

Before K. Kannan, J,

BHUPINDER SINGH,—Petitioner

versus

STATE OF PUNJAB & OTHERS,—Respondents

CWP No. 9284 of 2007

30th August, 2011

Constitution of India, 1950 -Art.14 & 226 - Petroleum Rules, 2002- Rl. 144 & 150 - Allotment of petrol pump- Cancellation of NOC by District Magistrate after initially granting it - Allotment involves grant of largesse by public authority - Action must, therefore, stand test of Article 14 of Constitution of India 1950 - Cancellation of NOC permissible only under the two conditions specified in Rule 150 however, public interest also to be seen-No plea of fraud or concealment by petitioner himself in the manner of securing NOC in the first place-Cancellation of NOC quashed

Held, That the allotment of a petrol pump involves grant of a largesse by a public authority and, therefore, the action must stand the test of Article 14 of the Constitution.

(Para 4)

Further Held, That the cancellation of NOC already issued cannot, therefore, be supported for: (i) the conditions for cancellation as spelt out in Rule 150 are not complied with. The reasons given are extraneous to the grounds for cancellation as contained in the said provision. (ii) As regards the location of the outlet, no objection has come from the Oil Corporation itself or from any person, who has applied for the outlet and has been denied the allotment in spite of owning property or willing to locate the outlet at Village Salempur. (iii) The State cannot take the issue of the location, for the first time, where there is no plea of fraud or concealment by the petitioner himself in the manner of securing NOC in the first place.

(Para 10)

Vinod S. Bhardwaj, Advocate, for the petitioner.

Navdeep Sukhna, DAG, Punjab, for respondents 1 and 2.

Girish Agnihotri, Senior Advocate, with Mr. Vijay Pal, Advocate,
for respondent No.3.

M.L. Saggar, Senior Advocate, with Mr. G.P. Vashisht, Advocate,
and Mr. Gurpreet Singh, Advocate, for respondents 4 and 5.

K. KANNAN, J.

(1) The petitioner, who had the benefit of allotment of a petrol pump after securing all statutory clearances and whose petrol pump had been commissioned after issuance of letter of intent, faced an obstacle by the District Magistrate, cancelling the 'No Objection Certificate' (NOC) already issued. This change in the stand had arisen when two persons, who were arrayed as respondents 4 and 5, filed a writ petition in CWP No.18655 of 2004, challenging the allotment made in favour of the petitioner, contending that the location of the petrol pump was a place different from what was advertised by the Oil Company. This allotment was exclusively for Scheduled Caste candidate and the 4th respondent also belonged to the Scheduled Caste category, but incidentally he had not even applied. The 5th respondent belonged to the General category and it is not very clear what his locus standi was. When the above writ petition filed at their instance was pending, the District Magistrate was reported to have taken a fresh appraisal on the location of the property with reference to the revenue records and cancelled the NOC already granted on the grounds essentially that the location of the petrol pump was at the village that had not been notified and that further the width of the road on which the petrol pump was located, was less than 5 *karams*, which was the minimum approved width as per the guidelines issued by the Corporation.

(2) After the filing of the writ petition, having regard to the cancellation of the NOC already issued, instead of directing the petrol pump to be closed, the Division Bench of this Court before which this case had been brought up, passed an order on 09.07.2007, permitting the Corporation to run the outlet in question, until further orders. This order was extended from time to time. By order dated 13.05.2008, the Division Bench had clarified that the Corporation could not entrust the running of the outlet to anyone including the petitioner.

(3) The contention of the petitioner is that the cancellation of the NOC as enjoined by the relevant Rules was restrictive and the several reasons set forth in the order of the District Magistrate which is impugned traversed outside the relevant factors for consideration. The first contention, therefore, was that the power of cancellation could not be exercised for reasons which would have been perhaps relevant at the time when the NOC was issued for the first time. If there was no fraud or suppression made at any time, a cancellation cannot be undertaken at the whims of the District Magistrate. The second contention is that, even the alleged grounds for cancellation as found in the order, cannot be supported.

(4) I would take the second objection first to examine whether the District Magistrate was correct in stating that there had been a serious violation in the manner of allotment that could justify a decision not to grant a NOC. The allotment of a petrol pump involves grant of a largesse by a public authority and, therefore, the action must stand the test of Article 14 of the Constitution. In the advertisement issued, the location and the identification of the stretch of the road as far as serial number 98 that is relevant for this case, was as follows:-

Sr. No.	Location	Identification of stretch of road	WML/OM	Approx. min. plot size (Mtr.) frontage & depth	Revenue District	Category	Marketing plan (as applicable)
98	Village Salempur	Between Bore and Chaunta	OML	35 x 40	Ludhiana	SC	

Admittedly, the petitioner was a Scheduled Caste candidate and he had applied for allotment of an outlet in a property which was situate at Kalewal. The contention of the petitioner to justify that the location did not breach the advertisement was by showing that the property which was identified to reside between Bore and Chaunta included Kalewal as well which fell within the very same panchayat of Salempur. The most crucial issue was, whether the location and the name of the village must be only understood from the context of such location brought through the terminal villages on either side as found in the advertisement. The distance between Bore and Chaunta itself was said to be not more than a kilometer and both, Salempur and Kalewal were comprised in that stretch. Kalewal is surrounded on all sides of Salempur and in the actual road stretch between Bore and Chaunta

where any portion of Village Salempur was situate, there could not have been a location of petrol pump, since it was a notified forest area. The understanding brought through the advertisement was, therefore, meant as a possible location also in Kalewal.

(5) The counsel for the State would, however, contend that, previously the reports had been given by the Naib Tehsildar in active connivance of the petitioner and he was being charge-sheeted and departmental action was being taken for false information. All the applications and field maps had been given only for a location of the property at Salempur and approval for location at Kalewal could not have been, therefore, granted. The learned counsel for the petitioner would contest this stand of the State by pointing out to the statement filed on behalf of the State in the writ petition filed in CWP No.18655 of 2004. It was worthwhile to reproduce what the contention in defence by the State was:-

“Para No.8: As per record land bearing Khasra Nos.22//20/1 (0-12), 21/1/3(0-3), 19(3-12), 22/2/1(0-19), Khewat No.12, 13, 14, 68, Khatauni No.17-18- 19-81. Jamabandi for the year 1988-89 (land measuring 5K-6M) is situated at Village Kalewal, Hadbast No.32, but this was a strip in between the revenue estate of Village Salempur. Para No.9: Admitted that Halqa Patwari and other Revenue Officers made a report that land bearing Khasra Nos.22/20/1(0-12), 21/1/3(0-3), 19(3-12), 22/2/1(0-19), is situated on Machhiwara-Ludhiana road and falls in Village Kalewal Hadbast No.32. In the report it is also mentioned that Panchayat for Village Kalewal and Village Salempur is the same.”

It is evident that the Government was taking a specific contention that the Panchayats for the Villages Kalewal and Salempur were the same and the Village Kalewal was but a strip between the revenue estate of Village Salempur. Having taken up this contention, the State made a *volte face* to later take a decision that the village was not the same and proceeded to withdraw the NOC.

(6) We are examining the case from a situation of how the NOC which was issued first, was later sought to be withdrawn and cancelled and it is this cancellation of NOC that is principally in challenge. It is, therefore, crucial to read the relevant Rules as to when a cancellation is possible. The Petroleum Rules of 2002 sets out the guidelines for the NOC and the

cancellation of NOC. Rule 144 enjoins that, the district authority will examine the site plan showing the location of the premises proposed to be licensed to ensure that there was no objection. He has the power to hold an enquiry before issuance of NOC. Rule 150 prescribes the relevant procedure for cancellation. Since the impugned order is an order of cancellation, it is essential to reproduce the entire text of Rule 150. Rule 150 reads as follows:-

“150. Cancellation of no-objection certificate- (1) A no-objection certificate granted under Rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the District Authority or the State Government is satisfied, that the licensee has ceased to have any right to use the site for storing petroleum;

Provided that before cancelling a no-objection certificate, the licensee shall be given a reasonable opportunity of being heard.

(2) A District Authority or a State Government cancelling a no-objection certificate shall record, in writing the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned, copy of the order cancelling the no-objection certificate.”

There are two conditions for a cancellation: (i) the right to store petrol must have been withdrawn; (ii) the licensee must have lost the right over the land over which the facilities are installed when the licence is given. It would appear, therefore, that if these two contingencies do not arise then the cancellation itself would not become possible. Admittedly, the Corporation is interested in supporting the case of the petitioner and would have no objection for the facilities to be located at the same place. It has not withdrawn its supplies to the petitioner on its own. Again, the petitioner has not lost his right over the property. Neither of the two conditions exists and strictly speaking the cancellation is not possible in the manner done.

(7) I am prepared to relax a strict construction and examine if in public interest, the State should see that in the manner of issuance of NOC, it had not been misled by its own officers by giving incorrect reports. It may surely have a relevance when the authorities, who are entrusted with preparing necessary groundwork for a District Authority to take an appropriate decision, had misled him with wrong details. That is precisely the contention which is taken by the District Magistrate for cancellation.

The ground alleged is that it is not within the Village Salempur and all the site plans had been submitted for Village Salempur and the Naib Tehsildar had given a false report that the location of the petrol pump was in the Village Salempur. In my view, this explanation given by the District Magistrate is too naive to be accepted. The District Magistrate before issuing the NOC has received the clearances from the District Food and Supplies Controls, has a reason to examine the actual location to ensure that there were appropriate drains provided and the Public Works Department (PWD) was actively involved to ensure that between the road and the place where the outlet was situate, there were drainage pipes for draining excess water. The Sub Divisional Magistrate (SDM) has given a report to say that there were no high-tension wires and that there were no petrol pumps in the near vicinity about 10 kilometers. The District Town Planner has referred to the issue of NOC on an assurance that the Company shall leave 3-3 meter land in front of the road of the site. The Food Civil Supplies and Consumer Affairs Officer has certified that the land belonged to Village Salempur. The Chief Agriculture Officer has carried out inspection and he has stated that the general public would be benefitted and the District Superintendent of Police has also carried personal inspection. The District Rural Development and Panchayats Officer has made specific reference to the location of the property and the District Fire Officer has stated that fire brigade vehicle can come and go easily. The Additional Chief Administrator of the Punjab Urban Planning and Development Authority, Ludhiana, has carried out inspection to affirm that there could not be objection, while the District Forest Officer has stated that permission for use of land for non-forest purposes has been given.

(8) The learned counsel for the petitioner states that the issue of property itself is not relevant and the counsel for the Corporation also states that since, for the allocation to a Scheduled Caste candidate, there was no requirement of any possession of property. In my view, it is one thing to state that an applicant need not own property but quite another to say that the location or identification of the property, as stated in the advertisement, is irrelevant. The location becomes relevant in a situation where the persons, who want to compete for allotment ought to have for a level playing field. Any member of public, who wants to set up an outlet ought to know beforehand where the outlet is going to be situate and whether he would be competent to apply for an allotment. In this case, if there had been any

objection at the instance of any member of public that he was interested in applying for an allotment, but he had not so applied only because he did not know that even the location of the property at Kalewal could be made for an advertisement for Salempur, then it should become possible for him to challenge such an allotment. A person, who was applying for an allotment under Scheduled Caste category, was not required to possess any property. All that was required was an intention to set up an outlet at the place indicated. To this extent surely it is irrelevant for a person being a prospective allottee that he owned property in Salempur or not. In this case, the objection which has come from the 4th respondent, who was a Scheduled Caste category, had not even applied. If his contention were to be that he had not applied since he was under the impression that outlet would be located only in Salempur and if he had known that he could also be in Kalewal, he would have also applied then there could have been some justification. So long as the possession of any property was not a precondition for a Scheduled Caste category, such a person, who was applying for an allotment, could not have been in any way misled. It could not have mattered at all whether the property was situate in Salempur or Kalewal. As far as the 5th respondent is concerned, he was a person, who belonged to a General category and he could have had no objection for the allotment. The counsel for the State himself admits that it was not possible to locate any petrol pump along side the road in Salempur since it is a forest area. The counsel for the Corporation contends that the location must have been seen as relevant only to the extent to which their own commercial interest and the public interest are properly serviced. In a case where the State has gone through originally with no objection in a situation where Kalewal was comprised in the same Panchayat of Salempur, it ought not to be taken as a serious breach which the State could take as a ground for cancelling the NOC. If the Corporation had decided not to make the allotment since it was not possible to locate the outlet in the said Village or if the objection had come from a candidate, who had applied and who either owned property or willing to offer a property for location at Salempur and pleaded for a better entitlement over the petitioner, then alone the cancellation could have been possible by the Corporation itself. On the other hand, the State cannot force a cancellation by joining issues on location so long as there existed all statutory compliances.

(9) Even the contention that the breadth of the road was not sufficient and fell below the guidelines issued by the Corporation, does not appear to be correct. The contention of the State through the District Magistrate is that the breadth of road is only 4 *karams*. It is not seen how this contention is made, for, the survey plan has been filed in Court and it specifically demarcates the breadth of the road to be 5 *karams*. The Government has a strange reply to make in this regard. In the impugned order of cancellation, the District Magistrate has stated as follows:-

.....The patwari's report indicates it as 5 *karams*, the revenue record as four *karams*, while the actual width at site is merely 3 *karams*."

Even apart from the Patwari's report, the revenue record as produced before the Court shows the width to be 5 *karams*. It is nowhere mentioned as to who actually measured the breadth of the site merely at 3 *karams* when the records shows that it is 5 *karams*. If there is any narrowing of the road, probably, there is even a scope for widening it to restore the breadth of the road as found in the village records. I cannot, therefore, take even the objection that the site where outlet was to be located, did not have the requisite breadth and did not conform to the guidelines.

(10) The cancellation of NOC already issued cannot, therefore, be supported for: (i) the conditions for cancellation as spelt out in Rule 150 are not complied with. The reasons given are extraneous to the grounds for cancellation as contained in the said provision. (ii) As regards the location of the outlet, no objection has come from the Oil Corporation itself or from any person, who has applied for the outlet and has been denied the allotment in spite of owning property or willing to locate the outlet at Village Salempur. (iii) The State cannot take the issue of the location, for the first time, where there is no plea of fraud or concealment by the petitioner himself in the manner of securing NOC in the first place.

(11) The impugned letter of cancellation of NOC is quashed. The NOC issued already stands restored and the 2nd respondent-Corporation is at liberty to ensure the restoration of the agency to the petitioner as per their contract.

(12) The writ petition is allowed on the above terms.

G. Gupta