

RESERVED ON : 29.08.2017
DELIVERED ON : 04.09.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2017

CORAM

THE HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P.Nos.41827 of 2016, 14430 & 15633 of 2017
W.M.P.Nos.35797 of 2016, 15838 &
16926 & 18418 of 2017

S.Shanmugharaja Petitioner in all WPs

v.

1 The District Collector
Puducherry District
Puducherry 1st Respondent in all WPs

2 D. Jasmine Suguna
(R-2 is impleaded as per order
dated 22.03.2017 made in WMP. No.
2929/2017 in WP.No. 41827/2016)
... 2nd Respondent in
W.P.No.41827/2016 &
4th Respondent in
W.P.Nos.14430 & 15633/2017

3 The Chief Regional Manager
Hindustan Petroleum Corporation Limited
No.90, Bharathidasan Road
2nd Floor, MDSR Enclave
Contonment, Trichy - 620 001
(R-3 is impleaded as per order
dated 04.08.2017 made in WMP. No.
19926/2017 in WP.No. 41827/2016) ... 3rd Respondent &
in W.P.No..41827/2016

&

W.P.Nos.14430 & 15633/2017

4 The Chief Town Planner
Town and Country Planning Department
Puducherry ... 2nd Respondent in
W.P.Nos.41827/2016

Prayer in W.P.No..41827/2016 : Writ petition filed under Article 226 of the Constitution of India, to issue a writ of declaration, forbearing the 1st respondent from giving 'No Objection Certificate' to the proposed installation of new Petrol Station within 300 meter distance from the petitioner's allotted Petrol Station at Survey Nos.213/A1, 213/14 A2, Embalam Village, Nettapakkam Commune, Puducherry in particularly at Survey No.214/1 by the Hindustan Petroleum Corporation Ltd. (HPCL) or others.

Prayer in W.P.No.14430 /2017 : Writ petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus directing the 1st and 2nd respondents to restrain the installation work of petrol station being carried out by the 3rd and 4th respondents at Survey No.214/1, Embalam Village, Nettapakkam Commune, Pudhucherry

Prayer in W.P.No.15633 /2017 : Writ petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus calling for the records related to the NOC issued by the 1st respondent bearing reference No.1409/DM/RO/ TAH/D3/ 2017, dated 25.4.2017 to the 3rd respondent and to quash the same and consequently forbearing the respondents 1 to 3 from putting up a retail petrol Station at S.No.214/1, Embalam Village, Nettapakkam Commune, Puducherry.

For Petitioner : Mr.R.Gandhi, Senior Counsel
for Mr.G.K.Muthukumar (In all WPs)

For Respondents : Mr.A.Gandhiraj, Govt. Pleader
(Puducherry)
Assisted by
Mr.B.Nambiselan,
Additional Govt. Pleader (P)
for R1 & R2 in W.P.Nos.14430 &15633/2017
and for R1 in W.P.No.41827/2016
Mr.M.Vijayan
for M/s. King & Patridge for R3
(In all WPs)
Mr.AR.L.Sundaresan, Senior Counsel
for Ms.A.L.Gandhimathi - for R4 in W.P.
Nos.14430 & 15633/2017 and for R2
in W.P.No.41827/2016)

COMMON ORDER

W.P.No. 41827/2016 has been filed by the petitioner, to issue a writ of declaration, forbearing the 1st respondent from giving 'No Objection Certificate' to the proposed installation of new Petrol Station within 300 meter distance

from the petitioner's allotted Petrol Station at Survey Nos.213/A1, 213/14 A2, Embalam Village, Nettapakkam Commune, Puducherry in particularly at Survey No.214/1 by the Hindustan Petroleum Corporation Ltd. (HPCL) or others.

2. W.P.No. 14430/2017 has been filed by the petitioner, to issue a writ of mandamus directing the respondents 1 and 2 to restrain the installation work of petrol station being carried out by the respondents 3 and 4 at Survey No.214/1, Embalam Village, Nettapakkam Commune, Pudhucherry.

3. W.P.No. 15633/2017 has been filed by the petitioner, to issue a writ of Certiorarified Mandamus calling for the records related to the No Objection Certificate issued by the 1st respondent dated 25.4.2017 to the 3rd respondent and to quash the same and consequently forbearing the respondents 1 to 3 from putting up a retail petrol Station at S.No.214/1, Embalam Village, Nettapakkam Commune, Puducherry.

4. Since the issue involved in all the three writ petitions are common, all the three writ petitions are disposed of by this common order.

5. The brief case of the petitioner necessary for the disposal of the writ petitions is as follows:-

(i) According to the petitioner, he was allotted dealership by the Indian Oil Corporation Limited to run a Retail Petrol Station under the Kissan Seva Kendra Scheme under open category from 05.03.2016. Since then, the petitioner has been operating the said Petrol Station in his land situated in Survey Nos.213/13 A1, 213/14 A2, Embalam Village, Puducherry.

(ii) The dealership was allotted to the petitioner after getting the required No Objection Certificate from the respondents 2 and 3, viz., District Collector, Puducherry and the Chief Town Planner, Puducherry, the license from Explosive Authorities and complying with other legal formalities. The retail vending commenced from 16.10.2016. While so, the 3rd respondent, viz., Chief Regional Manager, Hindustan Petroleum Corporation Ltd., Trichy has proposed to install another Retail Petrol Station within the distance of 180 meters from the petitioner's Petrol Station by allotting dealership to the 4th respondent, viz., Ms.Jasmin Suguna.

(iii) The petitioner made his objections to the 3rd respondent stating that the allotment made by it to the 4th respondent would be counterproductive and defeat the very purpose for which the Petrol Station was allotted to him under the Kissan Seva Kendra Scheme. The proposed Petrol station at the site of the 4th respondent is less than 180 meters from the petitioner's Petrol Station.

(iv) The petitioner also made representations to the respondents 1 and 2 not to issue No Objection certificate to the respondents 3 and 4. The 2nd respondent has not issued the No Objection Certificate. However, despite the petitioner's representation dated 22.11.2016, the 1st respondent was proceeding to issue the No Objection Certificate. Hence, the petitioner has filed the Writ Petition in W.P.No.141827 of 2016 forbearing the 1st respondent from issuing No Objection Certificate. Notice was ordered in the said writ petition. However, despite the same, the 1st respondent proceeded to issue No Objection Certificate dated 25.04.2017, which is being challenged in W.P.No.15633 of 2017. The petitioner also filed W.P.No.14430 of 2017 to issue a writ of mandamus directing the respondents 1 and 2 to restrain the respondents 3 and 4 from installing the Petrol Station at Survey No.214/1, Embalam Village, Nettapakkam Commune, Pudhucherry.

(v) Even during the pendency of the writ petitions in W.P.Nos.141827 of 2016 and 14430 of 2017, the 1st respondent has issued the No Objection Certificate dated 25.04.2017 for setting up a Retail Petrol Outlet at S.No.214/1, in favour of the respondents 3 and 4. In view of the said No Objection Certificate, the respondents 3 and 4 are now in the process of putting up a Retail Outlet at the said site.

(vi) According to the petitioner, the existence of Vellakulam is a bar for location of the Petroleum Retail Outlet as it will pollute the water of the pond especially during rainy season and would render the water unfit for domestic and cattle consumption. In these circumstances, the petitioner has filed the above writ petitions.

6. The brief case of the 1st respondent is as follows:-

(i) According to the 1st respondent, the proposed Retail Outlet is not a service station and there is no possibility of any effluents that is likely to pollute the adjacent pond as alleged by the petitioner. The No Objection Certificate was granted after thorough examination of the application and after obtaining reports from various authorities, viz., the Sub Divisional Magistrate (South), Superintendent of Police (West), District Fire Officer, Executive Engineer (Buildings and Roads) South, Commissioner of Nettapakkam Commune Panchayat, Town and Country Planning Authority and hence, there is no defect or illegality in the No Objection Certificate issued by the 1st respondent. The 1st respondent had thoroughly gone through all the available records and only after ascertaining all the material facts had issued the No Objection Certificate.

(ii) The objections raised by the petitioner on the presence of the pond and ecological impact is incorrect as the Petroleum Retail Outlet is not expected to discharge any

effluent. All revenue records are examined by the Sub-Divisional Magistrate (South) and suitability of site was also examined by all departments and reports submitted by them were thoroughly examined and scrutinized by the 1st respondent and proceeded according to law.

(iii) The objections raised by the petitioner that the 1st respondent issued the No Objection Certificate is contrary to the IRC guidelines for access location and layout of road side fuel and service station, because, the said guidelines under 4.6 prescribed the minimum distance to be maintained between two fuel stations in the rural area is within 300 meters, that the No Objection Certificate was issued by the 1st respondent is contrary to the said guidelines, since the proposed retail petrol pump is within 180 meters of that of the petitioner is incorrect.

(iv) The averment of the petitioner is not applicable because the petitioner's petrol bunk is located in the rural area and as per the guidelines issued by the Ministry of Road Transport & Highways, dated 24.07.2013. The IRC: 12 guidelines are applicable only for petrol bunks along National Highways Appendix 1.1. In the guidelines itself it is mentioned very clearly in Appendix 1.3, that these norms are applicable to all fuel stations within or without the other users facilities of rest areas on undivided carriage section of National Highways in plain and hilly terrains.

(v) As per clause 4.6.4 of the said guidelines, for the installation of the new fuel station within 1000 meters distance or within 300 meters distance, the new entrant would be responsible for construction and maintenance of common service road acceleration and deceleration lanes drainage and traffic control device. From the said guidelines it is clear that the permission can be granted for the Petrol Bunk even in the National Highway within 1000 meters or 300 meters by clustering and providing common access and any objection raised by existing Petrol Bunk can be overruled.

(vi) The 1st respondent is the competent authority under Rule 144 (1) of Petroleum Rules, 2002 to issue No Objection Certificate. The 1st respondent, after considering the various aspects, rightly overruled the report of the 2nd respondent. The public/consumers stand to gain when there is competition. In these circumstances, the 1st respondent prayed for dismissal of the writ petition.

7. The brief case of the 4th respondent is as follows:-

(i) According to the 4th respondent, the petitioner is not the aggrieved person for the grant of No Objection Certificate by the 1st respondent in favour of the 3rd respondent for setting up of Petroleum Retail Outlet at Survey No.214/1. The writ petitions have been filed purely out of business rivalry by the petitioner, who is a dealer under the

Indian Oil Corporation against the 4th respondent, who is a dealer selected by the Hindustan Petroleum Corporation Limited. There has been no objection from any department or party for location of the retail outlet in the said location.

(ii) According to the 4th respondent, the 1st respondent is the authority to grant No Objection Certificate under Rule 144(1) of the Petroleum Rules. The 1st respondent, on a careful perusal of the application and on being satisfied with the site has granted No Objection certificate by proceedings dated 25.04.2017. Pursuant to the same, the 4th respondent is carrying out all necessary works for commissioning of Petroleum Outlet Dealership. The tank has also been installed and the work is almost completed and the petroleum outlet dealership is ready to start the business.

(iii) The petitioner cannot avoid another retail outlet dealership of another Oil Corporation coming in the locality. The petitioner did not have any legal right to prevent another retail outlet station from coming up in the locality. The petitioner does not have any locus to challenge the No Objection Certificate issued by the 1st respondent in accordance with law. The location of the petroleum outlet would not in any manner cause any adverse effect on the pond/lake. The intension of the petitioner is mala fide and not supported by any rule or law. While the Indian Oil Corporation is entitled to locate its retail outlet under the Kissan Seva Kendra Scheme in rural area, the 3rd respondent is also entitled to locate in the rural area. The 1st respondent has granted No Objection Certificate after duly satisfying with all the legal requirements. In these circumstances, the 4th respondent prayed for dismissal of the writ petitions.

8. Heard Mr.R.Gandhi, learned Senior Counsel appearing for the petitioner in all the writ petitions, Mr.A.Gandhiraj, Government Pleader (Puducherry) for the respondents 1 & 2 in W.P.Nos.14430 & 15633/2017 and for the 1st respondent in W.P.No.41827/2016, Mr.M.Vijayan, learned counsel for the 3rd respondent in all the Writ Petitions and Mr.AR.L.Sundaresan, learned Senior Counsel for the 4th respondent in W.P.Nos.14430 & 15633/2017 and for the 2nd respondent in W.P.No.41827/2016.

9. Mr.R.Gandhi, learned Senior Counsel for the petitioner submitted that when the 2nd respondent had given a report to the 1st respondent stating that the proposed Petrol Station is situated within 180 meters from the petitioner's Petrol Station and that No Objection Certificate should not be issued to the respondents 3 and 4, the grant of No Objection Certificate by the 1st respondent is erroneous. Further, the learned Senior Counsel submitted that a pond is situated very near the proposed Petrol Station and therefore, the 1st

respondent should not have issued the No Objection Certificate. The learned Senior Counsel relied upon the Guidelines for Access, Location and Layout of Roadside Fuel Stations and Service Stations (Third Revision) published by Indian Roads Congress, in the year 2009 (IRC:12-2009) wherein, as per clause 4.6, the minimum distance between two fuel stations in plain and rolling terrain in non-urban (rural) areas for undivided carriageway (for both sides of carriageway) would be 300 meters (including deceleration and acceleration lanes). The learned Senior Counsel submitted that since the 2nd respondent has given a report stating that the distance between the two petrol stations would be less than 180 meters, the No Objection Certificate issued by the 1st respondent is liable to be quashed in view of the guidelines IRC:12-2009. In support of his contentions, the learned Senior Counsel relied upon the following judgments:-

(i) 2004 (2) SCC 463 [Mehsana District Central v. State of Gujarat and others], wherein the Hon'ble Supreme court held as follows:-

"17. In the facts and circumstances stated above, the High Court by the impugned order issued a writ of mandamus, directing respondent Nos. 4 and 5 to take appropriate action against the appellants in accordance with the provisions contained in the Gujarat Cooperative Societies Act and the rules framed thereunder. We do not see any infirmity in the impugned order. The Acts and Rules are made to be followed and not to be violated. When the Statute prescribed the norms to be followed, it has to be in that fashion. Converse would be contrary to law. If there is any allegation of violation of statutory rules which have been brought to the notice of the authorities and if the concerned authorities do not perform their statutory obligation, as in the present case, any aggrieved citizen can always bring to the notice of the High Court about the inaction of the statutory authorities and in such event it would always be open to the High Court to pass an appropriate order as deemed fit and proper in the facts and circumstances of the case. In the present case, the facts as alluded above, would clearly reveal that the High Court was clearly justified in issuing a writ of mandamus, which cannot be faulted."

(ii) RLW 2006(1) Rajasthan 161 [Dalpat Singh v. Union of India and Ors.] wherein, the Rajasthan High Court held as follows:-

"26. In view of the aforesaid discussions, I deem it proper to direct the companies including the respondent company to follow

strict compliance of the guidelines framed by the Ministry of Road Transport and Highways and by Union of India and Revenue Department and Public Works Department, Local Self Department, Municipal Corporation, Food & Civil Supplies Department, Jaipur Development Authority, UIT and other departments of the Govt. of Rajasthan and as also the Division Bench of this Court time and again issued direction that establishment and installation of petrol pump shall not be in violation of the policy of Govt. of India dated 25th September, 2004 and 17.10.2003 and any other policy issued by the Govt. of India and State of Rajasthan from time to time and further reiterated that no objection certificate by the licensing authority is sine qua non for starting construction of the petrol pump but it is observed that in numerous cases Oil Companies are not strictly complying with the policy and norms prescribed by the Union of India and State of Rajasthan. Therefore, the policy laid down by the Union of India, Govt. of Rajasthan have been discussed and it is observed that all the policies and norms prescribed by the Union of India and State of Rajasthan and by various others departments and corporation issued from time to time should be complied with in true and letter spirit. Union of India, State and Corporations are expected to ensure strict compliance of the policy and guidelines and in the instant case also the respondents are directed to test the present case whether retail outlet has been allotted in favour of the respondent No. 6 after due compliance of norms and policy laid down by the Union of India and State of Rajasthan has been followed or not and in case it is found that retail outlet is issued in contravention of the policy and norms prescribed the letter of intent issued to install the retail outlet in favour of respondent No. 6 may be canceled and in such eventuality the respondent oil company is at liberty to invite fresh tender and after verifying this fact the respondent oil company is expected to submit its report to this Court within a period of one month from today.

(iii) An unreported judgment of the Koklata High Court made in W.P.No.962 of 2010 [Rananjoy Bhattacharya v. Union of India and Ors], dated 19.03.2013, wherein the Kolkata High Court held as follows:-

"8. Learned counsel for the petitioner contended that the oil company had no power to

relax the eligibility criteria after publication of the advertisement, as in such cases many persons coming within the relaxed criteria would have been deprived of their right to participate in the selection process. In the event there was post-publication relaxation of eligibility criteria, a person who did not respond to the advertisement as he was not fulfilling the eligibility criteria could approach the Court questioning such relaxation. Supreme Court in the case of Ramana Dayaram Shetty Vs. International Airport Authority of India [(1979)3 SCC 489]. was relied upon by him on this point:" 34. It is, therefore, obvious that both having regard to the constitutional mandate of Article 14 as also the judicially evolved rule of administrative law, respondent 1 was not entitled to act arbitrarily in accepting the tender of respondents 4, but was bound to conform to the standard or norm laid down in paragraph 1 of the notice inviting tenders which required that only a person running a registered IInd Class hotel or restaurant and having at least 5 years' experience as such should be eligible to tender. It was not the contention of the appellant that this standard or norm prescribed by respondent 1 was discriminatory having no just or reasonable relation to the object of inviting tenders, namely, to award the contract to a sufficiently experienced person who would be able to run efficiently a IInd Class restaurant at the airport. Admittedly the standard or norm was reasonable and non-discriminatory and once such a standard or norm for running a IInd Class restaurant should be awarded was laid down, respondent 1 was not entitled to depart from it and to award the contract to respondents 4 who did not satisfy the condition of eligibility prescribed by the standard or norm. if there was no acceptable tender from a person who satisfied the condition of eligibility, respondent 1 could have rejected the tenders and invited fresh tenders on the basis of a less stringent standard or norms, but it could not depart from the standard or norm prescribed by it and arbitrarily accept the tender of respondent 4. When respondent 1 entertained the tender of respondents 4 even though they did not have 5 years' experience of running a IInd Class restaurant or hotel, it denied equality of opportunity to others similarly situate in the matter of tendering for the contract. There

might have been many other persons, in fact the appellant himself claimed to be one such person, who did not have 5 years' experience of running a IInd Class restaurant, but who were otherwise competent to run such a restaurant and they might also have competed with respondents 4 for obtaining the contract, but they were precluded from doing so by the condition of eligibility requiring five years' experience. The action of respondent 1 in accepting the tender of respondents 4, even though they did not satisfy the prescribed condition of eligibility, was clearly discriminatory, since it excluded other persons similarly situate from tendering for the contract and it was also arbitrary and without reason. The acceptance of the tender of respondents 4 was, in the circumstances, invalid as being violative of the equality clause of the Constitution as also of the rule of administrative law inhibiting arbitrary action."

9. A Division Bench judgment of the Orissa High Court in the case of Dilip Kumar Prusti Vs. Collector & District Magistrate, Sambalpur reported in AIR 199.Orissa 30 was also cited on behalf of the petitioner, in which it has been observed: "Sri Y. Mohanty, learned counsel for the petitioner assailing the grant of 'No Objection Certificate' has submitted that he has no grievance with regard to resitement but he is aggrieved with regard to the mode and manner of resitement. He is aggrieved because of carrying out of resitement in contravention of the procedure. He fairly concedes that once the Indian Oil Corporation has agreed on principle for resitement, he cannot challenge and to that extent the petitioner has no locus standi. But, it is his submission that his Company has not conceded to the place of resitement and therefore, he cannot be denied the right to challenge the same as he is substantially affected and becomes a person aggrieved. We find that the decision of the Oil Companies is that they had agreed on principle for the resitement of O. P. No.4 outlet but in actuality no place was mentioned. In absence of fixation of a specific place by way of resitement, it cannot be presumed that an unanimous decision by all the Oil Companies agreed to resitement subject to fixation of the place in accordance with the norms governing the field. If the installation or fixation is

contrary to the norms and by such contravention if the petitioner is affected, indubitably, he becomes a person aggrieved and thereby has the locus standi to challenge such grant of 'No Objection Certificate', as such a grant alone can give rise to installation."

15. In this matter, I have come to a finding that the petitioner is entitled to approach this Court with his complaint that there was post-advertisement relaxation of norms, and he would not be nonsuited on the ground of having no locus standi to agitate this cause. But as regards his actual complaint on merit, for the reasons disclosed in the earlier part of this judgment, it is not possible for me to actually come to a finding as to whether there has been any deviation from the disclosed norms in this case. Another authority, reported in [(2007)2 SCC 536], was cited, but I do not consider it necessary to apply the ratio of this authority for adjudication of the present proceeding.

16. I accordingly dispose of this writ petition directing the Chief Engineer, Public Works Department, Government of West Bengal to measure the distance of the retail outlet of the respondent No.8 from the nearest intersection point crossing through the State Highway and if it is found that the said intersection point is within the distance norm prescribed in IRC 12/2009, then appointment of the petitioner shall be terminated and there shall be fresh advertisement inviting applications for a retail outlet at that point. Otherwise, the appointment of the respondent No.8 shall stand validated.

(iv) An unreported judgment of Punjab & Haryana High Court dated 13.07.2015 made in CRM-A-MA of 2013 [Shiv Narain Dixt. v. Balwant Singh] wherein Punjab & Haryana High Court held as follows:-

" The 'person aggrieved' means a person who is wrongfully deprived of his entitlement which he is legally entitled to receive and it does not include any kind of disappointment or personal inconvenience. 'Person aggrieved' means a person who is injured or one who is adversely affected in a legal sense.

Madhya Pradesh High Court dated 24.07.2015 made in Writ Appeal No.568 of 2014 [Shailendra vs Smt.Saroj Bhatia] wherein Madhya Pradesh High Court held as follows:-

" 12. Keeping in view the aforesaid judgment delivered by the Allahabad High Court in the case of Mahtab Ahmad (supra), this Court is of the considered opinion that the guidelines framed by the India Road Congress are not at all statutory guidelines and which can be enforced by this Court under Article 226 of the Constitution of India. Resultantly, the impugned order based upon the guidelines framed by the Indian Road Congress is accordingly quashed. In the present case, no other reason has been assigned by the respondent No.3 for denying the NOC to the petitioner and therefore, as this Court has quashed the impugned order, the petitioner and the respondent No.1 shall be free to establish a retail outlet as they have already obtained NOCs from various other authorities in accordance with law.

10. In light of the aforesaid, even though the letter enclosed along with the return has got no statutory value, a Retail Outlet can be established within the distance of 1000 meter of the existing fuel station. So far as the question of establishment of a fuel station within 1000 meter from toll-plaza is concerned, the toll plaza is not in existence at all. As the guidelines framed by the Indian Road Congress are not mandatory as held by this Court and as the letter dated 25.9.2003 is not statutory notification, denial of establishment of the Retail Outlet to the petitioner and denial of No Objection Certificate to Indian Oil Corporation Ltd. is amounting to violation of Fundamental Rights guaranteed to the petitioner under Article 19 (1)(g) of the Constitution of India. The record of the case further establishes that some one aggrieved in the matter on account of allotment of a Retail Outlet to the petitioner has started levelling all kind of frivolous allegations against him. It appears that the authorities of the National Highway Authority of India have given undue consideration to the so called complaint/objection raised in the matter. The authorities involved in the matter to grant No Objection Certificate under the Petroleum Act and the Rules framed thereunder have already granted necessary No Objection Certificates and therefore, this Court is of the considered

opinion that the impugned action of the respondent-National Highway Authority of India is bad in law and Page no. 12 the order dated 7.5.13 deserves to be set aside and is accordingly set aside.

(vi) An unreported judgment of this court dated 29.11.2016 made in W.P.No.15348 of 2016 [S.N.K.Agencies vs Union Of India] wherein this Court held as follows:-

"5. The only point which has been raised by the petitioner is that 30 mtrs frontage is required to set up a petroleum outlet. As the petroleum outlet of the ninth respondent is not situated in the Highways, the above requirement is not applicable. The second objection raised by the petitioner, who is a competitor, as per the three judgments relied on by the ninth respondent, a competitor cannot question the No Objection Certificate issued by the authorities. In the circumstances, the Writ Petition is liable to be dismissed."

10. Countering the submissions made by the learned counsel appearing for the petitioner, Mr..A.Gandhiraj, learned Government Pleader (Puducherry) appearing for the respondents 1 and 2 submitted that the 1st respondent after taking into consideration all the reports submitted by the authorities has rightly issued the No Objection Certificate under Rule 144(1) of the Petroleum Rules. Further, the learned Government Pleader submitted that since the 1st respondent is the authority to issue No Objection Certificate, he has considered the reports submitted by the various authorities and also overruled the report given by the 2nd respondent. Further, the learned Government Pleader submitted that the petitioner has no locus standi to challenge the No Objection Certificate issued by the 1st respondent for the reason that he is not the aggrieved party to question the same. The learned Government Pleader also submitted that the norms issued by the Ministry of Road Transport and Highways is only the guidelines of administrative nature and there is no statutory force in the said guidelines.

11. Mr.M.Vijayan, learned counsel appearing for the 3rd respondent submitted that the petitioner does not have locus to file the writ petitions challenging the No Objection Certificate issued by the 1st respondent and also submitted that the norms issued by the Ministry of Road Transport and Highways are only the guidelines of administrative nature and there is no statutory force in the said guidelines. Further, the learned counsel submitted that since the Petrol Station is located in a rural area, the distance prescribed in the

guidelines have no application and the guidelines is applicable only to the Petrol Stations located in a National Highway. In support of his contention, the learned counsel relied upon the following judgments:-

(i) 2005(1) CTC 394 [Nataraja Agencies, Rep. By its Proprietor, G.Natarja, Delaer Indian Oil Corporation Ltd., Pondicherry v. The Secretary Ministry of Petroleum and Natural Gas, Government of India, New Delhi and others] wherein, this Court held as follows:-

"3. The Supreme Court in Mithilesh Garg v. Union of India [AIR 1992 SC 443] , held that a rival businessman cannot file a writ petition, challenging the setting-up of a similar unit by another businessman, on the ground that establishing a rival business close to his business-place would adversely affect his business interest, even if the setting-up of the new unit is in violation of law. In Mithilesh case, cited supra, the Supreme Court followed its own decision in Rice and Flour Mills v. N.T. Gowda, [AIR 1971 SC 246] , wherein it was held that a rice mill-owner has no locus standi to challenge under Article 226, the setting up of a new rice-mill by another even if such setting up be in contravention of Section 8(3)(c) of the Rice Milling Industry (Regulation) Act, 1958 because no right vested in such an applicant is infringed.

4. In the present case, the only grievance of the appellant is that if the fourth respondent is permitted to set up her retail outlet within one kilometer radius of the appellant's outlet, his business interest would be adversely affected. In our opinion, the appellant has no locus standi at all to complain against the setting up of a rival retail outlet by the fourth respondent, near his place of business, on the ground that would affect his business interest, inasmuch as the damage, if any, suffered thereby was damnum sine injuri-adamage without infringement of legal right. In our opinion, this will only result in promoting competition among the traders, which is good for the consumers. Merely because some of the customers may switch over to the rival retail outlet does not mean that public interest will suffer rather, in our opinion, it will benefit the consumers because, when there is competition, the businessmen are compelled to provide better quality products at reasonable rates.

(ii) 2006 Writ LR 917 [Kanyakumari District Petroleum Dealers Association, Rep by its Secretary v. The District Revenue Officer and Additional District Magistrate, The Joint Chief Controller of Explosives and the Territory Manager, Reliance Industries Limited] wherein this court held as follows:

8. The point that arises for consideration is whether on the ground of breach of guidelines of the Petroleum Rules, can the Petitioners, who are competitors in the field, can challenge the "No Objection Certificate" granted to the Third Respondent invoking Article 226 of the Constitution of India?

12. It is to be noted that no one from surroundings have raised the objection. Only the Petitioner Association, whose Members are dealers in Petroleum Products and also running Petrol bunks has raised the objection on the ground of (i) distance and (ii) that the proposed site is in the Agricultural Zone. It is pertinent to note that the objection is raised by the rival businessmen. Following a decision of the Supreme Court reported in Mithilesh Garg v. Union of India MANU/SC/0075/1992 : A.I.R. 1992 S.C. 443, a Division Bench of this Court held that rival businessmen cannot file Writ Petition on the ground that establishing rival business venture in his place violates the provisions of law since there is vested right in the Petitioner. In the decision reported in Nataraja Agencies v. The Secretary MANU/TN/1588/2004 : 2005 (1) C.T.C. 394 : 2005 Writ L.R. 15 : 2005 1 L.W. 100(2) S.N.), the Division Bench has held:

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... In the present case, the only grievance of the Appellant is that if the fourth Respondent is permitting to set up her retail outlet within one kilometer radius of the Appellant's outlet, his business interest would be adversely affected. In our opinion, the Appellant has no locus standi at all to complain against the setting up of a rival retail outlet by the fourth Respondent, near his place of business, on the ground that would

damage, if any, suffered thereby was *damnum sine injuria* - damage without infringement of legal right. In our opinion, this will only result in promoting competition among the traders, which is good for the consumers. Merely because some of the customers may switch over to the rival retail outlet does not mean that public interest will suffer rather, in our opinion, it will benefit the consumers because, when there is competition, the businessmen are compelled to provide better quality products at reasonable rates.

14. In the light of the fact that the objection is raised by the Dealers in Petroleum Products, the contention of the Petitioner is to be considered. The first objection raised by the Petitioner is that the distance between the intersection road and the proposed land upto National Highways is only 73.0 metres, which is less than 100 metres as contemplated under the guidelines. According to the Petitioners, as per the norms, it is imperative that the distance between the Intersection road (i.e. approach road to the Ambedkar Colony and St. Xavier Engineering College and proposed site) shall be minimum of 100 metres and in the present case, the distance is only 73 metres and hence, there is clear prohibition for installation of Petrol / Diesel retail outlet in the proposed site.

15. Ministry of Road Transport and Highways has issued certain guidelines on "System Improvement of Installation of Petrol / Diesel / Gas Retail outlets and Service Stations as well as access to private Properties along National Highways through its Circular No. RW/NH-33023/19/99-DO-III dated 31st August 2000. The Ministry has evolved the norms for having access to the fuel stations along the National Highways. Clause 6 is as follows:

The cases for granting permission for access to new fuel stations, service stations and rest areas along National Highways shall, henceforth be dealt with in accordance with the Norms prescribed in Appendix 1 to this Circular. The main features of the Norms are listed below.

For the sitting of fuel stations along National Highways, its minimum distance from an intersection would be:

Non-Urban (Rural) Stretches:

1. Plain and rolling Terrain

(i) Intersection with Nhs/S Hs/MD Rs 1000 m

(ii) Intersection with Rural Roads with carriageway width of 3.5m or more - 300 m

(iii) Intersection with Rural Road and all other earth tracks with carriageway width less than 3.5 m -100 m

2. Hilly / Mountainous Terrain

(i) Intersection with Nhs/S Hs/MD Rs -300 m

(ii) Intersection with all other roads and tracks- 100 m

18. For the sake of arguments, even if we assume that there is shortage of required distance, the High Court cannot sit in Appeal over the order of the First Respondent granting No Objection Certificate since on inspection, the First Respondent has found that there is sufficient space for incoming and outgoing vehicles. Further, the norms issued by the Ministry of Road Transport and Highways regarding the distance is only for the purpose of ensuring access to the fuel stations and the need for road safety. The norms issued by the Ministry of Road Transport and Highways is only the guidelines of administrative nature and no statutory force. In any event, the Petitioner Association, who are the competitors in the field cannot raise objection on the ground of non-compliance of the norms and distance rule.

21. On behalf of the Third Respondent, Learned Counsel brought to the notice of the Court the Order of the Division Bench of this Court in W.P. No. 6535 of 1992 dated 14.11.1995. In the said Order, the Court has recalled various Government Orders whereby the user of the wet land for non-agricultural purpose was purported to be prohibited. In the light of the decision of the Division bench in W.P. No. 6535 of 1992, the contention of the Petitioner that the proposed site is within the Agricultural Zone and impermissible for setting up a retail outlet is without any basis. The Petitioner Association represented the dealers

of Petroleum products in the District of Nagercoil. Admittedly, the Third Respondent is the competitor for the members of the Petitioner Association. The "NOC" issued by the First Respondent cannot be interfered with at the behest of the competitors

12. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the 4th respondent in W.P.Nos.14430 & 15633/2017 and for the 2nd respondent in W.P.No.41827/2016 also submitted that the petitioner does not have any locus to challenge the No Objection Certificate issued by the 1st respondent in favour of the respondents 3 and 4 for the reason that he is a competitor in the petroleum business. Further, the learned Senior Counsel submitted that the guidelines relied upon by the learned Senior Counsel appearing for the petitioner has no application for the reason that the petrol bunks are situated in the rural area. The learned Senior Counsel further submitted that the contention of the petitioner that the proposed petrol station located near the pond cannot be accepted for the reason that the petitioner's petrol station is also located very near the proposed petrol station. If the contention of the petitioner is accepted, in that case, the petitioner's petrol station should also be closed on that ground. In support of his contentions, the learned Senior Counsel relied upon an unreported judgment dated 20.04.2016 made in W.P.Nos.3782 and 3783 of 2012 a judgment reported in [A.Akamai Mourougayen vs Government Of Puducherry] , wherein this Court held as follows:-

"The petrol bunk is in existence for four years. Before the grant of permission, necessary check was done. However, the claim of the petitioners is that the IRC guidelines have not been followed. In this behalf, it has been averred in the counter-affidavit filed by the Indian Oil Corporation Limited in the earlier W.P.No.18629 of 2011 filed by a third party through the same counsel, as under:-

"8. I submit that the IRC guidelines are only meant for national and other highways and however it is not mandatory to follow as it is only a guideline and it does not bind legally. If it is the petitioner's contention that the site does not have minimum frontage of 30 mts, then the HPC retail outlet diagonally opposite this site also should not have been granted NOC as the frontage is only 80 ft (24 mts). There are many other retail outlets in Pondicherry town as well as other metros/town/cities where the site frontage is less than 30 mts, and they have been issued NOC and are successfully carrying on business. The Petitioner appears to be unaware that as per IRC:12-2009 (which is the current one and not IRC:12-1983), in urban

stretches the site need have only 20 mts frontage and 20 mts depth (Clause 5.2). For this particular retail outlet, the cross sectional frontage is more than 20 mts. and hence meets IRC guidelines, though IRC is not applicable and as such the averments made in Para 4(ii) and para 4(iii), the IRC guidelines will not be applicable. There are atleast three locations in Pondicherry alone, where two retail outlets are located adjacent to each other for which NOC has been granted and the outlets are functioning smoothly which goes to show that IRC norms are not applicable in this case. With respect to Para 4(ii), it is submitted that the distance between the tangent point of the curves of the side road and that of fuel filling station is more than 100 mts. The side road referred to by the petitioner is a private road leading to residential area and is a dead end. Hence, this road is not to be considered. There are many retail outlets abutting side roads for which necessary approvals have been granted by the authorities concerned. Moreover, as stated supra, IRC norms does not apply for this site in view of its urban location. The averments in Para 4 (iii) also does not apply for reasons stated above. Hence, there is no violation of any rules as IRC guidelines does not apply in this case.

2. There is no contra material produced to deny these averments including factual ones. The petitioners have no reply for their inaction against two other retail outlets similarly placed, leading to an adverse inference. We also find that the petitioners have started evincing interest only after the disposal of the earlier writ petition in W.P.No.18629 of 2011, dated 02.12.2011.

3. The present writ petitions do appear to be more in the nature of cases arising out of the some internal rivalry rather than the public interest, as multiple petitions have been filed on the same issue by the same counsel, though it was known earlier what was the stand of the respondents.

4. The writ petitions are dismissed. No costs. Consequently, all connected miscellaneous petitions are closed.

13.1 On a careful consideration of the materials available on record and the submissions made by the learned counsel for the respective parties and also the judgments relied upon by them, it could be seen that the petitioner was allotted dealership to run the Retail Petrol Station under the Kissan Seva Kendra Scheme by the Indian Oil Corporation under the open category from 05.03.2016. After obtaining all the necessary licenses, the petitioner is operating the Petrol Station at Survey Nos.213/13A1, and 213/14 A2, Embalam Village, Nettapakkam Commune, Puducherry. While so, the 3rd respondent has allotted dealership to the 4th respondent to run a Retail Petrol Station at S.No.214/1 in Embalam Village, Nettapakkam Commune, Puducherry.

13.2 According to the petitioner, the distance between his petrol station and the proposed station is less than 180 meters, therefore, the No Objection Certificate issued by the 1st respondent is contrary to the Indian Roads Congress Guidelines for Access, Location and Layout of Roadside Fuel Stations and Service Stations (IRC:12-2009). As per the said guidelines, clause 4.6 prescribed the minimum distance to be maintained between two fuel stations would be 300 meters in rural areas. The other condition is that one pond viz., Vellakulam is located very near the proposed petrol station, therefore, the 1st respondent should not have granted No Objection Certificate to the respondents 3 and 4.

13.3 The petitioner also contended that the 2nd respondent, Chief Town Planner, Town and Country Planning Department, Puducherry, has given a report to the 1st respondent stating that the distance between the two petrol stations is less than 180 meters and therefore, according to the petitioner, the 1st respondent should not have overruled the report of the 2nd respondent.

14. In the judgment of the Division Bench of this Court dated 20.04.2016 made in W.P.Nos..3782 and 3783 of 2012, the counter affidavit filed by the Indian Oil Corporation Limited in the earlier Writ Petition in W.P.No.18629 of 2011 has been extracted, wherein the Corporation has taken a stand that IRC guidelines are only meant for National and other Highways and it is not mandatory to follow as it is only a guideline and it does not bind legally. Further in the counter affidavit, the Indian Oil Corporation Limited has stated that there are atleast three locations in Pondicherry alone, where two retail outlets are located adjacent to each other for which NOC has been granted and the outlets are functioning smoothly which goes to show that IRC norms are not applicable in this case. When Indian Oil Corporation Limited has taken a specific stand in W.P.No. 18629 of 2011 stating that the IRC guidelines are only meant for National and other Highways and it is not mandatory to follow as it is only a

guideline and it does not bind legally, the said stand taken by the Indian Oil Corporation is applicable to the petitioner, who is also a dealer under the Indian Oil Corporation.

15. The very same view was also taken by this Court in the judgment reported in 2006 WLR 917 (cited supra) wherein this Court observed that the norms issued by the Ministry of Road Transport and Highways is only the guidelines of administrative nature and there is no statutory force in the said guidelines. The ratio laid down in these two judgments squarely applies to the facts and circumstances of the present case.

16. So far as the location of the petrol station is concerned, the petitioner contended that the proposed petrol station is located near a pond, viz., Vellakulam. According to the petitioner, his petrol station is located within 180 meters from the petrol station. When he is contending that the respondents 3 and 4 should not be allowed to start Retail Petroleum Outlet at Survey No.214/1 in Embalam Village, Nettapakkam Commune, Pudhucherry and if this contention is put against the respondents 3 and 4, the same can also be put against the petitioner. However, the petitioner had obtained all licenses from the authorities and is contending that he is running the petrol station smoothly. Therefore, when the petitioner was granted a No Objection Certificate and other licenses to run the retail outlet, the same principle can also be applied to the respondents 3 and 4 for running the retail outlet. That apart, the 1st respondent taking into consideration the reports obtained from various authorities, issued the No Objection Certificate as per Rule 144(1) of the Petroleum Rules. Apart from this, the petitioner is the competitor and a rival business man and he is raising all the issues to prevent the respondents 3 and 4 from establishing the petrol station. However, the intention of the petitioner is only to prevent the respondents 3 and 4 from establishing the petrol station which would affect his business. The petitioner, who is the competitor in the field, can not challenge the No Objection Certificate and the norms of the business rules. The norms issued by the Ministry of Road Transport and Highways regarding the distance is only for the purpose of ensuring access to the fuel stations and the need for road safety.

17. In the judgment reported in 2005(1) CTC 394 (cited supra), the Division Bench has categorically held that a rival businessman cannot file a writ petition, challenging the setting-up of a similar unit by another businessman, on the ground that establishing a rival business close to his business-place would adversely affect his business interest, even if the setting-up of the new unit is in violation of law. Merely because some of the customers may switch over to the

rival retail outlet does not mean that public interest will suffer rather, it will benefit the consumers because, when there is competition, the businessmen are compelled to provide better quality products at reasonable rates.

18. Following the ratio laid down by the Division Bench of this court in 2005(1) CTC 394 (cited supra) I hold that the petitioner does not have locus to challenge the No Objection Certificate issued by the 1st respondent and also that he cannot prevent the respondents 3 and 4 from establishing the proposed retail outlet at Survey No.214/1 in Embalam Village, Puducherry.

19. So far as the report of the 2nd respondent is concerned, he has stated that the proposed petrol station situate within 180 meters from the existing petrol station and therefore, he is not recommending for issuance of No Objection Certificate. As already stated, IRC guidelines are only meant for National and other Highways and it is not mandatory to follow as it is only a guideline and it does not bind legally. Therefore, I do not find any error overruling the report of the 2nd respondent, who has erroneously stated that as per norms, the distance between two petrol stations should be 300 meters. However, I am of the view that the 1st respondent-District Collector should have given a finding with regard to the report of the 2nd respondent while issuing No Objection Certificate dated 25.04.2017. The 1st respondent ought to have stated that the report of the 2nd respondent is erroneous for the reason that the IRC guidelines does not bind legally and could have overruled the report of the 2nd respondent. Since the report of the 2nd respondent has no legal implication it does not affect the No Objection Certificate issued by the 1st respondent in any manner whatsoever.

20. Though there is no dispute with regard to the ratio laid down in the judgments relied upon by the learned Senior Counsel appearing for the petitioner, since the facts and circumstances of the present case are different, they are not applicable.

21. In these circumstances, I do not find any error or irregularity in the No Objection Certificate issued by the 1st respondent. The writ petitions are devoid of merits and are liable to be dismissed. Accordingly, all the writ petitions are dismissed. No costs. Consequently, connected Miscellaneous petitions are also closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

Rj

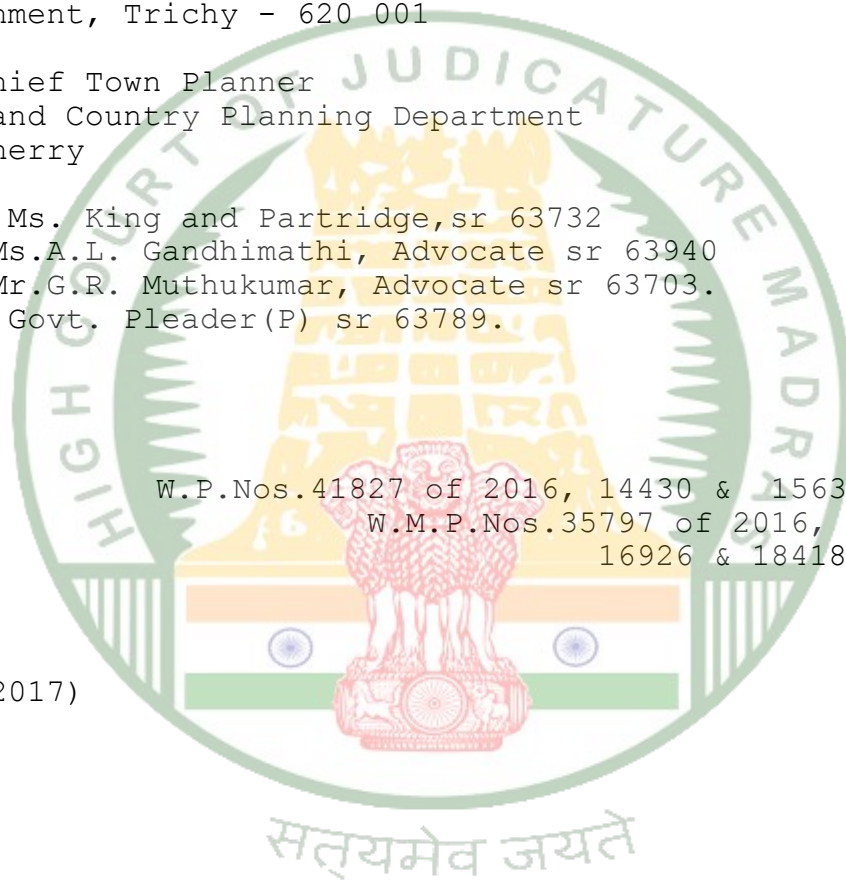
To

- 1 The District Collector
Puducherry District
Puducherry .
- 2 The Chief Regional Manager
Hindustan Petroleum Corporation Limited
No.90, Bharathidasan Road
2nd Floor, MDSR Enclave
Contonment, Trichy - 620 001
- 3 The Chief Town Planner
Town and Country Planning Department
Puducherry

+3 Ccs to Ms. King and Partridge, sr 63732
+1 CC to Ms.A.L. Gandhimathi, Advocate sr 63940
+1 Cc to Mr.G.R. Muthukumar, Advocate sr 63703.
+2 Ccs to Govt. Pleader(P) sr 63789.

W.P.Nos.41827 of 2016, 14430 & 15633 of 2017
W.M.P.Nos.35797 of 2016, 15838 &
16926 & 18418 of 2017

KJI (CO)
sp(06/09/2017)



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