

(2024) 07 UK CK 0100

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1275 Of 2024

Madhu Kamboj

APPELLANT

Vs

District Magistrate, Dehradun & Others

RESPONDENT

Date of Decision : 19-07-2024

Acts Referred:

Citation : (2024) 07 UK CK 0100

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : M.C. Kandpal, Anil Kumar Joshi, Neeti Rana, Gaurav Kandpal, Anil Dabral, Suyash Pant, V.K. Kohli, Kanti Ram Sharma, Rahul Consul

Final Decision : Dismissed

Judgement

Manoj Kumar Tiwari, J

1. Indian Oil Corporation Limited appointed petitioner as its dealer for running a retail outlet (petrol pump). Petitioner established petrol pump at Mothrowala (Dehradun) in 2021. Mussoorie Dehradun Development Authority sanctioned the map on 20.06.2022. Petitioner is challenging order dated 07.05.2024 passed by District Magistrate, Dehradun. By the said order, 'no objection' issued for setting up petrol pump has been cancelled on the ground that it was granted in ignorance of the guidelines for new petrol pumps issued by Central Pollution Control Board (for short 'CPCB'). The reliefs claimed in the writ petition are as follows:-

"i) Issue a writ of certiorari quashing the impugned order dated 7.5.2004 passed by respondent no 1 (contained as Annexure No. 1 to this writ petition.

ii) Issue a writ, order of direction in the nature of mandamus commanding and directing the respondents not disturb the function of retail outlet of the petitioner running in the name and style M/s Ravindra Fuel situated at Khasra no. 1081(Ka) Village Mothrowala district and Tehsil Dehradun."

2. It is not in dispute that no 'objection' was granted by the District Magistrate, vide order dated 20.03.2021. CPCB issued guidelines on 07.01.2020. Clause-H of the said guidelines provides 'SITING CRITERIA OF RETAIL OUTLETS', which reads as under:-

"H. Siting Criteria of Retail Outlets:

In case of siting criteria for petrol pumps new Retail Outlets shall not be located within a radial distance of 50 meters (from fill point/dispensing units/vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per local laws, in case of constraints in providing 50 meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO in no case the distance between new retail outlet from schools, hospitals (10 beds and above) and residential area designated as per local laws shall be less than 30 meters No high tension line shall pass over the retail outlet.

These guidelines are supplementary to all existing relevant Rules, Guidelines, Orders etc."

3. It is not in dispute that there is a school, namely Sierra International School, near petitioner's petrol pump. The no objection issued earlier has been cancelled on the ground that the distance of dispensing unit of petitioner's petrol pump is less than 30 meters from wall of the school building. The impugned order refers to the joint inspection made by Regional Officer, Uttarakhand Pollution Control Board and Additional District Magistrate, Dehradun. According to the joint inspection report, distance between the dispensing unit of petitioner and the school building is less than 10 meters, which do not meet the norms fixed by CPCB.

4. Learned senior counsel for petitioner contended that the guidelines issued by CPCB are not applicable. He submits that the advertisement inviting applications for appointing retail outlet dealer was issued on 25.11.2018; petitioner was informed about her selection on 07.12.2019 and letter of intent was issued to her on 07.12.2019, therefore, no objection issued to the petitioner cannot be cancelled on the ground that the norms laid down in the guidelines, issued subsequently on 07.01.2020, are not met. He refers to the communication dated 31.12.2020, issued by the Office of District Magistrate, in response to petitioner's application for no objection certificate, which is on record as Annexure-4 to the writ petition for, contending that no objection was issued after calling report from six different departments.

5. Learned senior counsel for petitioner submits that since none of the departments, who were asked to submit report, had objection, therefore, District Magistrate granted no objection to petitioner for setting up retail outlet at Khasra No. 1081 Ka, Village Mothrowala, Tehsil and District Dehradun.

6. Learned senior counsel for petitioner also relied on Office Memorandum dated

29.01.2021 issued by CPCB. By the said Office Memorandum, following clarification was issued:-

"In this regard, it is clarified that the siting criteria for new Retail Outlets is to be complied with in cases where construction of Retail Outlets by Oil Marketing Companies commenced on or after 07.01.2020. In other words, the siting criteria will not apply to those cases where PESO prior clearance/initial approval has been obtained and subsequently construction has been started by the OMC before 07.01.2020."

7. Learned senior counsel for petitioner further submitted that the decision that petitioner has been selected for retail outlet dealership, was communicated to her vide letter dated 07.12.2019 and she started work of establishment of petrol pump at the selected site in 2019 itself, therefore, the siting criteria mentioned in guidelines issued on 07.01.2020 is not applicable to petitioner in view of clarification issued by CPCB in its Office Memorandum dated 29.01.2021.

8. The said contention, however, is belied by the averment made in paragraph no. 11 of the writ petition, where it is stated that on 19.01.2021, petitioner applied for permission to Mussoorie Dehradun Development Authority (hereinafter referred to as 'MDDA') for constructing filling station upon the land in question. Paragraph no. 11 further reveals that petitioner started raising construction while her application remained pending with MDDA, consequently, a sealing order was also passed against her. Map submitted by petitioner was sanctioned by MDDA on 20.06.2022. PESO granted permission for storage of petroleum products on 30.04.2021.

9. The Office Memorandum dated 29.01.2021 categorises retail outlets into two categories; (a) where construction of retail outlets commenced before 07.01.2020, in such cases, siting criteria mentioned in CPCB guidelines issued on 07.01.2020 will not be applicable; (b) where construction of retail outlet started on or after 07.01.2020, then the siting criteria for new retail outlets, mentioned in guidelines dated 07.01.2020 will have to be complied with.

10. In view of admitted facts on record, this Court has no hesitation in holding that petitioner's case will fall in category (b), mentioned above, therefore, petitioner has to meet the norms regarding minimum distance indicated in the guidelines issued on 07.01.2020.

11. Learned senior counsel for petitioner submitted that petitioner had applied for NOC before 07.01.2020, therefore, the guidelines issued on 07.01.2020 cannot be pressed into service for cancelling the NOC issued to her.

12. The said submission is bereft of merit. The NOC was issued to petitioner on 20.03.2021 and petitioner could be exempted from the rigours of the guidelines only if she had started construction before 07.01.2020, which is not the case here. The application for NOC was also submitted by petitioner after issuance of the guidelines and the agreement between petitioner and Indian Oil Corporation

was executed on 28.04.2021. Thus, viewed from any angle, the siting criteria laid down by the guidelines is applicable to the petitioner.

13. Learned senior counsel for petitioner raised the issue of recognition of school in question (Sierra International School), and he contended that permission for raising construction of school building was obtained by the school authorities in respect of some other plot; while construction was made over a different plot. Thus, he submits that petitioner cannot be penalised for running retail outlet in close proximity to the school, which itself do not meet the norms laid down by State Government. He further contended that distance of school building from the dispensing unit of the retail outlet is more than 50 meters; therefore, the order passed by District Magistrate is liable to be set aside on this score alone.

14. The question, whether the concerned school is recognised or unrecognised, is not germane for deciding the writ petition, although, learned Standing Counsel makes a statement that the school is duly recognised by the competent authority. Petitioner has contended that the map of the school building is not sanctioned by MDDA and a sealing order was also passed against it. While exercising power of judicial review in respect of an order passed against the petitioner, this Court is not inclined to go into the question of legality or otherwise of the school building. The fact remains that there is a school, next to the retail outlet of the petitioner and as per the report of joint inspection made by Regional Officer, Uttarkhand Pollution Control Board and Additional District Magistrate, Dehradun, the distance between petitioner's retail outlet and Sierra International School is '0' (zero) meter and the dispensing unit of the petitioner is at a distance of less than 10 meters from the school building, which is in violation of the guidelines.

15. Learned senior counsel for the petitioner submitted that the District Magistrate did not consider the map sanctioned by MDDA regarding construction of school building over Khasra Nos. 1190 & 1990(ka), which indicates that distance between school building and the retail outlet of petitioner is 300 meters and District Magistrate erroneously relied upon the compounding map submitted in respect of the illegally constructed school building.

16. The said submission also cannot be accepted. This Court cannot go into disputed questions of fact in writ jurisdiction. Moreover, there is no reason to disbelieve the report of joint inspection. Two senior officers, one from State Pollution Control Board and another from District Administration, visited the site and measured the distance and found that retail outlet do not meet the requirement of the guidelines.

17. From the counter affidavit, filed by respondent no. 1, it is revealed that Sierra International School was granted recognition by Chief Education Officer, Dehradun vide order dated 31.03.2017 from pre-primary to 8th class, with the condition to impart free education to children belonging to weaker sections of society, to the extent of 25% of the total strength.

18. Learned senior counsel for petitioner then submitted that the impugned order has been passed by District Magistrate under pressure, as a show cause notice was issued to him by National Green Tribunal.

19. The said submission is bereft of merit. Every petrol pump has to comply with the siting criteria laid down by guidelines issued on 07.01.2020. Petitioner could have been exempted from the norms laid down in siting criteria, if she had started construction of petrol pump before 07.01.2020. There is nothing on record to show that petitioner started raising construction before 07.01.2020, and as per the pleadings, construction was started by petitioner after 07.01.2020. District Magistrate was under a duty to bear in mind the CPCB guidelines while issuing NOC to petitioner.

20. Since NOC was issued in favour of petitioner in violation of the norms laid down in the guidelines and National Green Tribunal had called upon District Magistrate to examine whether petitioner had set up petrol pump as per the guidelines, therefore, District Magistrate passed the order after calling report from the concerned agencies. Petitioner was given reasonable opportunity of hearing before passing the order.

21. Thus, this Court does not find any infirmity or illegality whatsoever in the impugned order dated 07.05.2024. Thus, any interference with the impugned order would be unwarranted. The writ petition, therefore fails, and is dismissed. No order as to costs.