
(2014) 03 MP CK 0024
In the Madhya Pradesh High Court
Case No : W.P. No. 9223 of 2012

Saroj Bhatia

APPELLANT

Vs

Indian Oil Corporation Ltd.

RESPONDENT

Date of Decision : 18-03-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 226

Citation : (2014) 2 MPLJ 539

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

Bench : Single Bench

Advocate : P. Namjoshi, Advocate for the Appellant; Yogesh Mittal, C. S. Ujjainiya, Panel Lawyer and Vivek Sharan, Advocate for the Respondent

Final Decision : Allowed

Judgement

S.C. Sharma, J.—The present petition has been filed against the order dated 7-5-2013, by which the National Highway Authority of India (NHAI) has rejected the application of Indian Oil Corporation Ltd. for construction of a Retail Outlet at National Highway No. 3 CH-527.021, Khasra No. 182/2 Village Roj was Tehsil Tarana District Ujjain. The contention of the petitioner is that the petitioner has submitted an application for allotment of a Retail Outlet and she was selected by the Indian Oil Corporation Ltd. for allotment of a Retail Outlet. The petitioner has further submitted that the letter of intent was issued on 19-11-2012 and a request was made by the Indian Oil Corporation Ltd. to the District Magistrate for grant of No Objection Certificate. The petitioner also submitted applications for grant of No Objection Certificate (NOC)/permission to the District Civil Supply Department, Town and Country Department and to the Department of Sanchalanalaya Nagriya Prasasan Evam Vikash and the NOCs were granted by all the departments/bodies of the State of Madhya Pradesh enabling the petitioner to establish the Retail Outlet. The Indian Oil Corporation Ltd. has approached the NHAI for grant of No Objection Certificate for establishment of Retail Outlet and the NHAI has rejected the application submitted by the Indian Oil Corporation

Ltd. vide impugned order dated 7-5-2013 (Annexure-P/14). The reasons assigned in the impugned order reflects that the Retail Outlet is being established at Khasra No. 182/2, Village Roj was and a portion of the aforesaid Khasra admeasuring 0.021 hectare has been acquired under the provisions of Land Acquisition Act, 1956 therefore, the Retail Outlet cannot be established. The other reasons assigned in the impugned order is that there is already a Retail Cutlet in existence near the site over which the Indian Oil Corporation Ltd. is going to establish a new Retail Outlet and the distance between two fuel stations, should be 1000 meters. The next line of the same paragraph further states that the distance between existing and proposed toll-plaza is 804 meter. The third reason assigned is that the distance between proposed toll-plaza (sic) and the fuel station should be 1 km. The petitioner's contention is that two petrol pumps can certainly be established even though the distance between two fuel stations is less than 1000 meters keeping in view the circular filed by the respondent-NHAI dated 25-9-2003. It has also been argued that the area offered by the Indian Oil Corporation Ltd. for establishment of a Retail Outlet is meeting the norms laid down by the Indian Oil Corporation Ltd. He has also argued that there is no toll-plaza constructed nor steps have been initiated by the NHAI for establishment of toll-plaza and denial of NOC is nothing, but it is an action at the behest of existing operator of the Retail Outlet, whose Retail Outlet is in existence.

2. A detailed and exhaustive reply has been filed by the respondent No. 3-NHAI and the NHAI has admitted issuance of letter dated 7-5-2013 (Annexure-P/14). The NHAI in paragraph No. 4 has detailed the reasons for rejecting the application of Indian Oil Corporation Ltd. Apart from the aforesaid reasons detailed by the NHAI, no other reasons have been assigned in the return for rejecting the application for grant of NOC for establishing for Retail Outlet.

3. Learned counsel appearing for the Indian Oil Corporation Ltd. has marked his appearance and his contention is that in spite of the fact that a part of the land has been acquired under the provisions of Land Acquisition Act, 1956, the land available at site is more than sufficient for establishing a Retail Outlet as per the norms laid down by the Indian Oil Corporation Ltd. as well as Union of India.

4. Heard the learned counsel for the parties at length and perused the record.

5. The petitioner in the present case is aggrieved by the order dated 7-5-2013, by which the National Highway Authority of India has rejected the application of Indian Oil Corporation Ltd. for construction of a Retail Outlet at National Highway No 3 CH-527 021, Khasra No 182/2 Village Roj was Tehsil Tarana District Ujjain The petitioner after he was successful in the process of selection has obtained No Objection Certificates from the following departments -

(1) Sanchalanalay Nagnya Prasasan Evam Vikash on 31-1-2013

(2) Madhya Pradesh Paschim Kshetra Vidyut Vitran Company, Tarana on 16-1-2013

- (3) District Civil Supply Department Distt. Ujjain on 23-1-2013
- (4) Dy. Director Town and Country Planning Department on 9-1-2013
- (5) Gram Panchayat Titodi and Janpad Panchayat Taran dated 3-9-2013
- (6) Madhya Pradesh Pollution Control Board on 29-12-2012
- (7) Collector Office (Food) Distt. Ujjain on 28-1-2013

6. National Highway Authority of India has raised an objection that a part of the land bearing Khasra No 182/2 Village Roj was has been acquired by them and therefore they are not granting the NOC The selection of a dealer to establish a Retail Outlet is based upon the guidelines framed by the Oil Companies and the Indian Oil Corporation Ltd. has carried out an exhaustive survey of the land in question and even though a part of the land has been acquired for the purpose of construction of retail outlet the land available is more than enough and is meeting the parameters required for establishment of a Retail Outlet Learned counsel for the Indian Oil Corporation Ltd. has categorically stated in open court that the land which is available on site after acquisition is more than enough for establishing a Retail Outlet and is meeting the requirements of the guidelines framed by the Government of India as well as Indian Oil Corporation Ltd. It has also been stated that the land which is now available is infact more than the land required to establish a Retail Outlet The National Highway Authority of India has also stated that there is already a petrol pump in existence and minimum distance between two fuel stations in National Highway should be 1000 meter, whereas in the present case the distance between existing retail outlet and proposed toll plaza is 804 meter A similar explanation has been given in respect of other grounds by the National Highway Authority of India

7. A similar problem arose in respect of establishment of a Retail Outlet of the Hindustan Petroleum Corporation Ltd. and Madhya Pradesh Road Development Corporation came up with similar plea before this Court This Court in the case of Amrish Dangi vs. Hindustan Petroleum Corporation Ltd. and ors WP No 7123/11 decided on 11-1-2013 in paragraphs 8 to 13 has held as under -

8. In the present case, it is not in dispute that the Hindustan Petroleum Corporation Ltd. has issued a notice inviting applications for appointment of retail outlet dealers at various places including Village Bistan, Khargone District National Highway No 31 on 17-2-2009 The petitioner was selected by the Hindustan Petroleum Corporation Ltd. and finally a letter of intent was issued on (sic) It is not in dispute that a NOC has been issuer by the (sic) Rule 144 of the Petroleum Rules, 2002 reads as under --

144. No objection certificate-- (1) Where the licensing authority is the Chief Controller or the Controller, as the case may be, an applicant for a new license other than a license in Form III, XI, XVII, XVIII or XIX shall apply to the District Authority with two copies of the site-plan showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection to

the applicant receiving a license for the site proposed and the District Authority shall, if he seeks no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application in Form IX

(2) Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly endorsed by him under his official seal

(3) The Chief Controller or the Controller, as the case may be, may refer an application not accompanied by certificate granted under sub-rule (1) to the District Authority for his observations

(4) If the District Authority, either on a reference being made to him or otherwise, intimates, to the Chief Controller or the Controller, as the case may be, that any license which has been applied for should not, in his opinion, be granted, such license shall not be issued without the sanction of the Central Government

(5) The District Authority shall complete his inquiry for issuing NO OBJECTION certificate (NOC) under sub-rule (1) and shall complete the action for issue or refusal of the NOC, as the case may be, as expeditiously as possible but not later than three months from the date of receipt of application by him.

9. The respondent-Collector keeping in view the statutory provisions as contained under the Petroleum Rules has issued the NOC and various authorities have also issued the NOCs i.e. the Inspector General of Police (Fire) has issued a NOC on 6-6-2011, the Town and Country Planning Department has issued a NOC on 31-5-2011, the SDM has issued a NOC on 15-3-2011, the Gram Panchayat, Bistan and Janpad Gogava and Madhya Pradesh Pollution Control Board has issued a NOC on 24-6-2011 Thus, various no objection certificates as required under various statutory provisions have been issued by the various authorities from time to time Only impediment, which coming in the way of the petitioner for installing the petrol pump is order dated 8-8-2011 passed by the Madhya Pradesh Road Development Corporation, which is based upon the guidelines framed by the Indian Road Congress, which provides that minimum distance between two fuel station should be 300 meter In the present case, a new retail outlet which is going to be established and the NOC has been denied by the Madhya Pradesh Road Development Corporation only because there is already a retail outlet in existence near the site and the distance is less than 300 meters from the existing retail outlet Clause 4 6 4 of the guidelines framed by the Indian Road Congress relied upon by the Madhya Pradesh Road Development Corporation reads as under

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 hilly/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 pre-condition.

10. The aforesaid clause permits for establishment of a retail outlet, even if the distance is less than 300 meters subject to construction and maintenance of the common service road, deceleration and acceleration lanes, drainage and traffic control devices. Thus, it is evident that there is no absolute bar in establishing the retail outlet, as held by the respondent No. 3. Not only this, the Division Bench of Punjab and Haryana High Court in the case of Environment Society of India and Another Vs. Administrator, Chandigarh Administration, Union Territory and Others, . In paragraph 20 in the aforesaid case has held as under :--

20. Hitherto, the Gas Stations/Petrol Pumps/Fuel Filling Stations have been sanctioned in areas reserved for commercial use. So is the situation in the present case. Nothing new or unusual has been done. Furthermore, what should be the distance between the two Petrol Pumps? The Indian Road Congress has undoubtedly recommended that it should be 300 mts. However, it is only a recommendation. It is not mandatory provision of law. The Administration has categorically averred that it has not; adopted the recommendations. In this situation, it cannot be accused of having acted illegally in sanctioning the site for the installation of the facility in dispute.

11. In view of the aforesaid judgment as the guidelines framed by the Indian Road Congress are only recommendatory in nature and does not have statutory force, the same cannot be made to be the basis for denying a NOC to the petitioner. A similar view has been taken by the Allahabad High Court in the case of Mahtab Ahmad vs. Union of India Thru Prin. Sec. Mini of Pet. and others in W.P. No. 43483 of 2010 and the same reads as under :-

Heard learned counsel for the petitioner, Sri Vikas Budhwar, learned counsel appearing on behalf of respondent Nos. 2 to 5 and Smt. Nuzhat Praveen, learned counsel appearing on behalf of respondent No. 1.

By this writ petition, petitioner has prayed for a mandamus directing, the respondents not to establish any such fuel station nearby plot No. 275 and on 277.

Petitioner's case in the writ petition is that petitioner is a proprietor of Petrol and Diesel Dealership of Aliganj Road, under the scheme of Adarsh Kisan Sewa Kendra.

Learned counsel for the petitioner submits that respondent No. 6 is taking steps for establishment of another outlet for which license has been given on 18-11-2009. Learned counsel for the petitioner relying on a guideline issued by Indian Road Congress, 2009 submits that under Clause 4.5.1 of the said

guideline at the place where respondent No. 6 is citing the outlet could not have been done.

Sri Vikas Budhwar submits that the guidelines on which petitioner is relying are issued by the Indian Road Congress which is not a statutory body and the guidelines have already been issued by the Government of India as well as by the Oil Companies for citing of the outlet and no breach is alleged of the aforesaid guidelines.

After considering the submissions of the parties we are of the view that the guidelines, Annexure-1 to the writ petition which are said to be issued by the Indian Road Congress are not statutory guidelines which can be enforced by this Court under Article 226 of the Constitution of India.

Writ petition is accordingly dismissed.

12. Keeping in view the aforesaid judgment delivered by the Allahabad High Court in the case of Mahtab Ahmad (supra), this Court is of the considered opinion that the guidelines framed by the Indian Road Congress are not at all statutory guidelines and which can be enforced by this Court under Article 226 of the Constitution of India. Resultantly, the impugned order based upon the guidelines framed by the Indian Road Congress is accordingly quashed. In the present case, no other reason has been assigned by the respondent No. 3 for denying the NOC to the petitioner and therefore, as this Court has quashed the impugned order, the petitioner and the respondent No. 1 shall be free to establish a retail outlet as they have already obtained NOCs from various other authorities in accordance with law.

13. With the aforesaid, the writ petition is allowed.

8. In the present case, the petitioner as well as the Indian Oil Corporation Ltd. have obtained No Objection Certificates required under the Petroleum Act, 1934 read with the Petroleum Rules, 2002. In the case of Amrish Dangi (supra) the distance between the existing Retail Outlet and the proposed Retail Outlet was less than 300 meter and this Court has allowed the writ petition preferred by Amrish Dangi. This Court in large number of cases has observed that the moment a new Retail Outlet is being established by the Oil Company, persons who are having existing Retail Outlets are filing complaints with the Oil Company or with the authorities, who are involved in the matter of grant of NOCs and based upon those complaints without verifying the statutory provisions as contained under the Petroleum Act, 1934 read with the Petroleum Rules, 2002, No Objection Certificates are being denied to the proposed dealer/oil companies. This Court in the case of Amrish Dangi has observed that the guidelines framed by the Indian Road Congress are only recommendatory in nature and does not have any statutory force and therefore denial of NOC based upon the guidelines framed by the Indian Road Congress or on the basis of some letter of Chief Engineer, Director General, Road Development and Special Secretary, Govt. of India, Ministry of Road Transport and Highways dated 25-9-2003 is bad in law.

The so called letter of the Director General dated 25-9-2003 is certainly not at all a statutory notification. It has not been issued under the provisions of Petroleum Act nor under the provisions of Petroleum Rules. Even for a moment the letter dated 25-9-2003 is taken into account, the Appendix-1 certainly provides for establishment of a new fuel station, even when the distance is less than 1000 meter, Clause-4.4.3 and 4.4.4 of Appendix-1 of letter dated 25-9-2003 filed by the National Highway Authority of India Ltd. reads as under;--

4.4.3. 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 the distance of more than 1000m.

4.4.4. For installation of new fuel station within the 1000m distance of existing fuel station in plain/rolling terrain and 300m in hilly/mountains terrain and urban stretch, new entrant would-be responsible for construction and maintenance of the common service road, deceleration and acceleration lanes, drainage and traffic control devices. In case of hilly/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 pre-condition.

9. In light of the aforesaid, even though the letter enclosed along with the return has got no statutory value, a Retail Outlet can be established within the distance of 1000 meter of the existing fuel station. So far as the question of establishment of a fuel station within 1000 meter from toll-plaza is concerned, the roll plaza is not in existence at all. As the guidelines framed by the Indian Road Congress are not mandatory as held by this Court and as the letter dated 25-9-2003 is not statutory notification, denial of establishment of the Retail Outlet to the petitioner and denial of No Objection Certificate to Indian Oil Corporation Ltd. is amounting to violation of Fundamental Rights guaranteed to the petitioner under Article 19(1)(g) of the Constitution of India. The record of the case further establishes that someone aggrieved in the matter on account of allotment of a Retail Outlet to the petitioner has started levelling all kind of frivolous allegations against him. It appears that the authorities of the National Highway Authority of India have given undue consideration to the so called complaint/objection raised in the matter. The authorities involved in the matter to grant No Objection Certificate under the Petroleum Act and the Rules framed thereunder have already granted necessary No Objection Certificates and therefore, this Court is of the considered opinion that the impugned action of the respondent-National Highway Authority of India is bad in law and the order dated 7-5-2013 deserves to be set aside and is accordingly set aside.

10. In light of the aforesaid, the writ petition deserves to be allowed and the same is allowed. The petitioner as well as respondent No. 1 Indian Oil

Corporation Ltd. shall be free to establish a Retail Outlet after obtaining No Objection Certificates as required under Rule 144 of the Petroleum Rules 2002 and the letter/order of the National Highway Authority of India dated 7-5-2013 will not come in way of the Collector/District Authority in granting No Objection Certificate to the Indian Oil Corporation Ltd./petitioner. The impugned order dated 7-5-2013 will also not come in way of the Indian Oil Corporation Ltd. and the petitioner in the matter of establishment of a Retail Outlet. The District Magistrate/Licensing Authority shall pass an appropriate order, if not passed so far, based upon the NOCs/permissions granted by the Director, Urban Administration and Development on 31-1-2013, Madhya Pradesh Paschim Kshetra Vidyut Vitran Company, Tarana on 16-1-2013, District Civil Supply Department Distt. Ujjain. on 23-1-2013, Dy. Director Town and Country Planning Department on 9-1-2013, Gram Panchayat Titodi and Janpad Panchayat Taran on 3-9-2013, Madhya Pradesh Pollution Control Board on 29-12-2012 and Collector Office (food) Distt. Ujjain on 28-1-2013.

11. The exercise of issuing a No Objection Certificate in accordance with law be concluded as expeditiously as possible preferably within a period of 30 days from the date of receipt of a certified copy of this order.

12. With the aforesaid, the writ petition stands allowed. No order as to costs.