

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.3553 of 2016

ORDER :

Heard the counsel for petitioner, the learned Government Pleader for Revenue for respondent nos.1 and 2, the learned Government Pleader for Roads and Buildings for 3rd respondent, and Sri B. Mayur Reddy, counsel for 4th respondent.

2. The petitioner has filed this Writ Petition challenging Memo in C3/4966/2013 dt.17.12.2015 (for short, 'the impugned memo'), passed by the 2nd respondent rejecting request of the petitioner and the 4th respondent for issue of 'No Objection Certificate' for installation of a new MS/HSD Retail Outlet at Survey No.252 of Mooduchintalapally Village, Shamirpet Mandal, Ranga Reddy district.

3. Earlier, when such application was moved before the 2nd respondent, the 3rd respondent had addressed a letter dt.25.11.2013 advising the 2nd respondent not to grant permission since the proposed site is within a distance of 300 meters from the existing B.P.C.L. Petrol Bunk, and that as per I.R.C. 12-2009 guidelines there ought to be minimum distance of 300 meters.

4. The petitioner assailed the same in WP.No.26375 of 2015. At that time, the learned Government Pleader for Revenue, appearing for 2nd respondent assured this Court that the 3rd respondent's letter is

only a recommendation and the 2nd respondent will examine the matter independently and pass orders.

5. Believing the said representation on 07.09.2015, the said Writ Petition was disposed of by this Court stating that the said guidelines referred to supra regarding location of more than one Fuel Station in close proximity also need to be considered, since provisions for access are laid down in the same guidelines and directed the 2nd respondent to consider the matter afresh, even permitting the 2nd respondent to impose appropriate conditions as he deemed fit for grant of certificate.

6. Thereafter, the impugned memo was issued by the 2nd respondent.

7. In the said impugned memo, he refers to the order in WP.No.26375 of 2015 dt.07.09.2015 and quotes verbatim the proceedings dt.25.11.2013 of the 3rd respondent to reject petitioner's application for 'No Objection Certificate'.

8. There is no independent application of mind by the 2nd respondent as was assured to this Court when WP.No.26375 of 2015 was heard. Indeed, it appears that the 2nd respondent has not noticed guidelines 4.6.3 and 4.6.4 in the I.R.C. 12-2009 guidelines which permitted two or more Fuel Stations to be situated in close proximity subject to certain conditions specified therein.

9. It is shocking that the 2nd respondent should issue the impugned memo without application of mind mechanically on the basis of the

advice of 3rd respondent in spite of a specific direction by this Court in its order dt.07.09.2015 in WP.No.26375 of 2015 without considering guidelines 4.6.3 and 4.6.4.

10. The learned Government Pleader for Revenue, appearing for 2nd respondent, sought time to file a counter.

11. It is to be noted that on 05.02.2016 he had taken notice for 2nd respondent and though one year nine months have elapsed since then, no counter is filed.

12. In any event, no counter-affidavit can be filed giving new reasons which are not contained in the impugned memo. This is because the correctness of the impugned memo is to be judged on its contents and any new reasons given in the counter-affidavit cannot be considered as per the decision of the Supreme Court in **Mohinder Singh Gill v. Chief Election Commr¹**.

13. Therefore, the request of the learned Government Pleader for Revenue for further time to file counter-affidavit is rejected.

14. Accordingly, the Writ Petition is allowed. The impugned memo is set aside. The 2nd respondent is directed to apply his mind to guidelines 4.6.3 and 4.6.4 of the I.R.C. 12-2009 guidelines, and communicate his decision thereon to petitioner within a period of three (03) weeks from the date of receipt of a copy of the order. The 2nd respondent shall also pay costs of Rs.10,000/- to the petitioner.

¹ 1978 (1) SCC 405

15. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 08-11-2017

Ndr/*

