
(2022) 11 SHI CK 0040
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 308 Of 2019

Gulzar Krishan Sewa Kendra	Vs	APPELLANT
Hindustan Petroleum Corporation Ltd. & Ors		RESPONDENT

Date of Decision : 22-11-2022

Acts Referred:

Citation : (2022) 11 SHI CK 0040

Hon'ble Judges : Tarlok Singh Chauhan, J;Virender Singh, J

Bench : Division Bench

Advocate : Sanjeev Bhushan, Rajesh Kumar, B. C. Negi, Nitin Thakur, Ajay Sharma, Athrav Sharma, Ashok Sharma, Rajinder Dogra, Vinod Thakur, Shiv Pal Manhans, Bhupinder Thakur

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. The instant petition has been filed for grant of following substantive reliefs:-

i. That an appropriate writ order or direction may very kindly be issued and the selection of respondent No. 3 for setting up of Petrol Pump for the location "within 4 km of Kathgarh Shiv Mandir on Kathgarh Indora Road" as shown on the website of respondents No. 1 and 2 and annexed herewith the present petition as Annexure P-2 may very kindly be quashed and set aside, in the interest of law and justice.

ii. That appropriate writ order or direction may very kindly be issued, directing the respondents No. 1 and 2 to set up the Petrol Pump strictly as per the location as shown in the advertisement and further by complying all the required Guidelines of the MORTH, in the interest of law and justice.

2. The brief facts of the case as are necessary for the adjudication of the present case are that the petitioner runs retail outlet i.e. Petrol pump, in the border area of Punjab and Himachal Pradesh at village Murthal in District Pathankot. This

Petrol Pump was established in the year, 2012. The respondents No. 1 and 2 advertised various locations for setting up of Petrol Pumps in the State of Himachal Pradesh including in the Districts Kangra. One of the such site locations was for "within 4 km of Kathgarh Shiv Mandir on Kathgarh Indora Road".

3. According to the petitioner, the identified location is only 500 metres from the Petrol Pump of the petitioner and as such in violation of the norms and guidelines issued for this purpose by the Ministry of Road Transport and Highways (for short 'MORTH'), which clearly provide that distance between two petrol pumps should not be less than 1000 metres. It is also averred that the approved site offered by respondent No. 3 does not fall within the location as advertised.

4. On the basis of such pleadings, the petitioner obtained ex parte ad interim stay on 12.02.2019, which reads as under:-

CMP No. 1252 of 2019

Allowed.

CWP No. 308 of 2019

Notice. Mr. Raju Ram Rahi, Deputy Advocate General, waives notice and accept service on behalf of respondent No.4 and seeks time to file reply.

Notice to respondents No.1 to 3, returnable on 12th March, 2019, be issued on taking steps by tomorrow.

CMP No. 1253 of 2019

Notice in the aforesaid terms.

It is submitted by learned counsel for the petitioner that as per Selection letter (Annexure P-2) location of the Petrol Pump allotted to respondent No. 3 is "within 4 Kms" Kathgarh Shiv Mandir on Kathgarh Indora road, whereas respondent No.3 is intending to locate his Petrol Pump at Kathgarh Mirthal road, a road in opposite direction to Kathgarh Indora road, at a distance of 500 meters from the Petrol Pump set up by the petitioner at a location which is at a distance of 50 meters from the Toll Plaza and setting up of Petrol Pump at such location is not only in violation of the Selection letter (Annexure P-2) and but also in conflict with the guidelines/norms (Annexure P-1) issued by Ministry of Road Transport & Highways for setting a Petrol Pump, particularly, conditions with respect to the distance, contained in Sr. Nos. 3 and 4 in stipulated norms for Fuel Stations (To be updated on revision of IRC:12), enclosed with the guidelines/norms (Annexure P-1).

It is further submitted that in case Petrol Pump set up by respondent No.3 as per location mentioned in the Selection letter, the petitioner has no objection.

In view of the aforesaid submissions respondent No.3 is restrained from setting up a Petrol Pump at a location in contravention of the Selection letter (Annexure P-2), for, as per this letter, he is entitled for setting up a Petrol Pump within 4

Kms of Kathgarh Shiv Mandir on Kathgarh Indora. Road only and not anywhere else.

5. Respondents No. 1 and 2 when put to notice, filed a short reply on 20.03.2019 and it shall be apt to reproduce paras 1 to 3 whereof, which read as under:-

1. That I, am fully aware with the facts and circumstances with respect to the above titled case and the advertisement issued in respect of allotment of Petrol pump more specifically "Within 4 KMs of Kathgarh Shiv Mandir on Kathgarh Indora Road", District Kangra.

2. That I, submitted that the private Respondent no 3 who is the selected has offered land for our advertised location i.e. "Within 4 KMs of Kathgarh Shiv Mandir on Kathgarh Indora Road", District Kangra and Sthe same is yet to be inspected by our Land Evaluation Committee.

3. That I further submitted as the entire process of evaluation is yet to start the petition filed by the petitioner is on apprehension and as such premature at this stage.

6. In view of the reply, on 25.03.2019, this Court passed the following order:-

Learned counsel for the respondent- Corporation states that the site given by respondent No. 3 shall be evaluated within four weeks.

List the matter on 04.05.2019. In the meanwhile, interim order dated 12.02.2019 to continue.

7. Thereafter, on 04.05.2019 and 27.05.2019, the Court passed the following orders:-

04.05.2019

Learned counsel for respondent No. 2 prays for and is granted three weeks' time to inspect the site. List on 27th May, 2019. In the meanwhile, interim order dated 12.02.2019 to continue.

27.05.2019

The evaluation of the site given by respondent No. 3 be now made by respondent-Corporation within four weeks. List on 15.7.2019.

Interim order to continue in the meanwhile.

8. It is eventually on 11.08.2020 that respondents No. 1 and 2 filed their reply, wherein in preliminary submissions it was again pointed out that the selection was under process and that the petition had been filed only on the basis of apprehension. Whereas on merit, it was submitted that for the location in question the Corporation had received applications of 12 candidates and 4 number of applicants were qualified after draw of lots and respondent No. 3 had been declared as a selected candidate. It was also pointed out that the location

advertised was for rural dealership, hence the norms as laid down by the MORTH that have been annexed by the petitioner as Annexure P-1 were not applicable, for the location in respect of minimum distances.

9. When the case came up for argument, this Court noticed that there was a dispute between the parties as to whether the site offered by respondent No. 2 was in fact the advertised site fall within the parameters of the advertisement which led to passing the following order on 11.10.2020:-

Heard. Taking into consideration the facts and circumstances of the instant case, we deem it appropriate to appoint Tehsildar, Indora to measure distance of the proposed site of Petrol Pump to be constructed over Khasra Nos. 1170 & 1171 in Village and Mauja Kathgarh, Hadbast No. 45, Tehsil Indora, from Shiv Mandir at Kathgarh and also report whether said spot is within 4 kms of Kathgarh Shiv Mandir on Kathgarh-Indora Road.

Let a copy of this order be sent by e-mail, FAX and registered A.D. to the concerned Tehsildar, with a copy thereof to the Deputy Commissioner, Kangra for compliance. The entire exercise be carried out within a period of 3 weeks from today.

For compliance, to come up on 1.11.2022.

10. It is in compliance to the aforesaid order that the Tehsildar, Indora has filed his report, the relevant portion whereof reads as under:-

In this context, it is submitted that I have visited the location of Khasra No 1170 and 1171 of revenue estate Kathgarh on 21-10-2022 accompanied by revenue field staff as well as revenue record. The distance of proposed site of Petrol Pump to be constructed over above sad khasra numbers was physically measured by JARIB and found that the distance of Khasra No. 1170 and 1171 from Shiv Mandir at Kathgarh is 900 meters which is within 4kms of athgarh Shiv Mandir on Kathgarh-Indora Road. Hence, the report is submitted for kind perusal of Hon'ble High Court please.

11. Thus, what stands established on record is that the site offered by the third respondent is strictly in accordance with the advertisement and the petitioner being a business rival has only un-necessarily sought to delay and if not hamper the allotment to be made in favour of the third respondent.

12. As observed above, the petitioner is a business rival and cannot maintain a writ petition as held by the Hon'ble Supreme Court in Mithlesh Garg vs. Union of India (1992) 1 SCC 168, wherein it was held that a rival businessman cannot file a writ petition challenging the setting up of similar unit by another businessman on the ground that establishing the rival business close to his business would adversely affect his business interest, even if the setting up of the new unit is in violation of law.

13. In the instant case, the only grievance of the petitioner is that if the third

respondent is permitted to set up his retail outlet within 500 metre radius of the petitioner's outlet, his business interest would be adversely affected.

14. In our opinion, the petitioner has no locus standi at all to complain to setting up of a retail outlet by the third respondent near his place of business that too only on the ground that would affect his business interest inasmuch as the damage, if any, suffered thereby was *damnum sine injuri*-adamage without infringement of legal right. We are further of the considered view, this would only result in promoting competition amongst the traders, which is good for the consumers. Merely because some of the customers may switch over to the rival retail outlet does not mean that public interest will suffer, rather in our opinion, it will benefit the consumers because, when there is competition, the businessmen are compelled to provide better quality products at reasonable rates.

15. Similar view has been expressed by the Hon'ble Madras High Court in *P. Selvi vs. District Magistrate*, AIR 2021 Madras 27. The retail outlet is being established by the third respondents in accordance with law where the guidelines as laid down by the Indian Road Congress are not applicable and the same otherwise have been held to be not mandatory by various courts.

16. As regards the contention of the petitioner regarding violation of the MORTH Guidelines, we need only to say that these guidelines only apply to the retail outlets that are to be opened on the National Highways and not otherwise and admittedly, in the instant case, the retail outlet is not being opened on the National Highway and thus, the MORTH Guidelines are inapplicable.

17. In view of the aforesaid discussion and for the reasons stated above, we find no merit in this petition and the same is accordingly dismissed, so also pending applications, if any.