

(2020) 12 KL CK 0190

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 31531 Of 2019 (N)

Shajida Shajahan

APPELLANT

Vs

District Magistrate And Ors

RESPONDENT

Date of Decision : 11-12-2020

Acts Referred:

Petroleum Act, 1934 — Section 154(2)

Citation : (2020) 12 KL CK 0190

Hon'ble Judges : N. Nagaresh, J

Bench : Single Bench

Advocate : R. Sunil Kumar, A. Salini Lal, Anil D. Kartha, K.V. Manoj Kumar, Lal George, Ananthakrishnan A. Kartha, M. Gopikrishnan Nambiar, K. John Mathai, Joson Manavalan, Kuryan Thomas, Paulose C. Abraham

Final Decision : Disposed Of

Judgement

1. The writ petition has been filed seeking to set aside Ext.P5 order of 1st respondent-District Magistrate whereby the application of the petitioner

seeking NOC for starting a petrol and diesel retail outlet in Madappally Village in Changanacherry Taluk, stands rejected.

2. The petitioner states that she intended to start a Petrol and Diesel Retail Outlet of the 8th respondent and obtained leasehold rights over 13.5 cents

of land in Re- Survey No.124/1â?"4 of Madappally Village in Changanacherry Taluk in Kottayam District. The petitioner thereafter entered into an

agreement with the 8th respondent. Ext.P1 is the Letter of Intent dated 26.02.2019 issued by the Deputy General Manager of the 8th respondent.

3. The 8th respondent submitted an application before the 1st respondent for grant of NOC under the Petroleum Rules to start the petrol and diesel

retail outlet as per Ext.P2. On receipt of Ext.P2, the 1st respondent sought

reports from various authorities. The 3rd respondent-Grama Panchayat gave a recommendation in favour of the petitioner. Still, the 1st respondent did not consider the application.

4. The petitioner filed W.P.(C) No.23849/2019 before this Court and this Court as per Ext.P4 interim order directed the 1st respondent to consider the petitioner's application. Thereupon, the 1st respondent heard the petitioner and respondents 3 to 7. However, Ext.P5 order dated 9.10.2019 was passed by the 1st respondent rejecting the application for NOC, citing objections raised by the 5th respondent and on the basis of the additional report submitted by the 4th respondent-Secretary to Grama Panchayat. The petitioner seeks to set aside Ext.P5.

5. Respondents 3 and 4 filed counter affidavits.

Respondents 3 and 4 stated that based on the proceedings dated 21.05.2019 of the District Magistrate, Kottayam, the matter was considered by the Panchayat in its meeting held on 26.06.2019 and it was decided to issue formal NOC of the Panchayat for the Retail Outlet. Thereafter, the Panchayat received a mass petition from Jyothi Residence Association on 07.07.2019 against starting of petrol and diesel retail outlet. The petitioner alleged that there are several residential buildings and St. Thomas Orthodox Church located in the immediate vicinity of the plot where the petitioner proposes to start fuel outlet. A petition was submitted by the St. Thomas Orthodox Church and its parishioners. There is no merit in the writ petition filed by the petitioner and it is liable to be dismissed, contended respondents 3 and 4.

6. The 5th respondent opposed the writ petition filing counter affidavit. The 5th respondent stated that NOC was rejected not only for non-compliance of Panchayat Building Rules and objections raised by the neighbours, but on various grounds also. The Government of Kerala has withdrawn the recognition given to IRC norms as per Government Order dated 10.02.2020. But, the said Government Order approve and stipulate norms and specifications to be followed for ensuring safety of the roads and traffic while granting NOC for new retail outlets.

7. The 5th respondent stated that there is only a distance of 450 m. from an intersection with the Changanacherry â Kattappana PWD Road. There is a road opposite to the proposed site which is evidently within 300 m. from the

proposed site. Therefore, the plot is not suitable to house a petrol and diesel retail outlet. The Kerala State Pollution Control Board, as per Ext.R5(b), has stipulated that petroleum outlets shall not be located within a radial distance of 50 m. from residential building and in no case it shall be less than 30 m. The proposed outlet of the petitioner violates this distance rule also.

As per Ext.R5(c)-Office Memorandum of the Central Pollution Control Board also, no NOC can be granted for setting up a petrol pump within a minimum distance of 50 m. from residential houses.

8. The 8th respondent-Indian Oil Corporation Limited filed a counter affidavit. The 8th respondent pointed out that a building permit need not be submitted along with an application for NOC. Local bodies accept building permit applications for petroleum outlets only along with an NOC issued by the District Collector. Possibility of law and order problems and the safety issues due to fireworks at nearby church and religious places are completely unfounded. There is no legal impediment in starting petroleum fuel outlets near places of worship. The mere fact that neighbouring plot owners object establishment of petroleum outlet, also cannot be a reason to decline NOC.

9. The counsel for the petitioner submitted that the guidelines of Pollution Control Board do not prescribe any distance rules. Ext.R5(c)-Office Memorandum of the Central Pollution Control Board only states that new retail outlets shall not be located within a radial distance of 50 m. from schools, hospitals and residential areas designated as per local laws. The area where the petrol and diesel retail outlet is proposed, is not in a designated residential area. Therefore, Ext.R5(c)-Office Memorandum of the Central Pollution Control Board will not apply.

10. The learned counsel for the petitioner further pointed out that in the judgment in W.P.(C) Nos.30818/2015 and 9081/2017, this Court has categorically held that objections raised by the neighbours of the property where petroleum outlet is sought to be established, by itself cannot be a reason to decline NOC.

11. The learned Standing Counsel for the Panchayat referred to Exts.R3(a) and R3(b) and submitted that the local residents and parishioners have raised strong objection to the establishment of petroleum fuel outlet at the proposed site. The proposed site is not suitable for starting petroleum fuel

outlet in view of Section 47 of the Panchayat Building Rules.

12. The learned counsel for the 5th respondent pointed out that due to the intersection with MDR within 450 metres from the proposed site, no NOC

can be granted to the petitioner. The proposed location of the petitioner's petroleum outlet does not satisfy the sighting criteria. In view of Ext.R5(c),

no petroleum outlets can be permitted, if there are residential houses within a radial distance of 50 m. The house of the 5th respondent is hardly 1 m.

away. The distance of 50 m. should be from residential buildings and need not be from designated residential areas, in view of Ext.R5(b).

13. The learned Government Pleader appearing for respondents 1 and 2 stated that the petitioner has an alternate remedy under Section 154(2) of the

Petroleum Act and the petitioner can file an appeal to the Government represented by the Land Revenue Commissioner. It is not the objections of the

neighbours alone, but the possibility of law and order problem has also worked with the District Collector in rejecting the application for NOC.

Respondents 1 and 2 are bound to consider the impact of the proposed petroleum outlet on traffic. The writ petition is therefore without any merit and

it is liable to be dismissed, contended the learned Government Pleader.

14. The learned Standing Counsel appearing for the 8th respondent, on the other hand, submitted that the issue of pollution cannot be now raised

because the 8th respondent has already received No Objection Certificate/ Consent from the Pollution Control Board. As the consent from the

Pollution Control Board has already been received, Exts.R4(a) and R4(b) cannot be relied on to reject the application for NOC. The learned counsel

for the 8th respondent urged that Ext.P5 rejection is illegal and unsustainable. The 1st respondent is therefore liable to be compelled to issue NOC to

the 8th respondent.

15. I have heard the learned counsel for the petitioner, learned Standing Counsel for the Panchayat, learned counsel for the 5th respondent, learned

Standing Counsel for the 8th respondent and learned Government Pleader appearing for respondents 1, 2 and 7.

16. The challenge in the writ petition is against Ext.P5 order of the 1st respondent-District Magistrate refusing to issue NOC for establishing a petrol

and diesel retail outlet. From Ext.P5 proceedings, it is seen that the Regional Fire Officer, Fire and Rescue Department, has given a report that the

Department has no objection in starting the petroleum fuel outlet at the place in question. The 3rd respondent- Grama Panchayat has also issued

Ext.P3 letter dated 28.06.2019 stating that the Panchayat has no objection. But, the 1st respondent noted that through a subsequent letter Ext.R3(d)

dated 02.08.2019, the Panchayat has informed that the drawings submitted by the petitioner do not satisfy Building Rules. The Panchayat has

informed the 1st respondent that the deficiencies have not been made good by the petitioner and therefore building permit has not been given.

17. The 1st respondent has also noted a report of the District Police Chief pointing out objections raised from certain quarters and the likelihood of law

and order issues. The report of the Tahsildar pointed out a civil appeal in respect of starting of the petroleum fuel outlet, pending in District Court. A

report of the Executive Engineer, PWD, stated that application has been returned as the establishment of the petrol and diesel retail outlet would

affect vehicular traffic as per IRC/MORTH norms.

18. Although the District Magistrate took note of all the afore reports, NOC has been declined on the ground that the house of the 5th respondent

stands adjacent to the proposed plot where the petroleum fuel outlet is to be established and it will adversely affect the health of the persons residing

there. The further ground on which the 1st respondent has declined NOC is that the District Police Chief and Secretary to the 5th respondent-Grama

Panchayat have made objections.

19. As regards the reason given by the 1st respondent as to the existence of houses nearby and threat to the health of the persons residing in those

houses, it is to be noted that as per the Circular dated 09.08.2004 of the Pollution Control Board, new retail outlets shall not be located within a radial

distance of 50 metres (from Fill point/dispensing units/vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential

areas designated as per local laws and in no case shall be less than 30 metres. The Pollution Control Board is the statutory authority competent to

decide whether establishment of a petroleum fuel outlet could cause health hazard to the nearby residents. The proposed petroleum fuel outlet is not

coming within any designated residential areas and therefore the 50 metre distance restriction provided by Circular dated 09.08.2004 of the Kerala

State Pollution Control Board will not apply.

20. It is true that the Kerala State Pollution Control Board has issued a subsequent Circular dated 24.02.2020, modifying the siting criteria for new petroleum retail outlets and has stated that the distance should be from the nearest residential building. However, in Ext.R5(b) Circular dated 18.08.2020, the Kerala State Pollution Control Board has made it clear that if any requisite licence other than the PCB consent is obtained by the applicant for establishing the petrol pump prior to the date of the Circular dated 24.02.2020, then the siting criteria mentioned in Circular dated 09.08.2004 shall be applicable. Therefore, NOC cannot be denied based on health hazard to neighbours, under Circular dated 24.02.2020 of the Pollution Control Board.

21. From Ext.P5 proceedings itself, it is evident that the Regional Fire Officer has granted permit/NOC on 25.06.2019. In view of the above, the Circular of the Pollution Control Board applicable would be the Circular dated 09.08.2004, as per which the 50 metre radial distance has to be measured from the nearest designated residential area. The proposed petroleum fuel outlet is not coming within the prohibited distance of any designated residential area. Therefore, the District Magistrate was not justified in declining NOC on the ground of health hazard to the nearby residents.

22. The further reason given by the 1st respondent-District Magistrate for refusing NOC, is that the District Police Chief has pointed out about the complaints by local residents and the likelihood of law and order issues, if a petroleum fuel outlet is coming up in the area. This Court has held in the judgment in W.P.(C) No.19140/2020 that consent of neighbouring property owners is not required for grant of NOC. Complaints submitted by local residents cannot be a reason to decline NOC, if the applicant is otherwise legally entitled to it.

23. From complaints filed by local residents, there cannot be a presumption of law and order problem. The presumption of law and order issues will have to be based on concrete inputs/information in respect of such issues. Possible law and order issues cannot be a reason to deny NOC or licence to an entrepreneur to start a petroleum fuel outlet or for that matter any other industry, if the person proposing to start such venture complies or is willing to comply with all legal requirements. From the pleadings in this writ

petition, it is not discernible as to based on what inputs, the District Police Chief has arrived at the conclusion on law and order issues.

24. As regards the objections subsequently raised by the Grama Panchayat, the petitioner can still make good the requirements of Building Rules

compliance, by submitting revised building plan. The learned Standing Counsel for the 8th respondent would submit that NOC from District Magistrate

should precede application for building permit to the Grama Panchayat.

25. In the circumstances, the grounds based on which the 1st respondent has declined NOC cannot stand the scrutiny of law. Ext.P5 is therefore set

aside. The 1st respondent is directed to re-consider the application for NOC in accordance with law and pass orders thereon within six weeks.

Writ petition is disposed of as above.