
(2007) 06 MAD CK 0234

In the Madras High Court

Case No : W.A. No"s. 193 and 194 of 2007

Chemfab and Alkalis Limited

APPELLANT

Vs

District Magistrate-cum-District Collector and Others

RESPONDENT

Date of Decision : 11-06-2007

Acts Referred:

Citation : (2007) 3 LW 512

Hon'ble Judges : A.P. Shah, C.J;P. Jyothimani, J

Bench : Division Bench

Advocate : G. Rajagopalan for G.R. Associates, for the Appellant; K.K. Sasidharan, Addl. Govt. Pleader (Pondy) for R.1, Patti B. Jegannatnan, for R.2, K. Ethiraj, for R.3 and Srinivasan, for R.4 and R.5, for the Respondent

Judgement

P. Jyothimani, J.—These writ appeals are directed against the common order of the learned single Judge dated 30.11.2006 made in W.P.Nos. 32655 of 2005 and 5452 of 2006, filed by the appellant, challenging the No Objection Certificate issued by the District Magistrate-cum-District Collector, Pondicherry, second respondent herein in favour of M/s. Bharat Petroleum Corporation Ltd., Chennai, third respondent, for the setting a petroleum retail outlet at R.S. No. 130/3A of 22, Pillachavadi village, Pondicherry and also to quash the licence issued by the first respondent, Joint Controller of Explosives, Chennai dated 28.10.2005, in favour of the third respondent.

2. The case of the appellant, who is a manufacturer of Caustic Soda and producers of Hydrochloric Acid, Sodium Hypo chlorite and Liquid Chlorine, is that the said Liquid Chlorine is classified, as hazardous and should be kept away from potential fire sources. When the appellant Company came to know that in the adjoining site, abutting the compound wall of the appellant's factory, the proposed petroleum "retail outlet was sought to be given to the third respondent, a representation was submitted to the Collector of Pondicherry, the second respondent, raising objection with regard to the setting up of the petroleum retail outlet on the ground that the Hydrogen and Chlorine stored by

the appellant Company are highly inflammable and it is very dangerous to locate a petrol bunk near its factory. According to the appellant, there was no personal enquiry on the representation, however, No Objection Certificate was issued in favour of the third respondent and the 4th respondent came to be appointed as a Dealer for the retail outlet. This has resulted in filing of the writ petitions. The first respondent has filed a counter affidavit stating that the procedure contemplated under the Petroleum Ruler, 2002 have been followed strictly and as per the Rules, there is no provision for granting personal hearing relating to the objections raised by the appellant Company before issuing licence. The District Collector, after referring to the application and having satisfied with the fulfilment of the requirements, has recommended for establishment of petrol bulk at the proposed site. The further case of the first respondent is that the appellant's factory being a "hazardous- establishment" functioning under various licences of Government of Pondicherry and as per various Acts and Rules, and the appellant factory is taking all precautionary measures and the State authorities are making periodical inspections. It is also stated that the distance between the storage of the Liquid Chlorine of the appellant's factory and the proposed underground storage of petroleum products is 130 meters away and there is no possibility of any danger. It is, after considering the said averments made by both parties, and taking into consideration that No Objection Certificate was issued in accordance with Rules and safety measures have been taken, the learned single Judge, has dismissed the writ petitions. It is, as against the said dismissal order, the present appeals are filed.

3. We have heard the learned Counsel for the appellant as also the respondents.

4. The learned senior counsel Mr. G, Rajagopal has contended that in spite of the fact that the appellant has objected to the setting up of a petroleum retail outlet in the adjoining property, which is only 132) meters away and considering the fact that the nature of chemicals and acids stored and dealt with by the appellant's factory, starting of petroleum retail outlet in the near vicinity will be a potential fire source and therefore, an objection was raised and it was the duty on the part of the first and second respondents to have enquired properly and considering the representation in proper manner before giving No Objection Certificate, since it is a matter involving probable accident and public safety.

5. On the other hand, Mr. K.K. Sasidharan, learned Additional Government Pleader for Pondicherry, appearing for the first respondent even though contends that No Objection Certificate as well as licence was issued only after inspection, could not substantiate that proper enquiry was conducted, especially when an objection was raised by the appellant, who is admittedly carrying on business, since untoward incident may result in unwanted consequences.

6. In view of the above said circumstances, we set aside the common order of the learned single Judge dated 30.11.2006 made in W.P.Nos. 32655 of 2005 and 5452 of 2006, and direct the first respondent, viz., Joint Chief Controller of Explosives, Chennai, to consider the representation of the appellant, including

the contents of the affidavit filed by the appellant raising various objections about starting of a petroleum retail outlet on the neighboring side of the appellant's factory and pass appropriate order in accordance with law, after affording opportunity to the appellant within a period of four weeks from the date of receipt of a copy of this order. The appellant is directed to submit their further representation and appear in person before the first respondent, Joint Chief Controller of Explosives, Chennai, within one week from today, i.e., on 18.06.2007 at 11.00 am and thereafter, the first respondent shall pass appropriate orders as stated above.

7. The writ appeals are disposed of with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.