



W.P(MD)No.20228 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.20228 of 2022 and
WMP(MD) Nos.16488, 16489 & 14704 of 2022

Anil Kumar .T.V

... Petitioner

Vs

- 1.The District Collector,
District Collectorate,
Nagercoil,
Kanyakumari District.
- 2.The District Revenue Officer,
District Collectorate,
Nagercoil,
Kanyakumari District.
- 3.The Executive Officer,
Kollemcode Town Panchayat,
Kollemcode Post,
Kanyakumari District-629160.
- 4.The Tahsildar,
Tholayavattam,
Kanyakumari District-629171.



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5.The Village Administrative Officer,
Kollemcode (A) Village,
Kollemcode Post,
Kanyakumari District-629160.

6.The District Environmental Engineer,
Tamilnadu Pollution Control Board,
No.318/46a, Water Tank Road,
Nagercoil,
Kanyakumari District-629001.

7.The Chief Divisional Retail Sales Manager,
Indian Oil Corporation Limited,
Madurai Divisional Office,
No.2, Race Course Road,
Chokkikulam,
Madurai-625002.

8.Subashini

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration that the No Objection certificate, issued by the Respondent Nos. 1-6 for the purpose of setting up of Indian Oil Corporation Petroleum Retail Outlet in R.Sy.No.418/6A2, Kollemcode Village in favour of the eighth respondent and the subsequent license granted by the seventh respondent for petroleum retail pump outlet as illegal and consequentially forbear the eighth respondent from constructing Petrol Retail Pump Outlet in the subject matter land.



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For Petitioner :Ms.J.R.Annie Abinaya
For R1, R2, R4 & R5:Mr.G.V.Vairam Santhosh
Additional Government Pleader
For R6 :Mrs.Vijayakumari Natarajan
Standing Counsel
For R7 :Mr.K.Muraleedharan
For R8 :Mr.C.K.M.Appaji

ORDER

The petitioner, a resident of Kollamkodu Village has filed this writ petition for a declaration that 'No Objection Certificate', if any issued by the respondents 1 to 6 in favour of the eighth respondent for setting up a Petroleum Retail Outlet in Survey No.418/6A2, Kollankodu Village is illegal and also sought for a consequential direction to the official respondents to forbear the eighth respondent from constructing any Petroleum Retail Outlet in the subject land.

2.The case of the petitioner is that the eighth respondent has attempted to construct a Petroleum Retail Outlet within a radius of 11 metres from the petitioner's house. Alleging that he has submitted an application before the competent authority. Based on



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the application of the eighth respondent, the District Revenue Officer has issued a notice to the petitioner and other residents of that area on 07.11.2020, calling upon them to offer their objections, if any, under the Petroleum Rules, 2002. Accordingly, an enquiry was conducted on 08.11.2020. The petitioner and other residents have raised their objections. Thereafter, the respondents have not intimated about the action taken on their objections. The petitioner has repeatedly reminded the District Revenue Officer under the RTI Act, wherein, it was stated that a decision has not been taken on the application of the eighth respondent for opening the petrol retail outlet in the above survey Number. As per the information provided in the application submitted under the RTI Act, No Objection Certificate was not issued to the eighth respondent. However, in the month of February 2022, the eighth respondent commenced the construction of the petrol outlet in the above said survey number. Therefore, the petitioner has immediately approached this Court for the reliefs as stated supra.



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3.The learned counsel appearing for the petitioner by referring the notification issued by the Ministry of Petroleum and Natural Gas, dated 10.08.2018 and the guidelines issued by the Petroleum Corporation for setting up of a new petrol outlets submits that there shall not be any petroleum outlet, if there is any High Tension lines are passing through the site and no petroleum outlet shall be established within a radius of 30 metres from the residential area. In this case, according to the learned counsel for the petitioner, the petitioner's house situated within 11 metres from the proposed petrol Pump and there are other houses also in existence within 30 metres radius. Without considering these significant guidelines, No Objection Certificate was issued by the District Revenue Officer and the Petroleum Corporation has also proceeded with granting further permission to establish the petrol Pump. The learned counsel has also relied upon the orders of the Honourable Division Bench of this Court in WP(MD) No.19244 and 19830 of 2019 and 5690 of 2019, dated 30.09.2019 & 05.08.2019 respectively.



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4.The learned counsel appearing for the seventh respondent submits that the claim of the petitioner is baseless and meaningless. The seventh respondent Corporation has acted upon based on the Certificate issued by the Competent authorities and Indian Oil Corporation has also selected the location after taking into consideration of all safety measures in the interest of the public. He further submits that the competent authorities have issued No Objection Certificate under the Petroleum Act, by taking into consideration of the objections given by the petitioner and other residents in that locality that there is no violation or deviation for commissioning the Petroleum Retail Outlet. Moreover, number of vehicles plying in that locality and the requirement for those vehicles' operation has also been taken into consideration before issuing the No Objection Certificate. He further submits that the guidelines issued are not of statutory in force and it is only recommendatory in nature. On this ground alone, the licence which has already been granted in favour of the eighth respondent cannot be interfered with.



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5.The learned counsel appearing for the eighth respondent is relying upon a detailed counter affidavit filed by him and submits that

- i. The subject property is situated in the isolated location of Kollemcode Town, abutting Thirumannam-Kirathur Road. On 26.05.2020, the eighth respondent has preferred an application before the seventh respondent for the grant of licence to run an IOCL Petroleum Outlet in her property.
- ii. The application of the eighth respondent was forwarded to the District Revenue Officer, Kanyakumari District, the third respondent herein for the grant of No Objection Certificate. Consequently, the third respondent has made a field visit, calling for objections, if any from the local men, by sending notice, conducted public hearing on 18.11.2020. After scrutinizing the written objections and after assessing ground reality, No Objection Certificate was issued to the eighth respondent.



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iii. The third respondent while issuing No Objection Certificate took into consideration of the following particulars:-

- a) Possession of the site by the applicant is lawful and authorization from land owner or lease holder of developing premises under these Rules for storage of Petroleum products:
- b) Interest of public, specially the facilities like Schools, Hospitals or Proximity to places of public assembly and the mitigating measures, if any is provided:
- c) Traffic density and impact on traffic;
- d) Conformity of proposed to the local or area development planning:
- e) Accessibility of the site to the tenders in case of emergency and preparedness of fire services for combating the emergencies:
- f) Genuineness of purpose
- g) Any other matter pertinent to public safety:
- h) To construct Blast Wall compound in the premises since



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habitations are there from 100 meters as specified by Fire & Rescue Department;

- i) To install 2 Trally type from fire Extinguisher
- j) To install lighting arrester in the premises.

Therefore, Rule 144 of Petroleum Rules, 2002 was strictly adhered to.

- iv. The house of the petitioner is located 40 meters away from the proposed Petroleum Pump and other houses are located for away from the proposed Petroleum Pump.
- v. Under Clause 'H' of the Office Memorandum of the Central Pollution Control Board, Delhi in B-13011/1/2019-20/AQM, dated 07.01.2020, the siting criteria of retail outlet are detailed below “In case of siting criteria for Petrol Pump new Retail outlets shall not be located within a radial distance of 50 meters (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 meters distance, the retail outlet



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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 meters. No high tension line shall pass over the retail outlet”. The prohibited radial distance of 50 meters for establishing a new retail outlet is applicable only to the residential area designated as per local law. The eighth respondent's property comprised in Survey No.418/6A2(Part), Kollemcode-A Village is not classified as a residential area and thus there is no impediment for opening the Petrol Bunk in the subject property. The petitioner with an oblique motive to gain advantage, misinterpreted the official memorandum of the Central Pollution Control Board dated 07.01.2020 that the retailed outlets shall not be located within 50 meters from residential areas, has filed this writ petition.



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6.The Executive Officer, Kollemcode Town Panchayat/ the third respondent herein has also filed a counter affidavit stating that based on No Objection Certificate issued by the District Revenue Officer and other authorities, the third respondent has approved the building plan submitted by the eighth respondent.

7.This Court considered the rival submissions made by the counsel on all sides and perused the materials placed on record.

8.The petitioner is a resident of Kollemcode Village and he has constructed a house after obtaining necessary permission from the local Planning authority. The eighth respondent was intended to put up a Petroleum Retail outlet in S.No.418/6A2 of Kollemcode Village, which according to the petitioner is within 11 metre radius from his residential house. Rule 144 of Petroleum Rules, 2002 prescribed certain certificates, which needs to be obtained from the District Revenue Officer and a standard proforma is also issued to that effect. The District Authority, who has to issue



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No Objection Certificate as required under Rule 144 of Petroleum Rules has to consider the following aspects before issuing the Certificate.

- a) Possession of the site by the applicant is lawful and authorisation from land owner or lease holder for developing premises under these rules for storage of petroleum products;
- b) interest of public, specially the facilities like schools, hospitals or proximity to places of public assembly and the mitigating measures,if any, is provided;
- c) traffic density and impact on traffic;
- d) conformity of proposal to the local or area development planning;
- e) accessibility of the site to fire tenders in case of emergency and preparedness fire services for combating the emergencies;
- f) genuineness of purpose.
- g) Any other matter pertinent to public safety

The Central Pollution Control Board has also issued guidelines for setting up a new Petroleum outlet by its memorandum dated 07.10.2020 and Clause H would be relevant and the same is



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extracted as under:-

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H. Siting criteria of Retail Outlets:-

In case of siting criteria for petrol pumps new Retails Outlets shall not be located within a radial distance of 50 meters (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 meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO in no case the distance between new retails outlet from schools, Hospitals (10 beds and above) and residential area designated as per local laws shall be less than 30 meters. No high tension line shall pass over the retails outlet.

9. These guidelines were issued as a supplementary to the existing guidelines and orders. The Division Bench of this Court in WP(MD)No.5690 of 2019, dated 05.08.2009 in a similar issue has held that the District Authority while issuing NOC has not made any



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observations or findings as to how he has ascertained the requirements of the proforma were satisfied. Ultimately, NOC in that case was set aside and the matter was remitted back for fresh consideration by the District Authority.

10.In the other Judgment of the Division Bench of this Court in similar issue, this Court has held that No Objection Certificate issued for setting up the petroleum outlet is nothing but the verbatim replica of the proforma and nothing on record to show as to how the factors mentioned therein have been satisfactorily complied with to the satisfaction of the concerned authority. The Division Bench has also held that there cannot be any mechanical grant of NOC/approval/consents and each authorities have to discharge the duties cast upon them under the statute.

11.The petitioner claims that he is a resident within 11 metres from the proposed Petroleum Retail outlet. The eighth respondent claims that the petitioner's house is situated 40 metres



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away from the petroleum outlet. As per the guidelines issued by the Pollution Control Board, an establishment of a new Petroleum Retails Outlet shall not be located within a radial distance of 50 meters from Schools, Hospitals (10 beds and above) and residential areas designated as per local laws. In case of any constrains, the retail outlet shall be established with an additional safety measures as prescribed by Explosiveness Safety Order. That apart, there shall not be any outlet within the radius of 30 meters from the residential area designated as per local law. If there is any High Tension lines passing through the outlet, there cannot be any permission for setting up the outlet. These guidelines were also issued as a supplementary to the existing relevant rules, guidelines and orders. The authority, while issuing No Objection Certificate ought to have considered these guidelines before issuing No Objection Certificate.

12.In this case, in view of the contradictory stand taken by the petitioner and the eighth respondent with regard to the distance of the petrol outlet from the residential area, this Court, by



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order dated 31.10.2022 directed the Revenue Inspector to personally visit the place and survey the land and to file a report before this Court. As per the report filed, it appears that the petitioner's house is situated within 11 meters from the proposed Petroleum retail outlet. The petitioner's house also appears to be constructed with the approval from the local Planning authority.

13.In view of the foregoing discussions, this writ petition is allowed. No Objection Certificate issued by the District Revenue Officer, dated 08.02.2022 is hereby set aside and the matter is remitted back for fresh consideration by the District Revenue Officer, Kanyakumari. No costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC :Yes/No

Index :Yes/No

Internet:Yes

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