

(1980) 07 GAU CK 0001
In the Gauhati High Court
Case No : Civil Rule No. 382 of 1979

Ganesh Chandra Hazarika

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 29-07-1980

Acts Referred:

Constitution of India, 1950 — Article 19(1), 226
Petroleum Act, 1934 — Section 4
Petroleum Rules, 1976 — Rule 144, 151

Citation : AIR 1981 Guw 36

Hon'ble Judges : K.H. Saikia, J

Bench : Single Bench

Advocate : J.P. Bhattacharjee, S.H. Medhi and U. Barua, for the Appellant; B.C. Barua and D.P. Chaliha, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Judges: K.H. Saikia, J.—This writ application impugns the order in letter No. CMS. 273/ 76/54 dated 4-7-1979 from the Govt. of Assam, Chief Minister's Secretariat, to the Deputy Commissioner, Sibsagar, vacating the stay of operation of the "No objection certificate" in favour of the Respondent No. 6 Shri Boloram Bora of Gaurisagar to the installation of a Petrol Pump, which stay order was issued by the same Secretariat, vide Govt. Letter No. CMS. 273/76 dated 3-4-1978. The original order No. JJ. 12/78/45 dated 22-3-1978 passed by the Additional District Magistrate, Sibsagar at Jorhat granting the No objection Certificate to the installation of a Petrol Pump by the Respondent No. 6, at Gaurisagar road junction, subject to the approval of the Chief Inspector of Explosives, Gauhati, is also being impugned in the petition.

2. The petitioner obtained a licence from M/s Indian Oil Corporation Ltd. hereinafter called "the Corporation" of dealership in petrol and high speed diesel at Gaurisagar on 12-6-1973 and for establishment of a Petrol Pump, purchased a plot of land near the road junction of Gaurisagar for the installation of the Pump,

but due to various objections from the public of the locality on the grounds that there were educational institutions and one O. N. G. C. drill site with overflowing crude oil in the vicinity of the site, the Petrol Pump could not be installed there. Subsequently, the petitioner purchased another plot of land at a distance of 3 K. Ms. from the said site at Gaurisagar Road junction and taking a loan of Rs. 40,000/- from the United Bank of India, Subsagar, installed his Petrol Pump there.

3. Subsequently, however, the Respondent No. 6 filed an application before the Deputy Commissioner, Sibsagar, for a No Objection Certificate for installing a Petrol Pump at the same Gaurisagar Road Junction, which is by the side of the National Highway No. 37, where the petitioner was not allowed to instal his Petrol Pump.

4. On 22-3-1978 the Additional District Magistrate, Sibsagar, by order No. JJ. 12/78/45 granted or issued the No Objection Certificate in favour of the Respondent No. 6 for establishing a Petrol Pump at the same place, subject to the approval of the Chief Inspector of Explosives. The petitioner challenged the issue of the certificate by a revision petition before the Chief Minister of Assam on the grounds that the site at the Gaurisagar Road Junction by the side of the National Highway No. 37 was close to the O. N. G. C. crude oil point with over-flowing crude oil exposing the pump to serious risk of fire; and that the distance between his Petrol Pump and the proposed Petrol Pump of Respondent No. 6 would be only 2 k. ms. On 1-4-1978 the Chief Minister by order stayed the operation of the impugned No Objection Certificate and called for a report, and the Deputy Commissioner, Sibsagar, submitted his report on the revision petition. On 4-7-1979 the Under Secretary to the Govt. of Assam, Chief Minister's Secretariat, by letter. No. CMS. 273/76/54 addressed to the Deputy Commissioner, Sibsagar, vacated the stay order and intimated for necessary action. On 18-8-79 by order No. JJ. 12/78/81 the Additional District Magistrate, Sibsagar, wrote to Respondent No. 6 that the stay order communicated vide office order No. JJ 12/78/ 50 dated 10-4-1978 stood vacated. As a result, the No Objection Certificate issued by the Additional District Magistrate, Sibsagar, remained effective.

5. The petitioner herein avers, inter alia, that the distance between his Petrol Pump and the proposed Petrol Pump of Respondent No. 6 is only 3 k. ms; that there is a weekly market only 200 ft. away from the Gaurisagar Road Junction, and a daily market only 100 ft. away and that about 50,000 people normally assemble in the weekly market; there is one Boy's High School, one Girls' High School, one M. E. School, one L. P. School and one "Hari Mandir" very near to the proposed site; and that there is one crude oil point of the O. N. G. C. within about 50 ft. from the proposed site.

6. Mr. J. P. Bhattacharjee, the learned counsel for the petitioner assails the issue of the No Objection Certificate on the grounds, inter alia, that the issue is violative of Petroleum Rules and the distance norms recommended by the Ministry of Petroleum, Govt. of India, and hence without jurisdiction and void; that the

Deputy Commissioner acted illegally in issuing the No Objection Certificate to the installation of a Petrol Pump at the proposed site, which constitutes a hazardous area having a over-flowing crude oil point at a distance of only about 50 ft., in violation of Rules 103, 104 and 114 of the Petroleum Rules; that the Petrol Pump at the proposed site will be hazardous to the public of the locality, and that under the distance norms recommended by the Ministry of Petroleum, Govt, of India, the authority is not to grant any No Objection Certificate for installation of a new outlet within a distance of 15 k. ms. on the National Highway unless the average sale of the existing outlet exceeds 20 K. Ls per month and in the instant case, the distance being only 3 k. ms and the average sale of the existing outlet of the petitioner not exceeding 20 K. Ls, the issue of the No Objection Certificate is without authority of law. The petitioner also submits that the order vacating the earlier order by letter dated 4-7-1977 without hearing the petitioner is illegal and in clear violation of the principles of natural justice. Lastly, it is submitted that the No Objection Certificate is in violation of Arts. 14 and 19 (1) (g) of the Constitution of India and hence ultra vires and void.

7. Mr. B. C. Barua, the learned counsel for Respondent No. 6 demurs stating that the petitioner applied for setting up his Petrol Pump at the Gaurisagar Road Junction as far back as in 1971 when the hazard may have been there and the public may have objected to such installation; Respondent No. 6 applied in 1978 when the hazard no longer existed, the over-flow of crude oil having been plugged in the meantime; and there was also no public objection to such installation. Counsel further submits that the Notification of the Ministry of Petroleum. Chemical and Fertilisers, Deptt. of Petroleum, Govt. of India No. P-19011/7/77-ioc dated 20/23-3-1978 was not there before the Additional Deputy Commissioner, while issuing the impugned No Objection Certificate by order No. JJ. 12/78/45 on 22-3-1978. The Govt. letter does not invalidate the certificate issued by the Deputy Commissioner. Counsel also points out that the said circular letter does not amount to any statutory Rule so as to invalidate the impugned No Objection Certificate, which could be cancelled only under Rule 151 of the Petroleum Rules. As regards the distance norms he submits that Indian Oil Company could have taken objection on that ground but the Company has not been impleaded in this petition.

8. Dr. M. K. Sarma appearing for the State adopts the arguments of Mr. Barua and adds that the said circular letter is not binding on the Govt. so as to invalidate the impugned orders.

9. Two basic questions are involved in this petition, namely, (1) whether the petitioner being an owner of Petrol Pump has the right to object to the setting up of another Petrol Pump by Respondent No. 6 within the same business area so as to impair his turnover and thereby his fundamental right to business? (2) whether the impugned orders are violative of any statutory Rules or mandatory provisions of law and are invalid on that ground?

10. The answer to the first question is in the negative on the following grounds:--

Under Article 14 of the Constitution of India the States shall not deny to any person equality before the law or equal protection of the law within the territory of India. Under Article 19(1)(g) all citizens shall have the right to practise any profession, or to carry on any occupation trade or business. In the instant case there is no question of the State having discriminated against the petitioner or having denied him any right to practise any profession or any occupation, trade or business. The licence for installation of a Petrol Pump is granted by the appropriate authority. The local authority, in the interest of local administration is to grant the No Objection Certificate to the location of the pump at a particular site. The proposed site does not belong to the petitioner, but to Respondent No. 6.

11. The fundamental legal principle applicable to such cases is that of "damnum absque (or sine) injuria", damage without injury, which itself is in the nature of an exception to the principle "Ubi Jus Ibi Remedium", there is no wrong without a remedy. "Jus" means the legal authority to do or to demand something and "remedium" means the right of action or the means given by law for the recovery or assertion of a right. According to this maxim whenever the law gives a right or prohibits an injury it also gives the remedy. If a citizen has a right he must also have a means to vindicate and maintain that right, and a remedy if he is injured in the exercise and maintenance of that right. A right without a remedy is in vain. However, under the complex social conditions, particularly under a laissez faire system, there may be situations where a damage may be sustained without being regarded as an injury by law, "damnum absque (or sine) injuria". In fact there are a large number of cases in which damage is sustained, but such a damage is not caused by anything which the law esteems as an injury and for that reason no action is maintainable and the maxim "Ubi Jus Ibi Remedium" does not apply; for there is no "Jus", no legal right to claim that the act causing the damage shall not be performed. In other words there is no remedy. Such an act lawful in itself will also not be actionable because it is done with ill will, bad motive, rivalry in business or any other specified intention, so long it is performed in exercise of one's own right and not ipso facto impairing like rights of others. Motive may not be relevant in a civil wrong. On the other hand injury to one's right can be suffered even without any actual or pecuniary damage (Ashby v. White (1703) 2 Ld Raym 938).

12. The English Law of Torts has a large class of such cases of "Damnum Absque injuria". The man who establishes a rival school, which draws away the students from a previously existing school (Gloucester Grammar School Case (1410) YB 11 Hen 4 P 47 PI 21); or builds a bridge over a river, which causes loss of traffic to a ferry owner. (Hopkins v. Great Northern Ry. Co. (1877) 2 QBD 224); the traders who by concerted action, but without the use of illegal means, acquire the business, formerly enjoyed by other traders (Mogul S. S. Co. v. McGregor 1892 AC 25). But to molest a person in the carrying on of his business or to interfere with his mode of doing it, by unlawful means such as threats, violence, intimidation, or conspiracy is actionable if it results in damage, except in so far

as protected by the trade dispute acts. (Quinn v. Leathem 1901 AC 495).

13. In the *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, where the owner of an existing Rice Mill shifted its location and obtained the necessary permission for change of location from the Director of Food and Civil Supplies, the Supreme Court held that:--

"Even if it be assumed that the previous sanction has to be obtained from the authorities before the machinery is removed from its existing site, the competitor in the business (owner of another Rice Mill) can have no grievance against the grant of permission permitting the installation on a new site. The right to carry on business being a fundamental right under Article 19(1)(g) of the Constitution, its exercise is subject only to the restriction imposed by law in the interest of general public under Article 19(6)(i)."

14. In *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, it was ruled that the proprietor of a cinema theatre holding a licence for exhibiting cinematograph films was not entitled to invoke the certiorari jurisdiction "*ex debito justitiae*" to get a No Objection Certificate granted under Rule 6 of the Bombay Rules, 1954 by the District Magistrate in favour of a rival in the trade, brought up and quashed on the ground that it suffered from a defect of jurisdiction. The petitioner was held not to be an aggrieved person. It was also held that the petitioner licence holder had no legal right under the statutory provisions or under the general law which could be said to have been subjected to or threatened with injury as a result of the grant of No Objection Certificate to the rival trader.

15. In *M.I. Varghese Vs. The Chalissery Panchayat and Others*, where the petitioner had objected to the grant of licence to the Rice Mill in the vicinity of his house, the objection was negatived holding that the right to carry on trade being a fundamental right under Art. 19(1)(g) the same could not be challenged in writ petition not only by a rival trader, objector, but also by a mere objector who had been given statutory right to object u/s 97 of the Panchayat Act. Such a statutory right to object was not sufficient to found a claim for locus standi to maintain a writ petition *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, , *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, and *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, were followed.

16. Applying the above principles to the facts of this case it is found that the right to instal a Petrol Pump at the said Road Junction is as much a fundamental right of respondent No. 6 as that of the petitioner to have installed his own Petrol Pump, and so long Respondent No. 6 exercises his fundamental right without impairing the like fundamental right of the petitioner, and without molesting, threatening, intimidating or by otherwise violent means, no injury can be said to have been caused to the petitioner, who, therefore, has no locus standi to challenge the impugned order on this ground. No certiorari shall, therefore, issue

on this ground.

17. The next question is whether the petitioner's right, if any, under the Petroleum Act and Petroleum Rules has been violated. The Petroleum Act, 1934 is an Act to consolidate and amend the law relating to the import, transport, storage, production, refining and blending of petroleum and other inflammable substances. u/s 2 (f) of this Act "to store" petroleum means to keep it in any one place, but does not include any detention happening during the ordinary course of transport. u/s 3 no one shall import, transport, or store any petroleum save in accordance with the rules made u/s 4, which empowers the Central Govt. to make rules for the purpose stated in Clauses (a) to (b) to that section. The Petroleum Rules 1976 are the Rules so framed. Under Rule 116, save as provided in Sections 7, 8, 9 of the Act (which deal with small quantities) no person shall store petroleum except under and in accordance with a licence granted under these rules; provided that no licence shall be necessary (i) for storage of petroleum in well-head tanks; or (ii) for the storage of petroleum as transit cargo within the limits of a port subject to such conditions as may be specified by the conservator.

18. Under Rule 141 licences under these rules may be granted by the licencing authorities set forth in the First Schedule in the forms specified for the purpose and on payment of a fee specified therein. Under Rule 143 a person wishing to obtain or renew a licence under these rules shall submit an application in writing to the authority empowered to grant such a licence. Application for licence to store petroleum shall be in Form VIII. Rule 144 deals with No Objection Certificate and says:

"144. No Objection Certificate-- (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 for a certificate to the effect that 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 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 a 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".

19. Under Rule 150 a No Objection Certificate may be refused for reasons to be recorded in writing after giving the applicant a reasonable opportunity of being heard.

20. Rule 151 deals with cancellation of a No Objection Certificate as follows:

"Cancellation of no objection certificate-- (1) A No Objection Certificate granted under Rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the District Authority or the State Government is satisfied, that the licensee has ceased to have any right to use the site for storing Petroleum :

Provided that before cancelling a No Objection Certificate, the licensee shall be given a reasonable opportunity of being heard.

(2) A District Authority or a State Government cancelling a No Objection Certificate shall record, in writing the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned a copy of the order cancelling the No Objection Certificate."

21. Thus under the above rule a No Objection Certificate shall be liable to be cancelled if the authority is satisfied that the licensee has ceased to have any right to use the site for storing Petroleum.

22. Rule 156 provides for appeal against any order of the District Authority refusing to grant or cancelling a No Objection Certificate.

23. In the instant case the State Government has refused to cancel the No Objection. Certificate as is clear from the impugned order No. CFS. 273/76/54 dated 4-7-1979 (Annexure VI). There is no averment in the petition that Respondent No. 6 has lost the use of the site. It cannot, therefore, be said that the refusal to cancel the certificate is violative of the Rules.

24. Mr. Medhi argues that the distance norm applicable to Petrol Pumps by the side of the National Highway has not been followed. The applicable norm is 15 K. Ms. while the distance in the instant case is only 3 K. Ms. The answers given by Mr. Baria to this contention appear to be reasonable. The No Objection Certificate was issued on 23-3-1978 while the Govt. of India's Letter No. p. 19011/7/77-ioc, which contain the distance norms, is dated 120/23-3-1978. So it was not there when the impugned certificate was issued. Besides, this letter does not amount to a statutory rule and is only a recommendation of the industry and accepted by the Central Government. It cannot override Rule 161. Nor does it speak of retrospective operation.

25. The argument on the ground of hazardous area is not tenable, firstly because there is no hazard in existence and the district authority was satisfied, and secondly it relates only to electric installations and not to Petrol Pumps as such. This Court also cannot go into all the disputed facts and technicalities in this

regard.

26. The petitioner has failed to establish any breach of statutory duty or obligation towards him on the part of the Respondents. He has failed to establish any injury or damage of a kind which the statute was designed to give protection against Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others, The answer to the second question is also, therefore, in the negative.

In the result, the petition is dismissed. The rule is discharged. There will be no order as to costs. Petition dismissed. The stay order stands vacated.