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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2022

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.NO.24904 OF 2014

AND

M.P.NO.1 OF 2014

M/s.Muthu Gas Agency,
Repd. by its Proprietor
V.Pethaperumal
50-A, Villiyanur Main Road,
Moolakolam,
Puducherry - 605 010.

... Petitioner

Vs.

1. The Government of Pondicherry,
The Department of Science,
Technology and Environment,
Pondicherry Pollution Control Committee,
3rd Floor, PHB Building,
Anna Nagar, Pondicherry - 5.
2. Petroleum and Explosives Safety Organization,
Represented by its Competent Authority,
"A" Block, 5th Floor, CGO Complex,
Seminary Hills, Nagpur - 440 006.
3. The Senior Regional Manager,
Hindustan Petroleum Corporation Ltd.,
LPG Division, Petro Bhavan,
Alwarpet, Chennai.

... Respondents

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent bearing reference No.PPCC/REJ/VCP/JE/2005/1715 dated 07.07.2005 and quash the same and consequently quash the records bearing R.4(2)79/CC75/2013, dated 09.12.2013 on the file of the 2nd respondent and direct the respondents to grant sanction to the petitioner to set up a LPG Storage and Gas Filling Station



in the lands situated at S.No.73/2, 73/5 to 73/8 at Osudu Revenue Village, Villianur Commune, Pondicherry.

For Petitioner	:	M/s.V.Raghavachari
For Respondent	:	M/s.V.P.Chamuraj
No.1		for M/s.V.Usha,
		Addl. Government Pleader (Pondy)
For Respondent	:	M/s.R.Rajesh Vivekanandan
No.2		Additional Solicitor General

O R D E R

The present Writ Petition has been filed for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the 1st respondent bearing reference No.PPCC/REJ/VCP/JE/2005/1715 dated 07.07.2005 and quash the same and consequently quash the records bearing R.4(2)79/CC75/2013, dated 09.12.2013 on the file of the 2nd respondent and direct the respondents to grant sanction to the petitioner to set up a LPG Storage and Gas Filling Station in the lands situated at S.No.73/2, 73/5 to 73/8 at Osudu Revenue Village, Villianur Commune, Pondicherry.

2. The petitioner is a Gas Bottling Agency. On 16.06.2004, in the 75th Meeting of Pondicherry Pollution Control Committee considering the report given by the experts from Pondicherry Engineering College, the petitioner was granted permission to set up bottling plant. After considering the objection raised by the others, again, in a subsequent meeting i.e. 79th meeting of the Pollution Control Committee on 18.04.2005, the proposal was deferred and decided to get a Risk Assessment done in this matter. In its 80th meeting dated 23.06.2005, the Committee based on the report of the Deputy Collector (Revenue) South decided to instruct the agency to shift the location to a suitable alternative site. A consequential order was passed on 07.07.2005 directing the petitioner agency to shift the location of the Unit to a suitable alternative site. In the meanwhile, it appears that one Shri Vidya Narayana Education Trust filed a Writ Petition about clearing the proposal to set up the bottling plant and the Writ Petition was dismissed on 12.08.2013 as having become infructuous pursuant to the order of the first respondent dated 07.07.2005.

3. It is also relevant to note that the petitioner made a representation dated 11.11.2013 setting out the details that at the time of setting up LPG bottling plant, there was no



habitation within radius of 1 km, but, the subsequent development shall not be a cause for reconsideration of the clearance of proposal given to set up the plant and it shall not be directed to be relocated to some other site. It is also relevant to mention that based on the clearance given by the Pondicherry Pollution Control Committee, the second respondent had approved the setting up of LPG bottling plant. The said approval was cancelled by the order dated 09.12.2013 pursuant to the order dated 07.07.2005 and the order in W.P.No.20445 of 2004 dated 12.08.2013. Aggrieved over the order of the first and second respondent, dated 07.07.2005 and 09.12.2013, the petitioner has approached this Court.

4. I have considered the submissions made by the learned counsel appearing on either side.

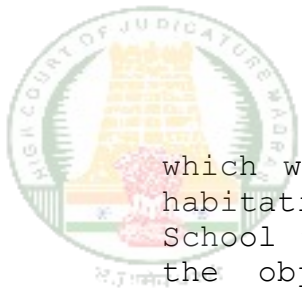
5. From the perusal of the records, it is noted that during the conduct of Pondicherry Pollution Control Committee meeting on 16.06.2004, the Committee has considered that there are habitations and residential villages within 500 meters and also the complaint from Vidya Narayana Education Trust against the proposal. After having deliberated on that, the first respondent cleared the proposal subject to the following conditions:-

"a) Proper ventilation shall be provided

b) Unit shall strictly adhered to measures stipulated in the Risk Assessment Study and

c) Confirming the distance from the site to the residential set up is beyond 1 km since the proponent informed the distance is 1 km and a few committee members stated that the distance might be less than 1 km."

6. Thereafter, the very same proposal was placed in the Committee meeting held on 23.06.2005. The Risk Assessment report given by the Pondicherry Engineering College has indicated maximum radial distance of around 62 meters will be affected in case of fatality. But according to the Pollution Control Committee, the report does not clearly indicate as to how the 62 meters distance was calculated and also relying on the report of the Deputy Collector (Revenue) South that habitations exist as near as 265-350 meters from the proposed location, it was decided to direct the petitioner to relocate its Unit. In the considered opinion of this Court, the decision taken by the first respondent does not come out with clear details as to why the report of the Expert viz., Pondicherry Engineering College,



which was accepted in the previous meeting was revisited. The habitations were in existence and objection was raised by the School then also. After having considered the report as well as the objections in detail, the permission was granted. But without disclosing the reasons given by the Deputy Collector (Revenue) South, revised the clearance given by it. The report does not give any reasons and it does not appear to be transparent.

7. The contention of the petitioner is that when LPG Gas Filling Unit was set up, there were no residence within 1 Km radius. But subsequently, the habitation has come in. Further, this matter was considered and the Expert has given an opinion that no danger will ensue by this plant. But to prevail over that and to take a different view, the Committee has not set out any reasons.

8. Above all, the third respondent has cancelled the approval only because of the revised decision taken by the Pollution Control Committee on 07.07.2005 and the order passed by this Court in W.P.No.20445 of 2004 dated 12.08.2013 consequent upon the decision of Pollution Control Committee. The third respondent has also passed a non-speaking order, without setting out any reasons. The petitioner, who was permitted to set up his Gas Filling Plant, was advised not to construct the facilities on the basis of disapproval. This shows that the authorities have not taken into consideration the actual ground realities and the risk factors pursuant to the setting up of Gas Filling Plant. There is no discussion as to the safety measures that could be made or a direction to the petitioner to set up the safety measure. Without considering the material issues, the project clearance has been granted on the whims and fancies of the authorities. Such action particularly, in a sensitive case like this, does not augur well. It is submitted by the petitioner that believing the promise and on the basis of the clearance granted by the first respondent, the petitioner has invested and erected tanks and buildings, and modified all these infrastructural facilities. While so without considering, which would be a suitable alternative site, and the hardships caused in relocating the present establishment to a new place and without application of mind, a blanket order issued by the first respondent and the consequential order issued by the second respondent are not sustainable and therefore, the same are liable to be set aside.

9. In view of the above, the order passed by the first respondent in reference No.PPCC/REJ/VCP/JE/2005/1715, dated 07.07.2005 and the order passed by the second respondent in R.4 (2)79/CC75/2013, dated 09.12.2013, are set aside. This Court



directs the first respondent to conduct a proper study after affording ample opportunity to the petitioner to explain the safety measures and precautions taken by him and then to take a decision.

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The Writ Petition is disposed of with the above terms. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Government of Pondicherry,
The Department of Science,
Technology and Environment,
Pondicherry Pollution Control Committee,
3rd Floor, PHB Building,
Anna Nagar, Pondicherry - 5.
2. The Competent Authority,
Petroleum and Explosives Safety Organization,
"A" Block, 5th Floor, CGO Complex,
Seminary Hills, Nagpur - 440 006.
3. The Senior Regional Manager,
Hindustan Petroleum Corporation Ltd.,
LPG Division, Petro Bhavan,
Alwarpet, Chennai.

+1cc to M/s.V.Raghavachari, Advocate, S.R.No.12581

+1cc to M/s.R.Rajesh Vivekanandan, Advocate, S.R.No.12725

+1cc to the Government Pleader(Puducherry), S.R.No.12213

W.P.No.24904 of 2014
and M.P.No.1 of 2014

RSV(CO)

RLP(21/03/2022)