

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2017

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

W.P.No.41954 of 2016 and
WMP.Nos.35912 to 35914/2016 and 5049/2017

T.R.Thirugnanam

... Petitioner

Vs.

1.The Government of India,
Ministry of Road Transport and Highways
rep. by its Regional Officer,
Regional Office,
C-1-A, Rajaji Bhavan,
Besant Nagar, Chennai-90.

2.The Deputy General Manager (Tech)
and Project Director,
PIU-Chennai, NHAI,
Sri Towers, 3rd Floor,
DP-34 (SP), Industrial Estate,
Guindy, Chennai-32.

3.The District Revenue Officer,
Collector's Office,
Tiruvallur District.

4.The General Manager (Retail),
Bharat Petroleum Corporation Limited,
No.1, 15th Main Road,
Ranganathan Gardens, Chennai-40.

5.The Territory Manager (Retail),
Bharat Petroleum Corporation Limited,
No.35, Vaidyanathan Street,
Tondiarpet, Chennai-81.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to India for the issuance of a Writ of Certiorari, calling for the records on the file of the 1st respondent in F.No.RW-MD/TN/NH5/ROL/61/2015-2016 dated 08.02.2016 and the letter confirming the permission on the file of the 1st respondent in RW-MD/TN/NH 5/ROL/61/2015-16 dated 18.11.2016 in favour of the 4th and 5th respondents and quash the same.

Senior Counsel
for M/s.Selvan Amunas
For Respondents : Mr.Su.Srinivasan,
Addl. Govt. Pleader for R1
Mr.S.R.Sumathy for R2
Mr.S.Rajeswaran,
Spl. Govt. Pleader for R3
Mr.Vijayan for
M/s.King and Patridge for R4&R5

O R D E R

The Writ Petition is filed, challenging the proceedings of the 1st respondent in F.No.RW-MD/TN/NH5/ROL/61/2015-2016 dated 08.02.2016 and the letter confirming the permission on the file of the 1st respondent in RW-MD/TN/NH 5/ROL/61/2015-16 dated 18.11.2016 in favour of the 4th and 5th respondents and quash the same.

2. The facts of the case are as follows:

(i) The petitioner is running a Fuel Filling Station in the name and style of 'Sri Sathya Agencies' in GNT Road (National Highway-5) Gummidipoondi-601 201, Tiruvallur District since 1993 after obtaining requisite permission from all Government Departments. The 1st respondent has given access permission from National Highways, flouting the guidelines and norms prescribed for running a petrol bunk to M/s.Bharat Petroleum Corporation Limited (hereinafter referred to as, 'BPCL') in Km 41/505 to 41/553 of (RHS) on NH5 in Survey No.50/3a, 50/4, 51/2 and 51/4 at Verkadu Village, Gummidipoondi Taluk, Tiruvallur, dated 08.02.2016 vide F.No.RW-MD/TN/NH5/ROL/61/2015-2016.

(ii) Further, according to the petitioner, the access permission granted to the proposed outlet by BPCL is in violation of the Guidelines/Norms issued by the Government of India, Ministry of Road Transport and Highways dated 24.07.2013. Further, the 3rd respondent has granted 'No Objection Certificate' vide Ref.R.Dis.19318/2010/M3, dated 20.08.2010 and the same was expired due to efflux of time. Again, BPCL has applied for revalidation of the 'NOC' in the month of June, 2016. The 'NOC' issued by the 3rd respondent has become time barred since the physical features of the site have entirely changed which needs fresh 'NOC' from Traffic, Law and Order, Health Department and revalidation of old 'NOC' is unacceptable.

(iii) In this regard, the petitioner had sent a representation dated 02.08.2016 to the respondents 1 and 2 for cancellation of the permission granted to BPCL dated 08.02.2016 and also to cancel the 'NOC' issued by the 3rd respondent dated 20.08.2010. It is also stated that the impugned order of the 1st respondent is not addressed to the petitioner and he has got a copy of the same from the 2nd respondent. Hence the petitioner filed W.P.No.28724/2016 before this Court. The same was disposed of by this Court on 18.08.2016, directing the

1st respondent to consider and dispose of the petitioner's representation dated 02.08.2016 in accordance with law/norms/regulations/guidelines by giving an opportunity of personal hearing to the petitioner as well as to the respondents 4 and 5 and pass orders within a period of six weeks from the date of receipt of a copy of that order and till then, the respondents 4 and 5 shall defer further decision as to the location or the new petrol bunk/fuel station.

(iv) After the order passed by this Court, BPCL increased their manpower and done day and night construction which act warranted initiation of contempt proceedings and accordingly, the petitioner filed Contempt Petition No.2322/2016. Meanwhile, the 1st respondent issued a notice dated 06.10.2016 directing the petitioner to appear on 18.10.2016 along with a written representation and accordingly, the petitioner appeared and submitted his written representation followed by a remainder. Thereafter, the 1st respondent sent a notice dated 08.11.2016 posted on 17.11.2016 fixing the scheduled inspection on 17.11.2016 i.e. the notice was posted only on the date of inspection in order to help BPCL which reached the hands of the petitioner only on 19.11.2016. Aggrieved over the same, the petitioner issued a letter dated 20.11.2016. But, on 23.11.2016, the petitioner received a letter from the 1st respondent dated 18.11.2016 vide his Proceedings in No.RW-MD/TN/NH5/ROL/61/2015-16 confirming the permission accorded to BPCL vide F.No.RW-MD/TN/NH5/ROL/61/2015-16 which is against the principles of natural justice. Hence the present writ petition.

3. Heard Mr.AR.L.Sundaresan, learned Senior Counsel for M/s.Selvan Amunas, learned Counsel appearing for the petitioner, Mr.Su.Srinivasan, learned Additional Government Pleader for the 1st respondent, Ms.S.R.Sumathy, learned Counsel for the 2nd respondent, Mr.S.Rajeswaran, learned Special Government Pleader for the 3rd respondent and Mr.Vijayan, learned Counsel for M/s.Kind and Patridge for the respondents 4 and 5.

4. The main ground of attack by the learned Senior Counsel for the petitioner is that the proposed petrol bunk is situated within 700 metres from the intersection (two bridge crossing) as against the advised distance of 1000 metres as per clause 4.5.1 (Non-Urban Rural Stretches). Further, according to him, even as per the plan submitted by the Government as well as by the Bharat Petroleum Corporation Limited, the distance between the intersection is 634 metres which is clearly much less than 1000 metres. Therefore, according to the learned Senior Counsel for the petitioner, the permission for the proposed outlet is granted in violation of the clauses, more specifically, the general conditions of Siting stated in Clauses 4.2 and 4.3. Further, according to the learned Senior Counsel, permission is granted in violation of Clause 4.4 wherein it is stated that when the population in the surrounding is more than Two million, no fuel station will be allowed in the National Highways. It is also the contention of the learned Senior Counsel that the NOC issued by the 3rd respondent has become time-barred since the physical features have already been changed entirely. Further,

in the earlier writ petition filed by the petitioner, though a direction was issued to consider the representation of the petitioner dated 02.08.2016 in accordance with law/norms/regulations/guidelines by giving an opportunity of personal hearing to the petitioner as well as to the respondents 4 and 5, without following the said procedure, the impugned order came to be passed. Therefore, the impugned order is liable to be set aside.

5. Mr.Su.Srinivasan, learned Additional Government Pleader appearing for the 1st respondent by reiterating the contentions raised in the counter affidavit would submit that in this case, as contended by the learned Senior Counsel for the petitioner, the distance between the intersection should be 1000 metres would arise in a case where there is an entry from the main road. Therefore, clause 4.5.1 will not be applicable to the facts of the present case. Secondly, the exemption was accorded to the 4th respondent by the Regional Officer as they have satisfied the requirement stipulated in para 4.6.3 of Ministry's guidelines. Thirdly, according to the 1st respondent, the writ petition is not maintainable in view of the fact that after the meeting for self-assessment of the facts of distances mentioned in the proposal, the site was inspected by the Executive Engineer of the 1st respondent on 17.11.2016 and thereafter, the petitioner was addressed vide Regional Office, Ministry of Road Transport and Highways, Chennai, by letter dated 18.11.2016 furnishing the proceedings in which it was reiterated that approval accorded by the respondent No.1 is not in violation of the guidelines averred by the petitioner. Further, the petitioner has not furnished a copy of the permission for construction of access to the retail outlet of M/s.Sri Sathya Agencies, HPCL obtained from Ministry, as such, he has violated para 11.3 of Appendix-I enclosed with the guidelines/norms to the access permission to fuel stations along with National Highways issued by Ministry vide letter No.RW/NH-33023/19/99-DO III dated 24.07.2013 as the action for regularising the existing retail outlet functioning without obtaining permission from Ministry for construction of access was not obtained.

6. I have considered the submissions made on either side and I have also perused the records carefully.

7. Though a question of maintainability was raised, both sides have argued both on maintainability as well as on merits. As far as the first objection raised by the petitioner that the proposed Petrol Bunk is situated less than 1000 metres which is in violation of the guidelines is concerned, in fact, a detailed plan has been produced before this Court by the 1st respondent in which it is very clearly pointed out that such a road i.e. the said Highways Road joins the service road very near to the petrol bunk where the petitioner's petrol bunk is situated at Km42/195 whereas the proposed one is situated at Km41/197 and the distance between the intersection point as per the plan is 634 metres. The 1st respondent would clearly point out that as

per the plan enclosed in page 13 of their typed set, which would clearly show that there is a service road and if there is an entrance only through the service road, the km1000 is not an embargo at all. It is a clear case of all parties that for the proposed Petrol Bunk as well as to the Petrol Bunk of the petitioner, the entry is only through service road. Both of them do not have any access from the main road. Therefore, the first point of objection has been rightly rejected by the authority concerned.

8. The second objection raised by the learned Senior Counsel for the petitioner is that the exemption which was given by the committee is not valid. It has also been clearly pointed out by the 1st respondent that the exemption was accorded to the 4th respondent by the Regional Officer as they have satisfied the requirement stipulated in para 4.6.3 of Ministry's guidelines. That was considered as a normal course as the entrance is only through the service road. Hence, the second objection raised by the learned Senior Counsel for the petitioner is also rejected. Further, merely because, in the earlier writ petition, this Court directed to consider and dispose of the grievance of the petitioner by giving an opportunity of personal hearing to the petitioner, it does not mean that there is an error in the impugned order since it has been considered by the same committee, when the main requirement is not fulfilled by the petitioner. Since all the objections raised by the petitioner have been negated by this Court, I do not find any error in the reasoned order of the 2nd respondent.

9. As far as the plea of maintainability is concerned, no doubt, the petitioner, being a rival Petrol Bunk owner, he cannot maintain this writ petition. In Nataraja Agencies, rep. by its Proprietor G.Natarajan, Dealer, Indian Oil Corporation Limited, Pondicherry vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India, New Delhi and others reported in 2005 (1) CTC 394, a Division Bench of this Court has held that definitely a rival businessman cannot file writ petition on the ground that establishing rival business venture in his place violates provisions of law as there is no vested right in the applicant which can be enforced in law.

10. However, the learned Senior Counsel for the petitioner would submit that earlier, he filed his objection and the same was not considered, he came before this Court by way of filing a writ petition in W.P.No..28724/2016 and that writ petition was disposed of by this Court by order dated 18.08.2016 by giving a direction to the 1st respondent to dispose of the petitioner's representation dated 02.08.2016. After complying with the direction in the said order, the order impugned in this Writ Petition came to be passed. Therefore, that objection cannot give rise to a new cause of action to the petitioner to file yet another writ petition.

11. In view of the foregoing, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Regional Officer,
Government of India,
Ministry of Road Transport and Highways
Regional Office,
C-1-A, Rajaji Bhavan,
Besant Nagar, Chennai-90.
- 2.The Deputy General Manager (Tech)
and Project Director,
PIU-Chennai, NHAI,
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Bharat Petroleum Corporation Limited,
No.35, Vaidyanathan Street,
Tondiarpet, Chennai-81.

+1cc to M/S. Selvan Amunas, Advocate SR. 12365
+1cc to Government Pleader, SR. 13042
+1cc to M/S. King & Partridge, SR. 12527
+1cc to Mr.S.R. Sumathy, Advocate SR. 12397

W.P.No.41954 of 2016