



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Thursday, the Second day of September Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice SENTHILKUMAR RAMAMOORTHY

WMP(MD) Nos.10047, 10718 and 6328 of 2021

IN

WP(MD) No.8355 of 2021

IN WMP(MD) No.10047 of 2021:

T.MEKALA ... PETITIONER/6th RESPONDENT/6th RESPONDENT

Vs

1 THE JOINT CHIEF CONTROLLER OF EXPLOSIVES,
A AND D WING, BLOCK 1-8, 2ND FLOOR,
SASTRI BHAVAN, 26, HADDOWS ROAD,
NUNGAMBAKKAM, CHENNAI 600 006.

2 THE DISTRICT COLLECTOR / THE DISTRICT MAGISTRATE,
VIRUDHUNAGAR,
VIRUDHUNAGAR DISTRICT.

3 THE DISTRICT REVENUE OFFICER,
VIRUDHUNAGAR, VIRUDHUNAGAR DISTRICT.

4 THE REVENUE DIVISIONAL OFFICER,
SATTUR, VIRUDHUNAGAR DISTRICT.

5 CENTRAL POLLUTION CONTROL BOARD,
REP. BY ITS MEMBER SECRETARY,
76, MOUNT SALAI, GUINDY,
CHENNAI 600 032

... RESPONDENTS/RESPONDENTS/RESPONDENTS

6 THE INDIAN OIL CORPORATION
REP BY ITS DIVISIONAL MANAGER,
MADURAI DIVISION OFFICE, NO.2, RACE COURSE ROAD,
CHOKKIKULAM, MADURAI-625002.

... 6th RESPONDENT IMPLEDED VIDE COURT
ORDER DATED 28.04.2021
IN WMP(MD) No.6639 of 2021

7 R.SANTHI

... 7th RESPONDENT/PETITIONER/PETITIONER



Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to accept this Affidavit and vacate the interim order made in W.M.P. (MD) No.6328 of 2021 in W.P. (MD) NO.8355 of 2021, dated 28.04.2021.

IN WMP(MD) No.10718 of 2021:

THE INDIAN OIL CORPORATION,
REP BY ITS DIVISIONAL MANAGER,
MADURAI DIVISION OFFICE,
NO.2, RACE COURSE ROAD, CHOKKIKULAM,
MADURAI-625002. ... PETITIONER/7th RESPONDENT
VS

1. R.SANTHI ... 1st RESPONDENT/PETITIONER

2. THE JOINT CHIEF CONTROLLER OF EXPLOSIVES,
A AND D WING, BLOCK 1-8, 2ND FLOOR,
SASTRI BHAVAN, 26, HADDOWS ROAD,
NUNGAMBAKKAM, CHENNAI 600 006

3. THE DISTRICT COLLECTOR / THE DISTRICT MAGISTRATE,
VIRUDHUNAGAR, VIRUDHUNAGAR DISTRICT.

4. THE DISTRICT REVENUE OFFICER,
VIRUDHUNAGAR, VIRUDHUNAGAR DISTRICT.

5. REVENUE DIVISIONAL OFFICER,
SATTUR.

6. CENTRAL POLLUTION CONTROL BOARD,
REP. BY ITS MEMBER SECRETARY, 76,
MOUNT SALAI, GUINDY, CHENNAI 600 032

7. T.MEKALA ... RESPONDENT 2 TO 7/RESPONDENT 1 TO 6

Prayer in WMP(MD). 10718/ 2021 :

To vacate the interim order passed in W.M.P.(MD) NO.6328 of 2021 in W.P. (MD) No. 8355 of 2021, dated 28.04.2021.

IN WMP(MD) No.6328 of 2021:

R.SANTHI ... PETITIONER/PETITIONER
VS.

1.THE JOINT CHIEF CONTROLLER OF EXPLOSIVES,
A AND D WING, BLOCK 1-8,
2ND FLOOR, SASTRI BHAVAN, 26, HADDOWS ROAD,
NUNGAMBAKKAM, CHENNAI 600 006



2.THE DISTRICT COLLECTOR / THE DISTRICT MAGISTRATE,
VIRUDHUNAGAR, VIRUDHUNAGAR DISTRICT

3.THE DISTRICT REVENUE OFFICER,
VIRUDHUNAGAR, VIRUDHUNAGAR DISTRICT

4.REVENUE DIVISIONAL OFFICER,
SATTUR, VIRUDHUNAGAR DISTRICT

5.CENTRAL POLLUTION CONTROL BOARD,
REP. BY ITS MEMBER SECRETARY, 76, MOUNT SALAI,
GUINDY, CHENNAI 600 032

6. T.MEKALA ...RESPONDENTS/RESPONDENTS

(*)7.THE INDIAN OIL CORPORATION,
REP BY ITS THE DIVISIONAL MANAGER,
MADURAI DIVISIONAL OFFICE,
NO.2, RACE COURSE ROAD, CHOKKIKULAM,
MADURAI-625002. ... RESPONDENT

(*)R7 IS IMPLEADED VIDE COURT ORDER DATED
28.04.2021 IN WMP(MD) No.6639/2021 IN WP
(MD) No.8355/2021

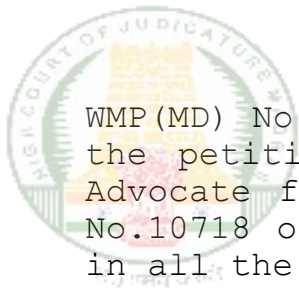
Prayer in WMP(MD). 6328/ 2021 :

To pass an order of injunction restraining the 6th respondent his men, agents or servants anybody claiing through them from functioning of the petroleum outlet viz Shree Krishna oil agencies 2/2, Old trunk road, situated in S.No.4/2, (Ward B, Block1) Sattur Village, Virudhunagar District, pending disposal of the above WP.

Prayer in WP(MD). 8355/ 2021 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus or any other appropriate order of direction in the nature of writ, by directing the 3rd respondent to cancel the NOC dated 16.06.2020 granted in favour of the 6th respondent for running petroleum outlet and consequentially forbearing the respondents from settingup and running petroleum outlet in S.No.4/2, (Ward B, Block1) Sattur Village, Virudhunagar District.

ORDER : These petitions coming up for orders on this day, upon perusing the petitions and the affidavit filed in support thereof and upon hearing the arguments of Mr.K.GOVINDARAJAN, Advocate for Mr.A.BALAJI, Advocate for the petitioners in WMP(MD) No.10047 of 2021 & R7 in WMP(MD) No.10718 of 2021 & R6 in WMP(MD) No.6328 of 2021 and of Mr.K.MURALEEDHARAN,advocate on behalf the petitioner in WMP(MD) No.10718 of 2021 & R6 in WMP(MD) No.10047 of 2021 & R5 in



WMP(MD) No.6328 of 2021 and of Mr.S.VENKATESH, advocate on behalf of the petitioner in WMP(MD) No.6328 of 2021 and of Mr.S.JEYASINGH, Advocate for R1 in WMP(MD) Nos.10047,6328 of 2021 & R2 in WMP(MD) No.10718 of 2021 and Mr.P.SUBBARAJ, Counsel for State for R2 to R4 in all the petitions, the Court made the following order:-

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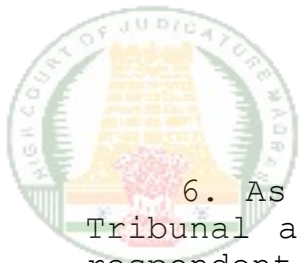
The petitioner seeks cancellation of the No Objection Certificate dated 16.06.2020, which was issued by the third respondent in favour of the sixth respondent herein.

2. The petitioner complains of the establishment of a fuel retail outlet by the sixth respondent as dealer of the Indian Oil Corporation. At the time of admission, an interim injunction was granted by order dated 28.04.2021. The sixth respondent has filed W.M.P(MD)No.10047 of 2021 to vacate the said order of interim injunction.

3. Similarly, the Indian Oil Corporation has also filed a petition to vacate the above mentioned interim order in W.M.P(MD) No.10718 of 2021.

4. The petitioner contends that the petroleum retail outlet has been established in violation of the order dated 22.07.2019 of the National Green Tribunal, New Delhi in I.A.No.7 of 2019 in O.A.No.31 of 2019. It is stated that guidelines were issued by the Central Pollution Control Board on 07.01.2020 pursuant to the above mentioned order of the National Green Tribunal. As per the said guidelines, it is stated that no new fuel retail outlets should be established at a distance less than 30 metres from Schools, Hospitals and residential areas. In addition, it is stated that no new outlets should be established unless the radial distance between the filling point/dispensing unit/vent pipe is at least 50 metres from Schools, Hospitals and residential areas designated by local laws. The petitioner also contends that the fuel retail outlet of the sixth respondent violates the licence conditions prescribed by Petroleum and Explosives Safety Organization (PESO). In particular, it is alleged that condition No.5, which specifies that the vent pipe should not be less than 4 metres from any adjoining land or property, has been violated in the present case. The third contention of the petitioner is that the No Objection Certificate was granted by the third respondent without conducting an inquiry as mandated by the Petroleum Rules and, in particular, Rule 144 thereof.

5. On the contrary, the sixth respondent contends that the ad interim order was obtained by suppressing material facts. The sixth respondent refers to paragraph No.2 of the affidavit and points out that the petitioner averred that the petroleum retail outlet is in the process of being established, whereas the sixth respondent had operationalized the petroleum retail outlet in November 2020.



6. As regards the order dated 22.07.2019 of the National Green Tribunal and the guidelines issued in pursuance thereof, the sixth respondent points out that the said order and the guidelines are applicable only for residential areas. The site of the petroleum retail outlet, in this case, is in a commercial and business area. In support of this contention, the sixth respondent relies upon the Certificate issued by the Sattur Municipality on 06.10.2020. The sixth respondent also relies upon the Inspection Report of the PESO dated 05.02.2021. By drawing reference to the said report, it is pointed out that PESO concluded upon inspecting the premises on 05.01.2021 that the premises has been established in accordance with the approved plan in all respects. In particular, it is pointed out that the said report mentions that the required safety distances around filling points, vent pipes and dispensing units were maintained. The next contention of the sixth respondent is that the petitioner suppressed the fact that his complaint was responded to by PESO. In this connection, paragraph No.3 of the counter affidavit of PESO is referred to wherein it is stated that the petitioner was informed of the outcome of the inspection of the petroleum Retail outlet by letter dated 01.03.2021. The sixth respondent points out that the present Writ Petition was filed in April 2021 and in spite of the same, the above outcome of inspection has been suppressed by the petitioner.

7. The Indian Oil Corporation points out that the petroleum retail outlet was established after obtaining the necessary licence from PESO. In addition, the requisite No Objection Certificate was obtained from the third respondent. The Indian Oil Corporation submits that prior to the grant of licence, PESO inspected the site and agreed to grant the licence because the fuel retail outlet, including the filling points, was in conformity with applicable norms in such regard.

8. The State has filed a counter affidavit stating that the NOC was issued by adverting to the prescribed procedure in such regard. Likewise, the first respondent has filed a counter affidavit, which draws reference to the grant of licence in Form-14 of the Petroleum Rules, 2002.

9. Upon consideration of the rival contentions and the pleadings of the respective parties, it is clear that the sheet anchor of the petitioner's case is the order of the National Green Tribunal dated 22.07.2019 and the guidelines issued in pursuance thereto. Therefore, it is necessary to consider the said aspect. The petitioner relies on the siting criteria of retail outlets, which reads as under:



'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 metres (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 metres distance, the retain 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 metres. No high tension line shall pass over the retail outlet''.

10. From the above, it appears that the distance criteria specified in the guidelines are applicable to residential areas designated as per local laws. In the case at hand, the sixth respondent has produced a copy of the classification certificate relating to the relevant site. Such classification certificate indicates that the land is classified as shops and business premises area.

11. Therefore, the guidelines issued by the Central Pollution Control Board do not appear to apply to an area classified as shops and business premises area. The second aspect is that the grant of licence to a petroleum retail outlet is to be done in accordance with the Petroleum Rules by PESO. In the case at hand, PESO has admittedly granted the necessary licence. Indeed, in response to a complaint from the petitioner's husband, the matter has been re-examined by PESO. Upon re-inspection on 05.01.2021, PESO has concluded that the petroleum retail outlet, including filling points and vent pipes have been set up in compliance with the requisite distance norms.

12. The third aspect to be borne in mind is that the petroleum retail outlet has been operationalized in November 2020. Although the petitioner contends that he did not make a misrepresentation to the effect that the petroleum retail outlet had not been established, paragraph No.2 of the affidavit certainly gives such impression. In any event, the balance of convenience shifts considerably in the context of a functioning petroleum retail outlet.

13. Therefore, taking into consideration the fact that PESO has given the green signal for the establishment of the petroleum retail outlet and the third respondent has also granted a No Objection Certificate, the facts and circumstances do not justify the continuation of the ad interim order. Consequently, the order dated 28.04.2021 is vacated. W.M.P(MD)No.6328 of 2021 is dismissed and



14. Let the main Writ Petition be posted after four weeks.
sd/-

02/09/2021

/ TRUE COPY /

/ /2021

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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.

TO

- 1 THE JOINT CHIEF CONTROLLER OF EXPLOSIVES,
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- 5 CENTRAL POLLUTION CONTROL BOARD,
REP. BY ITS MEMBER SECRETARY, 76,
MOUNT SALAI, GUINDY,
CHENNAI 600 032

+1. C.C. to M/S.S.VENKATESHAN, Advocate SR.No.5956
+1. C.C. to M/S.S.JEYASINGH, Advocate SR.No.5964

ORDER
IN
WMP(MD) No.10047, 10718
and 6328 of 2021
IN
WP(MD) No.8355 of 2021
Date :02/09/2021

SS/JM/SAR-IV/09.09.2021 : 7P/8C