
(2008) 04 BOM CK 0001
In the Bombay High Court
Case No : Writ Petition No. 648 of 2007

Shri Ashok V. Nanware

APPELLANT

Vs

Union of India and 8 Ors.

RESPONDENT

Date of Decision : 16-04-2008

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Citation : (2008) 04 BOM CK 0001

Hon'ble Judges : S.A. Bobde, J;N.A. Britto, J

Bench : Division Bench

Advocate : Mahesh Amonkar, for the Appellant; J. Vaz, Central Govt. Standing Counsel for Respondents No.1, 3 and 4., Mr. S.S. Kantak, Advocate General with Mr. M. Salkar, Addl. Govt. Advocate for Respondents No. 2, 5 and 7., Mr. N. Da Costa Frias, Advocate for Respondent No.6., Mr. Sudin Usgaonkar, Advocate for Respondent No.8. and Mr. N. Sardesai, Advocate for Respondent No.9., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard. By this petition, the petitioner has challenged the grant of "No objection certificate" under Rule 144 of the Petroleum Rules, 2002 by the District Magistrate to the respondent no. 9.

2. In brief, the facts are:-

The petitioner is a candidate to whom the respondent no.8/Hindustan 2 Petroleum Corporation wants to grant dealership. Respondent No.9 is a candidate to whom the Indian Oil Corporation has granted dealership. The petitioner and the respondent no.9 intend to set up a petrol pump at a distance of less than 100 kms from each other; that being the permissible distance.

3. The dispute between the parties is about the grant of "No-objection certificate" in respect of the site for setting up a petrol pump. Such "No objection certificate" is required by any party intending to set up a petrol pump under Rule

144 of the Petroleum Rules, 2002 which reads as follows;

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 licence other than a licence in Forms 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 licence for the site proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application 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 licence which has been applied for should not, in his opinion, be granted, such licence 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.

4. The admitted facts are that the respondent no.9 applied for the grant of "No-objection certificate" on 24/01/2001. "No-objection certificate" was granted to him by the District Magistrate on 25/01/2007. Thereafter, he was granted a "Letter of intent" on 27/04/2007. The above sequence of events gives rise to the challenge on behalf of the petitioner. According to Mr. Amonkar, the learned Counsel for the petitioner, the respondent no.9 could not have even applied for a "No-objection certificate", because on the date when he made the application, the Indian Oil Corporation had not issued "Letter of intent" in his favour.

5. There is no merit in this contention in view of Rule 144 of the Petroleum Rules, 2002, which does not impose any such qualification before a person makes such an application. An application, in fact, can be made by any applicant who intends to set up a petrol pump. It is after such a "No-objection certificate" is granted that a person may apply for a licence in accordance with Rule 141 of the Petroleum Rules, 2002. There is nothing in this aforesaid scheme to suggest that the applicant must have a "Letter of intent" from some Company before he may be considered qualified to apply for "No-objection certificate".

6. The learned Advocate General appearing on behalf of respondent no. 7 points out that in fact the "No-objection certificate" which has been issued by the District Magistrate imposes the condition that the applicant who has been granted "No-objection certificate" shall obtain necessary consent from the Oil Marketing Companies as per Clause 3(4) of Order No. GSR 725(E) u/s 3 of Essential Commodities Act dated 13/12/2005 i.e. subsequently. We find, that there is no error of law apparent from the record in any of the orders before us. There is therefore no merit in this petition which is hereby dismissed.