

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.43127 of 2016

ORDER:

Memo bearing No.G6/245/2016, dated 02.12.2016, issued by the Collector (CS), Karimnagar/second respondent herein, rejecting the application of the petitioner for grant of Form 'B' license filed under A.P. Petroleum Products (Licensing and Regulations of Supplies) Order, 1980 is under challenge in the present writ petition.

2. Petitioner made an application for Retail Outlet Dealership in response to a notification issued by the Bharat Petroleum Corporation Limited/fourth respondent herein. After submission of reports of various wings of the Government, the District Collector/second respondent herein issued No-Objection Certificate under Rule 144 of the Petroleum Rules, 2002 vide Proceedings No.G1/1013/2013, dated 05.07.2013, to install the Retail Outlet in S.No.977 of Choppadandi village & Mandal, Karimnagar District. The fourth respondent herein issued a letter of appointment vide WAR/TER/NRO/K-55, dated 30.01.2016, in favour of the petitioner and also made an application on the even date for Form 'B' License* vide letter WAR/TER/NRO/K-55, dated 30.01.2016. Thereafter, complaining inaction on the the application for Form 'B' License, petitioner filed W.P.No.21143/2016 and this Court, by way of an order dated 18.07.2016, disposed of the said writ petition and the operative portion of the said order reads as follows:

“In view of the same, the Writ Petition is disposed of directing the 2nd respondent to dispose of the application of the petitioner, dated 11-03-2016 in accordance with law as expeditiously as possible, preferably within a period of one month from the date of receipt of a copy of this order.

No order as to costs. Miscellaneous petitions, if any pending, in this Writ Petition shall stand closed.”

3. Pursuant to the said order of this Court, the District Collector vide Memo No.G6/245/2016, dated 17.10.2016, rejected the Form “B” license on the following grounds:

“1. As per the joint inspection of AD (S&LR), the above retail outlet is constructed in an extent of 0-15 gts. In Sy.No.835 only and .01 gts. Gap area between Sy.No.835 and Sy.No.977 situated at Choppadandi (V&M).

2. As per the verification of records, Sri Kotha @ Gurram Komurella Reddy is recorded as pattedar to the extent of Acs.0-36 gts in Sy.No.835 which was in his possession, raised crops from time to time and his son Sri Kotha Vikram Reddy (lessee) in in Sy.No.977 which is locatd on the Western side of Sy.No.835, where as the Sy.No.835 is located adjacent to the Karimnagar, Choppadandi-Mancherla state highway.

3. During the physical field inspection, it is found that the land which is under the possession of Gurram Komurella Reddy having cattle shed, loose stone boundary wall, well, dwelling house and seems to be established several years back. Hence, the said BPCL retail outlet is identified to have been setup in Sy.No.835 only.”

4. The said order of rejection dated 17.10.2016 was assailed by the petitioner in W.P.No.36193/2016 and this Court on 31.10.2016 disposed of the said writ petition and the operative portion reads as *infra*:

“2. Learned Government Pleader, on written instructions, admits that the second respondent did not put the petitioner on notice or give copies of report on which the conclusions in the impugned memo are arrived at. Therefore, he submits for setting aside the memo

impugned in the writ petition and remitting the matter to second respondent.

3. The statement of the learned Government Pleader is placed on record and accepted. The memo impugned in the writ petition is set aside and the matter remitted to second respondent for consideration and disposal of the case within four (4) weeks from today. It is needless to observe that the second respondent not only affords opportunity to petitioner but also gives copies of report/documents on which the enquiry pending before him is proceeded with.

The writ petition is ordered as indicated above. As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.”

5. According to the petitioner, pursuant to a notice issued vide Memo dated 24.11.2016, he appeared before the District Collector and sought opportunity to file various proceedings pending before the Civil Court and the orders passed therein and to place the same on record. It is further stated that on the said date, the District Collector took the signature of the petitioner and informed that the further course of action would be communicated. It is alleged in the writ affidavit that no further communication was given and a copy of the impugned Memo dated 02.12.2016 was served on the petitioner on 03.12.2016, rejecting Form ‘B’ License.

6. Challenging the validity and the legal sustainability of the said Memo dated 02.12.2016, the present writ petition has been filed.

7. Counter affidavits have been filed by the second respondent/District Collector so also the fifth respondent, denying the averments and the

allegations made in the affidavit filed in support of the writ petition and in the direction of justifying the action under challenge.

8. Heard Sri R.Raghunandan, learned Senior Counsel representing Sri Toom Srinivas, learned counsel for the petitioner on record, learned Government Pleader for respondents 1 to 3, Sri O.Mahonar Reddy, learned counsel for the respondent No.4 and Sri K.S.Murthy, learned counsel for the 5th respondent apart from perusing the material available before the Court.

9. Submissions/Contentions of Sri R.Raghunandan:

9.1. The impugned action is highly illegal, arbitrary, unreasonable, violative of Articles 14 and 19 (1) (g) of the Constitution of India and opposed to the very spirit and object of the Petroleum Rules, 2002 and the Petroleum Products (Licensing and Regulation of Supplies) Order, 1980.

9.2. The fifth respondent and another filed O.S.No.65/2015 for injunction against the lessor of the petitioner and the fourth respondent Bharat Petroleum Corporation Limited and they also filed I.A.No.190/2015 for temporary injunction and the same was dismissed, as such, the very action of the District Collector, basing on the complaint of the fifth respondent who suffered an order of dismissal of injunction application, in rejecting the Form 'B' license is highly illegal and arbitrary.

9.3. When there is an order of Civil Court, there is no justification on the part of the District Collector to refuse Form 'B' License on the ground that there is a report submitted by the Three Men Committee.

9.4. Having issued No-Objection Certificate, after due verification, second respondent is not justified in refusing Form 'B' License.

10. Submissions/Contentions of the learned Government Pleader:

10.1. There is no illegality nor there exists any infirmity in the impugned action and in the absence of the same the questioned action is not amenable for any judicial review under Article 226 of the Constitution of India.

10.2. On the complaint made by the fifth respondent that the petrol bunk is being constructed in his land in Sy.No.835 instead of the land in Sy.No.977 with a request not to issue license to the petitioner to run the petroleum bunk, the Collector/Second respondent vide reference No.G6/245/2016, dated 15.10.2016, formed Three Men Committee to inspect Sy.Nos.977 and 835 and to furnish a report and accordingly followed by a field survey and demarcation on 15.10.2016, the Assistant Director (S&LR), Karimnagar, vide reference No.A3/714/2016, dated 17.10.2016, submitted a Joint Inspection Report saying that the Retail Outlet is constructed in an extent of extent of 0-15 gts. in Sy.No.835 only and basing on the said report the District Collector refused to grant Form 'B' License.

10.3. There was no mention of civil cases in the application of the fifth respondent to the District Collector .

10.4. Mere pendency of the civil suits cannot give right to the petitioner to establish the petrol bunk.

10.5. At the time of issuing No-Objection Certificate under Rule 144 of the Petroleum Rules, 2002, no challenge was made as to the existence of land by any person.

11. Submissions/Contentions of Sri O.Manohar Reddy, learned counsel for the fourth respondent:

11.1. Questioned action cannot be sustained in the eye of law in view of the order of the Civil Court passed after due enquiry, rejecting the interim injunction application.

11.2. Having issued No-Objection Certificate under Rule 144 of the Petroleum Rules, 2002, there is no justification on the part of the District Collector in refusing to issue Form 'B' license.

12. Submissions/Contentions of Sri K.S.Murthy, learned counsel for the fifth respondent:

12.1. Writ petitioner has no vested right to get Form 'B' License and the Office of the District Collector vide Lr.No.C1/4501/2016, dated 24.10.2016, requested the Revenue Divisional Officer, Karimnagar to offer remarks for taking further action for cancellation of the No-Objection Certificate issued in favour of MS & HSD through Bharath Petroleum Corporation Limited Retail Outlet in the name of M/s. Laxma Reddy Service Station in Sy.No.977 of Choppadandi Village and mandal.

12.2. The second respondent/District Collector issued notice bearing No.C1/4501/2016, dated 02.12.2016, initiating action for cancellation of No-Objection Certificate issued earlier.

12.3. The fifth respondent has filed CMASR No.8143/2016 and I.A.No.27/2017 therein against the order of dismissal passed by the learned Junior Civil Judge in I.A.No.190/15 in O.S.No.65/2015, dated 26.10.2015, on the file of the Court of the learned District Judge with delay and the same is pending consideration.

13. In the above backdrop, now the issues that emerge for consideration of this Court are:

1. Whether the District Collector/Second respondent herein is justified in refusing to issue Form 'B' license?
2. Whether the fifth respondent is correct in approaching the second respondent pending O.S.65/2015, having suffered an order of dismissal of temporary injunction application in O.S.65 of 2015 and whether the District Collector is justified in arriving at the conclusions as regards the title pending O.S.No.65/2015?
3. Whether the petitioner is entitled for any relief under Article 226 of the Constitution of India?

14. Issues 1 and 2:

The information available before this Court vividly reveals that on the application made by the lessor of the petitioner, one Sri G.Vikram Reddy, the Revenue Divisional Officer, Karimnagar/third respondent herein vide proceedings No.N/4822/2013, dated 23.05.2016, accorded permission for conversion of agricultural land in Sy.No.977 of Choppadandi Village and Mandal admeasuring Acs.0.24 ½ guntas for non-agricultural purpose under Act 3 of 2006. There is also no controversy as to the reality that pursuant to the permission granted by various authorities under different legislations, the District Collector/second respondent vide proceedings No.C/1013/13, dated 05.07.2013, granted No-Objection Certificate to install Retail Outlet under

Rule 144 of the Petroleum Rules, 2002 obviously after undertaking the enquiry under the said provision of law.

15. Earlier when the second respondent/District Collector refused to issue For 'B' License, the petitioner herein filed W.P.No.21143 of 2016 and this Court, while setting aside the order of refusal dated 17.10.2016, remanded the issue to the second respondent District Collector for consideration afresh after affording opportunity and after giving report on which basis the enquiry was being proceeded with. After the said remand, the District Collector passed the order under challenge on 02.12.2016, obviously basing on the report of the Three Men Committee, dated 17.10.2016, according to which the Petroleum Retail Outlet is identified to have been set up in Sy.No.835 only.

16. There is also no dispute as regards the fact that on 10.03.2015, the fifth respondent herein along with one Mr.Velma @ Annadi Srinivas Reddy instituted O.S.No.65/2015 against the lessor of the writ petitioner, Mr.Gurram @ Kotha Vikram Reddy and the Bharath Petroleum Corporation Limited on the file of the Court of the Principal Senior Civil Judge, Karimnagar, for the following relief:

"It is therefore, prayed that the Hon'ble Court may be pleased to passa decree:

(a) restraining the Defendants, their employees, workers, yes men, supporters, others or any other person or persons on behalf of the defendants from interfering with peaceful possession and enjoyment of the Plaintiffs over the suit schedule land annexed to the plaint, land measuring Ac.0-25 Gts, in Wy.No.835, situated at Choppadandi Village and Mandal, Karimnagar District.

(b) Costs of the suit and

(c) Any other relief or relief's for which the Plaintiffs are otherwise entitled to under the circumstances, in the interest of justice."

17. Along with the said suit, the fifth respondent herein also filed I.A.No.190 of 2015 under Order 39 Rules 1 and 2 of the Code of Civil Procedure, for temporary injunction to restrain the defendants or their workers, supporters etc., from interfering with their possession and enjoyment over the plaint schedule properties. The said application for interim injunction was opposed by the defendants by filing counter.

18. During the course of enquiry, on the said interim injunction application, the plaintiff/fifth respondent herein filed Exs.P.1 to P.21 documents where as the defendants filed Exs.R.1 to R.26.

19. The Principal Junior Civil Judge, Karimnagar, by way of an order dated 26.10.2015 dismissed the said I.A.No.190 of 2015. The learned Junior Civil Judge, categorically recorded a finding in the said order that there is no land, much less, land in Sy.No.835, between Sy.Nos.977 and 978 and PWD Road and eventually the Court held that the vendors of the petitioner in the I.A cannot claim that the land in Sy.No.835 is existing on the spot abutting to PWD Road on western side. The Civil Court also took note of the pendency of O.S.No.201 of 2013 filed by the first defendant and the existence of injunction therein against the vendors of the plaintiffs in O.S.No.65 of 2015. Ultimately, the Civil Court held that the plaintiffs failed to make out *prima facie* case and in the result dismissed the injunction application and the said injunction order is subsisting as on date.

20. According to the learned counsel for the fifth respondent, fifth respondent has filed CMASR No.8143 of 2016 with delay, but the fact remains that there are no orders in the said appeal, meddling with the order passed by the trial Court. It is significant to note that admittedly after suffering an order of injunction dated 26.10.2015, the fifth respondent herein on 16.05.2016 filed a petition before the District Collector, raising objection

for installation of the retail outlet and basing on which the second respondent District Collector appointed Three Men Committee which submitted a report on 17.10.2016. It is also a fact, even as per the counter affidavit filed by the District Collector, that the pendency of the civil cases was not brought to the notice of the respondent authorities nor the fifth respondent brought to the notice of the respondents the dismissal of interim petition by the learned Principal Junior Civil Judge, Karimnagar on 26.10.2015.

21. The Courts of Law are undoubtedly meant for the people and the citizens who prosecute their issues in a *bona fide* manner and without suppressing the material realities. In the instant case, the fifth respondent herein instituted the suit along with an application for injunction which was dismissed on 26.10.2015 and without disclosing the filing of civil suit and the dismissal of injunction application, he approached the second respondent with an application/petition opposing establishment of Retail Outlet, which obviously made the District Collector to appoint Three Men Committee. Had the pendency of civil suit and the order of dismissal of injunction petition been brought to the notice of the second respondent/District Collector, the present situation of appointment of Three Men Committee and the submission of their report would not have cropped up. Having invoked the jurisdiction of Civil Court and having suffered an order of dismissal of injunction application, disbelieving the version of the fifth respondent, the fifth respondent cannot be permitted to proceed in a different way to achieve his destination of stopping the installation of Retail Outlet by the petitioner and restraining the petitioner from getting the Form 'B' license. The conduct of the fifth respondent in not disclosing the pendency of civil litigation would speak volumes as regards the attitude of the fifth respondent and this attitude is sufficient for non-suiting the fifth respondent and the said conduct is liable to be deprecated.

22. Another important aspect which needs mention in this context is that since the Civil suit instituted by the fifth respondent admittedly is pending consideration before the learned Principal Junior Civil Judge, the District Collector grossly erred in coming to the conclusion with regard to the title to the property in favour of the fifth respondent herein.

23. The contentions of the learned counsel for the fifth respondent with regard to the issuance of show-cause notice by the District Collector, basing on the report of the Three Men Committee for cancellation of the No-Objection Certificate issued earlier and initiation of proceedings in the said direction are of no consequence in view of the above situation.

24. For the aforesaid reasons, the writ petition is allowed, setting aside the impugned Proceedings in G6/245/2016, dated 02.12.2016 and consequently the second respondent is directed to issue Form 'B' license in favour of the petitioner herein. As a sequel, miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.



A.V.SESHA SAI, J

Date:21.03.2017
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



WRIT PETITION No.43127 of 2016

Dated : 21.03.2017

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