

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE**

**HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA**

**ON THE 8<sup>th</sup> OF SEPTEMBER, 2022**

**WRIT PETITION No. 17389 of 2022**

**BETWEEN:-**

**M/S LAXMI SERVICE STATION  
THROUGH ITS PARTNER SHRI NARESH  
KUMAR BATRA S/O SHRI BHAGWAN  
DAS JI BATRA 17, MANISH BAG  
COLONY NEAR AGRAWAL NAGAR  
INDORE (MADHYA PRADESH)**

**.....PETITIONER**

***(SHRI PIYUSH MATHUR, SR.COUNSEL WITH SHRI MADHUSUDAN DWIVEDI,  
COUNSEL FOR THE PETITIONER)***

**AND**

**1. UNION OF INDIA MINISTRY OF  
PETROLEUM AND NATURAL GAS  
THROUGH ITS SECRETARY A-WING  
SHASTRI RAJENRA PRASAD ROAD AZAD  
BHAWAN ROAD IP ESTATE NEW DELHI  
(DELHI)**

**2. COLLECTOR CUM DISTRICT MAGISTRATE  
INDORE, COLLECTORATE, INDORE  
(MADHYA PRADESH)**

**3. PETROLEUM AND EXPLOSIVE SAFETY  
ORGANISATION AND EXPLOSIVE SAFETY  
ORGANISATION THROUGH ITS DEPUTY  
CHIEF CONTROLLER OF EXPLOSIVE E-  
7/41, LALA LAJPAT RAI SOCIETY, NEAR 12  
NO. BUS STOP, ARERA COLONY, BHOPAL  
(MADHYA PRADESH)**

**4. HINDUSTAN PETROLEUM CORPORATION  
LTD. THROUGH ITS CHIEF REGIONAL  
MANAGER 27-A, KAPAS BHAWAN, GROUND  
FLOOR, RACE COURSE ROAD, INDORE  
(MADHYA PRADESH)**

**.....RESPONDENTS**

***(SHRI. HIMANSHU JOSHI, COUNSEL FOR RESP. NO.1 AND 3, SHRI ADITYA***

**GARG, G.A. FOR RESP.NO.2 AND SHRI ANIKET NAIK, COUNSEL FOR THE RESP.NO.4)**

*This petition coming on for orders this day, the court passed the following:*

**ORDER**

The present petition has been filed under Article 226 of the Constitution of India seeking quashment of the order of cancellation of No Objection Certificate dated 14.7.2022 and also a direction to permit the petitioner Firm to operate the retail outlet situated at Plot No.110, Ushaganj, Opposite G.P.O, A.B.Road, Indore which has been seized with effect from 3.5.2022 and a direction to resume the sales and supply of petroleum products to the retail outlet of the petitioner firm and other reliefs.

The facts of the case are that the petitioner Firm is a partnership firm and is engaged in the business of petroleum products through its filling and service centre/retail outlet known as 'M/s. Laxmi Service Station' situated at A.B. Road, G.P.O Square, Indore. For establishing a retail outlet, as per provisions under the Petroleum Act, 1934, a No Objection Certificate was granted vide letter dated 30.8.1957 to M/S. Standard Vacuum Oil Company. The said petrol pump was transferred to Hindustan Petroleum Corporation Limited (in short referred as 'HPCL') and the HPCL has granted the same retail outlet to the petitioner Firm as a Corporation owned/leased outlet which was commissioned since December, 1971. Thereafter the petitioner Firm

has been continuously operating the retail outlet for which lease agreement as well as dealer ship agreements were executed between the petitioner Firm and HPCL. Currently the lease agreement was executed on 12.5.2006 for the period of 30 years i.e. upto 31.3.2035 on the terms and conditions contained in the lease agreement. The petitioner Firm has been appointed as Dealer by the oil company for the retail, sale and supply of petroleum products i.e. motor spirit (petrol) and HSD (diesel) since last more than 50 years. Lastly, dealership agreement was executed on 22.9.2014 for a period of 10 years i.e. upto 31.9.2024.

It is further stated that the import, transport, production and storage of petroleum products are governed by the provisions of Petroleum Act, 1934. It is submitted that under the provisions of the Act, the Rules have been framed which are called the Petroleum Rules 2002. As per Chapter VII of the aforesaid Rules, granting of license is prescribed under Rule 141 and Rule 144 provides for No Objection Certificate. The Rules 148 provides for renewal of license as well as Rule 149 and 150 provides for refusal of NOC and cancellation of NOC. As per the provisions of Rule 148 of Rules 2002, the Controller of Explosives has renewed the existing petroleum class A and B. The license granted to the petitioner has been renewed by order dated 22.1.2015 upto 31.12.2024.

On 2.5.2022 an incident of fire had taken place while unloading the petroleum product at M/s. Laxmi Service Station at Indore at about 12.04 PM during Tank Truck (TT) decantation and the employees as well as partner of the Firm has taken precautionary measures and the fire was controlled with the assistance of fire equipments. The incident was reported to the HPCL officials at about 12.10 PM. The petitioner Firm narrated the incident that there was minor seepage from Hose Coupling at the decantation end, therefore, spilled product was accumulated in the unloading chamber and fire occurred at the TT Decantation Pit while removing the spilled product from the decantation chamber by a sponge, based upon which an investigation team was constituted by the HPCL for carrying out the inspection. Three members investigation team visited the retail outlet on 3.5.2022 at 12.30 PM and had submitted its report by recommending for issuance of Standard Operating Procedure, compulsory use of non-static material during the decantation process, dedicated unloading hose pipe at the outlet and also strict compliance of safety measures, initiation of action against the retail outlet employees and IT Crew who were involved in unloading process. It is further submitted that on the date of incident i.e. 2.5.2022 the District Food Officer has carried out inspection and sampling and nothing wrong has been found by him. The remaining petroleum product of Tank Tanker (TT) decanted in presence of the

officials of Food Department and the retail outlet was continued to be operated, which was later ceased by the District Authorities on 3.5.2022.

The Additional District Magistrate, District Indore has issued a show cause notice to the Regional Manager and Assistant Manager (Sales) of HPCL dated 3.5.2022 mentioning incident of fire, occurred on 2.5.2022 and sought explanation within three days in relation to the action taken against the officials/employees who was responsible for the incident as well as initiation of criminal prosecution against them. The Regional Manager and Assistant Manager (Sales) replied to the aforesaid show cause notice by reiterating the fact that the action has been taken against the erring driver/helper of the tank truck and action has been taken by removing the two employees of the outlet who were involved in the matter of use of sponge in place of cotton clothes for removing the spilled petroleum product. Based upon the recommendations made by three members committee, a detailed guidelines have been issued by the Chief Regional Manager on 4.5.2022 to all retail outlet situated at Indore region for maintaining the retail outlet as per the Rules and guidelines.

Thereafter a show cause notice was issued on 4.5.2022 by the Chief Regional Manager of the respondent oil company mentioning therein eight recommendations have to be strictly adhered as a

precautionary measure so that such type of eventuality to be prevented. It has also been mentioned that petitioner Firm has violated Clause 21,36 and 42 of the Dealership Agreement dated 22.9.2014. An investigation was carried out on 3.5.2022 in which some minor irregularities were found in relation to not following the safety measures. Since there was safety violation during unloading of tank truck, therefore, sales and supply of the outlet has been suspended for seven days with immediate effect. After receiving the show cause notice, the petitioner Firm submitted its reply on 12.5.2022 reiterating that the recommendations and guidelines issued by the Oil Corporation should be strictly followed by the petitioner Firm and the safety measures which have been recommended to be strictly complied with in future and two erring employees have been removed from service and requested for re-opening of the retail outlet as the district officials have seized the petrol pump by affixing its seal with effect from 3.5.2022.

The District Magistrate, Indore issued a show cause notice on 17.5.2022 to the petitioner Firm whereby mentioning the fact of the incident of fire and granting NOC under Rule 115(3) of the Petroleum Rules, 1937 framed u/S.29 of the Petroleum Act, 1934 by which the license was issued for operation of petrol pump to the petitioner. The show cause notice was issued by mentioning the public safety and

danger to public at large and sought reply within three days as to why the NOC issued for petroleum pump may not be cancelled under Rule 150 of the Petroleum Rules, 2002 (hereinafter referred as ' Rules 2002' ).

The petitioner Firm filed its reply to the aforesaid show cause notice reiterating the fact that the petitioner Firm immediately removed two erring employees of the retail outlet and the fact that there are proper safety measures available in the retail outlet. The petitioner Firm is properly following and complying all the safety measures and guidelines provided and requested to permit the petitioner Firm to resume operating the petrol pump. Thereafter the District authority vide its permission letter dated 4.7.2022 has permitted the petitioner Firm to re-open and operate its office with a condition that the petitioner Firm shall be prohibited from selling and supplying any petroleum product.

The District authority passed the impugned order dated 14.7.2022 whereby stating that the petitioner Firm is not competent to operate the retail outlet/petroleum pump and in the interest of the safety of public at large, the NOC issued for establishing of the petrol pump has been ordered to be cancelled under Rule 150 of the Rules 2002 by further directing the Chief Explosive Controller, Bhopal for initiation of proceedings in relation to license. The District Magistrate has further

directed the Commissioner, Indore Municipal Corporation, Indore for taking further action with respect to business license issued by the Municipal Corporation, Indore.

The petitioner challenged the impugned order of cancellation of NOC on the ground that the order is without jurisdiction. The District Magistrate has no authority to pass the order of cancellation of NOC under Rule 150 of the Rules 2002 after introduction of Commissioner of Police system in the city of Indore by notification dated 9.12.2021. It is argued that in exercise of the powers conferred u/Ss.4,5,14,21 and 22 of sub-section 1 of Section 29 of the Petroleum Act, 1934, the Central Government has made the Rules called the Petroleum Rules 2002. Under the aforesaid Rules, the power to grant NOC is conferred to the District Authority and power of cancellation of NOC is conferred to the District Authority or the State government on the ground that the licensee has ceased to have any right to use the site for storing petroleum. As per the Rule 2(x)- District authority means (a) in towns having a Commissioner of Police, the Commissioner or a Dy. Commissioner of Police; (b) in any other place the District Magistrate. It is submitted that no power has been conferred to the District Magistrate in a city where Commissioner of Police has been introduced. The District Magistrate is only the District authority in the other places



where Commissioner of Police system is not operating. Thus, the order passed by the District Magistrate is without jurisdiction.

It is also submitted that the NOC has been cancelled on a ground which is not existing in Rule 150 of the Rules 2002. Under the provisions of Rule 150, the District authority or the State government is conferred powers to cancel the NOC only when it is satisfied that the licensee has ceased to have any right to use the site for storing petroleum. The grounds on which the NOC has been cancelled is not within the purview of Rule 150 of Rules 2002. The petitioner being a licensee has not ceased to have any right to use the site for storing petroleum and no finding has been recorded in this relation that the petitioner firm have ceased to any right, then in such circumstances without there being any finding in this regard, the provisions of Rule 150 could not have been applied. It is urged that the NOC is granted under the provisions of Rule 144 of the Rules 2002 for the purpose of satisfaction of location of the premises proposed to be licensed and not for any other purpose. If there is violation of any conditions of the license or the dealer agreement, it is for the licensing authority to take action in the matter.

In the present case, three members committee of HPCL has already conducted the investigation of the retail outlet and it was found

that the TT Crew (driver/helper) and the two employees of the retail outlet responsible. The incident took place due to the mistake caused by TT driver and helper and two employees of the petitioner's retail outlet at the time of decantation of petroleum production and the action has already been taken against them and the oil corporation has also taken care of safety measures of the petroleum pump by issuing directions which has already been complied by the petitioner firm. On the basis of the aforesaid submissions it has been argued that the order passed by the District Magistrate - the respondent No.2 is without jurisdiction and beyond the purview of Rule 150 of Rules 2002.

In support of his submissions learned counsel for petitioner relied upon the judgment passed by the Apex Court in the case of ***Yogesh Kumar and others Vs. Bharat Petroleum Corporation Ltd. & Ors (1990) 4 SCC 49*** and also the order dated 26.6.2019 passed by coordinate bench at Jabalpur in WP No.21686/2018 ***Mrs. Lubeena Siddiqui Vs. Union of India & Ors.*** He also cited the judgment passed by single bench of the High Court of Tripura at Agartala in the case of ***Biswas & Sons. Vs. State of Tripura 2016 SCC Online Tri 498*** and also relied upon the judgment passed by single bench in the case of ***Swaraj Kisanrao Borkar Vs. The Collector and District Magistrate, Chandrapur & Ors*** passed by High Court of Bombay, Nagpur Bench in WP No.1442 of 2019 on 22.4.2022.

Before referring to the reply by the respondent No.2, it is apposite to refer the stand taken by the respondent No.4 HPCL. The company has supported the case of the petitioner. It is submitted that NOC contained in Annexure P/1 was issued in the name of M/s. Standard Vacuum Oil company which is the predecessor of the answering respondent. The NOC dated 30.8.1957 was issued in the name of the respondent company and has been issued individually in the name of the petitioner due to which the respondent No.2 ought not to have cancelled the NOC treating it to be an action against the petitioner. It is stated that Rule 15 empowers the cancellation of NOC if District Magistrate is satisfied that the licensee has ceased to have any right to use the site for storing the petroleum product. In the instant case, the retail outlet land is possessed by the respondent company with valid license which is subsisting as on date. It is also stated that in an incident of fire was reported by the petitioner through its Proprietor on 2.5.2022 to Area Sales Manager, Indore East sales area. The incident of fire had taken place at around 12.04 PM while decantation of tank truck was in the process whereby high speed diesel (HSD) motor spirit (MS) products were spilled out from unloading chamber. A detailed investigation has been undertaken by the respondent company by constituting a three member investigation committee. Upon investigation by the committee, it has been found that the root cause for

occurrence of the fire incident was minor seepage of MS from hose pipe coupling at decantation end which leads to product spillage in and around the decantation chamber. A specific stand has been taken that the action initiated against the petitioner is unwarranted on account of prejudice being caused to the respondent by the said action. The respondents have already issued advisory on 4.5.2022 to all its retail outlet dealers for adhering to complete safety measures. In view of the aforesaid, the cancellation of NOC was not desirable.

A reply has been filed on behalf of the respondent No.2. It is stated that on 2.5.2022 an accident of fire took place at the petrol pump of the petitioner which is situated at one of the busiest square of Indore situated at GPO square which is surrounded by dense population and heavy traffic through out the day. During decantation proceedings due to non following of the standard operating procedure, as contemplated by the petroleum companies a fire outbreak took place which was even recorded in the camera. Copy of the CD showing the said incident has been annexed along with the reply. It is further submitted that not only that the fire outbreak took place but the entire tank filled with 12000 litres of petrol was driven to the main road while fire trail following it. Though, there was no loss of life or injury but the the manner in which the entire incident took place is sufficient to hold that the petitioner pump was not careful or responsible about the safety and

precautionary measures, which are mandatory, particularly when while dealing with petroleum products which are highly inflammable. It is further stated that the staff of the petitioner was not having proper fire proof clothes or other necessary measures and even the staff was put at high risk trying to stop or control the fire which could have led to serious accident resulting in loss of life or serious injury. It is further stated that the petitioner in reply to the show cause notice has agreed that they did not follow the standard operating procedure of decantation and where it was required to use cotton clothes, a sponge was used which was the cause of fire and this fact has been duly accepted by the petitioner in the reply to the show cause notice and the SOP was not followed by them.

It is further submitted that the Commissioner of Police system has been introduced in the city of Indore by gazette notification dated 9.12.2021 but the Commissioner of Police has been conferred powers of District Magistrate only in respect of the Acts mentioned in Schedule appended to the notification issued under sub-section 5 of Sec.20 of the Cr.P.C. In the Schedule, the Petroleum Act has not been included and, therefore, the power still exists with the District Magistrate.

It is urged that on harmonious interpretation of the Rules, it can be gathered that under Rule 150 the power has been given to the District

Authority as well as to the State government and the respondent No.2 being District Magistrate is having power to exercise the power for cancellation of NOC. It is further argued that the words under Rule 150 of Rules 2002 'ceased to have any right to use the site for storing petroleum' cannot be given narrow meaning. It has to be interpreted that in a case where the company has failed to observe the norms relating to safety, the power can be exercised. In support of his submission he placed reliance on the judgment passed by the Delhi High Court in the case of *Pratap Oil Company Vs. State (NCT of Delhi) & Ors 2000(54) DRJ 299* decided on 4.5.2000 in CW NO.944/2000.

No any other point has been raised by the parties.

I have heard the learned counsel for parties and perused the record.

Two issues have cropped up for consideration in the present case.

(1) Whether the District Magistrate is competent to pass an order of cancellation of NOC under Rule 150 of the Petroleum Rules, 2002 after enforcement of the Commissioner of Police System at Indore ?

(2) Whether in exercise of the powers under Rule 150, the respondent No.2 could have passed an order of cancellation of the NOC on the grounds which are not mentioned under Rule 150 ?

To appreciate the aforesaid issues which have cropped up for consideration, it is apposite to consider the relevant provisions of the Petroleum Rules 2002.

Rule 2(x) 'District Authority' means--

(a) in towns having a Commissioner of Police, the Commissioner or a Deputy Commissioner of Police;

(b) in any other place, the District Magistrate;

Rule 150 reads as under:-

**" 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. "

It is not in dispute that in the city of Indore, the Commissioner of Police system has been introduced by notification dated 9.12.2021. As per the definition of District Authority, it means in towns having a Commissioner of Police, the Commissioner or Deputy Commissioner

of Police. In any other place the District Magistrate. Power to grant NOC under Rule 144 is conferred to the District Authority whereas under Rule 150 power to cancel the NOC is conferred to the District Authority or the State government. The word District Magistrate is neither used under Rule 144 nor under Rule 150 of the Rules 2002. The District Magistrate was exercising its power to grant NOC or cancellation of power under Rule 150 by virtue of being District Magistrate in a town which was not having a Commissioner of Police system as per the definition of sub rule (x) of Rule 2. The import, transport, production and storage of the petrol products are governed under the Petroleum Act 1934 and the Rules made therein. The "Rules 2002" have been framed under the provisions of the Petroleum Act, 1934 and, therefore, the grant of NOC and the cancellation of NOC is governed by the Rules of 2002. After application of Commissioner system in the city of Indore, the District Magistrate ceases to be a District Authority under sub rule 10 of Rule 2 of the Rules 2002.

I do not find any merit in the submissions of learned counsel for State - respondent No.2 that since the Petroleum Act is not included in the Schedule of the various Acts appended along with the notification of sub-section 5 of Sec.20 of the Code of Criminal Procedure, 1973, therefore, the District Magistrate would not ceases to be the competent



authority under Rule 150 of Rules 2002 as the power of the District Magistrate has not been conferred on the Commissioner of Police even after the application of the Commissioner of Police system in Indore town. The provisions of sub-section 5 of Sec.20 of Cr.P.C reads that nothing in this section precluded the State government from conferring under any law for the time being in force, on a Commissioner of Police, all or any of the power of an Executive Magistrate in relation to a metropolitan area.

The definition of “District Authority” under sub clause 10 of Rule 2 and the language of Rule 150 is unambiguous and very clear that the power has been conferred to the District Authority or the State government and not to the District Magistrate. There is no provision under the Petroleum Act or the Petroleum Rules conferring power to the State government to delegate its power to the District Magistrate. The District Magistrate is only the authority in the towns which are not having a Commissioner of Police or Deputy Commissioner of Police and not for the towns where the post of Commissioner of Police or Deputy Commissioner of Police are existing.

Thus, the first issue is answered that the order passed by the District Magistrate under Rule 150 of Rules 2002 is without jurisdiction.

The second question arises for consideration is that whether in exercise of the powers, the respondent No.2 could have passed the order of cancellation of NOC for the grounds mentioned in the order which are not covered under the provisions of Rule 150.

The District Magistrate has passed the impugned order stating that considering the reply of the petitioner Firm and HPCL it has been concluded that the petitioner Firm is not competent to operate the retail outlet and petrol pump and in the interest of safety of public at large the NOC issued for establishment of petrol pump has been ordered to be cancelled with further directions. The language of Rule 150 is unambiguous and unequivocal that the NOC can be cancelled by the District Authority or the State government if it is satisfied that the licensee has ceased to have any right to use the site for storing petroleum. The word 'licensee has ceased to have any right to use the site for storing petroleum' has come up for consideration before the Apex Court in the case of *Yogesh Kumar* (supra). The relevant para 4 of the judgment reads as under:-

"4. The High Court has rightly observed that the District Authority under Rule 151 can cancel the No Objection Certificate — only when the licensee ceases to have any right to use the site for storing petrol. However, there are certain subsequent observations made by the High Court in the impugned judgment which might lead to an inference that so long as the licensee continues to have leasehold rights on the site, the 'No Objection Certificate' cannot be cancelled at all. That does not appear to be the correct position of law. On a reading of sub-rule (1) of Rule 151 it is clear that a 'No Objection Certificate' granted under Rule 144 can be cancelled wherever the licensee ceases to have any right to use the site for storing petrol and that right could be lost by a licensee either by his tenancy or right to the use of the site coming to an end or for any other reason whereby, in law, the right to use the site for storing petrol ceases."

The Apex Court in the said case held that the NOC already granted under Rule 144 of the Rules 1976 is *pari materia* to the 2002 Rules which can be cancelled only under the circumstances when the licensee ceases to have any right to use the site for storing the petroleum. The same view has been taken by co-ordinate bench at Jabalpur in the case of *Mrs. Lubeena Siddiqui* (supra) and by the

High Court of Tripura in the case of *M/s.Biswas & Sons* (supra) and Nagpur bench in the case of *Swaraj Kisanrao Borkar* (supra).

There is nothing available which refracts the petitioner Firm has ceased right to use the right for storing petrol. On the contrary, the respondent No.4 HPCL company has stated that the incident was investigated by them and the action has already been taken against the tank truck (TT Crew) driver/helper and two employees of the retail outlet. An advisory has already been issued on 4.5.2022 to all the retail outlet dealers for adhering to the complete safety measures. The action taken by the respondent No.2 has been held to be unwarranted on account of the prejudice caused to the respondent company.

The judgment relied upon by the counsel for respondent No.2 *Pratap Oil Company* (supra) has not taken into consideration the judgment passed by the Apex Court of *Yogesh Kumar* (supra) and, therefore, the said judgment is held to be *per incuriam* and the same would not render any assistance to the facts of the present case.

In view of the aforesaid, the **present petition is allowed**. The order of cancellation of NOC dated 14.7.2022 Annexure P/12 is quashed and the petitioner is permitted to operate the retail outlet.

The District Authorities are directed to permit the petitioner for selling and supplying the petroleum products. No order as to costs.

**(VIJAY KUMAR SHUKLA)**

**JUDGE**

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