

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 14.03.2016

Pronounced on : 12-04-2016

Coram

THE HONOURABLE MR. JUSTICE R. SUBBIAH

Writ Petition No. 7479 of 2016

N.Santhakumar

..Petitioner

-Versus-

1. The District Revenue Officer,
***Collector Office,**
New Collectorate Building,
Palladam Road, Tiruppur, 641 604.

2. The Collector
Tirupur District
Collector Office
New Collectorate Building
Palladam Road
Tirupur - 641 604

3. The Territory Manager
Bharat Petroleum Corporation Limited
Coimbatore Retail Territory Office
Irugur Top. Ravathur Via.,
Irugur, Coimbatore - 641 103

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Mandamus forbearing the respondents 1 and 2 from granting No Objection Certificate to the third respondent pending disposal of the petitioner's representation dated 05.02.2016 and consequently to direct the first respondent to dispose of the petitioner's representation dated 05.02.2016 within a time frame to be fixed by this Court.

For Petitioner : Mr. V.B.R. Menon
for M/s. Vaani and Menon

For Respondents : Mrs. P. Rajalakshmi
Government Advocate for RR1 and 2
Mr. O.R. Santhanakrishnan for R3

ORDER

<https://hcservices.ecourts.gov.in/hcservices/>

The petitioner seeks for issuance of a Mandamus forbearing the respondents 1 and 2 from granting No Objection Certificate

in favour of the third respondent for establishing a petroleum retail outlet opposite the retail outlet of the petitioner in violation of Indian Road Congress norms culminated in the Circular No.IRC-12-2009.

2. The petitioner is the dealer of a Bharat Petroleum Corporation Limited Petrol/diesel outlet in the name of M/s. P. Natarajan Agency at No.67-1, By-pass Road, Dharapuram - 638 656, Tirupur District. According to the petitioner, he has come to know that the third respondent has submitted an application to the respondents 1 and 2 seeking no objection for award of a new petroleum/diesel outlet on the same bye-pass road at Dharapuram which is just opposite to his petroleum outlet. According to the petitioner, such a proposal for award of dealership in the new site is contrary to the mandatory guidelines for access, location and layout of Road side fuel stations as per the Indian Road Congress Circular No.12-2009. It is the further case of the petitioner that apart from the violation of the Circular referred to above, adjacent to the proposed site, there is a burial ground in existence at a distance of 120 meter and therefore, it would be a safety hazard to the public if the proposed retail outlet is established in that place. It is also the further contention of the petitioner that already there are adequate number of fuel dispensing units on the bye-pass road at Dharapuram and therefore commencing more number of outlets on the already crowded stretch of the road would seriously affect the business and financial viability of the existing outlets. It is also the contention of the petitioner that the proposed site does not meet the prescribed conditions laid down in Circular No.12-2009 by the Indian Road Congress, 2009, while so, the respondents 1 and 2 need not issue a no objection certificate as prayed for by the third respondent for establishment of a fuel dispensing unit. By highlighting the above facts, the petitioner has submitted a representation to the respondents on 05.02.2016, however, such representation has not been considered by the respondents, hence, this writ petition has been filed.

3. The learned counsel for the petitioner would submit that the proposed site is located just opposite to the fuel outlet operated by the petitioner. The proposed site is not feasible for running a fuel outlet since, within 100 meters therefrom, a burial ground is situated where fireworks will be carried out during funeral procession and in such event it will be hazardous for a petroleum outlet to be established. The proposed site where the outlet is to be started is situated in an already crowded area and it would only add to chaos and road traffic. At any rate, the No Objection sought for by the third respondent should not be given by the respondents 1 and 2 since already there are adequate number of fuel outlets established and operated in Dharapuram Bye-pass road, including the one run by the petitioner. Therefore, according to the counsel for the petitioner, if No Objection Certificate is given by the respondents 1 and 2, it would adversely affect his business and the constitutional guarantee conferred on the petitioner under

Article 14 and 19 (1) (g) would be infringed. In any event, the petitioner is only seeking for a direction to the respondents to consider his representation dated 10.05.2016 and if such a relief is granted, no prejudice will be caused to any one.

4. The learned counsel for the petitioner relied on the decision of the Division Bench of the Rajasthan High Court in the case of (Neeraj Kachhawaha vs. State of Rajasthan and others) 2013 (3) WLN 193 to substantiate his argument that guidelines laid down by Indian Road Congress are to be adhered to mandatorily. In Para No.8, it was observed by the Division Bench of Rajasthan High Court as follows:-

"8. This Court for its own satisfaction, by order dated 07.05.2013, directed the Police Commissionerate, Jodhpur to make available the entire record on basis of which the "No Objection Certificate" impugned was issued. The record concerned is made available to us for our perusal. We found that the Police Commissionerate before issuing "No Objection Certificate" made all necessary inquiry and after taking into consideration different aspects, issued the "No Objection Certificate" with definite conditions. The conditions so imposed are nothing but for adherence of the mandatory guidelines issued by the Indian Road Congress under IRC-2009. A bare perusal of the conditions makes it abundantly clear that in the event of their violation, the "No Objection Certificate" granted shall stand cancelled. The petitioner-appellant or the authority competent, if at any stage finds any violation of the mandatory conditions prescribed by the IRC-2009, Government of Rajasthan and by this Court by the judgment dated 02.01.2012, then necessary action can be taken against the petroleum company and its outlet dealer. But no such eventuality at the moment exists, therefore, at this stage, we are of the view that the learned single Judge rightly refused to invoke extraordinary jurisdiction of this Court as claimed by the petitioner-appellant. The appeal thus, is having no merit, hence dismissed.

5. The learned counsel for the petitioner also relied on the decision of the Supreme Court in the case of (M.S. Jayaraj vs. Commissioner of Excise, Kerala and others) (2000) 7 Supreme Court Cases 552 wherein a bidder in public auction relating to vending foreign liquor could not find out a suitable place to locate his shop within the range specified in the auction. Therefore, his request for locating his shop in another range was considered by the Excise Commissioner. Aggrieved by the same, a hotelier challenged the licence issued to him. In that decision, the Honourable Supreme Court held that the writ petitioner cannot be ousted from the purview of litigation merely on the ground of locus standi to file the writ petition

and that the writ petition filed by him is maintainable.

6. The learned counsel for the petitioner also relied on the decision of the Supreme Court in the case of (Institute of Law and others vs. Neeraj Sharma and others) delivered on 19.09.2014 in Civil Appeal No. 2143 of 2007 to contend that whenever there is a public wrong or public injury caused by an act or omission of the State or public authority, which is contrary to the Constitution or the law, any member of the public acting bona fide and having sufficient interest can maintain an action for redressal of such public wrong or public injury. Relying on this decision, the learned counsel for the petitioner would contend that the writ petition filed by the petitioner is maintainable before this Court and he prayed for issuing appropriate direction as prayed for.

7. The learned standing counsel appearing for the third respondent would oppose the writ petition by contending that the petitioner has no locus standi to file this writ petition since he has no legal right to maintain this writ petition. The relief sought for by the petitioner to restrain the respondents 1 and 2 from discharging their statutory duty is legally not sustainable. Further, the averment that the proposed site for establishment of the retail outlet is situate within 120 meters from a burial ground and situate just opposite to his retail outlet is incorrect. In fact, the proposed site is to come up at a place which is 1 kilometer away from the retail outlet of the petitioner. As regards the existence of burial ground, the learned counsel would submit that there is a burial ground in which dead bodies are buried and not burnt and therefore, the existence of burial ground has nothing to do with the establishment of the petroleum outlet. The petitioner, who is an existing dealer with the third respondent, is estopped from filing the writ petition to object for establishment of retail outlet by another oil company. It is stated by the counsel for the third respondent that the father of the petitioner P. Natarajan has filed WP No. 298 and 299 of 2012 before this Court to quash similar notification issued by the third respondent for establishment of a retail outlet on the ground that he is a retail outlet dealer of Bharat Petroleum Corporation outlet at No.67-1, Bye pass Road, Dharampuram, Thirupur District. The said writ petitions were dismissed on 13.06.2014 holding that a rival trader cannot maintain a writ petition. It is further stated that the reliance placed on the Indian Road Congress Circular has no statutory force and it can be construed only as a guideline. In any event, the Circular will not prevent the respondents from performing their statutory duty and it has got nothing to do with the establishment of petroleum outlets. The proposed site is on the State Highway and 1 kilometer away from the existing outlet of the petitioner. The learned standing counsel for the third respondent therefore prayed for dismissal of the writ petition. In this context, the learned standing counsel for the third respondent relied on an order dated 18.07.2011 in WP No. 6275 of 2011 in an identical circumstances, wherein this Court held as follows:-

"3. According to the petitioner, establishment of another outlet in the same locality would ruin her business, as she raised necessary amount for starting the outlet by loan from the bank.

4. The writ petition filed by the petitioner is not maintainable for the reason that both the petroleum as well as the Explosives Act conferred authority on the District Collector, being the District Magistrate to issue No Objection Certificate. The first respondent being the statutory authority cannot be prevented from exercising the power conferred on him, by the status. If the petitioner is having any objection, on merits with regard to the issuance of No Objection Certificate, it is always open to her to submit her objection before the first respondent. The fact that establishment of another petrol outlet in the same locality would ruin her business, cannot be a valid reason to forbear the first respondent from issuing No Objection Certificate sought for by the respondents 3 and 4. Therefore, I am of the view that the petitioner has not made out a case to issue a direction to the first respondent to abstain from issuing No Objection Certificate.

5. In the result, this writ petition is dismissed. No costs. Consequently, M.P. No. 1 of 2011 is closed."

8. I heard the learned counsel for the petitioner, the learned Government Advocate appearing for the respondents 1 and 2 and the learned standing counsel appearing for the third respondent/Corporation. The petitioner is an existing dealer of the third respondent corporation and he is running a petroleum outlet at No.67-1, By-pass Road, Dharapuram - 638 656, Tirupur District. The main grievance of the petitioner is that the proposed site for which no objection has been sought for by the third respondent is located just opposite to his shop. It is also the grievance of the petitioner that the respondents are attempting to establish a retail outlet in violation of Indian Road Congress norms and circular issued thereof. It is the further grievance of the petitioner that within 120 meters from the proposed site, there is a burial ground where fire works will be displayed during funeral procession which would be a safety hazard if an outlet is established there. Therefore, the petitioner has come forward with this writ petition seeking to forbear the respondents 1 and 2 from issuing No Objection Certificate as sought for by the third respondent.

9. The plea of the petitioner was repudiated by the third respondent by stating that they will adhere to all safety norms

before establishing a petroleum outlet. The circular issued by Indian Road Congress are only in the nature of guideline and they need not be adhered to mandatorily. The third respondent also opposed the writ petition on the ground that they are exercising the statutory powers vested under Rule 144 of the Petroleum Rules and that cannot be prevented at the instance of the petitioner. It is further repudiated by the third respondent that the proposed site is not situated within 120 meters as alleged by the petitioner, rather it is situate 1 kilometer away from the outlet of the petitioner and therefore, the question of establishing the proposed outlet opposite to his retail outlet does not arise. Further, the burial ground will not be a safety hazard to the proposed site as alleged by the petitioner and therefore the third respondent prayed for dismissal of the writ petition.

10. The third respondent has sought for a No objection Certificate from the respondents 1 and 2 and such no objection certificate is yet to be issued by the respondents 1 and 2. It is needless to mention that the objections which are raised by the petitioner in this writ petition cannot be considered by this Court. The respondents 1 and 2 are the competent person to issue No objection certificate after considering all the ground realities relating to establishment of a proposed retail outlet. This is more so that the third respondent denied all the allegations raised by the petitioner, including the averment that the proposed site is not likely to come up opposite to his place of business. Even otherwise, it is for the respondents to decide, on analysis of various factors, for establishment of a proposed retail outlet and to take into consideration various parameters before taking a decision. This Court cannot, in exercise of powers under Article 226 of The Constitution of India, issue a direction to the respondents not to discharge their statutory powers and functions. The prayer sought for by the petitioner is unsustainable and no direction as prayed for can be issued by this Court.

11. The decision of the Division Bench of Rajasthan High Court, relied on by the counsel for the petitioner, cannot be made applicable to this case. In that case, the No Objection Certificate issued by the Commissioner of Police, Jodhpur was subjected to challenge. The Division Bench held that the conditions incorporated in the No Objection Certificate has not been violated by the petroleum company and therefore, refused to interfere with the No Objection Certificate issued by the Police Commissioner of Jodhpur. In this case, the respondents 1 and 2 are yet to issue any No Objection Certificate. It is not known whether the respondents 1 and 2 may issue a No Objection Certificate as sought for by the third respondent or may not issue the same. Even if a certificate is issued, it is not known as to what are all the conditions that may be imposed by the respondents 1 and 2. Therefore, the decision of the Division Bench of Rajasthan High Court cannot be made applicable to the facts of this case.

12. Similarly, the other two decisions relied on by the petitioner cannot be made applicable to this case. In (M.S. Jayaraj vs. Commissioner of Excise, Kerala and others) (2000) 7 Supreme Court Cases 552 the Excise Commissioner has issued licence to the auction bidder to carry on his business and that was subjected to challenge before the Kerala High Court. Ultimately, the Supreme Court held that the hotelier has locus standi to question the licence issued by the Excise Commissioner inasmuch as it was issued by contravening Rule 6 (2) to transfer an abkari or Foreign Liquor Shop outside the limits notified in Rule 4 of the Auction Rules. In the present case, the respondents 1 and 2 are yet to issue the No Objection Certificate for proposed establishment of retail outlet and therefore, the decision rendered by the Honourable Supreme Court cannot be made applicable to the facts of this case. It is needless to mention that the petitioner has hastily approached this Court with this writ petition even before the respondents 1 and 2 could issue a No Objection Certificate in favour of the third respondent. The respondents 1 and 2, in exercise of the statutory power conferred on them are yet to take a decision to either issue a No Objection Certificate or not to issue such certificate in favour of the third respondent after considering the ground realities. Further, the guidelines issued by Indian Road Congress cannot override statute and they cannot be said to be mandatory. In any event, it is for the respondents 1 and 2 to even consider as to whether Indian Road Congress norms can be made applicable before issuing No Objection Certificate upon considering various factors and in this writ petition, this Court cannot deal with such an issue at the instance of the petitioner.

13. As rightly pointed out by the learned standing counsel for the third respondent, this Court, in identical circumstances, passed an order dated 18.07.2011 in WP No. 6275 of 2011 holding that the respondents, being statutory authorities, cannot be prevented from exercising the power conferred on them by the statute. Further, as pointed out by the counsel for the third respondent, on earlier occasion, the father of the petitioner P. Natarajan has filed WP No. 298 and 299 of 2012 before this Court to quash a notification issued by the third respondent for establishment of a retail outlet on the ground that he is a retail outlet dealer of Bharat Petroleum Corporation outlet at No.67-1, Bye pass Road, Dharampuram, Thirupur District. The said writ petitions were dismissed on 13.06.2014 holding that a rival trader cannot maintain a writ petition. Now, the petitioner has come forward with a similar plea in this writ petition. Therefore also, this Court is not inclined to grant the relief sought for by the petitioner. The writ petition is therefore liable to be dismissed.

14. The writ petition fails and therefore it is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

rsh

Sd/-
Asst.RegistrarCS (VI)
Dated:22/04/16

*CORRECTED AS PER THE
ORDER OF THIS COURT DATED 2/6/16

Sd/-
Asst.Registrar
Dated:06/06/16

/true copy/
Sub Asst.Registrar

To

1. The District Revenue Officer,
***Collector Office,**
New Collectorate Building,
Palladam Road, Tiruppur, 641 604. To be Substituted to the
Order already
Despatched on 28/04/16
and made herein.
 2. The Collector
Tirupur District
Collector Office
New Collectorate Building
Palladam Road
Tirupur - 641 604
 3. The Territory Manager
Bharat Petroleum Corporation Limited
Coimbatore Retail Territory Office
Irugur Top. Ravathur Via.,
Irugur, Coimbatore - 641 103.
- + 1 cc to M/s.Vaani and Menon, Advocate Sr ***29294**
- + 1 cc to Mr.O.R.Santhanakrishnan, Advocate Sr 22850

KR/25/4/16
KR/06/06/16

WP.No.7479 of 2016