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W.P.No.12631 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2024

CORAM

THE HONOURABLE **MR.JUSTICE M.DHANDAPANI**

W.P.No.12631 of 2021

and

WMP.No.13425 of 2021

1. Mithliesh Bhat
C/o. Indian Oil Corporation Limited,
500, Anna Salai, Teynampet,
Chennai – 600 018.
2. The Chief Divisional Retail Sales Manager,
Indian Oil Corporation Limited,
500, Anna Salai, Teynampet,
Chennai – 600 018.

...Petitioners

Vs.

1. The Additional Chief Secretary/
Transport Commissioner & Road Safety Commissioner
cum Appellate Authority,
Chepauk, Chennai – 600 005.
2. T.Dinesh

...Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the issuance of proceedings order in R.No.7607/M2/2020 dated 29.04.2021 passed by the 1st respondent and quash the same.



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For Petitioners : Mr.V.Meganathan
for M/s. AAV Partners

For Respondents : Mr.LSM.Hasan Fizal, AGP, for R1
: No Appearance, for R2

ORDER

This Writ petition has been filed seeking quashment of the proceedings of the 1st respondent in R.No.7607/M2/2020 dated 29.04.2021.

2. It is the case of the 2nd petitioner that it entered into a lease agreement for the establishment of a retail out in the land belonging to one Gobi Shankar, the brother of the 2nd respondent and after following guidelines and regulations, NOC was granted for erection of tanks, which were also done and retail business was commenced. However, the dealer, right from inception made complaints, which were found to be false and all of a sudden, the dealer stopped sale since 12.12.2009 by claiming for allotment of an outlet within the limits of Chennai City on company owned and company operated basis. The dealer sought for invoking the arbitration clause and accordingly arbitrator was appointed but no claim petition was filed and, therefore, the arbitrator dismissed the proceedings for default by



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order dated 10.9.2009. Further, the dealer, in connivance with the lessee, viz., Gobi Shankar made complaint to the DRO, Kanchipuram claiming that there is violation of NOC condition as excess land is occupied than what was leased out and the DRO, without proper appreciation cancelled the NOC granted in favour of the corporation. Against the said cancellation, appeal was filed, which was rejected on the ground of delay against which W.P.No.25006 of 2012 was filed which was allowed and the matter was remanded to the appellate authority for fresh consideration. Upon remand and after enquiry, the DRO, Kancheepuram passed the impugned order holding that no case is made out for interference with the finding already rendered. Thereafter, a show cause notice was issued by the petitioner corporation calling upon the dealer to show cause for his action in closing the outlet from 12.12.2008 in violation of the dealership agreement and though the dealer submitted his explanation, the same being found not satisfactory, the dealership agreement was terminated. As the NOC was cancelled, the tanks which were installed, were sought to be dismantled and after obtaining proper permission, the same were dismantled and the lease deed was cancelled by deed of cancellation dated 13.01.2021. However, the 2nd respondent filed an appeal in the cancellation of NOC, which was



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agitated by the petitioner corporation claiming that the 2nd respondent has no locus standi and that the present appeal is barred u/s 154 (3) of the Petroleum Rules, 2002. However, without considering the objections and the relevant materials, the 1st respondent held that the tanks have been laid without following the procedure and that it does not meet the norms for establishing the retail outlet and has reported the same to the Petroleum and Natural Gas Regulatory Board holding that serious infringements have been committed. Aggrieved by the said order, the present writ petition has been filed.

3. Learned counsel for the petitioners submitted that, the NOC granted in favour of the petitioner corporation was cancelled by the DRO in the year 2011 and subsequently the underground tanks were removed on 30.12.2020 and 31.12.2020 and subsequently the lease deed was cancelled, vide cancellation deed dated 13.1.21 bearing Doc.No.81 of 2021. In such circumstances, only in order to wreck vengeance, the 2nd respondent made a false claim before the 1st respondent as if the tanks were installed in violation of terms of the NOC, after a lapse of 6 years and the 1st respondent without any power available u/s. 154 of Petroleum Rules 2002, entertained the appeal with



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delay, which is not sustainable. Further the Division bench of this Court in W.P.No.2095 of 2021 dated 15.2.24 made it clear that the 1st respondent is not the appellate authority. However as the impugned order came to be passed prior to the order of the Division bench, the petitioners, seek necessary indulgence of this Court.

4. Per Contra, the learned Additional Government Pleader appearing on behalf of the 1st respondent submitted that, as there was a violation in erecting the tanks in the disputed land over and above the land leased out, the same was brought to the notice of the 1st respondent by filing appeal and the 1st respondent entertained the appeal, which cannot be said to be erroneous and if at all the petitioner corporation is aggrieved they have to challenge the consequential order and the present writ petition is filed premature.

5. Though notice was served and the name of the 2nd respondent is printed in the cause list, none appeared on his behalf. Considering the period of pendency of this Writ petition, this Court is inclined to dispose of the same based on the materials available on record.



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6. Admittedly, the DRO cancelled NOC granted in favour of the petitioner corporation for establishment of retail outlet in S.No.68/7b on the complaint of one Gopishankar, brother of the 2nd respondent. Based on the complaint made by the 2nd respondent, the NOC granted in favour of the petitioner corporation was cancelled on 19.9.11 and consequently the dealer resorted to arbitration and the same also ended against the dealer by passing of award on 26.7.16, upholding the termination of dealership. Aggrieved by the same, the 2nd respondent preferred O.P.No.482 of 2017 and the same is pending before this court. While so, the 2nd respondent preferred appeal before the 1st respondent challenging the cancellation of NOC as against the petitioner corporation by the DRO, in which the 2nd respondent is not an aggrieved person. However the 1st respondent failed to consider the locus standi of the 2nd respondent and entertained the appeal vide impugned order, and the same is contrary to section 154 of Petroleum Rules 2002. Further the Division Bench of this court in W.P.No.2095 of 2021 held that, the 1st respondent is not the appellate authority and for better appreciation, the relevant portion of the said decision is extracted hereunder :-



"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 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 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.;

(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 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. "

7. From the above, it is clear that the 1st respondent is not the appellate authority, as is evidenced from the said decision and, therefore, the impugned order passed by the 1st respondent is perverse. Even otherwise, it is to be pointed out that the appeal has been filed before the 1st respondent challenging the cancellation of NOC by the 2nd respondent. However, there is no relationship between the petitioner and the 2nd respondent and, thus, the 2nd respondent has no locus to question the cancellation of NOC. However, this crucial fact has been lost sight of by the 1st respondent while passing the impugned order. Therefore, not only the 1st respondent is not the appellate authority to entertain the appeal, even the appeal filed at the instance of the 2nd respondent is not maintainable as the 2nd respondent is not an aggrieved party and has no locus to question the cancellation of NOC. Therefore, the impugned order passed by the 1st respondent deserves to be interfered with.



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Consequently, the connected Miscellaneous petition is closed.

05.08.2024

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NCC : Yes/ No
Speaking Order : Yes/ No
Index : Yes/ No

To

The Additional Chief Secretary/
Transport Commissioner & Road Safety
Commissioner cum Appellate Authority,
Chepauk, Chennai – 600 005.



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in

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M.DHANDAPANI, J.

In view of amendment to the Court fee rules, this petition is allowed, subject to payment of separate Court fee, within a period of two weeks, from the date of receipt of a copy of this order, failing which this order shall be applicable only to the first petitioner.

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