

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.02.2017

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

Writ Petition No.26624 of 2016

M. Velmurugan
Prop; Aswin & Aswini Quality Fuels
No.274/50, Om Sakthi Nagar
Chennai Main Road
Near Muthampalayam
Villupuram - 605 602 ... Petitioner

Versus

1. Union of India
represented by its Secretary
Ministry of Petroleum and Natural Gas
Government of India
Shastri Bhavan
New Delhi - 110 001
2. The Commissioner of Revenue Administration
Chepauk, Chennai
3. The District Collector
Villupuram District
4. The District Revenue Officer
Villupuram District
Villupuram
5. The Revenue Divisional Officer
Villupuram District
Villupuram
6. The Thasildar
Taluk Office
Villupuram
Villupuram District
7. The Joint Chief Control of Explosives
PESO, Shastri Bhavan
Chennai - 600 006
8. The Project Director
National Highways Authority
Villupuram
Villupuram District

9. M/s. Esar Oil Limited
rep. by its General Manager
Essar House, 5th Floor
No.7, Esplanade
Chennai - 600 108

10. N. Devakumar

.. Respondents

Petition filed under Article 226 of the constitution of India to issue a Writ of Mandamus forbearing the respondents 1 to 8 from allowing the 9th and 10th respondents from putting up storage tank and erecting the retail outlet/petrol bunk in the land in Survey No.158/1 of Ayur Agaram Village, Vikravandi Taluk, Villupuram District next to the Naahar School by violating the mandatory norms.

For Petitioner : Mr. G. Arul Murugan

For Respondents : Mr. A. Veeramani for RR1 and 7

Mr. S. Rajeswaran
Special Government Pleader for RR2 to 6

Mr. V. Vadivelu for R8

Mrs. Hema Sampath, Senior Advocate
for Mrs. R. Meenal for R10

ORDER

The petitioner, an existing dealer of Indian Oil Petroleum Outlet in the vicinity of Ayyankoilpattu, has come up with this writ petition to restrain the respondents 1 to 8 from allowing the 9th and 10th respondents from putting up storage tank and erecting the retail outlet/petrol bunk in the land in Survey No.158/1 of Ayur Agaram Village, Vikravandi Taluk, Villupuram District alleging that permission is sought to be granted in favour of the 9th and 10th respondents in violation of norms.

2. I heard the learned counsel on either at length and perused the materials placed on record. The learned Senior counsel appearing for the tenth respondent would vehemently contend that the writ petition itself is not maintainable inasmuch as the petitioner, a competitor, cannot maintain the writ petition to prevent the 10th respondent from getting licence to run a petroleum outlet. In this context, the learned Senior counsel for the tenth respondent relied on the decision of the Honourable Supreme Court in (Sai Chalchitra vs. Commissioner, Meerut Mandal and others) reported in (2005) 3 Supreme Court Cases 683 to contend that a competitor who is carrying on business in the same trade is not entitled to maintain a writ petition to prevent his rival businessman from carrying on similar trade. The learned Senior counsel for the tenth respondent also relied on the decision of the Honourable Supreme Court in (Mithilesh Garg and others vs. Union of India

and others) reported in (1992) 1 Supreme Court Cases 168 wherein it was held that the fundamental right guaranteed under Article 19 (1) (g) of The Constitution of India cannot be extended to right to shutting out competition inasmuch as public interest can best be served by healthy competition. The learned Senior counsel for the tenth respondent also relied on the Judgment passed by the Division Bench of this Court in (Nataraja Agencies rep. by its Proprietor, Pondicherry vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India, New Delhi and others) (2005) (1) CTC 394 wherein it was held that a rival businessman is not entitled to file a writ petition on the ground that establishing rival business venture in the vicinity of his business would affect his vested right. The learned Senior counsel for the tenth respondent also placed reliance on the counter affidavit filed by the tenth respondent and contends that the petitioner has suppressed the fact that he is a dealer operating a petroleum outlet in the vicinity and therefore also, the petitioner is not entitled for any relief in this writ petition.

3. I find considerable force in the submissions of the learned Senior counsel for the tenth respondent. Admittedly, the petitioner is an existing dealer of petroleum products in the very same locality and therefore, as a competitor, he is not entitled to maintain this writ petition to forbear the official respondents from permitting the ninth and tenth respondents from establishing a retail outlet.

4. Even though the petitioner is not entitled to maintain the writ petition, the learned counsel for the petitioner has brought to the notice that while attempting to award dealership in favour of the respondents 9 and 10, the official respondents have violated the norms which are mandatory. According to the learned counsel for the petitioner, the place which is now earmarked and/or provided by the respondents 9 and 10 to establish a petrol bunk is situate within five meters from Naahar Public School which is in violation of the Rules relating to Petroleum and Explosive Safety Organisation (PESO) and a minimum of 500 feet distance has to be maintained from any public place. In response, the learned Special Government Pleader, placing reliance on the counter affidavit of the sixth respondent, would submit that the distance between the adjoining school compound is 35 meters away from the fill point and it is in accordance with the norms prescribed. The learned Senior counsel for the tenth respondent also would contend that the tenth respondent has complied with the distance criteria while seeking to award dealership in his favour.

5. In this writ petition, this Court cannot go into the correctness or otherwise of the submissions made by counsel on either side with regard to the distance factor. Therefore, even though the petitioner is not entitled for any relief in this writ petition, this Court is of the considered view in the interest of justice, the fourth and seventh respondents shall be directed to jointly conduct an inspection with respect to the distance factor within which the proposed facility is to be established and whether it is in accordance with the Rules and

Regulations. Such a direction is issued only to ensure the safety of the students studying in the school which is said to have been located within the prohibited distance. The respondents 4 and 7 are directed to conduct such a joint inspection within a period of two months from the date of receipt of a copy of this order to verify and ensure that the proposed facility where the ninth and tenth respondents are intending to erect a retail outlet is situate within the permitted distance from the public School and thereafter proceed further in accordance with law.

6. With the above direction, the writ petition is ordered. No costs. Consequently, connected miscellaneous petition in WMP No. 22818 of 2016 is closed.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

1. The Secretary,
Union of India
Ministry of Petroleum and Natural Gas
Government of India
Shastri Bhavan
New Delhi - 110 001
2. The Commissioner of Revenue Administration
Chepauk, Chennai
3. The District Collector
Villupuram District
4. The District Revenue Officer
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5. The Revenue Divisional Officer
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6. The Thasildar
Taluk Office
Villupuram
Villupuram District

7. The Joint Chief Control of Explosives

PESO, Shastri Bhavan
Chennai - 600 006

8. The Project Director
National Highways Authority
Villupuram
Villupuram District

+1cc to Mr.V.Vadivelu, Advocate sr.8407

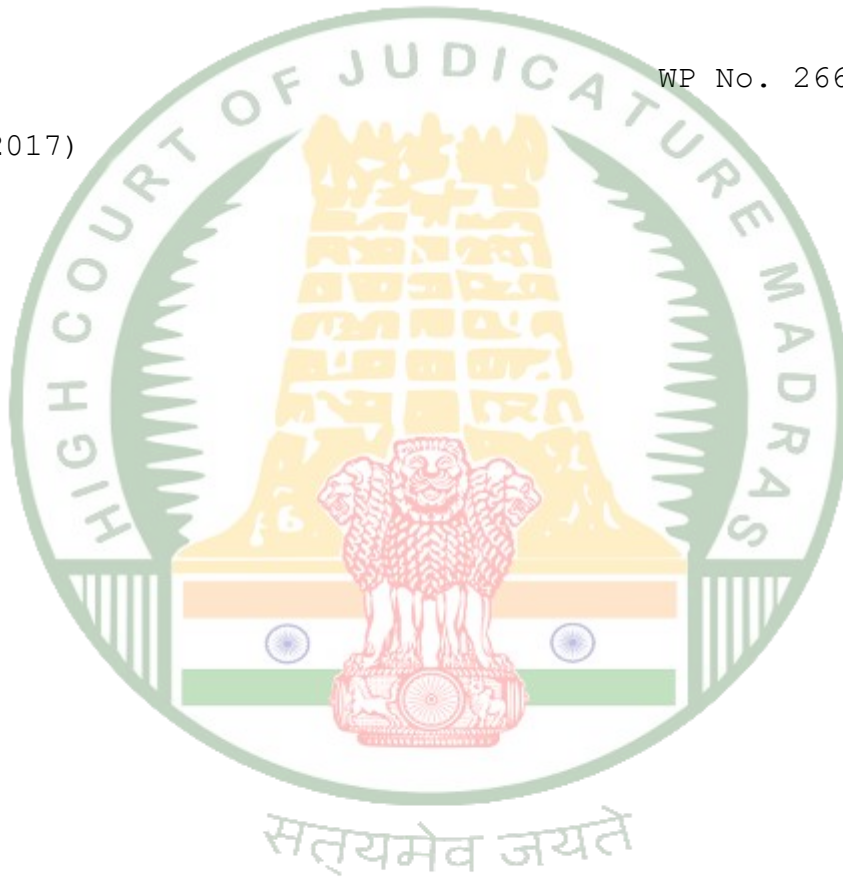
+1cc to Mr.G.Arul Murugan, Advocate sr.7873

+1cc to M/s.R.Meenal, Advocate sr.7920

+1cc to Government Pleader sr.8140

msm(co)
ss(15/02/2017)

WP No. 26624 of 2016



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