

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2017

CORAM

THE HONOURABLE MR.JUSTICE K. RAVICHANDRABAABU

W.P.No.28241 of 2017

and

W.M.P.No.30412 and 30358 of 2017

K.Velaven
Proprietor,
K.S.V. Energy, Authorized Dealer of Hindustan
Petroleum Corporation Ltd.,
Opp. Kunnimarathan Koil
Trichy Main Road, Valayapatty,
Namakkal District - 637 020. ... Petitioner

vs.

1. Indian Oil Corporation Ltd.,
Indian Oil Bhavan,
G-9, Ali Yavar Jung Marg,
Bandra East, Mumbai - 400 051.
Rep by its General Manager (Retail Sales)
2. The Executive Director,
Indian Oil Corporation Ltd.,
South Zonal Office, Nungambakkam High Road,
Chennai - 600 034.
3. The Divisional Engineer,
Indian Oil Corporation Ltd.,
No.234, 1st Floor, salem-Bangalore By-Pass,
(NH-7), Kondalampatty, Salem.
4. The State Highways (HS-25)
Ministry of Public Works and Highways,
St.George Fort, Chennai - 600 009, rep. by its Secretary.

5. The Divisional Engineer,
Department of State Highways,
Namakkal Division & District.

6. The District Revenue Officer,
Namakkal District, Namakkal.

...Respondents

PRAYER:

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus to Certiorarified Mandamus to call for the records and quash the advertisement dated 17.10.2014 in call for application and consequently directing the respondents to finalize the applicant in setting up any retail outlet or any other outlets of any other outlets of KSK at the location identified in violation of the MOSRT & H norms with regards to Sharp Curve, Inter-Section Road and Minimum District for the proposed retail outlet at Serial No.502 at SH-25-on Valayapatty cross Road LHS (Left Hand Side) including all further proceeding initiated in pursuant to the said publication.

For Petitioners : Mr.V.Jayachandran

For Respondents : Mr.M.Ravinarayanan,
Senior counsel
for Mr.V.Anantha Natarajan for R1 & R2.

ORDER

The petitioner is aggrieved against an advertisement dated 17.10.2014 calling for application to set up a retail outlet at Serial No.502 of the said notification at SH-25 on Valayapatty Cross Road, LHS (Left Hand Side).

2. Heard the learned counsel for the petitioner and the learned senior counsel appearing for the respondent Oil Corporation.

3. The petitioner is a dealer of Hindustan Petroleum Corporation and is running a petroleum outlet of such Corporation opposite to Kunnimarathan Koil, Trichy Main Road, Valayapatty, Namakkal District, under the category reserved for Scheduled Caste candidate. Now, the 1st respondent Corporation has issued the impugned advertisement for locating their outlet at the above said place by declaring such place as an open category.

4. The grievance of the petitioner is that when already he is running the outlet under the schedule caste category, however, by a different Corporation, the 1st respondent Corporation cannot open another outlet, that too, under open category which in effect would result in loss to the petitioner outlet. Learned counsel appearing for the petitioner extensively made his submissions and invited this Court's attention to the order passed in W.P.No.1537 of 2011 dated 14.12.2011 wherein the learned Judge of this Court has directed the petitioner like persons to approach the principal Corporation and make their representation ventilating such grievance.

5. Learned senior counsel appearing for the respondent Corporation submitted that the petitioner has no locus standi to maintain this present writ petition in view of the order passed by the Division Bench followed by the other learned Judges because he is a rival trader.

6. The challenge made in this writ petition is against the advertisement issued by the respondent Corporation for locating its outlet at the subject

matter site. Being the rival trader and in view of the order made by the Division Bench of this Court reported in 2005(1) CTC 394, the petitioner cannot question the location as a matter of right. At the same time, considering the fact that the petitioner herein was given the outlet by the Hindustan Petroleum Corporation under the reserved category and the learned Judge in W.P.No.1537/2011 dated 14.12.2011 has directed the petitioners therein like the petitioner herein, to approach the Principal Corporation and make their representation to ventilate their grievance, I am of the view that the petitioner can also be given such direction to approach the respondent Corporation and ventilate his grievance. For proper appreciation, the findings of the learned Judge made in W.P.No.1537 of 2011 dated 14.12.2011 read as follows:

The decision rendered by the Division Bench of the Kerala High Court cannot be applied a fortiori to the present case on hand. As contended by the learned counsel appearing for the respondents the Division bench of the Kerala High Court was dealing with a case of granting of a No Objection Certificate. Considering the said issue it was observed that nobody should be allowed to open an outlet contrary to the petroleum rules and Act. There is also no violation of the Petroleum Act and Rules involved in these Writ Petitions. This

Court is also aware of the fact that while exercising under Article 226 of the Constitution of India, the disputed questions of facts will not be gone into. Moreover, the Honourable Division Bench has not taken into consideration of the subsequent communication issued by the Government of India, Ministry of Petroleum and National Gas, dated 25.08.2011.

15. Coming to the last question raised by the learned counsel for the petitioners, this Court finds considerable force in the said submission. The petitioners stand on a different footing than that of the respondents. It is not in dispute that the petitioners were given subsidy and the substantial amount has been borne out by the respective principal-Corporation. The allotment has been made to the dealers under the Scheduled Caste/Scheduled Tribe category only in order to encourage the weaker sections by way of policy decision. Therefore, it is incumbent on the respondents to see it that the very policy which has been initiated should not be allowed to be defeated. This Court is of the view that considering the peculiar facts of the case and taking note of the materials, the petitioners will have to be shown some difference as against the normal dealers. It is the case of the petitioners that they

would be substantially affected by the proposed outlets. It is no doubt true that they cannot maintain these Writ Petitions as against the other Oil Corporations in the absence of any legal right vis-a-vis corresponding legal duty that would be public in nature. The subsequent communication relied on by the learned counsel for the respondents dated 25.08.2011 deals with the general decision regarding the establishment of outlet. By the subsequent communication, it cannot be said that the respondents can deviate from the stand taken by way of communication sent to the other Ministry in and by its letter dated 30.10.2008. While it can be said that the petitioners may not have a legal right to stop another outlet, certainly it can be stated by the petitioners that the principal-Corporation will have to be taken into consideration of the factual position.

16. Therefore, the petitioners will be at liberty to approach the principal-Corporation, in which, they are dealers to address their grievances by producing their materials available with them to specify their case, within a period of four weeks from the date of receipt of a copy of this order. As and when, the petitioners make such representation, the same will have to be

considered by the principal-Corporation by taking into consideration of the entire materials available on record and appropriate orders will have to be passed thereafter. It is made clear that if any such representation is made till appropriate orders are passed, no coercive action will be taken against the petitioners by the principal-Corporation.

7. Accordingly, this writ petition is disposed of only by permitting the petitioner to make a representation before the respondent Corporation within a period of two weeks from the date of receipt of a copy of this order, apart from any other representation already made by him. As and when any such representation is received, the respondent Corporation will consider the same and pass appropriate orders on merits and in accordance with law within a period of four weeks thereafter. In the meantime, the respondent Corporation shall not precipitate the matter further. No costs. Consequently, connected miscellaneous petitions are closed.

Speaking/Non speaking
Index: Yes/No
vsi

13.11.2017

WEB COPY

K.RAVICHANDRABAABU,J.
vsi

To

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Bandra East, Mumbai - 400 051.
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