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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-09-2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP.NO.43434 OF 2016

AND

WMP.NO.37295 OF 2016

A.Packirisamy

.. Petitioner

.vs.

1. The Joint Chief Controller of Explosive
Petroleum and Explosives Organisation,
South Circle, A and D Wing Block 1-8,
II Floor. Shastri Bhavan,
26, Haddows Road, Nungambakkam,
Chennai - 600 006.
2. The District Collector,
District Collector Office,
Tiruvarur.
3. The District Revenue Officer,
District Revenue Office,
Tiruvarur.
4. The Revenue Divisional Officer,
Tiruvarur.
5. The Tahsildar,
Tiruvarur.
6. The Fire Service Department Officer,
Fire Service Department,
Tiruvarur.
7. Essar Oil Limited,
Chennai House, 5th Floor,
No.7, Esplanade,
Chennai - 600 108.
8. Chitra

.. Respondents



Prayer:-

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the first and third respondents from issuing 'Explosive License' and 'No Objection Certificate' respectively under Petroleum Rules 2002 in favour of the seventh and eighth respondents for setting Petroleum Service Station (PSS) at R.S.111/B1, Mangudi Village, Tiruvarur-Thiruthuraipoondi Main Road, Tiruvarur District, without considering the objection raised in representation dated 27.06.2016 of the petitioner.

For Petitioner : Mr.R.Ravi

For Respondent-1: Mr.C.G.Kumar,
Central Government Standing Counsel.

For Respondents-2to6: Mr.C.Kathiravan,
Government Advocate.

For Respondent-7 : Mr.Abdul Saleem

For Respondent-8 : Ms.S.R.Shenbaga Babu

O R D E R

The writ on hand has been instituted to forbear the respondents 1 and 3 from issuing 'Explosive License' and 'No Objection Certificate' respectively under Petroleum Rules 2002 in favour of the seventh and eighth respondents for setting Petroleum Service Station (PSS) at R.S.111/B1, Mangudi Village, Tiruvarur-Thiruthuraipoondi Main Road, Tiruvarur District, without considering the objection raised by the petitioner in representation dated 27.06.2016.

2. The petitioner is a resident of Mangudi village and an agriculturist by avocation and also run a Provision Store. The petitioner is residing at Tiruvarur-Thiruthuraipoondi Main Road and the proposed retail outlet sought to be located in the land belonging to the eighth respondent's husband Mr.G.Gurunathan bearing R.S.No.111/B1 of Mangudi Village shares common boundary on Northern side of the residence of the petitioner.

3. The petitioner states that in the Tiruvarur-Thiruthuraipoondi Main Road, very close to the proposed site of locating Petroleum Retain Outlet, a Nursery and a Primary School namely 'Thai Nursery' and 'Primary School' having the strength of not less than 300 children, are located. The said school was established ten years back from the date of filing of the writ



petition and it is located very close to the proposed Retail Outlet. A Marriage Hall and a Welding Shop are also located close to the proposed site and setting up of Petroleum Retail Outlet close to such places of public assembly is clearly prohibited under the norms of fire safety requirements.

4. During February-March 2016, the petitioner came to know that the public belonging to Mangudi Village raised an objection for setting up of Petroleum Retail Outlet at the said location stating that it would create hazardous to the public and cause potential danger for the public assembly near the site. Thus, the petitioner took up the case and filed the present writ petition.

5. The petitioner made several representations citing all these irregularities and made a request not to issue 'NOC' as well as the 'License' granted by the District Authority in favour of the seventh respondent. Since the efforts taken by the petitioner went in vain, he is constrained to move the present writ petition.

6. The third respondent-District Revenue Officer filed counter statement stating that the seventh respondent has applied for issuing 'NOC' for setting up Petroleum Retail Outlet in R.S.No.111/B1, Mangudi Village, Tiruvaru Taluk, Tiruvarur District vide his application dated 20.01.2016. The said application was processed, inspection was conducted and thereafter 'NOC' was issued by the third respondent vide Rc.692/C4/2016 dated 19.10.2016. Thus, the writ petition is to be rejected.

7. In view of the public importance raised by the learned counsel for the petitioner, this Court has gone into the role of the Pollution Control Board and the District Authority for the purpose of granting 'NOC', conducting inspection and to initiate all further actions in the event of any violation of the guidelines.

8. The respondents have stated that they have acted in accordance with the provisions of the Petroleum Act, Rules and Regulations and therefore, the present writ petition is filed by the petitioner without any acceptable ground and thus to be rejected.

9. The Oil Companies, no doubt, are interested in protecting their business activities. But the Oil Corporations are 'State' within the meaning of Article 12 of the Constitution of India. Thus, the Oil Corporations are bound to ensure that the right to life enunciated under Part III of the Constitution, which is a fundamental right of every citizen, is protected. 'Freedom of



Trade' is enunciated under the Constitution is subject to the right of other citizen of this Great Nation. While granting permission, mechanical approach is impermissible. Retail Petrol Bunks are creating lot of health issues and therefore, the mitigating factors, surrounding atmosphere, the presence of schools, oldage homes and hospitals are also to be taken into consideration, while granting NOC by the District Authorities and also the license by the Explosive Department. However, the people residing in residences are complaining in many places that such Petrol Bunks are allowed to function very close to the residential premises and the same is causing lot of health issues to the children, oldage and the sick people.

10. Guidelines are issued and the Central Pollution Control Board also issued the norms. Certain measures are taken to avoid such hazardous substances affecting the health of the citizen residing close to the Retail Petrol Bunks. However, the irregularities are happening in many areas, more specifically, in urban locations. It cannot be denied that many such Retail Petrol Bunks are functioning very close to the residential areas, schools etc. Protection of health is an integral part of Article 21 of the Constitution of India. Thus, while granting NOC and License for running Retail Petrol Bunks, the Authorities must ensure 'subjective satisfaction'. The persons running the Retail Petrol Bunks may flout the instructions and the regulations. However, the Authorities Competent, while granting NOC, license and after commencement of business, have to conduct inspections frequently and thereby ensure that the guidelines are followed and health issues to the persons residing nearby are being protected.

11. 'Subjective satisfaction' includes that before grant of NOC and License, the Authorities Competent must ensure that the schools, oldage homes, hospitals and the residential areas are not closely situated, wherein it is proposed to run Retail Petrol Bunks. In other words, if any schools, oldage homes and hospitals are very close to the proposed site, then such NOC and License should not be granted in the interest of the public at large and to protect the fundamental right of every citizen for healthy life.

12. It is needless to state that the rules, regulations and the guidelines are not meant for mechanical implementation. The mitigating factors affecting the children, senior citizen and the health of the people in general, are also to be taken into consideration. The Authorities should borne in mind that if such Retail Petrol Bunks are allowed to run very close to their own residences, then what would be their mindset and the consequences. Thus, the Authorities are expected to put themselves in the place of the victim, who is making such



complaints and decide the issues to their subjective satisfaction and by applying the relevant rules and regulations.

13. The National Green Tribunal is also dealing with these issues. Several orders are passed. The Central Pollution Control Board also issued directions, which are to be implemented by the State Pollution Control Board. But it is unfortunate that the State Pollution Control Board is not functioning upto the mark and to the expectation of the people for the purpose of controlling the pollution and to protect the health issues and complaints raised by the citizen.

14. As far as the children studying in schools, oldage homes and hospitals are concerned, their welfare can never be compromised by the Authorities. No doubt, development is essential. However, such developments should not affect the health of the children, sick and oldage people.

15. 'Right to Life' is a fundamental right ensured under the Constitution of India. The health of the children is to be protected in all circumstances and any hazards on this aspect on account of installation of Retail Petrol Bunks nearby schools, residential areas, oldage homes and hospitals, are to be seriously viewed. The Competent Authorities cannot mechanically adopt the rules and regulations and grant NOC. Such an approach would result in non-application of mind with reference to the issue, which is bound to be considered in the interest of the general public.

16. The Authorities Competent are expected to borne in their mind that all such rules, regulations and guidelines are issued only in the interest of public at large and to protect the rights of the citizen, including the right to life. Thus, while implementing the regulations, mere measurement of an area is insufficient and the other mitigating factors and the surrounding areas are also to be assessed, in order to satisfy that the Authorities have applied their mind.

17. Thus, even in cases, where the Authorities formed an opinion that the guidelines issued for installation of Retail Petrol Bunks are satisfied with reference to the distance, area etc., the other factors affecting the health issues of the residents, who all are closely residing in the proposed site, are also to be taken into consideration in order to uphold the fundamental right of life to the citizen, who all are residing in the particular locality. Thus, the Oil Corporations are duty bound to ensure that they are not violating the constitutional mandates involving the fundamental right of citizen.



18. It is important to understand that all rules and regulations for grant of NOC and License to run Retail Petrol Bunks are subject to fundamental rights ensured to the citizen of this Great Nation under the Indian Constitution. Thus, the right to life became the first priority and will override all other guidelines, rules and regulations issued by the Authorities Competent.

19. This being the principles, while implementing the rules and regulations, the Authorities are duty bound to consider that the right to life of the citizen of the nearby locality, is also taken care and protected. In the event of any such violation, the residents, schools, oldage homes and hospitals are entitled to make complaints for removal of such Petrol Bunks from such objectionable locations.

20. Thus, application of mind on the part of the Authorities includes likelihood of causing any danger, health hazards, quality of air, ground water level and other factors affecting the normal life of the residents of that locality are to be taken into consideration, while granting NOC or License for setting up Retail Petrol Bunks in a particular location.

21. As far as the present writ petition is concerned, the petitioner has raised several objections. However, those objections were not considered while conducting inspection by the Authorities.

22. The respondents contended that they have followed the guidelines as discussed above. Adherence of guidelines is one aspect of the matter and other relevant factors are also to be considered in view of the fundamental right promised to every citizen under the Indian Constitution.

23. In view of the facts and circumstances, the respondents 1 and 3 are directed to conduct a revised inspection in respect of the subject Retail Petrol Bunk and consider the objections raised by the public as well as by the petitioner and by the people residing in that locality and make an assessment and accordingly, pass an order by following the procedures as contemplated under the Statutes and the Rules as applicable. The said exercise is directed to be done by the respondents 1 and 3, within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is permitted to furnish copies of the objections and relevant documents to the respondents 1 and 3, enabling them to consider the issues in a right perspective.



24. With the above directions, the writ petition stands disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The Joint Chief Controller of Explosive
Petroleum and Explosives Organisation,
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Tiruvarur.
6. The Fire Service Department Officer,
Fire Service Department,
Tiruvarur.

+1cc to Ms.S.R.Shenbaga Babu, Advocate, S.R.No.49638

+1cc to the Government Pleader, S.R.No.49788

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PA(CO)
CS/13/10/2021