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WP No.35520 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 03.01.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

WP No.35520 of 2023

and

WMP No.35488 of 2023

Bharat Petroleum Corporation Limited,
Rep. by its Territory Manager,
Southern Regional Office,
1, Ranganathan Garden,
Off 11th Main Road, Anna Nagar,
Chennai 600 040

... Petitioner

Vs.

1. The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner office Building,
E.V.K.Sampath Road, Vepery,
Chennai 600 007.
2. Joint Commissioner of Police South Zone,
Binny Road,
St. Thomas Mount,
Chennai 600 016
3. The Inspector of Police,
Adyar Police Station,
Adyar, Chennai 600 020



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4. P.Rakesh

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5. M/s.Sakthi Services
No.11, Sardar Patel Road,
Adyar, Chennai – 600 020

... Respondents /Respondents

Prayer: This Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent and quash the impugned order RC No.E2(2)/94/87926/2023 dated 08.09.2023.

For Petitioner	: Mr.M.Vijayan for M/s.King and Patridge
For Respondents	: Mr.A.Damodaran Additional Public Prosecutor for R1 to R3 Mr.V.P.Mohammed Moin M/s.Aiyar and Dolia for R4 Mr.D.Saikumaran for R5

ORDER

This writ petition has been filed challenging the order passed by the 1st respondent through proceedings dated 18.09.2023, wherein the 1st respondent has canceled the no objection certificate in the light of the power vested under Rule 150 of the Petroleum Rules, 2002 (hereinafter called as

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the “Rules”).

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2. Heard Mr.M.Vijayan for M/s.King and Patridge, learned counsel for the petitioner and Mr.A.Damodaran, Additional Public Prosecutor, for respondents 1 to 3 and Mr.V.P.Mohammed Moin for M/s.Aiyar and Dolia, learned counsel for 4th respondent and Mr.D.Saikumaran, learned counsel for 5th respondent.

3. The petitioner viz., Bharat Petroleum Corporation Limited was running a retail outlet in the subject property and the 5th respondent was the dealer, who was running the outlet. Initially, the no objection certificate was also granted by the 1st respondent under Rule 144 of the Rules . Thereafter, the 4th respondent, who is the owner of the property was not inclined to continue with the lease and hence, did not renew the lease. In the meantime, the license that was given by the Explosive authority expired and the 1st respondent through impugned proceedings dated 08.09.2023 cancelled the no objection certificate issued earlier in accordance with Rule 150 of the Rules. Aggrieved by the same, the present writ petition has been filed before



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this Court.

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4. The learned counsel for the petitioner by relying upon Paragraph 11 and 12 in the affidavit filed in support of the writ petition submitted that the petitioner was not afforded with sufficient opportunity by the 1st respondent while passing the impugned order. The learned counsel submitted that the 1st respondent was re-scheduling the date of hearing and even when the enquiry was called on 21.08.2023, it was once again re-scheduled to 22.08.2023 and thereafter, the petitioner did not get any notice from the 1st respondent. All of a sudden, the impugned proceedings came to be issued by the 1st respondent by cancelling the no objection certificate. The learned counsel submitted that even when the 4th respondent filed the earlier writ petition in WP No.21254 of 2022, this Court while disposing of the writ petition by order dated 10.01.2023 had specifically directed the authority to afford an opportunity to all concerned before passing the order. The learned counsel therefore contended that the impugned proceedings of the 1st respondent is liable to be interfered by this Court for violation of Principles of natural justice.



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5. The learned Additional Public Prosecutor appearing on behalf of the official respondents submitted that the 4th respondent, who is the owner of the property refused to renew the lease and did not give consent to run the petroleum outlet in the subject property. In view of the same, the 1st respondent proceeded to cancel the earlier no objection license given, in accordance with Rule 150 of the Rules. The learned counsel submitted that in the absence of any consent given by the land owner, the 1st respondent is left with no other option except to cancel the earlier license granted.

6. The learned counsel for 4th respondent submitted that the license that was given by the explosives authority expired in August 2023 itself and thereafter, the petitioner cannot continue with the petroleum out let in the property. The learned counsel further submitted that in the absence of license from the explosives authority and in the absence of the consent given by the land owner to continue to run the petroleum out-let, there is no question to continuing with the no objection license given by the 1st respondent and the 1st respondent had rightly canceled the license. In view of



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the same, the learned counsel contended that there are absolutely no merits in this writ petition.

7. The learned counsel for 5th respondent, who is running a out-let submitted that Rs.40,00,000/- worth petrol and diesel is lying idle in the property and hence, this Court can consider permitting the 5th respondent to atleast sell the available petrol and diesel within a stipulated time. The learned counsel submitted that the petrol and diesel cannot be removed from the property by the 5th respondent and it has to be sold in the same out-let. Therefore, the learned counsel requested this Court to exercise its jurisdiction under Article 226 of the Constitution of India and to pass appropriate orders by safeguarding the right of the 5th respondent.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. The crux of the submission made by the learned counsel for the petitioner is that the order passed by the 1st respondent suffers from violation



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of Principles of natural justice. The learned counsel contended that the petitioner is entitled to invoke the relevant provision under the Chennai City Tenants Protection Act and to purchase the property as and when the 4th respondent initiates proceedings for eviction of the petitioner from the subject property. Till this event takes place, the petitioner is entitled to continue in the premises. The learned counsel submitted that the petitioner wanted to put forth this aspect before the 1st respondent and even before it was done, the 1st respondent had proceeded to pass the impugned order.

10. In the considered view of this Court, compliance with the Principles of natural justice also has certain exceptions. One such exception falls under the category “Useless formality”. It only means that if the matter is remitted back to the concerned authority and the authority once again comes to the same conclusion, there is no meaning in remitting the matter back to the authority. Ultimately, while remitting the matter back to the authority, there must be some ground for the authority to reconsider the decision which was already taken. If there is no such ground, remanding the matter back to the same authority will be an empty formality.



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11. When the above Principle is applied to the facts of the present case, it is seen that the 4th respondent who is owner of the property refused to extend the lease and give any consent for continuing to run the petroleum out-let. This prior consent of the owner is a pre-requisite for the 1st respondent to extend the license. In the absence of extension of lease and in the absence of prior consent of the owner, the 1st respondent cannot continue with the license and earlier license granted has to be necessarily cancelled in accordance with Rule 150 of the Rules. The same is clear from a careful reading of the said rule.

12. The stand taken by the learned counsel for the petitioner to the effect that the petitioner will be entitled to purchase the property under the provisions of City Tenants Protection Act, as and when eviction proceedings are initiated by the 4th respondent, is not an issue which can be gone into by the 1st Respondent. Rule 150 of the Rules does not entitle the 1st respondent to go into this issue. Filing an eviction petition and exercising a right given under the City Tenants Protection Act, is an exercise to be carried out only



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before the Competent Civil Court. Therefore, even assuming that the petitioner has such a right, that will not be a ground for the 1st respondent to continue with the license in the absence of extension of lease by the owner of the property or the prior consent. Therefore, no purpose will be served in once again remanding the matter back to the file of the 1st respondent to deal with this issue. If this issue cannot be dealt with by the 1st respondent, it is not necessary to send the matter back to the 1st respondent. In any event, this Court does not find any ground to interfere with the impugned order passed by the 1st respondent and the order is perfectly in line with Rule 150 of the Rules.

13. The last issue to be addressed is with regard to the request that was made by the 5th respondent for selling the petrol and diesel worth Rs.40,00,000/-, which is already available in the out-let. The petroleum products must not go waste and it has to be sold to the customers. At the same time, it must not come in the way of the 4th respondent to take steps to recover possession of the property. Hence, this Court in exercise of its jurisdiction under Article 226 of the Constitution of India is inclined to



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exercise its discretion and issue certain directions.

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14. The petitioner is directed to approach the 1st respondent and seek for granting a temporary license for a period of 15 days. On such application, temporary license shall be granted for 15 days by the 1st respondent. On receipt of the same, it shall be produced by the petitioner before the explosives authority and the explosives authority shall grant license for a period of 15 days. On receiving such license, the petroleum products that are available in the property shall be sold within a period of 15 days. It is made clear that no fresh consignment will be sent to the 5th respondent and this temporary arrangement is made only to ensure that the available petroleum products are to be sold by the 5th respondent. On the expiry of 15 days, the 5th respondent shall not continue to sell any petroleum products in the property. This direction shall be strictly complied with and such compliance shall be ensured by the 1st respondent.

15. In the result, this Writ petition is disposed of in the above terms.



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No costs.

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Index :Yes/No

Internet:Yes/No

Speaking Order/Non-speaking Order

To

1. The Commissioner of Police,
Greater Chennai Police,
No.132, Commissioner office Building,
E.V.K.Sampath Road, Vepery,
Chennai 600 007.
2. Joint Commissioner of Police South Zone,
Binny Road,
St. Thomas Mount,
Chennai 600 016
3. The Inspector of Police,
Adyar Police Station,
Adyar, Chennai 600 020
4. The Public Prosecutor,
Madras High Court,
Chennai.

N.ANAND VENKATESH,J.

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