
(2014) 04 AHC CK 0304

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 27184 of 2013

Deepak Agarwal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-04-2014

Acts Referred:

Citation : (2014) 6 ADJ 270

Hon'ble Judges : Vijay Lakshmi, J; Krishna Murari, J

Bench : Division Bench

Advocate : Rahul Sahai, Advocate for the Appellant; Prakash Padia and Ramendra Asthana, Advocate for the Respondent

Final Decision : Allowed

Judgement

1. Heard Shri Rahul Sahai, learned counsel for the petitioner, learned Standing Counsel for respondent Nos. 1 to 4 and Shri Prakash Padia for respondent No. 5. By means of this petition, petitioner has prayed for quashing the order dated 25.4.2013 passed by District Magistrate refusing to grant No Objection Certificate for establishing petroleum retail outlet on the ground that the same is located within 300 metres of another retail outlet, which is violative of paragraph 4.6 of the Indian Road Congress Guidelines (hereinafter referred to IRC Guidelines).

2. Brief facts necessary for the purposes of adjudicating the dispute in this petition are that the Indian Oil Corporation issued an Advertisement dated 20.12.2010 inviting application for establishment of a Kisan Seva Kendra, a retail outlet for petroleum products at Gawan, Babraula road, Block Rajaura, District Sambhal. Petitioner was one of the applicants in pursuance to the said advertisement. After undergoing the process prescribed for selection, the petitioner was selected and a letter of intent dated 15.11.2012 was issued to him. As required under Rule 144 of the Petroleum Rules, 2002, the Indian Oil Corporation applied to the District Magistrate for a No Objection Certificate to establish the retail outlet. The Additional District Magistrate (Finance & Revenue), who was delegated the matter, called for report from police, fire, forest, revenue

department, Pollution Control Board as well as Public Works Department. All the departments submitted a report raising no objection to the retail outlet at the proposed site, except for the Public Works Department. An objection was raised by the P.W.D. citing paragraph 4.6 of the IRC Guidelines alleging that since the retail outlet to be established is situate within 90 metres of an existing retail outlet, whereas the minimum distance provided under the IRC Guidelines, is 300 metres, as such, No Objection Certificate cannot be granted.

3. On the basis of the objection raised by the P.W.D., respondent No. 3 Additional District Magistrate (Finance & Revenue) vide order dated 25.4.2013 refused to grant No Objection Certificate.

4. Shri Rahul Sahai, learned counsel for the petitioner contends that the guidelines prescribed by the IRC, which has been relied upon for refusing No Objection Certificate, are not statutory guidelines, thus, violation of any of the norms prescribed therein, cannot constitute a valid and legal ground to refuse the No Objection Certificate.

5. Reliance in support of the contention that the said guidelines are not statutory in nature, has been placed upon Division Bench decision in the cases of M/s. Vikash Traders v. Union of India and others, Civil Misc. Writ Petition No. 36700 of 2005 decided on 6.5.2005, Lila Dhar Gera v. The Union of India and others, Civil Misc. Writ Petition No. 12283 of 2010 decided on 20.7.2010 and Mahtab Ahmad v. Union of India Thru Prin. Sec. Mini of Pet. and others, Writ Petition No. 43483 of 2010, decided on 29.7.2010.

6. Shri Prakash Padia, learned counsel appearing for the Indian Oil Corporation has supported the case of the petitioner.

7. However, learned Standing Counsel contended that the proposed location is not only contrary to the norms led by the IRC Guidelines, but is also contrary to the guidelines issued by the Government of India, Ministry of Road Transport and Highways dated 25.9.2003, which provided that minimum distance between two fuel stations should be 300 metres from the middle of the intersection. It is further contended that Public Works Department vide its letter dated 9.12.2003, directed all the Superintending Engineers to ensure compliance of the letter dated 25.9.2003 issued by the Government of India, Ministry of Road Transport and Highways. He further submitted that by virtue of letter dated 9.12.2003, the guidelines issued by the Government of India dated 25.9.2003 have been made applicable in respect of fuel pumps sought to be opened on State Highways, main district roads and other district roads.

8. Shri Rahul Sahai, learned counsel for the petitioner, in reply, submitted that Division Bench of this Court has also considered similar submissions in the case of M/s. Vikash Traders (supra) and also in Writ Petition No. 8852 of 2004, Gopal Auto Centre v. Union of India and others, decided on 15.9.2004 and the contention advanced by the learned Standing Counsel has not been accepted.

9. We have considered the submission made by the learned counsel for the parties and perused the record.

10. The first submission of the learned counsel for the petitioner is that the guidelines issued by the IRC are not statutory in nature and, thus, the No Objection Certificate could not have been refused on the violation of any of the said guidelines.

11. The issue stands settled by pronouncements of different Division Bench of this Court in the case of M/s. Vikash Traders (supra), Lila Dhar Gera (supra) and Metab Ahmad (supra). The same view has again been reiterated by another Division Bench in the case of Ajay Kumar Goyal v. State of UP. Thru Secy. and others, Writ Petition No. 13768 of 2012, decided on 2.5.2012.

It may be relevant to quote the following observation.

"Sri Rajeev Misra, learned counsel submitted that the Plot Nos. 415-16 situate at Village Dagrauli, Tehsil Hasanpur, District J.P. Nagar abuts the Main District Road and, therefore, in accordance with the guidelines prescribed by the Indian Road Congress, the retail outlet should be at a distance of 300 metres. He further submitted that the Oil Companies had formulated norms for fuel outlets under which distance from intersections for considering the location of the retail outlet has been prescribed. In respect of Rural Stretch, if the location is on the intersection with any National Highways/State Highways/Main District Road then it should be situated at a distance of 1000 metres whereas if the location is on the intersection with Rural Roads with carriageway width of 3.5 metres or more then it should be situated at a distance of 300 metres. According to him, the present plots are situated barely at a distance of 150 metres and, therefore, "No Objection Certificate" could not have been granted.

The submission is wholly misconceived. This Court has held in a catena of decisions that the guidelines prescribed by the Indian Road Congress are not statutory guidelines. Some of the decisions are as follows:

1. M/s. Vikash Traders v. Union of India and others, Civil Misc. Writ Petition No. 36700 of 2005, decided on 6.5.2005.

2. Lila Dhar Gera v. The Union of India and others, Civil Misc. Writ Petition No. 12283 of 2010, decided on 20.7.2010.

3. Mahtab Ahmad v. Union of India Thru Prin. Sec. Mini of Pet. and others, Writ C No. 43483 of 2010, decided on 29.7.2010."

12. In view of the settled law on the point, the order of the District Magistrate refusing to grant No Objection Certificate on the ground of violation of the guidelines of the IRC cannot be said to be legally justified.

13. In so far as the submissions of the learned Standing Counsel based on the guidelines issued by the Government of India, Ministry of Road Transport and Highways dated 25.9.2003 is concerned, the subject of the aforesaid Guidelines

is as follows.

"Government of India,

Ministry of Road Transport and Highways

(TELEGRAM "ROADIND") Transport Bhawan

Parliament Street

New Delhi-110001

No. RW/NH-33023/19/99-DO-III Dated: 25.9.2003

17-10-2004

To

1. Chief Secretaries/Secretaries (PWD/Roads) of all State Governments/UTs dealing with National Highways and Centrally Sponsored Schemes.

2. Chief Engineers of States/UTs dealing with National Highways and Centrally Sponsored Schemes.

3. Director General (Border Roads) Seema Sadak Bhavan, Ring Road, New Delhi-110010

4. Chairman,

National Highways Authority of India (NHA)

Sub: Norms for the Access for Fuel Stations, Service Stations and Rest Areas along National Highways."

14. A perusal of the aforesaid Circular indicates that it was addressed to the Chief Secretaries of the State Government dealing with National Highways and Centrally Sponsored Schemes. Paragraph 6.1 of the aforesaid guidelines deals with distance. Paragraph 6.1 and 6.1.2(a) which is relevant is quoted below:

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

6.1.2 Urban Stretches

1. Plain and Rolling Terrain

(a) Urban Area with population of more than 20,000 and less than one lakh:

(i) Intersection with any category of roads of carriageway width of 3.5m and above. 300m

(ii) Intersection with roads of carriageway width of less than 3.5m 100m"

15. The Government of India by the aforesaid guidelines intended to lay down the distance restriction only with regard to the fuel stations on the National

Highways. The said circular was not issued with regard to the laying down any criteria for State Highways or other District Roads.

16. In support of his submission, learned Standing Counsel has relied on two letters issued by the P.W.D., State of U.P., firstly, the letter dated 15.11.2003, issued by the Chief Engineer, Head Quarters, P.W.D., Lucknow addressed to all the Regional Chief Engineers and the second is the letter dated 9.12.2003, issued by the office of Engineer-in-Chief to Superintending Engineer referring to the Circular dated 25.9.2003, by the Ministry of Surface Transport, Road Transport and Highways. The letter dated 15.11.2003, relied on by the learned counsel for the petitioner refers to the letter dated 31.8.2000, Ministry of Surface Transport Department and Road Transport. The subject-matter of the aforesaid letter indicates that the said circular was issued with regard to setting up of retail outlet alongwith National Highways and was addressed to the Chief Secretaries of all the State Government dealing with National Highways and Centrally Sponsored Scheme. Relevant extract of the aforesaid Government Order including the subject is quoted below:

"Government of India

Ministry of Surface Transport Department of Road Transport and Highways

(Roads Wing)

Telegram: "ROADIND" Transport Bhavan

FAX No.: 3710236 1, Sansad Marg, No. RW/NH 33023/19/99-DO.III New Delhi.

31st Aug. 2000

To

1. Chief Secretaries/Secretaries (PWD/Roads) of all State Governments/UTs dealing with National Highways & Centrally Sponsored Schemes.
2. Chief Engineers of States/UTs dealing with National Highways and other Centrally Sponsored Schemes.
3. Director General (Border Roads) Seema Sadak Bhavan, Ring Road, New Delhi-110010
4. Chairman, National Highways Authority of India

Maharani Bagh, New Delhi.

SUBJECT: SYSTEMS IMPROVEMENT FOR INSTALLATION OF PETROL/DIESEL/GAS-RETAIL OUTLETS AND SERVICE STATIONS AS WELL AS ACCESS TO PRIVATE PROPERTIES ALONG NATIONAL HIGHWAYS."

17. The letter dated 15.11.2003 refers to some direction issued by the Engineer in Chief on the basis of which Regional Chief Engineers have been authorised to give permission for setting up petrol pumps on State Highways other District

Roads, and Main District Roads. The orders issued by the Engineer in Chief has neither been brought on record nor details of the said order has been mentioned. Similar is the letter dated 9.12.2003, issuing directions to the Superintending Engineer. Both the letters dated 15.11.2003 and 9.12.2003, are the letters circulating the guidelines issued by the Government of India. The above letters have been issued by the Engineer-in-Chief, PWD, and at best it can be read as a direction to comply with the directions issued by the Government of India, Ministry of Surface Transport. The circulars of the Government of India, dated 31.8.2000 and 25.9.2003 do not relate to the State Highways, Main District Road and other District Roads and the criteria regarding the distance cannot be applied with on the State Roads by any direction issued by the Engineer in Chief.

18. A Division Bench of this Court in M/s. Vikas Traders (supra) had occasion to consider similar submission with regard to the distance and the submission that the Circular dated 31.8.2000 shall apply to District Road, was rejected. The Division Bench held as under.

"The contention of the learned counsel for the petitioner that the circular dated 31st August, 2000 is not limited to National Highways alone cannot be accepted. A bare perusal of the aforesaid circular clearly indicates that it is in respect of installation of petrol/diesel/gas retail outlets and service stations along National Highways. Thus the said circular cannot be made applicable in respect of retail outlets not situated on the National Highways. Learned counsel for the petitioner then placed the communication dated 3rd March, 2005 issued by the office of the Chief Engineer, P.W.D. Gorakhpur for impressing upon us that the circular dated 31st August, 2000 is applicable on all retail outlets irrespective of the fact whether they are situated at National Highways or not. We have read the letter dated 3rd March, 2005, but do not find anything which may support the contention of the learned counsel for the petitioner. Thus we are unable to find any infirmity in the order of the District Magistrate holding that reliance placed by the petitioner on the aforesaid circular dated 31st August, 2000 is misplaced."

19. From the aforesaid, it is clear that the Circular of Government of India, Ministry of Road Transport and Highways dated 25.9.2003 being relied upon by the learned Standing Counsel is not applicable on the outlets which are not situated on the National Highways.

20. Thus, the argument advanced by the learned Standing Counsel has no legs to stand. In view of the above facts and discussions, the impugned order dated 25.4.2013 passed by Additional District Magistrate refusing to grant No Objection Certificate is not liable to be sustained and is hereby quashed.

21. The writ petition stands allowed.

22. The District Magistrate, Sambhal is directed to reconsider the issue of grant of No Objection Certificate afresh in accordance with law and in the light of the observation made hereinabove. However, in the facts and circumstances of the case, there shall be no order as to costs.