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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-09-2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.7264 of 2016

And

WMP No.6469 of 2016

Mr.R.Gunasekaran

...Petitioner

VS.

- 1.The Joint Secretary,
The Ministry of Petroleum and Natural Gas,
Shastri Bhawan,
New Delhi.
- 2.The Executive Director (Marketing),
IOCL Bhavan, Bandra (East),
Mumbai - 400 051.
- 3.The District Collector,
Singaravelar Maligai,
62, Rajaji Salai,
Chennai - 600 001.
- 4.The Deputy General Manager (Petroleum) Sales,
Indian Oil Corporation Ltd.,
139, M.G.Road,
Nungambakkam,
Chennai - 600 034.
- 5.The Director (ADGP),
Tamil Nadu Fire and Rescue Services,
No.1, Greams Road, [Commercial Tax Annexe Building],
Thousand Lights,
Chennai - 600 006.



6.The Commissioner,
Corporation of Madras,
Rippon Buildings,
Chennai - 600 003.

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7.Sri Senthil Andavar Petrol Bunk,
No.63/31, Perambur Barracks Road,
Pattalam,
Chennai - 600 012.

8.The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai,
Guindy,
Chennai - 32.

(R-8 suo motu impleaded vide order
of Court dated 17.09.2021 made in
WP 7264 of 2016)

...Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents 1 to 6 to take immediate steps to close down the fire accident met petrol bunk situated at M/s.Senthil Andavar Petrol Bunk, No.63/31, Perambur Barracks Road, Pattalam, Chennai-600 012 established by the seventh respondent based on the representation dated 21.12.2015 and consequently direct the fourth respondent to cancel the license granted to the seventh respondent for running the petrol bunk at No.63/31, Perambur Barracks Road, Pattalam, Chennai-600 012.

For Petitioner : Mr.M.Vijay Anand

For Respondent-1 : Mr.J.Madanagopal Rao,
Senior Central Government Standing
Counsel.

For Respondents-3&5 : Mr.C.Kathiravan,
Government Advocate.

For Respondents-2&4 : Mr.Mohammed Fayaz Ali

For Respondent-6 : Mr.S.Saravanan

For Respondent-7 : Mr.N.Jothi



O R D E R

The relief sought for in the present writ petition is to direct the respondents 1 to 6 to take immediate steps to close down the fire accident met petrol bunk situated at M/s.Senthil Andavar Petrol Bunk, No.63/31, Perambur Barracks Road, Pattalam, Chennai-600 012 established by the seventh respondent based on the representation dated 21.12.2015 and consequently direct the fourth respondent to cancel the license granted to the seventh respondent for running the petrol bunk at No.63/31, Perambur Barracks Road, Pattalam, Chennai-600 012.

2. The petitioner is a Senior Citizen and residing in a residential area. There are some Hospital and Schools situated in the nearby area. While-so, the seventh respondent without getting the proper approval and license from the Competent Authorities and without following the safety norms and the conditions prescribed under the Petroleum Act, 1934, The Petroleum Rules 1976 and also the guidelines framed by the Petroleum and Explosives Safety Organisation (PESO) opened a Petrol Bunk licensed by the fourth respondent-Indian Oil Corporation.

3. The Petrol-cum-Diesel Bunk is situated within a densely populated residential area, even at the time of opening, the petitioner along with other residents gave several representations to the Authorities concerned, to take necessary action against the seventh respondent for not following the safety norms as prescribed. Due to unethical and poor maintenance of the Petrol Bunk by the seventh respondent, often there are several accidents took place in the locality. The petitioner along with other residents often gave several representations to the Authorities to close down the said Petrol Bunk to avoid any untoward incidents, however, no action has been taken. Thus, the petitioner is constrained to move the present writ petition.

4. The respondents filed the counter-affidavit by stating that they have followed the rules and regulations and proper approval was granted by the Statutory Authorities. No Objection Certificate (NOC) was issued by the Commissioner of Police and the District Authorities. Thus, the procedures, as contemplated,



were followed by the Authorities, while granting permission for commissioning of Retail Petrol Bunk in that locality.

5. 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.

6. 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.

7. 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



8. '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.

10. 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.

12. '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.

13. 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.

14. 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.

15. 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.

16. 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.



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17. 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.

18. 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.

19. 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.

20. In view of the facts and circumstances, the respondents 1 to 6 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. The said exercise is directed to be done by the respondents 1 to 6, 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 to 6, enabling them to consider the issues in a right perspective.

21. 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.

Sd/-
Assistant Registrar (CCC)

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Sub Assistant Registrar

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To

- 1.The Joint Secretary,
The Ministry of Petroleum and Natural Gas,
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- 7.The Chairman,
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+1cc to Mr.M.Vijay Anand, Advocate SR.No.49596

W.P.No.7264 of 2016

AK-II(CO)
RMV(20/10/2021)