



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) No.2259 of 2021

and W.M.P.(MD) Nos.1882 to 1884 of 2021

(Through Video Conference)

WEB COPY

Shanthi

...Petitioner

Vs.

1) The District Revenue Officer,
Tiruchirappalli.

2) The Territory Manager (Retail),
Bharat Petroleum Corporation Ltd.,
Karur Bye Pass Road,
Trichy 620 002

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, by calling for the records relating to the impugned proceedings in Na.Sa.D.2/29058/2019 passed by the 1st Respondent dated 26-11-2020 and quash the same.

For Petitioner	: Mr.M.Suresh Kumar
For R-1	: M/s.Rajeswari, Government Advocate For Mrs.S.Srimathy, Special Government Pleader
For R-2	: Mr.Natesa Raja

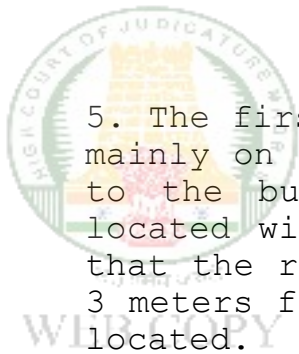
O R D E R

On consent given by either side, the main writ petition itself is taken up for final hearing.

2. This writ petition has been filed challenging the proceedings of the first respondent refusing to grant 'No Objection Certificate' to the petitioner to run the Petroleum Retail Outlet.

3. The second respondent invited applications for grant of dealership to run Petroleum Retail Outlet. The petitioner submitted an application and the second respondent, on being satisfied with the fulfilment of all the requirements, granted permission to the petitioner to set up a Petroleum Retail Outlet, subject to the condition that the petitioner will have to obtain 'No Objection Certificate' from various Authorities.

4. The petitioner applied for 'No Objection Certificate' before various Authorities and all the Authorities gave the 'No Objection Certificate'. The same is clear from the documents filed in the typed set of papers.



5. The first respondent refused to grant 'No Objection Certificate' mainly on the ground that the proposed outlet is located very close to the burial ground and that there is a transformer, that is located within a distance of 30 meters from the proposed site and that the residential premises of the petitioner is situated within 3 meters from the place at which the proposed outlet is going to be located. The first respondent has also quoted the proceedings of the Central Pollution Control Board, dated 07.01.2020 and shown that also as a reason, for not giving the 'No Objection Certificate'. Aggrieved by the same, the present writ petition has been filed before this Court.

6. Heard Mr.M.Suresh Kumar, learned counsel for the petitioner and M/s.Rajeswari, learned Government Advocate for the first respondent and Mr.Natesa Raja, learned counsel appearing for the second respondent.

7. The learned counsel appearing on behalf of the second respondent made a categorical submission that the place where the petitioner has been permitted to set up a the Petroleum Retail Outlet, fulfils all the requirements and there cannot be any objection to start the outlet at this site.

8. The learned counsel for the petitioner specifically brought to the notice of this Court, paragraph no.5 of the affidavit and also ground (g) in the affidavit. For proper understanding, the same is extracted hereunder:

"5. I respectfully submit that I am having the large extent of property in Old S.No. 555/2 Thuvakudi Village. In the said large extent only in a small portion, the Petroleum outlet is going to be developed. My property is located on the Northern side of Main Road. On western side I am having my own property with buildings. Similarly, on the northern side also a portion of my property with building is available. Further in the northern side, at 30 meters away from my property boundary a burial ground is available. In fact on the northern side abutting my property a compound wall was developed by the local body. Thereafter a public road was available. Further North is the Uyakondan Channel in which the Traditional form of Crematorium is functioning. The above factual aspects are the ground reality. As stated above the 2nd Respondent, the Highways department, the local body, the Fire and rescue Department, the Explosive Department, Police Department and RDO are granted No objection for development of Petroleum outlet in my site. The 1st Respondent is not favoring for grant of no objection on the ground that the Crematorium place is available behind my property. Admittedly the Crematorium structure is 30 meter away from my boundary in the northern side. **Further I hereby**



undertake that I am ready to put up a compound wall for an height of 6 meters on the northern side and as well as on the eastern side for safe functioning of petroleum outlet."

...

"G. The petitioner is hereby undertake to vacate the residential buildings, which are own by him on the eastern side and on the part of northerside and the same will not be used for residential activities in future also. Except my own buildings no other residential buildings are available near to my property. The main road is commercially developed one."

9. The learned counsel for the petitioner, by pointing out to the above extracts from the affidavit, submitted that the objections raised by the first respondent with regard to the location of the burial ground and location of the residential houses, have been properly met by the petitioner and the same can be considered by the first respondent. Insofar as the location of the transformer is concerned, the same is located more than 30 meters away from the proposed site and therefore, it cannot be a ground for refusing the 'No Objection Certificate'.

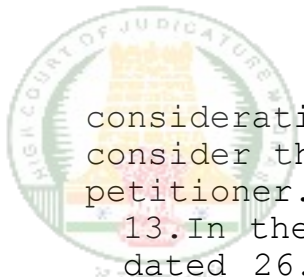
10. The only other issue that requires consideration is the proceedings of the Central Pollution Control Board that was relied upon by the first respondent. The relevant clause in the proceedings is extracted hereunder for proper appreciation:

"H. Siting criteria of Retail Outlets:

In case of siting criteria for petrol pumps new Retail Outlets shall not be located within a radial distance of 50 meters (from fill point/ dispensing units / vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per local laws. In case of constraints in providing 50 meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO. In no case the distance between new retail outlet from schools, hospitals (10 beds and above) and residential area designated as per local laws shall be less than 30 meters. No high tension line shall pass over the retail outlet."

11. It is seen from the above clause that the distance restrictions is calculated only from the fill point / vent pipe and not from the boundary of the property, where the outlet is proposed to be located. That apart, the clause itself makes it clear that the retail outlet will provide for additional safety measures, in case the distance falls within 50 meters.

12. In view of the specific stand taken by the petitioner, this Court deems it fit to remand the matter back to the file of the first respondent and the first respondent shall take into



consideration the specific stand taken by the petitioner and shall consider the issuance of 'No Objection Certificate' in favour of the petitioner.

13. In the result, the impugned proceedings of the first respondent dated 26.11.2020 is hereby quashed and the matter is remitted to the file of the first respondent to take a decision in line with the order passed in the writ petition, within a period of eight weeks from the date of receipt of a copy of this order. The petitioner is directed to make a fresh representation to the first respondent with all the relevant documents and also a copy of this order.

14. This Writ Petition is allowed with the above directions. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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.

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To:

1) The District Revenue Officer,
Tiruchirappalli.

2) The Territory Manager (Retail),
Bharat Petroleum Corporation Ltd.,
Karur Bye Pass Road,
Trichy 620 002

+1 CC to M/s.SPL GP (SR-15638[F] dated 09/04/2021)

+1 CC to M/s.M.SURESH KUMAR, Advocate (SR-15732[F] dated 09/04/2021)

Order made in

W.P. (MD) No.2259 of 2021

GS (20.05.2021) 4P 5C