

(2008) 01 KAR CK 0054
In the Karnataka High Court
Case No : Writ Petition No. 16971 of 2007

Prakash Pattanashetti

APPELLANT

Vs

The District Magistrate, The Executive Engineer, P.W.D.
Division and Anandrao @ Vittalrao Kulkarni

RESPONDENT

Date of Decision : 04-01-2008

Acts Referred:

Citation : (2008) ILR (Kar) 2825 : (2008) 3 KarLJ 475 : (2008) 1 KCCR 277

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : F.V. Patil, for the Appellant; Shashidhar S. Karmadi, High Court Government Pleader for Respondent Nos. 1 and 2 and Ashok Haranahalli and Associates, for the Respondent

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—The petition coming on for orders, it is taken up for final disposal.

2. The Counsel for the parties are heard.

3. The petitioner is a dealer in petroleum products, the petitioner has established a petrol bunk in survey No. 322 of Ameengad in Hunagund Taluk, Bagalkot District and he has been carrying on business in vending of petroleum products for the last two years under a licence issued by the Government of India.

4. It is contended that the third respondent, who is the owner of survey No. 343 situated also in Ameengad in Hunagund Taluk, in the vicinity of a petrol bunk of the petitioner, has been converted for non-agricultural purposes. One acre of the said land has been converted for non-agricultural purposes, for the purpose of establishing a petrol bunk

5. The Town Planning Authority has in turn granted approval of the site plan and the Chief Engineer-Communication and Buildings, Dharwad, has by a Circular

dated 26.3.2003, imposed conditions which required to be adhered to in the first respondent issuing any no objection certificate, which is a precondition, for the establishment of such a petrol bunk.

6. It is his contention that the third respondent has granted the dealership in favour of the third respondent to establish a petrol bunk in. the above said converted land. The Assistant Executive Engineer, Hunagund, who is said to have inspected the land and has submitted a certificate, has indicated that the petitioner's petrol bunk is within 300 metres from the bunk that is sought to be established by the third respondent. The second respondent inspite of the said certificate, has issued a "No Objection Certificate".

7. It is the petitioner's contention that though the petitioner had filed objections before the second respondent to reconsider the "No Objection Certificate" which has been issued, there has been inaction on the part of the second respondent and it is in this background that the petitioner has preferred to writ petition.

8. The petition coming on for preliminary hearing on 30.10.2007, this court while issuing notice regarding rule, had granted an interim stay of Annexure-G for a period of three weeks, which was further extended by another four weeks on 3.12.2007. The third respondent has now filed an application in I.A.I/2007, seeking vacation of the stay order.

9. It is contended on behalf of the third respondent that the petitioner has established a retail outlet after purchasing the land from the third respondent's father. The petitioner is a rival businessman and has filed the writ petition apprehending that the establishment of the petrol bunk by the third respondent would affect his business.

10. The Counsel for the third respondent would point out that the "No Objection Certificate" is issued after due consideration of the several, aspects of the matter and that the third respondent has invested a huge amount of money and at this point of tune, by virtue of the order of stay granted by this Court, the enterprise has been stalled, which results in hardship and injury to the respondent and therefore, the stay requires to be vacated While elaborating the contentions in the statement of objections, it is contended, that the Government of India has issued a circular dated 22.7.1999, wherein, certain guidelines were issued in the matter of location of retail outlets of petroleum products. These guidelines, thought prescribe a distance between, two adjacent fuel stations of 300 metres, the same would not apply in the case on hand, since the proposed fuel station of the third respondent and. the existing fuel station of the petitioner are on either side of a high way and therefore, are not adjoining each other and this prohibition of the distance between two adjoining stations would not apply in the case on hand.

11. Further, insofar as the other conditions imposed, such as, clustering of fuel stations along the high way and that they should not be too closer to each other and even if there is such proximity, there should be a parallel service road

provided, to provide common access to the high way, would certainly not impede the establishment of the proposed fuel station and hence, the apprehension and the complaint of the petitioner is inexplicable. The petitioner's contention that there has been non-application of mind by the second respondent in issuing the "No Objection Certificate", is incorrect. The guidelines which are applicable across the country does not prescribe any such prohibition and hence, the contention of the petitioner that the prescription of distance of 300 meters between two adjacent fuel stations as being applicable to the present case on hand, is untenable.

12. In this regard, the Counsel has produced a circular addressed to the Chief Secretaries of all the State Governments in India as well as other authorities. The same is placed on record.

13. The Counsel for the petitioner, by way of reply, would reiterate that there has been no consideration by the second respondent of the said guidelines not being applicable to the fuel stations which, are opposite each other on either side of the highway and that the distance prescribed would apply only to adjacent petrol bunks and not to fuel stations which are opposite each other and therefore, the counsel would submit that it is a fit case which requires to be remanded to the first respondent on this aspect of the matter. Since it is a pure question of finding of fact, it is necessary that this aspect of the matter insofar as the interpretation of the guidelines and the actual location of the petrol bunks, even though they may be on the opposite side of the high way, requires to be addressed.

14. Having closely perused the guidelines which prescribe a distance of 300 metres between the adjoining fuel stations as also of the requirement of fuel stations on the opposite sides of the road, which requires to be staggered, the contention of the counsel for the petitioner that, since the distance between two stations would be less than 300 metres, would be a bar to the grant of "No Objection Certificate", cannot be sustained. The bar is in respect of fuel filling stations situated adjacent to each other and not to stations which are on the opposite sides of a road.

In the instant case, it is not in dispute that the fuel stations are on the opposite sides of the road. The bar insofar as the fuel stations, which are on the opposite sides of the road, is found at 4(iii) of the guidelines issued under the letter dated 27.7.1999 which reads as follows:

Fuel filling stations should be well distributed on both sides of road so that vehicles do not have to cut across the traffic to reach a fuel filling station. The fuel filling station on opposite sides of the road should be staggered.

15. A reading of this would indicate, that there is no minimum distance between such stations on the opposite sides of the road, prescribed. The requirement that they should be staggered would only mean that they should not be immediately opposite each other. In the present case on hand, the respondent would state on oath that the stations are not immediately opposite each other. There is no

serious dispute on this and it is not even the contention of the petitioner in this regard, except contending that the distance between the stations is less than 300 metres. In this view of the matter, the petition does not make out any case in the material contention that the first respondent has not applied his mind in granting "No Objection Certificate. Accordingly, there is no ground made out in the writ petition. The petition is dismissed. The interim order, which stood extended as on 3.12.2007, stands vacated.