

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.11.2020

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

WP.No.15937 of 2020
and W.M.P.Nos.19816 & 19818 of 2020

Raffik Moideen

... Petitioner

Versus

1.The Secretary to Government
Agriculture & Farmers Welfare Department,
Government of Puducherry,
New Light House Road, Vembakeerpalyam,
Puducherry 605 001.

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

3.The Sub Divisional Magistrate(north),
Revenue Complex, Ground Floor,
NO.505, Kamaraj Salai, New Saram,
Puducherry 605 013.

4.The Commissioner,
Oulgaret Municipality,
Main Road, Boomianpet,
Jawahar Nagar, Puducherry 605 005.

5.The Chief Engineer,
Public Works Department,
No.4, labourndnais Street,
Puducherry 605 001.

6.The Joint Chief Controller of Explosives,
A and D Wing, Block 1-B,
Shastri Bhawan,
No.26, Haddows Road, Nungambakkam,
Chennai 600 006.

7.The Chief Engineer cum Regional Officer,
Ministry of Road Transport and Highways,
C-1 A, Rajaji Bhawan,
Besant Nagar, Chennai 600 090.

8.The Territory Manager,
M/s.Bharat Petroleum Corporations Ltd.,
1st Floor, Raj Towers, Near Kalaingar Arivalayam,
Karur Bye Pass Road,
Trichy 620 002.

9.M/s.Badmavathy Agencies,
rep.by Mr.Ragu,
Dealer, Bharath Petroleum Corporation Ltd,
Survey No.65/6 Part ECR Road,
Pakkamudayanpet, Saram,
Puducherry 605 008. .. Respondents

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus Call for the records of the No Objection Certificate No. 13847 / DM / RO / TAH / D3 / 2019 dated 19.06.2020 issued by the 2nd Respondnet to the 8th Respondent and quash the same and consequently forbear the Respondnets 1 to 7 from issuing Explosive License 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 RS N0. 65/6 part Saram Revenue Village Oulgaret Taluk Puducherry District 605 008 adjacent to perivanamadu kulam (Water Body) and in violation of the guidelines for setting up of New Petrol Pumps appended to the Office Memorandum in B-13011/1/2019-20/AQM dated 07.01.2020 issued by the Central Pollution Control Board, New Delhi.

For Petitioner : Mr.V.Vasanthkumar

For R1 & R3 : Mr.N.Mala, Government Pleader
Union Territory of Puducherry

For R5 to R7 : Mr.S.S.Pajaniraja, CGSC

For R9 : Mr.Issac Mohanlal, Senior counsel
for M/s.Issac Chamber

For R8 : Mr.V.Anantha Natarajan

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The Writ Petition is styled as a Public Interest Litigation, filed by the resident of Vasanth Nagar, Muthilapet, Puducherry 605 003, stating among other things that the 9th respondent is putting up a Petrol Bunk, which lies in close proximity to the water body namely "Periavana Madu Kulam" and it is also enlisted in Annexure II-list of Ponds in the Puducherry Region. It is also identified for renovation, rejuvenation and restoration. It is also further pointed out by the petitioner that the location of the Petrol Bunk of the 9th respondent is contrary to the Office Memorandum of the Central Pollution Control Board, New Delhi, dated 01.07.2020. That apart, the proposed

Petrol Bunk, put up by the 9th respondent, lies very close proximity to the School namely, Aditya Primary School and Hospital namely PIMS City Center and that apart in the event of leakage of petroleum products from the Petrol Bunk, it would affect the ground water, more particularly, the Pond which lies close proximity to the said Petrol Bunk and therefore, prays for appropriate orders.

2. Mr.V.Vasanthkumar, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of papers as well as the additional typed set of papers and would submit that despite overwhelming materials have been made available, which was also brought to the knowledge of the concerned officials, they deliberately turned a blind eye and taking advantage of the same, the 9th respondent is hurriedly putting up construction for the purpose of establishing a petroleum retail outlet and therefore, prays for appropriate orders.

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3. Ms.N.Mala, learned Government Pleader for Union Territory of Puducherry would submit that one Ms.P.Selvi, who is a owner of a

petroleum retail outlet, filed W.P.Nos.10177 of 2020 and 9613 of 2020, raising the very same contentions/issues and a Hon'ble Single Judge, vide common order dated 19.11.2020, has dismissed both the Writ Petitions and further points out that the petitioner, under the garb of this Public Interest Litigation, technically wants this Court to collaterally review the said order and it cannot be permissible and prays for dismissal of this Writ Petition.

4. The learned standing counsel appearing for the 8th respondent would submit that before granting clearance / No Objection Certificate, all relevant aspects have been gone into and also assures that periodical as well as surprise inspection would be caused as to the maintenance of the underground water and Pond, which lies closer to the Petrol Bunk and quality and quantity of the products, dispensed through retail outlet would also be a subject matter of periodical and surprise inspection and if any infraction / violation of conditions are noted, penal and other consequences would also follow against the 9th respondent, by resorting to due process of law.

5. In ***W.P.Nos.10177 & 9613 of 2020 (P.Selvi vs. The District Magistrate, New Revenue Complex, 1st Floor, Vazhuthavoor Road, Pettaiyanchathiram, Puducherry 605 009 and others)*** filed by Ms.P.Selvi, who is a rival to the 9th respondent, the following grounds were raised:

"(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."

6. The learned Judge, after taking note of the contents of the counter affidavit and other materials, had considered all the contentions and dismissed both the Writ Petitions. A perusal of the order would disclose that though an objection was raised as to the location of the Petrol Bunk by the 9th respondent which lies adjacent to the water body, the same have not been considered, may be on account of the fact that the petitioner therein did not argue on that point.

7. Ms.N.Mala, learned Government Pleader for Union Territory of Puducherry, on instructions, would submit that the Pond is located in S.F.No.64/4, whereas the proposed petrol retail outlet of the 9th respondent is located at S.F.No.65/6 and in between there are patta lands in various subdivisions of S.F.Nos.64 and 65 and further points out that in the light of the submissions made by the learned standing counsel appearing for the 8th

respondent as to the leakage of the petroleum products from underground tank, the apprehension expressed by the petitioner is wholly unfounded and also points out that in the absence of any expressed apprehension as to the location of the Petrol Bunk, nearby to the waterbody, assuming that the said point urged by the learned counsel appearing for the petitioner is sustainable, it is based only on apprehension and hence prays for dismissal of this Writ Petition.

8. The learned Government Pleader appearing for the Union Territory of India also assures that the waterbody located in S.F.No.64/4 would be maintained properly and steps would be taken to prevent shrinkage of the waterbody in the form of dumping of garbage and orders passed by the National Green Tribunal, in this regard, would be strictly complied with.

9. This Court heard the submission of Mr.Issac Mohanlal, learned Senior counsel appearing for the 9th respondent would submit that the Writ Petition, styled as a Public Interest Litigation, is filed with an oblique motive and in the light of the dismissal of W.P.Nos. 10177 & 9613 of 2020

vide common order dated 19.11.2020, the present Writ Petition deserves dismissal with exemplary costs. No costs.

10. This Court has carefully considered the rival submissions and also perused the materials placed before it.

11. A perusal of the common order dated 19.11.2020 in ***W.P.No.10177 & 9613 of 2020*** would disclose that objections raised by the rival to the 9th respondent namely, Ms.P.Selvi have been considered in detail and in extenso and the learned Single Judge has rejected the same and dismissed those Writ Petitions as devoid of merits.

12. The learned counsel appearing for the petitioner has drawn the attention of this Court to the said common order and points out that the objections with regard to the location of the proposed Petrol Bunk being put up by the 9th respondent is closer to the water body in S.F.No.64/4, have not been considered and as such, it is open to the Court to consider the said issue also.

13. In the considered opinion of this Court, in the absence of any specific apprehension as to the location of the proposed Petrol Bunk by the 9th respondent, closer to the water body and that apart in the light of the submission made by the learned Government Pleader appearing for the Union Territory of India that there are patta lands between the pond in S.F.No.64/4 and the proposed Petrol Bunk in S.F.No.65/6, the apprehension expressed by the petitioner is not sustainable. This Court has also taken note of the submission made by the learned standing counsel appearing for the 8th respondent as to the periodical inspection of underground storage bunk, being put up by the 9th respondent for storing and dispensing with the petroleum products and is of the considered view that the apprehension expressed by the petitioner has also been taken note of. It is also open to the 8th respondent to cause regular periodical as well as surprise inspection as to the maintenance of the Petrol Bunk being put up by the 9th respondent and if any violation of conditions of license / permission is noted, it is always open to them to take appropriate action in accordance with law.

14. The respondents 4 and 5 shall also maintain the water body located in S.F.No.64/4, free of encroachments and see to that there is no dumping of garbage or other materials, which may shrink the water body and shall ensure that the water body is maintained in a proper condition.

15. In the result, the Writ Petition is disposed of with the above observation. No costs. Consequently connected miscellaneous petitions are closed.

[M.S.N.,J] [R.H., J]
30.11.2020

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Internet : Yes/No
Index : Yes/No

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