
(2013) 02 GAU CK 0049
In the Gauhati High Court
Case No : Writ Petition (C) No. 218 of 2012

M/s. K.C.B. Poddar

APPELLANT

Vs

Indian Oil Corporation Ltd. and Others

RESPONDENT

Date of Decision : 06-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2013 Guw 82 : (2013) 2 GLD 460 : (2013) 2 GLT 855

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : S.M. Chakraborty, S. Bhattacharjee, Ms. P. Chakraborty and Ms. D. Das, for the Appellant; S. Chakraborty, A.G.A., A. Lodh, M. Dey and Ms. S. Datta, for the Respondent

Judgement

S.C. Das, J.—By this writ petition, filed under Article 226 of the Constitution of India, the petitioner challenged an advertisement made by the respondent-Indian Oil Corporation Ltd. (for short, IOCL) published in the newspaper "Tripura Observer" dated 31.63.2012 and some other newspapers, whereby the respondent corporation invited tender/application to appoint dealers for retail outlets of petroleum products by way of setting up of Auto Pumping stations including that of one at Manubazar on NH-44, South Tripura. Heard learned Sr. counsel, Mr. S.M. Chakraborty, assisted by learned counsel, Ms. P. Chakraborty for the petitioner and learned counsel, Mr. A. Lodh for respondent Nos. 1,2 and 3 and learned Additional G.A., Mr. S. Chakraborty for respondent No. 4.

2. On the prayer of learned counsel of both sides, the case has been heard at the admission stage itself for final disposal.

3. The case of the petitioner, in short, is that the petitioner, M/s. K.C.B. Poddar, is a partnership firm and in the year 1964, it started retail business of selling kerosene oil under Burma Oil Company (BOC) and subsequently in the year 1975 under a licence of IOCL, it was converted as a packed agency of Kerosene & Diesel. From 1964, till date the firm doing its business with all reputation and

goodwill and having been satisfied" IOCL decided to convert the said packed agency of the petitioner into an Auto Pumping agency on the prayer of the petitioner. Respondent No. 3, by writing a letter dated 22.06.2010 to the District Magistrate, South Tripura, sought for No-objection Certificate for construction of petroleum Class-A and Class-B retail outlet at Manubazar in favour of the petitioner and copy of that letter is annexed as Annexure-1 to the writ petition. The packed agency of the petitioner located at Manubazar on NH-44 and the land originally belonged to Relief and Rehabilitation Department, Govt. of Tripura and it was in exclusive possession of the petitioner from the year 1964. The petitioner filed a Title Suit, in the Court of learned Civil Judge, Junior Division, Sab room for declaration of right, title and interest over the suit land and the title suit was decreed on 19.12.2007. Since there was a minor error in the judgment, the " petitioner filed T.A. 05 of 2008 in the court of learned District Judge, South Tripura, Udaipur and the appeal was allowed and the petitioner got the right, title and interest declared by the Court in its favour. Pursuant to, such decree of the Civil Court, the petitioner approached the revenue authority for mutation, but no response was received. When the respondent No. 3 approached the District Magistrate for No-objection Certificate, the District Magistrate was found dilly dally in the matter and the petitioner, therefore, in a compelling situation, filed WP(C) No. 01 of 2011 before this Court seeking a direction on the District Magistrate to issue No-Objection Certificate in the name of the petitioner for construction of petroleum Class-A and Class-B retail outlet at Manubazar, South Tripura. In that writ petition, the present respondent No. 3, i.e. the Sr. Divisional Retail Sales Manager was also made a party. The writ petition was finally disposed of by judgment dated 28.06.2011 and a copy of that judgment has been annexed as Annexure-2 to the writ petition. In paras 10 and 11 of the judgment, while allowing the writ petition, this Court observed thus:--

[10] In view of the above, this writ petition is disposed of with a direction to the respondent authority to consider issuance of "No Objection Certificate" in favour of the petitioner for construction of Petroleum Class "A" and "B" retail outlet at the proposed site at Manubazar on which the petitioner has already been running a kerosene and diesel outlet in accordance with the procedure so prescribed for the purpose. However, in doing so, the "No Objection Certificate* cannot be denied on the ground that the decretal land in possession of the petitioner is a Government land. Further, it is made clear that in considering the prayer of the petitioner for issuance of "No Objection Certificate", the authority concerned shall not treat the petitioner as a trespasser in the land belonging to the petitioner in terms of the decree of the Civil Court.

[11] With the aforesaid observation and direction, this writ petition is disposed of. However, the respondent Nos.2 is directed to consider issuance of "No Objection certificate" within a period of 30 days from the date of receipt of a certified copy of this order.

4. It is further submitted by the petitioner that there was a typographical

mistake in the order dated 28.06.2011 and therefore, CM application No. 244 of 2011 was filed and the necessary correction was made by order dated 12.07.2011 which reads thus:--

This application has been filed by the applicant-petitioner praying for correction of the typing error in the judgment and order dated 28.06.2011, passed by this Court, in WPC(C) No. 01 of 2011.

Heard Mr. S. Bhattacharjee, learned counsel for the applicant-petitioner.

Learned counsel for the applicant-petitioner has pointed out that in Para 8, page 6, 3rd line from the bottom, the word "Government" has been typed out instead of "petitioner", and as such, prayed for correction of the typographical error as mentioned in the application.

Considering the facts and circumstances, the prayer made by the applicant-petitioner is allowed and the word, "Government" would be replaced by the word, "petitioner".

This order shall be a part of the judgment and order dated 28.06.2011, passed by this Court, in WP(C) No. 01 of 2011.

Misc. application shall stands disposed of in terms of the above.

5. It is contended by the petitioner that the order stands good and it is within the knowledge of the respondent corporation.

6. Subsequent thereto, the State respondents filed appeal against the judgment passed by the Civil Court and also the judgment passed by this Court in WP(C) 01 of 2011 but the petitioner and the State respondents came to a settlement that the petitioner shall pay the premium to the State Govt. for allotment of the land of the packed agency in favour of the petitioner and it is submitted by learned counsel that the cases have been compromised in terms of agreement and a copy of the order dated 04.12.2012 passed in RSA 39 of 2011 as submitted by the counsel of the petitioner has been made a part of this record. It is the further case of the petitioner that the respondent corporation also approached the Controller of Explosives for approval in respect of necessary construction in the packed agency of the petitioner for converting it to a retail outlet and a copy of that letter has been annexed as Annexure-6.

7. After the respondent corporation published the advertisement for setting up of auto pumping unit, including that of one at Manubazar on NH-44, the petitioner filed a representation to the respondent corporation addressing respondent No. 3 on 02.04.2012 but it was never responded. On the contrary, when representative of the petitioner enquired about it, he was informed that no action will be taken on the representation. A copy of that representation dated 02.04.2012 has been annexed as Annexure-5. It is contended by the petitioner that setting up of a retail outlet with auto pumping station at Manubazar was approved by the respondent corporation and the respondent corporation now cannot go back to

the decision already taken and when it is in the process, the respondent corporation came out with an advertisement for setting up of a new agency which would be amounting to cancellation of the approved agency of the petitioner and hence, the petitioner prayed for setting aside item No. 16 of the advertisement published on 31.03.2012 in Annexure-4 and also prayed for directing the respondent Nos. 1,2 and 3 to treat the petitioner as the dealer of the petrol pump at Manubazar on NH-44 and to carry out the business and further to prevent the respondent Nos. 1,2 and 3 from sanctioning any Auto Pumping station at Manubazar in favour of any third party avoiding the letter of sanction already made in favour of petitioner.

8. The respondent Nos. 1, 2 and 3 contested the case by filing written statement, inter alia stating that the petitioner is a partnership firm and it was appointed as a packed agency of IOCL at Manubazar to deal with retail business of High Speed Diesel (for short, HSD) products and the agency agreement was signed on 12th December, 1975 with erstwhile Assam Oil Company. According to that agreement, M/s. K.C.B. Poddar would store HSD Oil products in the godown in drums and would do the retailing through cans. The respondents disputed that Sri Amal Poddar is a partner of the firm since there is no such record with the IOCL. It is strongly contended that IOCL neither decided to convert the said packed agency into any Auto Pumping Agency nor it was communicated to M/s K.C.B. Poddar at any point of time.

9. It is also contended by the respondents that the letter dated 22.06.2010 (Annexure-1), was written to the District Magistrate for issuance of a No-Objection Certificate in favour of IOCL but not in favour of the petitioner for consideration of petroleum Class-"A", Class-"B" and Class-"C" retail outlet at Manubazar on NH-44. It is also stated that for establishment of Auto Pumping Agency a No-Objection Certificate as per the Explosive Rules is also necessary and after receiving all those, the approval of the IOCL will require for setting up of Auto Pumping Agency. IOCL has absolute right to have its business expansion for which the advertisement has been made to set up retail outlets as many as 27 locations including that of one at Manubazar on NH-44 and the petitioner has no right to say that the respondent corporation cannot go for advertisement with a view to setting up such Auto Pumping Agency at Manubazar on NH-44. The locations were advertised considering feasibility and other ground realities on the necessity of the Govt. of Tripura and hence, the IOCL for interest of its business has full authority for its network expansion and the petitioner has no right to restrain the answering respondent i.e. IOCL from its expansion activities. The respondents, therefore, prayed for dismissal of the writ petition.

10. Respondent No. 4 submitted no counter affidavit.

11. Learned Sr. counsel, Mr. Chakraborty appearing for the petitioner has submitted that Annexure-1 and Annexure-6 are enough to arrive at a conclusion that IOCL approached the District Magistrate and the Controller of Explosives by writing those letters to convert the packed agency of the petitioner as an Auto

Pumping station/retail outlet of petroleum products at Manubazar on NH-44.

12. Learned counsel, Mr. Lodh submitted that IOCL cannot be held responsible for writing those letters and even if those letters were written, it was not addressed to the petitioner but to the authorities concerned for issuing the certificates in favour of IOCL and the petitioner by virtue of those letters cannot claim that IOCL has already approved setting up of an Auto Pumping Station or a retail outlet.

13. For ready reference as well as for fair appreciation, let us reproduce here Annexure-1 and Annexure-6 which read thus:--

ANNEXURE-1

Ref. No. SDO/248/018

Date: 22.06.10

To The District Magistrate, District South Tripura, Manubazar, Tripura

Sub: No Objection Certificate for construction of Petroleum Class "A" & "B" Retail Outlet at Manubazar, dist.

Dear Sir,

M/s. K.C.B. Poddar, Manubazar presently a packed agency are in the trade of retailing HSD through measuring cans. The product is presently been stored in drums against "J" licence No. 2493/DM/XII-4 JOL/64 dated 05/05/64 renewed upto 31/12/10.

To maintain the quality and quantity of products to customers and also considering safety, our management has approved for installation of Under Ground Storage tanks and Dispensing Units as Retail Outlet at M/s. K.C.B. Poddar, Manubazar.

In this regard, we proposed to construct the Retail Outlet at Manubazar, Dist. South Tripura as per the enclosed site layout plan drawing no. SIDO/SE/001 at the location Khaitan No. 6/13 and Patta No. 3248, 3249, 3268.

A "No objection Certificate" from the District Authority is a mandatory requirement for grant of Explosives approval. We are therefore, enclosing herewith 3(three) copies of the layout drawing No. SIDO/SE/ 001, for your granting the NOC. A standard format of "NOC required is enclosed for your reference. Grateful, if you kindly arrange to grant us a "No objection Certificate" for construction of the proposed Retail Outlet. Please return us 2(two) copies of the drawings, duly signed and sealed along with the NOC.

Thanking you, Yours faithfully Indian Oil Corporation Limited

Sd/ (M.K.K. Peggo)

Sr. Divisional Retail Sales Manager

ANNEXURE-6 "Ref No: SIDO/ENG/RO/MBZR

Date: 23.06.2010

To

The Jt. Chief Controller of Explosives, Petroleum & Explosive Safety Organisation (PESO)

(Formerly Deptt. of Explosives)

East Circle, 8, Esplanade East, 1st floor, Kolkata-700069.

Subject: Construction approval for conversion of packed agency to a RO at Manubazar, Dist South Tripura, State: Tripura.

Sir, M/s. K.C.B. Poddar, Manubazar, presently a packed agency is in the trade of retailing HSD through measuring cans. The product is presently been stored in drums against "J" licence No. 2493/DM/XH-4 JOL/64 dated 05/05/64 renewed upto 31/12/10. To maintain the quality and quantity of products to customers and also considering safety, our management has approved for installation of Under Ground Storage tank and Dispensing Unit as Retail Outlet at M/s. K.C.B. Poddar, Manubazar.

In this regard, we proposed to construct the Retail Outlet at Manubazar, Dist. South Tripura as per the enclosed site layout plan No. SIDO/SE/001 dated 26.05.10 at the location, Khaitan No. 6/13 and Patta No. 3248, 3249 and 3268.

We are now enclosing herewith the following documents for obtaining construction approval from your end:

1. 3 copies of layout drawing No. SIDO/SE/ 001 dated 26.05.10.
2. DD No: 563029 dtd. 23.06.10 of Rs.400.00 in favour of Joint Chief Controller of Explosives, East Circle, payable at Kolkata towards the scrutiny fee.

We therefore, request you to kindly accord construction approval for the above at the earliest and oblige.

Thanking you, Yours faithfully, For Indian Oil Corporation Limited

(U. Das)

For Sr. Divisional Retail Sales Manager Silchar Integrated Divisional Office
Enclosed: As above.

14. A bare reading of the above two annexures make it clear that the respondent corporation has decided to convert the packed agency of the petitioner into a retail outlet and/or an Auto Pumping Station and for that reason approached the appropriate authorities i.e. the District Magistrate and Controller of Explosives, for issuing No-objection Certificate to that effect. While it has been clearly spelt out in those letters that the packed agency of the petitioner has been considered

for converting it to a retail outlet, there remains nothing else for the respondent corporation to say otherwise than what is stated in the said letters. I cannot appreciate the submission of learned counsel, Mr. Lodh that the corporation cannot be held responsible for those letters since those were written by a particular officer who may remain responsible for writing the same. Whereas, it is on record that the officer who wrote letter dated 22.06.2010(Annexure-I) has filed the counter affidavit for himself and on behalf of corporation. The counter affidavit has been signed by Mr. M.K.K. Peggo, Sr. Divisional Retail Sales Manager of the IOCL and Annexure-1 was also written by the same officer. While an officer of the corporation written the letters it is to be presumed that the letter has been written with the authority of the corporation and not otherwise The corporation can in no way go back to those letters, marked Annexure-1 and Annexure-6 to the writ petition. It is clearly spelt out that the impugned advertisement dated 31.03.2012 in SI. No. 16 contains a location at Manubazar on NH-44 and the petitioner's agency is also located at Manubazar on NH-44 which is not disputed. Under such circumstances, while the approval which has already been made by the corporation and has not been cancelled by the corporation as yet for any valid reason, the corporation cannot come out with a fresh advertisement so long the earlier approval is in force.

It is also on record that respondent No. 3, the Senior Divisional Retail Sales Manager of the Corporation, was a party in the Writ Case No. WP(C) 01 of 2011, filed by the petitioner, whereunder direction has been given to the concerned authorities, as reproduced herein-before, to consider issuance of No-objection Certificate. Under such circumstances, corporation cannot go for a fresh advertisement to set up a new retail outlet at same location, in view of the approval accorded to the petitioner.

15. Learned counsel, Mr. Lodh in support of his contention, referred a decision of the Rajasthan High Court in Civil Writ Petition No. 10441 of 2010 between the Rajasthan Petroleum Dealers Association v. Union of India and others and has submitted that in the reported case, the Court relying on the decision of the Apex Court in the case of Mithilesh Garg, Vs. Union of India and others etc. etc., has held that it is the prerogative of the corporation to set up as many retail outlet or agency as they may desire and the petitioner has no authority to resist the corporation from setting up such retail outlets.

On going through the reported case, I am of the opinion that the factual matrix of that case is quite different to that of the present case. In that case, the respondents made an advertisement for setting up of several retail outlets but the petitioner, the Rajasthan Petroleum Dealers Association filed the writ case challenging the advertisement on the ground that the business of the members of the association who were having with a license to deal with such business will be affected. In that case, the Court in para 16 of the judgment has held thus:--

16. The existing petrol outlet dealers like the members of the petitioner Association alone cannot be allowed to have the cake and eat it "too" to the

exclusion of others. It is left only to the wisdom of concerned OMCs to allot such outlets as per their business requirements and their business prudence has neither been questioned nor can possibly be examined by this court in writ jurisdiction as it is a question of complex factual matrix . Unless arbitrariness and unfairness in the decision making process with specific instances is pointed out by them, no bald and blanket writs can be issued by this Court prohibiting their rights. It would be sheer misuse and abuse of jurisdiction of this court if such petitions are entertained and allowed.

16. In the present case the petitioner is having with a packed agency and the corporation has already approved to convert it as a retail outlet with Auto Pumping station and that approval has been reflected in Annexure-1 and Annexure-6 as reproduced hereinabove. While the corporation has approved converting the petitioner's agency to an Auto Pumping station and while such approval is still in force and has not been cancelled, the corporation cannot go for an advertisement to set up another retail outlet on the same location without assigning any valid reason therefor. So the ratio of the decision referred by the learned counsel, Mr. Lodh , cannot be applied in this case.

17. In view of the discussions made above, the writ petition is allowed. The advertisement published in the newspaper on 31.03.2012, in respect of item No. 16, for setting up of an Auto Pumping Station at Manubazar on NH-44, is quashed. The respondents are directed to deal with the petitioner's agency according to norms. The writ petition is accordingly disposed of.