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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 1/4/2022

C O R A M

The Hon'ble Mr. Justice T.RAJA
a n d
The Hon'ble Mr. Justice S.SOONTHAR

W.P.Nos.8027, 8028 and 8031 of 2022
a n d
W.M.P.Nos.8003 to 8011 of 2022

M/s. Hindustan Petroleum Corporation Limited
rep. By its General Manager -
Operations & Distribution
South Zone, "Thalamuthu - Natarajan Building"
4th Floor, 1 Gandhi Irwin Road, Egmore
Chennai 600 008. ... Petitioner in
W.P.No.8027 of 2022

M/s. Indian Oil Corporation Limited
rep. By its General Manager (Operations)
Indian Oil Bhawan
139 Nungambakkam High Road
Chennai 600 034. ... Petitioner in
W.P.No.8028 of 2022

M/s. Bharat Petroleum Corporation Limited
rep. By its Territory Manager (Retail)
No.35 Vaidyanaathan Street
Tondiarpet
Chennai 600 081. ... Petitioner in
W.P.No.8031 of 2022

Vs

1. Union of India
Ministry of Environment
Forest and Climate Change
rep. By its Secretary
Indira Paryavaran Bhawan
Jorboagh Road
New Delhi 110 003.
2. Central Pollution Control Board
through its Chairman
Parivesh Bhawan, East Arjun Nagar
New Delhi 110 032.



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3. Tamil Nadu Pollution Control Board
rep. By its Chairman
76 Mount Salai, Guindy
Chennai 600 032.

4. The Deputy Director (Labs)
Tamil Nadu Pollution Control Board
76 Mount Salai, Guindy
Chennai 600 032. ... Respondents in all the
writ petitions

PRAYER in all the writ petitions: Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining to the issuance of the Notification No.TNPCB/DD (L)/02151/2019 dated 20/10/2021 on the file of the fourth respondent and quash the same and forbear the respondents in enforcing of Retrofitting of Emission Control Devices in DG sets without proper study and creating infrastructure.

For Petitioners.. Mr.A.L.Somayaji
Senior Counsel

For Respondents.. Mr.L.Infant Dinesh
Central Government Standing Counsel
for R.1.

Mr.Gokul Krishnan
for R.2.

Mrs.Shanmugavalli Sekar
for R.R.3 and 4.

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C O M M O N O R D E R
(Order of this Court was delivered by T.RAJA,J.)

The petitioners have filed these writ petitions, to quash the impugned Notification No.TNPCB/DD (L)/02151/2019, dated 20/10/2021, issued by the Deputy Director (Labs), Tamil Nadu Pollution Control Board, Chennai, fourth respondent, and also to forbear the respondents in enforcing the Retrofitting of Emission Control Devices in DG sets, without proper study and creating infrastructure.

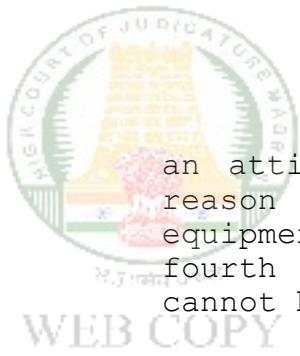
2. Pleading the cases of the petitioners, Mr.A.L.Somayaji, learned Senior Counsel submitted that the petitioners, being a Public Sector Enterprise of the Government of India are engaged in marketing the petroleum products through retail network through out the Country. The petitioners also have DG sets in



Plants, Terminals, Depots, Aviation Fuel Stations and in administrative offices in the State of Tamil Nadu, catering to the needs of the larger public and these plants were also established after obtaining all necessary clearances from the third respondent, the Tamil Nadu Pollution Control Board. As the power situation in the State has improved, the operation of DG sets, at all the Plants have become minimal. But all these DG sets used by the petitioners are all well within the prescribed emission limits laid down by the Central Government and the maintenance of DG sets are also undertaken by the Original Equipment Manufacturers (OEMS). Besides the omissions from the DG sets and ambient air quality, the Plants of the petitioners are also regularly checked by CPCB or State PCB - approved parties.

3. When the matters stand as above, the National Green Tribunal, in its order, dated 6/8/2019, passed in O.A.No.681 of 2018, gave a direction for remedial measures for enforcing the Ambient Air Quality Standards and further directed that action plans to be prepared by the State Pollution Control Boards. Even after 10 months from the date of passing of the order, dated 6/8/2019, where Retrofit Emission Control Devices are yet to be produced by any manufacturers, either in India and abroad, no action was taken by the respondents 2 and 3. All of a sudden, the fourth respondent, by Notification No.TNPCB/Labs/DD (L)/02151/2019, dated 10/6/2020, directed to comply with the direction of installation of Retrofit Emission Control Device/Equipment in all DG sets used by the petitioners Plants.

4. Learned Senior Counsel, assailing the direction issued by the impugned Notification stated that when the Retrofit Emission Control Equipment is not even manufactured/produced by any Company either in India or abroad, a detailed representation, dated 9/12/2021 was given to the Member Secretary, Tamil Nadu Pollution Control Board and also CPCB, making it very clear that no such Retrofitted Emission Control devices are available in the market and that too in all the CPCB recognized laboratories, as prescribed in the order. Even the Oil Marketing Companies (OMCs) were also informed by the CPCB that Retrofitted Emission Control Devices are not available in India and the issues relating to the Retrofitting Emission Control devices in DG sets is currently being considered by the CPCB Sub-Committee, pursuant to the directions of the NGT and norms of in-use of DG sets are yet to be finalised. Therefore, when the non availability of Retrofitted devices was brought to the notice of the respondents, instead of giving sufficient extension of time for installation of retrofitted emission control equipment, after granting extension of time for installation of the aforementioned devices, all of a sudden, by way of impugned orders, they refused further extensions. Such



an attitude is highly untenable and arbitrary, for the simple reason that if there is no such retrofitted emission control equipment is manufactured anywhere in the Country or abroad, the fourth respondent cannot impose the petitioners to comply what cannot be humanly possible.

5. Mr. Gokulakrishnan, learned counsel appearing for the second respondent, produced a copy of the written instruction and the same reads as follows:-

"1. Whether there any manufacturers of RECD's in India from where the same can be procured.

As on date, no certified RECD is available.

CPCB has received application from six manufacturers to obtain Type Approval Certificate; these applications have been forwarded to Certification Agencies (ARAI, Pune and ICAT, Manesar) as per choice of manufacturers for compliance testing and certification. The identified agencies for testing are as follows:-

- a. Automotive Research Association of India (ARAI, Pune)
- b. International Centre for Automotive Testing (ICAT, Manesar)
- c. Indian Institute of Petroleum (IIP, Dehradun)
- d. Vehicle Research Development Establishment (VRDE, Ahmednagar)

Since it is a new product, the process of testing and first product availability in market may take 2 to 3 months. Subsequently, each certification shall take 2 - 3 weeks.

Presently, testing agencies are equipped with RECD compliance testing facility upto 800 KW only.

2. What's the stage of implementation?

Implementation can be effective after certification of products.

3. Whether SPCBs were given instructions to implement the same on any time limit?

CPCB has not given any instruction with regard to implementation timeline.

CPCB has published a document in Pollution



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Control Services on 1/4/2022 titled - "System and Procedure for Emission Compliance Testing of Retro-fit Emission Control Devices (RECD) for Diesel Power Generating Set Engines upto Gross Mechanical Power 800 KW".

This document lays down the applicability and requirements of system and procedure for compliance of the NGT order dated 6/8/2019 in the matter of "Report filed in O.A.No.681/2018. This is with the objective of PM (particulate matter) reduction by using retrofitted emission control devices (RECD) for in-use diesel operated internal combustion engines upto 800 KW gross mechanical power for generator set (Genset) application. The copy of document is attached for your reference."

6. Mrs. Shanmugavalli Sekar, learned counsel appearing for the respondents 3 and 4, produced a copy of the letter, dated 1/4/2022, of the Chairman, Tamil Nadu Pollution Control Board, Chennai, wherein it is stated that considering the time likely to be involved in getting the certification by the manufacturers of RECD devices from the CPCB approved laboratories, the Board has decided to consider a six months extension of time limit for the implementation of the Notification in the non-attainment cities by 30/9/2022 and for all the other parts of Tamil Nadu by 31/3/2023.

7. As the Tamil Nadu Pollution Control Board has granted six months time for installation of the above service, recording the written instruction submitted by the second respondent and the letter, dated 1/4/2022 of the Tamil Nadu Pollution Control Board, we may mention herein that when the Retrofitted Emission Control Device has not been made ready anywhere in India or abroad, we wish the Tamil Nadu Pollution Control Board should have a pragmatic approach and could have avoided issuing the impugned Notifications, therefore, the same stands quashed and the respondents are injuncted from directing the petitioners to install non-existing device. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar



mvs.

To

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1. The Secretary
Union of India
Ministry of Environment
Forest and Climate Change
Indira Paryavaran Bhawan
Jorboagh Road
New Delhi 110 003.
2. The Chairman
Central Pollution Control Board
Parivesh Bhawan, East Arjun Nagar
New Delhi 110 032.
3. The Chairman
Tamil Nadu Pollution Control Board
76 Mount Salai, Guindy
Chennai 600 032.
4. The Deputy Director (Labs)
Tamil Nadu Pollution Control Board
76 Mount Salai, Guindy
Chennai 600 032.

+3cc to M/s.AAV Partners, Advocate, S.R.No.23076, 23075, 23074

+3cc to Mr.M/s.L.Infant Dinesh, Advocate, S.R.No.22321, 22320,
22319

+1cc to M/s.Shanmugavalli Sekar, Advocate, Sr.No.22302

W.P.Nos.8027, 8028 and 8031 of 2022

SSJ(CO)
KM(21/04/2022)