
(2010) 07 AHC CK 0042

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 12283 of 2010

Lila Dhar Gera

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 20-07-2010

Acts Referred:

Citation : (2010) 07 AHC CK 0042

Hon'ble Judges : Virendra Singh, J; Ashok Bhushan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard Shri Arvind Srivastava, learned Counsel for the Petitioner and Shri Vikas Budhwar for Respondent Nos. 2 and 3.

2. By this petition, Petitioner has prayed for certiorari quashing the order dated 15/2/2010, passed by the Chief Regional Manager, Meerut Retail Region, Hindustan Petroleum Corporation Ltd. by which order the representation submitted by the Petitioner objecting to the location of retail outlet proposed to be setup by the Corporation has been rejected.

3. Brief facts necessary for deciding the writ petition are: On 23/6/2009, an advertisement was issued by the Hindustan Petroleum Corporation Ltd. (hereinafter referred to as "Corporation") advertising several locations for selection of retail outlets. At Serial No. 228 one of the proposed site was "On Tehsil Road, Aonla (between inter section with Station Road and Sargam Talkies Chauraha)" District Bareilly. The applications submitted in response to the above advertisements were considered and the Corporation fixed dates for holding interview of the candidates. Objecting to the aforesaid location, Petitioner filed Writ Petition No. 60485/2009, which writ petition was disposed of by this Court by order dated 19/11/2009, permitting the Petitioner to make a detailed representation before the Respondent No. 3 which was to be decided by a reasoned order within a period of two months. Petitioner in pursuance of the

order of this Court dated 19/11/2009, submitted a representation, copy of which is filed as Annexure-8 to the writ petition which representation has been rejected by the order dated 15/2/2010. This writ petition has been filed praying for quashing the aforesaid order.

4. Learned Counsel for the Petitioner challenging the order impugned contended that the proposed location is contrary to the guidelines issued by the Government of India, Ministry of Road, Transport and Highways dated 25/9/2003, which provides that the minimum distance between two fuel stations should be at least 300 mts from the middle of the inter section. It is contended that the P.W.D. by letter dated 09/12/2003, has directed the Superintending Engineers to ensure the compliance of the letter of the Government of India dated 25/9/2003. He submits that by virtue of the letter dated 09/12/2003, the guidelines which have been issued on 25/9/2003, are also applicable on the fuel pumps sought to be opened at State Highway, Main District Roads and other District Roads. Reliance has also been placed on the letter dated 15/11/2003 issued by the Chief Engineer, P.W.D., Luck now addressed to all the Regional Chief Engineers. It has further been submitted that according to the policy of the Petroleum Ministry New Retail outlets cannot be advertised by any Oil Company until and unless per outlet average monthly sale does not exceed 80 Kilo Litres on the basis of the last financial year of all the retail outlets existing within the area. It is submitted that five retail outlets are already there in the area hence, another outlet cannot be opened average sale of the existing outlets not being more than 80 Kilo Litres.

5. Shri Vikas Budhwar, learned Counsel for the Respondents refuting the submission of the learned Counsel for the Petitioner contends that the distance criteria as relied on by the Petitioner on the basis of the Circular dated 25/9/2003, of the Government of India, Ministry of Road Transport and Highways is applicable only with regard to the fuel stations along with National Highways. He submits that the said criteria is not applicable to the State Highways or other District Roads. With regard to the second submission of the Petitioner, it is contended that the guidelines which were earlier issued with regard to the volume of sales are no longer in existence they having been superseded by subsequent guidelines issued by the Government of India dated 09/10/2000.

6. Learned Counsel for the Respondents submits that the Division Bench of this Court has already considered similar submissions in the case of M/s Vikash Traders v. Union of India and Ors, in Writ Petition No. 36700/2005, decided on 06/5/2005. Another Division Bench judgment of this Court in Writ Petition No. 8852/2004, Gopal Auto Centre v. Union of India and Ors. decided on 15/9/2004 has also been relied on.

7. We have considered the submissions of the learned Counsel for the parties and have perused the record.

8. The first submission of the learned Counsel for the Petitioner is based on the

guidelines which have been issued by the Government of India, Ministry of Road Transport and Highways dated 25/9/2003. The subject of the aforesaid guidelines is as follows:

Government of India, Ministry of Road Transport and Highways

TELEGRAM "ROADIND"

Transport Bhawan

Parliament Street

New Delhi-110001

Dated: 25/9/2003 17-10-2004

To

1. Chief Secretaries/Secretaries (PWD/Roads) of all State Governments/U Ts dealing with National Highways and Centrally Sponsored Schemes.
2. Chief Engineers of States/U Ts dealing with National Highways and Centrally Sponsored Schemes.
3. Director General (Border Roads) Seema Sadak Bhavan, Ring Road, New Delhi-110010 Chairman, National Highways Authority of India (NHA) Sub: Norms for the Access for Fuel Stations, Service Stations and Rest Areas along National Highways.

A perusal of the aforesaid Circular indicates that the said circular was addressed to the Chief Secretaries of the State Government dealing with National Highways and Centrally Sponsored Schemes.

Paragraph 6.1 of the aforesaid guidelines deals with distance.

Paragraph 6.1 and 6.1.2(a) which is relevant is quoted below:

6.1 For the sitting of fuel stations along National Highways, its minimum distance from an intersection would be:

6.1.2 Urban Stretches

1. Plain and Rolling Terrain (a) Urban Area with population of more than 20,000 and less than one lakh:

(i) Intersection with any category of roads of carriageway width of 3.5m and above.

300m

(ii) Intersection with roads of carriageway width of less than 3.5m 100m

9. The Government of India by the aforesaid guidelines intended to lay down the distance restriction only with regard to the fuel stations along with National

Highways. The said circular was not issued with regard to the laying down any criteria for State Highways or other District Roads.

10. In support of his submission, learned Counsel for the Petitioner has relied on two letters issued by the P.W.D., State of U.P., firstly, the letter dated 15/11/2003, issued by the Chief Engineer, Head Quarters, P.W.D., Luck now addressed to all the Regional Chief Engineers and the second is the letter dated 09/12/2003, issued by the office of Engineer-in-Chief to Superintending Engineer referring to the Circular dated 25/9/2003, by the Ministry of Surface Transport, Road Transport and Highways. The letter dated 15/11/2003, relied on by the learned Counsel for the Petitioner refers to the letter dated 31/8/2000, Ministry of Surface Transport Department and Road Transport. The subject matter of the aforesaid letter indicates that the said circular was issued with regard to setting up of retail outlet along with National Highways and the said letter was addressed to the Chief Secretaries of all the State Government dealing with National Highways and Centrally Sponsored Scheme. Relevant extract of the aforesaid Government Order including the subject is quoted below:

Government of India Ministry of Surface Transport Department of Road Transport and Highways (Roads Wing)

Telegram:"ROADIND"

FAX NO:3710236 1,Sansad Marg,

No.RW/NH 33023/19/99-DO.III

Transport Bhavan

1,Sansad Marg,

New Delhi

31st Aug. 2000

To

1. Chief Secretaries/Secretaries (PWD/Roads) of all State Governments/UTs dealing with National Highways & Centrally Sponsored Schemes.

2. Chief Engineers of States/U Ts dealing with National Highways and other Centrally Sponsored Schemes.

3. Director General (Border Roads)Seema Sadak Bhavan, Ring Road, New Delhi-110010 Chairman,National Highways Authority of India Maharani Bagh, New Delhi.

SUBJECT: SYSTEMS IMPROVEMENT FOR INSTALLATION OF PETROL/DIESEL/GAS-RETAIL OUTLETS AND SERVICE STATIONS AS WELL AS ACCESS TO PRIVATE PROPERTIES ALONG NATIONAL HIGHWAYS.

11. The letter dated 15/11/2003 refers to some direction issued by the Engineer

in Chief on the basis of which Regional Chief Engineers have been authorised to give permission for setting up petrol pumps on State Highways other District Roads, and Main District Roads. The orders issued by the Engineer in Chief has neither been brought on record nor details of the said order has been mentioned. Similar is the letter dated 09/12/2003, issuing directions to the Superintending Engineer. Both the letters dated 15/11/2003, and 09/12/2003, are the letters circulating the guidelines issued by the Government of India. The above letters have been issued by the Engineer-in-Chief, PWD, and at best it can be read as a direction to comply with the directions issued by the Government of India, Ministry of Surface Transport. The circulars of the Government of India, dated 31/8/2000 and 25/9/2003 do not relate to the State Highways, Main District Road and other District Roads and the criteria regarding the distance cannot be applied with on the State Roads by any direction issued by the Engineer in Chief.

12. A Division Bench of this Court in M/s Vikas Traders (supra) had occasion to consider similar submission with regard to the distance and the submission that the Circular dated 31/8/2000, shall apply to District Road was rejected. Following was laid down in the said case by the Division Bench.

The contention of the learned Counsel for the Petitioner that the circular dated 31st August, 2000 is not limited to National Highways alone cannot be accepted. A bare perusal of the aforesaid circular clearly indicates that it is in respect of installation of petrol/diesel/gas retail outlets and service stations along National Highways. Thus the said circular cannot be made applicable in respect of retail outlets not situated on the National Highways. Learned Counsel for the Petitioner then placed the communication dated 3rd March, 2005 issued by the office of the Chief Engineer, P.W.D. Goakhpur for impressing upon us that the circular dated 31st August, 2000 is applicable on all retail outlets irrespective of the fact whether they are situated at National Highways or not. We have read the letter dated 3rd March, 2005 but do not find anything which may support the contention of the learned Counsel for the Petitioner. Thus we are unable to find any infirmity in the order of the District Magistrate holding that reliance placed by the Petitioner on the aforesaid circular dated 31st August, 2000 is misplaced.

13. In M/s Vikas Traders (supra) the order was passed by the District Magistrate rejecting the objection of the Petitioner regarding grant of "No Objection Certificate" in favour of the Reliance Industries, which was challenged on the ground that in accordance with the Government Order dated 31/8/2000, no objection could not have been granted since the minimum distance between the two retail outlets was less than 300 metres. The District Magistrate had rejected the objection of M/s Vikas Traders holding that the Circular dated 31/8/2000, is not applicable since the retail outlet was not situated on National Highway.

14. From the aforesaid, it is clear that the Circular which is being relied by the Government of India, Ministry of Road Transport and Highways dated 25/9/2003, is not applicable on the outlets which are not situated on the National Highways.

15. Coming to the second submission of the Petitioner, with regard to volume of sale of the existing outlets, submission of the Respondents is that the circular which has been relied on by the learned Counsel for the Petitioner regarding the volume of sale is no longer in existence since the Government of India has issued fresh guidelines by an order dated 09/10/2000, (Annexure CA-2) which does not contain any restriction with regard to the volume of sale of the existing outlet. A perusal of the guidelines dated 09/10/2000, filed as Annexure CA-2, does not indicate that there are any such restriction on setting up of outlet of oil company as contended by the learned Counsel for the Petitioner.

16. A Division Bench of this Court in Gopal Auto Centre (supra) had considered the earlier guidelines dated 04/8/1980, issued by the Ministry of Petroleum providing that no retail outlet of Motor Spirit and High Speed Diesel should be opened within the radius of 5 KM of an existing outlet unless average combine sale of the area as a whole exceeds 80 Kilo Litres Per Month. The Division Bench of this Court referring to the Guidelines dated 09/10/2000, issued by the Government of India held that the Guidelines dated 09/10/ 2000, provides for complete procedure for selection of Retail Outlets dealers/LPG distributors/SKO-LDO dealers. Similar submission of the Petitioner's counsel was rejected. It is useful to quote following observations of the Division Bench.

Sri Arvind Srivastava, learned Counsel for the Petitioners submitted that the guidelines dated 4.8.1980 framed by the Ministry of Petroleum provides that no retail outlet of Motor Spirit and High Speed Diesel should be opened within a radius of 5 Kms. of an existing outlet unless average combines thru put of the area as a whole exceeds 80 Kls. Per month, and thus, no retail outlet can be allotted by the Hindustan Petroleum Corporation Limited within a radius of 5 kms. of the Petitioners' outlet and the impugned allotment being in violation of the guidelines deserves to be quashed.

On the other hand, learned Counsel for the Respondent pointed out that the aforesaid guidelines were issued by the Dealers Selection Board which has been dissolved by the Ministry of Petroleum and Natural Gas vide letter dated 9.10.2000 and fresh guidelines have been framed and issued by the Government of India, Ministry of Petroleum & natural Gas for the selection of the retail outlet dealers, copy whereof is enclosed as Annexure Ca 1 to the counter affidavit. It is also submitted that in the new guidelines, which is in vogue, there is no bar in granting dealership within a radius of 5 kms. of an existing outlet.

We have considered the submissions made on both sides. It is apparent from the fresh guidelines issued by the Ministry of Petroleum and Natural Gas that all earlier guidelines for the selection and appointment of dealers and distributors stands superseded and replaced by the guidelines dated 9.10.2000. It prescribes complete procedure for selection and appointment of dealers/distributors. In the new guidelines, there is no embargo in granting dealership of retail outlet within a radius of 5 kms. of existing outlet.

17. In view of the above both the submissions of the Petitioner, has no legs to stand. In the counter affidavit it has further been stated that the Petitioner's outlet was suspended by the Corporation in the year 2007, against which Writ Petition No. 10095/2008, thereafter Civil Suit No. 254/2009 was instituted by the Petitioner in which initially an injunction order was issued on 31/3/2009, which was challenged by the Corporation in Misc. Appeal No. 13/2009. The appeal was allowed on 20/11/2009, against which Writ Petition No. 1265/2009, was filed by the Petitioner in which this Court on 05/1/2010, directed the trial court to decide the injunction application and till the disposal of the injunction application Corporation was directed to ensure the regular and uninterrupted supply of "Motor Speed" and "High Speed Diesel" to the Petitioner. It has been stated in paragraph 8 of the counter affidavit that injunction application of the Petitioner was rejected on 01/2/2010, by the trial court. In view of the aforesaid background, it has been stated in the counter affidavit that the Petitioner had no locus standi to challenge the setting up of the retail outlet by the Company on the aforesaid objection.

18. We have perused the order passed by the Corporation rejecting the representation of the Petitioner. The objections raised by the Petitioner has been suitably dealt with and answered in the impugned order.

19. As observed above, both the submissions raised by the Petitioner regarding the location of the retail outlet having no substance, Petitioner is not entitled for any relief in this writ petition.

20. The writ petition is dismissed.