



W.P.No.2095 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM :

**THE HON'BLE MR.SANJAY V.GANGAPURWALA, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

Writ Petition No.2095 of 2021

V.B.R.Menon

.. Petitioner

Versus

1.The Secretary
Ministry of Petroleum & Natural Gas
A-Wing, Shastri Bhawan
Dr.Rajendra Prasad Road
New Delhi – 110 001.

2.The Chief Controller of Explosives
Petroleum and Explosive Safety Organisation (PESO)
A-Block, CGO Complex, 5th Floor
Seminary Hills, Nagpur – 440 006.

3.The Joint Chief Controller of Explosives
Petroleum and Explosive Safety Organisation (PESO)
A and D – Wing, Block 1 -8, 2nd Floor
Shastri Bhavan, 26, Haddows Road
Nungambakkam, Chennai – 600 006.

4.The Deputy Chief Controller of Explosives
Petroleum and Explosive Safety Organisation (PESO)
South Circle, Chennai
A & D Wing, Block 1 – 8, 2nd Floor



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Shastri Bhavan, No.26, Haddows Road
Nungambakkam, Chennai – 600 006.

5.The Joint Director and Head of Zone
Central Bureau of Investigation-Chennai Zone
3rd Floor, E.V.K.Sampath Building
College Road, Nungambakkam
Chennai – 600 006.

6.The Head of Bureau
Central Bureau of Investigation – ACB, Chennai
3rd Floor, Shastri Bhavan
No.26, Haddows Road, Nungambakkam
Chennai – 600 006.

7.M/s Indian Oil Corporation Ltd.,
Rep.by the Executive Director (Retail), Indian Oil Bhawan
No.139, Nungambakkam High Road
Chennai – 600 034.

8.M/s Bharath Petroleum Corporation Ltd.,
Rep.by the State Head (Retail)
Southern Regional Office
No.1, Ranganathan Gardens, Off 11th Main Road
Anna Nagar, Chennai – 600 040.

9.M/s Hindustan Petroleum Corporation Ltd.,
Rep.by the General Manager (O), South Zone – Retail,
Thalamuthu Natarajan Building,
4th Floor, No.3045, Gandhi Irwin Road,
Chennai – 600 008.

(RR7 to 9 are impleaded vide order of this Court dated 10.03.2021 made in
W.M.P.No.3754 of 2021 in W.P.No.2095 of 2021)

.. Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the 5th and 6th respondents or any other independent investigation agency to investigate and take appropriate actions, in accordance with law, against wrongful and negligent issuing of provisional site approvals and final explosive licenses in Form XIV by the 3rd and 4th respondents to the Petroleum Retail Outlets in Tamil Nadu and Puducherry and further direct the 1st and 2nd respondents to formulate and notify, within a prescribed time limit, appropriate site inspection and verification procedures for adherence while issuing prior site approvals and final explosive licences in Form No.XIV to the Petroleum Retail Outlets.

For the Petitioner : Mr.V.B.R.Menon, Petitioner-in-Person

For the Respondents: Mr.A.R.L.Sundaresan
Additional Solicitor General of India
Assisted by
Mr.R.P.Pragadish, for RR1 to 4
Mr.V.Anantha Natarajan
for RR7 to 9

ORDER

(Order made by the Hon'ble Mr.Justice D.Bharatha Chakravarthy)

This Writ Petition is filed by the petitioner, who is a practising Advocate before this Court in public interest. The petitioner has also filed



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similar public interest Writ Petitions in respect of proper siting of petroleum outlets.

2.The cause that the petitioner brings to the notice of this Court by way of this public interest litigation is that any Petroleum Retail Outlet has to comply with several parameters relating to public safety and environment. The general public do not have sufficient knowledge and exposure about the relevant rules and procedure in force for granting site approvals for Petroleum Outlets as well as about the extent of harm that wrongful site approvals shall cause to their health and safety. The potential fire hazards and health problems associated with the continuous emission of Volatile Oil Compounds (VOC) such as Benzene, Toluene, etc., which are medically proven to cause major diseases of Cancer and damages to Brain and nervous systems, makes it necessary that these outlets are located as per law.

3.The safety and public health norms are prescribed under the Petroleum Rules, 2002 (hereinafter referred to as 'the Rules'). The Central Pollution Control Board (CPCB) had issued Siting and other mandatory



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criteria for new Petroleum Outlets, vide Circular dated 07.01.2020. However, greedy applicants who seek prior site approvals from the Petroleum and Explosive Safety Organisation (PESO), as well as the No Objection Certificate (NOC) and Explosives Licence, play fraud with the system and succeed. False declarations are made and documents are produced as if every site is suitable and safe. Without any inspection whatsoever, the PESO authorities grant initial permission under Rule 133 of the Rules. Thereafter, on the strength of the same, the parties seem to manoeuvre the State authorities in getting the NOC with respect to the site and also Fire Safety and Explosive Licences. On the strength of the same the final licence is also granted by PESO. This resulted in innumerable retail outlets being illegally located posing potential danger to the society and therefore, repeated orders have been passed by this Court relating to the cancellation of NOC, license and ordering re-location of retail outlets. Hence, the petitioner is seeking constant vigil and prior site approvals based on independent and thorough verification of site, conforming to the standards and mandatory requirements. In many cases, wilfully and wantonly, the licenses are issued. In some cases, fake NOC's were also produced. Without even proper



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verification of the same, the retail outlets are run. Under these circumstances, the above prayer is made.

4.The Writ Petition is resisted by filing of separate counter affidavits.

5.A counter affidavit is filed on behalf of PESO (Respondents 2 to 4) stating that the licenses under Form XIV of the Rules is issued by following the steps prescribed therein and the said steps are as follows:-

(a) Specification and plans drawn to scale in duplicate clearly indicating.-

(i)the manner in which the provisions prescribed in these rules will be complied with;

(ii) the premises proposed to be licensed, the area of which shall be distinctly coloured or otherwise marked.

(iii) The surroundings and all protected works lying within 100 meters of the edge of all facilities which are proposed to be licensed;



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(iv) The position, capacity, materials of construction and ground and elevation view of all storage tanks, enclosures around tanks, all valves, filling and discharge points, vent pipes, dip pipes, storage and filling sheds, pumps, fire-fighting and all other building and facilities forming part of the premises proposed to be licensed;

(v) The areas reserved for different class of petroleum including petroleum exempted under section 11 of the Act;

6. On receipt of documents mentioned therein, at this stage, the authority goes by the declaration of the concerned applicant. The safety distances as applicable for license in Form XIV are prescribed in 4th Schedule C (Extent of hazardous area in service station). Construction approval for Retail Outlets are accorded only after the said prescribed distances are available / provided in the plan of the premises submitted. Thereafter, the second step is to obtain NOC under Rule 144, from the District Authority. While issuing NOC, the District Authorities are required to consider the following particulars:-



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(a) Possession of the site by the applicant is lawful and authorization 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 of fire services for combating the emergencies;

(f) genuineness of purpose.

(g) any other matter pertinent to public safety.

7. Before grant of NOC, the District Authorities used to inspect the premises to assess the above points. After receipt of NOC, the concerned applicant is authorized to commence the construction. On completion of the construction, thereafter, the PESO conducts inspection with regard to safety of the premises and testing of underground tanks and also confirms as to whether



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the premises has been constructed as per the approved drawing of PESO.

Competent persons are also appointed under the Rules, who will on behalf of the PESO will generate Safety Certificate and Tank Testing Certificate in the prescribed format under Sections 130 & 126 of the Rules. Thereafter, the following documents are required from the licensees:-

- (i) Four copies of specifications and plans approved under sub-rule (5) of rule 131,
- (ii) "No Objection Certificate" from the District Authority,
- (iii) Requisite amount of fees for the grant, amendment, or transfer of a licence paid in the manner specific in Rule 13.
- (iv) A certificate of tank testing if required under Rule 126,
- (v) A certificate of safety if required under Rule 130.

8. Further, the competent person, after inspection of the premises, also issues Safety Certificate under Rule 130 that the Site is safe for storage of petroleum. It is only thereafter, the PESO issues licence in Form XIV.



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9. The 7th respondent viz., M/s Indian Oil Corporation Ltd., has filed a counter stating that the Writ Petition filed by the practicing Advocate need not be entertained and the same has been deprecated by the Hon'ble Supreme Court of India in the case of ***Dattaraj Nathuji Thaware Vs. State of Maharashtra***,¹. It is their submission that the Writ Petition has been filed on vague allegations and no public interest is involved in the matter. Detailed rejoinder affidavits are also filed by the petitioner, refuting the allegations and reiterating the submissions made in the Writ Petition.

10. We have heard, *Mr.V.B.R.Menon*, Petitioner-in-Person, *Mr.A.R.L.Sundaresan*, learned Additional Solicitor General of India and *Mr.Edwin Prabhakar*, learned State Government Pleader.

11. *Mr.V.B.R.Menon*, Petitioner-in-Person would contend that the respondents 2 to 4 have admitted in paragraph Nos.10 and 15 of their counter affidavit that no site inspection or physical verification of the relevant particulars submitted by the Oil Marketing Companies are being done, prior to

¹ (2005) 1 SCC 590



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the issuance of prior site approval under Rule 131 or Final Explosive License in form XIV of the said Rules. This is resulting in issuance of prior Site Approvals and Final Explosive Licenses to the Oil Marketing Companies, on the basis of fraudulently submitted site drawings and false site particulars.

12. As matter of fact, non conduct of inspection leading to submission of false site particulars is not expressly denied and therefore, it should be deemed to be admitted by the respondents 2 to 4. It is the bounden duty of the said authorities to verify and satisfy themselves that the particulars submitted to them are true and correct. An enquiry is contemplated under Section 131 (2) of the Rules which pre supposes objective satisfaction of all the site particulars. For the same, physical site inspection will be essential. It is not enough for the respondents 2 to 4 to rely only upon the State Authorities issuing NOC. The role of District Authorities are distinct and separate. When the site approval is granted under Rule 131, it cannot be done without an enquiry. The petitioner has produced number of forged NOC's which resulted in directions by this Court . The directions issued in W.P.No.19983 of 2023 by itself would demonstrate the failure and lack of efficacy of the system which has been followed presently.



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13. The contents of Schedule C, under Rule 105 of Chapter IV relate to the in house electric and other installations within the site and not the safety distances from 'protected works and areas' situated outside the site for which mandatory siting criteria have been prescribed by CPCB, Highways Department, Fire Department, WRO (PWD), DTCP, etc.. As a matter of fact, before issuance of Final Explosives License in form XIV, (i) completion certificates of site works as per the approved plan and (ii) colour photographs of the completed outlet will be mandatory, which is not even mentioned in the paragraph 14 of the counter affidavit. When the prior site approval and the final license are issued without even any inspection, the same is exploited by the Oil Marketing Companies or their nominees by submitting false siting particulars. Even the PESO authorities are not sure, whether the District Authorities are inspecting the site and it is mentioned in the counter affidavit that the District Authorities 'used to' visit the site. As far as the certificate of testing of tanks is concerned that does not involve physical verification of safety distances from protected areas which lie outside the site. Similarly, construction as per the approval, conformity of siting criteria of CPCB and



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other authorities will not come within the purview of an inspection, with reference to the certificate of safety. In some of the cases, which were ordered to be closed down, even the Oil Marketing Companies being the Public Sector Units also suffer loss, on account of indiscriminate grant of licenses.

14. *Mr.V.B.R.Menon*, would submit that the authorities are attempting to shirk their primary responsibility to protect public safety and health and therefore, he would submit that even if not an independent agency, the PESO as well as the other authorities should be mandated by this Court to make a physical inspection as part of their enquiry under 131 as well as 144 or any other Rules.

15. Per contra, *Mr.A.R.L.Sundaresan*, learned Additional Solicitor General of India appearing on behalf of the respondents 2 to 4 would submit that as far as the safety of the tank and other installations are concerned 'competent person' is appointed under the Rules, who has the requisite technical qualifications to inspect and do the testing and submit the Safety Certificate in respect of the installations. As far as the locational and siting criteria is concerned, the same comes within the purview of the District



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Authorities who only inspect the site and grant NOC. The PESO, while granting prior site approval as well as the final approval thoroughly scrutinizes the documents including Safety Certificate and NOC granted by the District Authorities and all the other relevant documents including site maps which are submitted by the Oil Marketing Companies and the licensees. Therefore, it cannot be said that the prior site approvals or the final license approvals are indiscriminately given. Even though Section 131 (2) contemplates an enquiry, the same does not mean physical inspection. The authorities can verify the facts from the documents submitted before them. PESO is provided with limited staffing and that is why Rules specify that competent person be appointed for the purpose of Safety Certificate and testing of tanks. Similarly, NOC is issued by the District Authorities, who conduct the on-site inspection. Therefore, it is not necessary that in all cases, the PESO should inspect or any independent agency should inspect the same.

16. *Mr.Edwin Prabhakar*, learned State Government Pleader would submit that as far as the District Authorities are concerned, their duty is to



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check various parameters mentioned under Rule 144 and for that purpose, they are entitled to make an enquiry, which includes site inspection.

17. We have considered the rival submissions made on either side and perused the material records of the case.

18. This is not an adversarial litigation and all concerned are interested in the safety of the general public as well as the due compliance of the Petroleum Rules and the mandatory criteria in respect of the location of the retail outlets. It is true that even at the stage of prior site approval, an enquiry is contemplated under Section 131 (2), wherein, the PESO authorities are to satisfy themselves as to the necessary ingredients in respect of Rule 131 (1) of the Rules. Similarly, the District Authorities are to satisfy the various criteria mentioned in Rule 144. Both the Rules, within the ambit would include the siting criteria and or any other mandatory norms imposed by any other law or authorities including CPCB or Directorate of Town and Country Planning or Water Resources Department or the Highways Department or the Fire Department etc.. However, it is also submitted that number of Petroleum Retail



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Outlets are opened across the country and PESO does not have the wherewithal or the staffing pattern to physically inspect each and every site. Site inspection would also involve the proper identification of the site. Only the concerned Surveyor / Revenue Official will be in a position to earmark the concerned site, in order to measure the location of other protected areas around the site, such as water bodies, schools or other public building, residences etc., and the distances between the same and the Retail Outlets. In that view of the matter, the District Authorities granting NOC are better suited for the said purpose to coordinate with the local authorities in identifying and verifying the survey numbers boundaries and making measurements.

19. Rule 144 of the Rules also specifically mention the possession of the site, interest of public, specially the facilities like schools, hospitals and their proximity and any other matter pertinent to public safety. Therefore, the verification of the mandatory criteria of CPCB, or any other lawful authority would also come within the purview of granting of NOC. It would also be the duty of the respondents 2 to 4 - PESO authorities, to ensure that every Retail



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Outlets which are licensed by them are not violating any of the mandatory norms.

20. Under the said circumstances, we dispose of the present Writ Petition with the following directions:-

(i) While granting prior site approvals under Rule 131, the respondents 2 to 4 shall conduct due enquiry and satisfy themselves as to the fact that the site satisfies all the criteria mentioned under Rule 131 (1) and all other legal requirements;

(ii) For the said purpose, it is not necessary to carry out physical inspection in each and every case, but whenever any doubt arises or in any situation which they deem fit and proper, a physical inspection shall also be made by PESO;

(iii) Upon request of PESO, the concerned Revenue Tahsildar shall depute the jurisdictional Surveyor, who will demarcate the boundaries and assist in the location of the premises of the Retail Outlets and also assist in the measurements between the site and location of other buildings, water bodies etc.;



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(iv) Whenever a prior site approval is granted and the matter proceeds to the District Authority for issuance of NOC, the respondents 2 to 4 shall also in every case can prepare and forward a check list for the District Authorities to check, apart from the parameters for the District Authorities, which should include mandatory CPCB guidelines and other locational requirements;

(v) Every State authority granting NOC shall grant the same only after objective satisfaction of all the criteria mentioned in the proforma and the criteria that may be contained in the checklist or any other criteria which it finds to be relevant and only upon satisfaction of the same shall issue a NOC;

(vi) Satisfaction of the same shall be made by making a site inspection;

(vii) Site inspection shall be carried on with the help of the jurisdictional Revenue Authorities upon request of the District Authority, concerned Tahsildar or the Authority as the case may be shall depute the jurisdictional Surveyor, who will identify the location and boundaries and shall



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also assist the authority in making the measurements between the site and other relevant locations around the site so as to satisfy the mandatory requirements;

(viii) The notes of inspection shall also be prepared in writing indicating therein, the objective satisfaction of each of the criteria, where under, the actual measurement and the distances between the houses or hospitals or water bodies etc., should be specifically mentioned. Site inspection notes shall also be forwarded to the respondents 2 to 4 for their consideration at the time of grant of final license;

(ix) Even at the time of grant of final license, it would still be the duty of the respondents 2 to 4 to ensure that the Retail Outlets satisfy all the mandatory norms and if any doubt arises or in any appropriate cases, site inspection can also be made.

21. The Writ Petition is disposed of with the above directions. No costs.

(S.V.G., C.J.,)

(D.B.C., J.,)

15.02.2024

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Index : Yes

Speaking order

Neutral Citation : Yes

To

1.The Secretary

Ministry of Petroleum & Natural Gas

A-Wing, Shastri Bhawan

Dr.Rajendra Prasad Road

New Delhi – 110 001.

2.The Chief Controller of Explosives

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**THE HON'BLE CHIEF JUSTICE
AND
D.BHARATHA CHAKRAVARTHY, J.,**

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