

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON

WEDNESDAY, THE 11TH DAY OF FEBRUARY 2015/22ND MAGHA, 1936

WP(C).No. 2186 of 2015 (W)

PETITIONER(S):

**S.MADHU, AGED 46 YEARS,
S/O.M.SUKUMARAN, CHEMPADAM HOUSE, THATHAMANGALAM,
PALAKKAD DISTRICT.**

**BY ADVS.SRI.BABU S. NAIR
SMT.SMITHA BABU**

RESPONDENT(S):

- 1. THE CHIEF TOWN PLANNER,
THIRUVANANTHAPURAM, PIN - 695 001.**
- 2. THE ADDITIONAL DISTRICT MAGISTRATE,
COLLECTORATE, PALAKKAD, PIN - 678 001.**
- 3. THE BHARATH PETROLEUM CORPORATION LTD.,
REPRESENTED BY ITS TERRITORY MANAGER (RETAIL),
CALICUT TERRITORY OFFICE, 3RD FLOOR, CEEKAY TOWERS,
VANDIPETTA, KANNUR ROAD, KOZHIKODE,
PIN - 673 001.**

**R1& R2 BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED SHAFI M.
R3 BY ADV. SRI.M.GOPIKRISHNAN NAMBIAR**

**THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

msv/

APPENDIX

PETITIONER(S)' EXHIBITS

**EXT.P1: TRUE COPY OF THE LETTER OF INTENT ISSUED BY THE 3RD RESPONDENT
DATED 28/03/2011.**

**EXT.P2: TRUE COPY OF THE NO-OBJECTION CERTIFICATE ISSUED BY THE
2ND RESPONDENT DATED 07/08/2013.**

**EXT.P3: TRUE COPY OF THE LEASE DEED EXECUTED BEFORE THE S.R.O.,
THATHAMANGALAM DATED 01/11/2013.**

**EXT.P4: TRUE COPY OF THE COMMUNICATION ISSUED BY THE FIRST RESPONDENT
TO THE PETITIONER DATED 29/08/2014.**

**EXT.P5: TRUE COPY OF THE NO-OBJECTION GIVEN BY THE EXECUTIVE ENGINEER,
P.W.D. (ROADS) PALAKKAD, DATED 06/12/2011.**

RESPONDENT(S)' ANNEXURES:

**ANNEXURE R1(a): A TRUE COPY OF THE GUIDELINES FOR SETTING UP OF
MOTOR-FUEL FILLING STATIONS AS PER IRC: 12-1983.**

**ANNEXURE R1(b): A TRUE COPY OF THE REPORT OF THE DISTRICT TOWN
PLANNER, PALAKKAD DATED 24.7.2014.**

//TRUE COPY//

P.S.TO JUDGE

Msv/

P.R. RAMACHANDRA MENON, J.

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W.P.(C). No. 2186 of 2015

Dated this the 11th day of February, 2015

JUDGMENT

The challenge in this writ petition is against Ext.P4 communication issued by the first respondent on 29.08.2014, whereby the layout approval for setting up a retail petroleum outlet has been turned down, stating that the location is within 60 mtrs. from the Thathamangalam Junction where the Palakkad - Menakshipuram State Highway and the High school road get converged. It is pointed out that the said factual position does not enable the concerned authority to grant the layout approval, being contrary to the guidelines issued by the Indian Road Congress (IRC), according to whom, it has to be located at a minimum distance of 100 mtrs.

2. Heard the learned counsel for the petitioner, the learned Standing Counsel for the 3rd respondent and learned Government Pleader.

3. A statement has been filed on behalf of the 1st respondent. But for the version that, the request is contrary to

the guidelines/recommendation issued by the IRC, to have it located at a minimum distance of 100 mtrs, no other insinuating circumstance is referred to in the said statement dated 4.02.2015. A copy of the guidelines issued by the IRC in 1983 has been produced as Annexure R1(a) and a copy of the report of the District Town Planner Palakkad has been produced as R1(b) dated 24.07.2014. Clause 4.7 of R1 (a) guidelines reads as follows;

"4.7. The distance between the tangent points of the curves of the side road and that of the fuel filling station as shown in Plate, measured in a direction parallel to the centre line of the road, should not be less than 100 metres and the station should be located only in the outbound direction as shown in the Plate. However, on expressway and arterial road having dual carriage-way, the distance from a junction should not be less than 300 metres."

The question to be considered is whether the guidelines issued by the IRC in the year 1983 could be taken as law, to have any binding force, so as to cause rejection of the application for layout approval.

4. The learned counsel for the petitioner submits that, the

said guidelines do not have sanctity of law and further, it has no connection or nexus with the factual position. The learned counsel further points out that quite a number of buildings are situated between the junction and the location where the petroleum outlet is to be located and that the same in no way causes any hindrance to the free flow of traffic, nor does it cause any threat to the security measures.

5. The learned Standing Counsel appearing for the Marketing Company submits that, exactly similar issue, as to the sanctity of the guidelines, had come up before the High Court of Allahabad in W.P(C) Nos. Civil Misc. Writ Petition No.27184 of 2013 (**Deepak Agarwal v. State of U.P.**). Referring to the various judgments passed by the said Court at different point of time, it was held that the guidelines issued by the Indian Road Congress were not statutory guidelines and as such, the refusal to grant the NOC with reference to the guidelines issued by the IRC was held as not legally justified.

6. Coming to the case in hand, it is brought to the notice of this Court that, a No Objection Certificate vide Ext.P2 has already

been issued by the 2nd respondent. The factual position has also been examined and NOC has been issued by the Executive Engineer, PWD (Road), Palakkad as per Ext.P5.

7. In the said circumstance, this Court finds no reason to deviate from the findings and reasoning given by the High Court of Allahabad under similar circumstances. Accordingly, Exts. P4 will stand set aside. The 1st respondent is directed to reconsider the matter in the light of above observations and pass appropriate orders so as to have the approval of the location, if the same is qualified in all other respects. The proceedings as above shall be finalized at the earliest, at any rate, within 'one month' from the date of receipt of a copy of this judgment.

The petitioner shall produce a copy of the judgment along with a copy of the writ petition before the concerned respondent for further steps. The writ petition is disposed of.

**P.R. RAMACHANDRA MENON,
JUDGE.**