



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.16247 of 2021

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Sri Padma Highway Filling Station,
rep.by its Proprietor,
Mr.Mudunuri Venkata Satya Suryanarayana Raju ...Petitioner
Vs.

1. Government of India
rep.by its Secretary,
Ministry of Surface Transport and Highways,
Department of Road Transport and Highways,
Transport Bhavan,1, Sansad Marg, New Delhi.

2. District Magistrate,
Pondicherry.

3. Deputy Collector (Revenue) cum
Sub Divisional Magistrate,
Yanam, Government of Puducherry.

4. Indian Oil Corporation Ltd.,
Marketing Division,
Visakha Divisional Office,
8th Floor, LIC Building,
Jeevitha Binta Road,
Visakhapatnam 530 004.

5. M/s.Flash (Partnership Firm),
rep.by its Partner,
Malladi Raghu Vamsee,
Door No.9-2-252,9-6-255/1,
U.K.V.Nagar,Yanam.

...Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records relating to the proceedings bearing No.4494/ SDMY/ D3/ Petrol/ 2020-21 dated 29.1.2021 on the files of the 3rd respondent and quash the same.

For Petitioner : Mr.A.R.L.Sundaresan,
Senior Counsel for
M/s.Aiyar and Dolia

For RR1 : No appearance

For RR2 and 3 : Ms.N.Mala, Government Pleader
(Pondicherry)

For RR4 : Mr.Abdul Saleem, Standing Counsel



O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari to call for the records relating to the proceedings bearing No.4494/ SDMY/ D3/ Petrol/ 2020-21 dated 29.1.2021 on the files of the 3rd respondent and quash the same.

2. The case of the petitioner is that the petitioner is a dealer of Indian Oil Corporation Limited having petrol filling station at NH2016, Kanakalapeta, Yanam 533 463 and engaged in the supply of petrol, high speed diesel and other petroleum products. The petitioner states that within 50 meters from the existing outlet of the petitioner, on the same side of the road, one M/s.Own Eco Energy Pvt.Ltd., intended to establish a new petrol retail outlet abetting NH-2016 and the same sought to be commenced without obtaining NO Objection Certificate from the respondents 2 and 3 and in violation of the guidelines / norms issued by the 1st respondent dated 24.07.2013. As per the said clause, in respect of Undivided Carriageway, the minimum distance prescribed is 300 meters including deceleration and acceleration lanes and in respect of divided carriage way, the minimum distance prescribed is 1000 meters including deceleration and acceleration lanes. The petitioner objected for grant of no objection certificate to the proposed retail outlet as the same is situate within 100 meters. Under those circumstances, the petitioner has filed W.P.No.33354 of 2017 for Writ of Mandamus forbearing the respondents 2 and 3 from granting No Objection Certificate for starting the retail outlet. During the pendency of the Writ Petition, this Court vide order dated 20.12.2017, had granted interim order and it is still in force. Though the order of interim order was passed, the 3rd respondent vide proceedings dated 29.01.2021, had granted No Objection Certificate to the 4th respondent to set up a retail outlet for storage and usage in contravention of the guidelines/norms dated 24.07.2013. Challenging the said proceedings, the present petition is filed.

3.The learned counsel appearing for the petitioner submitted that the minimum distance for divided carriage way with no gap in the median in the location and stretch is 1000 meters, however, the proposed retail outlet is proposed to be located within 1000 meters of divided carriage way, which is in violation of the guidelines / norms dated 24.07.2013. Further, the learned counsel appearing for the petitioner submitted that the establishment of the proposed retail outlet by the 5th respondent is to circumvent the guidelines dated 24.07.2013, which is still in force and for the purpose of evading payment of sales tax, which is higher in the State of Andhra Pradesh compared to Yanam. Therefore, the grant of no objection certificate by the 3rd respondent for the establishment of the



proposed retail outlet by the 5th respondent is bad in law and contrary to the guideline dated 24.07.2013. Hence prays for quashment of the proceedings of the 3rd respondent, dated 29.01.2021.

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4. The learned Additional Government Pleader (Pondicherry) submitted that the said National Highway (NH-2016) was recently developed as four lane road with service road and median and the allegation levelled by the petitioner in respect of the distance between two fuel stations are not maintainable as he relies upon the guidelines issued on 24.07.2013. As per the latest guidelines, issued by the Ministry of Road Transport and highways, Government of India vide No.RW-NH-33032/01/2017-S&R(R), dated 26.06.2020, particularly in Point NO.2.3(6), prescribed as follows:

'Distance between two fuel stations: 300m-for both divided and undivided carriageway (including deceleration and acceleration lanes). However, this restriction shall not apply in case access / egress for all such fuel stations are provided through common service road of 7.0m width and not directly to NH. Further, access for fuel stations at closer proximity than 300m may be allowed provided entry/exit for both fuel stations are provide through service road of 7.0m width having sufficient length; further, additional length of such service road shall be constructed at the cost of the later fuel station owner / company seeking grant of permission for access for the facility.'

5.The above guidelines are laid down for establishment of two or more fuel stations in same side. In the present case, the fuel stations are opposite to each other and both the fuel stations have separate service lane after development of the said NH-2016 as four lane highway with central median. Hence, the No Objection Certificate issued by the respondent, dated 29.01.2021, is in conformity with the above guidelines and prays for dismissal of this petition.

6.The learned Standing Counsel appearing for the 4th respondent submitted that the present retail outlet is established in strict compliance with the Petroleum Act and Rules and after securing all the necessary approvals as mandated under the Act and Rules. Further the guideline dated 24.07.2013 is no longer applicable as the same is revised under the guidelines dated 26.06.2020, whereby under Clause 2.3 Appendix I, intersection with any category of road and median gap is 100m and the 3rd respondent had considered the same while issuing the NOC. The Corporation has invested huge amount of money towards development of the retail outlet and started construction



activities only after securing necessary approval and in view of the interim order, the construction activity in the retail outlet is stayed and the entire investment is lying idle and it causes severe hindrance and loss to the Corporation. Hence prays for dismissal of the writ petition.

7. The learned counsel appearing for the 5th respondent has drawn the attention of this Court to the counter affidavit filed by the 5th respondent and submitted that the previous writ petition filed by the petitioner was against one firm namely Own Eco Engineering Pvt Ltd., and not against the 5th respondent. Further the petitioner filling station is on the right hand side of the road, whereas the proposed retail outlet is on the left hand side of the road only and as on date, there is an existing divided carriage way with 4 lane road and the minimum distance between the existing IOCL fuel station and the proposed IOCL fuel station along with acceleration and deceleration lines is more than 300 meters and therefore, there was no violation of the distance rules in granting No Objection Certificate by the 3rd respondent. Furthermore, the petitioner had relied upon the instructions dealing with the location of the retail outlet in rural area and stating that the distance is 1000mts as per the guidelines, whereas the Yanam is not a rural area, it is an urban area, where the prescribed distance between the two outlets is only 300m. In the present case, the distance rule was verified by the 1st respondent while issuing the NO Objection Certificate in favour of the 4th respondent. Thus, the petitioner had obtained interim order against the NOC issued, by suppressing the above facts and hence prays for vacating the order of interim stay and for dismissal of this writ petition.

8. This Court has carefully considered the submission made by the respective parties and perused the materials available on record.

9. Facts in dispute is that the NOC issued by the 3rd respondent is not in accordance with the guidelines dated 24.07.2013, wherein the minimum distance for divided carriage way with no gap in the median in the location and stretch is 1000 meters. Whereas, it is the claim of the 5th respondent that as per the revised guidelines dated 26.06.2020, the prescribed distance between the two outlets is only 300m. As rightly pointed out by the respondents and further on going through the counter affidavits filed on behalf of the respondents, it is evident that as per the latest guidelines, issued by the Ministry of Road Transport and highways, Government of India vide No.RW-NH-33032/01/2017-S&R(R), dated 26.06.2020, particularly in Point No.2.3(6), the 'Distance between two fuel stations is 300m-for both divided and undivided carriage way (including deceleration and acceleration lanes). Further, the No



Objection Certificate was issued after taking into consideration of all relevant provisions of the Petroleum Acts and Rules and after physical verification of the Site. Furthermore, in the present case, the fuel stations are opposite to each other and both the fuel stations have separate service lane and the minimum distance between the petitioner IOCL fuel station and proposed IOCL Fuel Station along with acceleration and deceleration lines is more than 300 meters. Hence, the No Objection Certificate issued by the respondent, dated 29.01.2021, is in conformity with the above guidelines and no error apparent on the face of the record in granting No Objection Certificate to the 4th respondent and thereby, the writ petition deserves dismissal.

10. In view of the aforesaid reasons, this writ petition is dismissed and the interim order granted by this Court vide order dated 04.08.2021, stands vacated and W.M.P.No.17191/2021, is dismissed and thereby, W.M.P.No.19085/2021, filed for vacating the order of interim stay, stands ordered. No costs.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
Ministry of Surface Transport and Highways,
Department of Road Transport and Highways,
Transport Bhavan, 1, Sansad Marg, New Delhi.
2. District Magistrate,
Pondicherry.
3. Deputy Collector (Revenue) cum
Sub Divisional Magistrate,
Yanam, Government of Puducherry.

+1cc to M/s.Aiyar & Dolia, Advocate, S.R.No.63066
+1cc to Mr.M.Gnanasekar, Advocate, S.R.No.62333
+1cc to M/s.AAV Partners, Standing Counsel to IOCL S.R.No.62725
+1cc to the Government Pleader, Puducherry, S.R.No.62801
W.P.No.16247 of 2021

KG(CO)
RGA(17/12/2021)