

(2014) 08 KAR CK 0073

In the Karnataka High Court

Case No : Writ Petition No. 16893/2014 (GM-RES)

J.O. Channakeshava

APPELLANT

Vs

The Deputy Commissioner

RESPONDENT

Date of Decision : 27-08-2014

Acts Referred:

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

Citation : (2014) 4 AKR 268

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : K. Rama Bhat, Advocate for the Appellant; H.B. Mahesh, HCGP, B.S. Sachin, Adv., C.M. Kempe Gowda, Advocate for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopal Gowda, J.—The petitioner, an agent of M/s. Essar Oil Limited, running a retail outlet, at Parashurampura Village, Challakere Taluk, assails the validity of a "No Objection Certificate", issued vide Annexure-A, by respondent No. 1, for establishing another 20 KL HSD and 15 KL Petrol Bunk, at Parashurampura Village, Challakere Taluk, Chitradurga District.

2. The Executive Director, M/s. Essar Oil Limited, Chennai, having made an application for issue of "No Objection Certificate", for establishing a new retail outlet at Sy. No. 189/2, Parashurampura Village, Challakere Taluk, to store 20 KL MS and 40 KL HSD and the first respondent having issued "No Objection Certificate", on 20.10.2004, the petitioner is running the said outlet. The 2nd respondent having made an application, the first respondent issued "No Objection Certificate", vide Annexure-A, to establish 20 KL HSD and 15 KL Petrol Bunk, at Sy. No. 294/1B, Parashurampura Village, Challakere Taluk.

3. The grievance of the petitioner is that the first respondent has acted against the guidelines issued by the Government of India, Ministry of Road Transport and Highways, in the matter of issuance of "No Objection Certificate", in favour of

respondent Nos. 2 and 3, as the distance between the existing petrol bunk run by him and the proposed petrol bunk is 158 meters only.

4. Sri K. Rama Bhat, learned advocate, contended that the petitioner having established a petrol bunk in 2004, would be severely affected, on account of another petrol bunk being permitted to be established by respondents 2 and 3, within a distance of 158 meters. He submitted that the guidelines issued by the Government of India, Ministry of Road Transport and Highways, has been ignored by respondent No. 1, while issuing the NOC. He further submitted that there being violation of guideline issued by respondent No. 1, the impugned action is arbitrary and illegal.

5. Sri. H.B. Mahesh, learned HCGP and Sriyuths B.S. Sachin and C.M. Kempe Gowda, learned advocates, appearing for respondents, on the other hand, by referring to the statement of objections filed to this writ petition, submitted that the petitioner has no subsisting legal right to challenge the NOC issued to set up a retail outlet of M/s. Bharat Petroleum Corporation Limited, in the property belonging to respondent No. 3. They submitted that the impugned action of the first respondent being in conformity with the Judgment dated 23.01.2013, passed in W.A. No. 50299/2012, no interference with Annexure-A is called for.

6. Perused the writ record and considered the rival contentions. Respondent No. 1 while issuing the NOC, has placed reliance on a report dated 05.10.2013 vide Annexure-R11, submitted by the Assistant Commissioner, Chitradurga and on the Judgment dated 23.01.2013 passed in W.A. No. 50299/2012.

7. Ministry of Road Transport and Highways, sent a communication dated 17.10.2003, vide Annexure-R4, containing the guidelines for the access for fuel stations, service stations and rest areas, along National Highways. Concededly, the place where the petitioner is running the retail outlet of M/s. Essar Oil Limited and the proposed retail outlet of respondent No. 2 are not situated along side of a National Highway. The said communication is with regard to minimum distance from an intersection for the sitting of fuel stations along National Highways. Hence, the contention of Sri K. Rama Bhat, that respondent No. 1 has acted against the guidelines issued by the Government, in the matter of issuance of the impugned NOC, has no merit.

8. In *Shanthi Institute of Commerce Vs. The State of Karnataka and Others*, , one of the questions that arose for consideration was whether an existing institution has any locus standi to file a petition challenging the recognition granted to a rival institution. Relying upon the decisions of the Supreme Court in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, and *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, , this Court held that the rules being regulatory, a third party did not acquire the right to question the action of the authority permitting or recognising a new institution in proceeding under Article 226 of the Constitution.

9. In *Smt. B.S. Gowramma Vs. Joint Director of Public Instructions and Others*, ,

while upholding the constitutional validity of Rule 3-A of Grant-in-Aid-Code for Commerce Education 1975, fixing distance of 1 K.m. for granting recognition of one Commerce Institute from another, this Court observed:

"10. It is in these circumstances, that this Court is required to uphold the validity of rule and also direct that while applying this rule even though the authorities shall as far as possible ensure that there is a separation distance of 1 km. between similarly situated institutes that in given cases, it would be permissible to water down that rule, if the other circumstances so justify".

The above decision was upheld by the Division Bench in W.A. No. 5606 of 1996 disposed of on 23rd July, 1996.

10. In D.R. Sadashiva Murthy And Others Vs. State of Karnataka And Others, 1997(1) K.L.J. 353, this Court was dealing with the question, whether Government guidelines for opening of new high schools according to which a new school could not be allowed within a distance of 5 Kms. from an existing school could be enforced. Repelling the contentions that a new school could not be established within the prohibited distance of 5 Kms. from an existing institution, the Court observed:

"...The distance may be one of the factors to be taken into consideration but is not the sole determinating factor in such cases. Basic criteria while exercising power to do open or permit to open a school is the consideration of the need of the school in that area which has to be examined in the context of existing schools and the local population particularly the population of the children needing education. There can be cases where more than one institution may be needed and can be established within the radius of 5 Kms. and there can be cases where only one school can be established. The best judge of the matters is the State and the authorities in this regard. The criteria contained in Annexure-K is only a guideline. It is open to the Government to change or to take a decision to open a school keeping in view the need of the school in the locality".

11. W.P. No. 81190/2012 was filed challenging the permission granted to another person, to set up a retail outlet within 100 meters distance, by contending that, if the new retail outlet is established, it leads to competition and both of them would not survive, as the capacity of the village is hardly about 800 liters per day. The writ petition having not been entertained, on the ground that the petitioner has no subsisting legal right, W.A. No. 50299/2012 filed was dismissed on 23.01.2013, by observing as follows:

"While granting petrol bunk permission, not only the capacity of the village is taken into consideration, persons who pass through the road also is taken into consideration. At any rate, it is only the competition which would benefit the public at large. There is no legal right vested in the petitioner to prevent a competitor from setting up a petrol bunk. The petitioner is an agent of M/s. Indian Oil Corporation. Now, M/s. Bharat Petroleum Corporation Limited wants to set up a petrol bunk. Therefore, the competition is a must so that public at large

would get a fair deal. In that view of the matter, the learned Single Judge was right in rejecting the writ petition. We do not find any good ground to interfere with the said order."

12. In order to maintain a petition under Article 226 of the Constitution, the petitioner should normally be a "person aggrieved". The concept of "locus standi" and the meaning of the "person aggrieved" has been explained by the Apex Court in catena of decisions.

13. By noticing the law relating to the question of "locus standi" declared by the Apex Court in the case of *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, , which relates to the holder of a licence to run a rice mill, sought to question the grant of a similar licence to another person, on the ground that the said grant was in contravention of certain regulations governing the grant of licence to mills of that nature, Apex Court rejected the same, on the ground that the person who impugned the same, do not have the "locus standi" to do so. While holding so, it has been held as follows:

"10. 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 regard 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 Art. 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."

14. In *State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo*, , with regard to jurisdiction under Article 226, the Apex Court has held as follows:

"8. On the merits, the position is absolutely clear Under Art. 226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Art. 226 is not confined to cases of illegal invasion of his fundamental rights alone. But though the jurisdiction of the High Court under Art. 226 is wide in that sense, the concluding words of the article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Art. 226."

15. In *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, , Apex Court has held as under:

"8. The first question is whether the appellant had locus standi to file a petition in

the High Court under Art. 226 of the Constitution. This Court in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, , dealing with the question of locus standi of the appellant in that case to file a petition under Art. 226 of the Constitution in the High Court, observed:

"Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental right can also approach the court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right.....The right that can be enforced under Art. 226 also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified."

16. In *Dr. Satyanarayana Sinha Vs. S. Lal and Company (P) Ltd.*, , Apex Court has held:

"In order to have locus standi, the petitioner should normally be a "person aggrieved". When an application is made by a party or by a person aggrieved, the Court will intervene *ex debito justitiae*, in justice to the applicant and when it is made by a stranger, the Court considers whether the public interest demands its intervention. In either case, it is a matter which rests ultimately in the discretion of the Court."

17. The fulfillment of the guidelines in the Circular, as at Annexure-R4, is no more than a broad parameter which is neither sacrosanct nor enforceable at the instance of an existing agent running a retail outlet, that too, of a private Oil Company. The existence of two retail petrol outlets in near vicinity would enure to the benefit of the public and the petitioner and the 3rd respondent could live and let live.

18. In *Poonam Verma and Others Vs. Delhi Development Authority*, , with regard to the legal effect of guidelines, Apex Court has held as follows:

"27. Guidelines per se do not partake to the character of statute. Such guidelines in absence of the statutory backdrop are advisory in nature. Mr. Ram Prakash himself has relied upon a decision of this Court in *Narendra Kumar Maheshwari Vs. Union of India (UOI) and Others*, , wherein it has been laid down: (SCC p. 510, para 107)

"107.....This is because guidelines, by their very nature, do not fall into the category of legislation, direct, subordinate or ancillary. They have only an advisory role to play and non-adherence to or deviation from them is necessarily and implicitly permissible if the circumstances of any particular fact or law situation warrants the same. Judicial control takes over only where the deviation

either involves arbitrariness or discrimination or is so fundamental as to undermine a basic public purpose which the guidelines and the statute under which they are issued are intended to achieve."

[See also Narendra Kumar Maheshwari Vs. Union of India (UOI) and Others, ; Maharao Sahib Shri Bhim Singhji Ors. Vs. Union of India (UOI) and Others, ; J.R. Raghupathy and Others Vs. State of A.P. and Others, and Uttam Parkash Bansal and Others Vs. Life Insurance Corporation of India and Others,]

28. Guidelines being advisory in character per se do not confer any legal right."

19. In view of the above and also the Judgment dated 23.01.2013 passed in W.A. No. 50299/2012, which squarely applies to the instant case, the first respondent is justified in issuing the "No Objection Certificate", as at Annexure-A. The petitioner has no locus to question Annexure-A. Even otherwise, in view of the report submitted by the Assistant Commissioner, Chitradurga vide Annexure-R11, one more retail outlet being required to be located in the area in question for the benefit of the public, no exception can be taken for the issuance of Annexure-A. The legal point raised by Sri K. Rama Bhat, stands covered by the Judgments, noticed supra. There is no legal infirmity in the impugned action of respondent No. 1, warranting any interference.

In the result, petition is devoid of merit and is dismissed, with no order as to costs.