



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.2687 of 2019

and

W.M.P.(MD)Nos.2046 and 2047 of 2019

Kumaravel

... Petitioner

-Vs-

1. Hindustan Petroleum Corporation Limited,
17, Jamshedji Tata Road,
Mumbai-400 020.

2. The Regional Manager,
Tiruchirapalli Retail Regional Office,
Hindustan Petroleum Corporation Limited,
90, 2nd Floor, MDSP Enclave,
Bharathidasan Salai, Cantonment,
Trichy.

... Respondents

PRAYER:

Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notification dated 25.11.2018 issued by the respondents regarding Sl.No.878 for outlets between KM stones 298 and 304 pmn NH 38 (LHS towards Perambalur) and quash the same as illegal and consequently direct the respondents to issue fresh notification after rectifying the infirmities.

For Petitioner : Mr.T.Senthil Kumar

For Respondents : Mr.M.Sridhar

ORDER

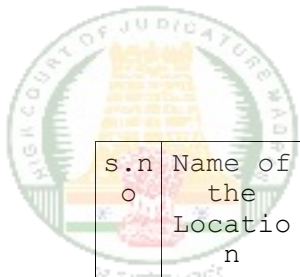


2.The petitioner questions the validity of the notification dated 25.11.2018 issued by the respondents regarding Sl.No.878 for outlets between KM stones 298 and 304 on NH 38 (LHS towards Perambalur). The petitioner wants this Court to quash the said notification and direct the respondents to issue a fresh notification after rectifying the infirmities pointed out in the affidavit.

3.The said prayer is strongly opposed by the respondents. The second respondent has filed counter affidavit. The learned standing counsel reiterated the contentions set out in the counter affidavit. The learned standing counsel appearing for the respondents points out that this writ petition is highly premature. He would also contend that the writ petitioner is estopped from challenging the validity of the notification, when he had applied in response thereto. The learned counsel would place reliance on the decision reported in **CDJ 2007 SC 427 [Shiv Kant Yadav Vs. Indina Oil Corporation and others]** and **CDJ 211 MHC 1710 [E.Joshua Livingston vs. the Senior Divisional Retail Sales Manager Indian Oil Corporation limited Trichy Divisional Office and others]**.

4.This Court considered the contentions raised in the affidavit filed in support of the writ as well as the objections raised by the respondents.

5.The second respondent issued the notification dated 25.11.2018 proposing to appoint retail outlet dealers at various locations set out in the said notification. The case on hand pertains only to Serial No.878. The notification contains as many as 15 columns. The details would read as under:-



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s.n o	Name of the Location	Rev enu e Dis tri ct	Typ e of RO	Estim ated month ly sales poten tial	Categ ory	Type of Site	Minimum dimension (in.M)/Area of the site (in Sq.M.)			Finance to be arranged by the applicant in Lakhs		
1	2	3	4	5	6	7	8			9		
							Fro nta ge	Depth	Area	Estimated Working capital requirement	Estimated fund required for development of infrastructur e at RO	
878	Between KM Stones 298 and 304 on NH 38 (LHS Towards Peramba lur	Tir uch ira ppa lli	Reg ula r	150	Open	DC	35	35	1225	25	75	



6. In the affidavit filed in support of the writ petition, it had been specifically pleaded that the outlet is proposed to be estopped in a divided carriageway in the plain / rolling terrain.

7. It is not in dispute that the Government of India Ministries of Road Transport and Highways had issued guidelines / norms vide its communication No.RW/NH-33023/19/99-DO-III dated 24.07.2013. Clause 5-2 of the said guidelines would read as under:-

"5.2. From these considerations, the minimum size of the plot for fuel stations along National Highways shall be as follows:-

S.No.		Frontage	Depth (In Metre)
(i)	On undivided carriageway in plain and rolling terrain	35	35
(ii)	On divided carriageway in plain / rolling terrain	35	45
(iii)	In hilly and mountainous terrain	20	20
(iv)	In urban stretches	20	20

Note: The proposed plot of new fuel stations should be such that the minimum frontage is achieved within the minimum total area, as stipulated above."

8. Likewise, the oil Corporations, namely the Indian Oil, Bharath Petroleum and HPCL have issued brochure with regard to the selection of dealers for regular and rural retail outlets.

9. Clause 14 (H) of the said brochure pertains to the land evaluation. It is categorically mentioned that the land to be chosen should meet NHAI norms for sites on NH.

10. This Court posed a specific question to the learned standing counsel as to whether the HPCL is bound by the guidelines / norms issued by the Ministry of Road Transport and Highways vide its communication No.RW/NH-33023/19/99-DO-III dated 24.07.2013.



11. The learned standing counsel was fair enough to say that the HPCl is bound by the norms issued by the Government.

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12. This Court went through the counter filed by the second respondent. Nowhere had it been denied that NH in question would fall under the category of divided carriageway in a plain terrain. Therefore, the plot should have the minimum frontage of 35 metres and depth of 45 metres. In this case, the notification in question mentions that the depth will have to be 35 meters. I have to be necessarily hold that the impugned notification insofar as Serial No.878 is not in conformity with the guidelines / norms laid down in the aforesaid guidelines dated 24.07.2013.

13. It is not as if the writ petitioner took his chance and after being unselected chose to challenge it. Only in that event, the doctrine of estoppel can be pressed into service against the writ petitioner. Apprehending that the respondent may possibly question him on the ground of *locus standi*, the petitioner submitted an application in response to the said notification. It is clear that the impugned notification is not in consonance with the norms laid by the Ministry of Road Transport and Highways, Government of India.

14. Therefore, the impugned notification is quashed insofar as serial No.878 is concerned and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

sd/
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. Hindustan Petroleum Corporation Limited,
<https://hcservices.ecourts.gov.in/hcservices/>
17, Jamshedji Tata Road,
Mumbai-400 020.



2. The Regional Manager,
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Hindustan Petroleum Corporation Limited,
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Bharathidasan Salai, Cantonment,
Trichy.

+1.CC. To Mr.T.Senthil Kumar, Advocate in SR No.46503

+1.CC. To Mr.M.Sridhar, Advocate in SR No.46405

W.P. (MD) No.2687 of 2019
12.02.2019

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