

WMP No.24461 of 2019 in
W.P.No.31055 of 2012

C.V.KARTHIKEYAN.J.,

This application has been filed by the writ petitioner seeking amendment of relief sought in the writ petition from a writ of Certiorari to a writ of Certiorarified Mandamus.

2. A modification is required in view of the fact that the license issued by the 1st respondent in favour of the 2nd respondent had already expired on 31.12.2012. This was a fact brought to the knowledge of the petitioner during the hearing on 22.07.2019. Thereafter, the present Writ Miscellaneous Petition has been filed seeking amendment of the prayer. By the amendment, apart from retaining the earlier relief of writ of Certiorari with respect to calling for the records of the 1st respondent relating to the impugned license which had been renewed up to 31.12.2012, in favour of the 2nd respondent, it is additionally sought to call for the records of the 1st respondent with respect to the impugned license which had been renewed as stated in the writ petition up to 31.12.2012 and subsequently quash the same and a direction against the 2nd respondent to forbear storing of Petroleum at the premises.

3. As stated above, this amendment is a direct result of arguments advanced by the learned counsel more particularly the learned counsel for the 1st respondent namely the Joint Chief Controller of Explosives, Ministry of Commerce and Industry Petroleum and Explosives Safety Organization (PESO) (Formerly Department of Explosives), Chennai.

4. A counter affidavit has been filed by the 1st respondent which is adopted by the 2nd respondent. It is stated that the 2nd respondent, licensee has submitted the renewal documents periodically after 31.12.2012 and the license is kept in abeyance as the subject matter is sub judice. However, the deponent has also quoted the provision of Rule 148 (5) of the Petroleum Rules, 2002 and stated that the license is deemed to be in force until such date as the licensing authority i.e., 1st respondent renews the license or until given an intimation that the renewal of the license is refused. This order must be communicated to the applicant.

5. Heard arguments advanced by the learned Senior counsel on behalf of the petitioner, the learned counsel on behalf of the 1st respondent and the 2nd respondent.

6. One further factor which has to be noted is that a further writ petition has been filed in W.P.No.24058 of 2019 which writ petition has been filed for a mandamus against the 2nd respondent therein namely the Commissioner of Police /District

Authority, Vepery, Chennai 700 007 to cancel the No Objection Certificate No.2660/E4/60 dated 09.12.1960 which had been granted in favour of the 3rd respondent, Bharat Petroleum Corporation Ltd, Tondiarpet, Chennai.

7. Filing of a writ petition seeking a mandamus, calling upon the Commissioner to cancel No objection certificate, has been necessitated in view of the counter filed by the 1st respondent in an earlier writ petition in W.P.No.31055 of 2012. The licensing authority had stated in their counter affidavit that there was no obligation on their part, to verify the lease agreement and that orders are passed on the basis of the orders of the District authority. Since both the writ petitions are pending it would be improper to hear on the merits of those writ petition.

8. This Miscellaneous petition is restricted to the limited extent of seeking an amendment in the relief sought in W.P.No.31055 of 2012. Originally, the writ petition was filed seeking Certiorari with respect to license granted to the petitioner. That had expired on 31.12.2012.

9. During the arguments it had come to knowledge that an application has also been filed seeking renewal, placing reliance on an interpretation on Rule 148(5) which states that the license is deemed to be in force until the license is cancelled. Therefore, the relief sought for in the writ petition has to be amended in the first place to also include the further period after 31.12.2012. A further amendment is

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made for the prayer of a mandamus forbearing the 2nd respondent from storing Petroleum products.

10. According to the learned Senior Counsel, storage of Petroleum is permissible only when the 2nd respondent establishes a right over the site where the petroleum is to be stored. The learned Senior counsel has stated that such right had expired since the lease has not been renewed after 2009. These facts have to be heard during the hearing of the main writ petition and it would only be in the interest of the parties to hear them all on all the issues raised.

11. For the reasons aforesaid, the writ Miscellaneous petition is allowed and amendment as sought for is permitted.

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Note:Registry is directed to carry out the necessary amendment in the prayer column, if it is otherwise in order

11.02.2020

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