

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.08.2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.23546 of 2017

and

W.M.P.No.24702 of 2017

B.Moorthi

... Petitioner

Vs

1.The District Revenue Officer,
Coimbatore District,
Collectorate Building,
State Bank Road,
Coimbatore - 641 108.

2.The Joint Chief Controller of Explosives,
A and D Wing, Block 1-8, 2nd Floor,
Shastri Bhavan, No.26, Haddows Road,
Nungambakkam, Chennai - 600 034.

3.The Deputy Director of Health Services,
Health Department,
No:219-A, Race Course Road,
Coimbatore - 641 018.

4.Indian Oil Corporation Ltd.,
Coimbatore Area Office,
Indian Oil Bhavan,
No.8/1079, Avanashi Road,
Coimbatore - 641 018.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to permanently forebear the Respondents from proceeding with the proposal to set up a New Road-side Petrol / Diesel retail outlet at S.F.No.25, 25/1A, Sundarapuram - Nachipalayam Road, Madukkarai Village and Taluk, Coimbatore District - 641 105 and thereby to prevent serious potential hazards to the health, safety and security of the Students,

their Parents and Staff members of the nearby Brindhavan Vidyalaya Public School.

For Petitioner : Mr.V.B.R.Menon
For R1 and R3 : Mr.E.Manoharan
Additional Government Pleader.
For R2 : Mr.G.Karthikeyan, ASGI
For R4 : Mr.Abdul Saleem
Senior Counsel (for IOC)

O R D E R

(Order of the Court was made by S.MANIKUMAR, J)

Petitioner has sought for a Writ of Mandamus, to forebear the respondents, from proceeding with the proposal, to set up a New Road-side Petrol / Diesel retail outlet at S.F.No.25, 25/1A, Sundarapuram - Nachipalayam Road, Madukkarai Village and Taluk, Coimbatore District and thereby to prevent serious potential hazards to the health, safety and security of the students, their parents and staff members of the nearby Brindhavan Vidyalaya Public School.

2. Record of proceedings shows that, on 05.09.2017 the Hon'ble First Bench of this Court, has passed the following order:-

"Mr.M.K.Subramanian, learned Government Pleader accepts notice on behalf of respondents 1 and 3.

2. This writ petition is directed against the proposal of Indian Oil Corporation Limited to set up a company operated petroleum/diesel retail outlet at Survey No.25, 25/1A, Sundarapuram Nachipalayam Road, Madukkarai Village and Taluk, Coimbatore District.

3. According to the writ petitioner, the site Survey No.25, 25/1A, Sundarapuram Nachipalayam Road, Madukkarai Village and Taluk, Coimbatore District, where the retail outlet is proposed to be set up is adjacent to a recognized school, Brindhavan Vidyalaya Public School, where about 700 students study. It appears that the site is located about 25 meters from the gate of the school.

4. We cannot but take judicial notice of the health hazards caused by evaporation of petroleum in and around retail petroleum/diesel outlets. The harmful effects of contamination at petrol stations can be felt in buildings located within 100 metres from service stations. Published articles based on research indicate that some airborne organic compounds such as Benzene, which are said to increase the risk of cancer, have been recorded at fairly high levels in

and around petrol stations. This observation is, however, only a prima facie observation.

5. Considering the welfare of about 700 children, we deem it appropriate to direct that status-quo with regard to setting up of the petroleum/diesel outlet be maintained in respect of the premises in question. It is, however, made clear that the order of status-quo will not prevent the fourth respondent from using the premises in question for purposes other than storage/sale of petroleum/diesel, etc., if it so chooses.

6. In this context, we may refer to the judgment of a Division Bench of the Bombay High Court in *St. Philomena Convent High School, through its Principal Sister, Fatima v. Union of India, through the Secretary, Ministry of Petroleum and others*, reported in 2009 4 Mh1J 255. The Division Bench held "The welfare of the students cannot be sacrificed on the altar of the developmental interest of the adjoining owner. An adjoining owner is free to develop his land in accordance with law. But when he chooses to house a hazardous establishment like a petrol filling station, the law steps in and tells him what distances must be maintained, if the safety of young children in schools is not to be compromised. Such a restriction is reasonable. The Commissioner, unfortunately, misconceived the nature of the provision and wrongfully exercised the power conferred upon him."

7. It is true that the judgment of the Division Bench was rendered in the context of relaxation by the Municipal Commissioner of Rules in exercise of discretion conferred under the Rules. In this case, there are no rules restrict the setting up of petroleum/diesel outlets near schools.

8. It appears that pursuant to the orders of this Court, the State Government have framed the Code of Regulations for Play Schools, 2015, which provides that no petroleum/diesel outlet should be set up within 100 meters from play schools. These Regulations do not, of course, apply to schools other than play schools.

9. However, we are of the prima facie view that in no circumstances can the interests of school going children, particularly their health, be compromised. We find no reason why there should not be similar regulations in relation to recognized schools other than play schools, which have long been in existence. We are, therefore, of the view that status-quo, as

directed above, should be maintained until further orders of this Court.

10. Prima facie, the Govern should consider faming regulations restricting the setting up of petroleum/diesel outlets near all schools attended by small children.

11. Notice as issued to Mr.Abdul Saleem, learned counsel who appears on behalf of the Indian Oil Corporation Limited. Notice to the second respondent may be given through the learned Assistant Solicitor General.

12. Counter affidavits be filed within three weeks. Rejoinder thereto within to one week after.

13. Let the matter be listed on 23.10.2017."

3. Additional District Magistrate and District Revenue Officer, Coimbatore/the 1st respondent, has filed the counter affidavit, wherein it is stated as follows:-

(i) The averment of the petitioner is not correct. As presumed by the petitioner, the right to life of the School students is not violated by locating a Petrol Bunk in the proposed site. The diagonal distance between the Petrol Bunk to the School Building is 123 meter. The entrance gate of the School is located at a distance of 27 meter parallel to the Petrol Bunk. Whereas, the distance between the entrance gate of the school to the School building is 127 meter. The google map photo copies are attached herewith for kind perusal. Enough safety measures are taken in storing the Petroleum products under the supervision of officials concerned as per the norms prescribed by the Petroleum Act,1934 and Petroleum Rules, 2002.

(ii) Though the petitioner claims that he has kept several technical publications to satisfy about the need to maintain a particular distance between Petrol Pumps and schools, there is no specific Government instructions prescribed in the Petroleum Rules, 2002. Hence, as a normal procedure, whenever and wherever a Petroleum retail outlet is proposed in a particular land, the reports from the Police Department, the Fire and Rescue Services Department and the Revenue Department are received after inspecting the proposed site to ensure its suitability from their point of view and after satisfying the fulfillment of the norms of the department concerned, the District Authorities are issuing No Objection Certificates to locate the retail outlets. In particular, the Fire and Rescue

Department has issued its No Objection Certificate imposing certain conditions to provide enough safety measures as laid down in the Petroleum Rules, 2002 before commencing its operation of the retail outlet.

(iii) The petitioner has not mentioned the actual distance between said proposed land and said school. The actual parallel distance between the Petrol Bunk to the School Entrance gate is 27 meter. Whereas, the actual distance to the School Building from the Petrol Bunk is 123 meter and the distance between the School Entrance gate and the School Building is 127 meter. The petitioner seeks to rely upon the order passed by the Hon'ble High Court of Bombay in its W.P.No:4734/2004, in which the distance to be maintained between a School and a retail outlet has been discussed and finding that the distance was less than the 91.5 meters prescribed in Development Control Rules framed in Nashik Municipal Corporation, the Hon'ble Bombay High Court has issued instructions to the Municipal Commissioner to reconsider the case by giving an opportunity to all concerned affected parties and quashed the permission granted by the Municipal Corporation. But, in this case there is no such developmental rules has been framed restricting the distance to be maintained between the schools and the petroleum outlets.

(iv) In another case referred by the petitioner i.e., in W.P.No:26624/2016, before this Court. This Court has directed the District Revenue Officer to conduct a Joint inspection with the Controller of Explosives officials and then decide according to the laws in force. No specific distance to be kept is discussed in the order. Hence the petitioner's averment has no relevance to this case. It has also been discussed that the petitioner's actual cause of filing that Writ Petition was business competition in the same trade and not actually the health oriented issue of the students and the public.

(v) Rule 144 of Petroleum Rules, 2002 relates with the issuance of No Objection Certificate to the retail outlet with respect to the quantity of Petroleum products proposed to be stored in the premises. The guidelines issued by the Joint chief Controller of Explosives, South circle, Chennai in his letter dated 06.01.2005 were also followed in this case by conducting an enquiry with the owner of the proposed land to ensure her right over the land. The public interest was also taken into account while issuing the

No Objection Certificate as no objection of any kind was received by the District Authority. Except these above guidelines there is no other specific instructions / guidelines prescribed in the Petroleum Rules, 2002 with regard to the distance to be maintained between the retail outlet and public places like schools, hospitals etc.,

4. Deputy General Manager, Indian Oil Corporation Limited (MD), Coimbatore DO/the 4th respondent, has filed the counter affidavit, wherein it is stated as follows:-

(i) The property belongs to one Mrs.S.Radhamani, W/o. P.Sivamoorthy, which she had provided for selection for retail outlet. I state that the said individual has been selected as dealer for setting up a retail outlet at Madukkarai and the said individual who is a necessary party has not been added as a party respondent in the above writ petition and as such the writ petition is liable to be dismissed for non-joinder of the necessary party.

(ii) By notification dated 16.10.2014, the 4th respondent/corporation called for applications from aspiring candidates for dealership of petroleum retail outlet at Madukkarai under Kisan Seva Kendra Scheme. It is stated that Mrs.S.Radhamani, W/o.P.Sivamoorthy complied with all the requirements for selection and she was found to be the only successful candidate for the said location. He stated that as the advertisements pertaining to appointment of dealerships were challenged in various litigations which at present are currently pending before the Hon'ble Supreme Court and as the Hon'ble Court was pleased to pass an interim order whereby the entire selection was not proceeded further during the period from November, 2014 to May, 2016. It is stated that the Hon'ble Supreme Court, by order dated 09.05.2016 modified the interim order with condition that allotments made during the pendency of the petitions shall be subject to the final outcome of the bunch of cases. The Hon'ble Supreme Court further directed to incorporate the above expressed conditions while making the allotments.

(iii) Pursuant to the order passed by the Hon'ble Supreme Court, Field Verification was done on 23.02.2017 and Letter of Intent has been issued in favor of the said individual on 31.03.2017, incorporating the condition as directed by the Hon'ble Supreme Court. It is stated that, the

respondent/corporation by application dated 12.06.2017 sought No Objection certificate from the District Revenue Officer. It is stated that as per Petroleum Rules, the District Revenue Officer is the competent authority to issue NOC for setting up a retail outlet. The District Revenue Officer, after careful consideration of the rules in force and after inspecting the site by proceedings in R.Dis.11437/2017/J1, dated 01.08.2017, granted NOC in favor of the respondent/corporation for setting up the retail outlet at Madukkarai.

(iv) By proceedings dated 04.08.2017, building permission was granted by the Madukkarai, Town Panchayat. Pursuant thereto, the respondent/corporation made an application to the 2nd Respondent by application dated 23.08.2017. The 2nd Respondent, considering the fact that all statutory clearances have been obtained without flouting any norms prescribed for setting up a retail outlet granted explosives license by proceedings No.P/SC/TN/14/7862(P408382) dated 28.08.2017 in favor of the Respondent Corporation.

(v) Immediately, thereafter, by order dated 29.08.2017 the respondent/corporation issued Letter of Appointment in favour of the said candidate and the retail outlet was commissioned on 31.08.2017 and sales commenced from 02.09.2017. Though the Petitioner is well aware that the entire construction is complete and statutory clearances have been obtained, has concealed the same before this Court.

(vi) It is further stated that the Retail Outlet is located at around 25 meters from the entry gate of the school, however the school building is more than 100 meters from the Retail Outlet site. The authorities concerned had actually taken note of the same and had granted NOC in favor of the Respondent Corporation for setting up the retail outlet. Before granting NOC the authorities' concerned make thorough verification as to the safety and standard in respect of storing the petroleum products and only on subjective satisfaction NOC is being granted by the authorities concerned.

(vii) The retail outlet commenced its operations from 2nd September, 2017 after scrupulous compliance with all statutory regulations and no norms, guidelines have been violated by the

respondent/corporation in setting up the retail outlet. It is further stated that there is no specific rule or regulation that restrains the Oil Marketing Corporations from setting up the retail outlet near school, the only restriction is placed under the Tamil Nadu Government Revised Draft Code of Regulations for Play School, 2005 and the said restriction is strictly followed and the said regulation is not applicable in the present case as the "Brindhavan Vidyalaya Public School" is not a play school and in any case the Retail Outlet is located at a distance of 100 meters from the school building.

(viii) It is reiterated that after securing all statutory clearances in strict compliance without flouting any norms and strictly following the safety measures as contemplated by PESO the KSK retail outlet commenced its operations from 02.09.2017. I further state that no rules or regulations were violated for commissioning the Retail Outlet. It is stated that the products dealt with are essential commodities and the retail outlet has been providing essential service to the general public. As all the rules and regulations have been diligently followed, the above writ petition may be dismissed as devoid of merits."

5. On this day, when the matter came up for hearing, Mr.V.B.R.Menon, learned counsel for the petitioner submitted that the petitioner is not interested in pursuing the remedy sought for in the instant writ petition.

6. Placing on record the counter affidavits filed by Additional District Magistrate and District Revenue Officer, Coimbatore, Deputy General Manager, Indian Oil Corporation Limited (MD), Coimbatore DO, respectively and also the submission of Mr.V.B.R.Menon, learned counsel for the petitioner, this Court is of the view that there is no need to issue any mandamus, as prayed for.

7. Accordingly, writ petition is disposed of. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The District Revenue Officer,
Coimbatore District,
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- 3.The Deputy Director of Health Services,
Health Department,
No:219-A, Race Course Road,
Coimbatore - 641 018.

+1 cc to M/s.G.Karthikeyan, Advocate Sr.No. 68855
+1 cc to M/s.Abdul Saleem, Advocate Sr.No.69663

AKM/24.09.19/9P-6C /

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