

(2022) 11 GUJ CK 0023

In the Gujarat High Court

Case No : R/Special Civil Application No. 9265 Of 2016

Yogiji Petroleum & 1 Other(S)

APPELLANT

Vs

State Of Gujarat & 3 Other(S)

RESPONDENT

Date of Decision : 07-11-2022

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2022) 11 GUJ CK 0023

Hon'ble Judges : Biren Vaishnav, J

Bench : Single Bench

Advocate : Rasesh H Parikh, Hemang H Parikh, Dhvani Tripathi, Jay M Thakkar, Kunal Nanavati

Final Decision : Dismissed

Judgement

Biren Vaishnav, J

1. Heard learned advocates for the respective parties.
2. By way of this petition, under Article 226 of the Constitution of India, the petitioner is challenging the issuance of No Objection Certificate (NOC) in favour of respondent no. 4 by which no objection has been granted to the respondent no. 4 to set up an underground tank and distillation bearing T.P Scheme no. 2 Plot No. 155/1/paiki village Anand, Ta. Dist. Anand. Challenge to the issuance of the NOC to respondent no. 4 is essentially on the ground that the same is in violation of clause no. 4.7 of the Norms For Location, Layout And Access To Fuel Stations Along National Highways (for short 'the norms').
3. Mr. Hemang Parikh, learned counsel for the petitioner would read out clause 4.7 of the norms to indicate that the fuel station would not be located within a distance of 1000 meters from any barrier including that of a toll plaza and railway level crossing. No check barrier, toll plaza should be situated within 1000 meters of a fuel station. In support of his submission, Mr. Parikh would rely on communications addressed by the District Magistrate/Collector, Anand to the

Divisional Manager, Western Railways and that to the Additional Divisional Engineer, Anand seeking an opinion as to whether a petrol pump/fuel station was in compliance of the norm being 4.7 of the Norms referred to hereinabove. Essentially the point of challenge therefore is that since it is located within a 1000 meter distance of a railway barrier, the NOC is contrary to the norms and therefore be set aside.

3.1 Mr. Parikh would rely on a decision of the Punjab and Haryana High Court in the case of Subhash Khobra vs. State of Haryana and Others rendered in Civil Writ Petition No. 21006 of 2020 on 16.12.2020.

4. Mr. Kunal Nanavati, learned counsel appearing for respondent no. 3 would draw the court's attention to the affidavit-in-reply filed on behalf of the company and submit that the petition is misconceived inasmuch as the petrol pump was not proposed to be set up on a national highway and therefore there was no need for the authorities to procure any opinion/NOC from the department of railways. He submitted that therefore the submission of learned advocate for the petitioner is misconceived. He would rely on the guidelines dated 25. 06.2015 and submit that as per the guidelines issued by the Ministry of Railways, the NOC is required from the ministry only for construction within 30 meters from the railway line. In the present case, the distance between the railway line and proposed petrol pump was 180 meters and therefore no NOC was required.

5. Ms. Dhvani Tripathi, learned AGP for the State would also rely on the affidavit-in-reply filed by the District Magistrate, Anand. Reliance was placed particularly on para 11 thereof which indicates that the petrol pump was located on the local road of the Nagarpalika and not on the highways. Clause 4.7 of the norms would therefore not apply. She submitted that even otherwise it is at a distance of 180 meters away from the central point of the railway line which is in compliance of the Indian Roads Congress Guidelines, 2009, particularly clause 4.2.3 thereof.

6. Mr. Jay Thakkar, learned advocate appearing for respondent no. 4 has raised objection as to the maintainability of the petition on the ground that essentially it is a case of motivated litigation of a competitor. He would also otherwise argue that the permission so granted in accordance with the compliance of the Indian Roads Congress Guidelines, 2009 as it is within the state vicinity.

7. Considering the submissions made by the learned counsels for the respective parties, essentially the petitioners harping on clause 4.7 of the norms which are norms applicable for setting up of fuel stations on national highways is not the case here. Reading of the affidavits filed on behalf of the company as well as the State would indicate that the fuel outlet was set up in a local area on the road in the vicinity of the nagarpalika. Clause 4.2.3 of the guidelines would indicate that a filling or filling-cum-service station should not be sited too close to an intersection or a traffic island or a bridge or a culvert or a railway level crossing on the main road. The minimum desirable distance between an across to a station and the tangent point of the traffic island on intersection or a bridge or a

culvert or a railway level crossing should not be less than 90 meters.

7.1 Considering the replies filed by the authorities concerned indicates that the place in question is within the area of the Nagarpalika and is at a distance of 180 meters from the center point of the railway line. There is no breach of clause 4.7 of the norms which in fact would not apply to the case on hand.

7.2 Reading the decision in the case of Subhash Khobra (*supra*) would indicate that the prayer in the petition was by a petitioner who wanted to set up a fuel outlet and had prayed for an NOC to set up such petrol pump dealership at village Balianwala and therefore had prayed for a mandamus for affording relaxation in the Indian Roads Congress Guidelines, 2009. It was in the backgrounds of these facts that the court had opined that no mandamus can be issued for relaxation of such guidelines. The case on hand therefore would not be a case which would have a persuasive value for this court to exercise jurisdiction in favour of the petitioner.

8. In view of the above, this court does not deem it fit to entertain this petition and the same is accordingly dismissed. Notice is discharged. Interim relief, if any, shall stand vacated.