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W.P.Nos.18010 and 18239 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.P.Nos.18010 and 18239 of 2020
and
W.M.P.Nos.22359, 22360, 22630 & 22631 of 2022

N.Radha

..Petitioner in W.P.No.18010/2020

S.Vimal Vijay Palanivel

..Petitioner in W.P.No.18239/2020

Vs.

- 1.The Secretary,
Highways and Minor Ports (HS2) Department,
Fort St. George, Chennai.
- 2.The District Collector,
Coimbatore District,
Collectorate Building,
State Bank Road, Gopalapuram,
Coimbatore.
- 3.Additional District Magistrate and District Revenue Officer,
Coimbatore District,
Collectorate Building,
State Bank Road, Gopalapuram,
Coimbatore.



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4.The Joint Chief Controller of Explosives,
A and D Wing, Block 18,
Shastri Bhavan,
No.26, Haddows Road, Nungambakkam,
Chennai – 600 006.

5.The Divisional Engineer,
(Construction and Maintenance),
Highways Department,
ATT Colony, VOC Park Road,
Gopalapuram, Coimbatore – 641 018.

6.The Deputy Director of Health Services,
No.219 & 126; A, Race Course Scheme Road,
Coimbatore – 641 018.

7.The Joint Director of Agriculture,
Thadagam Road, GCT (Post),
Coimbatore – 641 013.

8.The Territory Manager,
Bharat Petroleum Corporation Ltd.,
Burmah Shell Lane, 19/2, Big Bazaar Street,
Ukkadam, Coimbatore.

9.Sivakumar
WPs

..Respondents in both

Prayer in W.P.No.18010 of 2020: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent made in Proceedings



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in R.Dis.No.23590/2019/J1 dated 10.11.2020 which was served on 19.11.2020 and quash the same and consequently direct the 3rd respondent to consider the representation dated 09.03.2020 and Additional objections made by the petitioner dated 10.11.2020 seeking not to issue No-objection Certificate (NOC), Explosive License and other necessary approvals/permissions/ to the 8th and 9th respondent to open and operate a New Petroleum Retails Outlet at S.F.No.268/1B, Servaikaranpalayam Revenue Village, Ramapattinam Firka, Pollachi Taluk, Coimbatore District by complying with the guidelines contained in the Indian Road Congress (IRC) Circular No.12: 2009 for the issuance of No Objection Certificate for site approvals of Road – side Petroleum outlets by Oil Marketing Companies (OMC).

Prayer in W.P.No.18239 of 2020: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus, to call for the records of the 3rd respondent made in Proceedings in R.Dis.No.23590/2019/J1 dated 10.11.2020 and quash the same and consequently direct the 3rd respondent to conduct the enquiry after affording opportunity to the petitioner with regard to issuance of No-objection Certificate (NOC), Explosive License and other necessary approvals/permissions/ to the 8th and 9th respondent for opening/ operating a New Petroleum Retail Outlet at S.F.No.268/1B, Servaikaranpalayam Revenue Village, Ramapattinam Firka, Pollachi Taluk, Coimbatore District by complying with the guidelines contained in the Indian Road Congress (IRC)



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Circular No.12: 2009 for the issuance of No Objection Certificate for site approvals of Road – side Petroleum outlets by Oil Marketing Companies (OMC).

For Petitioner in both the WPs : Mr.N.Umapathi

For Respondents in both the WPs : Mr.U.Baranidharan,

Additional Government Pleader
for R1 to 7

Mr.V.Anantha Natarajan,
Standing Counsel for R8

Mr.R.Ravi
for Mr.C.Prakasam for R9

ORDER

Challenge in both these writ petitions is to the No Objection Certificate dated 10.11.2020 issued by the District Revenue Officer, Coimbatore for establishing a retail outlet in petroleum products by the Bharat Petroleum Corporation Limited.

2. Applications were invited by the Corporation on 25.11.2018 for



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appointment of dealers for retail outlet under the Scheduled Caste category.

The 9th respondent had applied for the dealership. He had furnished a lease deed dated 21.12.2018 entered into with the owner of certain land. The allotment being one for a person belonging to Scheduled Caste category, the guidelines for selection of dealers for regular and rural retail outlets dated 24-11-2018 imposes an obligation on the Oil Company to develop the land that is offered by the proposed dealer. In order to enable such development, the Oil Company would require a lease deed from the land owner or from the lessee. Though registered lease deed dated 21.12.2018 between the 9th respondent and the land owners was produced as offer of land to the Corporation, the same was cancelled subsequently on 10.03.2020. The District Revenue Officer issued No Objection Certificate on 10.11.2020.

3. Though the petitioners would raise several contentions regarding the distance norms and the stipulations of Indian Road Congress etc., realizing that all these requirements have been held to be directory and not mandatory, Mr.N.Umapathi, learned counsel appearing for the petitioners in both the writ petitions would mainly contend that the lease was



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not in force on the date when the No Objection Certificate was granted and therefore the very No Objection Certificate is invalid. He would further point out that the land being agricultural land cannot be converted for commercial purposes.

4. Contending contra Mr.V.Anantha Natarajan, learned Standing Counsel appearing for the Oil Company would submit that the registered lease deed dated 21.12.2018 was cancelled on 10.03.2020 mainly to enable the owners of the land to execute a lease deed directly in the name of the corporation. A memo of understanding to that effect was reached between the land owners, the proposed dealer and the Oil Company on 08.01.2020. The land owners had also expressed their consent for leasing out the land to the corporation directly.

5. Mr.R.Ravi, learned counsel appearing for the proposed dealer would submit that the lease deed was cancelled on 10.03.2020 and the other lease deed could not be registered due to the outbreak of pandemic and imposition of lock down. In the interregnum the No Objection Certificate



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came to be issued which was challenged by the petitioner and stay was granted. Therefore, the Corporation could not proceed further with execution of the lease deed.

6. The learned counsel appearing for the Corporation and the land owners would also rely upon the judgment of the Division Bench of this Court in ***The General Manager, Indian Oil Corporation Vs. T.Valli*** dated **02.08.2018** in ***W.A.No.305 of 2018***, to which I was a party, to contend that a rival dealer or rival business man cannot challenge allotment of dealership. Reliance was also placed on the judgment of mine in ***WP.No.26931 of 2017*** dated **14.07.2022**, wherein I had dismissed a similar writ petition relying upon the judgment of the Division Bench in ***Nataraja Agencies Vs. The Secretary, Ministry of Petroleum and Natural Gas, Government Of India, New Delhi and others*** reported in **2005 (1) CTC 394**.

7. In so far as the writ petition filed by the rival dealer viz., Radha it can be dismissed on the short ground that such writ petition by rival dealers is not maintainable. However, since the other writ petition has been



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filed by an agriculturist, I have to necessarily go into the merits.

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8. The only contention that is advanced in support of the cause of the petitioners is that there was no valid lease deed when No Objection Certificate was issued. True there was no valid lease deed when the No Objection Certificate was issued. I find that the lease deed was executed by the land owners in the favour of the 9th respondent on 21.12.2018. The same was cancelled on 10.03.2020, only to enable execution of lease deed by the land owners directly in favour of the Corporation. This is evident from the tripartite agreement dated 08.01.2020. The District Revenue Officer issued No Objection Certificate on 10.11.2020, during the currency of the lockdown imposed. It is not in dispute that the lock down was imposed on 23.03.2020 and this Court had granted stay on 11.12.2020. No doubt, there is infraction of the guidelines. If the question is as to whether the infraction would lead to the capital punishment of cancellation of No Objection Certificate, my answer will be a firm No. The guidelines issued by the oil corporation require the oil corporation to develop land and provide it to the dealer. The lease deed can be entered into even after issuance of No



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Objection Certificate. Therefore, I do not think that the non-existence of the lease on the day when No Objection Certificate was issued would be fatal to the case of the corporation.

9. The other objections of Mr.N.Umapathi, is that the land in question is agricultural land and it cannot be converted. That is for the Authorities who are vested with the powers to issue No Objection Certificate to take into account. I do not think that this Court would venture into the factual issue under Article 226 of the Constitution of India. Once it is found that infraction by itself would not dis-entitle the respondents from having No Objection Certificate and establishing retail outlet in the site concerned. Both the writ petitions will have to fail. Accordingly, both the writ petitions are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

09.12.2022

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Index : No

Internet : Yes

Speaking order

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R.SUBRAMANIAN, J.

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