

105 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-1874-2025 (O/M)

Date of decision : 23.01.2025

Randhir Singh and another

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. D.S. Patwalia, Senior Advocate with,
Mr. Kannan Malik, Advocate
for the petitioners.

Mr. Navneet Singh, Senior DAG Punjab.

Mr. Karanjit Singh and Mr. Shivam Joshi, Advocates
for respondent No. 6.

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HARSH BUNGER, J. (ORAL)

1. Petitioners (Randhir Singh and another) have filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of mandamus for directing respondent No. 3-Deputy Commissioner, Gurdaspur, to place on record copies of the orders dated 07.06.2024 and 18.09.2024, vide which the complaints/representations submitted by petitioner No. 1 against setting up of a fuel pump at Khasra No. 63, 64 and 65 of village Dhariwal and Khasra No. 15 of village Japuwal by illegally encroaching and dismantling the water channel running through aforesaid khasra numbers, have been rejected.

1.1 A further prayer has been made for issuance of a writ of certiorari for quashing orders dated 07.06.2024 and 18.09.2024 as well as

letters dated 12.06.2024 (Annexure P-4) and dated 24.09.2024 (Annexure P-12), vide which decisions of orders dated 07.06.2024 and 18.09.2024, have been communicated to the petitioners.

1.2 Another prayer has been made for issuance of a writ of mandamus for directing respondent No. 3-Deputy Commissioner, Gurdaspur, to place on record a copy of no objection certificate issued to respondents No. 5 and 6 for setting up fuel filling station and further for quashing the said no objection certificate.

1.3 It is still further prayed for issuance of a writ of mandamus for directing respondents No. 5 and 6 to restore the dismantled water channel, situated at Khasra No. 63, 64 and 65 of village Dhariwal and Khasra No. 15 of village Japuwal.

2. Briefly, respondent No. 5 (Reliance BP Mobility Limited) issued a Letter of Intent dated 24.12.2021 (Annexure P-1), appointing respondent No. 6 (M/s S&B Fuels) as its dealer. Thereafter, respondents No. 5 and 6 sought no objection certificate for setting up fuel filling station at the proposed land comprised in Khasra No. 63, 64 and 65 of village Dhariwal and Khasra No. 15 in village Japuwal, which were duly issued and thereafter, respondents No. 5 and 6 began the construction of said fuel filling station. The wife of petitioner No. 1 is stated to be the owner of fuel filling station situated near to the fuel filling station being set up by respondent No. 6 and she submitted a complaint dated 13.03.2024 (Annexure P-2) to Deputy Commissioner, Gurdaspur, inter alia, alleging that respondents No. 5 and 6 are setting up a fuel filling station after encroaching and dismantling a water channel

comprised in Khasra No. 63, 64 and 65 of village Dhariwal and Khasra No. 15 of village Japuwal. It is stated that another complaint dated 24.05.2024 (Annexure P-3) was submitted raising similar issues, however, letter dated 12.06.2024 (Annexure P-4) was issued by the office of Deputy Commissioner, Gurdaspur, stating that the complaint has been closed.

2.1 It is stated that thereafter, petitioner No. 1 sought information under the Right to Information Act, 2005 (in short 'RTI Act'), regarding details of water channel and in response thereto, a letter dated 08.08.2024 (Annexure P-6) was received alongwith report of concerned Patwari. Another application filed by the petitioners seeking information under RTI Act was responded to, vide letter dated 29.07.2024 (Annexure P-8). It is stated that no objection certificate dated 13.05.2024 (Annexure P-9), issued by the Water Resources Department, Punjab, was only with a specific condition that while setting up the fuel filling station, no interference or tampering of any kind shall be done with the water channel running through the aforesaid land. It is further stated that as per office memo dated 16.08.2021 (Annexure P-10) of the Central Pollution Control Board, guidelines for setting up of new petrol pumps have been issued and National Green Tribunal has passed an order directing that no petrol pump is to be allowed within a distance of 50 meters of water body.

2.2 It is the case of the petitioners that another complaint dated 28.08.2024 (Annexure P-11) was made to the Deputy Commissioner, Gurdaspur, highlighting the relevant facts, however, vide

letter dated 24.09.2024 (Annexure P-12), the petitioners were intimated that the said complaint has been closed, as per order dated 18.09.2024, passed by the Deputy Commissioner, Gurdaspur. Petitioners state that a similar complaint was submitted against respondents No. 5 and 6 to the National Highway Authority of India (in short 'NHAI'), whereupon, vide letter dated 03.09.2024 (Annexure P-15), the NHAI has withdrawn the provisional approval granted for setting up of the fuel filling station.

3. In the aforementioned circumstances, the instant civil writ petition has been filed by the petitioners for the relief(s), as noticed hereinabove.

4. During the course of hearing, the only argument raised by learned senior counsel on behalf of the petitioners is that the fuel filling station set up by respondents No. 5 and 6 is in violation of office memo dated 16.08.2021(Annexure P-10), the relevant extracts whereof read as under :-

“ The matter was subsequently referred to the Expert Committee constituted by CPCB earlier in the matter of guidelines for setting up of new petrol pumps and the following addendum guidelines (to guidelines dated 07.01.2020) have been finalised for implementation in case of petrol pumps near water bodies.

a) All the surface water bodies irrespective of utility shall be protected from any possible contamination. These include lakes, ponds, streams, rivers, wetlands, canals and creeks, as per revenue records. Retail Outlets shall not be located within a distance of 50 meters from the nearest point of water bodies. In case of streams and rivers, the distance shall be considered from floodway. In case floodway is not defined, the distance shall be considered from firm

banks/edge of river. The siting criterion is to be implemented for all new petrol pumps where construction by OMCs starts post the issuance of these guidelines.

b) Retail outlets coming within 50 meter to 100 meter from the nearest point of surface water body shall have secondary containment by way of double walled tanks or concrete protection walls around Underground Storage Tank (UST).

c) Groundwater and soil quality monitoring near the premises of fuel retail outlets shall be conducted by OMCs once a year through E (P) Act, 1986 approved labs or labs with national/international accreditation. The monitoring shall be done for those Fuel Retail Outlets which are located within 100 meter from the nearest point of surface water bodies. These shall be applicable to all petrol pumps, regardless of the date of establishment. In case of any clarification and/or difficulty in obtaining samples for groundwater and soil quality monitoring, OMCs may seek assistance of local administration/SPCB/PCC/CGWB. Protocol for soil and groundwater monitoring is annexed as Annexure-1.

d) Groundwater and soil quality monitoring shall also be conducted by OMCs before installation of the new fuel retail outlet, for those retail outlets coming up within 100 meter from the nearest point of surface water bodies.”

5. On the other hand, Mr. Karanjit Singh, Advocate appears on behalf of respondent No. 6 (M/s S&B Fuels) and has handed over a photocopy of letter dated 23.09.2024, issued by NHAI, revoking its earlier letter/notice No. 2295 dated 03.09.2024 (Annexure P-15), copy whereof is taken on record subject to all just exceptions and copy thereof has been supplied to learned senior counsel for the petitioners. Mr. Karanjit has opposed the submission raised on behalf of petitioners.

6. Heard.

7. A perusal of the above extracted guidelines for setting up a new petrol pump would indicate that all the surface water bodies irrespective of utility shall be protected from any possible contamination, which includes lakes, ponds, streams, rivers, wetlands, canals and creeks, as per revenue records. It further provides that retail outlets shall not be located within a distance of 50 meters from the nearest point of water bodies. It further provides for the siting criterion and also states that retail outlets coming within 50 meter to 100 meter from the nearest point of surface water body shall have secondary containment by way of double walled tanks or concrete protection walls around underground storage tank.

7.1 As regards the aforesaid guidelines are concerned, there is no dispute at all, however, the question which arises for consideration in the instant case is whether the said guidelines would be attracted to the case in hand or not.

7.2 Apparently, the setting up of petrol pump within 50 meter from the nearest point of water bodies is sought to be regulated with the issuance of aforesaid guidelines, whereas in the instant case, the fuel filling station being set up is near to Khal (water channel), through which the water is taken to the fields for irrigation purposes.

7.3 Learned senior counsel has been unable to show from any material that the said Khal (water channel) would fall within scope and ambit of a water body, as stated in the aforesaid guidelines. Once, it is not shown that the Khal (water channel) falls within the ambit of water

bodies, as envisaged under the aforesaid guidelines, no interference is required to be made.

8. Resultantly, the instant civil writ petition fails and the same is accordingly dismissed.

9. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

23.01.2025
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No