

**(2014) 07 P&H CK 0425**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 5146 of 2012

Sanjeev Chaudhary

APPELLANT

Vs

Union of India

RESPONDENT

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**Date of Decision:** July 24, 2014

**Acts Referred:**

- Constitution of India, 1950 - Article 19(1)(g)
- Forest Act, 1927 - Section 33

**Hon'ble Judges:** Ritu Bahri, J

**Bench:** Single Bench

**Advocate:** Arun Jain, Senior Advocate and Harkesh Manuja, Advocate for the Appellant;  
Indresh Goel, Addl. A.G., N.K. Joshi, B.S. Jaswal, Manoj Chahal and Himanshu Puri,  
Advocate for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Ritu Bahri, J.

The petitioner is seeking a writ of certiorari for quashing the order dated 14.03.2012 (Annexure P-12), whereby approval has been granted to Hindustan Petroleum Corporation-respondent No. 7 for installation of proposed retail outlet dealership by respondent Nos. 10 and 11 by diverting forest land for approach road to retail outlet along Panipat-Haridwar Highway. Further prayer has been made for issuance of direction to the respondent-authorities not to accord final approval regarding diversion of forest land for non-forest purposes in the State of Haryana in violation of the Indian Forest Act, 1927, Forest (Conservation) Act, 1980 as well as guidelines dated 15.07.2004 and 18.03.2010 (Annexures P-1 and P-2) issued by the Government of India, Ministry of Environment and Forest.

2. In the year 2010, Hindustan Petroleum Corporation Limited had issued a letter of intent (Annexure P-3) for setting up of a retail outlet on State Highway No. 16, leading from Panipat to Haridwar, in the name of respondent Nos. 10 and 11. The

user agency-respondent No. 7 submitted an application for grant of permission for diversion of 0.0609 hectare of forest land for construction of approach road for setting up of this retail outlet. The site inspection was carried out by the Divisional Forest Officer, Panipat-respondent No. 9 and he gave his report dated 19.10.2010 (Annexure P-4), stating that in view of the guidelines dated 15.07.2004 and 18.03.2010 (Annexures P-1 and P-2), permission cannot be granted for using the forest land as six number of trees were standing in ingress-outgress and D-Zone area and two other petrol pumps, run by the Indian Oil Corporation at a distance of one to two kilometers from the proposed site, were already functioning. The Principal Chief Conservator of Forests-respondent No. 6, vide letter dated 07.12.2010, forwarded the case of respondent No. 7 for grant of permission for setting up of proposed petrol pump to the office of Financial Commissioner and Secretary, Environment and Forest Department-respondent No. 3. The case was sent back on the ground that there was obstruction of eight trees on the approach road of the proposed petrol pump. Respondent No. 6 was directed to reconsider the matter in accordance with the instructions dated 15.07.2004 (Annexure P-1). During this period i.e. from the date of letter of allotment (Annexure P-3) till December 2010, respondent No. 10 had cut some "kikkar" trees standing over the forest land, which were sought to be used for ingress and outgress/approach road for setting up of the retail outlet. In this regard, respondent No. 10 was challaned for having committed offence under Sections 33(A), 33(F), 33(B) and 33(C) of the Indian Forest Act, 1927. On 27.01.2012, charge under Sections 33 of the Indian Forest Act, 1927, was framed against respondent No. 10. Despite the aforesaid fact, a fresh proposal was submitted by the user agency before respondent No. 9 i.e. Divisional Forest Officer. The same was further forwarded to respondent No. 6, who in turn forwarded the same to respondent No. 3 vide letter dated 12.01.2011. It was subsequently, referred to the Environment and Forests Minister, Government of Haryana-respondent No. 2 on 14.01.2011. Finally, the proposal was rejected by respondent No. 2 on 18.01.2011 (Annexure P-9).

3. Grievance of the petitioner is that despite the rejection order dated 18.01.2011 (Annexure P-9), the case was again recommended by the office of respondent No. 3 vide letter dated 07.04.2011 (Annexure P-10) to respondent No. 1, stating there was no hindrance of any tree. It has been further stated in the said letter that a scheme of compensation has been made by the Divisional Forest Officer, Panipat, for payment of some amount, which shall be deposited by the user agency. Therefore, a request for grant of approval under the Forest Conservation Act, 1980, was sent. During this time, on a letter dated 21.01.2011 written by the Assistant Inspector General of Forests, Ministry of Environment and Forests, New Delhi, the Additional Principal Chief Conservator of Forests (Central) had written a letter dated 28.04.2011 (Annexure P-11) directing respondent No. 6 to hold an enquiry regarding illegal felling of trees. Finally, vide order dated 14.03.2012 (Annexure P-12), provisional permission was granted with regard to diversion of 0.0190 hectare of forest land for

approach road to retail outlet, to respondent No. 7 along Panipat-Haridwar Road. The petitioner is seeking quashing of the order dated 14.03.2012 (Annexure P-12) on the following grounds:-

(i) This order has been passed while ignoring the earlier report dated 19.10.2010 submitted by the then Divisional Forest Officer, Panipat, specifying that six number of trees were standing in ingress-outgress and D-Zone area and permission cannot be granted for using this land for ingress-outgress.

(ii) The second proposal had been initiated by respondent No. 7 in collusion with respondent No. 9 as well as respondent Nos. 10 and 11, after cutting down the trees standing over the forest land, for which, respondent No. 10 has been challaned and charge-sheeted u/s 33 of the Indian Forest Act. 1927. The second report dated 28.12.2010 submitted by the Divisional forest Officer, Panipat was indicative of the fact that respondent Nos. 7, 9 to 11 are in collusion with each other.

(iii) The impugned order has been passed in violation of the guidelines dated 15.07.2004 (Annexure P-1), which provides that the minimum distance between fuel stations, on each side of the road, should not be less than 5 Kms. outside the city, limits on highways. If two or more fuel stations are to be constructed in close proximity or adjacent to each other for some reasons, a common access and exit shall be provided. This condition shall not apply if no tree felling is involved. The proposed outlet was to be installed along Panipat-Haridwar State Highway, right side at village Tamsabad, District Panipat and two fuel stations were already functioning near the proposed retail outlet. The petitioner was running a retail outlet of Hindustan Petroleum Corporation Limited in between Panipat 15 K.M. Stone to 18 K.M. Stone on Panipat-Haridwar road NH-16 on the left side of the road. Passing of the order dated 14.03.2012 is in violation of the guidelines (Annexure P-1). This fact is evident as per the site plan (Annexure P-14).

4. In the written statement, filed by respondent Nos. 2, 3 and 6, it is stated that in the inspector report dated 19.10.2010, it was mentioned that there were about eight number of trees effecting in the way of area demanded by respondent No. 7. However, in the proposal, which was approved by respondent Nos. 2 and 5, there were changed circumstances. In that proposal, D Zone area has been excluded and no tree has been shown as obstruction on inspection by the competent authority. Thereafter, the case of respondent No. 7 (Hindustan Petroleum Corporation) for grant of permission for setting up of aforesaid petrol pump was forwarded by respondent No. 6 to respondent No. 3 vide letter dated 07.12.2010. In this letter, it was mentioned that there were eight trees, which were obstructing and were required to be cut. It was clarified in the said letter that the Divisional Forest Officer, Panipat-respondent No. 9 and Conservator of Forest, Central Circle, Rohtak, have clearly remarked that the said proposal was not in accordance with instructions dated 15.07.2004 (Annexure R-1) issued by the Government of India. Vide letter dated 23.11.2010, which was written by respondent No. 7, it had been stated that

eight trees had come in the D area of the site and they were not required to be cut. Hence, there was no obstruction in granting the "no objection certificate." In this background, vide letter dated 09.12.2010 (Annexure R-3), respondent No. 3 asked respondent No. 6 to reconsider the matter in accordance with the instructions dated 15.07.2004 issued by the Government of India. Respondent No. 9 inspected the spot again and gave his report dated 28.12.2010. This inspection was conducted pursuant to the letter dated 09.12.2010 (Annexure R-3). In this inspector report, it was made clear that no tree was effecting in the way of ingress and outgress of the proposed retail outlet. This report of respondent No. 9 considered only the ingress and outgress area of the site plan comprising diversion of 0.0190 hac. of forest land, whereas the report dated 19.10.2010 submitted by the earlier Divisional Forest Officer, Panipat, was comprising diversion of 0.0609 hac. of forest land and included the D zone area along with ingress and outgress area. The fresh report dated 28.12.2010 was examined by respondent No. 3 and was brought to the notice of respondent No. 2. In the fresh proposal, the D zone area was excluded, as there was no cutting of trees required in this area. Finally, in response to letter dated 29.03.2011 (Annexure R-4) from respondent No. 6, the matter was again examined in the office of respondent No. 3. Respondent No. 3 recommended to respondent No. 2 on the following grounds:-

(a) No tree has been shown as obstruction as per report of DFO, Panipat and inspection done by Nodal Officer & Conservator of Forests (FC) O/o Principal Chief Conservator of Forests, Haryana.

(b) The green trees which are standing on the said site fall in D-area and hence, no violation of guidelines dated 15.07.2004 issued by Govt. of India has been done.

5. Finally, the proposal submitted by respondent No. 3 was approved by respondent No. 2 on 05.04.2011 and after its approval, respondent No. 3 sent the same to respondent No. 5. The permission has been granted by respondent No. 5 regarding diversion of 0.0190 hac. forest land for the proposed retail outlet of respondent No. 7 along Panipat-Haridwar Road Km. 16-17 right side at village Tamsabad, District Panipat, Haryana.

6. In a separate written statement, filed by Hindustan Petroleum Corporation-respondent No. 7, reference has been made to the site plan (Annexure R7/1), Revised plan (Annexure R7/2) and demarcation report (Annexure R7/3). It is contended that permission to use forest land was confined to 0.0190 hect. in place of earlier proposal of 0.0609 hect. of forest land. In the second request letter, it has been clarified that 0.0609 hect. of land included entire forest land which will ultimately fall in D area. The D area was not put to use for any construction and anything falling in that area would remain intact, as none of the trees in the D area was to be cut. The only area, which is to be used for ingress and outgress would require construction of path, metaled, concrete, brick lined or of a paver block, but the area falling in between entry and exit, called as D area would remain intact.

Hence, on the basis of revised plan, the Forest Officer visited the spot and after having demarcation, recommended it for approval. On an earlier occasion, a CWP No. 7647 of 2011 was filed on similar question of law by one Rajesh Kumar, which was decided on 02.05.2011. One Rakesh Kumar Gupta had filed CWP No. 15563 of 2010 before this Court, challenging the proposal of retail outlet, which was dismissed on 13.09.2011. The petitioner has concealed this fact while filing the present petition. It has been further stated that the "no objection certificate" issued by the Forest Department does not violate the guidelines dated 15.07.2004 and 18.03.2010 (Annexures P-1 and P-2). Hence, this petition is liable to be dismissed.

7. In the written statement filed by respondent Nos. 10 and 11, it has been mentioned that CWP No. 15563 of 2010 was filed by one Rakesh Kumar Gupta, challenging the allotment made in favour of respondent Nos. 10 and 11, which was dismissed by this Court on 13.09.2011 (Annexure R-10/10). The challenge was made on the ground of allotment of marks to the candidates by the Interview Committee. Similarly, CWP No. 7647 of 2011 was also filed by Rajesh Kumar, which was disposed of on 02.05.2011 (Annexure R-10/11) being premature. The letter of intent had been issued at that stage and the Hindustan Petroleum Corporation had made an application to the Divisional Forest Officer, Panipat, for grant of "no objection certificate." The petitioner, in that case, had made complaint against cutting of trees for setting up of petrol pump. The said petition was dismissed being premature, as he had filed objections to the authorities with regard to felling of forest trees. In the written statement, they have reiterated the stand taken by the official respondent Nos. 2, 3, 6 and 7 to the extent that on a second report, permission for diversion of 0.0609 hect. of forest land had been reduced to 0.0190 hect., as in the D area, there was no requirement for cutting the forest trees. The permission was only being sought for ingress and outgress of land. It has been further submitted that the earlier report dated 09.10.2010 was given without demarcating the proposed site.

8. During the pendency of this petition on 03.02.2014, learned counsel or the petitioner had referred to a report dated 07.03.2012 (Annexure R-10/8) of Forest Division Officer, Panipat, stating that five trees were falling in the D area and one tree was falling out of the curve area of ingress and outgress, thus, passage on the ingress and outgress was not obstructed by any tree. Thereafter, Mr. Himanshu Puri, Advocate, was appointed as Local Commissioner to verify the contents of report dated 07.03.2012 (Annexure R-10/8). He was to visit the spot on 06.02.2014 and one officer of the Forest Department was to assist the Local Commissioner. Both the parties were also required to assist the Local Commissioner on the date fixed.

9. The Local Commissioner filed his report on 12.02.2014, stating that on 06.02.2014, he conducted the spot inspection at 11.30 A.M. in the presence of Mr. Atul Sirsikar, IFS, Deputy Conservator of Forest, Panipat Forest Division, Panipat, Mr. Sanjeev Chaudhary-petitioner, Mr. Dharmender Sharma-respondent No. 10 and Jitamrit,

Executive Sales Officer (HPCL), Panipat Regional Office. The attendance sheet signed by the parties has been annexed as Annexure L/2. Rough site plan (Annexure L/3 Colly.) was prepared at the spot. The Local commissioner found that there were demarcation pillars, which were already erected on all four boundaries of the site. The crux of the report (Annexure R10/8) is as under:-

Total Trees:	8
Trees in D-Area:	5
Trees in personal property: (out of forest land)	1
Cut down trees:	2
One in out of curve area of ingress side	
One in out of curve area of egress side.	

10. After conducting the spot inspection, the report of the Local Commissioner is as under:-

Total Trees standing on the spot	3 (Three)
Trees in D-Area	2 (Two)
Trees in personal property (out of forest land)	1 (One)

11. Photographs of the aforementioned trees have been annexed as Annexure L/4. In the report, it has been further stated that there were two siblings, one in D-area and another in ingress area.

12. After going through the report, given by the Local Commissioner, it transpires that out of the total eight trees, now three trees are present there. Out of the total 5 trees in the D-area, at present there are only two trees and one tree is in the personal property, which is out of the forest land. As per the said report, two trees had been cut down and in the D-area, there are only two trees. Hence, in the enquiry report dated 07.03.2012, given by the Divisional Forest Officer, three trees are now not even available in the D-area and in all, three trees in the D-area are less. There is no tree standing in the ingress and outgress site. Even in the earlier report, there was no tree which was in the curve area of ingress and outgress. Hence, as per the report of the Local Commissioner, two trees in the D-area are not required to be cut now and one tree is falling in the personal property, which is outside the forest area. The siblings in the ingress area, as per photograph (L/5) can be implanted elsewhere by the forest department.

13. At this stage, the written statement filed by respondent Nos. 1, 4 and 5 would be relevant, wherein it has been stated that pursuant to the letter dated 21.01.2011 written by the Assistant Inspector General of Forests, a direction was given to the State of Haryana to examine the matter with regard to illegal felling of trees, which were available on entry, exit and D area of the petrol pump proposed to be set up by M/s. Hindustan Petroleum Corporation Limited (HPCL) along Panipat-Haridwar Road (SH-16) at Kilometer 16-17 in Tamshabad village of Panipat District. Finally, vide letter dated 27.12.2011 (Annexure R-VI), it was clarified by the Nodal Officer-cum-conservator of Forest, Haryana, that no tree was felled from entry and exit of the propose petrol pump, as two trees which were found cut, were in D zone area. Thereafter, the Incharge Additional Principal Chief Conservator of Forests (Central), Northern Regional Office of the Ministry of Environment and Forests, Chandigarh, again requested the Nodal Officer-cum-Conservator of Forest, Haryana, vide letters dated 04.01.2012 and 27.02.2012 (Annexures R-VII and R-VIII) to clarify about the location of the trees. A detailed reply, in this regard, was given vide letters dated 09.02.2012 and 09.03.2013 (Annexures R-IX and R-X). It is, thereafter, that the project proposal of the Government of Haryana was accorded "In Principle" under the Forest (Conservation) Act, 1980 vie letter dated 14.03.2012 (Annexure R-XI)

14. Learned counsel for the petitioner has informed the Court that the Chief Judicial Magistrate/Presiding Officer, Special Environment Court, Kurukshetra, vide its judgment dated 24.01.2013 (Annexure A/1) has acquitted respondent No. 10-Dharmender Kumar Sharma of the charges framed against him.

15. Precise grievance of the petitioner in the present case is that the approval dated 14.03.2012 (Annexure P-12) has been granted against the guidelines dated 15.07.2004 and 18.03.2010 (Annexures P-1 ad P-2). This argument of the petitioner is liable to be rejected. Respondent Nos. 1, 4 and 5 have examined the complaint and report given by the State of Haryana with regard to the illegal felling of trees, which were cut in the D zone area, in detail. The Additional Principal Chief Conservator of Forests, vide letter dated 21.01.2011 and 28.04.2011 (Annexures R-II and R-III) had directed the State of Haryana to examine the matter with regard to felling of trees in the D-area. A report dated 07.10.2011 (Annexure R-IV) was received from the Principal Chief conservator of Forests, Government of Haryana. As per this report, there was no violation of instructions dated 15.07.2004 with regard to opening of the petrol pump on Panipat-Haridwar road. The existence of eight trees are on the D-area and they are not liable to be cut. Hence, the earlier recommendation made by the Chief Conservator, Haryana, should be proceeded with. Having not satisfied with the report dated 07.10.2011 (Annexure R-IV), the Incharge Additional Principal Chief Conservator of Forests (Central), vide letter dated 07.12.2011 (Annexure R-V), sought clarification, as to "whether the trees, which were illegally cut were in D zone area or entry/exit of the proposed petrol pump. In response to this letter, a report dated 27.12.2011 (Annexure R-VI) was given to the effect that no tree was felled from entry and exit of the petrol pump. Two trees, which were found cut, were in D

zone area. The clarification with regard to location of the trees was again sought vide letters dated 04.01.2012 and 27.02.2012 (Annexures R-VII and R-VIII). After detail examination of the proposal, reply was submitted vide letters dated 09.02.2012 and 09.03.2012 (Annexures R-IX and R-X) by the Nodal Officer-cum-Conservator of Forest, Haryana, wherein it was clarified that there were eight trees existing at the spot, out of which, two trees were on the curve of ingress, six trees were in the D-area. As per report (Annexure R-IX), an inspection report was carried out and it was found that no tree was obstructing in the installation of petrol pump outlet. There was no tree in the outgress and ingress route of the petrol pump. Respondent No. 10 was facing a criminal trial for cutting two trees, which were earlier existing in the D-area. After doing spot inspection, there was no tree, which was obstructing in the setting up of petrol pump outlet. As per report (Annexure R-X), there were total eight trees. Five were in the D-area and one was outside the forest area. Two trees were cut and one tree was outside the ingress site curve. Two trees, which were cut, were not obstructing the ingress of the proposed outlet. Detailed report (Annexures R-IX and R-X) is in consonance with the report given by the Local Commissioner, which was filed in the Court on 12.02.2014.

16. Hence, as per the permission, which was granted vide Annexure P-12, as on today, no tree exists on the ingress and outgress route, which is to be used by the petrol pump for making metaled road. There is no violation of guidelines/instructions dated 15.07.2004 and 18.03.2010 (Annexures P-1 and P-2). Moreover, respondent No. 10, who had been facing criminal trial, has now been acquitted by the Court. Two siblings, which are existing as per report of the Local Commissioner, can easily be implanted on other land. At this stage, reference can be made to a Division Bench judgment of this Court in [Basakha Singh Ghunas Vs. State of Punjab and Others](#), where a public interest litigation challenging the proposed petrol pump on forest land on National Highway, was dismissed on the ground that even if there was loss of 46 trees, it was permissible under the Forest (Conservation) Act, 1980, as the owner of petrol pump had deposited Rs. 1.68 lakhs under compensatory afforestation scheme. The money was directed to be utilized for planting equal number of trees. In para 13 of the aforesaid judgment, it was observed as under:-

13. We have heard counsel for the parties. We do not find any reason to interfere and restrain BPCL from establishing the retail petroleum outlet, as the official respondents have taken a definite stand that in the present case, no felling of trees is involved and for diversion of forest land, compensatory afforestation scheme has been accepted by the respondent-BPCL and it has deposited the necessary funds. According to Chief Conservator of Forests (Central), Northern Regional Office and Chief Conservator of Forests, Punjab, respondents are bound to plant trees on equal land, even through in the present case, no trees are to be uprooted. According to the official respondents, loss of 46 plants is permissible and can be condoned under the compensatory afforestation scheme. We are inclined to believe and trust the



official respondents who have been assigned the duty to preserve ecological balance, save and take care of forest land. The allegations that the writ petition is prompted at the instance of rival petrol pump owner who will suffer loss of business, need not be gone into by us, as there is no material on record to substantiate that allegation. Suffice it to say that since no felling of trees is involved and for uprooting of 46 plants, the requisite amount has been deposited by BPCL under the compensatory afforestation scheme envisaged by the Central Government, the only direction which we may give is that the Chief Conservator of Forests, Punjab shall ensure that the amount deposited is utilized for the purpose for which it has been deposited and on equal land trees are planted so that necessary forest cover is not eroded. The Chief Conservator of Forests, Punjab and Central Northern Regional Office shall periodically monitor and keep his officers and employees vigilant and issue necessary directions to them to take immediate action against any illegal felling of trees anywhere in the State. The Writ petition is disposed off with these observations. No Costs. Order accordingly.

17. The second ground for challenging the allotment of site to respondent Nos. 10 and 11 is that already petrol pumps are existing on the National Highway within five kilometers of the proposed site. The objection is liable to be rejected, as the right to carry on any occupation, trade or business is fundamental right under Article 19(1)(g) of the Constitution of India. This aspect has been dealt with by the High Court of Gauhati in [Ganesh Chandra Hazarika Vs. State of Assam and Others](#), In this case, the owner of petrol pump has challenged allotment to another. While dismissing the writ petition, it was observed as under:-

16. Applying the above principles to the facts of this case, it is found that the right to install a petrol pump at the said Rod Junction is as much a fundamental right of respondent No. 6, as that of the petitioner to have installed his own petrol pump, and so long respondent No. 6 exercises his fundamental right without impairing the like fundamental right of the petitioner, and without molesting, threatening, intimidating or by otherwise violent means, of injury can be said to have been caused to the petitioner, who, therefore, has no locus standi to challenge the impugned order on this ground. No certiorari shall, therefore, issue on this ground.

18. In the light of the above discussion and keeping in view the detailed enquiries conducted by the Central as well as the State Government, no ground is made out to interfere in the order dated 14.03.2012 (Annexure P-12).

19. Dismissed.