



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.10.2021

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD)No.16489 of 2021

and

W.M.P. (MD)No.13368 of 2021

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Shanthi Engineering Industries,
Plot No-D/C-2,
SIDCO Industrial Estate,
Thuvakudy, Trichy,
Represented by its Managing Partner,
R.P.Gowthaman.

.. Petitioner

Vs.

1.The Government of Tamilnadu,
by its Secretary,
Small Industries,
Secretariat, Chennai.

2.The Chairman & Managing Director,
Tamil Nadu Small Industries Development
Corporation Limited,
Chennai.

3.The Branch Manager,
Tamil Nadu Small Industries Development
Corporation Limited,.
Thuvakudi, Trichy.

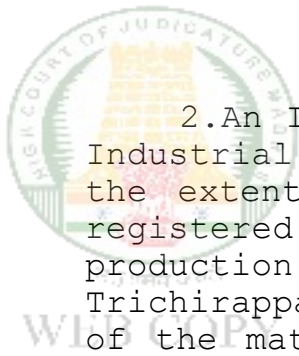
.. Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the third respondent proceedings RC.No.351/B/2020, dated 08-07-2021 and quash the same as illegal and direct the third respondent to issue NOC to the petitioner for entering into lease agreement with Hindustan Petroleum Limited.

For Petitioner	: Mr.S.Muthukrishnan
For R1	: Mr.R.Sureshkumar
	Government Advocate
For R2 and R3	: Mr.T.Sakthikumaran
	Standing Counsel

ORDER

Prayer sought for herein is for a Writ of Certiorarified Mandamus, calling for the records of the third respondent proceedings RC.No.351/B/2020, dated 08-07-2021 and quash the same and direct the third respondent to issue NOC to the petitioner for entering into lease agreement with Hindustan Petroleum Limited.



2.An Industrial plot has been allotted in Plot No.D/C2 at SIDCO Industrial Estate, Thuvakudi, to the petitioner some time in 1989 to the extent of 40,946 sq.ft. A sale deed to that effect has been registered in Doc.No.802/89, the petitioner industry started production of some industrial activities and the BHEL, Trichirappalli was a main source of the supplier for the production of the materials for the petitioner industry, however, after some years, there has been no patronage for the production of the petitioner industry, therefore, in order to have a viable alternative business, the petitioner wanted to start a petrol bunk in the said industrial plot, for which the petitioner, after having obtained necessary No Objection Certificate from the third respondent and other authorities like Fire Service Department, Local Authority etc., had also obtained letter from Hindustan Petroleum, dated 25.02.2021 and thereafter approached the second respondent, that is, SIDCO for giving such permission for converting the plot for commercial activity to have the petrol retail outlet.

3.The said request of the petitioner has been turned out or rejected by the second respondent through the impugned communication, dated 08.07.2021, where the Branch Manager concerned of the SIDCO has passed the following communication:

"We inform that you have requested permission to start a fuel station of M/s.Hindustan Petroleum corporation Ltd., or a Hotel in plot No.D/C-2 stating the reason that you are affected due to lack of order from BHEL.

In the reference cited, Head Office has informed that TANSIDCO has already given permission for one petrol bunk in Industrial Estate, Thuvakudy and also to inform to undertake any industrial activity in the above plot.

Hence, you are requested to undertake any industrial activity in the above plot."

Challenging the same, the present writ petition has been filed.

4.Heard Mr.S.Muthukrishnan, learned counsel appearing for the petitioner, who would submit that the very reason stated in the impugned communication of the respondents-SIDCO that already there is a permission granted to one petrol bunk in the same industrial Estate at Thuvakudi. Therefore, the request of the petitioner cannot be considered and granted, is absolutely an unsustainable reason, therefore, for the said reason cited the impugned communication cannot taken stand in the legal scrutiny, therefore, he seeks indulgence of this Court to set aside the order impugned and to remand the matter back to the respondents-SIDCO for reconsideration.

5.However, Mr.T.Sakthi Kumaran, learned Standing Counsel appearing for SIDCO has filed counter affidavit and additional counter affidavit as well as typeset of documents, where he relies



upon the actual decision taken by the SIDCO by its Deputy General Manager, dated 05.07.2021, has been produced, where it is stated by the SIDCO with the following reason:

"The attention of the Branch Manager, Trichy is drawn to the reference cited and The allottee M/s.Santhi Engineering has requested permission to start a fuel station of M/s Hindustan petroleum corporation Ltd or a Hotel in the allotted plot stating the reason that they are affected due to lack of order from BHEL. The same situation is for all the units at Industrial Estate Thuvakudy. If we give permission for change of Industrial use to commercial use, it will become a bad precedence. All the unit holders are doing the industrial activity. Moreover already TANSIDCO has given permission for one petrol bunk.

Hence the Branch Manager is requested to inform the allottee to undertake any industrial activity in the above plot."

6.At one point of time, when this case came up for hearing on 20.10.2021, after hearing both side, this Court passed the following order:

"Mr.T.Sakthi Kumaran, learned Standing Counsel for the second and third respondents-SIDCO, though had relied upon the Counter affidavit as well as the Additional typeset of documents, still wants some more time to file additional documents with regard to the mandatory guidelines, if any, on the policy decision to be taken by the SIDCO in converting the industrial plots into commercial plots, as in the present case, the petitioner has very much relied upon a permission given by the respondents-SIDCO to a plot allottee to have a petrol bunk sometime in 2003, where the justification or defence now taken by the respondents-SIDCO is that, in 2003, that is, during the relevant point of time, considering various aspects, such a permission of converting the plot into commercial one has been granted, and that kind of permission cannot be shown to the petitioner or any other person at this juncture.

2.In order to justify this stand taken by the respondents- SIDCO, what is the mandatory guidelines prescribed in this regard, based on which the SIDCO can convert an industrial plot into a commercial one or vice-versa, has to be spelt out and the document to that effect with supporting counter affidavit



shall be filed by the respondents-SIDCO during the next hearing, for which, he seeks a weeks time.

Post the matter on 27.10.2021."

7. Pursuant to which, the learned Standing Counsel for SIDCO has filed additional typeset of documents, where he has filed the memorandum of the Board of SIDCO, dated 10.04.2003 and also the Circular memo, dated 24.04.2003 and the Circular memo, dated 02.02.2006 relying upon these memo of the Board as well as the Circulars, the learned Standing Counsel for SIDCO has submitted that as per Clause-7 of memo of the Board, dated 10.04.2003, the following has been stated:

"(7) As SIDCO's estates are meant mainly for industrial activities, SIDCO is not encouraging purely Commercial activities or trading activities in the Industrial Estates by the original allottee himself or by means of transfer or lease. However, such requests will have to be placed before the Board for charging the difference of 2 times between the present cost and the original cost paid by the allottee."

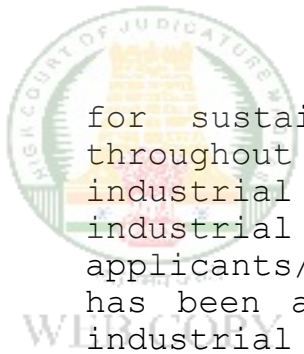
8. He also relies upon the Circular memo, dated 24.04.2003, where in paragraph No.6, the following has been stated.

"6. Purely commercial activities or trading activities will not be encouraged in the Industrial Estates either by the original allottee or by means of transfer or lease to any other person. However such requests will be placed before the Board for final decision and for charging of two times of the current land cost after deducting the original land cost paid by the allottee."

9. He further relies upon the subsequent Circular, dated 02.02.2006 of SIDCO, where he relies upon the following:

"Where the change in Line of Activity is for a non-Industrial activity like Information Technology enabled Industries, Petrol Bunks etc., approval of the Managing Director should be obtained.
This order takes immediate effect.
This order supersedes all the earlier orders issued on the above matter.
This receipt of this Circular Memo should be acknowledged."

10. By relying upon these communications, the learned Standing Counsel for SIDCO vehemently contend that the SIDCO was established only



for sustained growth and development on industrial activities throughout the State and for enabling new entrepreneurs for having industrial activities and progression, lands are being acquired and industrial plots are being allotted and sold to various applicants/industrial entrepreneurs as such, the plot in question has been allotted in the year 1989 to the petitioner to have an industrial activity, which was infact undertaken by the petitioner and he was running an industry for supplying certain materials to the BHEL, Trichirappalli, and after some years, since there has been some sluggish in the market or there has been no patronage from BHEL, the petitioner seems to have taken a decision to convert the industrial activity to commercial one, for which, he sought permission from SIDCO to convert the plot from industrial one to commercial one for having the retail petrol outlet.

11.In this context, the learned Standing Counsel would submit that in view of the policy decision taken by SIDCO as has been reflected in the afore-stated memo and Circular, the request of the petitioner has been placed and decided by the SIDCO, where the Deputy General Manager of SIDCO, having taken note of the fact that, already there is a petrol bunk functioning in the same industrial Estate, permitting the petitioner to have one more petrol outlet, would not viable for the petitioner also and moreover, if this kind of permission to convert the industrial plot to commercial activities are permitted continuously, that will set a bad precedence, as it would be detrimental to the industrial growth and development of the State, for which or for the said prime purpose only, the second respondent-SIDCO was established, therefore, such a conscious decision was taken by the SIDCO through the order, dated 05.07.2021, which is reflected or pursuant to which the present impugned order has been passed by the Branch Manager of the SIDCO.

12.Therefore, the learned Standing Counsel would submit that, it is not a matter of right for the petitioner to claim that, every industrial plot has to be converted into commercial plot and it is the discretion of the SIDCO to take a decision based on their policy and accordingly, since one commercial activity of same nature has already been permitted in the same industrial Estate, there is no scope for permitting one more commercial activity of same nature in the same industrial Estate, as it would be not only unavailable but also detrimental to the policy of the SIDCO, therefore, such a decision, taken consciously by the respondents-SIDCO, is fully justifiable and sustainable, hence, the learned Standing Counsel would submit that the impugned order does not warrant any interference from this Court.

13.I have considered the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.



14.If we look at the impugned order passed by the Branch Manager, it has only been stated that the TANSIDCO has already given permission for one Petrol bunk in the Industrial Estate, Thuvakudi, therefore, the petitioner's request cannot be accepted.

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15.The said communication, which is impugned in this writ petition infact is pursuant to the order passed by the SIDCO through its Deputy General Manager, dated 05.07.2021, where the General Manager has stated that, if we give permission for change of industrial use to commercial use, it will become a bad precedence, moreover already TANSIDCO has given permission for one petrol bulk.

16.On perusal of these two reasons cited by the Deputy General Manager of the SIDCO, in its order, dated 05.07.2021, which is the basis for the impugned communication of the Branch Manager, dated 08.07.2021, this Court feel that both the orders would not sustain in the legal scrutiny.

17.The reasons being that, having a commercial activity or to have a retail petrol bulk is not an illegal or unlawful activity or business, therefore, the reason that, it would become a bad precedence may not be sustained in the eye of law.

18.The second reason cited is that, since the SIDCO has already given permission to one petrol bunk in the same industrial Estate is also equally an unsustainable reason.

19.The reason being that, in the memorandum of the Board, dated 10.04.2013 in Clause-7, it has been decided that the request to convert into commercial activities has to be or to be placed before the Board for charging the difference of two times between the present cost and the original cost paid by the allottee. Subsequent Circular has been issued by the SIDCO, dated 24.04.2003 has also reiterated the same in paragraph No.8.

20.In further Circular, dated 02.02.2006 of SIDCO, it is made clear that whether the change in line of activity is for a non-industrial activity like Information Technology enabled industries, Petrol bunk, etc., the approval of the Managing Director should be obtained.

21.Therefore, according to the policy decision of the SIDCO that, these kind of conversion or change of industrial activity to commercial activity, very particularly, the Information Technology related activities or industries or petrol bunks is permissible. The only condition is that, in order to have such a change of activities from industrial one to commercial, like having petrol bunk, etc., the entrepreneur must get an approval from the Managing Director of the SIDCO.



22. In this context, the power vested with the Managing Director seems to have been delegated to the General Manager and on whose place, now, the Deputy General Manager has passed the order, dated 05.07.2021, stating that, if permission is given for change the industrial use to commercial use, it will become a bad precedence.

23. This kind of closing the Chapter at the threshold, in the considered opinion of this Court, is not permissible because of the consistent policy decision taken, as has been reflected in the memorandum as well as the Circular referred to above, issued by the SIDCO, each case in this regard for changing the industrial plot into commercial activity has to be considered on its own merits and only plausible reasons has to be stated.

24. In this context, for instance, if any ceiling is fixed by SIDCO, by taking the policy decision that, in a particular industrial Estate only, a particular percentage of industrial plots would be permitted to convert into a commercial plot, and if any such decision is taken, in consonance with such decision, those application comes for consideration for changing the activity to commercial one, can be considered and decided.

25. Such a policy decision fixing a maximum ceiling of percentage of conversion in each and every industrial Estates, though claimed by the learned Standing Counsel for SIDCO, that has been taken, nothing has been placed before this Court to that effect.

26. Assuming that such a ceiling has been fixed, the Managing Director or General Manager of the SIDCO, while considering such application must have stated that, what is the maximum percentage of permissible limit to convert into commercial activities has to be stated and based on which, if already a saturation is reached, then only it can be rejected on that ground, however, in the present case, the reason is different to state that, if permission is granted, it will become a precedence and one petrol bunk has already been permitted.

27. It seems that one petrol bunk has already been permitted within one kilometer from the plot of the petitioner, therefore, that seems to be the prime reason, which influence the SIDCO to take a decision that, no more petrol bunk within one kilometer radius would be permitted.

28. Such a criteria self-designed or self-made by the SIDCO for taking a decision only in respect of the petitioner's application can only be construed as an arbitrary exercise of power, therefore, this Court is not accepting the said view taken by the SIDCO as reflected in their order, dated 05.07.2021.



29. For all these reasons, this Court feel that the impugned orders would not be sustained. Therefore, the impugned order, dated 08.07.2021, prior to which, the actual order passed by the Deputy General Manager, dated 05.07.2021 are hereby quashed and consequently, the matter is remitted back to the second respondent-SIDCO for reconsideration.

30. While reconsidering the same, the Managing Director or the General Manager, as the case may be, as per the power vested with them must take a conscious decision strictly in accordance with the policy decision of the SIDCO and in that case, if there is no impediment for the SIDCO to permit one more petrol bunk in the same industrial Estate. Such a permission sought for by the petitioner can be granted and a final decision in this regard shall be taken and communicated to the petitioner, within a period of four weeks from the date of receipt of copy of this order.

31. With these directions, this writ petition is ordered accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

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Sub Assistant Registrar(CS)

PJL

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 Secretary.
Government of Tamilnadu,
Small Industries
Secretariat, Chennai.
2. The Chairman & Managing Director,
Tamil Nadu Small Industries Development
Corporation Limited,
Chennai.



3.The Branch Manager,
Tamil Nadu Small Industries Development
Corporation Limited,
Thuvakudi, Trichy.

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+1 CC to M/s.T. SAKTHI KUMARAN, Advocate (SR-32909[F] dated
27/10/2021)

+1 CC to M/s.SPL.GP (SR-33028[F] dated 28/10/2021)

W.P. (MD) No.16489 of 2021
27.10.2021

PK (CO)

GC(09.12.2021) 9P 6C