



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.06.2021

CORAM

THE HONOURABLE MR.JUSTICE T. S. SIVAGNANAM

AND

THE HONOURABLE MRS.JUSTICE S.ANANTHI

WEB COPY

W.A. (MD)No.1190 of 2021
and C.M.P. (MD) Nos.5060 and 5062 of 2021

A.Malarvizhi ... Appellant/Petitioner

Vs.

- 1.The District Collector,
Dindigul District, Dindigul.
- 2.The Territory Manager (Retail),
Bharath Petroleum Corporation Ltd.,
Madurai Retail Territory,
37, Tirupparankundram Road,
Pasumalai, Madurai - 625 004.
- 3.The Joint Chief Controller of Explosives,
140, Rukmani Lakshmipathi Marshalls Road,
Egmore, Chennai - 600 008.
- 4.The Chief Educational Officer,
Palani Road, Vanivilasmedu,
Dindigul District, Dindigul.
- 5.Akhilesh ... Respondents/Respondents

Prayer : Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court in W.P.(MD)No.7057 of 2021, dated 29.03.2021.

Prayer in WP(MD). 7057/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus to forebear the respondents, from proceeding with the installation work of petrol station being carried out by the 5th respondent in Survey No.132/3D2A1 of Markkampatti Village, Oddanchtram Taluk, Dindigul District and thereby to prevent serious potential hazards to the health, safety and security of the students, their parents and staff members of the nearby Government High School Markkkampatti Village, Oddanchatram Taluk, Dindigul District.

For Appellant : Mr.V.R.Venkatesan

For Respondent Nos.1, 3 & 4 : Mr.R.Baskaran
Standing Counsel for Government

For Respondent No.2 : Mr.S.Nadesh Raja

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J U D G M E N T

(Judgment of the Court was delivered by T. S. SIVAGNANAM, J.)

Heard Mr.V.R.Venkatesan, learned counsel for the appellant, Mr.R.Baskaran, learned Standing Counsel for Government, appearing for respondent Nos.1, 3 and 4 and Mr.S.Nadesh Raja, learned Standing Counsel, appearing for the second respondent.

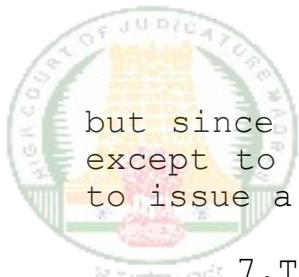
2.The appellant filed the Writ Petition in W.P.(MD) No.7057 of 2021, praying for issuance of a Writ of Mandamus, to forbear the respondent Nos.1 to 4 from proceeding with the installation work of petrol bunk by the fifth respondent in Survey No.132/3D2A1 of Markkampatti Village, Oddanchatram Taluk, Dindigul District as the same is within the prohibited distance of the Government High School, Markkampatti Village. The Writ Petition was dismissed on the ground that the appellant is a rival trader, who is also running a petrol bunk and a dealer of the Indian Oil Corporation. Learned Writ Court has held that such motivated litigation cannot be encouraged and while dismissing the Writ Petition, a cost of Rs.5,000/- was also directed to be paid.

3.After hearing the elaborate arguments of the learned counsel for the parties, we find that the representation given by the appellant to the second respondent has not been considered and no reply was given to the petitioner. When the appellant approached the Public Information Officer under the Right to Information Act, 2005, seeking details of the 'No Objection Certificate' granted to the fifth respondent, a reply was sent on 25.02.2021, stating that the information appears to be that of a third party and therefore, it is a privileged information and cannot be divulged. Therefore, the appellant is left with no option except to file the Writ Petition.

4.It is the submission of the learned counsel for the appellant that his petroleum retail outlet is situated 2 kms from the outlet, which is in the process of being set up by the fifth respondent and the litigation is not motivated litigation, but bearing in mind the safety of the children.

5.Mr.S.Nadesh Raja, learned Standing Counsel for the second respondent Petroleum Corporation submitted that the guidelines issued by the Central Government and Pollution Control board have been strictly adhered to and there is no violation of the distance rule and the fifth respondent's retail outlet is not within the prohibited distance.

6.Had the second respondent replied to the appellant's representation and has enclosed a copy of the 'No Objection Certificate', it is well open to the appellant to question the same,



but since no reply was given, the appellant was left with no option except to approach this Court with the Writ Petition with a prayer to issue a Writ of Mandamus.

7. Though the appellant may say that his retail outlet is situated 2 kms. from the outlet of the second respondent, it can always be viewed as a personal motive. However, in the matter, the safety of the children is concerned. Therefore, the second respondent has to disclose the distance criteria, which was adopted and has to establish how the petroleum retail outlet of the fifth respondent is not within the prohibited distance.

8. For the above reason, we partly allow the Writ Appeal by excluding the direction to pay cost and issuing a direction to the second respondent to send a suitable reply to the appellant's representation dated 12.03.2021, enclosing all relevant documents including the copy of the 'No Objection Certificate' given by the second respondent Corporation for establishing a petroleum retail outlet by the fifth respondent as dealer within one week from the date of receipt of a copy of the order. The appellant has also raised another objection stating that there is a transformer situated within the prohibited distance. This issue also be appropriately dealt with in the reply to be given by the second respondent in terms of the above direction. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: (i) 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.

To

1. The District Collector,
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2. The Territory Manager (Retail),
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<https://hcservices.ecourts.gov.in/hcservices/>



3.The Joint Chief Controller of Explosives,
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4.The Chief Educational Officer,
Palani Road, Vanivilasmedu,
Dindigul District, Dindigul.

+1 CC to M/s.V.R.VENKATESAN, Advocate SR-20123[F] dated 24/06/2021

+1 CC to M/s.SPL GP (SR-20137[F] dated 24/06/2021)

W.A. (MD)No.1190 of 2021
23.06.2021

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TR(28.06.2021) 4P 7C