishing a new retail outlet within 300 meters from an existing one. The only condition that is imposed by the authority is that the owner should provide at his own cost a service road having a width of seven meters along the entire length of the retail outlet. The said condition is imposed only to see that the accidents are minimized. When this Court has pointed out the above clause learned counsel for the petitioner in CWJC has fairly stated that he cannot have any objection for opening of a new retail outlet within 300 meters from the existing one if the petitioner abides by the conditions laid down in the No Objection Certificate (NOC). Further, the learned counsel has also stated that he has not challenged the



above guideline issued by the Respondent-Corporation.

9. Having regard to the above, the present writ petition is disposed of directing the Respondent No. 8 in the CWJC No. 14682 of 2023 to abide by the conditions imposed in the NOC issued. The Respondent No. 8 shall not commence his operations till such time the service road as mandated by clause 4.6.3 is provided. The Respondent No. 8 shall endeavour to complete the service road within a period of three months from the date of the receipt of the copy of this order. Thereafter, he shall intimate the Respondent-Corporation about the laying of the service road, on such intimation the authority shall inspect the site of the petitioner and permit him to operate the retail outlet if the other parameters and conditions are met.

10. The prayer sought for by the petitioner in CWJC No. 4524 2024 is read as under:-

“That this is an application praying for issuance of a writ in the nature of a writ of mandamus or any other appropriate writ/order/direction upon the respondent statutory authorities to ensure that all the statutory clearances/NOCs/licenses are issued to the petitioner for starting his petrol pump retail outlet dealership for the subject location, in terms of the Letter of Appointment dated 30.07.2022 granted by the Bharat Petroleum Corporation Limited, in particular for a direction to the



District Transport Officer, Gaya who is malafidely refusing to issue selling license to the petitioner despite an application dated 27.10.2022 pending with him for the last 1.5 years.

The Petitioner further prays for issuance of a writ in the nature of a writ of certiorari or any other appropriate writ/order/direction for setting aside the letter dated 20.01.2024, issued by the Bharat Petroleum Corporation Limited, whereby it is unilaterally trying to push the Petitioner's allotted retail outlet to a holiday scheme even after knowing that issuance of the aforesaid selling license by the District Transport Officer, Gaya is one of the last clearances required from the statutory authorities."

11. Having regard to the order passed in CWJC No. 14682 of 2023, the impugned Memo No. 801 dated 12.07.2022 issued by the Respondent No. 5 is set aside. In case, the petitioner does not take necessary steps for lying out the service road within the time stipulated by this Court, the authorities are free to take necessary action in accordance with law.

12. With the above, the present writ petition stands disposed of.

(A. Abhishek Reddy, J)

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