
(1996) 05 OHC CK 0014
In the Orissa High Court
Case No : O.J.C. No. 6382 of 1995

Dilip Kumar Prusti

APPELLANT

Vs

Collector and District Magistrate, Sambalpur and Others

RESPONDENT

Date of Decision : 15-05-1996

Acts Referred:

Petroleum Rules, 1976 — Rule 144

Citation : AIR 1997 Ori 30 : (1996) 82 CLT 218 : (1996) 2 OLR 13

Hon'ble Judges : D. Misra, J;A. Pasayat, J

Bench : Division Bench

Advocate : Y. Mahanty, P.C. Biswal, S.K. Beura, B.N. Mahanty and B.R. Das, for the Appellant; Additional Government Advocate, S.P. Mishra, A.K. Mishra, D. Chatterjee, R.K. Patnaik, S.K. Mishra, B.S. Tripathy, K.P. Mishra, M. Kar, P.K. Das and M. Sarkar, for the Respondent

Judgement

Dipak Misra, J.—Justifiability of the order passed by the Additional District Magistrate, Sambalpur, the O. P. No. 3, granting "No Objection Certificate" in pursuance of the provisions contained in R. 144 of the Petroleum Rules, 1975 (hereinafter referred to as "the Rules") in favour of opposite party No. 4, is called in question, in the present writ application under Arts. 226 and 227 of the Constitution of India by the petitioner, a physically handicapped person operating a retail outlet dealership being conferred such privilege by the Indian Oil Corporation Limited, one of the prime Oil Companies of the Country.

2. According to petitioner, the facts giving rise to the writ application, sans unnecessary detail, are as follows : The petitioner is a licensee to deal with high speed diesel and has installed his retail outlet over plot No. 1660/3789 of village A. Kantapalli at Gosala, in the district of Sambalpur and the said retail outlet is known as M/s. Kalinga Fuels. It is situated on National High Way No. 6 under Burla Police Station. The opposite party No. 3, the Hindustan Petroleum Corporation Ltd., through its representative filed an application before the Additional District Magistrate, Sambalpur for grant of "No Objection Certificate"

for installing a high speed diesel filling station over plot No. 1615 at A. Kantapalli as such installation was necessary by way of resettlement of a retail outlet belonging to the dealer M/s. Fateh Chand Banka of Medipada, Sambalpur (opposite party No. 4) on the ground of viability. Petitioner felt aggrieved by such resettlement in favour of opposite party No. 4, by the opposite party No. 3, the Oil Company, as according to him, it was done in violation of norms of Oil Industry, and the grant of "No Objection Certificate" by the Additional District Magistrate was contrary to the norms and Rules, he filed an objection before the Collector-cum-District Magistrate, Sambalpur indicating, inter alia, that the grounds for resettlement were unjustified and the outlet of opposite party No. 4 situates within the "C" class market i.e. Sambalpur town and the same cannot be brought on resettlement to the place sought for as the new place comes within the "D" class market, wherein outlet of the petitioner is in existence. Apart from this, numerous allegations were made touching the decision of a resettlement as well as the situation on resettlement on the grounds relating to aspects of distance, violative of National High Way Rules and predictability. As, ultimately, "No Objection Certificate" has been granted without considering the objections raised by the petitioner and without affording him an opportunity, he has visited this Court challenging the decision.

3. The opposite parties 1 and 2 have filed a return taking the stand that the Hindustan Petroleum Corporation Limited having certified that the outlet at Modipada in the name of Fateh Chand Banka was not viable for high speed diesel sales, the challenge of the petitioner in regard to the same is untenable. They have also taken the plea that since the site plan was given by the Oil Company and authorities did not find anything objectionable, they have granted the "No Objection Certificate". The further stand is that in the matters of this nature dealer has no role to play. The opposite party No. 3, the Hindustan Petroleum Corporation Limited has filed the counter affidavit refuting the stand taken by the petitioner with regard to resettlement. Their main challenge is that the petitioner is a dealer of Indian Oil Corporation and the said Corporation has agreed on principle for resettlement of the opposite party No. 4, the petitioner has no locus standi to challenge the same. That apart, their further stand is that the grant of "No Objection Certificate" is in accordance with the Rules and there has been no violation of the norms laid down by the Oil Industry as the proposed site is not beyond 5 Kms. from Sambalpur Municipality and the certificate having been granted after considering the clearance for resettlement given by all the concerned Oil Companies, such permission is neither arbitrary nor mala fide. It has also been mentioned that a number of factors like Volume/ Distance and such others are not to be insisted upon in a case of resettlement. The opposite party No. 4 in his counter affidavit had resisted the challenge of the petitioner on the grounds of locus standi, non-violation of the Rules, circulars and the guidelines and further specifically stating that the proposed resettlement area is approximately 4.5 kms. away from Sambalpur Municipal limits and the same is not within 105 metres of the petitioner's Pump as claimed by the petitioner, but the distance is

304 metres. The attitude reflected by the petitioner has been criticised as monopolistic and it has been categorically averred that the petitioner has no locus standi to challenge such resitement.

4. We have heard Sri Y. Mohanty, learned counsel for the petitioner, the learned Additional Government Advocate for opposite parties, 1, 2 and 7, Sri D. Chatterjee, learned counsel for O. P. No. 3, learned counsel for opposite party No. 4, and Sri S. Mohanty, the learned counsel for the State Level Coordinator of the Indian Oil Corporation Limited (opposite party No. 5).

5. Sri Y. Mohanty, learned counsel for the petitioner assailing the grant of "No Objection Certificate" has submitted that he has no grievance with regard to resitement but he is aggrieved with regard to the mode and manner of resitement. He is aggrieved because of carrying out of resitement in contravention of the procedure. He fairly concedes that once the Indian Oil Corporation has agreed on principle for resitement, he cannot challenge and to that extent the petitioner has no locus standi. But, it is his submission that his Company has not conceded to the place of resitement and therefore, he cannot be denied the right to challenge the same as he is substantially affected and becomes a person aggrieved. We find that the decision of the Oil Companies is that they had agreed on principle for the resitement of O. P. No. 4 outlet but in actuality no place was mentioned. In absence of fixation of a specific place by way of resitement, it cannot be presumed that an unanimous decision by all the Oil Companies was taken with regard to the specific situation of installation of the pump on resitement. It is reasonable to conclude that Oil Companies agreed to resitement subject to fixation of the place in accordance with the norms governing the field. If the installation or fixation is contrary to the norms and by such contravention if the petitioner is affected, indubitably, he becomes a person aggrieved and thereby has the locus standi to challenge such grant of "No Objection Certificate", as such a grant alone can give rise to installation.

6. Having accepted that the petitioner has the locus standi to challenge the impugned grant of "No Objection Certificate", we would now advert to find out whether such a grant of certificate has been given in contravention of the norms. To substantiate the same Sri Y. Mohanty has taken us through the norms which have been brought on record as Anne-xure-7, wherein stipulations have been made for full/partial, resitement retail outlet with the same dealer. The relevant clauses of the same are reproduced hereunder :

"1. The concept of resitement with the same dealer in the same market is based on the necessity of having to "rehabilitate" the dealer and his staff in his trading area.

2. No Oil Company can recite an existing outlet only to improve their sale performance.

3. Resitement can be full or partial (i.e. any and/or both products can be resiled.)

4. Resitement of a RO with the same dealer permissible in the following circumstances ;

- a) Closure of road,
- b) Shifting of an octroi post,
- c) Realignment of an existing road by a new one.
- d) Bye-pass of an existing road.
- e) Closure of a particular type of traffic along a road.
- f) Volume of cans going below an economic level due to an upward revision in octroi rates. This must not be less than 5(1) of the last 2 years average sales.
- g) Where an Oil Company is unable to obtain "legal redress" to enable it to continue on the site and the Legal Department of the Company concerned informs.
- i) they had no registered valid lease/ option available for the site.
- ii) they have no recourse to the Acquisition Act following nationalisation and
- iii) they do not have any protection under any local tenancy and other Acts.

In case of IUP who do not have an internal Legal Deptt. such continuation would be issued by their appointed lawyers.

h) Any other reason beyond the control of the dealer Oil Co. which may adversely affect economic viability, such as uncontrollable increase in expenses rent increases (Railways)/ Port Trusts/Government/Semi Government lands due to exorbitant increase in rentals/taxes, declared objectionable by a competent authority viz., Collector District Magistrate, CCUC, Municipality, P.W.D.

5. Resitement can be :

- a) with the same dealer,
- b) within the same town/area specified for different class of markets (including periphery limits) as applicable for the setting up of a new retail outlet except for Metro Cities and "A" class Markets when periphery applicable to these markets will apply.
- c) without meeting volume/distance norms for the market."

7. From a reading of the aforesaid norms, it is quite clear that resitement has to be done with the same dealer in the same market area. The conditions enumerated under Clause 5 are relatable to a different sphere. Resitement can be made without meeting the volume/distance norms for the market. Definitely this aspect has to be within the exclusive discretion of the Oil Companies. Clause 5(b) lays down another condition that resitement can be made within the same town/area specified for different clause of markets (including periphery limits) as

applicable for the setting up of a new retail outlet. These norms stipulate the resitement is possible with the same dealer in the same market and if it is a town which includes different "class of markets" that would include periphery limits. Permission for resitement in the same class of market is not conceived of. On the basis of materials available on record we find there are various classes of markets, namely "A", "B", "C", "D" and "E" class. Every market has a different and distinct definition. As the norms postulate resitement in another "class of market" is impermissible. It has been strenuously contended before us that Clause 8(b) permits resitement within the periphery limits of the same class of markets and therefore the same class of market is not sine qua non for resitement. Though the interpretation in this manner of the said clause appears attractive, we are afraid, we cannot accede to such an interpretation as that would run contrary to the concept of same town or same area. The proper interpretation is to read "periphery limits" in connection with town or area, as the said words are to take colour from the words used in the beginning of the sentence. We cannot construct these words to take colour from the words "class of markets" as the concept "class of market" has its own definition, and purposive interpretation has to take cognizance of the same. The emphasis by the learned counsel on the expressions "without meeting volume/distance" is of as consequence in the present contest.

8. It is interesting to note that the Additional District Magistrate who has granted "No Objection Certificate" for installation of retail outlet, has not considered these aspects. The counter filed on his behalf in this regard reads as follows:--

". In reply to the averments made in para 6 of the writ application, it is submitted that these opposite parties have no information readily available about the class of market possessed! by the petitioner as well as M/s. Fateh Chand Banka and Co. Since the petitioner belongs to Indian Oil Corporation and M/s. Fateh Chand Banka and Co. is of Hindustan Petroleum Corporation and both are of Government of India Enterprises, these Enterprises are supposed to be quite aware of the norms prescribed for installation of such HSD outlet. Moreover Hindustan Petroleum Corporation Ltd. while praying for No Objection Certificate have also filed necessary land scheduled after physically verifying the spot and they might have been well aware of the existing Indian Oil Corporation outlet near their proposed outlet and they should have refrained from such prayer for grant of No Objection Certificate. If there had been any norms that would have existed at that time i.e. 27-8-1994.

In case of Hindustan Petroleum Corporation Ltd., the Tahasildar, Sambalpur was directed to cause an enquiry on different aspects as per Rule 44 of the Petroleum Rules, 1976. As the District Administration is mainly responsible to see No Objection on the location of the premises/site plan proposed to be licenced for a certificate to the effect that there is no objection to the application receiving license, for the site proposed, it was felt not necessary to go into other aspects. The report of the Tahsildar in this matter is annexed herewith as Annexure-8/1."

9. Thus, it is crystal clear the authority granting the certificate has not verified these aspects and has taken the stand that the said aspects were not necessary to be enquired into. In this context, we may refer to Rule 144 of the Rules which reads as follows :--

"144. No Objection Certificates --(1) Where the licensing authority is the Chief Controller or the Controller of Explosives, as the case may be, an applicant for a new licence other than a licence in form III or IX shall apply to the District Authority with two copies of the site plan showing the location of the premises proposed to be licensed there is no objection to the applicant receiving a licence for the site proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application form VIII.

(2) Every certificate issued by the District Authority under Sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly endorsed by him under his official seal.

(3) The Chief Controller or the Controller of Explosives, as the case may be, may refer an application not accompanied by certificate granted under Sub-rule (1) to the District Authority for his observations.

(4) If the District Authority, either on a reference being made to him or otherwise, intimates to the Chief Controller or the Controller of Explosives, as the case may be, that any licence which has been applied for should not, in his opinion, be granted, such licence shall not be issued without the sanction of the Central Government."

10. The rule read in proper perspective connotes that the District Authority has to grant the certificate to the effect that there is no objection to the applicant receiving a licence for the site proposed. The application is submitted under Rule 143 and the prescribed Form is Form VIII. In column 2 of the said Form, the application is required to indicate the following details:--

"2. Situation of the premises where petroleum is to be stored --

State_____

District_____

Town or village_____

police Station_____

Nearest railway station. _____".

11. On perusal of the relevant Rules, and the Form, it is difficult to agree with the stand of the Additional District Magistrate that an enquiry with regard to the site for the class of market is not essential. In column 2 of the Form, the requirement is to indicate the situation of the premises where petroleum is to be stored. When "no objection" is given the authority concerned has also to see

whether it is free from objection from all angles. The petitioner has asserted that there has been violation of the National High Way Rules, specifically Rule 4(1) of the said Rules. This has been controverted by the opposite parties. Reliance has been made by the opposite parties 1 and 2 on the report submitted by the Tehasildar, Sadar, Sambalpur by Annexure-E/1 with regard to the distance of the proposed outlet from the limits of Sambalpur Municipal area and its distance from the existing outlet at Medipada. Such reliance makes it further clear that the authorities were conscious of the norms relating to distance under the norms but had not taken note of the "class of market" which is also a norm to consider. The conditions which are imposed for resitement are not separable but are to be read cumulatively and they are to operate as a whole. As we find the competent authority granting "No Objection Certificate" has not dealt with this aspect, it is difficult to sustain the same.

12. On the basis of preceding analysis, we are of the view that the learned Additional District Magistrate has not kept the norms while passing the order granting "No Objection Certificate". We have already held the stand taken by the authority that it was not obligated to appraise itself with regard to the norms is not acceptable. On the basis of this finding alone, we could have disposed of the writ application but we would also address ourselves in regard to the decision of resitement and the execution of the said decision. The prayer in the writ application is for quashing of Annexure-5 the order granting "No Objection Certificate". Grant of No Objection Certificate is given on the basis of an application filed by the Oil Company under Rule 143. The Oil Company, a Government undertaking is required to set with fairness. They had decided for resitement which is really not open to challenge. But while proceeding with resitement they cannot lose sight of the norms prescribed by them. Norms are laid down to be followed. If a policy is formulated by Government undertaking the same has to be adhered to. True it is, the prayer is for quashing of the ultimate act but the said ultimate act is because of the execution of resitement in flagrant violation of the norms. It is settled in law that a writ Court can mould the prayer. We are persuaded to mould the prayer in the instant case. We notice that the real grievance is with regard to the decision for the fixation of site, indication of which has been given in Rule 143 in violation of the norms set forth by the Company. We are constrained to observe that if the area in question comes within the "D" Class market, the same is not permissible and application under Rule 143 by the Company being violative of its own norms should be regarded as incompetent. To put it in another way; the decision to resile of the Pump at the present site is contrary to norms of the Oil Industries and therefore, the same is not sustainable and as on the said basis, "No Objection Certificate" has been granted, the same is not tenable. However, as the competent authority has not considered the matter from this aspect and the Corporation has not clarified the position we are of the considered view that the interest of justice would be best served if the Additional District Magistrate, the opposite party No. 2, would cause an enquiry with regard to the "class of market" and thereafter,

pass appropriate orders under Rule 144. We reiterate that if the resitement is within the "B" class market, "No Objection Certificate" should not be granted. That apart, the Additional District Magistrate has not indicated in the order whether there is violation of the National High Way Rules. As the matter is remanded to the said Authority, we also direct that he would deal with the matter keeping in view the aforesaid Rule.

13. In the result, the order granting "No Objection Certificate" by Annexure-5 is quashed and the matter is remanded to the Competent Authority, the Additional District Magistrate to dispose of the application, keeping in view the observations made and directions given above. However, there shall be no order as to costs.

A. Pasayat, J.

14. I agree.