

MC(N) 1268/2006

BEFORE

THE HON'BLE MR. JUSTICE P.G. AGARWAL

Heard Mr. H. Roy, learned Senior advocate appearing for the writ petitioner, Mr. M.K. Choudhury, Senior advocate appearing for the IOC, Mr. A.K. Goswami, appearing for respondent No.7, Mr. C. Baruah appearing for respondent No. 6,8, 9 and Ms. R. Chakraborty appearing for the State Government.

The matter relates to establishment of Kishan Sewak Kendra at Lakhipur Bazar, for which a selection process was conducted and respondent No.7 appeared at Sl. No.1 whereas the writ petitioner Brajendra Pandey was placed at Sl. N. 2. Thereafter, the respondents No.7 approached the concerned authorities for grant of no objection certificates (NOC) and vide order dated 15.10.05, the prayer was rejected due to objections from the various corners and on the ground that the existing law and rules also does not permit it.

Respondent No.7 thereafter, filed an application and the matter was again processed and subsequently vide impugned order dated 2.1.06, the District Magistrate, Goalpara, issued no objection certificate in favour of the respondent No.7 for establishing the Kishan Seva Kendra in a plot of land measuring 25 meters x 25 meters out of total land measuring 2 Bighas-2 Kathas-1Lecha covered by Dag No. 1323, Patta No. 660.

The said order dated 2.1.06 had been challenged by the writ petitioner on the ground that the order of refusal dated 15.10.05 had attained the finality as no appeal was preferred as provided under Rule 154 of the Petroleum Rules, 2002 and it is mentioned here that no objection certificates is required under Rule 144 of the said rules, as in the proposed K.S.K. the dealer is required to store High Speed Diesel and other lubricants for supply to the farmers. The submission of the learned counsel, Mr. Roy is that the subsequent order dated 2.1.06 impugned in this writ petition amounts to review of the earlier order of rejection/refusal and as the Petroleum Act- 1934 was made - it has not provided any review of an order which was passed by District Judicial authority. The impugned order was bad in law because the Deputy Commissioner, Goalpara, had no authority to review the matter. There is no dispute that no appeal for refusal was filed against the order dated 15.10.05.

The learned counsel for the petitioner in support of his submission has placed reliance at the decision of the Apex Court in case of Dr. Smt. Kuntesh Gupta vs. Management of Hindu Kanya Mahavidyalaya, AIR 1987 SC 2186, wherein it was observed \it is now well established that a quasi judicial authority cannot review its own order, unless the power of review is expressly conferred on it by the statute under which it derives its jurisdiction.\

In absence of any specific provision in Petroleum Act and Rules the above proposition has not been disputed. The case of the respondent is that the impugned order of no objection certificate was granted on the basis of the fresh application and there is no power for that.

The respondent No.2, Deputy Commissioner, Goalpara has also filed an affidavit-in-opposition stating inter alia that the subsequent application was treated as fresh application and the NOC was issued on merit.

The records have been produced by the State Government and we have perused the same and find that in the earlier application the petitioner has proposed for permission to store HSD as well as the MS and the Gas Agency (Bharat Gas Agency) which is situated adjacent to the proposed land and as such the storage of MS was found to be dangerous to the safety of the people. However, in the subsequent application the MS was deleted and as a matter of fact, it is submitted that the MS was not required to be stored for the benefit of the farmers and hence, the application was for HSD only. The Indian Oil Corporation has also submitted that the revised plan for HSD after obtaining necessary approval from the Controller of Explosives, East Circle Office, Kolkata, the respondent No. 8 and 9 have filed an affidavit-in-opposition stating inter alia that the proposed site is not absolutely hazardous to public life.

Now coming to the question we find that Rule 154 provides for filing appeal against the order of refusing or canceling no objection certificate. However

, we find that there is a rule that provides that once the application is rejected a fresh application can be submitted. In the present case, the subsequent application for MS was executed and NOC was sought in respect of HSD only. The question is for obtaining permission for construction of a commercial cum residential house in a thickly populated area of the locality meant for residential purpose only. In case of refusal of the grant of permission the owner of the land sought fresh permission for the purpose of construction of residential premises only. Considering the facts and circumstances of the present case we therefore find no illegality or infirmity in considering the subsequent application as fresh one and thereafter grant of NOC as per rules. There is no submission that the grant of NOC vide impugned order 2.1.06 is otherwise bad in law. So far the allegation of fear of hazard to the public safety is concerned the matter is ensured by the respondent No. 8 and 9. There is also public interest involved in the matter as the matter relates to establishment of KSK for the benefit of the farmers so that the causes of their daily needs of HSD and lubricants, fertilizers and seeds etc are met.

In the result, the writ petition stands dismissed. There is no order as to cost.

The interim order stands vacated.