
(2005) 08 RAJ CK 0014
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1548 of 2005

Dalpat Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 31-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 1 RLW 161 : (2005) 4 WLC 378

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Advocate : S.N. Kumawat, for the Appellant; Sushil Kasliwal, for Respondent No. 1, S. Kasilwal, for Respondent No. 3, Shyam Arya, for Respondent No. 4, B.S. Chhaba, Additional G.A. for Respondent No. 5 and Shiv Pal Singh, for the Respondent

Judgement

K.S. Rathore, J.—The petitioner who is a social worker has preferred this writ petition challenging the action of the respondents that interest of public at large is involved. The writ present petition was earlier registered as DB Civil Writ Petition as a public interest litigation and placed before the Division Bench and the Division Bench vide order dated 4.3.05 having heard the learned Counsel for the petitioner observed that prima facie no public interest element is involved in the matter to entertain the petition and further observed that the petitioner in person is suffering from the action of the respondent therefore, the matter was ordered to be listed before the single Bench.

2. Since the matter is referred by the Division Bench observing that the petitioner is personally aggrieved by the action of the respondents and policy framed by the State/National Highways Authority and Union of India has not properly been followed, as also the policy and guidelines for allotment of retail outlet are generally flouted therefore this Court has no option other than to hear the matter on merit.

3. Brief facts of the case are that the respondent No. 3, Bharat Petroleum

Corporation Limited invited applications for allotment of retail outlet/dealership in Jhotwara, Jaipur, along with other 87 sites vide advertisement dated 10.2.2005 and the applications were invited upto 14.3.2005.

4. The present petition is concerned with regard to allotment of retail outlet/dealership in Jhotwara and the retail outlet/dealership was already allotted in favour of the respondent No. 6 Shri Pawan Kumar Agarwal vide letter of intent dated 25.9.2001 wherein it was stipulated that the requisite land is to be provided within a period of two months failing which the letter of intent will be withdrawn.

5. Respondent No. 6 applied to the Municipal Corporation for allotment of the land near Bani Park Police Station, Jaipur and the Municipal Corporation allotted 6000 sq. mtrs. of land at the commercial reserved price on depositing the lease money near Bani Park Police Station.

6. Main grievance of the petitioner is that the petrol pump which is required to be set up in Jhotwara and now proposed at Bani Park which is contrary to the notification and Bani Park cannot be considered as a part of Jhotwara and the respondent cannot change the site and another grievance of the petitioner is that the respondent while allotting petrol pumps are not following the norms and conditions prescribed for the purpose and further tried to make out the case that the respondent No. 6 did not fulfill the conditions and the requirement of the allotment as the respondent changed the site which they could not.

7. Per contra, learned Counsel appearing for the Indian Oil Company, Municipal Corporation and State have raised preliminary objections regarding maintainability of this petition and have submitted that the present petition was initially filed before the Division Bench in the form of public interest litigation but was not entertained by the Division Bench on the count that no public interest is involved in the matter and on the request made on behalf of the petitioner the present petition is treated as SB Civil Writ Petition in the form of personal interest litigation but the petitioner has miserably failed to show his locus standi in the matter so much as he is seeking relief for quashing and setting aside the letter of intent Annexure-2 issued in favour of the respondent No. 6 Shri Pawan Kumar Agarwal.

8. It is also contended on behalf of the respondents that since the petitioner has not applied and participated in the selection process in respect of location of Jhotwara therefore, he is not concerned or aggrieved with the selection of respondent No. 6 and he cannot claim relief for quashing and setting aside the selection of the respondent No. 6.

9. Learned Counsel for the respondents further submitted that the petitioner is not able to make out contravention of any of his legal fundamental rights to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

10. So far change of the site is concerned, learned Counsel appearing for the respondent company submitted that it was clearly stipulated in the notification itself that site location is Jhotwara or nearby area and the present location Bani Park where retail outlet has been allotted is undisputedly nearby area of Jhotwara. Only on this count alone, the selection process cannot said to be null and void.

11. Learned Counsel appearing for the petitioner has referred the guideline and policy framed by the respondent company regarding allotment of petrol pump. Considering the submissions of the petitioner and to resolve the controversies involved in several petitions regarding allotment of retail outlet, it is necessary to discuss about the guidelines and the norms prescribed for allotment of retail outlet dealership by the companies not only at Jhotwara but throughout State.

12. Although the documents which are referred during the arguments were not submitted along with the writ petition, in the interest of justice, I deem it proper to consider the documents submitted by the respective parties at the time of arguments.

13. The petitioner referred the judgment rendered by the Division Bench of this Court in the case Hamendra Singh v. dated 24.9.2004 wherein the Division Bench of this Court has held as under:

that it is agreed by the learned Counsel for the parties that the writ petition be disposed with the direction that the establishment and installation of petrol pump shall not be in violation of the policy of the Govt. of India dated 25.9.04 and 17.10.03 and any other policy issued by the Govt. of India from time to time. It appears that the judgment rendered by this Court dated 24.9.2004 has not been followed in true and letter spirit by the petrol companies. I am not confined to the petrol companies but it is not out of place to mention that all the companies who are dealing with the petrol products are not following the policy of the Govt. of India issued from time to time.

14. Again, the Division Bench has re-iterated this observation in the judgment dated 3.6.2004 wherein the Division Bench of this Court has particularly mentioned the relevant clause and according to Clause 10.6 of the norms of location, layout and access to fuel stations along National Highways (Appendix-1) of Annexure-1. No objection certificate issued by the licensing authority is the sine qua non for starting construction of the petrol pump.

15. Time and again this Court vide final and interim orders observed that no construction shall be raised at the site of the petrol pump in violation of the policy of Government of India as well as policy and guidelines of State,

16. First I would like to deal with the policy framed by the Ministry of Road Transport and Highways vide order dated 25.9.2003.

6- for siting of fuel stations along National Highway, its minimum distance from an intersection would be: 6.1.1. Non-Urban (Rural) Stretches 1 Plain and Rolling

Terrain (i) Intersection with NHs/SHs/MDRs 1000m (ii) Intersection with Rural Roads with carriageway width of 3.t. m. or more 300m (iii) Intersection with Rural Roads and all other earth tracks with carriageway width less than 3.5m 100m 2) Hilly/Mountainous Terrain (i) Intersection with Nhs/SHs/MDRs 300m (ii) Intersection with all other roads and tracks 100m 6.1.2 Urban Stretches 1. Plain and Rolling Terrain (a) Urban Area with population of more than one lac 20,000 and less (i) Intersection with any category of roads of carriageway width of 3.5m and above 300m (ii) Intersection with roads of carriageway width of 3.5 m 100m (b) Urban Area with population of one lac and above (i) Intersection with any category of road (irrespective of carriageway width) 100m 2. Hilly and Mountainous terrain (i) intersection with any category of road (irrespective of carriageway width) 100m 6.2 The minimum distance between two fuel stations along the National Highway would be as given below: Plain and Rolling Terrain in Non-urban (Rural) Areas (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 300m (including deceleration and acceleration lanes) 6.2.2 Hilly/Mountainous Terrain and Urban Stretches (i) Undivided carriageway 300m (for both sides of carriageway (clear) (ii) Divided carriageway 300m (with no gap in median at this location and stretch) 6.3 The distance from check barrier/toll plaza would be at least 1 km and no check barrier/toll plaza would be installed within 1 km of fuel station/rest area 6.4 Minimum plot size of fuel station shall be (i) On undivided carriageway in plain/rolling terrain 35m 35m (ii) On divided carriageway in plain/rolling terrain 35m (frontage) x 45m (iii) In hills 20m x 20m (iv) In urban areas 20m x 20m 6.5 The entry to fuel station shall be through deceleration lane of minimum length of 70m and width of 5.5m, the exit through acceleration lane of minimum length of 100m and width of 5.5m.

6.6 The pavement composition of these acceleration/deceleration lanes and service road (if provided) would comprise granular Sub Base (GSB) with minimum thickness of 150mm, three layers of Water Bound Macadam (WBM) of 75 mm thick each, Bituminous Macadam (BM) of 50mm thickness and Semi Dense Bituminous Concrete (SDBC) of 25 mm thickness,

6.7 The access lanes, service road and separator island in the layout would be accommodated within the available ROW of the highway but fuel pumps would be located beyond building line. The fuel station office building etc. shall be located at the safe distance as prescribed by the Fire Department or other authorities.

6.8 The acceleration, deceleration lane, service roads, drainage system, signs and markings shall be constructed and maintained by the Oil Company/owner of the fuel station at his cost and responsibility during the period of license deed.

6.9 Permission would be granted within 30 days of the receipt of the application in the field office, if it meets all the requirements of the norms contained in the circular.

6.10 The Oil Company/owner shall have to enter into an Agreement for the license deed with the Government (Ministry of Road Transport and Highways-MORTH), for the use of NH land. There would be one time fee of Rs. 1 lac in consideration of this agreement. The validity of the Agreement would be for a period of 15 years.

6.11 The default or non-conformity of these norms for the fuel station approaches, drainage, traffic control devices etc, would be identified and determined through joint inspection by the representatives of the concerned Oil Company and the field officer in charge of the NH section. If the deficiencies are not rectified within the specified time frame, the Oil Company would be asked to de-energize the fuel station and re-energizing would be done only on complete rectification and on the authorization by the field officer in charge of the NH section.

7. These norms will be applicable to all new fuel stations from the date of the issue of this circular. Its content may be brought to the notice of all the concerned officers of your Department/Organizations.

17. In Appendix 1 norms for location, layout and access to fuel station along national highways also laid down.

18. After laying the aforesaid policy one who has applied for allotment of outlet and the application must accompany with the document for getting approval of installation of new fuel station along national highways as laid down in the criteria and there should be a check list of such documents and then only permission can be granted for installation of retail outlet.

19. The Revenue Department, Govt. of Rajasthan also laid down certain policy and guidelines for the purpose of installation of petrol pump vide notification dated 6.7.2004 and this notification is communicated to the Collectors of the State as the Collectors asked to remove the doubts regarding land conversion for that purpose. Relevant portion and relevant clause reproduced hereunder:

tgka rd vkoklh; okf.kfT;d o isV?ksy iEi vkfn dk iz"u gS blds fy, fofHkUu izdkj dh IM+dksa gsrq bf.M;u jksM+ dkaxzsl }kjk tks orZeku esa fn"kk funsZ"k@ekun.M fu/kkZfjr gS ykxw fd;s tkosaxs D;ksafd bu iz;kstuksa dh Js.kh m|ksxksa dh Js.kh ls vyx gS A bf.M;u jksM+ dkaxzsl }kjk Hkfo"; esa ;fn fn"kk funsZ"k@ekun.M ykxw gksaxsa A

20. And also prescribed certain norms for the fuel stations, service stations and rest areas along State Highways/MDR"s/ODR"s vide letter dated 27.12.2004.

21. Similarly, P.W.D., Govt. of Rajasthan vide its letter dated 17.1.2004 addressed to the District Collectors of Rajasthan further communicated norms for the access for fuel stations, service stations and rest areas along National Highways, State Highways and Major District Roads.

22. Not only this, the Food & Civil Supplies Department, Government of

Rajasthan vide its letter dated 27.7.2004 addressed to the Collectors and District Supply Officers have categorically stated that the licences should not be granted in those cases where the norms prescribed by the Ministry of Road Transport & Highways/Indian Roads Congress, as the case may be are not fulfilled.

23. The norms and guidelines are time and again revised and published and as per the revised norms to set up a new fuel station along National Highway it was clearly indicated that no new RO will be set up within one kilometer of intersection of Highways (intersection would mean the junction of National Highway with another National Highway and State Highway). It is also stipulated that no new RO will be permitted to set up within one kilometer of existing check barrier. Similarly, no check barrier will be set up within one kilo meter of RO.

1. Recommended Practice for location and Layout of roadside motor-fuel filling and Motor-Fuel Filling-cum Service Stations has been laid down by Specifications and Standards Committee for general adoption after carefully considering the views of the representatives of major distribution of motor fuels.

2. Basic principle

The governing consideration as to minimize, as much as possible, interference to normal flow of traffic on the road by vehicles using the amenity and also to ensure safety.

3. Clearance from Road Authority

The sanctioning authority if it is not the Road Authorities should obtain clearance from the appropriate Road Authority for the site and the lay out before according the sanction.

4. General Conditions of Siting

4.1 As a general rule, the clearance between two adjacent fuel filling stations (these will also include fuel filling-cum-service stations) should not be less than 300 meters.

24. The Indian Oil Corporation Ltd. also issued guidelines for selection of retail outlet and more or less similar guidelines are published by every oil companies but it appears that companies have no co-ordination with each other therefore, certain guidelines issued by the Govt. of India have been violated mainly with regard to keeping distance from one outlet to another and it is also found that without obtaining no objection certificate by the licensing authority they start laying and construction petrol pump in violation of the policy of Govt. of India.

25. The minimum distance between the two outlet is one kilo meter but it is observed that different companies are installing their petrol pump in cluster which as per the policy cluster of petrol pump should clearly be avoided and this only because different companies have no co-ordination and no control over the different companies. Save for example if the Hindustan Petroleum allot a retail outlet after following the norms prescribed by the Govt. of India and RO will be

allotted at a distance of one kilometer but the Indian Oil Corporation will set up RO nearby the RO set up by the Hindustan Petroleum or by Reliance or Bharat Petroleum, I.B.P., ESSAR and other Oil Companies. For that purpose all the companies should co-ordinate between each other and should follow the guidelines collectively and individually as the guidelines and principle laid down by the Union of India and the State Government are not meant for particular company but for all oil companies.

26. In view of the aforesaid discussions, I deem it proper to direct the companies including the respondent company to follow strict compliance of the guidelines framed by the Ministry of Road Transport and Highways and by Union of India and Revenue Department and Public Works Department, Local Self Department, Municipal Corporation, Food & Civil Supplies Department, Jaipur Development Authority, UIT and other departments of the Govt. of Rajasthan and as also the Division Bench of this Court time and again issued direction that establishment and installation of petrol pump shall not be in violation of the policy of Govt. of India dated 25th September, 2004 and 17.10.2003 and any other policy issued by the Govt. of India and State of Rajasthan from time to time and further reiterated that no objection certificate by the licensing authority is sine qua non for starting construction of the petrol pump but it is observed that in numerous cases Oil Companies are not strictly complying with the policy and norms prescribed by the Union of India and State of Rajasthan. Therefore, the policy laid down by the Union of India, Govt. of Rajasthan have been discussed and it is observed that all the policies and norms prescribed by the Union of India and State of Rajasthan and by various others departments and corporation issued from time to time should be complied with in true and letter spirit. Union of India, State and Corporations are expected to ensure strict compliance of the policy and guidelines and in the instant case also the respondents are directed to test the present case whether retail outlet has been allotted in favour of the respondent No. 6 after due compliance of norms and policy laid down by the Union of India and State of Rajasthan has been followed or not and in case it is found that retail outlet is issued in contravention of the policy and norms prescribed the letter of intent issued to install the retail outlet in favour of respondent No. 6 may be canceled and in such eventuality the respondent oil company is at liberty to invite fresh tender and after verifying this fact the respondent oil company is expected to submit its report to this Court within a period of one month from today.

27. With these observations, the writ petition stands disposed of.