

THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA
AND
THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT APPEAL No.124 OF 2021

JUDGMENT: *(Per the Hon'ble the Chief Justice Satish Chandra Sharma)*

The present writ appeal is arising out of an order dated 15.12.2020, passed in W.P.No.17795 of 2019 by the learned Single Judge dismissing the writ petition filed by the petitioner.

2. The facts of the case reveal that the appellant/petitioner before this Court has filed a writ petition being aggrieved by Order dated 20.03.2019 passed by the Commissioner of Police, Hyderabad refusing to grant 'No Objection Certificate' (NOC) for establishment of Auto LPG Dispensing Unit' at premises bearing Nos.5-8-110, 5-8-110/1 to 5, situated at Nampally, Hyderabad. The writ petition is also against the order passed by the State Government rejecting the Appeal of the appellant/petitioner vide Order dated 31.07.2019.

3. The facts of the case reveal that the appellant/petitioner, who is the owner of land situated at Nampally Main Road having an area of 700 square yards, wanted to establish Auto LPG Dispensing Unit under the licence from M/s.SHV Energy Private Limited, Hyderabad, franchisee of

M/s.Super Gas. The appellant/petitioner has submitted an application keeping in view the Explosives Act, 1884 submitting site plans and drawings of the proposed installations to the licensing authority and on 01.01.2019, the drawings of the proposed installations were approved by the competent authority. The petitioner's submission is that Rules have been framed in exercise of powers conferred under Sections 5 and 7 of the Explosives Act, known as the 'Static and Mobile Pressure Vessels (Unfired) Rules, 2016' (hereinafter referred to as 'the SMPV(U) Rules') and the said Rules provide a mechanism for grant of permission to operate Auto LPG Dispensing Unit. The petitioner's submission is that under Chapter V of the SMPV(U) Rules, licence was granted and there is a procedure prescribed for grant of licence. The petitioner's submission is that under Rule 47 of the SMPV(U) Rules, the grant of NOC is mandatory and the competent authority is required to grant NOC in terms of the Rules and the Commissioner of Police, Hyderabad does not have any discretion to reject the application for grant of NOC. The petitioner's application for grant of NOC is rejected by the Commissioner of Police, Hyderabad and aggrieved thereby, the appellant/petitioner has filed an Appeal and the same has also been dismissed by the State

Government by Order dated 31.07.2019. The appellant/petitioner has preferred a writ petition i.e., W.P.No.17795 of 2019 before this Court and the learned Single Judge has dismissed the writ petition holding that NOC is necessary under the Rules.

4. The relevant statutory provisions, i.e., Rule 2(xix) and Rules 45 to 50 are reproduced as under:-

“Rule 2(xix) ‘District Authority’ means-

- (a) In towns having a Commissioner of Police, the Commissioner or a Deputy Commissioner of Police; and
- (b) In any other place, the District Magistrate;

45. Licence for storage of compressed gas.- No person shall store any compressed gas in any vessel except under and in accordance with the conditions of a licence granted under these rules.

46. Prior approval of specification and plans of vessels and premises proposed to be licensed.-

(1) Every person desiring to obtain a licence to store any compressed gas in any vessel shall submit to the Chief Controller or Controller authorised by him-

- (i) specifications and plans drawn to scale in triplicate clearly indicating-
- (a) the manner in which the provisions prescribed in these rules shall be complied with;
- (b) the premises proposed to be licensed, the area of which shall be distinctly coloured or otherwise marked;
- (c) the surrounding area lying within 100 metres from the edge of all facilities which are proposed to be licensed; however, for major installations of flammable or toxic gases including LNG exceeding total capacity of product 50 metric tons or 100 m³ water capacity of each vessel, whichever is less, area lying within 500 metres

along with Hazard and Operability (HAZOP) study and a risk analysis report prepared by a reputed agency;

(d) the position, capacity, materials of construction and ground and elevation views of all vessels, all valves and fittings, filling and discharge pumps and fire-fighting facilities where provided and all other facilities forming part of the premises proposed to be licensed;

(e) piping and instrumentation diagram for the vessels, equipments and system proposed to be installed;

(f) any other documents specified by the Chief Controller or Controller; and

(ii) a scrutiny fee as specified in clause (B) of the Schedule I

(2) If the Chief Controller or Controller authorised by him, after scrutiny of the specifications and plans and after making such inquiries as he deems fit, is satisfied that compressed gas can be stored in the premises proposed to be licensed, he shall return to the applicant one copy each of all the specifications and plans signed by him conveying his sanction which may be subject to such conditions as he may specify.

No Objection Certificate.- (1) An applicant for a new licence other than the licence for storage of non-toxic, non-flammable compressed gases in pressure vessels and licence in Form LS-2 shall apply to the District Authority with two copies of site plan showing the location of the premises proposed to be licensed under these rules for a certificate to the effect that there is no objection to the applicant's receiving a licence for storage of compressed gas in pressure vessel at the site proposed, and the District Authority shall, if he sees no objection, grant such certificate to the applicant in the format specified in sub-rule (6) of this rule who shall forward it to the Chief Controller with his application.

(2) Every certificate issued by the District Authority under sub-rule (1) above shall be accompanied by a copy

of the plan of the proposed site duly endorsed by him under official seal.

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

(4) If the District authority, either on a reference being made to him or otherwise, intimates to the Chief Controller 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) Notwithstanding anything contained in sub-rules (1) to (4) above, all licences granted or renewed under the said rules prior to the date on which the above provisions come in force, shall be deemed to have been granted or renewed under these rules.

(6) xxxx

(7) The District Authority shall grant no objection certificate or convey his refusal for granting no objection certificate with reasons thereof in writing to the applicant as expeditiously as possible, but not later than four months from the date of receipt of application from the applicant.

48. Licence for transport of compressed gas.- (1) No compressed gas filled in a vessel shall be transported by a vehicle except under and in accordance with the conditions of a licence granted under these rules.

(2) Nothing in this rule shall apply to the transport of compressed gas filled in a vessel by a railway administration.

49. Grant of Licence.- (1) A licence prescribed under these rules shall be granted by the Chief Controller or

Controller on payment of the fees as specified in clause (A) of the Schedule I.

(2) Every licence granted under these rules shall be subject to the conditions specified therein and shall contain all the particulars which are contained in the Form specified under these rules.

(3) The licensing authority shall issue an authenticated copy of the licence when so applied for by the licensee with a fee as specified in clause (B) of the Schedule I.

(4) When the licensing authority grants a licence in Form LS-1A, LS-1B & LS-2, after conducting inspection of the premises to ensure conformity of the premises to the provisions of the Act and these rules, such authority shall endorse the licence and from the date of such endorsement, the licence shall come into force.

(5) If the licensing authority observes on inspection, that the premises do not conform to the provision of the Act and rules and not fit for endorsement, he shall communicate to the licensee-

- (i) his direction for rectification of deficiency; or
- (ii) reasons for not endorsement of the licence; or
- (iii) reasons for revocation of the licence, as the case may be.

50. Application for licence- A person intending to obtain a licence under these rules shall submit to the Chief Controller or Controller authorised by him-

- (i) an application –
 - (a) in Form AS-1, if the application is in respect of a licence in Form LS-1 to store compressed gas in pressure vessels and in Form LS-1B to store and dispense Auto LPG as automotive fuel;
 - (b) in Form AS-2, if the application is in respect of a licence in Form LS-2 to transport compressed gas in pressure vessel by a vehicle;

(c) in Form AS-3, if the application is in respect of permission to import pressure vessel;

(ii) a certificate of safety under rule 33 or rule 43 as the case may be;

(iii) a test and inspection certificate as required under sub-rule (2) of rule 13;

(iv) four copies of the drawings for the site, layout, installation details (for static vessel) or vehicle mounting (for mobile vessel) and as-built vessel design drawing duly endorsed by the inspector;

(v) licence fee as specified in the clause (A) of the schedule I;

(vi) no objection certificate from the District Authority in respect of storage of compressed gas in pressure vessels along with the site-plan duly endorsed as per rule 47;

(vii) copy of the registration certificate of the vehicle issued under the Motor Vehicles Act, 1988 (59 of 1988) and weighment slip in respect of mobile pressure vessels for transport of compressed gas.”

5. The aforesaid Rules make it very clear that NOC has to be issued by the District Authority and in the present case, the District Authority is the Commissioner of Police, as Hyderabad is a town having the Commissioner of Police.

6. Much has been argued before this Court by the learned counsel for the appellant/petitioner that once the drawing are approved by the competent authority, i.e., Chief Controller or Controller under Rule 46 of the SMPV(U) Rules, the District Authority cannot reject NOC

on the ground of not meeting the specifications provided in a Circular Memo dated 06.07.2006.

7. The Government of Andhra Pradesh (Police Department) has issued executive instructions for installation of Petrol/Diesel/LPG outlets, keeping in view various factors, including the density of the location. The said Circular Memo dated 06.07.2006 is reproduced as under:-

“GOVERNMENT OF ANDHRA PRADESH
(Police Department)
Office of the Commissioner of Police,
Hyderabad.

No.L&O/M8/2745/06

Dated 06.07.2006

CIRCULAR MEMO

Sub: City Police Hyd-Installation of Petrol/Diesel/LPG
Outlets (Traffic Branch) & (L&O) proforma for
inspection – Required reports in new criteria i.e.,
After 1-7-2006 – Instructions Issued – Reg.

Ref: Note No.Tr.T4/168/2006, dt.27-1-2006 from the
Addl.CP Traffic, Hyd.

1. In the reference cited, the committee was constituted to evolve guidelines and specific yardsticks for issuing NOCs for the installation of Petrol/Diesel/LPG outlets. The committee recommended the following criteria to accept the application for new petrol pump and outlets. The recommendation of the committee were accepted to this.

2. The required standard of measurements as per new criteria are table below and they will come into force w.e.f. 1-7-2006 and they are applicable, to the applications received after 1-7-2006.

Parameters	Only MS Petrol with 2 delivery Units	MS (Petrol) and HSD (Diesel) with 2 delivery Units each	MS (Petrol) HSD (Diesel) & LPG with 2 delivery Units each
Minimum area required	600 Sq.Mtrs	800 Sq.Mtrs	800 Sq.Mtrs
Minimum Opening (both entry & exit)	717.6 Sq. Yds 25 Mtrs 82.02 Fts	956.6 Sq. Yds 25 to 30 Mtrs 82.02 Fts	956.6 Sq. Yds 25 Mtrs 82.02 Fts
Minimum road Width	60 feet 18.29 Mtrs	60 feet 18.29 Mtrs	60 feet 18.29 Mtrs
Distance from Junction	100 Mtrs 328.08 Fts	100 Mtrs 328.08 Fts	100 Mtrs 328.08 Fts

3. Revised proforma for L&O and Traffic Enquiry are also appended. In the past, it was seen that L&O to be giving remarks on Traffic side without concentrating on the aspect pertaining to them. This practice may be discontinued.

4. Application received prior to 1-7-2006 and pending with L&O and Traffic wings may be processed expeditiously without any delay on merits of the each case. Replies are to be received by 15-7-2006 the present standards now prescribed need not be extended to them.

A.K.Mohanty
Commissioner of Police,
Hyderabad.

To
The Zonal DCPs and Traffic and Addl. C.P. Traffic, Hyd.

//f.b.o//
For Commissioner of Police,
Hyderabad.”

8. The learned counsel for the appellant/petitioner was not able to point out from the SMPV(U) Rules, a similar provision in respect of location of the Auto LPG Dispensing Unit and in fact, there is no such provision under the SMPV(U) Rules, which provides specifications for location of Petrol/Diesel/LPG outlets. The Commissioner of Police, Hyderabad in exercise of powers conferred under Rule 47

of the SMPV(U) Rules has rejected the application and the copy of the Order of Rejection, dated 20.03.2019 is reproduced as under:-

“GOVERNMENT OF ANDHRA PRADESH
(Police Department)
Office of the Commissioner of Police,
Hyderabad.

No.L&O/A4/0005/2019 Dated 20.03.2019

NOTICE

Sub: Hyderabad City Police Hyd-Grant of NOC to set up a 2x7.5 KL Auto Dispensing Station at 5-8-110, 5-8-110/1 to 5, Nampally, Hyderabad-500 001 – Rejected – Regarding.

Ref: Letter No.Nil dated 05-01-2019 of Sri Susheel Raina, General Manager, M/s.Super Gas, SHV Energy Pvt Ltd, Reg.Office 8-2-334, 4th Floor, Super Gas House, SDE Serene Chambers, Road No.7, Banjara Hills, Hyderabad – 500 034.

Sri Susheel Raina, General Manager, M/s.Super Gas, SHV Energy Private Limited, Registered Office at 8-2-334, 4th Floor, Super Gas House, SDE Serene Chambers, Road No.7, Banjara Hills, Hyderabad through representation cited above has requested for grant of NOC to set up a 2x7.5 KL Auto LPG Dispensing Station at Premises No.5-8-110, 5-8-110/1 to 5, Nampally, Hyderabad – 500 034.

His request has been examined, considered and rejected based on the reason mentioned below:-

As per this Office Circular Memo No.L&O/M8/2745/2006, dated 0607-2006, the required distance from the nearest traffic junction must be 100 metres. But in this case the distance is only 5.3 metres which is inadequate.

Anjani Kumar, IPS
Commissioner of Police,
Hyderabad.

To
Sri Susheel Raina, General Manager,
M/s.Super Gas, SHV Energy Private Limited,
Registered Office at 8-2-334,
4th Floor, Super Gas House,
SDE Serene Chambers, Road No.7,

Banjara Hills, Hyderabad – 500 034.
(Through SHO Banjara Hills PS)

Copy for information and necessary action:

1. The Addl. Commissioner of Police, Traffic, Hyderabad for information.
2. The Dy. Commissioners of Police, Central Zone & Traffic-II, Hyd for information.
3. The Asst. Commissioner of Police, Saifabad Division, Hyderabad.
4. The Asst. Commissioner of Police, West Central Zone, Hyderabad.
5. The SHO Banjara Hills PS. He will serve the Memo on the above individual at once and return dated acknowledgement to this office urgently.
6. The SHO, Nampally PS.

// Attested //

I/c Jt. Commissioner of Police

9. The aforesaid Order makes it very clear that the appellant/petitioner's request was for establishment of Auto LPG Dispensing Unit in a traffic junction and as the executive instructions issued by the State Government through a Circular Memo dated 06.07.2006 does not permit for grant of NOC near traffic junction, the same has been rejected. The appeal preferred by the appellant/petitioner has also been dismissed by passing a detailed order taking into account all the grounds raised by the appellant/petitioner.

10. Much has been argued before this Court by the learned counsel for the appellant/petitioner stating that the executive instructions cannot supersede the statutory provisions. In the present case, the executive instructions are not at all superseding the statutory provisions. The

Rules do not provide for specifications in respect of location and the ground realities can be looked into only by the Commissioner of Police in respect of location. The Commissioner of Police is also guided by the Circular Memo dated 06.07.2006, which has been made applicable in the entire State and no such statutory provision is in existence under the Explosives Act nor under the SMPV(U) Rules and therefore, it is not a case where the State Government has amended or superseded the statutory provisions.

11. The learned Single Judge has rightly taken into account the Judgment delivered in the case of **Bishambhar Dayal Chandra Mohan v. State of Uttar Pradesh**¹ and has rejected the ground raised by the learned counsel for the appellant/petitioner.

12. Much has been argued about the appellant/petitioner's right to carry on trade keeping in view Article 19(1)(g) of the Constitution of India. The Hon'ble Supreme Court in the case of **Khoday Distilleries Limited v. State of Karnataka**², in paragraph 64 has held as under:-

“**64.** The last contention in these groups of matters is whether the State can place restrictions and limitations under Article 19(6) by subordinate legislation.

¹ (1982) 1 SCC 39

² (1995) 1 SCC 574

Article 13(3)(a) of the Constitution states that law includes “any ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law”. Clauses (2) to (6) of Article 19 make no distinction between the law made by the legislature and the subordinate legislation for the purpose of placing the restrictions on the exercise of the respective fundamental rights mentioned in Article 19(1)(a) to (g). We are concerned in the present case with clause (6) of Article 19. It will be apparent from the said clause that it only speaks of “operation of any existing law insofar as it imposes ...” “from making any law imposing” reasonable restrictions on the exercise of the rights conferred by Article 19(1)(g). There is nothing in this provision which makes it imperative to impose the restrictions in question only by a law enacted by the legislature. Hence the restrictions in question can also be imposed by any subordinate legislation so long as such legislation is not violative of any provisions of the Constitution. This is apart from the fact that the trade or business in potable liquor is a trade or business in *res extra commercium* and hence can be regulated and restricted even by executive order provided it is issued by the Governor of the State. We, therefore, answer the question accordingly.”

13. In the considered opinion of this Court, reasonable restrictions can certainly be imposed by the State Government and in the present case, the appellant/petitioner wants to endanger the life of a common man by establishing a retail outlet close to a traffic junction, which is impermissible in the light of the executive instructions dated 06.07.2006. There cannot be a mechanical exercise on the part of the Commissioner of Police in allowing

applications for grant of NOC under Rule 47 of the SMPV(U) Rules. The guidelines have been framed vide Circular Memo dated 06.07.2006 and they are applicable to all cases. In case the argument canvassed by the appellant/petitioner is accepted, there will be total anarchy in the system permitting everyone to establish a retail outlet anywhere at a place of his/her choice endangering human lives and therefore, the learned Single Judge was justified in dismissing the writ petition.

14. The executive instructions issued by the State Government are in larger public interest and the appellant/petitioner certainly is entitled to establish Auto LPG Dispensing Unit, however, subject to the restrictions as provided under Circular Memo dated 06.07.2006. The District Authority certainly is competent to assess the viability of the Unit vis-a-vis the traffic density in the area to ensure free flow of traffic and also to ensure safety of human life. It is a well established proposition of law as laid down by the Hon'ble Supreme Court that the Courts should not ordinarily interfere in policy decision unless there is a clear violation on some constitutional or statutory provisions (see **Dilip Kumar Garg v. State of Uttar Pradesh**³, **Tata Cellular v. Union of India**⁴, **Zahoor Ahmad Rather**

³ (2009) 4 SCC 753

v. Sheikh Imtiyaz Ahmad⁵ and Pradeep Kumar Rai v. Dinesh Kumar Pandey⁶).

15. In the light of the aforesaid Judgments, this Court is of the opinion that the application for NOC was rightly rejected by the Commissioner of Police as the location is in high density road, very close to traffic junction and there is a metro station adjacent to the location as well as the regular railway station, i.e., Nampally Railway Station. The Commissioner of Police has done transparent and objective assessment and therefore, in the considered opinion of this Court, there is no illegality or perversity in the decision which is based upon the executive instructions and the ground reality.

16. The learned Single Judge, vide Order dated 15.12.2020, in paragraphs 28 to 33 has held as under:-

“28. Only aspect which needs to be considered is whether the decision is vitiated on the ground of arbitrariness. In other words, while NOC was granted to others even though location of the petroleum outlets/LPG dispensing stations are proximate to traffic junctions, it is rejected to petitioner and therefore, the rejection is discriminatory and not *bona fide*. In ground ‘G’ petitioner alleges that NOC was granted in thickly populated areas/junctions. The affidavit is silent on instances. During the course of arguments, learned counsel for petitioner placed reliance on the additional material

⁴ (1994) 6 SCC 651

⁵ (2019) 2 SCC 404

⁶ (2015) 11 SCC 493

papers. To this additional material papers, petitioner enclosed representation dated 20.07.2019 where he has given list of 47 outlets established close to traffic junctions/ densely populated areas and also filed photographs.

29. To appreciate this contention, two aspects to be noticed. First, when and how such consideration was made to others and second, even if NOC was granted to sites proximate to traffic junctions would rejecting the application of petitioner gets vitiated on that ground if the decision is otherwise sustainable. The additional material papers are filed after counter was filed in the writ petition and there was no occasion for respondents to respond to these assertions. However, as assessed hereunder, the case need not be kept back for that reason as this Court considers that even otherwise petitioner is not entitled to relief prayed in the writ petition. From the perusal of the list appended to his representation dated 20.7.2019, it is seen that many were cleared before 06.07.2006 circular was notified. With reference to others, it is not known their exact location and reason for granting NOC. It is possible that when NOC was granted, the traffic was not heavy. *Per se*, even if NOC was granted to others, even though the sites were located proximate to the traffic junctions, the Court can not invalidate the impugned decision if it answers other parameters. As noticed above, the site of petitioner is on a high density traffic road and on the 'T' junction and metro station and Nampally Railway station. Establishing Auto LPG dispensing station at this location will certainly add to traffic congestion and inconvenience to general public/road users. It may have disaster consequences if any untoward incident happens. Public interest require not to locate Auto LPG dispensing stations/petroleum outlets proximate to traffic junctions. The decision was made on objective consideration. There is no illegality or perversity in the decision. It is in compliance with the

Circular Memo dated 06.07.2006. Earlier, if petroleum outlets were permitted, as alleged by the petitioner, contrary to guidelines stipulated in Circular Memo dated 06.07.2006, those decisions would amount to illegal decisions. If wrong decisions were taken earlier, they cannot lead to committing further illegality. Adopting such course amounts to perpetrating such illegalities, more so, when it is not in larger public interest to locate such units close to traffic junctions. Court cannot subscribe to such course in exercise of its equity jurisdiction. On the contrary, validating the impugned decision may lead to setting a new norm in considering such request.

30. Under Article 226 of the Constitution of India, writ remedy is an equitable remedy and discretionary. Writ court exercises equity jurisdiction. Though scope of power of writ Court to undertake judicial review of administrative actions is very wide, its exercise is subjected to self-imposed restraint. *'It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point'* [RAMNIKLAL N BHUTTA v. STATE OF MAHARASTRA - (1997) 1 SCC 134]. It must be exercised with great caution and only in furtherance of public interest or to set right grave illegality. Larger public interest must be kept in mind to decide whether intervention of the court is called for in a given case. Writ Court may refuse to grant relief in a case where justice and larger public interest require denial of such relief as compared to grievance of an individual, even assuming there is breach of natural justice/statutory prescription and decision is arbitrary.

31. Further, while considering the grievance in a petition under Article 226, the writ court need not grant relief merely because the petitioner makes out a legal point. 'Even if a legal flaw can be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public importance is

involved [RASHPAL MALHOTRA v. SATYA RAJPUT MRS. AND ANOTHER - 1987 SC 2235], & COUNCIL OF SCIENTIFIC AND INDUSTRIAL RESEARCH AND ANOTHER v. K.G.S.BHATT – [AIR 1089 SC 1972].

32. In **Kalasagaram, Secunderabad Cultural Association Vs State of Andhra Pradesh and others**⁷, learned single Judge of this Court, as he then was, considered the very issue and held as under:

“14. Even if it is to be assumed that the impugned order suffers from some infirmities, should the Court grant relief to the petitioner and issue writ as prayed for? Whether the petitioner is entitled for any relief from this Court? It is settled law that this Court does not issue writs in exercise of its jurisdiction under Article 226 of the Constitution of India, as a matter of course. The Court exercising jurisdiction under Article 226 of the Constitution of India is also a Court of equity. The relief to be granted in exercise of such power is an equitable one. Mere infraction of a statutory provision would not automatically give rise to a cause for issuing a writ of Mandamus. ***The Court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power.*** Equity is always known to defend the law from crafty evasions and now subtleties invented to evade law’ (See *A.P. State Financial Corporation v. Gar Re-Rolling Mills*, (1994) 2 SCC 647 at 662. Writ of Mandamus is highly discretionary remedy as the aggrieved person has to not only establish the infraction of a statutory provision of law but required to further establish that such infraction has resulted in invasion of a judicially enforceable right. The existence of a right is the foundation of the jurisdiction of Court to issue a writ of Mandamus.

(emphasis supplied)

33. For the aforesaid reasons, Writ Petition fails. It is accordingly dismissed. Pending miscellaneous petitions if any shall stand closed.”

17. In the considered opinion of this Court, grant of NOC under the SMPV(U) Rules is a mandatory condition and it is not a mere mechanical exercise as argued by the learned counsel for the appellant/petitioner. A prior approval of

⁷ 1997 (6) ALD 277

specifications and plans by the Chief Controller or Controller does not mean that permission has been granted to establish a retail outlet/Auto LPG Dispensing Unit and it is an undisputed fact that site is not at all inspected by the Chief Controller or Controller nor drawings are approved under Rule 46 of the SMPV(U) Rules. The location of the site is looked into by the District Authority and in the present case, the Commissioner of Police is the District Authority, under Rule 46 of the SMPV(U) Rules while considering the case for grant of NOC. In the present case, the location of site was inspected and keeping in view the Circular Memo dated 06.07.2006, the District Authority has rejected the application for grant of NOC.

18. In the considered opinion of this Court, keeping in view the location of the appellant/petitioner's land, which is very close to the traffic junction, it is densely populated locality, close to Railway Station, close to Metro Station, the Commissioner of Police was justified in rejecting the application in the larger public interest and also keeping in view the Circular Memo, this Court does not find any reason to interfere with the order passed by the learned Single Judge.

19. The learned counsel for the appellant/petitioner has placed reliance upon the Judgment delivered in the case of **State of Punjab v. Devans Modern Breweries Limited**⁸ contending that the action of the respondents is violative of Article 19(1)(g) of the Constitution of India.

20. This Court has carefully gone through the aforesaid Judgment and it is nobody's case that the appellant/petitioner is being restrained to establish Auto LPG Dispensing Unit. The NOC has not been issued only in respect of particular locality and it certainly amounts to a reasonable restriction and therefore, the Judgment does not help the appellant/petitioner.

21. Reliance has also been placed upon the Judgment in the case of **Khoday Distilleries Limited** (supra). It has been vehemently argued that the action of the respondents is depriving the petitioner of his fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. In the aforesaid case also, it has been held that the State can impose reasonable restrictions on the right of trade or business of liquor. In the present case, there is no restriction at all in establishing Auto LPG Dispensing Unit, however, certain conditions have been imposed by the State Government keeping in view various factors,

⁸ (2004) 11 SCC 26

including population density and therefore, the Circular Memo issued by the State Government, by no stretch of imagination, is an infringement of the appellant/petitioner's constitutional right under Article 19(1)(g) of the Constitution of India.

22. Reliance has also been placed upon the Judgment by the High Court of Telangana in W.P.No.20186 of 2016 and batch, decided on 19.07.2016. In the aforesaid case, it has been held that the rights guaranteed by Article 19(1)(g) of the Constitution of India are not absolute, but qualified. The aforesaid Judgment again is distinguishable on facts. There is no restriction upon the appellant/petitioner's fundamental right to carry on trade or business. However, certain procedure is provided for grant of NOC and the appellant/petitioner can very well apply for grant of NOC for some other location.

23. Learned counsel for the appellant/petitioner has placed reliance upon the Judgment delivered in **Kerala Samsthana Chethu Thozhilali Union v. State of Kerala**⁹ and it has been vehemently argued that the executive instructions cannot supersede the statutory provisions contained under the Act and the Rules. In the present case, there is no conflict between the statutory provisions

⁹ (2006) 4 SCC 327

and the executive instructions issued by the State Government. In fact, the executive instructions have been issued in order to ensure compliance of Rule 47 of the SMPV(U) Rules while granting NOC. In case the argument canvassed by the learned counsel for the appellant/petitioner is accepted, there will be no guiding factor for the Commissioner of Police to guide him while deciding the applications for NOC and the exercise then would become arbitrary and discriminatory on the part of the Commissioner of Police.

24. This Court is of the opinion that the Commissioner of Police was justified in passing the order keeping in view the executive instructions issued vide Circular Memo dated 06.07.2006 and no case for interference is made out in the matter.

25. Reliance has also been placed by the Judgment delivered in the case of **Babji Kondaji Garad v. Nasik Merchants Cooperative Bank Limited**¹⁰ on the issue of conflict of subordinate legislation with legislative enactment.

26. In the present case, there is no conflict at all between the subordinate legislation and the legislative enactment. Learned counsel has not been able to point out from the

¹⁰ (1984) 2 SCC 50

SMPV(U) Rules a similar provision in respect of distance from traffic junction, minimum road width, minimum and maximum opening requirement (entry and exit) and as no such provision finds place under the Explosives Act or under the SMPV(U) Rules, the question of conflict between the subordinate legislation and the legislative enactment does not arise.

27. Learned counsel for the petitioner has place reliance on the Judgment in the case of **Shamsu Suhara Beevi v. G.Alex and another**¹¹. This Court has carefully gone through the aforesaid Judgment and again it is distinguishable on facts. No such contingency is involved in the aforesaid case.

28. Reliance has also been placed by the learned counsel for the appellant in the case of **Kunj Behari Lal Butail v. State of Himachal Pradesh**¹². In the aforesaid case, it has been held that the delegated legislation must advance the purposes of the statute it is framed under and unless it does so, it cannot be sustained.

29. In the present case, the executive instructions issued by the State Government for the purpose of grant of NOC has been issued to guide the District Magistrate/

¹¹ (2004) 8 SCC 569

¹² (2000) 3 SCC 40

Commissioner of Police for the purposes of statute i.e., SMPV(U) Rules and therefore, the Judgment cannot help the appellant/petitioner in any manner.

30. Learned counsel for the appellant/petitioner has placed reliance upon various other Judgments alleging violation of rights guaranteed to the appellant/petitioner under Article 19(1)(g) of the Constitution of India. (See **Chintaman Rao v. State of Madhya Pradesh**¹³, **Dwaraka Prasad Laxmi Narain v. State of Uttar Pradesh**¹⁴, **Reliance Industries Limited v. Commissioner of Land Revenue**¹⁵, **Arjun Gopal v. Union of India**¹⁶, **Godawat Pan Masala Products v. Union of India**¹⁷, **Anuj Garg v. Hotel Association of India**¹⁸, **Action Committee Unaided Private Schools v. Director of Education, Delhi**¹⁹ and **Hari Krishna Mandir Trust v. State of Maharashtra**²⁰). However, in the considered opinion of this Court, there is no such violation of the appellant/petitioner's constitutional right guaranteed under Article 19(1)(g) of the Constitution of India. In fact, it is still open for the appellant/petitioner to offer other piece of land and obtain NOC keeping in view the Circular Memo dated 06.07.2006 issued by the State Government.

¹³ 1950 SCR 759

¹⁴ 1954 SCR 803

¹⁵ 2007 SCC OnLine Ker 213

¹⁶ (2019) 13 SCC 523

¹⁷ (2004) 7 SCC 68

¹⁸ (2008) 3 SCC 1

¹⁹ (2019) 10 SCC 1

²⁰ 2020 SCC OnLine SC 631

31. The appellant/petitioner cannot be permitted, as rightly done by the Commissioner of Police, to establish retail outlet of Auto LPG Dispensing Unit at traffic junction, near Railway Station, near Metro Station resulting in a threat to public at large and also becoming an obstruction to free flow of traffic.

32. In the light of the aforesaid, this Court does not find any reason to interfere with the Order passed by the learned Single Judge. The writ appeal is accordingly dismissed.

Miscellaneous petitions, if any pending, shall stand dismissed. There shall be no order as to costs.

SATISH CHANDRA SHARMA, CJ

ABHINAND KUMAR SHAVILI, J

19.01.2022

Pln