

POLLUTION CONTROL APPELLATE AUTHORITY (W. B.)

“Paribesh Bhawan”, 10A, LA Block, Sector-III, Salt Lake City,
Kolkata – 700 098.

**Re: Appeal No. A-20/2003
M/s. United Novelties & Gas Supply
Company, ...Appellant**

Vs.

**W. B. Pollution Control Board & Ors.,
... Respondents.**

**ORDER
06.04.2004**

This is an appeal against the order passed by the West Bengal Pollution Control Board on 04.08.2003 directing the appellant unit, i.e., M/s. United Novelties & Gas Supply Co., to shift its LPG Godown from the present location to any other suitable place on or before a specified date. The unit is a dealer / distributor of LPG cooking gas cylinders. The appellant unit receives supply of such cylinders from M/s. Indian Oil Corporation Limited under certain terms and conditions as per agreement between them. The reasons for passing the impugned order have been spelt out elaborately in the impugned order itself. In the impugned order it has been pointed out that the appellant unit is not maintaining the norms as fixed up by the State Board for loading / unloading of gas cylinders for the purpose of reducing the noise pollution and also for minimizing the chance of other environmental hazards.

Another reason for passing the impugned order is that the unit has been asked by M/s. Indian Oil Corporation in the year 1999 to shift its godown from the present location which is a congested residential area to some other place suitable in shape and dimension, but the same has not yet been complied with.

The third ground spelt out in the impugned order is that the concerned LPG unit is absolutely reluctant to comply with the direction of the WBPCB towards reducing the noise level as well as preventing the possibilities of other environmental hazards during loading / unloading of LPG cylinders.

The point for decision in this appeal is whether any interference is warranted with the impugned order.

It may be noted that pursuant to the direction of the Hon'ble High Court dated 25.06.1999 passed in W. P. No. 5826 (W) of 1999, the Board formulated certain guide-lines in September, 1999 regarding loading / unloading of gas cylinders for minimizing the noise level and also for certain other relevant matters associated therewith.

One of the objections raised in respect of the said guidelines by the appellant unit is that the said guidelines were prepared by the WBPCB and not by M/s. Indian Oil Corporation Limited. It is, however, on record that the said guidelines were formulated by the WBPCB in consultation with M/s. IOC Ltd. Therefore, the question of competency of the authority for framing such guidelines is absolutely without merit.

The guidelines will speak for themselves. What is really surprising is that the appellant unit is not at all willing to take the responsibility of discharging their own role towards implementation of the said guidelines. The appellant unit has taken the stand that loading / unloading is the responsibility of M/s. IOC Ltd. and the concerned dealer / distributor has no responsibility in the matter. In our opinion this is a very dangerous and irresponsible stand taken by the appellant unit particularly where M/s. IOC Ltd. wants that the appellant unit should discharge its responsibility in this regard. It is needless to mention that we are not so much concerned with the question of apportioning the responsibilities in the matter between the supplier and the dealer as with the question of ascertaining whether there is someone to take and discharge the responsibilities required to be taken in the matter in the interest of public safety and prevention of environmental hazards. As the appellant unit is clearly not willing to take any responsibility to comply with the guidelines regarding loading / unloading at their godown point, this, in our opinion, is a sufficient reason why the godown should not be allowed to operate at that particular place which has now become a very congested residential area.

It is the case of the appellant that initially in the year 1978 when the appellant unit obtained necessary licenses for running the godown, the concerned area was not so much congested. But of course, it is now an admitted fact that the place has since become very thickly populated and the godown is surrounded by a lot of residential houses. In fact, there were and are complaints from the residents of the neighborhood against the improper loading / unloading activities of the

appellant unit creating noise pollution and risk of other environmental hazards. On receiving such complaints the Board embarked upon an enquiry and ultimately the matter culminated in the passing of the impugned order by the State Board.

Another very significant thing which has to be taken into consideration is that although the godown is surrounded on all sides by walls keeping necessary space in between the godown and the wall yet there is a public road in front of the godown and unloading of the LPG cylinders from the supply vehicle take place on that public road. The complainants, who have been added as respondents in these proceedings before us on their prayer, have filed certain photographs taken on different occasions showing the nature of unloading activities of LPG cylinders on the public thoroughfare in front of the LPG godown. It appears from the photographs that unloading of cylinders is done by simply throwing away the cylinders from the supply vehicle on the public road. It may be that at the time of inspection the unit might have placed some rubber mats on the ground for carrying on unloading operation but it is not difficult to visualize that such procedure will not be followed always, specially, when there is no inspection by the State Board or by some other authorities. In fact, the photographs produced before us, which are on record, show that the LPG cylinders are being thrown on the road in front of the godown premises indiscriminately and that too in a very reckless and hazardous manner. This is definitely not a recommended procedure for unloading the cylinders and is rather quite hazardous from the environmental point of view and also from the viewpoint of public safety.

It is the case of the appellant unit that they have obtained necessary licenses for storing the LPG gas cylinders in the said godown from the Department of Explosives, Government of India. During the hearing of the appeal, two Deputy Controllers of Explosives, East Circle, Kolkata were personally present before us and submitted inter-alia that very recently they had received an administrative instruction on the guidelines regarding granting of licenses for LPG cylinders and according to that guidelines loading / unloading of LPG cylinders should not be done on the public thoroughfare. This was recorded in our order dated 17.02.2004. The said officers, however, submitted that these guidelines are generally applicable for new licenses.

However, to see the guidelines for ourselves we asked them to produce before us the administrative instruction regarding the guidelines for loading / unloading of LPG cylinders. Accordingly, they produced the said guidelines before us. The said guidelines, as we find, reads thus: ' The matter regarding provision of fence around LPG godowns was discussed and it was felt that all LPG godowns should be provided with 1.8 M high masonry wall around the boundary since, only barbed fencing being provided are removed after inspection is over. Alternatively, a combination of boundary wall (atleast 0.6 M high) and barbed wire fence above it may also be considered. So far as new godowns are concerned, adequate space for parking of trucks outside the masonry fencing should be considered. The present practice of unloading on public roads has to be discouraged in the interest of public safety'. In the light of the above it has further been communicated that while granting permission etc. in respect of new LPG godowns, office of the Department of Explosives now insists for providing adequate space for loading / unloading of LPG cylinders outside the masonry fencing.

It appears from their communication that these guidelines were issued pursuant to a meeting of the senior officials of the Department of Explosives held in the office of the C.C.E, Nagpur on 4th & 5th April 1991. It thus appears that these guidelines issued by the Department of Explosives are not of recent origin but these were formulated as far back as in April 1991. The impression given to us by the officers of the Department of Explosives appearing before us was that these guidelines were issued recently but now we find that these guidelines were issued rather 12 or 13 years back.

Another very significant thing reflected in the aforementioned guidelines is that barbed wire fencing even if installed around the LPG godown for the purpose of inspection is rather removed after inspection. This, therefore, is a notorious fact, which has been taken notice of the Department of Explosives. It is not difficult to visualize that if barbed wire fencing is generally removed when inspection is over, then the rubber mats, which may be used at the time of unloading of LPG cylinders for facing an inspection, in all probability will not be put to use at the time of unloading generally after inspection.

We have noted that the Department of Explosives has also considered it necessary to prohibit the practice of unloading of LPG gas cylinders on the public

thoroughfare in the interest of public safety and security. If such practice is fraught with danger to public safety then such possibility of danger should be avoided or eliminated in the interest of public safety not only in respect of new godowns but also in respect of all godowns, old or new. Therefore, as loading / unloading on the public thoroughfare is considered by the Department of Explosives to be an unsafe practice in the interest of public safety, then this practice must be effectively deprecated in respect of all godowns whether new or old. Since the existence or functioning of the godown of the appellant at its present location is intimately associated with the vice of such undesirable practice, the unit has to be asked compulsively to relocate itself.

It has been mentioned that M/s. IOC Ltd. also advised the appellant unit quite a few years back to search out a suitable plot of land to shift their godown to some non-residential area comprising of not less than 20 cottahs of land in suitable dimension and shape. This fact was also communicated by M/s. IOC Ltd. to WBPCB by their letter dated 05.03.1999.

It is submitted by the Ld. Advocate appearing on behalf of the appellant unit that no such advice was ever received by the appellant unit from M/s. IOC Ltd. Even assuming that no such communication was received by the appellant unit on or before the year 1999 from M/s. IOC Ltd., in our opinion it hardly makes any difference while M/s. IOC Ltd., through their advocate appearing in this appeal, supported the said stand which is also specifically recorded in our order-sheet dated 16.12.2003.

It is, therefore, clear that M/s. IOC Ltd., being the supplier of the appellant unit, is also of the opinion that the godown of their distributor in such a congested residential area should be shifted to an appropriate place and also it should have an area measuring 20 cottahs instead of the present area of only 11 cottahs. The appellant unit being a mere distributor/dealer of the Indian Oil Corporation Limited can not be allowed to ignore the same at the cost of public safety and environmental protection.

The impugned order of the State Board also clearly states in clause (b) that the LPG godown unit has not yet been shifted its godown from the thickly populated residential area to some other suitable location as per the recommendation of the M/s. IOC Ltd. Although the appellant unit takes the stand that no such advice

was ever received by them from M/s. IOC Ltd. yet in their Memo of Appeal they have not mentioned any such ground although such advice of the IOC Ltd. has been specifically reflected in the impugned order of the WBPCB. In para (viii) of the Memo of Appeal the said ground has been specifically mentioned but without taking any such plea that no such advice was received nor was any point of defence at all taken in the memo of appeal as to why such advice of M/s. IOC Limited should not be implemented, followed or adhered to.

We have already pointed out that the appellant unit clearly disowned their responsibility to follow the guidelines and has taken the plea that compliance of such guidelines is not their responsibility but it is the responsibility of M/s. IOC Ltd. and this has been mentioned in the para (viii) of the Memo of Appeal.

Reckless manner of unloading by throwing LPG cylinders on the public thoroughfare undoubtedly creates noise to an offensive level as well as risk of environmental hazards but the appellant unit is not at all willing or ready to acknowledge even its responsibility as a dealer to comply the guidelines for loading / unloading at the disembarking point of the godown. This is an untenable situation that deserves no patronisation.

It may also be pointed out here that on inspection the Explosives Department has found the existence of a number of trees in the godown premises, which should not have been there. The learned Advocate for the appellant submits, obviously for meeting the objection of the Explosives Department in this regard, that we may permit the appellant to cut down the trees. In our considered opinion this is a wholly unacceptable proposal. To suit the appellant's own commercial convenience and purpose surely we can not sign death-warrant for the extermination of trees, which are invaluable assets for maintaining the environmental health of a congested urban locality. Considering all relevant angles of view we hold that it is the godown which has to be removed from that place and not trees, the treasures of environment.

For all the reasons discussed above including the view point of public safety reflected in the guidelines of the Department of Explosives it is highly undesirable that the appellant unit should continue to operate the LPG godown at its present location abutting a public thoroughfare by using the thoroughfare as unloading spot of LPG cylinders in a densely populated residential area. We therefore, find no reason to interfere with the impugned order. The appeal is accordingly

dismissed. The appellant unit is, however, allowed time to shift their godown to a suitable place within four months failing which the Board will be at liberty to take necessary action in the matter in accordance with law.

Sd/-

(Prof. Pinaki Bhattacharyya)
Head, Dept. of Chemical Engineering
Jadavpur University
And
Member, Appellate Authority

Sd/-

(Prof. Dipak Kumar Bhattacharyya)
Emeritus Fellow, All India Council of
Technical Education, New Delhi
And
Member, Appellate Authority

Sd/-

(Justice Gitesh Ranjan Bhattacharjee)
Chairman, Appellate Authority