
Before Viney Mittal and H.S. Bhalla, JJ.

SANJEEV KUMAR,—*Petitioners*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. NO. 6584 OF 2006

10th August, 2006

Constitution of India, 1950—Art. 226—Petitioner seeking NOC for setting up a new retail outlet—After thorough inspection of site all concerned departments forwarding their NOC to District Magistrate—District Magistrate referring matter back to SDO (C) for inspection of site again—On direction by High Court, District Magistrate requiring the departments to submit their joint report—SDO (C) after conducting thorough inspection submitting NOC along with his report—All concerned departments also submitted their NOC—NOC declined to petitioner on the basis of Cl. 4.1 of I.R.C. 12-1983 which requires a minimum distance of 300 meters between two retail outlets—Challenge thereto—Respondents failing to show that recommendation of IRC has been notified/adopted by the State Government by issuing any notification—Merely on the basis of a recommendation of IRC and in absence of any rule/regulation applicable in State, claim of petitioner could not be rejected — Petition allowed, orders passed by District Magistrate declining NOC to petitioner quashed.

Held, that the petitioner is being harassed unnecessarily by respondent No. 2. Although all the concerned departments have sent their no objections to the District Magistrate but for unjustifiable reasons respondent No. 2 has chosen not to issue the requisite no objection certificate. On one pretext or the other the requisite no objection certificate is being detained/declined in the case of petitioner. On an earlier occasion, when an order dated 10th September, 2004 was passed by respondent No. 2, reliance was placed upon Government of India instructions dated July 27, 1999. The petitioner challenged the aforesaid rejection order through CWP 17385 of 2004. A specific objection was taken that the aforesaid instructions dated 27th July, 1999 were applicable only in the case of National Highways and as

such were not even applicable to the case of the petitioner. Then a clarification was issued on February 4, 2005 that the mentioning of the instructions dated July 27, 1999 was inadvertent but the case was covered under Clause 4.1 of I.R.C. 12-1983 which was applicable to the case. When this Court required the District Magistrate to pass a fresh order by reconsidering the matter, a fresh order dated 16th February, 2005 was passed again rejecting the claim of the petitioner. As a matter of fact, it has not been even adverted to by the District Magistrate while passing the order dated 16th February, 2005 as to whether the aforesaid IRC 12-1983 were even applicable to the case of the petitioner or that whether the same had ever been notified/adopted by the State Government of Haryana. We fail to understand as to in what manner, in the absence of any formal adoption/notification of the said instructions/recommendations can there be any broad adoption, as suggested by the respondents. The claim of the company/petitioner for issuance of no objection certificate could only be rejected on the basis of some rule/regulation which was applicable in the State of Haryana and not merely on the basis of a recommendation by IRC which had not been so adopted by the State of Haryana at any stage.

(Para 12)

Puneet Bali, Advocate for the petitioner.

Ashok Jindal, Additional Advocate General, Haryana for the respondents.

JUDGEMENT

VINEY MITTAL, J.

(1) The petitioner has approached this Court challenging the orders dated February 4, 2005 (Annexure P.22) and February 16, 2005 (Annexure P.23) passed by the Deputy Commissioner/District Magistrate, Mohindergarh. *Vide* the aforesaid orders, respondent No.2 has refused to issue no objection certificate for setting up a retail outlet at village Balaha Kalan on Narnaul-Singhana Road, District Mohindergarh.

(2) The facts which emerge from the record show that the petitioner had purchased land measuring 8 kanals 16 marlas in

village Balaha Kalan on Narnaul-Singhana Road, District Mohindergarh near KM Stone No. 122 of State Highway 26, *vide* sale deed dated December 31, 2001. Indo Burma Petroleum Company (IBP) respondent No. 3 took a portion of the aforesaid land from the petitioner for the purpose of setting up a new retail outlet at the aforesaid location. The petitioner claims that no written agreement was executed between the petitioner and IBP. It is a pre-requisite that the licence for explosives and written agreement could only be executed after getting no objection certificate from the District Magistrate, therefore, respondent No. 3 issued a communication dated December 23, 2002 to District Magistrate, Mohindergarh for the issuance of no objection certificate for putting up a new retail outlet at the site in question. Alongwith the said application, respondent No. 3 also annexed copies of site plans and other requisite documents. On receipt of the aforesaid application, the District Magistrate, respondent No. 2 forwarded the requisite communication to various other departments including the Superintendent of Police, Mohindergarh, Sub-Divisional Officer (Civil), Narnaul, Executive Engineer, PWD (B & R), Narnaul, District Town and Country Planning Officer, Narnaul, Deputy Conservator of Forests, Mohindergarh, Fire Officer, Narnaul and District Education Officer, Narnaul. The petitioner maintains that on receipt of the communications and after thorough inspection of the site in question by the different departments, all the aforesaid departments *vide* their separate communications forwarded their no objection certificates to the District Magistrate. Copies of the aforesaid communications addressed by various departments to the District Magistrate have been annexed with the present petitioner. However, the District Magistrate, respondent No. 2 did not choose to issue the requisite no objection certificate but chose to refer the matter back to the Sub-Divisional Officer (Civil), Narnaul through his communication dated April 10, 2003 requiring him to conduct the inspection again. The petitioner maintains that various similar applications filed by the other applicants for issuance of no objection certificates were processed and the requisite certificates were issued to the said applicants but no such no objection certificate was issued in the case of the petitioner. In these circumstances, the petitioner approached this court through CWP No. 8292 of 2003 challenging the aforesaid communication dated April 10, 2003 issued by the District Magistrate

to Sub Divisional Officer (Civil). The said writ petition was disposed of by this Court on May 17, 2004 and the respondents were directed to consider the effect of issuance of the earlier no objection certificate dated January 10th, 2003 by the Sub Divisional Officer, Narnaul.

(3) On receipt of the orders from this Court, a communication was sent by the District Magistrate to the concerned departments, referred to above, requiring them to submit their joint report. The Chief Divisional manager, IBP sent a communication dated July 20th, 2004 to respondent No. 2 whereby the case of the petitioner was recommended. A similar communication was sent by Sub Divisional Officer (Civil) on July 5th, 2004 again after conducting a thorough inspection alongwith District Food and Supplies Controller, Narnaul and Deputy Superintendent of Police, Narnaul and a report with regard to no objection was submitted. The Sub Divisional Officer (Civil) mentioned that the petrol pump be made functional and that there was no possibility of any untoward incident and that his office has no objection in the installation of retail outlet. It was further reported that the Police and fire brigade services could be extended to the place without any difficulty because the aforesaid petrol pump was located on Narnaul-Singhana road.

(4) The petitioner has maintained that even the office of Sub Divisional Engineer, PWD (B & R), Narnaul had submitted a similar no objection. Even the fire station officer, Narnaul submitted a report on August 6th, 2004, giving his no objection.

(5) Although, all the concerned Departments had submitted no objection certificates to the officer of the District Magistrate, but still the requisite no objection certificate was never issued by the District Magistrate to IBP/petitioner because of a complaint filed by one Raj Kapur, resident of Village Bala Kalan. No objection certificate was declined to the petitioner vide an order dated September 10th, 2004 on the ground that another petrol pump was functioning just within 300 meters from the proposed outlet and, therefore, as per the instructions issued by the Ministry of Surface Transport, Government of India dated July 27, 1999, requiring a clear distance of not less than 300 meters between the two fuel filling stations, no objection certificate could not be issued to the petitioner. A copy of communication

dated September 10, 2004 has been appended as Annexure P.20 with the present petition. The petitioner filed a CWP No. 17385 of 2004 before this Court challenging the aforesaid communication dated September 10, 2004. However, during the pendency of the aforesaid petition, a clarification/modification was issued by respondent No. 2 through another order dated February 4, 2005 whereby it was communicated to the petitioner that in the earlier order dated September 10, 2004, the instructions of Government of India dated July 27, 1999 had been inadvertently mentioned, whereas, the case of the petitioner was covered against him as per clause 4.1 of I.R.C., 12-1983. The aforesaid communication dated February 4, 2005 is annexed here with as Annexure P.22 with the present petition. It was in these circumstances that an order was passed in CWP No. 17385 of 2004 to consider the matter afresh.

(6) In view of the aforesaid directions, an order dated February 16, 2005 was passed and the claim for issuance of no objection certificate was still rejected by respondent No. 2. Faced with the fresh rejection order, the petitioner withdrew the aforesaid CWP No. 17385 of 2004 with a liberty to file a fresh petition challenging the fresh order dated February 16, 2005. It is in these circumstances that the petitioner has approached this Court through the present petition challenging the earlier orders of rejection as well as the fresh order dated February 16, 2005 (Annexure P.23).

(7) At this stage, we may also notice that the order (Annexure P. 23) dated February 16, 2005 has been passed by respondent No. 2 by observing that as per I.R.C. 12-1983, it was required that there should be a minimum distance of 300 meters between the two retail outlets and since the proposed site of the company is within 300 meters from an adjacent petrol pump, therefore, no objection certificate could not be issued to the petitioner. However, in Para 27 of the writ petition, the petitioner has specifically pleaded that clause 4.1 of I.R.C., 12-1983 was merely a recommendation and had never been made applicable to the State of Haryana and had neither been notified or adopted by the State Government of Haryana by issuance of any notification/instructions. The petitioner has also pleaded in paras 28 and 29 of the writ petition that no objection certificates had been issued to a large number of applicants for setting up of the retail

outlets, although the aforesaid proposed sites were within a distance of 300 meters of the existing retail outlets.

(8) The claim of the petitioner has been contested by respondents No. 1 and 2. In the written statement filed on behalf of the said respondents, the rejection of the claim for the issuance of no objection certificate has been defended. The other detailed facts pleaded by the petitioner, have not been disputed, inasmuch as, it has not been disputed that all the concerned departments had issued no objection certificates and that the only reason on which the no objection certificate had been declined by respondent No. 2 was the existence of another retail outlet within a distance of 300 meters from the proposed site and, therefore, relying upon clause 4.1 of I.R.C., 12-1983, it has been maintained that the said proposed retail outlet could not be permitted.

(9) Although, a specific plea has been raised by the petitioner in Para 27 of the writ petition that clause 4.1 of I.R.C., 12-1983 was merely a recommendation and had never been made applicable to the State of Haryana, having never been notified or adopted by the State Government of Haryana, in the corresponding para of the written statement, this fact has not been denied. The contents of paras 27 and 28 of the written statement may be noticed as follows :

“27. That the contents of para No. 27 of the writ petition is a matter of record, hence no comments. However, order dated 4th February, 2005 and dated 16th February, 2005 are legal and liable to be sustained.

28. That the contents of para No. 28 of the writ petition as alleged are wrong and incorrect. It is further wrong to mention that the recommendation of I.R.C.-12-1983 are not applicable on the State Highways. These instructions/recommendations have been broadly adopted throughout the country for installation of petrol pump outlet. The Government of India, Ministry of Road Transport and Highways has circulated the same to all the chief secretaries to all the States and U.T.s *vide* its memo No. PW-NB-33023/19/99-DO-II, dated 25th September, 2003/17th October, 2003, as informed in the memo No. 296, dated 16th February, 2005 of the Executive Engineer PWD (B and R) Narnaul addressed to the respondent No. 2 which is annexed R.7.”

(10) Again the petitioner has given the facts in para 29 of the writ petition with regard to issuance of no objection certificates to a large number of applicants for setting up of the retail outlets, although the proposed sites were within a distance of 300 meters of the existing retail outlets, but in para 29 of the written statement even this fact is not denied. Para 29 of the written statement may be noticed as follows :

“29. That para No. 29 of the writ petition is a matter of record. However, it is submitted that the petitioner cannot take benefit of some previous incorrect reports. Further, some earlier unhappy decisions of the then authorities cannot be taken as Rule which cannot be rectified later on. These decisions are not relevant to decide the present petition.”

(11) We have heard Shri Puneet Bali, the learned counsel appearing for the petitioner and Shri Ashok Jindal, the learned Additional Advocate General, Haryana appearing for the respondents and with their assistance have also gone through the record of the case.

(12) Narration of the detailed facts noticed above clearly leaves an impression that the petitioner is being harassed unnecessarily by respondent No. 2. Although all the concerned departments have sent their no objections to the District Magistrate but for unjustifiable reasons respondent No. 2 has chosen not to issue the requisite no objection certificate. On one pretext or the other the requisite no objection certificate is being detained/declined in the case of the petitioner. On an earlier occasion, when an order dated September 10, 2004 was passed by respondent No. 2, reliance was placed upon Government of India instructions dated July 27, 1999. The petitioner challenged the aforesaid rejection order through CWP No. 17385 of 2004. A specific objection was taken that the aforesaid instructions dated July 27, 1999 were applicable only in the case of National Highways and as such were not even applicable to the case of the petitioner. Then a clarification was issued on February 4, 2005 that the mentioning of the instructions dated July 27, 1999 was inadvertent but the case was covered under clause 4.1 of I.R.C., 12-1983, which was applicable to the case. When this Court required the District Magistrate to pass a fresh order by reconsidering the matter, a fresh order dated February 16, 2005 was passed again rejecting the claim of the petitioner. As a matter of fact, it has not been even adverted

to by the District Magistrate, while passing the order dated February 16, 2005, as to whether aforesaid I.R.C., 12-1983 were even applicable to the case of the petitioner or that whether the same had ever been notified/adopted by the State Government of Haryana. A specific plea has been raised by the petitioner in para 27 of the writ petition, but the respondents (State Government and the District Magistrate) in the written statement filed by them have chosen not to deny the said fact. It has been maintained that contests of para 27 are a matter of record. It has further been stated in para 28 of the written statement that "these instructions/recommendations have been broadly adopted throughout the country for installation of the petrol pump outlet" We fail to understand as to in what manner, in the absence of any formal adoption/notification of the said instructions/recommendations can there be any broad adoption, as suggested by the respondents. The claim of the company/petitioner for issuance of no objection certificate could only be rejected on the basis of some rule/regulation which was applicable in the State of Haryana and not merely on the basis of a recommendation by I.R.C., which had not been so adopted by the State of Haryana, at any stage.

(13) We may also note that I.R.C., 12-1983 is titled as follows :

"IRC : 12-1983

RECOMMENDED PRACTICE FOR LOCATION AND
LAYOUT OF ROADSIDE MOTOR-FUEL FILLING AND
MOTOR-FUEL FILLING-CUM-SERVICE STATIONS."

(14) In these circumstances, we are satisfied that a mere recommendation made by IRC for location and lay out of a motor fuel filling and service station cannot be treated to have a binding force so as to provide a power/jurisdiction to the District Magistrate to reject the claim of the applicant. The aforesaid recommendation at the most is in the nature of a guide-line. The competent authority (District Magistrate) is required to adjudicate the claim of an applicant, independently, keeping in view the facts and circumstances of the case, location of the proposed retail outlet and various other circumstances. The claim cannot be rejected mechanically on the basis of recommendations of IRC.

(15) There is another aspect of the matter which we must take note of. The aforesaid recommendations by IRC were formulated in the

year 1983. At that point of time, the allotment of retail outlets, management and control thereof, was under the Government control. There has been a sea change since then. The business of running the retail outlets has been privatized. Various oil companies have been privatized. The control by the Government of India and various State Governments is restricted to the minimum. A policy of liberalization has been adopted. In these circumstances, if strict adherence to the said clause is permitted, it would lead to a monopoly in the hands of few. A healthy competition would be ruled out. Consumer would be the sufferer. This cannot be the intention, and under the present system of governance, cannot be so permitted. In any case, we do not find that the aforesaid recommendations have any binding force, since the same have not been adopted by the Stated Government, at any stage.

(16) Even otherwise, we find, as specifically pleaded by the petitioner in paras 29 and 30 of the petition, that no objection certificates have been issued to a large number of applicants for setting up of the retail outlets, although the proposed sites were also within a distance of 300 meters of the existing retail outlets. This fact has not been even denied by the respondents. This fact itself shows that the aforesaid recommendations of IRC were not treated to be having any binding force even in the past. The petitioner cannot be treated differently.

(17) Consequently, we allow the present petition and quash the order dated February 4, 2005 (Annexure P. 22) and order dated February 16, 2005 (Annexure P. 23) passed by the District Magistrate, respondent No. 2. Since the no objection certificate on the application filed by IBP company has been declined only on the basis of clause 4.1 of I.R.C., 12-1983, therefore, we direct respondent No. 2 to issue the requisite no objection certificate qua the application filed by respondent No. 3 with regard to the proposed retail outlet to be set up near KM Stone No. 122 of State Highway-26 at village Balaha Kalan on Narnaul-Singhana road, District Mohindergarh. Necessary process in this regard shall be completed within a period of four weeks from the date a certified copy of this order is received.

(18) A copy of the order be given dasti on payment of charges for payment of urgent copies.

R.N.R.