

(1960) 04 MAD CK 0031
In the Madras High Court

V. Jayaraj by Power of Attorney, V. Chandrasekaran	APPELLANT
Vs	
The Additional District Magistrate and Additional Collector and Another	RESPONDENT

Date of Decision : 04-04-1960

Acts Referred:

Citation : (1990) 2 MLJ 12

Hon'ble Judges : K.S. Bakthavatsalam, J

Bench : Single Bench

Judgement

K.S. Bakthavatsalam, J.—The petitioner challenges the order of the second respondent dated 24.4.1989, which was passed pursuant to the order of the first respondent dated 17.4.1989, cancelling the licence.

2. The petitioner claims to be the power agent of one Jayaraj. This petition is filed with an affidavit sworn to by one Chandrasekaran as power of attorney.

3. The aforesaid Jayaraj was a successful applicant for operating a retail outlet of the second respondent corporation in Perianegamam Village. S. No. 273/4 of Perianegamam village was chosen by the petitioner and he entered into a lease with the owner of the site by a registered lease deed for a period of 15 years. The first respondent granted no objection certificate to the second respondent corporation stating that he has no objection to the second respondent Corporation receiving the licence. On receipt of the said certificate a licence was granted to the petitioner for storing petroleum in tank in connection with pump outfit for fueling motor conveyances. The complaint made in the affidavit is that the petitioner has been operating the retail outlet from January, 1986 without any hindrance, while so the first respondent, after more than 3 years of operation, has arbitrarily cancelled the no objection certificate. A reference to Petroleum Act, 1934 and to Petroleum Rules, 1976 has been made in the affidavit. It is alleged in the affidavit that under Rule 141 of the Petroleum Rules no objection certificate is granted and under Rule 151 of the Petroleum Rules, the cancellation was made. It is stated in the affidavit that cancellation of the no

objection certificate can be made on the sole ground that the licensee has ceased to have any right to use the site for storing petroleum. It is stated in the affidavit that the petitioner has been granted lease of the premises for a period of 15 years with effect from 10th October, 1985 and that the lease has been by a registered document, which is still in force. It is stated that the first respondent has arbitrarily cancelled the no objection certificate. It is alleged that the First respondent has no power to cancel the no objection certificate on the sole ground that the licensee has ceased to have any right to use the site for storing petroleum. It is stated that the first respondent has not given any reason for cancelling the no objection certificate which is violative of Sub-rule (2) of Rule 151 of the Petroleum Rules and that the first respondent has also not given any opportunity before cancelling the no objection certificate to the petitioner and the second respondent, which is violative of Rule 151 of the Petroleum Rules. It is stated in the affidavit that the site occupied by the petitioner belongs to a former Member of the Legislative Assembly and an influential politician belonging to the opposition and several illegal actions have been initiated against the said person by the ruling party and that the impugned action is a part of the same. It is further stated that the petitioner has incurred expenditure to create the infrastructure and that the respondents, after allowing the petitioner to alter his position, are bound by the principle of promissory estoppel. It is also stated that there is no other pump in the vicinity and the nearest outlet is at Pollachi nearly 18 Kms. away and that the respondents by their arbitrary action have illegally deprived the petitioner of his livelihood.

4. Notice of motion has been ordered by Abdul Hadi, J., on 9.5.1989.

5. The second respondent has filed a counter. It is stated in the counter affidavit that the writ petition filed by the power of attorney is bad in law and is liable to be dismissed in limine. It is stated that when the petitioner is alive and available he should have filed the writ petition. It is also stated that the petitioner V. Jayaraj, who is the authorised dealer of Indian Oil Corporation Limited for the retail outlet in question, wrote a letter on 2.5.1989 to the 2nd respondent that he had not executed any power of attorney in favour of any person for operating the retail outlet. It is stated that the Deputy Chief Controller of Explosives, Southern circle, Madras issued a notice to the 2nd respondent to show cause as to why the licence earlier granted should not be cancelled, and for this the 2nd respondent sent a reply on 2-6-1989 pointing out the pendency of this Writ Petition. It is stated that the letter dated 24-4-1989 has to be issued in view of the cancellation of no objection certificate by the 1st respondent in his proceedings dated 17.4.1989.

6. Mr. R. Thiagarajan, learned Counsel appearing for the petitioner contends that Jayaraj has given a power of attorney to one Chandrasekaran who has sworn to the affidavit. Learned Counsel has produced a copy of the unregistered general power of attorney which is dated 4-7-1986. In view of the power of attorney the learned Counsel contends that the power of attorney has not been given any

notice before the impugned order is passed and, since the petitioner has obtained general power of attorney for operating the retail outlet, the entire order is bad in law and is in violation of principles of natural justice.

7. I directed the learned Additional Government Pleader to produce before me, the files and they are before me. I find that the application for issue of no objection certificate for expanding existing petroleum storage facilities at the retail outlet in Negamam has been made on 16-6-1987 and that this outlet is in operation since December, 1985. In April, 1989 an inspection was made by the Tahsildar, Pollachi, the Revenue Inspector and by the Village Administrative Officer and the Inspection report shows that the said Jayaraj, the purported unemployed graduate, owner is not residing in Negamam and is only a benami for one K.V. Kandasamy of Negamam and that the action of the Corporation in classifying as unemployed graduate outlet is improper and also against the rules of Government. It is also seen that the Senior Divisional Manager, Indian Oil Corporation has requested for the grant of no objection certificate for the storage of 15 KL Petroleum products and that it was issued on 5-12-1985 by the Collector of Coimbatore and the dealership for the retail outlet has been issued to Jayaraj, 18, N.R. Mani Lay out, Varadharajapuram, Uppilpalayam, Coimbatore. It seems that the Deputy Chief Controller of Explosives, Madras, while approving the site plan of the above company has conditionally approved the site plan with an endorsement that a revised no objection certificate and the plan attested by the District Magistrate has to be obtained before any additions and alterations are made in the existing licence. The Sub Collector, Pollachi, on his inspection on 5-4-1989 has noticed some serious irregularities in the grant of no objection certificate for Jayaraj Petrol Bunk and has also found that the sketch describing the site on ground given by the Sub Collector, Pollachi corresponds to facts on ground. In the report it is also stated that some alterations have been made without getting the approval of the District Magistrate which is in violation of Rule 147, Petroleum Rules, 1976. It is stated in the report that since the lessee of the bunk is not having title to possess above 10,000 Sq.ft. and the H.S.D. Bank is not in this area the no objection certificate may be cancelled. A notice was issued by the Additional Collector on 13-4-1989 which has been received by the said Jayaraj on 13-4-1989 itself. An enquiry was conducted on 17-4-1989 and the said Jayaraj has given a statement before the authorities that he is residing in Coimbatore for the past three years and he is not looking after the petrol bunk at Negamam. Further the said Jayaraj has also not produced the relevant documents relating to the extended portion for which the no objection certificate is applied for. He has also deposed that the petrol bunk is now run by one K.V. Kandasamy and that he has no connection with it. From the deposition of Jayaraj it is clear that there is large scale deviation and violation endangering public property and that therefore, the no objection certificate issued to Jayaraj is ordered to be cancelled.

8. The entire file produced before me shows that the said Jayaraj is only a name lender and according to the statement made by the said Jayaraj this Writ Petition

is filed by one Chandrasekaran, the so called power of attorney. When the petitioner Jayaraj himself states that he is not running the petrol bunk, I do not know in what way the power of attorney is aggrieved. Moreover the power of attorney, produced before me is not registered one. I am not able to accept the power of attorney produced before me and this court cannot go into the question whether the power of attorney is true or not. It is for the said Chandrasekaran to move before a Civil Court and claim whatever rights he has got against the said Jayaraj. As on record under the Petroleum Act and under the Petroleum Rules only said Jayaraj is the dealer. When the said Jayaraj himself has given a statement that he is not running the outlet I do not see any merit in the contention on behalf of the power of attorney that no notice has been issued to the power of attorney as such there is violation of principles of natural justice. It has been repeatedly held that the principles of natural justice cannot be considered apart from the facts of the case and that it cannot be put into a strait jacket. Considering the facts and circumstances of this case a notice has to be issued only to the said Jayaraj under the Rules before cancellation of the no objection certificate and the said Jayaraj under Rule 144 of the Petroleum rules has given a statement as referred to earlier. When such is the case I do not see any reason to interfere with the order impugned which in my view is valid in law. Further as rightly pointed out by the learned Counsel for the Corporation the petitioner has no locus standi because from the records produced before me I do not see anywhere that the said Chandrasekaran has been made as power of attorney at all. Rule 151 of the Petroleum Rules reads as follows:

Cancellation of No objection certificate: (1) A "no objection certificate" granted under Rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the District Authority or the State Government is satisfied, that the licensee has ceased to have any right to use the site for storing petroleum, : Provided that before cancelling a "no objection certificate", the licensee shall be given a reasonable opportunity of being heard.

(2) A District Authority or a State Government cancelling a "no objection certificate" shall record, in writing the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned a copy of the order cancelling the "no objection certificate".

9. Proviso - 1 to Section 151 of the Petroleum Rules speaks of the reasonable opportunity to be given to the licensee. The licensee" here is the said Jayaraj. It is not disputed and it cannot be disputed that the said Jayaraj has not been given a reasonable opportunity. As such there is no violation of principles of natural justice as contended by learned Counsel for the petitioner. I do not think that the Corporation can go about to find out who is the power of attorney for whom. Moreover the said Jayaraj has written a letter to the Corporation on 2-5-1989 that he has not given any power of attorney to anybody. As such the fact whether the deponent of the affidavit is the power of attorney is itself in dispute. I think the proper forum is the civil court and this court cannot do that. Even on

this ground the writ petition has to fail. If the said Jayaraj is aggrieved he can prefer an appeal to the Transport Commissioner as provided under the Rules and as stated in the order passed. That has not been done by the said Jayaraj. When the principal himself is not aggrieved by the impugned Order I do not see how the agent would be aggrieved by the impugned order who claims under an alleged power of attorney executed by the said Jayaraj. There are no merits in the writ petition. The writ petition stands dismissed. There will be no order as to costs.