

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

OWP No. 711/2011
CMP Nos. 1323/2011 & 996/2011

Date of Decision: 28.10.2011

Mirza Mohd. Iqbal Beg Vs. U.O.I & Ors.

Coram:

MR. JUSTICE J. P. SINGH

Appearing Counsel:

For the Petitioner(s) : Mr. Abhinav Sharma, Advocate.
For the Respondent(s) : M/S A.H.Qazi, AAG, R.Koul
and Y.E.Tak, Advocates.

Whether approved for reporting
in Press/Media : Yes

Whether to be reported
in Digest/Journal : Yes

The petitioner-Mirza Mohd. Iqbal Beg questions Additional Deputy Commissioner, Doda's 'No Objection Certificate' (NOC) for installation of a Retail Outlet at Doda, Tehsil and District, Doda issued by the Additional Deputy Commissioner Doda to Indian Oil Corporation Limited on various grounds, urging, *inter alia*, violation of the provisions of Rule 144 of the Petroleum Rules, 2002, Non-furnishing of details regarding existence of petitioner's residential house at Zero

Distance of the Site selected for installation of Retail Outlet and non-compliance of the provisions of the Petroleum Act, by the Indian Oil Corporation Limited, besides questioning the jurisdiction of Additional Deputy Commissioner, Doda to issue the NOC.

The Indian Oil Corporation Limited, District Magistrate, Doda, Director Fire and Emergency Services and Naseeb Kousar Khan whose land is proposed to be utilized for setting up of Retail Outlet, have responded to the petitioner's Writ Petition, questioning, *inter alia*, the maintainability of the Writ Petition and the petitioner's right to oppose issuance of NOC to the Corporation.

Heard learned counsel for the parties and perused the records.

Perusal of the records of learned Additional Deputy Commissioner, Doda reveals that the learned Commissioner had initially directed its Saddar Qanungo to obtain NOC from PWD, R&B, Tehsildar and Police, but later on, the NOC appears to have been issued only on the 'No Objection' of Tehsildar, Doda. It is indicated in the NOC that it was issued subject to fulfillment of all conditions laid mandatory in different NOCs of different Departments.

The records further indicate that in his report to the Additional Deputy Commissioner, the Tehsildar had indicated that the petitioner, whose house was situated on Southern side of the proposed Site for Retail Outlet, had objected to the setting up of the Outlet.

The petitioner does not appear to have been heard on his Objection, by the learned Additional Deputy Commissioner.

To deal with the submissions advanced at the Bar, regard needs to be had to the provisions of Rules 2 (X) & (XI), besides Rule 144 of the Petroleum Rules, 2002, which, for facility of reference, are reproduced hereunder:-

“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 2 (XI) “District Magistrate” means and includes an Additional District Magistrate and in the States of Punjab and Haryana and in the Karaikal, Mahe and Yenam areas of the Union Territory of Pondicherry, also includes a Sub-divisional Magistrate.”

“Rule 144. No-objection certificate.- (1) Where the licensing authority is the Chief Controller or the Controller, as the case may be, an applicant for a new licence other than a licence in Forms III, XI, XVII, XVIII or XIX shall apply to the District Authority with two copies of the site-plan showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection, to the applicant receiving a licence for the site proposed and the District Authority shall, if he sees no objection, grant such certificate to the applicant who shall forward it to the licensing authority with his application Form IX.

(2) Every certificate issued by the District Authority under sub-rule (1) shall be accompanied by a copy of the plan of the proposed site duly endorsed by him under his official seal.

(3) The Chief Controller or the Controller, as the case may be, may refer an application not accompanied by certificate granted under sub-rule (1) to the District Authority for his observations.

(4) If the District Authority, either on a reference being made to him or otherwise, intimates, to the Chief Controller or the Controller, as the case may be, that any licence which has been applied for should not, in his opinion, be granted, such licence shall not be issued without the sanction of the Central Government.

(5) The District Authority shall complete his inquiry for issuing NO OBJECTION CERTIFICATE (NOC) under sub-rule (1) and shall complete the action for issue or refusal of the NOC, as the case may be, as expeditiously as possible but not later than three months from the date of receipt of application by him."

Perusal of Rule 144 indicates that 'No Objection Certificate' for a new licence, other than licence in Forms (III), (XI), (XVII), (XVIII) or (XIX), may be issued to an applicant, by the District Authority, if he sees 'No Objection' to the grant of such Certificate.

The District Authority, in terms of Rule 2 (X), is, besides others, the District Magistrate which, in terms of Rule 2 (XI) would include Additional District Magistrate.

The power to issue 'No Objection Certificate' to an applicant seeking new licence, may, therefore, be exercised either by the District Magistrate or by an Additional District Magistrate or by the other Authorities indicated in Rule 2 (X).

The Deputy Commissioner or the Additional Deputy

Commissioner, may not, therefore, have the power to issue requisite 'No Objection Certificate' under Rule 144 of the Petroleum Rules, 2002.

However, as the Deputy Commissioners and Additional Deputy Commissioners, in the State of Jammu & Kashmir, are vested with the powers of District Magistrate and Additional District Magistrate as well, so the power exercised by the learned Additional Deputy Commissioner, Doda, who exercises the powers of the Additional District Magistrate too, to issue 'No Objection Certificate' under Rule 144 of the Rules cannot be faulted on the ground of lack of jurisdiction. The argument of the petitioner's learned counsel that the NOC issued to the Indian Oil Corporation by the Additional Deputy Commissioner was without jurisdiction, therefore, fails.

Coming to the second submission of the petitioner's learned counsel that the District Authority had not followed the laid down procedure in issuing 'No Objection Certificate', affording opportunity of hearing to the petitioner and the Certificate thus issued was unsustainable, it is found that although neither in the Petroleum Act nor in the Petroleum Rules, there is any indication as to the nature of inquiry that the District Authority may make before issuance of 'No Objection

Certificate' under Rule 144, yet when considered in the light of the provisions of Rule 144 (5) of the Rules, which contemplate holding of inquiry before issuance of NOC, it becomes apparent that the inquiry contemplated by Rule 144 (5) is not limited only to the title of the property, but may extend to any other Objection that may be raised by any one to the issuance of 'No Objection Certificate', sought for by an applicant desirous of seeking a new licence other than the licence in Forms indicated in the Rules.

In view of the above legal position, the Additional District Magistrate, seized of Indian Oil Corporation's Application for issuance of NOC to set up Retail Outlet, was, therefore, required to invite Objections from all concerned, and if objected to, to inquire into the matter before issuing requisite 'No Objection Certificate' as to the setting up of Retail Outlet on the indicated Site. The 'No Objection Certificate', so issued, would be requisite Certificate as contemplated by Rule 144 of the Petroleum Rules, 2002.

The District Authority, in the present case, has issued 'No Objection Certificate' only as to the title of the land where Retail Outlet is sought to be installed, indicating in the Certificate that the NOC would be "subject to fulfillment of all conditions laid

mandatory in different NOCs of different Departments issued on this account”.

The Certificate issued by the Additional Deputy Commissioner, Doda, being a Conditional Certificate, cannot, therefore, partake the character of requisite Certificate in terms of Rule 144 of the Petroleum Rules, which contemplates a clear ‘No Objection Certificate’ without any restriction of any type whatsoever.

The Conditional NOC issued by the Additional Deputy Commissioner, Doda, without holding any inquiry in terms of Rule 144 (5) of the Rules and hearing the petitioner on his Objection to the issuance of NOC, cannot, therefore, be sustained.

As the learned Additional Deputy Commissioner has not complied with the provisions of Rule 144 (5) of the Petroleum Rules and the error committed by him in issuing the ‘No Objection Certificate’ is apparent on the face of records so the Objection raised by the respondent’s learned counsel as to the maintainability of the Writ Petition is found without substance, for, it would be in the interests of both the parties if the issue as to the issuance or otherwise of ‘No Objection Certificate’ in terms of Rule 144 of the Petroleum Rules was examined by the

District Authority afresh for passing orders, as warranted under law, on the subject.

For all what has been said above, this Writ Petition, therefore, succeeds and is, accordingly, allowed quashing Additional Deputy Commissioner, Doda's NOC No. 582/SQ dated 31.08.2010. The Indian Oil Corporation's Application seeking 'No Objection Certificate' for installation of Retail Outlet at Doda, Tehsil and District, Doda, shall accordingly revive for its consideration afresh by learned Additional District Magistrate, Doda who shall pass appropriate orders thereon, as warranted under law.

**(J. P. Singh)
Judge**

JAMMU
28.10.2011
Pawan Chopra