

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 23rd February, 2015

+ W.P.(C) No.2611/2012 & CMs No.5584/2012 (for stay), 5729/2013 (for directions), 16629/2013 (for disposal of CM No.5729/2013) & 969/2014 (for rectification of order dated 18.12.2013)

HARISH CHANDER & ORS.

..... Appellants

Through: Ms. Indira Unninayar with Ms. Kirat Randhawa & Mr. Narayan Krishan, Advs.

Versus

HINDUSTAN PETROLEUM CORPORATION LTD. & ORS.

..... Respondents

Through: Mr. Kailash Vasdev, Sr. Adv. with Mr. P. Sinha, Ms. Reshmi Rea Sinha & Mr. Avneesh Garg, Adv. for R-1/HPCL.
Mr. Ripu Daman Bhardwaj, CGSC with Mr. T.P. Singh, Adv. for R-2 to 7 & 14 / UOI.
Ms. Ferida Satarawala, Adv. for GNCTD.
Mr. Amitabh Marwah, Adv. for DDA.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This petition under Article 226 of the Constitution of India, filed as a Public Interest Litigation (PIL), seeks the reliefs of:

- (a) restraining the Hindustan Petroleum Corporation Ltd. (HPCL) (respondent No.1) from constructing and operating its Petroleum Storage Depot at Tikri Kalan;
- (b) a direction to the HPCL to shift / re-site its Petroleum Storage Installation to a safe distance of a minimum of 10 to 15 Kms. from the village Tikri Kalan, thereby excluding the residents of village Tikri Kalan from the high risk zone in case of fire, explosion or any other accident / incident in the said Petroleum Storage Installation;
- (c) a direction to the Government of National Capital Territory of Delhi (GNCTD) (respondent No.11) to identify appropriate alternative land for re-locating the said petroleum storage depot of HPCL at a safe distance from population / populated areas;
- (d) a declaration that the Environment Clearance dated 24th August, 2009 granted by the Ministry of Environment and Forests (MOEF), Government of India (respondent No.7) for setting up of petroleum storage depot at Tikri Kalan is void *ab initio* and a writ quashing the same;

- (e) quashing of the “consent order” if any issued by the Delhi Pollution Control Committee (DPCC) (respondent No.8);
- (f) quashing of the clearances / NOC if any issued by the Petroleum and Explosives Safety Organization (PESO) (respondent No.6), Ministry of Petroleum and Natural Gas (MoP&NG) (respondent No.4) and Oil Industry Safety Directorate (OISD) (respondent No.5) for setting up of the said oil storage depot;
- (g) quashing of the Zonal Plan dated 9th June, 2010 of the Delhi Development Authority (DDA) (respondent No.12) and the Clause 6.3 of the Master Plan of Delhi (MPD) notifying the said land near / in Tikri Kalan as a major storage site for oil;
- (h) a direction to the MoP&NG to incorporate mandatory safety norms for installation of oil and petroleum storage depots in the Petroleum Rules, 2002;
- (i) a direction to the OISD to declare as mandatory and ensure compliance of the appropriate safety norms and safety standards with regard to installation of petroleum / oil depots all over India;

- (j) a direction to the National Disaster Management Authority (NDMA) (respondent No.2) and Delhi Disaster Management Authority (DDMA) (respondent No.9) to review the instant installation of HPCL's petroleum / oil storage depot at Tikri Kalan in the light of M.B. Lal Committee report;
- (k) a direction to the Delhi Fire Service Authority (DFSA) (respondent No.13) to review the instant installation;
- (l) a direction to the NDMA to ensure compliance of Safety Guidelines / procedures into Disaster Management Guidelines;
- (m) a direction to the DDMA and the Government of India to prominently publish its final Chemical Disaster Management Guidelines;
- (n) a direction to the National Executive Committee for Disaster Management (NECDM) (respondent No.3) to prepare a proper National Plan for Disaster Management;

- (o) a direction to the NDMA to mandate safety audits before setting up of hazardous Petroleum Storage Installations and to review from time to time adherence to safety by such installations;
- (p) a direction to the DDMA to formulate policies for installation of petroleum / oil depots; and,
- (q) a direction to the State Executive Committee of Delhi for Disaster Management (respondent No.10) to ensure coordination between all concerned agencies of Delhi for setting up / implementation of any project.

2. It is *inter alia* the case of the seven petitioners, all of whom claim to be residents of village Tikri Kallan:

- (i) that village Tikri Kalan situated in West Delhi has around 25,000 to 30,000 inhabitants and the surrounding areas within a radius of 1 to 2 Kms. also have around 1.5 to 2 lakhs population, spread over several villages;

- (ii) that HPCL has set up a Petrol Storage Installation at Tikri Kalan, without adhering to the necessary distance for the purpose of safety;
- (iii) that the said Petrol Storage Installation violates the right of the petitioners and the other residents of village Tikri Kalan to live in a safe environment;
- (iv) that the said Petrol Storage Installation is at a dangerously close distance of only 1440 odd feet i.e. 440 mtrs. from the residences;
- (v) that the boundary wall of the installation is at a distance of 180 feet i.e. 55 mtrs. only from the residences of villagers;
- (vi) that Tikri Kalan also has bottling plants for Liquefied Petroleum Gas (LPG) of Indian Oil Corporation Ltd. (IOCL), HPCL as well as Bharat Petroleum Corporation Ltd. (BPCL);
- (vii) that after a major fire in 1995 in Jwala Puri and in the light of the hazards of the plastic industry, Delhi's largest plastic waste industry was also in or about the year 2000 shifted to Tikri Kalan;

- (viii) that a major fire at the IOCL Petroleum Storage Depot near Jaipur on 29th October, 2009 had left 11 dead and 150 injured; the area within 5 Kms. radius of the said depot was reported as 'danger zone';
- (ix) that a seven Member Committee headed by former HPCL Chairman M.B. Lal was constituted to submit a report on the Jaipur fire;
- (x) that M.B. Lal Committee reported the impact of fire upto 2 Kms. or more from the site; and,
- (xi) that the representations of the petitioners commencing from 11th February, 2010 till the filing of the petition in or about April, 2012 remained unheeded.

3. The petition came up before this Court first on 2nd May, 2012 when notice, only to HPCL, NDMA and DDMA was issued.

4. HPCL filed an affidavit pleading:

- (a) that in view of the fire that took place in the Army Ordinance Depot adjoining the Oil Storage Depot / Tanks of HPCL at Shakur

Basti, Delhi, all the Oil Marketing Companies (OMCs) were advised to shift the existing Petroleum Products Storage Installations from Shakur Basti;

- (b) that pursuant thereto process of land acquisition for Petroleum Oil Terminals across the National Highway-10 from village Tikri Kalan was initiated in the year 2004 and suitable land was identified along with the DDA in accordance with the Zonal Development Plan, Planning Zone-L, West Delhi-III as per MPD-2021;
- (c) that Notification under Section 4 of the Land Acquisition Act, 1894 was published on 20th January, 2009 in respect of land ad-measuring 145 Bighas for construction of HPCL's terminal; thereafter notifications under Section 17(1) and under Section 6 of the Land Acquisition Act were issued and published on 25th February, 2009;
- (d) that MPD-2021 authenticated by Government of India on 9th June, 2010 also mentions that Shakur Basti Oil Depot had been shifted

to a site between Ghevra and Tikri Kalan which will be a major storage site for oil;

- (e) that HPCL, for setting up of its Terminal on the land, obtained:
 - (i) Environment Clearances dated 24th August, 2009 from the MOEF;
 - (ii) Layout Approval dated 27th October, 2009 from PESO;
 - (iii) Consent dated 23rd December, 2009 of the DPCC;
 - (iv) Approval dated 2nd August, 2011 from the Chief Inspectorate of Factories, GNCTD.
- (f) that HPCL, while setting up the Terminal, complied with the provisions of the Petroleum Act, 1934, Petroleum Rules, 2002 framed thereunder and the OISD-118 as well as the Local Building Byelaws;
- (g) that the center line of the tank farm containing the storage tanks storing High Speed Diesel, Superior Kerosene Oil and

Petrol/Motor Spirit is 430 mtrs. away from the village side edge of the National Highway;

- (h) that HPCL has left a distance of 125 mtrs. from the center line of National Highway, as against the required distance of 61.96 mtrs.;
- (i) that construction activity for the said Terminal was commenced in the year 2009 and had been completed and the Terminal is ready though operations had not begun awaiting some fire-fighting equipment which are 100% in line with OISD-117, as revised, subsequent to the M.B. Lal Committee report;
- (j) that the said terminal could not be compared with the IOCL's Terminal at Jaipur where the incident of fire had occurred; the said IOCL Terminal was three times larger than the said Terminal and the fire water storage capacity of the said terminal is more than double of the IOCL's Jaipur Terminal;
- (k) that HPCL and BPCL's terminals in close vicinity of IOCLs Jaipur terminal were not affected;

- (l) that each oil installation has to be analyzed for risks and safety provisions on its own merits and there can be no blanket comparison;
- (m) that the re-sitement of the HPCL terminal from Shakur Basti to across the National Highway-10 from village Tikri Kalan was at a cost of about Rs.190 crores;
- (n) that the operation of the said terminal would avoid the current risk of surface transportation; the input to Shakur Basti installation was through railway / tank wagons; the input to said terminal will be through dedicated underground cross-country pipeline thereby ensuring environment friendliness, safety and faster movement of the product;
- (o) that prior to setting up of the said terminal, Environmental Impact Assessment and Risk Analysis was carried out in July, 2009;
- (p) that the probability of leakage due to tank failure and mechanical seal failure or other causes is very low in view of stringent

precautions taken in the design and construction of the said installation;

- (q) that the Environment Impact Assessment (EIA) and Risk Analysis report were studied by the DPCC and consent given thereafter only;
- (r) that subsequent to the incident of fire at IOCL's Jaipur Terminal and in line with the M.B. Lal Committee's recommendation, Quantitative Risk Assessment Studies were carried out in February, 2012 and whose report revalidated the findings of the earlier Risk Analysis Studies / reports;
- (s) that as per the said report, the impact areas under various scenarios fall within the premises of the said Terminal;
- (t) that the extent of area impacted in the remotest possible event of vapor cloud explosion also falls within the boundary wall of HPCL's said terminal;
- (u) that the said terminal is constructed in accordance with MPD-2021 as well as OISD-118 and HPCL has taken all necessary

precautions reviewed by various authorities such as MOEF, DPCC, PESO and Chief Factory Inspectorate's Office, thereby ensuring that risk, if any, is contained within HPCL's said Terminal;

- (v) that OISD-118 relates to the layout of the petroleum storage installation and OISD-117 relates to fire safety measures to be taken for an oil storage installation;
- (w) that detailed particulars running into as many as 100 items, of the compliances done for OISD-117 pre M.B. Lal Committee recommendation and running into 13 items for OISD-117 post M.B. Lal Committee's recommendations are given; and,
- (x) that HPCL has thus taken all necessary steps towards fire safety including those in the M.B. Lal Committee's report.

5. The petitioners have filed a response to the aforesaid reply affidavit of HPCL *inter alia* pleading:

- (I) that the money already spent by HPCL cannot be a relevant factor inasmuch as the loss estimated in the M.B. Lal Committee's report

with respect to the incident of fire at IOCL's Jaipur storage was of approximately Rs.280 crores besides the loss of 11 lives;

- (II) that safety has to be the primary concern;
- (III) that moreover the petitioners had been representing for stoppage of the construction work since before it began;
- (IV) that the M.B. Lal Committee had recommended a buffer safety zone around High Hazardous Petroleum Installations and had reiterated that from the explosion, buildings close to the boundary wall had also been damaged;
- (V) that 1440 feet will not be an adequate buffer should there be any disaster;
- (VI) that Tikri Kalan is surrounded by highly inflammable industries and even a slight spark in the area can set off an eminently preventable disaster by just ensuring adequate distance / safety buffer;

(VII) that the issue is not with respect to putting out a fire but of the inherent lack of safety in setting up petrol storage depots near thickly populated areas;

(VIII) that though the reason for shifting of oil depots of IOCL, BPCL as well as HPCL from Shakur Basti was a fire which took place in the Army Ordinance Depot adjoining the said oil storage depots yet in re-locating the oil storage depots, the said concern had been ignored;

(IX) that since the decision in 2001, Tikri Kalan has become thickly populated.

6. DDMA in its counter affidavit dated 25th August, 2012 pleaded that HPCL's Petroleum Storage Depot at village Tikri Kalan was surveyed on 30th May, 2012 and the Surveying Committee had recommended that a Consultant be appointed to suggest measures to augment safety of the areas surrounding the depot and the said proposal was under consideration. The District Disaster Management Plan of West District within whose jurisdiction village Tikri Kalan falls was also enclosed to the said affidavit.

7. It was however the contention of the counsel for the petitioners that the said affidavit of the DDMA was contrary to the report of the survey got conducted by the DDMA;

8. A perusal of the said survey report showed the surveying committee to have observed:

- (A) that the HPCL's plant was located at a distance of approximately 500 mtrs. from the residential area of village Tikri Kalan and that distance is not enough in case of any major disaster spreading out of the plant;
- (B) that HPCL has an elaborate Internal Disaster Management Plan but there was no External Disaster Management Plan till then;
- (C) that the location of LPG bottling plant nearby also poses some threat to the nearby localities but the PVC bazar is located quite far away from the HPCL's plant and does not pose any imminent danger in case of any major incident;

- (D) that there is a need of Comprehensive External Disaster Plan for handling the major disasters in the vicinity of HPCL plant in case of any accident or disaster inside the plant; and
- (E) that there is also a need to have an expert opinion on explosions, fire and other eventualities like projectiles due to presence of large number of LPC cylinders in nearby LPG bottling plant etc. and a comprehensive disaster mitigation plan should be formulated for external areas of those plants;

9. In view of the said survey report, this Court vide order dated 24th January, 2013 on the application filed by the petitioners along with the writ petition for interim reliefs, restrained HPCL from commencing the operation of the subject project without seeking specific permission from the Court. The said interim order has continued in force till now.

10. HPCL filed CM No.5729/2013 dated 7th May, 2013 seeking permission to commence operations, detailing the steps taken by it for a comprehensive emergency response and disaster management plan for handling any major disaster in the vicinity of the terminal in case of occurrence of any accident /

disaster inside the terminal. In the affidavits subsequently filed in support of the application, it was *inter alia* pleaded:

- (i) that a Fire Safety Certificate dated 11th November, 2012 for occupancy of the said storage depot had been obtained from Delhi Fire Services;
- (ii) that Delhi Fire Service was satisfied that HPCL, besides fulfilling the standards laid down by the OISD, had also made additional provisions for detection and fire suppression using inert gas for electrical panels and by providing additional water monitors in the tank farm to provide effective water curtain between the tanks for restricting the heat retention from one tank to another;
- (iii) that the ACP (Licensing for Storage of Petroleum Products) also had given a NOC dated 3rd December, 2012 with respect to the said storage depot after inspecting the safety aspects;

- (iv) that in consultation with DDMA, a Consultant had been appointed for carrying out Qualitative Risk Assessment / Emergency Response and Disaster Management Plan with respect to the three plants separately as well as together;
- (v) that on 7th March, 2013 and 11th March, 2013, mock drills were conducted by the Consultant with the involvement of all the agencies including DDMA and prominent villagers of Tikri Kalan;
- (vi) that the Consultant also in its report had stated that the distance of Tikri Kalan village border from the incident point is 440 mtrs. and thus the village will have no risk due to heat radiation also;
- (vii) that the consultant had found that the probability of happening of such an incident itself is five in ten lakhs per annum;
- (viii) that the Consultant had further reiterated that even in the worst case scenario of fire / disaster at the HPCLs plant,

towards Tikri Kalan village, the impact thereof will be totally contained within the HPCL installation only;

- (ix) that safety and firefighting equipment in line with M.B. Lal Committee recommendations and revised OISD standards had been installed;
- (x) that arrangements have been made for deploying trained manpower for safe operation of the facility;
- (xi) that HPCL being a Government company is fully committed to the issue of safety and has taken and will at all time take all steps so that its installation does not pose any safety risk to any inhabitants;

11. It was further pleaded in the affidavit accompanying the said application that the petitioners and other villagers of Tikri Kalan did not challenge the acquisition of the land for the purpose of setting up of the said terminal of HPCL and rather accepted the acquisition by accepting compensation without demur and even thereafter did not challenge the installation of the said terminal

till 2012 and filed the writ petition only when the terminal was ready to be commissioned.

12. It was yet further pleaded that the Comprehensive Disaster Management Plan (CDMP) prepared by the Consultant had been forwarded to the DDMA and thus the reasons for which this Court had vide order dated 24th January, 2013 restrained HPCL from commissioning the subject storage depot stood satisfied.

13. DDMA filed a response dated 30th May, 2013 to the application aforesaid of the HPCL for commissioning of the storage depot, stating:

- (i) that HPCL, pursuant to the interim order dated 24th January, 2013 (supra) had submitted to the DDMA a CDMP of its storage plant, LPG Bottling Plant of IOCL and Oil Terminal of IOCL at Tikri Kalan, prepared by M/s International Certification Services Pvt. Ltd.;
- (ii) that as a norm, DDMA conducts and puts such plan to test / analysis on the ground, in order to determine their actual feasibility and their ability to achieve the targeted results;

- (iii) that accordingly, a mock drill with the help of all Emergency Support functionaries with respect to the CDMP submitted by HPCL will be conducted;
- (iv) that in this mock drill Indian Army as well as a third party observer as well as prominent villagers of the area were also scheduled to be involved;
- (v) that only after such mock drill would the DDMA be able to check the preparedness level of HPCL;
- (vi) that the said CDMP submitted by HPCL was also to be forwarded to the NDMA and the National Institute of Disaster Management (NIDM) for their comments and suggestions as both the said institutions are the apex bodies for disaster management at national level;
- (vii) that DDMA would also be consulting the neighbouring North-West district as inter-district coordination is very important and necessary in case of any eventuality;

- (viii) that after completion of the said mock drill, a observation report will be obtained from the Indian Army and on the basis of which final report of the mock drill will be prepared by the DDMA and submitted before the Court;
- (ix) that DDMA would be able to respond to the request of the HPCL for commissioning of the plant only after the mock drill is conducted and the targeted results as claimed by the CDMP achieved;
- (x) that the area surrounding the plant, to the extent 1 to 2 kms. has a population of 1.5 to 2 lakhs villagers and it is vital to ensure and protect their safety;
- (xi) that the CDMP submitted by HPCL was a piece of paper till the efficacy thereof is established in the mock drill; and,
- (xii) however with the submission of the Comprehensive Emergency Response and Disaster Management Plan, HPCL had complied with all the requirements for commissioning and operation of its Tikri Kalan Oil Terminal.

14. Needless to state, the petitioners contested the application aforesaid of HPCL for commissioning of the storage depot by filing reply thereto but at this stage, it is not deemed necessary to detail the contents thereof.

15. HPCL filed rejoinder to the response aforesaid of DDMA stating:

- (a) that DDMA on 27th June, 2013 had conducted the mock drill aforesaid in the presence of an independent observer and the villagers of Tikri Kalan including the petitioner No.1;
- (b) that in the mock drill the working of the Comprehensive Emergency Response and Disaster Management Plan got prepared by HPCL was checked;
- (c) that HPCL had complied with all the relevant statutory provisions including Rules, Regulations, Guidelines and / or Notification in this regard; and,
- (d) however if any of the statutory authorities indicate any other requirement to be fulfilled, HPCL is ready and willing to comply with the same for the safety and security of the villagers of Tikri Kalan and other neighbouring villagers.

The said rejoinder was accompanied with a note on the sequences of events during the mock drill and the photographs thereof which also show the independent observer participating in the mock drill interacting with the villagers.

16. DDMA also submitted to this Court a report of the mock drill conducted on 27th June, 2013 along with the report of the independent observer who had participated therein.

17. DDMA in the said report, while analyzing the mock drill, in the column “strength” of the Comprehensive Emergency Response & Disaster Management Plan *inter alia* observed that the Fire Hydrant System of HPCL and IOCL worked properly – within few seconds of the incident the Fire-dousing equipment were made operational effectively to control the fire. In the column of ‘weakness and suggestions’, the report is that;

(A) the site being situated in a remote area, the response time by most of the departments was not very good;

(B) the movement of emergency vehicles was obstructed by heavy traffic on the access roads;

- (C) the security staff of HPCL and IOCL needs to be trained more professionally on search and rescue techniques and first aid;
- (D) proper signage board of emergency exit needs to be displayed at different suitable locations in the premises of both the plants;
- (E) awareness generation-cum-orientation programme about disaster management should be conducted in the nearby areas of these plants; and,
- (F) there should be mutual collaboration between management of both the plants to cope up with such incidents more effectively.

18. The independent observer of the mock drill has *inter alia* reported that:

- (i) the response of HPCL for the on-site emergency was very good;
- (ii) two fire tenders reported immediately including one which is stationed within the premises and started the fighting;

- (iii) the hydrants were also started;
- (iv) in the tanks in the vicinity of the tank where the incident was simulated, water sprinklers were started;
- (v) foam had started spilling inside automatically to douse the fire instantly;
- (vi) rescue team with stretchers and first aid team with the first aid box reached the disaster site;
- (vii) though the disaster was managed within the boundary of HPCL but by way of abundant caution emergency was also declared off-site;
- (viii) the police, fire services and the ambulance services reached the disaster site beyond the acceptable response time owing to heavy traffic on the access roads;
- (ix) HPCL's storage depot is fully automated with entry and exit control and an integrated tank farm management system;

- (x) each tank is provided with radar type level transmitter, multi element averaging temperature sensor, water / product interface measurement and pressure transmitters for density measurement;
- (xi) indication is available locally in the tank side display unit as well as in the control room;
- (xii) high velocity long range automated TT loading facility, automated fire alarm / fighting facility and fairly good communication system exists;
- (xiii) emergency shut down is in the terminal control room to stop all dispatch operation;
- (xiv) Emergency push button to stop all road loading operations are provided on either side of the gantry and one in the middle of the gantry and also in the control room;
- (xv) that the representatives of Tikri Kalan witnessing the mock drill did not want to listen to the logic that the storage depot was more modern, more safe and adhered to the laid down safety and security norms and continued to complain about the nearness of

the installation and the fear of a disaster and blamed their earlier Sarpanch who had given the NOC on behalf of the village.

19. The independent observer has *inter alia* recommended; i) that the control room should preferably be at a higher floor from where the whole plant is visible; ii) the control room should have a fire proof glass for functioning even during disasters; and, iii) planting of more trees with shade within the premises of HPCL.

20. Thereafter, when the matter was listed before this Court on 22nd August, 2013, though earlier notice of the petition had been issued only to HPCL, DDMA and NDMA, notice of the petition was issued to the other respondents also.

21. In response thereto, DPCC has filed a counter affidavit stating that the Environment Clearance was granted first for laying down of the pipeline from Bahadur Garh to Tikri Kalan by HPCL and thereafter for setting up of the oil depot at Tikri Kalan for storage of petroleum products and that the said storage terminal had been established at site which had been specifically earmarked and provided under the MPD-2021 for the said purpose and that the consent given was valid and does not suffer from any infirmity. It is further stated that the

storage of petroleum products is not an activity which would fall in the 'Red' category of industries as per Classification list of industries under the DPCC consent policy.

22. DDA in its counter affidavit has stated:

- (a) that MPD-2021 was prepared in accordance with the relevant provisions of the Delhi Development Act, 1957 and was approved by Central Government and notified on 7th February, 2007;
- (b) generally speaking, a proposal is made and public objections / suggestions are invited under Section 11(a) of the Delhi Development Act;
- (c) in the said public notice, the period prescribed for receipt of objections and suggestions is 30 to 45 days from the date of the notice;
- (d) the objections and suggestions received are placed for hearing before the Board consisting of Engineer Member, DDA as Chairman and the Finance Member, DDA and other persons and other non official authority members;

- (e) the Board thereafter gives its recommendations which are put up before the Competent Authority comprising of Lieutenant Governor, Vice Chairman, DDA and others including elected members of Legislative Assembly;
- (f) the competent authority is empowered to accept / reject or modify the recommendations;
- (g) the Scheme known as “Rohtak Road Scheme” was formulated by the DDA for 556 hectare of land falling in between Railway Line of Rohtak Road in West Delhi, for industrial / wholesale / warehousing use;
- (h) a public notice inviting objections / suggestions for the purpose of change of land use was published in the newspapers on 30th August, 1997;
- (i) after examination of objections / suggestions, the proposed change of land use of 556 hectares of Rohtak Road Scheme were duly considered as per legally mandated procedure;

- (j) the land use plan of Rohtak Road Scheme was processed as part of the MPD-2021 and a draft land use plan containing Rohtak Road Scheme was published for objections / suggestions in March / April, 2005;
- (k) that after consideration of the objections / suggestions, MPD 2021 as per legally mandated procedure as aforesaid was notified on 7th February, 2007;
- (l) that it was the decision of the Government of India to relocate Shakur Basti oil depots to a site between village Ghevra and village Tikri Kalan which was to be a major oil storage site and the same is reflected in Clause 6.3 of MPD-2021;
- (m) that the oil storage depots are required for the captive requirement of the city of Delhi and needs to be located in Delhi due to operational difficulties outside Delhi;
- (n) the decision for relocating the oil depots at Shakur Basti to the said location was taken in the year 1980-85 and MPD-2001 was

notified in August, 1990 when the said area was sparsely populated and was predominately rural;

- (o) however due to massive increase in population, the said area has become thickly populated and has changed its character from rural to urban.

23. The petitioners thereafter applied for impleadment of Union of India through the Ministry of Urban Development as respondent to the petition and which was allowed vide order dated 21st April, 2013. We may also add that the petitioners have filed rejoinders to all the counter affidavits, denying contents thereof, but need is not felt to burden this judgment with content thereof also.

24. We heard the counsels for the parties on 9th & 10th October, 2014 and reserved judgment. The petitioners however filed an application for further hearing of the petition. Though the said application was dismissed on 29th October, 2014 but fresh written arguments submitted by the counsel for the petitioners were taken on record.

25. As would be obvious from the counter affidavits of HPCL and other respondents, the subject oil storage depot is situated on a land earmarked in the

Master Plan for the said purpose and has been set up after obtaining all approvals, permissions, consents under all applicable laws, rules, regulations and notifications. Though, till the date of filing of this petition and also till the date of subject oil storage depot becoming ready for commissioning, Comprehensive Emergency Response and Disaster Management Plan, as was required to be in place as per the conditions of the approvals, consents, permissions granted for setting up of the oil storage depot, was not in place but now the same is also in place and has also been checked / tested in the mock drill. It cannot thus be said that the setting up of the said oil storage depot is in contravention of any law, rule and regulation for this Court to interfere on such ground.

26. The petitioners have however, also impugned the consents, permissions and approvals given by the various authorities for setting up of the said oil storage depot and sought the relief of setting aside thereof. The petitioners in this regard rely on the recommendations of the M.B. Lal Committee's report.

27. PESO in its counter affidavit, with respect thereto has stated that the said recommendations have not been accepted by the Government and to be

actionable, have to be incorporated in the Petroleum Rules, 2002 and which has not been done.

28. Perhaps, being fully aware of this fact, the petitioners have also sought the relief of issuance of a direction for amendment of the said Rules. However though the said relief was claimed but Union of India (UOI) against which the said relief could have been granted was not even impleaded as a party in the petition as originally filed. Though UOI has subsequently been impleaded as a respondent but we do not feel the need for entertaining the said aspect in the present case for the reason that the independent observer has opined that the subject oil storage depot is compliant with the M.B. Lal Committee recommendations also. We may record that no response has been filed by UOI and the counsel for the petitioners, at the time of hearing, did not press for amendment of the Petroleum Rules and which relief indeed cannot be granted. The Petroleum Rules have been framed by the Central Government in exercise of legislative power in this regard conferred on it by the Petroleum Act, 1934 and are a piece of subordinate legislation. We have recently in ***Mool Chand Kucheria Vs. Union of India*** MANU/DE/1338/2014, on the conspectus of a host of precedents, held that no direction amounting to compelling the Government to initiate legislation can be given. The Supreme Court thereafter

in *Manoj Narula Vs. Union of India* (2014) 9 SCC 1 has reiterated the principle. In this respect, the pleadings of HPCL, of the subject oil depot having been equipped with latest inbuilt technology to contain the incident, if any occurs, of fire / blast also cannot be brushed aside. We have no reason to doubt the said pleas. Ignoring such scientific advancements and new technology, even when made available, would tantamount to not availing benefit thereof inspite of the energy, time, effort and resources including monetary and human expended in research, innovation, development and installation thereof and would not be wise. We have all experienced, the huge space earlier occupied by library in law offices being freed and becoming available, with the books being compacted in a disk or a pen-drive. The plea of the HPCL is to the same effect i.e. of the buffer distance which was earlier required to be maintained having been shortened with the advent of new safety technology.

29. It cannot also be lost sight of that as per the MPD-2001 as well as MPD-2021, the prescribed user of the subject land is for the purpose of oil installations only. Being fully aware of the same also, the relief of quashing the same also has been claimed in the petition but again without impleading the UOI. Though UOI has subsequently been impleaded but the petitioners have

neither pleaded nor argued any basis for claiming the relief of quashing of the Clause of the MPD-2021 prescribing such use of the subject land. DDA in its counter affidavit has already elaborated the process that goes into the making / drafting of a Master Plan, including of inviting objections from the public to the proposed use. There is no explanation whatsoever as to why the petitioners or for that matter, any other residents of the village Tikri Kalan or neighbouring villages did not object. They are thereby deemed to have consented to such land use and are now estopped. The present is a case, not only of the said residents / villagers having not objected but also of the subject land having been acquired from them for the said purpose. At that time also, they did not contend that the purpose stated for acquisition, in this context, was not a public purpose. There can thus be no manner of doubt whatsoever that the said residents / villagers were fully aware of the use to which the land being acquired from them will be put. Thereafter also, they did not object to the setting up of the LPG bottling plants of HPCL, IOCL and BPCL.

30. The only other ground on which the petitioners sought to challenge the permissions granted was qua the subject installation being a 'Red Category' industry. However, as aforesaid, DPCC in its counter affidavit has explained that though in the draft of the Prevention and Control of Pollution (Uniform

Consent Procedure) Rules, 1999, the activities of storage, transfer and processing of petroleum products was shown in the list of 'Red Category' industries but the said Rules have not been notified till date. DPCC has also explained that as per the draft Rules also, there is a provision for granting sanction to the 'Red Category' industries and it cannot thus be said that such industries are prohibited for which no consent can be given.

31. The petitioners, along with the petition have not filed any documents showing the boundaries of the residential abadi of village Tikri Kalan as they existed at the time of acquisition of the subject land or as to how far the said abadi then was from the acquired land. The petitioners have also not filed any documents to show the title to the land within 500 mtrs. or for that matter 1 k.m. of the subject oil depot i.e. whether it is government land or the land of the Gram Sabha or belongs to any individual. We had during the hearing enquired from the counsel for the petitioners that what would be the position if the persons stated to be residing in close proximity to the subject oil depot were to be encroachers and unauthorized occupants on public land and whether such persons after first settling down in close proximity to an establishment, whether for the reason of seeking employment therein or for otherwise earning livelihood from activities ancillary to that establishment can subsequently turn

around and complain that the activities being carried on in the establishment pose a danger to their life and the establishment should be shut down.

32. The counsel for the petitioners of course contended that no such issue had been raised and the petitioners were thus not required to make any such pleadings or file any such documents.

33. However we do not even know what is the prescribed user of the land, residences whereon are stated to be threatened by the danger posed by the subject oil depot. If the prescribed user of the said land is not residential but the same is being unauthorizedly used for residence, the question would again arise whether by residing on land not meant for residence, user of the adjoining land for the purpose for which it is permitted to be used can be objected to. In our view these are all relevant aspects for adjudication of the *lis* brought by the petitioners before this Court and are in fact essential to the adjudication and without establishing which the petitioners could not expect to succeed. With respect to the rights of the residents of village Tikri Kalan, the concept of 'right' cannot be conceived in isolation. Social experience and public realities are all relevant as juridically, right is understood as a relative abstraction flowing from the concept of duty itself. The word 'right' in favour of one

person serves as a sign that someone else is obliged to conform to a pattern of conduct. Before the Court can be called upon to pronounce on the right asserted it must be further shown that the activity in relation to which the right is asserted is sanctioned. However wide a right is, it cannot be as wide as to destroy similar or other rights in others. The Supreme Court in *Minerva Mills Ltd. Vs. Union of India* (1980) 2 SCC 591 held that the object of fundamental rights is to protect individual liberty but individual liberty cannot be considered in isolation from the socio-economic structure in which it is to operate and that there is a real connect between individual liberty and the shape and form of the social and economic structure of the society.

34. Experience of human life shows that residential settlements, mostly unauthorized, and where none earlier existed come up in close proximity to sources of income and livelihood such as commercial establishments. This has been classified by the geographers and landscape historians as a nucleated village or a clustered settlement and as one of the main types of settlement pattern. Such nucleated villages / concentrated settlements have been precursors to many a small town.

35. At the same time, we cannot say that the concerns of the petitioners as residents of the village in the vicinity of the subject oil storage depot are unfounded. The petition was filed in the wake of the incident of fire in a similar installation at Jaipur. Moreover, with the intervention of the petitioners, HPCL which at the time of filing of the petition appeared to be going ahead with the commissioning of the subject oil storage depot without even preparing the Comprehensive Emergency Response and Disaster Management Plan and without even having such a plan tested, as was required, has been compelled to do so. The petition, to that extent, has already achieved the purpose of filing thereof.

36. After giving our anxious consideration to the concerns of the petitioners pitted against the factum of the subject oil storage depot being situated on a land specified in the MPD-2021 and acquired for the said purpose and having been established in accordance with all the requisite approvals, permissions and consents, we are of the view that no case for restraining the commissioning of the subject oil storage depot or for considering further the aspects of challenge to the MPD-2021, Petroleum Rules or the classification of industries or for grant of any other relief claimed, is made out for the following reasons:

- A. The subject oil storage depot is in relocation of the existing oil storage depot at Shakur Basti.
- B. The decision for such re-location was taken long back, when the vicinities of Shakur Basti were densely populated (as they continue to be, if not more) and the area of the subject oil storage depot was largely rural and considered the outskirts of Delhi; though with the passage of time is now stated to have a population of 1.5 to 2 lakhs.
- C. The need for and dependence on oil, of the residents of the city of Delhi, is inevitable.
- D. If we restrain the commissioning of the subject oil storage depot, it would necessarily mean continued operation of the Shakur Basti storage depot and which the Government, in public interest, had taken a decision should be relocated; after all the city cannot be without petroleum and petroleum products.
- E. No challenge was / is made to the decision of the Government to relocate the oil storage depot from Shakur Basti.

- F. The question which arises is, whether implementation of the decisions taken in accordance with the then contemporaneous situations can be stopped / stalled due to the change in the interregnum.
- G. In our opinion, no. We cannot be blind to the ever growing population which is converting the hitherto uninhabited lands into inhabited. We cannot also be blind to the human tendency of making their habitats in close proximity to places of trade and commerce and which also serve as source of employment.
- H. We have no reason to believe that when the Government / governmental agencies took the decision to earmark the land on which subject oil storage depot is situated, for the said purpose, all the said aspects would not have been considered.
- I. The Supreme Court in *N.D. Jayal Vs. Union of India* (2004) 9 SCC 362 held that once the government has taken a considered decision and has put a system in place for the execution of the project and such a system cannot be said to be arbitrary, then the only role which the Court has to play is to ensure that the system

works in the manner it was envisaged. It was further held that the decision or the question whether to have an infrastructural project or not and what is the type of project to be undertaken and how it is to be executed are a part of policy making process and the Courts are ill-equipped to adjudicate on a policy decision so undertaken; the only duty of the Court is to see that in undertaking the decision, no law is violated. It was further observed that at the penultimate stage of execution of the project it was too late in the day to think as to why the decision was taken, though at one stage it was thought it would not be appropriate to continue with the project. We may add that in the present case, the situation is beyond even the penultimate stage.

- J. It has been held by the Supreme Court in *Shri Sachidanand Pandey Vs. State of West Bengal* (1987) 2 SCC 295 relied upon by HPCL, that where the government while dealing with an administrative order or action has been alive to various considerations requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for the Court to interfere in the absence of mala fides.

K. We cannot also be unmindful of the fact that there is implicit time lag in the setting up and commissioning of such mammoth projects, from the date of conception thereof and when they are to be set up by governmental agencies, the delay is a little longer. In the interregnum, there are bound to be considerable changes in and around the site thereof, particularly qua human habitation. As aforesaid, the very conception of such a project and the commencement itself thereof attracts humans to the sites. If it were to be held that owing to hazards posed by the project to the human settlement in proximity thereto and which settlement owes its existence to the project, the project should be abandoned, possibly no project would ever see the date of commissioning or live its life. If such subsequent events were to come in the way of implementation of the decisions taken when the circumstances were different, it will lead to a hiatus and not allow any development to take place.

L. The petitioners and the other residents of village Tikri Kalan though had opportunity to, at the time when the subject land was so earmarked for the purpose of oil storage and oil products

installations, did not object. In fact the said land was acquired for the said purpose only and thus the villagers from whom the said land was acquired were fully aware of the purpose for which their land was being acquired. They then also did not contend that there could be no oil installation thereon for the reason of the land being in close vicinity to their residences. On the contrary, they received compensation for acquisition. Obviously, their residences at that point of time must have been far away from the said land and the village over the years appears to have extended its abadi towards the said land.

- M. The concerns of the residents of village Tikri Kalan whose present population is stated to be 20,000 to 30,000 are also pitted against larger public interest of the citizens of Delhi numbering over a crore who need petroleum and petroleum products and which have to be stored somewhere.
- N. The Supreme Court, in *G. Sundarrajan Vs. Union of India* (2013) 6 SCC 620 relied upon by senior counsel for HPCL, while dealing with safety concerns expressed with respect to setting up of a

nuclear power plant, held that a balance has to be struck between the benefits of establishing such a plant, since the production of nuclear energy is of extreme importance for the economic growth of the country, to alleviate poverty, generate employment, with the right to life and property. It was held that the Court has to have an overall view of larger public interest rather than a smaller violation of right to life guaranteed under Article 21 of the Constitution. It was further held that we have to put up with “minor inconveniences”, “minor radiological detriments” and “minor environmental detriments” in our lives because the benefits to be reaped from the nuclear power plant in question are enormous. The Supreme Court also in ***Chameli Singh Vs. State of U.P.*** (1996) 2 SCC 549 held that in an organized society, the right to live as a human being is not ensured by meeting only the human needs of man, but secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth.

- O. We find that similarly, in ***Indian Council for Enviro-Legal Action Vs. Union of India*** (1996) 5 SCC 281 it was held that both,

development and environment must go hand in hand, the necessity to preserve ecology and environment should not hamper economic and other developments; there should not be development at the cost of environment and vice versa but there should be development while taking due care.

- P. In *Essar Oil Vs. Halar Utkarsh Samiti* (2004) 2 SCC 392 relied upon by HPCL also, it was held that the aim is to balance economic and social needs on one hand with environmental considerations on the other and that there need not necessarily be a deadlock between development on one hand and environment on the other.
- Q. A balance, thus must be maintained between the need for and the benefits which the subject oil depot brings and the safety hazards that it possesses.
- R. Undoubtedly, the residents in the vicinity of the existing oil storage depot at Shakur Basti far outnumber the residents in the vicinity of the subject oil storage depot. The Supreme Court, in *The State of Maharashtra Vs. The Jalgaon Municipal Council*

(2003) 9 SCC 731, opined “that smaller interest must always give way to larger public interest in case of conflict” to be a principle of good governance in a democratic society. We may add that, a community of rights, not always synchronizing with each other, have to be harmonized.

- S. Also, while oil to the existing oil storage depot at Shakur Basti has to be transported from the oil refineries in trucks / wagons, adversely impacting environment, the transportation to the subject oil storage depot at Tikri Kalan will be through underground pipeline already laid and which will also stop the environmental damage through such transportation of oil by road.
- T. Though it is the contention of the petitioners that the oil storage depot should be shifted from the subject place to some other place but we also cannot be blind to the fact that there is hardly any space left in the city which can be said to be far away from habitation or which will remain far away from habitation. Though DDA in a meeting held on 29th July, 2013 is stated to have taken a decision to hereafter have oil storage depots in the NCR region but

the position is not very different there also. Moreover, as aforesaid humans have a tendency of congregating around wheresoever alternative site is announced and starts coming up. Our experience shows that it is generally the families and extended families of those involved in setting up of such projects who in the absence of any enforcement mechanism against encroachment of surrounding lands make up their residences in the vicinity and continue to reside there even after the work of construction and setting up is complete.

- U. We cannot also ignore the fact that the residents of the village of Tikri Kalan have themselves tacitly consented to the land being notified for the subject use. The petitioners are but a few of the residents who though have filed the petition as a PIL for the benefit of all residents but cannot be assumed to be representing even the majority of the residents. It is not known as to what the view of the majority is. It is possible that majority of villagers, who owing to acquisition of their agricultural land cannot depend upon agriculture as a source of livelihood, are happy with such development.

- V. We are satisfied that HPCL has taken all possible steps to prevent any disaster as well as to meet such a disaster. We cannot also loose sight of the fact that large sums of money have already been spent on the project and which was a factor taken into consideration in *G. Sundarrajan* supra also.
- W. In *G. Sundarrajan* it was further observed that once justification for establishing the nuclear power plant had been vindicated and all safety and security measures had been taken and necessary permissions and clearances had been obtained from all statutory authorities, apprehension expressed by some of the consequences flowing from commissioning thereof, however legitimate, cannot be permitted to override the justification of the project. It was observed that nobody on this earth can predict what would happen in future and to a larger extent we have to leave it to destiny but once the justification test is satisfied, the apprehension test is bound to fail. It was further observed, apprehension is something we anticipate with anxiety or fear, a fearful anticipation which may vary from person to person. It was further held that electricity is the heart and soul of modern life; to sustain rapid economic

growth, it is necessary to double the supply of energy and thus the production of nuclear energy is of extreme importance for the economic growth of our country.

X. The said test, in our opinion, equally applies to petrol and petroleum products which are also necessary in furtherance of the commercial needs of the country and we have to necessarily have storage facilities and thus striking a balance between such developmental needs on one hand and security and safety concerns on the other should be aimed at.

Y. Even according to the M.B. Lal Committee, such installations should be at a distance of 250 to 300 mtrs. from the habitation. While according to the petitioners, the said distance has to be measured from the outer boundary of the installation, according to HPCL, it has to be measured not from the outer boundary of the installation but from the storage point within the said boundary. We are satisfied that from the storage point within the boundary of the subject installation, the distance of the habitation is 430 mtrs.

and which satisfies the M.B. Lal Committee's recommendations also.

Z. In our opinion, the insistence ought not to be upon the distance being from the boundary wall. What is necessary is to provide a buffer from the hazardous point of the installation. In the present case, obviously HPCL has acquired land much more than actually required for storage tanks, so as to provide a buffer around the said storage tanks. When HPCL has already provided buffer within its boundary, it cannot be compelled to provide buffer beyond its boundary also.

ZA. Though the counsel for the petitioners during the hearing relied upon recent news reports about the Disaster Management Authorities being ineffective but we are afraid, we cannot proceed on the said premise.

ZB. We have no reason not to believe the report of the experts who have certified that the requisite safety measures have been complied with. A Constitution Bench of the Supreme Court in *University of Mysore Vs. C.D. Govinda Rao* AIR 1965 SC 491,

reiterated in *G. Sundarrajan* supra, held that normally the court should be slow to interfere with the opinion expressed by the experts and it would normally be wise and safe for courts to leave the decisions to experts who are more familiar with the problems which they face than courts generally can be. It was held that the court cannot sit in judgment on the views expressed by the technical and scientific bodies in setting up of the concerned project and on its safety and security. Similarly, in *Essar Oil* supra it was held that a court will not substitute its own assessment in place of opinion of persons who are specialists and who may have decided the question with objectivity and ability.

37. The counsel for the petitioners has in her written submissions accompanied with a document titled 'Detailed Notes' and list of dates and a glossary of pleadings, all running into thirty six pages, besides repeatedly re-emphasizing the danger the subject oil depot poses to the residents has alleged various violations by HPCL of what according to the petitioners the standards of safety should be. It is contended that the vacuum between the outdated standards of safety in the existing laws / rules / regulations and

what such standards ought to be, should be filled in by the court by issuing guidelines. The deficiencies in pleadings of the petitioners pointed out by us are sought to be got over by contending that in issues of public importance and enforcement of fundamental rights the procedural laws have to be relaxed. ***G. Sundarrajan*** is sought to be distinguished by contending that all the safety guidelines were complied therein. It is contended that the acquisition of land being under emergent provisions, there was no right to object factual dispute of the distance between the subject oil depot and the human settlement is of course reiterated. It is further contended that the danger which the subject oil depot poses could be perceived only after the Jaipur incident. It is also the contention of the petitioners that the road between the subject oil depot and the human settlement is itself the ignition point and thus the distance has to be measured from the road and not even from the storage point within the depot else submissions are made on the need for re-drawing the standards. The village of Tikri Kalan is described as in the green belt.

38. We only need to state that we have in arriving at the decision aforesaid weighed and considered all the said submissions and for the reasons stated above do not find any merits in any of the contentions.

39. We thus do not find the petitioners entitled to any of the reliefs claimed.

40. Though we have held the petitioners not entitled to the reliefs claimed but at the same time, it is essential to ensure that the Comprehensive Emergency Response and Disaster Management Plan on the basis of existence whereof we are refusing to interfere, continues to be efficacious. For the said purpose, we direct:

A. HPCL to:

- (i) Comply and continue to comply with all the suggestions in the subject plan to a tee.
- (ii) Review the said plan from time to time and at least once every year and to keep updating the same with the changing circumstances, needs and with advancement in technology and to cooperate in the conduct of the mock drills herein below directed to be undertaken regularly from time to time and to comply with the all suggestions recommendations in accordance therewith.

- (iii) Ensure at all times the readiness of the human and other resources, part of the said plan.
- (iv) Enquire about the title of the land in the vicinity of the said installation and if the said land is found to be public land, to initiate action for removal of the encroachment in the form of residences therefrom.
- (v) From time to time, as part of its corporate social responsibility, educate the residents of the vicinity about the mock drill to be undertaken in the event of a disaster and about the other safety precautions.
- (vi) Comply with the suggestions, from time to time, of DDMA, NDMA and other regulatory body.
- (vii) Within four weeks hereof, designate and from time to time designate a General Manager level officer by name, to be responsible for compliance with all these directions as well as all rules / regulations concerning safety and maintenance and readiness of all preventive measures. We make it clear

that the officer so designated shall be responsible / liable in law for breach if any.

B. GNCTD to:

- (I) Enquire about the title to the land within a radius of about 500 mtrs. from the boundary wall of the subject oil storage depot and if the same is found to be public land, within six months hereof remove all encroachments therefrom.
- (II) Within six months herefrom, prepare a scheme / plan for ensuring quick / timely response by the outside agencies at the time of need, including by making a scheme for blocking traffic on the access roads to enable the rescue teams to reach the subject site at the earliest.

C. DDMA to;

- (A) Periodically and in any case latest every year, conduct a mock drill to check the efficacy of the Comprehensive Emergency Response and Disaster Management Plan of HPCL and to issue necessary directions for making up

deficiencies if any and suggestions for further improvement
and to ensure compliance therewith.

With the aforesaid directions, the petition is disposed of.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

FEBRUARY 23, 2015
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