
(2014) 07 RAJ CK 0042
In the Rajasthan High Court
Case No : Civil Writ Petition No. 772 of 2014

Jethu Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 19(6), 19(6)(i), 226

Citation : AIR 2014 Raj 157 : (2014) 4 RLW 3590

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : Ravindra S. Rathore and Abhishek Pareek, Advocate for the Appellant; L.R. Vishnoi, O.P. Boob, Govt. Counsel, Garmia Dadhich, Vikas Balia and O.P. Mehta, Advocate for the Respondent

Judgement

Pratap Krishna Lohra, J.—The matter comes up on second stay petition preferred on behalf of the petitioner but with the consent of the learned counsel for the parties, the matter is heard finally at this stage. By this writ petition, an authorized dealer of Bharat Petroleum Corporation Limited (BPCL) for MS/HSD Retail Outlet, located at Bhadrarjun-Nayad/Bhadrarjun-Ahore road, near Nosra Choraha, District Jalore, has challenged impugned No Objection Certificate dated 19th of August, 2013 issued by the District Collector, Jalore for setting up of MS/HSD outlet of fourth respondent Indian Oil Corporation Limited (for short, "IOCL") at village Dudiya, Tehsil Ahore, District Jalore and sought a direction against the respondents to regulate and follow the Notification dated 25th of September, 2003 issued by the Ministry of Road Transport and Highways with guidelines provided therein. The petitioner, in the writ petition has precisely placed heavy reliance on the Notification Anenx.4 issued by the Ministry of Road Transport and Highways, Government of India to assail the impugned NOC issued in favour of fourth respondent. In the writ petition, it is specifically pleaded by the petitioner that the competent authority while issuing NOC has not adhered to Clauses 5, 6.3 and 6.9 of the Notification dated 25th of September, 2003, and therefore, the impugned NOC deserves to be annulled. In this connection, the

petitioner has also placed heavy reliance in the pleadings on entries in the checklist (Annex.II) with specific emphasis on stipulated norms for fuel outlets. While referring to Clause 4, the petitioner has stated in the writ petition that the proposed MS/HSD outlet is located at 250 meters from Toll Plaza and therefore it is in clear violation of the guidelines incorporated in Annex.4. According to the petitioner, the recitals contained in Clause 4 makes it crystal clear that proposed outlet is at a distance of 250 meters from Toll Plaza. The petitioner has also placed on record with the second stay petition guidelines issued by the Department of Food, Civil Supplies and Consumer Affairs, Government of Rajasthan dated 3rd of October, 2006 and submitted that Clauses 1 & 2 of the said guidelines have not been followed while issuing the impugned NOC.

2. All the respondents have submitted their separate reply to the writ petition defending the impugned NOC. The first respondent in its reply has countered all the allegations contained in the writ petition and submitted that the writ petition is filed by the petitioner to claim monopoly over the business of MS/HSD outlet in the area. It is also averred in the reply that NOC was issued after soliciting requisite reports from the concerned officers and therefore the same is perfectly valid. While advertng to the fact that a brick kiln is situated nearby, it is averred in the reply that the same is not in operation from 29th of July, 2013.

3. The second respondent, in its reply, has also defended the NOC issued in favour of IOCL. In the return, the second respondent District Collector has specifically pleaded that on receipt of application for NOC from respondent No. 4, in compliance of Rule 144 of the Petroleum Rules 2002, it has solicited necessary reports from the Public Works Department, District Superintendent of Police, District Supply Officer, Sub Divisional Magistrate and Deputy Conservator of Forest and when all these authorities have not submitted any objectionable report being satisfied with the facts and circumstances, the requisite NOC was issued. Joining the issue with the petitioner on the existence of Toll Plaza at a distance of 250 meters, second respondent has averred that no such report was submitted by the Public Works Department at the time of issuance of NOC.

4. On behalf of respondent No. 3, reply is submitted denying all the allegations contained in the writ petition. While attributing motive to the petitioner, the third respondent has averred in the reply that the whole object of this litigation is to stall opening of other MS/HSD outlet so that his monopolistic commercial interest may not be adversely affected and there may not be any competitor in his business. The respondent No. 3 has also submitted that the establishment of MS/HSD retail outlet cannot injure any of the legal rights of the petitioner much less his fundamental rights enshrined under Article 19(1)(g) of the Constitution. While referring to the guidelines issued by the Ministry of Road Transport and Highways, the respondent No. 3 has submitted that the said guidelines are applicable vis-a-vis National Highways for the purpose of establishment of MS/HSD outlets and not with respect to State Highways, and therefore, the objection of Toll Plaza at a distance of 250 meters is not tenable. On the issue of brick kiln

(plant), it is submitted in the reply that the said kiln is not operational since long and now the land, on which that plant was situated, has been converted vide order dated 18th of September, 2013.

5. The respondent No. 4 IOCL has submitted its reply defending the impugned NOC. In the reply, the respondent has referred to some judgments of Hon"ble Apex Court and this Court and urged that the present writ petition is nothing but a camouflage to prevent possible competition in business and as such the petition is ill-motivated and cannot be maintained. As per the version of the fourth respondent, after locating the site for establishment of retail outlet, the respondent Corporation adhered to thorough process of selection and in the selection third respondent was selected and letter of intent was issued in his favour, who made available the land after issuance of the letter of intent. It is also submitted in the reply that for obtaining NOC, requisite exercise was undertaken by all the authorities and thereafter the District Magistrate has issued NOC. The fourth respondent Corporation has also pleaded that after issuance of NOC, it has invested approximately Rupees fifty lacs for setting up of a retail outlet on the land. The respondent Corporation has also pleaded in the reply that the impugned NOC has been issued by the competent authority after examining the reports of the experts, and therefore, there is no infirmity in issuance of the NOC. The fourth respondent has also questioned the locus standi of the petitioner to maintain this writ petition. The fourth respondent has also reiterated the stand of respondent No. 3 that Notification Annex.4 issued by Ministry of Road Transport and Highways is applicable vis-a-vis National Highways and not applicable qua State Highways. Respondent No. 4 has also submitted that petitioner being a business competitor cannot maintain a writ petition under Article 226 of the Constitution. On the issue of brick kiln, the fourth respondent has submitted that no such plant is operative.

6. Learned counsel for the petitioner, Mr. Ravindra S. Rathore, has argued with full eloquence that impugned NOC is contrary to Notification Annex.4 containing guidelines for setting up of fuel stations and the guidelines issued by the State Government on 5th of October, 2006, and therefore, the same is not sustainable. Learned counsel Mr. Rathore has urged that the impugned NOC has been issued dehors Clauses 5, 6.3 and 6.9 of Notification Annex.4 dated 25th of September, 2003 which are mandatory in character, and therefore, the impugned NOC merits annulment. Learned counsel for the petitioner would contend that the guidelines issued by State Government on 5th of October, 2006, more particularly, Clauses 1 & 2 have been given complete go-bye while issuing the impugned NOC, and as such, it is not sustainable.

7. Per contra, learned counsel Mr. L.R. Vishnoi for respondent No. 1 and Mr. O.P. Boob for respondent No. 2 have argued that NOC has been issued after soliciting reports from the concerned and therefore no interference is called for.

8. Ms. Garima Dadhich appearing for Mr. Vikas Balia, learned counsel for respondent No. 3 has submitted that the entire writ petition is based on

hypothetical facts with the sole object to thwart a rival retail MS/HSD outlet, and therefore, no interference with the impugned NOC is warranted. Learned counsel for the respondent has submitted that brick kiln was closed long back and after investing huge amount by the IOCL and by the respondent, the retail outlet has already started functioning from March 2014, therefore, no interference with the impugned NOC is warranted.

9. Mr. O.P. Mehta, learned counsel for IOCL has vehemently argued that petitioner is unnecessarily harping on Notification An-nex.4 issued by the Ministry of Road Transport and Highways, Government of India, which is essentially applicable for fuel stations, service stations and rest areas along National Highways and the impugned NOC has been issued for setting up of MS/HSD outlet on a State Highway. With this submission, learned counsel has submitted that no interference with the impugned NOC is warranted. Learned counsel Mr. Mehta, while questioning locus and bona fides of the petitioner has submitted that NOC remained pending before the competent authority for about a year, during which no objection was raised by the petitioner, further goes to show that this petition is designed with ulterior motive to thwart setting up of a rival MS/HSD retail outlet. Mr. Mehta has argued that a competitor in the business cannot have a valid grievance against grant of permissions for installation of business at a new site. For substantiating this argument, learned counsel has argued that right to carry on business is a fundamental right under Article 19(1)(g) of the Constitution subject to restriction imposed by law in the interest of general public. Under Article 19(6)(i) of the Constitution, as there is no interest of general public involved rather setting up of a MS/HSD retail outlet will cater the needs of travelling public, which is in the larger interest of public, the writ petition is not maintainable. For this proposition, learned counsel has placed reliance of following verdicts of the Apex Court:

1. The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others,
2. Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others,
3. Mithilesh Garg, Vs. Union of India and others etc. etc.,

10. In The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others, , Hon"ble Apex Court while examining the scope of Article 19(1)(g) and 19(6)) of the Constitution of India, made following observations:

"..Permission for shifting their rice mill was obtained by the appellants from the Director of Food and Civil Supplies. The appellants had not started rice milling operations before the sanction of the Director of Food and Civil Supplies was obtained. Even if it be assumed that the previous sanction has to be obtained from the authorities before the machinery is moved from its existing site, we fail to appreciate what grievance the respondents may raise against the grant of permission by the authority permitting the installation of machinery on a new site. The right to carry on business being a fundamental right under Art. 19(1)(g)

of the Constitution, its exercise is subject only to the restrictions imposed by law in the interests of the general public under Article 19(6)(i).

Section 8(3)(c) is merely regulatory: if it is not complied with, the appellants may probably be exposed to a penalty, but a competitor in the business cannot seek to prevent the appellants from exercising their right to carry on business, because of the default, nor can the rice-mill of the appellants be regarded as a new rice mill. Competition in the trade or business may be subject to such restrictions as are permissible and are imposed by the State by a law enacted in the interests of the general public under Article 19(6), but a person cannot claim independently of such restriction that another person shall not carry on business or trade so as to affect his trade or business adversely. The appellants complied with the statutory requirements for carrying on rice milling operations in the building on the new site. Even assuming that no previous permission was obtained, the respondents would have no locus standi for challenging the grant of the permission, because no right vested in the respondents was infringed."

11. In *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, , Hon"ble Apex Court held in para 51 as under:

51. For all the foregoing reasons, we are of opinion that the appellant had no locus standi to invoke this special jurisdiction under Article 226 of the Constitution. Accordingly, we answer the question posed at the commencement of this judgment, in the negative and on that ground, without entering upon the merits of the case, dismiss this appeal with costs.

12. While examining the locus of an individual and construing true purport of the expression "person aggrieved", the Court made following observations in Para 39:

39. Now let us apply these tests to the case in hand. The Act and the Rules with which we are concerned, are not designed to set norms of moral or professional conduct for the community at large or even a section thereof. They only regulate the exercise of private rights of an individual to carry on a particular business on his property. In this context, the expression "person aggrieved" must receive a strict construction.

13. In *Mithilesh Garg, Vs. Union of India and others etc. etc.*, , same principle is reiterated by the Hon"ble Apex Court.

14. Mr. Mehta has also placed reliance on a Division Bench decision of this Court dated 22nd of October, 2009 in D.B. Civil Special Appeal No. 256/2005 (*Narain Singh v. Union of India*) and a decision dated 20th of September, 2011, rendered by co-ordinate Bench, in S.B. Civil Writ Petition No. 10441/2010 (*Rajasthan Petroleum Dealers Association v. Union of India*).

15. In *Petroleum Dealers Association's case* (supra), the learned single Judge of this Court made following observations in Paras 15 to 17 of the judgment:

15. The present writ petition is nothing but a camouflage to prevent possible

competition by other retail outlets. The discretion & freedom of OMCs to set up more outlets with the expansion of road network and consumer markets has neither been disputed nor can it possibly be disputed. From the material placed on record before this Court by the respondent Union of India and OMCs, it is clear that there is no breach of any guidelines, which are not even statutory in nature, by the OMCs while inviting applications for such retail outlets. The allegation that lesser sale targets have been fixed for such applicants than the standard quota does not make out any ground for prohibiting the OMCs for allotting such retail outlets. In their replies, the OMCs have clearly come out with a case that they undertook the cost benefit analysis for each retail outlet to be opened by comparison of possible sales with actual sales of existing retail outlets and profit to be earned by it and it is only upon finding such economic viability for such new proposed retail outlet that such advertisements have been issued with the approval of the Board of Directors of respective OMCs at the highest level and there is no arbitrariness or illegality pointed out in the decision making process of these OMCs in the present writ petition. The fear of competition only seems to be at the bottom of the writ petition of the Association. A fair and legitimate competition coupled with the need of increased number of retail outlets with the expansion and development of road network & consumer market cannot be denied or disputed.

16. The existing petrol outlet dealers like the members of the petitioner Association alone cannot be allowed to have the cake and eat it too to the exclusion of others. It is left only to the wisdom of concerned OMCs to allot such outlets as per their business requirements and their business prudence has neither been questioned nor can possibly be examined by this court in writ jurisdiction as it is a question of complex factual matrix. Unless arbitrariness and unfairness in the decision making process with specific instances is pointed out by them, no bald and blanket writs can be issued by this Court prohibiting their rights. It would be sheer misuse and abuse of jurisdiction of this Court if such petitions are entertained and allowed.

17. This Court is, therefore, fully satisfied that the present writ petition, at the instance of Association of existing dealers, is not only misconceived but is an abuse of process of the Court under Article 226 of the Constitution of India and in view of similar writ petitions having been dismissed by the other High Courts, the present writ petition deserves to be dismissed with exemplary cost, which is determined at Rs. 10,000/- to be paid to each of the respondents.

16. Mr. Mehta has also placed reliance on a decision of Hon'ble Madras High Court rendered in W.A. No. 4057 of 2004 (Nataraja Agencies v. Secretary, Ministry of Petroleum and Natural Gas & Ors.) decided on 07.12.2004. While examining locus of the petitioner, Hon'ble Madras High Court made following observations in Para 4 of the verdict:

4. In the present case, the only grievance of the appellant is that if the fourth respondent is permitted to set up her retail outlet within one kilometer radius of

the appellant's outlet, his business interest would be adversely affected. In our opinion, the appellant has no locus standi at all to complain against the setting up of a rival retail outlet by the fourth respondent, near his place of business, on the ground that would affect his business interest, inasmuch as the damage, if any, suffered thereby was *damnum sine injuria* - damage without infringement of legal right. In our opinion, this will only result in promoting competition among 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.

17. I have heard learned counsel for the parties and perused the materials available on record.

18. Upon perusal of the materials available on record and after appreciating the arguments advanced by the learned counsel for the parties at the Bar, in my considered opinion, the question which requires adjudication is the locus standi of the petitioner to maintain this writ petition. There is no quarrel in the factual position that petitioner is an authorized dealer of BPCL for MS/HSD outlet and the impugned NOC has been issued for setting up of MS/HSD outlet by the IOCL at a location nearby his outlet. The main cause of grievance of the petitioner is apparently clear from the pleadings inasmuch as from the averments as per the version of the petitioner, setting up of MS/HSD outlet shall adversely affect his business interests. The averments contained in Para 5 of the writ petition in this behalf are clear and unambiguous, which read as under:

5. That being envious and attracted towards the huge clientele of this petitioner, company respondent No. 4 and private respondent No. 3 proposed to set up their own MS/HSD Retail Outlet nearby the MS/HSD Retail Outlet of this petitioner. It is apt and proper to submit at this juncture that the respondents are setting up their MS/HSD Retail Outlet only to illegally hijack the business share and clientele of this petitioner.

19. Thus, in the considered opinion of this Court, the ratio decidendi of the Hon'ble Apex Court referred to supra is fully applicable and the very locus standi of the petitioner is under serious cloud. It is trite that right to carry on business is a sacrosanct fundamental right enshrined under Article 19(1)(g) of the Constitution of India and such right of citizen can only be curtailed in the interest of general public. Setting up of a petrol pump nearby the retail outlet of the petitioner cannot be presumed to be against the interest of general public, and on the contrary, it will further the interest of general public. In these circumstances, in the considered opinion of this Court, petitioner cannot have a valid grievance against NOC granted in favour of respondent IOCL and the writ petition at his behest is, therefore, not entertainable. Moreover, in view of the fact that the competent authority has issued NOC after examining all pros and cons, and the retail outlet has been established and has started functioning, at

such a belated stage, no interference with the impugned NOC is called for.

20. If the grievance of the petitioner, in substance, is examined on general principles of law of torts, then it will ipso facto reveal that it is a clear case of *Damnum Sine Injuria*, i.e., actual and substantial loss without infringement of any legal right, as such, on the anvil of aforesaid principle also, no action at the behest of petitioner can be sustained. Mere loss in money or money's worth of itself does not constitute a tort. As per the principle of *Damnum Sine Injuria*, damage resulting therefrom is not actionable.

21. While advertng to the merits of the case, the entire edifice of the petitioner's case rests on Notification Annex.4 dated 25th of September, 2003, issued by the Ministry of Road Transport and Highways, Government of India. From a bare perusal of Notification dated 25th of September, 2003, it is amply clear that it prescribes norms for access to fuel stations, service stations and rest areas along National Highways, and it per se cannot apply *mutatis mutandis vis-a-vis* State Highways and other roads. The petitioner has not placed on record any material to show that these guidelines are also applicable in case of State Highways where retail outlet of MS/HSD is established by respondent IOCL. As regards the contravention of guidelines incorporated in Notification of the State Government dated 5th of October, 2006, particularly with reference to Clause 1, there is no pleading in the writ petition as well as in the second stay petition. So far as Clause 2 of the Notification is concerned, apparently there is no question of violation of the said condition inasmuch as brick kiln plant was closed long back and the same is not in operation. This fact is also clear from the land conversion order placed on record by respondent No. 3.

22. No other point is urged by the learned counsel for the petitioner.

23. Resultantly, on evaluation of the matter in its entirety, in my considered opinion, no case for interference is made out. Consequently, the writ petition is dismissed. Costs are made easy.