



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2020

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

WP (MD) No. 12010 of 2020

and

WMP (MD) Nos. 10352 to 10354 of 2020

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Billy Graham

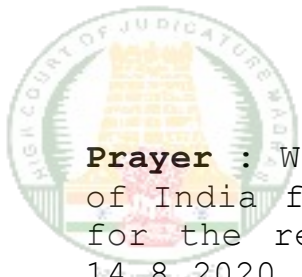
... Petitioner

Vs.

1. The Director,
Ministry of Petroleum and
Natural Gas,
Shastri Bhawan, New Delhi - 110001.
2. The Additional Chief Secretary,
Highways and Minor Ports
Department,
St. George Fort, Secretariat,
Chennai - 600 009.
3. The Regional Officer,
Bharath Petroleum Corporation Ltd.,
No. 37, Thiruparankundram Road,
Pasumalai, Madurai - 625 004.
4. The District Revenue Officer,
Ramanathapuram District,
Ramanathapuram.
5. The Joint Chief Controller of
Explosives,
No. 26, Haddows Road, Nungambakkam,
Chennai - 600 006.
6. The Divisional Engineer,
Construction and Maintenance,
Highways Department,
Travellers Bungalow Road,
Ramanathapuram.
7. The District Fire Officer,
Bharathi Nagar,
Near India Supermarket,
Ramanathapuram.

8. Manivannan

... Respondents



Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the impugned order in Roc.C2/7178/2020 dated 14.8.2020 on the file of the 4th respondent and to quash the same and consequently forbearing the respondent Nos.3 to 7 from issuing No Objection Certificate (NOC) explosive license and other necessary approvals/permissions/consents to the 8th respondent to open and operate a new road side petroleum retail outlet at S.No.295/1A1B Meiyampulli Village, Rameswaram Taluk, Ramanathapuram District.

For Petitioner : Mr.N.Ananthapadmanabhan
for Apn Law Associates

For Respondents : Mr.P.Mahendran,
Additional Government Pleader
for R2, R4, R6 and R7

Ms.Hema Sampath, Senior counsel
for Mr.Natesh Raja for R3

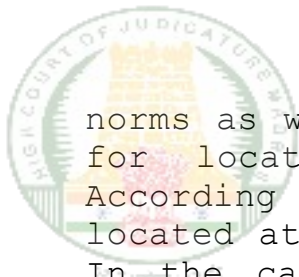
Mr.D.Sadiq Raja for R8

ORDER

Heard the learned counsel appearing for the petitioner, the learned Additional Government Pleader for the respondents R2, R4, R6 and R7, the learned Senior Counsel assisted by the counsel for the third respondent and also the learned counsel appearing for the 8th respondent.

2.The petitioner is running an educational institution in Survey No.295/1A1B, Meiyampulli Village, Rameswaram Taluk, Ramanathapuram District. It appears to be an area spread over ten acres of land. The petitioner is having a Tamil Medium School and a CBSC School inside the premises. Aggrieved by the grant of NOC in favour of the eight respondent to locate petroleum outlet in the said survey number, this writ petition has been filed.

3.The petitioner's counsel reiterated all the contentions setout in the affidavit filed in support of the writ petition. His core argument is that the site in which NOC has been given by the District Revenue Officer, Ramanathapuram under Rule 144 of the Petroleum Rules, is adjacent to the entrance gate leading to the school. The learned counsel for the petitioner also pointed out that the proposed petroleum outlet will have to share the compound wall of the school. This according to the petitioner's counsel is a clear violation of the Indian Roads Congress (IRC) 12-2009



norms as well as the other guidelines laid down from time to time for location and laying out the road side fuel stations. According to the latest guidelines, the fuel station must be located at a distance of not less than 60 meters from the school. In the case on hand, the violation is apparent. He seriously faulted the impugned NOC on the ground that it has failed to take into account the aforesaid relevant facts. If an administrative order fails to take into account a relevant material, it has to be quashed on that sole ground. He also took me through the materials and photographs enclosed in the typed set of papers.

4.The prayer made in the writ petition is opposed both by Bharat Petroleum as well as the allottee, namely, 8th respondent. Both have filed counter affidavits opposing the writ prayer. The learned Senior Counsel appearing for the Bharat Petroleum pointed out that the petitioner has not approached the court with clean hands. She took me through the relevant provisions in the guidelines issued by IRC and contended that it has been held in more than one decision of the Madras High Court that the IRC norms are not binding or mandatory. The core objection of the learned Senior Counsel is that the petitioner has deliberately shifted the entrance gate from its original location to a point adjacent to the present site. It was also pointed out that the school building is located at a distance of almost 150 meters from the fuel station. The arguments advanced by the learned Senior Counsel have been adopted in toto by the learned counsel for the eight respondent. The eight respondent would in addition point out that the proposal of the allottee has been approved not only by the other authorities but also by PESO.

5.The learned Additional Government Pleader appearing for the fourth respondent also submitted that the fourth respondent issued impugned NOC only after getting inputs from all the concerned authorities. It is not as if in response to the application made by the eight respondent, NOC was arbitrarily issued. It is not so. A mere perusal of the impugned NOC would indicate that after getting clearance from various authorities such as District Forest Officer etc., the fourth respondent had chosen to issue the same.

6.I carefully considered the rival contentions and went through the materials on record. Rule 144 of the Petroleum Rules, 2002 confers power on the District Revenue Officer to grant NOC. Of course, the guidelines issued by the IRC mentions that fuel station must be located at a distance not less than 50 meters from the school.

7.In this case, two issues arise for my consideration. The first question is whether the IRC norms are mandatory and binding as contended by the learned counsel appearing for the petitioner.



Even though orders passed by two Hon'ble Division Benches have been brought to my notice, as rightly pointed out by the learned Senior Counsel appearing for the third respondent, another Hon'ble Division Bench by a final order had clearly held that the IRC norms are not binding. But I am more on the conduct of the petitioner. Any person who invokes jurisdiction of the Court under Article 226 of the Constitution of India will have to come with clean hands. In other words, the court must be approached for vindicating an existing right. A cause of action cannot be deliberately engineered. Convincing materials have been placed by the respondents that the original entrance gate of the petitioner school was located in the middle of the compound wall and at a distance of more than 75 meters from the fuel station. The petitioner had been representing the authorities even last year that the eighth respondent should not be given NOC. It appears that the entrance gate has been shifted to a point very adjacent to the site in question. This Court cannot appreciate such a conduct. This Court has utmost concern for the safety of the children who are studying in the educational institution run by the petitioner. But then, when the existing arrangement would not pose any threat to the safety of children, by opening an entrance gate near the site of the eighth respondent, it is the petitioner who is endangering the lives of the school children. That apart, as earlier pointed out, the petitioner's land is spread over 10 acres. The school building is located at a distance of 150 meters from the site of the eighth respondent. The eighth respondent has also given an undertaking to comply with various safety requirements. Therefore, the fourth respondent cannot be faulted for having issued the impugned NOC in favour of the eighth respondent. I find no ground to interfere. The writ petition is dismissed. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar (CS)

skm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To

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7. The District Fire Officer, Bharathi Nagar,
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+1 CC to SGP (SR-18689[F] dated 01/10/2020)

**WP (MD) No.12010 of 2020
and**

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KM (19.10.2020) 5P 9C