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IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

Sr. No.203

CWP-11971-2021 (O&M)
Date of decision : 06.08.2021

Ishwar Singh

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. S.K. Nehra, Advocate, for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

Mr. Ashish Kapoor, Advocate, for respondents No.4 and 5.

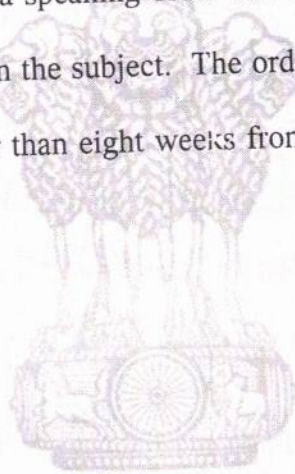
SUDHIR MITTAL, J. (Oral)

The only grievance of the petitioner in this writ petition is that NOC for setting up a retail outlet has been refused by the P.W.D (B&R) department. The letter of refusal is dated 18.02.2021 (Annexure P-12), in which, three reasons have been mentioned. However, learned counsel for the petitioner has confined his challenge only to rejection on the ground of minimum distance required from the nearest outlet.

Written statement on behalf of the State is on record, in which, it has been submitted that NOC is to be issued by the Deputy Commissioner concerned and that the P.W.D (B&R) department is only a recommending authority. The letter dated 18.02.2021 (Annexure P-12) is not an order of rejection and is only a recommendation and the file of the petitioner has been sent to the Deputy Commissioner concerned alongwith the said recommendation. Final order is to be passed by the Deputy Commissioner and thus, the writ petition is pre-mature.

Faced with this situation, learned counsel for the petitioner submits that the writ petition may be disposed of with a direction to the Deputy Commissioner, concerned to decide the matter of NOC in accordance with law and in a time-bound manner. The request is reasonable and is accepted.

The writ petition is disposed of with a direction to the Deputy Commissioner, Fatehabad to decide the pending matter of NOC of the petitioner by passing a speaking order and by keeping in view the law laid down by this Court on the subject. The order be passed as expeditiously as possible and not later than eight weeks from the date of receipt of certified copy of this order.



(SUDHIR MITTAL)
JUDGE

06.08.2021

Ramandeep Singh

Whether speaking / reasoned

Whether Reportable

Yes / No

Yes/ No



ORDER

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Whereas in the present matter, Public Works Department (B & R) Fatehabad vide memo's no. 5792 dt. 09.08.2021, received on 16.08.2021 sent the copy of order/judgment dated 06.08.2021 passed by the Hon'ble Punjab and Haryana High Court in CWP No. 11971 of 2021 titled as "Ishwar Singh Vs State of Haryana & others". After examining, it revealed that the petitioner namely Ishwar Singh s/o Ram Kumar R/o House no. 635 VPO Bhuthan Kalan District Fatehabad had filed writ petition bearing CWP No. 11971 of 2021 before the Hon'ble Punjab and Haryana High Court and vide order dated 06.08.2021, the Hon'ble High Court disposed of the above said writ petition with following observations:

"...The writ petition is disposed of with a direction to the Deputy Commissioner, Fatehabad to decide the pending matter of NOC of the petitioner by passing a speaking order and by keeping in view the law laid down by this Court on the subject. The order be passed as expeditiously as possible and not later than eight weeks from the date of receipt of certified copy of this order."

Whereas in compliance of the direction above, the case file was examined and it was noticed that Indian Oil Corporation Limited vide letter memo HDO/NOC/VILLAGE BHUTHAN KALAN dt 15.02.2020 made request to grant NOC for setting up a Retail outlet (Petrol Pump) on the land bearing Khasra no. 185/22/1, 22/2 Village Bhuthan Kalan, Bhuthan-Hasanga Road, Block Fatehabad District Fatehabad which has been proposed in the name of Ishwar Singh i.e. the petitioner.

Whereas thereafter vide this office memo no. 1119-29/PLA dated 09.06.2020, the concerned authorities including PWD (B&R) Fatehabad and Forest Department Fatehabad were directed to provide their comments in view of memo no. 252-72/PLA dated 04.02.2020 in connection with NOC and vide memo no. 2124 dated 30-03-2021, PWD (B&R) Fatehabad gave their comments with following remarks:-

- 1) The PWD Land for acceleration Lane Deceleration lane is not available at site, company/Owner of petrol pump will arrange extra land as per requirement and submit the case after ownership of land.
- 2), NOC from Forest Department beyond formation Width of road is to be arranged from the Forest Department.
- 3) The distance from nearest fuel station is required 300 Mtr whereas in this case it is 280 Mtr.

Whereas aggrieved with this, the petitioner approached the Hon'ble Punjab & Haryana High Court by filing the aforementioned writ petition.

During examination of the case file, the concerned officer i.e. SDE, PWD (B&R) Bhuna District Fatehabad appeared on 07.09.2021 before the undersigned and produced the guidelines with regard to access permission to fuels stations (excluding properties) along state roads i.e. SH/MDR/ODRs/VRs duly approved by Govt. vide Dy. No. 39410/PSCM dated 28.09.2020, conveyed vide memo no 575-RII-19,406-RII-20/Tech./Roads/211.55/Guidelines for access permission 152824-152878/2020 dated 13.10.2020 by Engineer-in-Chief, Haryana PWD (B&R) Chandigarh vide which it has been clearly mentioned that for setting up a retail outlets (Petrol Pump) over State Highways (SH), Major District Roads (MDR) & Other District Roads (ODR/VR), distance between two fuel stations would be 300 meters and also apprised about clause 10.0 which states "No relaxation in these Guidelines/Norms shall be permissible."

Whereas on the other hand, the petitioner vide application dated 19.08.2021 also supplied the copy of order/judgment dated 06.08.2021 discussed above along with the copy of decision dated 22.10.2013 rendered by the Hon'ble Punjab and Haryana High Court in CWP No. 19287 of 2011 case titled as "Charan Dass Vs Union of India & others". The petitioner vide said application specially stated that the guidelines with regard to distance norms of 300 meters are

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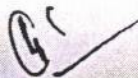
not mandatory but directory in nature as held by the Hon'ble High Court Chandigarh in CWP No. 19287 of 2011. 89

Whereas from the facts of the case, it is an admitted fact that the Hon'ble Punjab and Haryana High Court in CWP No. 19287 of 2011 discussed above, has already observed that "While passing the impugned order, respondent No. 4 has tried to make it a case of statutory violation which was factually incorrect and legally misconceived".

Whereas in order to decide the said case for NOC to set up a retail outlet (Petrol Pump) in view of guidelines issued vide memo number 3-S-2005/12279 dated 30.06.2005 by The Financial Commissioner & Principal Secretary, Government of Haryana, Department of Food & Supplies, Chandigarh, vide memo no. 2269-70/PLA dated 17.09.2021, Xen DHBVN Tohana and District Forest Officer Fatehabad were instructed to send his report and vide memo no 1268 dated 27.09.2021 District Forest Officer Fatehabad intimated that as per Forest Rule. 1980, the applicant has to apply online for NOC. Accordingly vide memo 2429/PLA dated 01.10.2021 and vide memo no 2474/PLA dated 04.10.2021 the applicant company was instructed to take necessary action. Moreover copy of the said letter was endorsed to the petitioner for intimation but neither the petitioner nor the applicant company responded so far.

Whereas keeping in mind the order/directions dated 06.08.2021 as well the above discussed position, I am of the considered view that due to non-receipt of NOC report from Forest Department, the decision over the application moved by the applicant company i.e. Indian Oil Corporation Limited vide its letter memo number HDO/NOC/VILLAGE/BHUTHAN KALAN dated 15.02.2020 for granting NOC to set up retail outlet (Petrol Pump) cannot be taken at this stage. However, in the interest of justice the applicant company is advised to make sincere efforts for NOC before Forest Department as per norms/guidelines.

I order accordingly.


Deputy Commissioner,
Fatehabad. 6

Endst. No. 2519-21) PVA /Dated: 13-10-2021

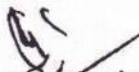
A copy is forwarded to the following for information and necessary action

Please:

1. Id. Advocate General, Haryana, Chandigarh.

2. Gaur Singh s/o Ram Kumar R/o House no. 635 VPO Bhutan Kalan District Fatehabad.

3. Indian Oil Corporation Limited (Marketing Division) Hisar Divisional Office First Floor, SCO 40-41, Sector -13P, Tosham Road, Hisar Haryana.


Deputy Commissioner,
Fatehabad. 6