
(2014) 03 KAR CK 0162

In the Karnataka High Court

Case No : Writ Petition No. 103069 of 2014 (GM-RES)

The Mudalagi Education Society

APPELLANT

Vs

The Deputy Commissioner

RESPONDENT

Date of Decision : 05-03-2014

Acts Referred:

Citation : (2014) 3 KarLJ 646

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : G.B. Naik and P.G. Naik, Advocate for the Appellant; K. Vidyavathi, Additional Government Advocate, C.V. Angadi and Rajashekhar Burji, Advocate for the Respondent

Judgement

Aravind Kumar, J.—Though matter is listed for orders by consent of learned Advocates appearing for the parties it is taken up for final disposal. Heard the learned Advocates appearing for the parties. Perused the case papers and also statement of objections filed by respondent 3.

2. Petitioner is seeking for quashing of the no objection certificate dated: NIL Annexure-G issued to third respondent by first respondent for storage of 20 KL of HSD and 10 KL of MS at property bearing No. 498/3B/1 TMC Nos. 2701 and 2702 of Mudalagi in Gokak- Taluk namely for establishment of petrol pump station. Grievance of the petitioner is that it is running a educational institution exactly opposite to the proposed petrol station and by virtue of permission granted by first respondent vide Annexure-G to third respondent to establish petrol pump i.e., dealer in retail outlet it would affect the children studying in the school and it would cause environmental pollution and first respondent has closed its eye to the material fact that proposed petrol station is located within 100 meters radius and it would be hazardous to the life of thousands of school children attending petitioner's school. It is also contended that grant of no objection certificate by first respondent is against the principles of natural justice inasmuch as objection filed by the petitioner has not been considered in proper perspective and hence

petitioner seeks for quashing of no objection certificate Annexure-G or in the alternate it is prayed that after quashing of Annexure-G permission may be granted to the petitioner to place such material before first respondent-authority to buttress their stand and thereafter first respondent would be in a position to arrive at a proper decision.

3. Per contra, Sriyuths C.V. Angadi and Rajashekhar Burji, learned Advocates appearing for respondents 2 and 3 would support the impugned order and submit that first respondent has taken all care and caution while issuing no objection certificate and has also ensured that no objection certificate issued to the second respondent is with conditions stipulated thereunder and it would safeguard the interest of all the persons. It is also contended that President of the petitioner-society is a person interested in ensuring that third respondent does not establish a petrol station inasmuch as he is having a petrol station of Hindustan Petroleum and with an intention to frustrate the right of third respondent, objections have been, filed by the President of petitioner-society in his individual capacity and not on behalf of the institution. Hence, he prays for dismissal of the writ petition.

4. Having heard the learned Advocates for parties and on perusal of case papers it would indicate that second respondent proposal to develop a retail outlet meant to cater to the fuelling needs of farming community under the scheme called "Kisan Seva Kendra" at Mudalagi. Third respondent was selected as eligible to set up a retail outlet (at Sy. No. 498/3B/1) TMC Nos. 2701 and 2702 of Mudalagi Village, Gokak Taluk, Belgaum District. Second respondent has issued no objection certificate to third respondent to enable the third respondent to develop the outlet. Third respondent as required under the Petroleum Act, 1934 and the Rules made thereunder namely Petroleum Rules, 2002 has applied to the Licensing Authority empowered to grant licence to open a retail outlet to deal in petroleum products. The Licensing Authority after considering the report from jurisdictional Police, Public Works Department, Fire and Emergency Services Department, Assistant Commissioner, Baihongal and report from the local Municipal Council has resolved to issue No Objection Certificate to second respondent as evidenced from the note sheet at Annexure-F. Pursuant to the same no objection certificate has been issued under Rule 144 of Petroleum Rules, 2002 in favour of second respondent which is subject to conditions stipulated thereunder. Learned Counsel for petitioner has made available the certified copy of site plan which is said to have been submitted before the District Magistrate for grant of no objection certificate by the second respondent. A perusal of the same would clearly indicate that proposed site for Indian Oil Corporation Limited (IOCL) retail outlet is situated diagonally opposite to the petitioner-institution. In between these two, the district main road runs from Mudalagi to Gokak which is measuring about 15 meters and said road intervenes the proposed petrol outlet and petitioner-institution. Perusal of the summary of the reports submitted by various Statutory authorities which is at Annexure-F. The Office of the Director, Fire Services vide their report dated 2-1-2013 they have indicated their no

objection for grant of licence subject to third respondent complying with the conditions that may be imposed by the first respondent. Likewise jurisdictional Assistant Commissioner after having conducted a spot inspection has submitted a report on 31-12-2013 indicating their no objection. So also Municipal Council, Mudalagi has granted its no objection. Paragraph 20 of the note sheet of Annexure-F would indicate that petition or objections filed by the petitioner-institution regarding adverse effect on the children that would be caused on account of opening of the petrol pump and fire accident that may occur has been considered and rejected by first respondent.

5. In a similar situation the locus standi of the petitioner to challenge the grant of no objection certificate to open a petrol pump came to be examined by Division Bench of this Court in W.A. No. 10077 of 2010 (GM) and it was held as under: 9. We have gone through the aforesaid findings noted after examination of the site. Firstly, the petitioner must establish her right to maintain the petition. It is only if the right is established and if it is infringed, then the question of issuing any writ would arise. Except the aforesaid report and the comments made therein, the petitioner is unable to point out any rule or regulation, which is violated by the Deputy Commissioner in granting the No Objection Certificate. In the absence of any legal rights, the petitioner cannot challenge the No Objection Certificate.

In the present facts and circumstances of the case petitioner is placed in the same position as that of the appellant in the above referred writ appeal. Except contending that establishment of petrol station would be hazardous to the health of children and their safety, learned Counsel for petitioner has not been able to demonstrate as to the extent Rules or Regulation which prohibits the opening of a retail outlet in the vicinity of a educational institution. Learned Counsel for petitioner has fairly submitted that petitioner-institution does not have any personal interest except safeguarding the interest of children studying in the petitioner-school. I am of the considered view that establishment of a petrol bund would have no delirious affect on the children studying in the school and it would not affect their health in any manner whatsoever. First respondent-authority as such has issued no objection certificate vide Annexure-G to second respondent and the conditions required to be complied has been stipulated which would safeguard the interest of all the concerned including that of the children studying in petitioner-institution. Said petrol station is proposed to be established to cater to the needs of farming community which is in the larger interest of public and respondent-authorities having taken care of all the safeguards that requires to be put in and no objection having been granted to second respondent to establish petrol pump, I do not find any illegality committed by first respondent in issuing no objection vide Annexure-G to the second respondent. In that view of the matter writ petition is liable to be rejected and accordingly it stands rejected. Sri C.V. Angadi, Advocate appearing on behalf of respondent 2 is permitted to file vakalathnama within three weeks from today.