
(2023) 02 KL CK 0281

In the High Court Of Kerala

Case No : Writ Petition (C) No. 19932 Of 2022

Khalid K.A

APPELLANT

Vs

National Highway Authority Of India

RESPONDENT

Date of Decision : 28-02-2023

Acts Referred:

Citation : (2023) 02 KL CK 0281

Hon'ble Judges : S. Manikumar, CJ;Murali Purushothaman, J

Bench : Division Bench

Advocate : P.K.Aboobacker, Salil Narayanan, Dinesh Mathew J.Muricken, M.Gopikrishnan Nambiar, Riji Rajendran, Mitha Sudhindran, Bhairavi S.N, Ajai Raghu, K.John Mathai, Joson Manavalan, Kuryan Thomas, Paulose C. Abraham, E.C.Kuriakose, Lejo Joseph, George, ??Nayanpally Ramola, Souradh

Final Decision : Dismissed

Judgement

Murali Purushothaman, J.

1. The petitioner, who claims to be a social worker, has filed this public interest writ petition challenging Ext. P1 'provisional approval of access' issued by the National Highways Authority of India ('NHAI' for short) to the Bharat Petroleum Corporation Ltd. (hereinafter referred to as 'BPCL'), granting access permission for its proposed fuel outlet.

2. According to the petitioner, the BPCL has filed an application for access to a proposed retail outlet at KM 412+780 (LHS) in Kodungalloor – Edappally section of NH-17 (NH-66) (Ch. 397+850 to Ch. 423+000) at Survey No. 383/20-15 of Kottuvally Village, Paravur Taluk, Ernakulam. On the basis of the said application, the NHAI has given Ext. P1 provisional approval for access in violation of Ext.P2 'guidelines/norms for grant of permission for construction of access to fuel stations, wayside amenities, private properties, rest area complexes, connecting roads and such other facilities/establishments'.

3. The petitioner contends that as per clause 2.3 of Ext. P2 guidelines, insofar as

location norms for urban/mountainous stretches of National Highways are concerned, there should not be any intersection with any category of road and median gap within 100 meters from the proposed retail outlet location. However, contrary to the said norms, provisional approval for access has been granted to the proposed retail outlet of BPCL comprised in survey No. 383/20 of Kottuvally Village, Paravur Taluk, which has an intersection with a Panchayat public road within 100 meters with a width of 4.2 meters on the southern side known as 'Mesthirippadi – Thirumuppam road'.

4. The petitioner states that permission has been obtained from NHAH suppressing material facts and without divulging that the proposed outlet has an intersection with Panchayat public road which is in violation of clause 2.3 of Ext. P2 guidelines. The petitioner states that the location of the outlet is in an urban area and therefore, clause 2.3 of the norms has to be followed which provides that there shall not be any intersection with any category of road and median gap within 100 meters from the proposed retail outlet location. Accordingly, the petitioner prays for a direction to quash Ext. P1 provisional permission given by NHAH for access to the retail outlet of BPCL and for direction to NHAH to verify whether there is violation of Ext. P2 guidelines in issuing Ext. P1 provisional approval for access.

5. A counter affidavit has been filed on behalf of the 5th respondent, by the Territory Manager of BPCL contending that the petitioner has no locus standi to file the public interest litigation and has not stated his credentials in the writ petition as required for filing a public interest litigation. According to BPCL, the petitioner is only an interloper and the writ petition has been filed at the behest of a third party attempting to thwart the coming up of the retail outlet. It is further stated that the construction of the outlet has already reached an advanced stage and the writ petition, at this belated stage, cannot be entertained, and the writ petition has to be dismissed for delay and laches and since the petitioner has not made BPCL a respondent in the party array and has only made an officer (Territory Manager) of the BPCL a party to the writ petition, the writ petition has to be dismissed for misjoinder of parties and failure to array necessary parties. It is also stated that Ext. P1 is only a provisional permission for access, and only after all the relevant requirements are met, final approval will be issued by NHAH for starting the retail outlet. Accordingly, it is contended that the writ petition is premature. On merits, it is contended that the retail outlet is constructed on the service road of the proposed 6-lane National Highway and that the relevant clause applicable is clause 2.1 of Ext. P2 guidelines and not 2.2 or 2.3. Clause 2.1 of Ext. P2 guidelines provides that, irrespective of the terrain, no norm shall be applicable if the retail outlet is proposed on the existing service roads/slip road. However, permission for retail outlet proposed on the existing service roads/slip roads is to be obtained from Highway Administration to regulate other requirements such as drainage facilities, plot size, drinking water, toilet facilities, signs, markings etc. It is therefore contended that since the outlet is on the service road, clause 2.3 of

Ext. P2 guidelines has no application.

6. The 6th respondent with whom the BPCL entered into the lease agreement has filed a counter affidavit on similar lines.

7. A counter affidavit has been filed by the 1st respondent, National Highways Authority of India wherein it is stated that the outlet is being established on the service road and hence the category of the road is immaterial and irrelevant. The 1st respondent also refers to Ext. R1(a) report of site inspection conducted by the 1st respondent on 12.08.2021, and clause 6 of the report reads as follows:-

"The intersection with roads of carriageway width of 3.6m is at 105.9m which has been verified through roadometer (as per norms 100m) from the retail outlet. However, the applicant has proposed 7.5m wide service road for a length of 388.68m and 70m long deceleration lane and acceleration lane for a length of 100m."

It is stated that Ext. P1 was granted after a detailed examination by the NHAI and there is no contravention of any of the guidelines.

8. We have heard learned counsel Sri. P. K. Aboobacker for the petitioner, Sri. Lejo Joseph George for the National Highways Authority of India, the 1st respondent, Sri. Sachin for the Alangad Grama Panchayat, the 3rd respondent, Sri. Nayanpally Ramola for the Bharat Petroleum Corporation Ltd., the 5th respondent and Sri. Souradh for M/s. Knowell Realtors (India) Private Ltd., the 6th respondent.

9. On going through the pleadings and materials on record, we find that the retail outlet is being constructed on the service road of the proposed 6 lane National Highway. The relevant clause applicable to the site (service road) is clause 2.1 of Appendix I of Ext. P2, which reads as follows:-

"2.1 Norms on Existing Service Road/Slip road

Irrespective of the terrain, no norm shall be applicable if the retail outlet is proposed on the existing service roads/slip road. However, permission for retail outlet proposed on the existing service roads/slip roads to be obtained from Highway Administration to regulate other requirements such as drainage facilities, plot size, drinking water, toilet facilities, signs, markings etc.

However, no access permission shall be granted for establishment of a retail outlet on the entry/exit ramp of service/slip road."

10. Since the retail outlet is established on the service road, irrespective of the terrain, no norm shall be applicable. Therefore, the petitioner cannot contend that clause 2.2 or 2.3 of Ext. P2 will apply for grant of provisional approval for access. It is stated by the NHAI that Ext. P1 provisional approval for access is given after a detailed examination and on finding that all requirements for issuance of provisional approval for access, are satisfied. Therefore, we do not find any illegality in the issuance of Ext. P1 provisional approval for access to

BPCL by NHAI.

There is no merit in the writ petition. Accordingly, the writ petition is dismissed.
There will be no order as to costs.