

(2021) 08 TEL CK 0078
In the Telangana High Court
Case No : Writ Petition No. 5059 Of 2021

K.Venkatesh Gupta

APPELLANT

Vs

Union Of India And 8 Others

RESPONDENT

Date of Decision : 31-08-2021

Acts Referred:

Petroleum Rules, 2002 — Rule 144

Citation : (2021) 08 TEL CK 0078

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Advocate : N Krishna Sumanth

Final Decision : Disposed Of

Judgement

1. This Writ Petition is filed to declare the action of respondent Nos.4 to 7 in not taking any action on the representations dated 31.01.2020, 18.09.2020 and 07.09.2020 submitted by the petitioner and not stopping illegal and unauthorized construction of the petrol bunks by the 9th respondent in Sy.Nos.200 and 201 of Mogiligidda Village, Ranga Reddy District as illegal and for consequential direction to respondent Nos.4 to 7 to stop the above said illegal and unauthorized construction of petrol bunks by 9th respondent in the above survey numbers.

2. Heard Sri Krishna Sumanth, learned counsel for the petitioner and learned Assistant Solicitor General of India for respondent No.1, Sri D. Narender Naik, learned standing counsel appearing for respondent Nos.2 and 3, Sri A. Ram Mohan, learned Government Pleader for Revenue appearing for respondent No.4, learned Assistant Government Pleader for Home appearing for respondent Nos.5 and 6, learned Government Pleader for Panchayat Raj appearing for respondent No.7, Sri V. Jawaharlal, learned counsel for respondent No.8 and Sri V. Raghunath, learned counsel for 9th respondent. Perused the record.

3. SUBMISSIONS OF THE PETITIONER:-

i) He is the retail outlet dealer appointed by the Essar Oil Limited Petroleum in

Sy.No.202/1/E of Mogiligidda Village, Farooqnagar Mandal, Ranga Reddy District. Proceedings vide letter No. AP100317218503-1209, dated 14-03-2017, was issued authorizing him to purchase/sell or store the Motor Spirit and High Speed diesel Oil.

ii) He has entered into agreement to that effect. He has also obtained necessary permissions/NOC(No objection Certificate) after physically verifying the site and the outlet. Pursuant to the said letter of appointment, the petitioner has been inducted into possession of the outlet and has been running the same in the name and style "Sri Venkataramana filling Station".

iii) 8th respondent is taking active steps for establishment of petroleum outlet by obtaining dealership from 3rd respondent which is adjacent to the outlet of the petitioner herein i.e. within 100 meters. 8th respondent is also trying to obtain all necessary permissions/NOC from the concerned authorities violating the guidelines of India Road Congress (IRC).

iv) There should be minimum distance between the two fuel stations and undivided carriage way as per the India Road Congress (IRC):12-2009 guidelines point 4.6.1 of 4.6.

v) According to the petitioner, guidelines for access, location and layout of road side fuel stations and service stations were framed by the India Road Congress governing consideration for setting up fuel stations to ensure free flow of traffic on the road along with fuel stations, minimum interference by the vehicles using the facilities and to ensure safety of the vehicles on the road.

vi) Guidelines 4.5.1 deals with non-urban(rural) stretch and intersection with rural roads/approach roads to private and public properties at a distance of 300 meters.

vii) Guideline No.2 enunciates that 300 meters minimum distance between two fuel stations would be on plain and rolling terrain in non-urban(rural) areas of carriage way. The proposed outlets to be established by 8th and 9th respondent are exactly less than 100 meters from the outlet of the petitioner.

viii) Thus, 8th and 9th respondents, in violation of the above said guidelines including the said distance, are trying to set up fuel stations.

ix) On 17.02.2021, 9th respondent has placed petroleum tanks in the property which is less than 50 meters to the outlet of the petitioner.

x) The petitioner herein has submitted the above said representations complaining about the said violations and also proposal of 8th and 9th respondents for setting up of outlets illegally, to respondent Nos.4 to 7 who did not take any action for stopping the illegal establishment of the said petroleum outlets illegally.

xi) With the said submissions, the petitioner sought to allow the writ petition.

4. SUBMISSIONS OF 9TH RESPONDENT:-

- i) He has filed a petition vide I.A.No.2 of 2021 to receive certain documents as additional material papers in support of his case.
- ii) He is the dealer of petroleum outlet having obtained the same from 2nd respondent after long legal battle.
- iii) He has followed the regulations and complied with all the requirements for getting the dealership.
- iv) He has obtained all necessary permissions/NOC from competent authorities after due enquiry and following the due procedure laid down under law.
- v) There is no illegality or irregularity in setting up of the petroleum outlet by him.
- vi) He denies that his outlet is less than the distance of 100 meters from the outlet of the petitioner.
- vii) He has also filed a letter of intent dated 12.01.2021 for proposed Bunk site Kisan Seva Kendra (KSK) dealership at Mogiligidda (Kondurg-Shadnagar Road), Ranga Reddy District. He has also filed a letter of appointment dated 25.02.2021 issued by 2nd respondent.
- viii) He has also filed letter dated 07.10.2020 addressed by 2nd respondent to the 5th respondent with a request to issue NOC for setting up of the said outlet. He has also filed a show cause notice dated 22.06.2021 issued by 5th respondent to 9th respondent seeking explanation as to why NOC issued should not be cancelled.
- ix) With the said submissions, he sought to dismiss the writ petition.

5. SUBMISSIONS OF 2ND RESPONDENT:-

- i) 9th respondent has taken necessary permission from all the relevant concerned authorities before going ahead with construction activities of proposed retail outlet.
- ii) Permission is granted to 9th respondent for setting up of KSK retail outlet in the year 2010 itself and the same was challenged and an internal inquiry was conducted by 2nd respondent and the matter was disposed of in favour of 9th respondent.
- iii) The letter of intent dated 24.08.2020 was issued in favour of 9th respondent and KSK retail outlet was finally commissioned by 9th respondent on 28.02.2021 after obtaining all necessary permissions.
- iv) The guidelines issued by IRC are directory but not mandatory.
- v) 9th respondent has obtained permissions/NOC on 25.01.2021.

vi) With the said contentions, 9th respondent sought to dismiss the present writ petition.

6. SUBMISSIONS OF 8TH RESPONDENT:-

i) He has obtained permission for setting up of rural petroleum retail outlet at location site in Sy.No.201, situated at Mogaligidda Village, Farooqnagar Mandal, Ranga Reddy District on Pargi-Shadnagar road, under the reserved category of Scheduled Tribe by 3rd respondent vide letter of intent dated 12.04.2019.

ii) The competent authority - cum - Revenue Divisional Officer, Mahaboob Nagar Division has issued orders for conversion of the land to an extent of Ac.0.20guntas in Sy.No.201 situated at Mogaligidda Village, Farooqnagar Mandal, Mahabubnagar District and he has obtained all necessary permissions/NOC in accordance with law basing on the reports received and also after conducting necessary enquiry and by following the procedure laid down under law.

iii) 5th respondent has also issued NOC dated 30.09.2020 in his favour under Rule 144 of Petroleum Rules, 2002 and there is no irregularity or illegality in issuing the same.

iv) The guidelines of IRC are directory but not mandatory and moreover, the proposed fuel station is not on any National Highway. Therefore, IRC guidelines are not applicable.

v) The Assistant Executive Engineer (R&B) Section, Shadnagar, Roads and Building Department, Government of Telangana vide letter dated 01.07.2020 submitted that the right of way of Shadnagar-Parigi Road from KM 0/0 to 24/00 is Shadnagar Sub Division, a major district road and it is 50 feet from centre of road. Thus, the said IRC guidelines are not applicable.

vi) In support of his submissions, he has also placed reliance on the principle laid down by the Hon'ble Apex Court in Chief

Commercial Manager, South Central Railways, Secunderabad Vs. G.Rathnam (2007) 8 SCC 212.

vii) With the said submissions, 8th respondent sought to dismiss the present writ petition.

7. ANALYSIS AND FINDINGS OF THE COURT:-

i) The above stated rival submissions would reveal that the grievance of the petitioner herein is that 8th and 9th respondents are setting up fuel stations/ retail outlets in violation of the IRC guidelines and without maintaining certain distance etc. The authorities concerned including 4th and 5th respondents have issued permissions/NOC in favour of 8th and 9th respondents. Therefore, the petitioner herein has submitted specific representations dated 31.01.2020, 18.09.2020 and 07.09.2020 to respondent Nos.4 to 7 with a specific request to stop illegal and unauthorized construction of petrol bunks by the 8th and 9th

respondents in Sy.Nos.200 and 201 of Mogiligidda village. Despite receiving and acknowledging said representations, the respondent Nos.4 to 7 did not stop the said illegal constructions.

ii) The petitioner herein in the above said representations and also in the writ affidavit specifically contended that the minimum distance between two fuel stations of undivided carriage way as per IRC 12-2009 guidelines, at point No.4.6.1 of 4.6 shall be as follows:-

"a) (4.6.1) Plain and rolling terrain in non-urban(rural) areas:-

i) Undivided carriageway (for both sides of carriageway)-300 m (including deceleration and acceleration lanes)

ii) Divided carriageway(with no gap in median at this location and sketch)-1000m(including deceleration and acceleration lanes)"

Similar guidelines were issued vide memo No.25/Petroleum/Y-1/ DCP-TR/Cyb/2015, dated 28.01.2016. It is also further contended by the petitioner herein that the guidelines for access, location and lay out of road side fuel stations and service stations were framed by the IRC governing consideration for setting up fuel stations is to ensure free flow of traffic on the road along with fuel stations, minimum interference by the vehicles using the facilities and to ensure safety of the vehicles on the road. As per guideline 4.5.1, non-urban(rural) stretch and intersection with rural roads/approach roads to private and public properties at a distance of 300 meters and guideline No.2 enunciates that 300 meters minimum distance between two fuel stations would be on plain and rolling terrain in non-urban (rural) areas of carriage way.

iii) By referring the same, learned counsel for the petitioner would submit that respondent Nos.8 and 9 are setting up of their retail outlet in violation of the said guidelines and official respondents have issued permissions/NOCs, without conducting proper enquiry and in violation of the said guidelines to 8th and 9th respondents. Despite specific representations submitted by the petitioner reiterating the above said facts, respondent Nos.4 to 7 have not initiated any action for stopping the illegal and unauthorized construction of retail outlets by the respondent Nos.8 and 9.

iv) In view of the same, it is relevant to refer the counter filed by 2nd respondent. According to the 2nd respondent, they have granted permission to 9th respondent for setting up of KSK retail outlet in the year 2012 itself and the said permission was under challenge and therefore after conducting internal enquiry, 2nd respondent has issued letter of intent dated 24.08.2020 in favour of 9th respondent. According to 2nd respondent, 9th respondent has obtained all necessary permissions/NOC from the concerned authorizes and thereafter only he is setting up the said petroleum outlet in Sy.No.200 of Mogiligidda village. According to 2nd respondent, guidelines issued by IRC are directory but not mandatory.

v) The petitioner herein has filed show cause notice dated 22.06.2021 issued by 5th respondent wherein 5th respondent has categorically stated that on receipt of complaint from the petitioner herein, an enquiry was made and site was also inspected on 26.03.2021 by 6th respondent wherein it was noticed that 9th respondent has started construction of outlet by changing the site which is earlier not shown at the time of site inspection and by omitting the earlier shown site installed the outlet at another place existing at a distance of 80 meters only to Essar Petrol bunk of Mogiligidda and thus, violated the norms and also misguided and cheated enquiry authorities. Therefore, 5th respondent sought explanation from the petitioner herein.

vi) Accordingly, the petitioner herein has submitted explanation dated 30.06.2021 reiterating that he never violated any clauses of NOC and he has not changed location. He has never acted contrary to the norms of NOC. He has also enclosed certain documents along with the explanation with a request to withdraw the show cause notice and drop further proceedings. 9th respondent has also requested 5th respondent to conduct joint inspection to know the veracity of allegation and till such time he has requested not to take any coercive steps.

vii) The above stated facts would reveal that the 2nd respondent has issued letter of intent in favour of 9th respondent herein basing on the NOC issued by the 5th respondent. Now on receipt of the above representations from the petitioners herein, 5th respondent has directed 6th respondent to conduct site inspection and submit report. Accordingly, 6th respondent has conducted site inspection and submitted report and as per the report, 9th respondent is making construction changing site location which was submitted by him earlier. Thus, there is violation of terms and conditions of NOC. Therefore, 5th respondent has issued show cause notice, dated 26.06.2021 seeking explanation from the 9th respondent herein and accordingly, 9th respondent has already submitted his explanation dated 30.06.2021 and further proceedings are pending. In the said explanation, 9th respondent alleged that 6th respondent conducted inspection behind his back and in collusion with the petitioner herein and therefore, he sought joint inspection. Thus, respondents have already acted upon the representations, dated 31.01.2020, 18.09.2020 and 07.09.2020 submitted by the petitioner.

viii) The above stated facts would reveal that there are the following several factual aspects to be investigated into:

a) Whether the respondent Nos.8 and 9 have obtained necessary permissions/ NOC from 2nd and 3rd respondents; and

b) Whether the outlets proposed/alleged to be set up by 8th and 9th respondents are within the specified distance or not?

The aforesaid factual aspects are to be considered by the respondent authorities. According to 9th respondent, 6th respondent has not conducted inspection by

giving opportunity to him by putting him on notice and thus, he seeks to conduct joint inspection. It is for the respondent authorities to consider the same, otherwise, it is for the petitioner to take steps in accordance with law. Thus, the concerned authorities have already acted upon the representations impugned herein submitted by the petitioner herein.

ix) However, it is relevant to note that the guidelines relied upon by the petitioner herein are only directory but not mandatory. The Hon'ble Apex Court has also upheld the said principle in the above referred judgment.

8. CONCLUSION:

In view of the above discussion and facts and circumstances of the case, more particularly considering the fact that the official respondents have already acted upon representations submitted by the petitioner herein, this Writ Petition is disposed of directing the respondent Nos.2 to 7 to take further steps in accordance with law by putting the petitioner and respondent Nos.8 and 9 on notice, as expeditiously as possible, in consideration of the representations, dated 30.01.2020, 18.09.2020 and 07.09.2020.

As a sequel, miscellaneous Petitions, if any, pending, in the writ petition shall also stand closed.