

(2006) 11 MAD CK 0018

In the Madras High Court

Case No : Writ Petition No's. 5452 and 32655 of 2006

Chemfab Alkalies Limited

APPELLANT

Vs

District Magistrate-cum-District Collector and Others

RESPONDENT

Date of Decision : 30-11-2006

Acts Referred:

Petroleum Rules, 2002 — Rule 107, 126, 130, 131, 141

Citation : (2007) 1 MLJ 338 : (2007) WritLR 409

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : G. Rajagopalan for G.R. Associates, for the Appellant; K.K. Sasidharan, Additional Government Pleader for R1 in W.P. No. 32055 of 2005 and R2 in W.P. No. 5452 of 2006, AR.L. Sundaresan for Raja Srinivas, for R5 in W.P. No. 32655 of 2005 and R4 in W.P. No. 5452 of 2006, Patty B. Jaganathan, for R2 in W.P. No. 32655 of 2005 and R1 in W.P. No. 5452 of 2006 and K. Ethiraj, for R3, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—Since both the writ petitions are with regard to the same issue and common in nature, both the writ petitions are taken up together and a common order is passed.

W.P. No. 32655 of 2005:

The Writ Petition has been filed praying for the issuance of a writ of certiorarified mandamus to call for the records relating to the No Objection Certificate issued by the first respondent, on 31.8.2005, bearing No. 12505/DM/20/D3/2005, in favour of the third respondent, quash the same, and to forbear the respondents from permitting or setting up any petroleum retail outlet near the vicinity of the petitioner's factory at Kalapet, Pondicherry and particularly at R.S. No. 130/3A of 21, Pillachavadi Revenue Village, Pondicherry.

W.P. No. 5452 of 2006:

The Writ Petition has been filed praying for the issuance of a writ of Certiorari to call for the records of the licence, dated 28.10.2005, vide Licence No. P/SC/PY/14/110 (P136235), issued by the first respondent in favour of the third respondent and to quash the same. 2. Heard the learned Counsels appearing for the petitioner as well as for the respondents.

3. It is the case of the petitioner Company that it is one of the leading manufacturers of Caustic Soda in India having first Chlor Alkali plant to adopt membrane cell electrolyser. The petitioner Company was incorporated in the year 1983, and the factory had been established in the year 1985, with an investment of more than 100 crores and with the consent of the Pollution Control Authority. The petitioner's factory is situated at Kalapet near Pondicherry in an area of about 25 acres and nearly 250 employees are working in the said factory. The petitioner Company had won several awards and certified to ISO/14001 by LRQA for Environmental Management System. The petitioner Company, apart from manufacturing Caustic Soda, also produces Hydrochloric Acid, Sodium Hypo Chlorite and Liquid Chlorine. The Liquified Chlorine is classified as hazardous and should be kept away from potential fire sources. Likewise, the Hydrogen generated from the electrolysis is cooled, filtered and compressed and is highly inflammable.

4. It is the further case of the petitioner Company that during the month of April, 2005, some activities, like, inspection and measurements of land were going on in the adjoining site abutting the compound wall of the petitioner's factory. The petitioner Company came to know that a petroleum retail outlet was proposed to be situated in the site. Since the petitioner Company came to know the details regarding the proposed outlet, a representation was submitted to the Collector of Pondicherry, the first respondent herein, raising objections with regard to the setting up of the petroleum retail outlet near the petitioner's factory on the ground that the hydrogen and chlorine stored by the petitioner Company are highly inflammable and it would be dangerous to locate a petroleum bunk near its factory.

5. Pursuant to the representation made by the petitioner Company, the Deputy Collector (Revenue)-cum-Deputy Divisional Magistrate of Pondicherry, along with the concerned Revenue Officer had inspected the petitioner's factory, on 9.8.2005. After inspection, the Deputy Collector (Revenue)-cum-Deputy Divisional Magistrate had submitted a report to the first respondent, recording the objections of the petitioner Company with regard to the setting up of the petroleum retail outlet near the petitioner's factory premises. However, no personal enquiry was conducted with regard to the objections raised by the petitioner Company. Later, the petitioner Company had come to know that a "No Objection Certificate" was issued in favour of the third respondent, M/s. Bharat Petroleum Corporation Limited, for locating the petroleum retail outlet in the site located adjoining the compound wall of the petitioner Company.

6. The petitioner Company came to know that the "No Objection Certificate" had

been issued in favour of the third respondent, on 31.8.2005, and the fourth respondent herein had been appointed as a dealer for the retail outlet. Hence, the petitioner Company had filed the present writ petitions.

7. It is the specific case of the petitioner Company that while issuing the "No Objection Certificate", on 31.8.2005, the first respondent had not taken into consideration the vital safety factors and it has been issued arbitrarily and without any basis. Therefore, the petitioner Company had challenged the "No Objection Certificate" issued by the first respondent raising several grounds, including those that are mentioned hereunder.

(a) The first respondent, while granting the "No Objection Certificate" for locating the petroleum retail outlet near the petitioner's factory premises, ought to have taken into consideration the location of the petitioner's factory, the chemicals stored in the factory and its highly inflammable nature, safety of factory and its workers as well as the petroleum retail outlet and the members of the public.

(b) The No Objection Certificate issued by the first respondent suffers from non-application of mind and is contrary to the object of the petroleum Rules, 2002.

(c) The first respondent had not followed the procedure established by law before issuing the "No Objection Certificate" in favour of the third respondent.

(d) The petitioner Company ought to have been given an opportunity of hearing with regard to the objections raised relating to the establishment of the petroleum retail outlet.

8. In the counter affidavit filed on behalf of the first respondent in W.P. No. 32655 of 2005 it is stated that there was no written objection submitted by the petitioner Company with regard to the setting up of the petroleum retail outlet at R.S. No. 130/3A of 21-Pillaichavady Revenue Village, Pondicherry. The grant of licence for the retail outlet in petroleum is governed by the Petroleum Rules, 2002, framed under the Petroleum Act, 1934. The process of issuing of licence is done strictly in accordance with the said procedure and the interest of the petitioner Company had been taken into account before issuing the licence. There is no provision with regard to granting of personal hearing relating to the objections raised by the petitioner Company before granting of such licence. Under Rule 144(1) of the Petroleum Rules, 2002, the District Authority is vested with the powers of granting the "No Objection Certificate". Accordingly, the third respondent, had applied before the District Authority for the grant of a "No Objection Certificate" for the setting up of the petroleum retail outlet at R.S. No. 130/3A of 21 Pillaichavady Revenue Village, Pondicherry. In order to ascertain the suitability of the proposed location for setting up of the petroleum retail outlet, the District Authority referred the application to (i) The Chief Town Planner, Pondicherry, (ii) The Superintendent of Police (North), Pondicherry, (iii) The Commissioner, Oulgaret Municipality, Pondicherry, (iv) The Divisional Fire Officer, Pondicherry, (v) The Executive Engineer, National Highways Division,

P.W.D., Pondicherry, and (vi) The Sub-Divisional Magistrate (North), Pondicherry. All of them had recommended for the establishment of the petroleum retail outlet at the proposed site.

9. It has been further stated that the petitioner's factory, being a 'hazardous establishment', is functioning under various licences of the state Government of Pondicherry covered under the various Acts & Rules. The said factory is adopting all precautionary measures as per the directions of the State Government of Pondicherry and the Officials of the State Government are making regular inspection of the factory to ensure that the necessary safety standards are maintained. On the inspection of the proposed site, it was found that the distance between the storage of liquid chlorine of the petitioner's factory and the proposed underground storage of petroleum products is 130 meters away and thereby, there was no possible danger involved in the establishment of the petroleum retail outlet at the proposed site. The "No Objection Certificate" was granted for obtaining the licence from the second respondent, Joint Chief Controller of explosives at Chennai, after all the necessary formalities have been followed in accordance with law. The process for the grant of licence is contained in Rules 131 to 144 of the Petroleum Rules, 2002. Under Rule 131, every person desiring to obtain a licence has to first submit to the licensing authority, the second respondent herein, an application and a plan in duplicate complying with the provisions of the said Rule and thereafter, following the scrutiny of the application and the plan and after such enquiry, if such authority is satisfied that the petroleum can be stored in the premises proposed to be licensed, then sanction is conveyed by return of one copy each of specifications.

10. Thereafter, the application for licence, as contemplated under Rule 143, has to be submitted to the same authority with the "No Objection Certificate" issued by the District Authority under Rule 144. Rule 144(1) prescribes that it is the District Authority, who is empowered to issue a "No Objection Certificate" to the applicant where he finds no objection. The third respondent had complied with all such procedural requirements prescribed by the Rules and the second respondent herein, who is the Licensing Authority, had granted the licence to have the petroleum retail outlet at the proposed site.

11. It is only after all the necessary formalities had been complied with, the District Authority had issued the "No Objection Certificate" as per the Petroleum Rules, 2002, and the second respondent Licensing Authority, representing the Petroleum and Explosives Service Organisation (formerly Department of Explosives), Chennai, had granted the licence to the third respondent, on 28.10.2005.

12. In the counter affidavit filed on behalf of the second respondent, it is stated that the licence to store the petroleum products in tanks in connection with pump outfit for fuelling motor conveyances in Form XIV of the Petroleum Rules, 2002, is granted by the Petroleum and Explosives Safety Organisation for which a "No Objection Certificate" from the District Authority is required under Rule 144 of

the Petroleum Rules, 2002. Having received the "No Objection Certificate" from the office of the District Magistrate, Pondicherry, vide certificate No. 12505/DM/RO/D3/2005, dated 31.8.2005, the third respondent had applied for grant of licence to locate the pump outfit at Survey No. 130/3A of 21, Pillaichavadi Revenue Village, Pondicherry, by installing underground storage tanks and connected with pump facilities. A licence was granted, on 28.10.2005, vide licence No. P/SC/PY/14/110(P 136235) as the relevant provisions of the Petroleum Rules, 2002, had been complied with.

13. It has been further stated in the counter affidavit that the petitioner Company is holding five licences under the Gas Cylinder Rules, 2004 and under Static & Mobile Pressure Vessels (Unfired) Rules, 1981, under the supervision of the second respondent.

14. In the counter affidavit filed on behalf of the second respondent in W.P. No. 5452 of 2006 it is stated that the licence has been granted as per the provisions under Article 5 in the First Schedule and Rule 141 of the Petroleum Rules, 2002, after following the procedures mentioned in Rules 126,130,141 and 144. The underground tanks for the storage of petroleum products installed in the proposed site have been fabricated as per the tank design specified in the Bureau of Indian Standards specification IS:10987 and the tanks are to be placed at a distance of more than 1.5 metres safety clearance from the boundary wall of the retail outlet premises in fulfilment of the condition 2 of the licence in Form XIV of the Petroleum Rules, 2002. The tanks had been tested for leakage as required under Rule 126 of the Petroleum Rules, 2002, and after installation of the tanks, all electrical fittings and dispensing pump facilities, a certificate of safety has been issued under Rule 130 of the Petroleum Rules, 2002, before the grant of licence.

15. The dispensing pumps installed at the premises are all of flame-proof type as approved by the Department conforming to Bureau of Indian Standards specification IS:2148. The installation of the tanks observe safety distance of 5 metres within the boundary of the premises as prescribed by the Rules, 2002. The safety distance is only 3 metres as per schedule IV, Sub-section (c) of the Petroleum Rules, 2002.

16. The vent pipes of the underground tanks installed in the premises have observed 4 metres safety distance in all sides and it conforms to condition 5 of the licence in Form XIV of the Petroleum Rules, 2002.

17. The dispensing pump island is observing 15 metres safety distance on both sides and 8 metres distance from the buffer strip on the front side. The required distance for such layout is only 6 metres as per schedule IV, Sub-Section (c) of the Petroleum Rules, 2002. The double pole switch is provided in the sales building of the premises to shut down the dispensing pump operation, in case of emergency, as required under Rule 107 of the Petroleum Rules, 2002. The petitioner Company is segregated by a 3 metres high RCC compound wall on the

northern side of the premises.

18. In the counter-affidavit filed on behalf of the third respondent Corporation, it is stated that the third respondent Corporation is a Public Sector Organisation formed to meet the fuelling needs of the Common Motoring Public. The third respondent had advertised for the establishment of a retail outlet under the "woman" category to be located at Kalapet and after following the due process, selected a woman candidate for operating the proposed petroleum retail outlet, as early as 3.9.2004. After all the necessary verifications, the third respondent had obtained the approval of the Deputy Chief Controller of Explosives for the establishment of the retail outlet, on 8.11.2004. The District Authority concerned had also issued the "No Objection Certificate", on 31.8.2005. Thereafter, the third respondent had done the land preparation, excavation and installed the underground tanks and the dispensing units. The petroleum retail outlets are established in a particular area after taking into consideration the demand and the requirement of petrol and diesel by the motoring public. The identification of the proposed site is done after various factors are taken into consideration including open space of the required extent and front space for parking of vehicles etc. The proposal to locate the retail outlet was submitted to the various authorities and agencies in the prescribed format along with the required documents, including the sketch of the retail outlet showing the physical features of the outlet and the adjacent properties. After scrutinising the papers and after making physical inspection of the proposed site and on satisfying themselves, the concerned Officials and the Government Authorities had granted the necessary permission. The third respondent had obtained the approval of the site plan to open the retail outlet, on 8.11.2004, and the application for issuance of the "No Objection Certificate" was made to the first respondent, on 30.10.2004. The first respondent, after getting a satisfactory report from various Government Agencies, including the Local Police and the fire Department, had issued the "No Objection Certificate", on 31.8.2005, stipulating the statutory conditions that are to be adhered to. Thereafter, the third respondent had installed the machineries investing a huge sum of Rs. 15,00,000/- for the functioning of the retail outlet after all the safety norms had been followed as per the Petroleum Act, 1934, and the Petroleum Rules, 1976. It is only after the physical verification by the various Authorities and the Agencies of the Government and after fulfilling all the safety norms and requirements as prescribed by law, the "No Objection Certificate" as well as the licence to locate and run the petroleum retail outlet at the proposed site have been issued and therefore, the apprehension of the petitioner Company with regard to safety of its factory and of the public cannot be sustained.

19. The fifth respondent has also filed a counter stating that she has invested a substantial amount in the business, which has been done only after all the formalities have been followed in accordance with law and that the petitioner Company cannot object to her right to use the property for a lawful purpose. Further, her right to carry on trade and business, which is a fundamental right, is being infringed by the unsustainable objections being raised by the petitioner

Company without any basis, both on facts and in law. It has also been stated that all the safety measures have been followed before the granting of the licence to run the petroleum retail outlet.

20. In the reply affidavit filed by the petitioner Company a doubt has been raised as to whether the existence of the petitioner Company has been disclosed in the site plan submitted by the third respondent and whether it has been brought to the knowledge of the concerned authorities that the petitioner Company is manufacturing and storing chlorine and hydrogen. The petitioner Company had consulted a retired General Manager, B.O.C. India Limited, who is acquainted with the various procedures relating to the distance norms to be maintained between the storage containing the highly inflammable material and the petroleum retail outlet. He had stated that there should be a minimum of 500 meters between the petitioner's factory and the petrol station. The products of the petitioner as well as the third respondent are covered under the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, framed under the Environment Protection Act, 1986, and when there was an objection, either written or oral, from the petitioner Company with regard to the establishment of retail outlet, the first respondent could not have granted the "No Objection Certificate" under Rule 144(1) of the Petroleum Rules, 2002. It was not open to the first respondent to grant the "No Objection Certificate" without examining the matter in detail. The petitioner Company's installations are only 130 meters away from the proposed petrol bunk and therefore, it is dangerous to locate any petrol bunk in the proposed site. The petitioner Company's installations are existing from the year, 1983, and merely because the third respondent had spent nearly Rs. 15,00,000/- on the proposed site, it cannot insist on proceeding with the project without adhering to the safety norms.

21. The learned senior counsel Mr. G. Rajagopalan, appearing on behalf of the petitioner Company, contends that clause 5 of Rule 144 of the Petroleum Rules, 2002, contemplates an enquiry before the "No Objection Certificate" could be granted. However, in the present case, no such enquiry had been conducted before issuing the "No Objection Certificate".

22. Per contra, the learned senior counsel Mr. AR. L. Sundaresan, appearing for the fifth respondent has pointed out that all the necessary procedures provided under the Petroleum Rules, 2002, had been complied with and it is only when the licence is refused to be granted, detailed reasons ought to be given. Such reasons are not necessary, while granting the licence and the onus is on the petitioner Company to clearly show as to which are the provisions of the Petroleum Rules, 2002, which have been infringed while granting the "No Objection Certificate" or while granting the licence to run the petroleum retail outlet at the proposed site.

23. It is also pointed out by the learned Counsels appearing for the respondents that it is the same authority, the second respondent herein, who had granted licence for the petitioner Company, as well as the third respondent Corporation,

for a period of two years at a time and frequent site inspection had been done by the authorities concerned on both the petitioner's factory as well as the proposed site for installation of the petroleum outlet. The allegation made by the petitioner Company that there was a remote possibility of accident occurring cannot be a reason to cancel the licence granted in favour of the third respondent Corporation. Further, such an allegation is without any basis.

24. Even during the period covered by the licence, if safety standards are not followed, the licence could be suspended in accordance with the relevant Rules and the potential damages as pointed out by the petitioner Company cannot be a valid ground for restraining the concerned authorities from granting the licence to run the proposed outlet.

25. On analysing the rival contentions raised by the learned Counsels appearing for the petitioner Company as well as for the respondents and on a perusal of the records placed before this Court, it is found that the authorities concerned have granted the "No Objection Certificate" as well as the licence to run the petroleum outlet at the proposed site at R.S. No. 130/3A of 21-Pillaichavady Revenue Village, Pondicherry, only after due inspections were carried out and after following all the necessary formalities as prescribed by the Petroleum Rules, 2002, and after taking into consideration all the other aspects relating to the matter.

26. From the records placed before this Court, it is also seen that all the safety measures, necessary to be followed by the third respondent Corporation, have been complied with and the apprehension of the petitioner Company with regard to possible danger is not based on any material evidence. It is also seen that the petitioner Company is carrying on its manufacturing process only on the basis of the licence granted by the concerned authorities and agencies of the Government. Admittedly, the petitioner Company is also following all the safety precautions that are to be followed, in accordance with the terms and conditions of the licence and as provided under the concerned Rules. Regular inspections are also being done by the authorities concerned with regard to the safety measures prescribed. While such measures have been contemplated by the Rules and followed by the authorities before granting of the licence to the third respondent Corporation, mere apprehension on the part of the petitioner Company, with regard to the possible hazards involved in the setting up of the petroleum outlet at the proposed site, cannot be sustained in the eye of the law.

27. The petitioner Company has not shown sufficient cause or material proof to sustain its claim that the proposed petroleum outlet will be dangerous either to the petitioner Company or to the Public at large.

28. In such circumstances, the writ petitions are liable to be dismissed. Accordingly, the writ petitions are dismissed. No costs. Consequently, connected W.P.M.P. No. 35597 of 2005 and W.P.M.P. No. 5845 of 2006 are closed.