
(2013) 05 RAJ CK 0087

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 159 of 2013

Neeraj Kachhawaha

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-05-2013

Acts Referred:

Citation : (2013) 3 WLN 193

Hon'ble Judges : Govind Mathur, J; Banwari Lal Sharma, J

Bench : Division Bench

Advocate : M.C. Bhoot, assisted by Mr. D.S. Beniwal, for the Appellant; M.S. Singhvi assisted by Mr. S.G. Ojha, Advocates for Respondent No. 9, Mr. I.S. Pareek, Advocate for Respondents No. 4 and 5, Mr. Sunil Beniwal, Advocate for Respondents No. 7 and 8 and Mr. Mukul Singhvi, Advocate, for the Respondent

Judgement

Govind Mathur, J.—This special appeal is directed to challenge the judgment dt. 21.03.2013 passed by learned Single Bench in SB Civil Writ Petition No. 11986/2012. Respondent Bharat Petroleum Corporation Ltd. proposed to establish its retail outlet dealership at location Mandalnath Bypass Road (Kaliberi Mod to Mandalnath Railway Crossing) in revenue district Jodhpur. An application was submitted by respondent Smt. Kiran Meghwal to have such retail outlet dealership and that was awarded to her as per letter dt. 20.11.2010 (Anx.1). The Bharat Petroleum Corporation Ltd. under letter dt. 01.10.2010 requested the District Magistrate, Jodhpur to issue a "No Objection Certificate" in the name of Bharat Petroleum Corporation Ltd. for putting of retail outlet at the site concerned. Suffice to mention here that a "No Objection Certificate" pertaining to same site was earlier given in favour of M/s. ESSAR Oil Company.

2. The petitioner-appellant, who is operating a retail outlet (petrol pump) of Indian Oil Corporation at Paldi Khichiyan, District Jodhpur, by submitting a representation objected the claim made by respondent Bharat Petroleum Corporation Ltd. to have "No Objection Certificate". A petition for writ (SB Civil Writ Petition No. 1026/2011) was preferred by him before this Court with

assertion that establishing a retail outlet on the land adjacent to the outlet where petitioner-appellant's petrol pump is already working shall be in gross violation of the norms laid down for establishment of fuel station, service station etc.

3. The writ petition aforesaid came to be disposed of by an order dt. 02.01.2012 with a direction to respondent Bharat Petroleum Corporation Ltd. in the terms that the fuel station shall be established at the location proposed strictly adhering to the conditions laid down under clause 4.4.3 and 4.4.4 of the guidelines issued by the State Government after obtaining "No Objection Certificate" from the competent authority in accordance with law. By acceptance of a review petition, the clauses 4.4.3 and 4.4.4 were substituted by 4.6.3 and 4.6.4 of the Indian Road Congress guidelines for access location and lay out of road side fuel station and service station under IRC-2009. Clause 4.6.3 and 4.6.4 of that reads as under:-

4.6.3-If two or more fuel stations are to be sited in close proximity for some reasons, these would be grouped together to have a common access through a service road of 7.0 m width and connected to the highway through acceleration, deceleration lanes. From these considerations, the permission for the new fuel stations would be considered only if it is either in proximity to the existing one so that the common access can be provided or the new one located at distance of more than 1000 m. Any objection from the existing fuel station owner against granting of access permission from the highway for the proposed new fuel station are to be overruled and access to all fuel stations in case of clustering, shall invariably be from the service road only.

4.6.4-For installation of new fuel station within the 1000 m or 300 m distance of existing fuel station as the case may be, new entrant would be responsible for construction and maintenance of the common service road, deceleration and acceleration lanes, drainage and traffic control devices. Wherever, available ROW is inadequate to accommodate such service roads, deceleration/acceleration lanes, etc. the additional land by the side of ROW to accommodate such service roads shall also be acquired by the new entrant Oil Company. In case of billy/mountainous terrain, common service roads at all such locations may not be possible as per the site conditions and, therefore, common access through service roads would not be a precondition.

4. After disposal of the writ petition, a "No Objection Certificate" dt. 4.9.2012 was given by the office of the Commissioner, Police Commissionerate, Jodhpur. The "No Objection Certificate" was subject to following conditions:-

5. An other writ petition then was filed by the petitioner-appellant with following reliefs:-

(i) by an appropriate writ, order or direction, the conditional NOC dt. 4.9.2012 (Annexure-6) issued by the respondents in favour of BPCL for establishment of Retail Outlet in khasra no.125/2 on Mandalnath Bypass Road may kindly be declared illegal and be cancelled;

(ii) by an appropriate writ, order or direction, it may kindly be declared that BPCL and/or the private respondent no. 9 could not be permitted to establish Retail Outlet at the site in question as the same would run contrary to the IRC Guidelines of 2009;

(iii) any other appropriate writ, order or direction which this Hon"ble Court considers just and proper in the facts and circumstances of the case may kindly be passed in favour of the petitioner;

(iv) Costs throughout may kindly be awarded in favour of the petitioner.

6. Learned Single Bench by the judgment impugned dismissed the writ petition on the counts that-

(1) the petitioner-appellant failed to satisfy the Court with regard to his right to challenge the "No Objection Certificate" issued by the Commissioner of Police, Jodhpur in favour of Bharat Petroleum Corporation Ltd. for establishment of retail outlet in Khasra No. 125/2 at Mandalnath Bypass Road; and

(2) the directions given in earlier petition for writ preferred by the petitioner-appellant were very much in currency and in the event of violation of those the petitioner-appellant would be at liberty to take recourse of law.

7. While challenging the judgment aforesaid, the argument advanced by learned counsel for the petitioner-appellant is that the officers of the Public Works Department by positive assertion communicated to the Police Commissionerate about non-feasibility of making service lane as per the guidelines prescribed by the Indian Road Congress, but without examining the same, "No Objection Certificate" has been issued. It is further submitted that even the officers of Public Works Department changed their stand without any just reason with permission to have service lane on a part of running highway. As per learned counsel the petitioner-appellant is having a petrol pump at a site close to the place where Bharat Petroleum Corporation Ltd. is going to establish a petrol pump, therefore, a common service lane shall be there to be utilised by the petitioner-appellant as well as by the petrol pump outlet of Bharat Petroleum Corporation Ltd. If the service lane shall be running contrary to the mandatory guidelines, then that shall be certainly a cause of the petitioner-appellant also and as such certificate impugned could have not been issued without ensuring that there shall be no violation of mandatory norms.

8. This Court for its own satisfaction, by order dt. 7.5.2013 directed the Police Commissionerate, Jodhpur to make available the entire record on basis of which the "No Objection Certificate" impugned was issued. The record concerned is made available to us for our perusal. We found that the Police Commissionerate before issuing "No Objection Certificate" made all necessary inquiry and after taking into consideration different aspects, issued the "No Objection Certificate" with definite conditions. The conditions so imposed are nothing but for adherence of the mandatory guidelines issued by the Indian Road Congress under

IRC-2009. A bare perusal of the conditions makes it abundantly clear that in the event of their violation, the "No Objection Certificate" granted shall stand cancelled. The petitioner-appellant or the authority competent, if at any stage finds any violation of the mandatory conditions prescribed by the IRC-2009, Government of Rajasthan and by this Court by the judgment dt. 02.01.2012, then necessary action can be taken against the petroleum company and its outlet dealer. But no such eventuality at the moment exists, therefore, at this stage we are of the view that learned Single Judge rightly refused to invoke extraordinary jurisdiction of this Court as claimed by the petitioner-appellant. The appeal, thus, is having no merit, hence dismissed.