

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2020

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.10177 of 2020 and W.P.No.9613 of 2020 and
W.M.P.Nos.12374 & 12375 of 2020 and
W.M.P.Nos.11750, 12431 & 13841 of 2020

W.P. No.10177 of 2020

P.Selvi

... Petitioner

Vs

1. The District Magistrate,
New Revenue Complex, 1st Floor,
Vazhuthavoor Road, Pettaiyanchathiram,
Puducherry - 605 009.
2. The Sub-Divisional Magistrate (North)
Revenue Complex, Ground Floor,
No.505, Kamaraj Salai, New Saram,
Puducherry - 605 013.
3. The Joint Chief Controller of Explosives,
A and D Wing, Block 1 - 8,
Shastri Bhavan,
No.26, Haddows Road, Nungambakkam,
Chennai - 600 006.
4. The Commissioner,
Oulgaret Municipality Office,
Main Road, Boomianpet,
Jawahar Nagar, Puducherry - 605 005.
5. The Secretary to Government of Puducherry,
Agriculture & Farmers Welfare Department,
New Light House Road, Vembakeerapalayam,
Puducherry - 605 001.
6. The Chief Engineer-cum-Regional Officer,
Ministry of Road Transport and Highways (MORTH)
C-1-A, Rajaji Bhavan,
Besant Nagar, Chennai - 600 009.

7. The Executive Engineer,
National Highways - (PWD Office)
No.4, Labourdonais Street,
Puducherry - 605 001
8. The Territory Manager (Retail),
M/s. Bharat Petroleum Corporation Ltd.,
1 st Floor, Raj Towers, Near Kalaignar Arangam,
Karur Bye Pass Road, Trichy - 620 002.
9. M/s. Badmavathy Agencies,
represented by Mr.Raghu,
Dealer, Bharat Petroleum Corporation Ltd.,
Survey No.65/6 Part, ECR Road,
Pakkaudaiyan Pet, Saram,
Puducherry - 605 008.
10. The Project Director
National Highways Authority of India
SRI Tower, 3rd Floor,
DP-34, SP Industrial Estate, Guindy
Chennai - 32
(R10 impleaded vide order dated
14.10.2020 made in W.M.P. No.18148/2020
in W.P. No.10177/2020)

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying Writ of Certiorarified Mandamus to call for the records of the "No Objection Certificate" No.13847/DM/RO/TAH/D3/2019 dated 19.06.2020 issued by the 1st respondent in favour of the 8th respondent and to quash the same and consequently, to restrain permanently the 1st to 7th respondents from issuing Explosive Licence, permission and approvals to the 8th respondent to set up and operate the New Road-side Petroleum Retail Outlet on Puducherry - Mamallapuram ECR Road, National Highway No.NH- 332A, at Re-survey No.65/6 Part, Saram Revenue Village, Oulgaret Taluk, Puducherry District - 605 008 adjacent to a water body and in violation to the Notification No.RW/NH-33023/19/99-DO-III dated 24.07.2013 issued by the Ministry of Road Transport and Highways, New Delhi.

For Petitioner : Ms.T.Kokilavane
for Mr.V.B.R.Menon

For Respondents: Mr.A.V.Ramalingam,
AGP (P) for R1, R2, R4, R5
Mr.S.S.Pajaniradja
CGSC for R3, R6 & R7
Mr.V.Anantha Natarajan for R8

Mr.Issac Mohanlal, Sr. Counsel
for M/s.Issac Chambers for R9
Mr.Su.Srinivasan, ASGI for R10

W.P. No.9613 of 2020
P.Selvi

... Petitioner

Vs

1. The District Magistrate,
New Revenue Complex, 1st Floor,
Vazhuthavoor Road, Pettaiyanchathiram,
Puducherry - 605 009.
2. The Sub-Divisional Magistrate (North)
Revenue Complex, Ground Floor,
No.505, Kamaraj Salai, New Saram,
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3. The Joint Chief Controller of Explosives,
A and D Wing, Block 1 - 8,
Shastri Bhavan,
No.26, Haddows Road, Nungambakkam,
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Main Road, Boomianpet,
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5. The Chief Engineer-cum-Regional Officer,
Ministry of Road Transport and Highways (MORTH)
C-1-A, Rajaji Bhavan,
Besant Nagar, Chennai - 600 009.
6. The Executive Engineer,
National Highways - (PWD Office)
No.4, Labourdonais Street,
Puducherry - 605 001.
7. The Territory Manager (Retail),
M/s. Bharat Petroleum Corporation Ltd.,
1st Floor, Raj Towers,
Near Kalaigiar Arangam,
Karur Bye Pass Road, Trichy - 620 002.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying Writ of Mandamus to restrain the 7th respondent to set up and operate a New Road side Petroleum retail outlet on Puducherry Mamallapuram ECR Road National Highway No.NH 332-A at resurvey No.65/6 Part Saram Revenue Village Oulgaret Taluk Puducherry District 605 008 adjacent to a water body and in violation to the Notification No.RW/NH-33023/19/99-DO-III dated 24.07.2013 issued by the Ministry of Road Transport and Highways New Delhi.

For Petitioner : Ms.T.Kokilavane
for Mr.V.B.R.Menon

For Respondents: Mr.A.V.Ramalingam,
AGP (P) for R1, R2, R4,
Mr.S.S.Pajaniradja
CGSC for R3, R5 & R6
Mr.V.Anantha Natarajan for R7

COMMON ORDER

W.P. No.9613 of 2020 is filed to restrain the 7th respondent from setting up a petroleum retail outlet on Puducherry to Mamallapuram E.C.R Road. In W.P. No.10177 of 2020, the petitioner has laid challenge to the 'No Objection Certificate' (NOC) issued by the first respondent in favour of the eighth respondent, namely the Territory Manager (Retail), Bharat Petroleum Corporation Ltd., Trichy, in addition to the above relief.

2. The petitioner is an existing dealer of Bharat Petroleum Corporation Ltd in Puducherry. The proposed site for the new petrol/diesel outlet, which the 9th respondent establishes, is situated at National Highways, namely NH 332-A. Hence compliance of Ministry of Road Transport and Highways (MORTH) Notification No.RW/NH-33023/19/99-DO-III dated 24.07.2013 (in short MoRTH Norms), is mandatory for establishing the petroleum retail outlet in the proposed site.

3. The issuance of NOC for establishment of the proposed retail outlet is challenged by the petitioner on various grounds, namely:

(a) The proposed site is situated at a distance of 115 metres from the existing petroleum retail outlet operated by the petitioner as against the distance of 1000 metres as per Rule 4.6.1.(ii) of Appendix - I of the MoRTH Notification dated 24.07.2013;

(b) There are no service roads to the proposed site. The proposed site and the existing

outlet are lying on the same side of NH 332-A;

(c) There is a water body adjacent to the site, which would pose serious health problems to the public and the residential lay out in that area;

(d) The petitioner had sent a representation to the first respondent expressing her objections on 23.12.2019, and the second respondent had afforded an opportunity of personal hearing on 19.02.2020 to the petitioner. According to her, no order has been passed. However, the 9th respondent was issued NOC for the new outlet.

(e) It is also stated that there are commercial and public building and school situate within a distance of 100 metres to the proposed site which shall pose health hazard to the public due to the presence of vapour in the petroleum atmosphere.

Thus stating the above, the petitioner has sought for cancellation of the No Objection Certificate issued by the first respondent in favour of the 8th respondent.

4. The first respondent, who is the District Magistrate, has filed a counter, stating that the 'No Objection Certificate' has been issued by the said authority, taking note of the fact that the population in the Union Territory of Puducherry is more than 12.00 Lakhs in 419 Sq. Kms. and the vehicle density is also the highest in the country. Hence the proposed fuel station will be of most helpful to the residents of Puducherry as well as to the travellers passing through Puducherry.

5. The main contention of the writ petitioner that the proposed site is on the National Highway, is denied by the first respondent stating that the NOC was issued only after thorough examination of the application and after obtaining the reports from various authorities and considering the relevant provisions of the Petroleum Acts and Rules, guidelines indicated by the Ministry of Road Transport and Highways (MoRTH). The NOC was also issued, only after a personal inspection and due enquiry by the second respondent, based on whose report, the No Objection Certificate was issued.

6. The 7th respondent, who is the Executive Engineer of the National Highways, has filed his counter stating that the proposed site is not situated on NH 332-A, as claimed by the petitioner. The said averment is false and made with malafide intention.

7. It is further stated that the proposed site is situate at R.S. No.65/6 part, Saram Revenue Village, Oulgaret Taluk, Puducherry and not on the National Highways, as alleged by the petitioner. This respondent further states that the proposed site in the Highway is no way related to NH 332A and the said route of National Highways - NH 332A was notified in the Extraordinary Gazette Part II Section 3 Sub Section (ii) dated 01.03.2018.

8. As per the said proposal, the acquisition of lands for the said NH 332-A is covered only in three Revenue Villages, namely Olavaikal, Villiyanur and Kurumbapet of Villianur Taluk and not as stated by the petitioner in Saram Revenue village. Thus stating the above, the seventh respondent also prayed for dismissal of the writ petition.

9. The eighth respondent is the Territory Manager of Bharat Petroleum Corporation Limited of whom, the petitioner is an existing dealer and the ninth respondent is a proposed dealer. The eighth respondent states that the 'No Objection Certificate' was duly granted on 19.06.2020 by the first respondent in favour of the 8th respondent corporation for setting up retail outlet at Re-Survey No.65/6 Part, Saram Revenue Village, Oulgaret Taluk, Puducherry. This respondent, who is the Oil Corporation, specifically states that the writ petition is not maintainable at the instance of the petitioner on the ground of rival business close to the existing business place, as the petitioner does not have any vested right, which can be enforced in law.

10. The ninth respondent is the proposed dealer of the eighth respondent. He has also stated that the proposed site is not situate on the National Highways. Hence compliance of MoRTH Norms is not applicable to the petitioner.

11. As the first respondent has already issued the No Objection Certificate in favour of the eighth respondent, it cannot be stated that the first respondent, has not followed the guidelines and the rules. As the ninth respondent has already invested huge amount in such petroleum retail outlet, the petitioner has unnecessarily interfering with the setting up of the petrol bunk, with malafide intention.

12. The petitioner, who is an existing dealer of Bharat Petroleum Corporation Limited, is challenging the No Objection Certificate issued to the eighth respondent for setting up a fresh retail outlet in Puduchery. The first contention of the petitioner is that the ninth respondent is the applicant, whereas the ownership and possession of the site, is found in the names of some third parties, who are not the applicants seeking the impugned 'No Objection Certificate'. Hence, the

finding of the first respondent that the 8th respondent is in lawful possession of the site on the date of issuing the NOC, is false. Even though such allegation is made by the petitioner, the petitioner has not furnished the names the said third parties. However, this aspect falls between the exclusive domain of the first respondent, the petitioner need not be aggrieved by the same.

13. The next contention of the petitioner is that there is a school situated, which is within 100 metres of the proposed site and that there is no mention as to how the interest of the students have been taken care of by the first respondent while issuing the impugned NOC. According to the petitioner, the first respondent has overlooked the mandatory direction issued by the Central Pollution Control Board to protect the interest of the students studying in the school. The first respondent in his counter has specifically stated that the school building is located sufficiently far away from the proposed site to cause any health issues to the students. Further, the first respondent has stated that, if such objection of the petitioner has to be considered, the same is equally applicable to the petitioner, who is also a dealer in the same area. It is also indicated that the proposed site is so much isolated when compared to petitioner's retail outlet, since it is closely packed with commercial and residential plots. Therefore, as the authority concerned has issued an NOC, as stated above, after the spot inspection, the contention of the petitioner has to be negated.

14. The next aspect raised by the petitioner is that the NOC issued is not in conformity with the proposal to the Local Area Development Planning and that the first respondent has overruled the same due to inexplicable reasons overstepping the authority of the Town and Country Planning.

15. This objection has also been countenanced by the first respondent stating that the NOC was issued, based on the personal inspection and enquiry of the respondents 1 and 2 and upon a detailed enquiry conducted by the second respondent and also based on the reports given by the authorised departments. The aggression of the petitioner that the proposed outlet is on the National Highways is stoutly denied by all the respondents, as the retail outlet at R.S. No.65/6 (Part) of Saram Revenue village is not on the National Highways. Neither the State Government nor the Central Government has declared the present road as a National Highway. It is stated that the NOC was granted, after thorough examination by the second respondent, namely the Sub Divisional Magistrate (North), Superintendent of Police (North), District Fire Officer, Puducherry, Executive Engineer (National Highways Division), P.W.D., Puducherry, the

Commissioner, Oulgaret Municipality, Town and Country Planning Authority, Puducherry. NOC was issued after taking into consideration all relevant provisions of the Petroleum Acts and Rules, guidelines communicated by the Ministry of Road Transport & Highways vide letter dated 24.07.2013 based on IRC:12-2009.

16. It is also demonstrated by the seventh respondent that the proposed site and the said Highway are no way related. The said route of NH-332A was notified in the Extraordinary Gazette on 01.03.2018, as per which, the highway starts from its junction with NH-32 near Puducherry and terminates at Mamallapuram in the State of Tamil Nadu. It is stated that the proposal for acquisition of lands for the said NH 332A covered only three Revenue Villages of Union Territory of Puducherry viz., Olavaikal, Villiyanur and Kurumbapet of Villianur Taluk. Therefore, the claim of the petitioner that the stretch of said National Highway is through Saram Revenue Village of Oulgaret Taluk, is false and misleading.

17. In fact, the tenth respondent, namely the Project Director, National Highways Authority of India, was impleaded on 14.10.2020, to clarify this issue, who has categorically stated that the proposed site is not on the Saram Revenue Village or on a National Highway. It was also pointed that the intention of the Government of Puducherry was to ensure that public gets quality of service and that the competition need to be encouraged so that the businessmen are compelled to provide better quality products at reasonable rates and the monopoly of a particular dealer can be avoided. The first respondent had also issued an NOC only after ascertaining the concurrent decisions from various authorities and following the guidelines and rules and hence the petitioner cannot have any objection.

18. The ninth respondent, who is the proposed dealer, who had obtained the NOC which is under challenge now, also has submitted that the MoRTH Norms are not applicable, since the proposed site is not on the National Highways. The No Objection Certificate in their favour was issued by the first respondent only in accordance with the guidelines and norms. Besides it was also pleaded that the ninth respondent had invested a huge amount in setting up the retail outlet, by depositing a sum of Rs.4,50,000/- towards security deposit, a sum of Rs.15,00,000/- towards non-refundable fixed fee and a sum of Rs.7,45,080/- towards Loan Amount with the Corporation and huge amount of money for constructing the retail outlet. The above said amounts were mobilised and invested by the ninth respondent after getting loans from the bank and the financial institutions for which he has been paying the interest. Therefore, only in the business rivalry, the petitioner is seeking to quash the NOC issued by the first respondent.

19. The first respondent has categorically stated that it was only based on the inspection and field enquiry and after satisfying himself, he has issued the No Objection Certificate. Other than business rivalry, the petitioner does not seem to have any other ground, to oppose the issuance of the NOC. The best person to speak about the location of the proposed outlet is the National Highways and the first respondent, who have already cleared that it is not on the National Highway. It is only the apprehension of the petitioner that some of the customers will switch over to the proposed retail outlet. The opening of the new outlet certainly will not affect the public interest as already stated only when there is a competition, the service providers will be compelled to offer better quality products at reasonable rates.

20. In *Nataraja Agencies vs. The Secretary, Ministry of Petroleum and Natural Gas* reported in 2005 (1) CTC 394, a Division Bench of this court at paragraph Nos.3 and 4 held as follows:

"3. The Supreme Court in *Mithilesh Garg v. Union of India*, AIR 1992 SC 443, held that a rival businessman cannot file a writ petition, challenging the setting-up of a similar unit by another businessman, on the ground that establishing a rival business close to his business-place would adversely affect his business interest, even if the setting-up of the new unit is in violation of law. In *Mithilesh* case, cited supra, the Supreme Court followed its own decision in *Rice and Flour Mills v. N.T. Gowda*, AIR 1971 SC 246, wherein it was held that a rice mill-owner has no locus standi to challenge under Article 226, the setting up of a new rice-mill by another even if such setting up be in contravention of Section 8(3)(c) of the *Rice Milling Industry (Regulation) Act, 1958* because no right vested in such an applicant is infringed.

4. In the present case, the only grievance of the appellant is that if the fourth respondent is permitted to set up her retail outlet within one kilometer radius of the appellant's outlet, his business interest would be adversely affected. In our opinion, the appellant has no locus standi at all to complain against the setting up of a rival retail outlet by the fourth respondent, near his place of business, on the ground that would affect his business interest, inasmuch as the damage, if any, suffered thereby was *damnum sine injuri*-adamage without infringement of legal

right. In our opinion, this will only result in promoting competition among the traders, which is good for the consumers. Merely because some of the customers may switch over to the rival retail outlet does not mean that public interest will suffer rather, in our opinion, it will benefit the consumers because, when there is competition, the businessmen are compelled to provide better quality products at reasonable rates."

21. The above said decision was followed by two learned single Judges of this court in (i) T.N.Prakash vs. The Union of India and others made in W.P. No.5398 of 2016 dated 27.04.2016 and (ii) S.Shanmugasundar v. District Collector reported in 2017 SCC OnLine Mad 23632.

22. Following the decision of the Division Bench of this court in 2005 (1) CTC 394, cited supra, this court is of the view that the existing dealer cannot maintain a writ petition challenging the NOC issued for setting up a similar unit by another businessman. Hence, there is no merit in W.P. No.10177 of 2020 and the same deserves to be dismissed.

23. Accordingly, W.P. No.10177 of 2020 is dismissed.

24. Insofar as W.P. No.9613 of 2020 is concerned, as already a No Objection Certificate has been issued by the first respondent in favour of the 7th respondent, namely Territory Manager (Retail), M/s. Bharat Petroleum Corporation Ltd., Trichy. Thus, the writ petition has become infructuous. Hence the writ petition is dismissed, having become infructuous. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-

सत्यमेव जयते
Assistant Registrar

//True Copy//

WEB COPY
Sub Assistant Registrar

Asr

To

1.The District Magistrate,
New Revenue Complex, 1st Floor,
Vazhuthavoor Road, Pettaiyanchathiram,
Puducherry - 605 009.

- 2.The Sub-Divisional Magistrate (North)
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SRI Tower, 3rd Floor,
DP-34, SP Industrial Estate, Guindy
Chennai - 32
- +1cc to M/s.V.B.R.Menan,Advocate, sr no.37288
+1cc to M/s V.Anantha Natarajan, Advocate, sr no.37200
+1cc to The Government Pleader, sr no.37127

W.P.Nos.10177 of 2020
and 9613 of 2020 and WMPs

VSNI (CO)
RMP (14/12/2020)