

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 21.03.2018	Delivered on 28.06.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.Nos.1209 to 1211 of 2017

W.A.No.1209 of 2017 :-

1 S.Shanmugharaja ... appellant

versus

1 The District Collector
Puducherry District Puducherry

2 D. Jasmine Suguna

3 THE CHIEF REGIONAL MANAGER
HINDUSTAN PETROLEUM CORPORATION LTD
NO.90 BHARATHIDASAN ROAD
2ND FLOOR MDSR ENCLAVE
CANTONMENT TRICHY-620 001.

4 THE CHIEF TOWN PLANNER
TOWN & COUNTRY PLANNING DEPT PUDUCHERRY

5 THE SECRETARY
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
NEW DELHI

6 THE JOINT SECRETARY (MARKETING)
THE MINISTRY OF PETROLEUM AND NATURAL GAS
NEW DELHI

7 THE CHIEF SECRETARY
SECRETARIAT GOVERNMENT OF PUDUCHERRY

8 THE DIRECTOR GENERAL
INDIAN ROAD CONGRESS NEW DELHI

9 PUDUCHERRY PLANNING AUTHORITY
JAWAHAR NAGAR BOOMIANPET PUDUCHERRY
(R5 TO R9 IMPEADED AS PARTY RESPONDENTS VIDE ORDER OF THIS
COURT DATED 06/03/2018 BY KKSJ & PVJ)

Appeal filed against the order passed by this Court dated
4.9.2017 passed in W.P.No.41827 of 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.

W.A.No.1210 of 2017 :-

1 S.Shanmugharaja ... appellant
versus

1 The District Collector
Puducherry District Puducherry

2 D. Jasmine Suguna

3 THE CHIEF REGIONAL MANAGER
HINDUSTAN PETROLEUM CORPORATION LTD
NO.90 BHARATHIDASAN ROAD
2ND FLOOR MDSR ENCLAVE
CANTONMENT TRICHY-620 001.

4 THE SECRETARY
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
NEW DELHI

5 THE JOINT SECRETARY (MARKETING)
THE MINISTRY OF PETROLEUM AND NATURAL GAS
NEW DELHI

6 THE CHIEF SECRETARY
SECRETARIAT GOVERNMENT OF PUDUCHERRY

7 THE DIRECTOR GENERAL
INDIAN ROAD CONGRESS NEW DELHI

8 PUDUCHERRY PLANNING AUTHORITY
JAWAHAR NAGAR BOOMIANPET PUDUCHERRY

(R4 TO R8 IMPEADED AS PARTY RESPONDENTS VIDE ORDER OF THIS COURT DATED 06/03/2018 BY KKSJ & PVJ)

Appeal filed against the order passed by this Court dated 4.9.2017 passed in W.P.No.14430 of 2017.

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

W.A.No.1211 of 2017 :-

1 S.Shanmugharaja ... appellant
versus

1 The District Collector
Puducherry District Puducherry

2 D. Jasmine Suguna

3 THE CHIEF REGIONAL MANAGER
HINDUSTAN PETROLEUM CORPORATION LTD
NO.90 BHARATHIDASAN ROAD
2ND FLOOR MDSR ENCLAVE
CANTONMENT TRICHY-620 001.

4 THE CHIEF TOWN PLANNER
TOWN & COUNTRY PLANNING DEPT PUDUCHERRY

5 THE SECRETARY
MINISTRY OF ROAD TRANSPORT AND HIGHWAYS
NEW DELHI

6 THE JOINT SECRETARY (MARKETING)
THE MINISTRY OF PETROLEUM AND NATURAL GAS
NEW DELHI

7 THE CHIEF SECRETARY
SECRETARIAT GOVERNMENT OF PUDUCHERRY

8 THE DIRECTOR GENERAL
INDIAN ROAD CONGRESS NEW DELHI

9 PUDUCHERRY PLANNING AUTHORITY
JAWAHAR NAGAR BOOMIANPET PUDUCHERRY

(R5 TO R9 IMPEADED AS PARTY RESPONDENTS VIDE ORDER OF THIS
COURT DATED 06/03/2018 BY KKSJ & PVJ)

Appeal filed against the order passed by this Court dated
4.9.2017 passed in W.P.No.15633 of 2017.

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 appellant : Mr.M.Gopinath

For Respondents : Mrs.V.Usha, A.G.P. (Pondicherry)
for respondents 1,4,7 and 9.
Mr.A.R.L.Sundaresan, Senior Counsel,
for Ms.A.L.Gandhimathi, for R-2
Mr.Mohan,
for M/s.King & Patridge, for R-3

COMMON JUDGMENT

K.K.SASIDHARAN, J.

INTRODUCTORY :-

The appellant, who is an existing dealer of Indian Oil
Corporation Ltd., for its petroleum products in Embalam Village,
Puducherry, challenged the no objection certificate given by the
District Magistrate, Pondicherry, to M/s.Hindustan Petroleum
Corporation Ltd., to open an outlet in Embalam Village, on the
ground that the permission was granted in violation of the norms
prescribed by the national highways for opening the outlet at
the national and state Highways. The Writ Petitions were
dismissed by the learned Single Judge, accepting the contention
of the Government and the Corporation that norms are not
statutory in nature and that the proposed location is neither
near to a National Highway nor a State Highway.

Brief facts:-

2. The appellant is a dealer of Indian Oil Corporation for its petroleum products, at No.214/1, Embalam Village, Puducherry. The appellant found that there was a proposal to open another retail outlet in his village by M/s.Hindustan Petroleum Corporation Ltd. The appellant opposed the grant of no objection certificate on the ground that proposed location is less than 180 meters from his outlet. The appellant contended that the new outlet would take his customers, and his business would be affected. It was his contention that the proposed location would not satisfy the norms prescribed by the Ministry of Highways. The District Collector notwithstanding the objection raised by the appellant, granted no objection certificate to M/s.Hindustan Petroleum Corporation Ltd. The appellant filed three Writ Petitions, one to challenge the no objection certificate and the other two to restrain the fourth respondent from commencing the petroleum business. The learned Single Judge by way of a detailed order, negatived the contentions and dismissed the Writ Petitions. Feeling aggrieved, he appellant has come up with the appeals.

Submission of parties :-

3. The learned counsel for the appellant contended that the no objection certificate was given by the District Magistrate in total contravention of the guidelines issued by the Indian Road Congress. According to the learned counsel, even the provisions of the Pondicherry Buildings Regulations were flouted by the District Magistrate while issuing the no objection certificate for opening the outlet. It was further contended that the Town and Country Planning Department was not in favour of giving no objection certificate. Those objections were overruled by the District Magistrate without any factual or legal basis. The learned counsel contended that the distance criteria would be applicable even to an outlet established on the side of a village road and as such, the learned Single Judge was not correct in dismissing the Writ Petitions.

4. The learned Senior counsel for the fourth respondent contended that the guidelines prescribed by the Indian Road Congress and the Ministry of Highways Government of India are not statutory in character and as such, they cannot be enforced in a Court of law. The learned Senior counsel contended that the appellant is a dealer of Indian Oil Corporation. The very same Indian Oil Corporation in another Writ Petition contended that the norms prescribed by the Indian Road Congress are all recommendatory in nature and the same is not binding on the authorities. Such being the position, the appellant was not correct in challenging the no objection certificate.

5. The learned counsel for the third respondent contended that the appellant is a rival dealer and as such, the Writ Petition at his instance is not maintainable.

6. We have also heard the learned Additional Government Pleader on behalf of the Union Territory of Puducherry.

Discussion:-

7. The appellant has challenged the no objection certificate primarily on the ground that it was in violation of clause 4.6 of Indian Road Congress Guideline for access, location and layout of roadside fuel stations and service stations. The other contention is on the basis of the note appended to Annexure III of Pondicherry Building Bye-laws and Zoning Regulations, 2012, dealing with petrol pumps, which says that norms other than prescribed by the Government of Puducherry shall be adopted as prescribed by Indian Road Congress and the Ministry of Road Transport and Highways, Government of India.

8. There is nothing on record to show that the Indian Road Congress norms are statutory in nature. The Indian Road Congress has evolved certain guidelines for the purpose of road safety and to avoid accidents on highways. Those norms have no statutory flavour for enforcement. Even otherwise, those norms would not apply to a retail petrol outlet located on the side of a village road. The District Magistrate rightly rejected the objection on the ground that it is only a village road and as such, norms applicable to National Highway/State Highway are not applicable.

9. The appellant has not taken up the issue with larger public interest. It was only to avoid a competition and to further his business interest, he has filed the Writ Petitions. In fact, the appellant disclosed this reason in his affidavit filed in support of the Writ Petitions.

10. The note appended to the Pondicherry Building Regulation proceeds as if the applicable norms of Indian Road Congress or Government of India would also be applicable in the Union Territory of Puducherry. However, there is nothing before us to show that there is any such norms to be complied with before establishing an outlet in a village and on the side of a village road without touching the national or state highway. We are therefore in agreement with the views expressed by the learned Single Judge in his common order dated 4 September 2017. There is absolutely no merit in any of the grounds taken by the appellant.

11. Before parting with the matter, we are constrained to observe that the District Magistrate proceeded to issue the no objection certificate notwithstanding the pendency of the Writ Petition, solely on account of the letter dated 24 April 2017 sent by the Government Advocate, who represented the Union Territory of Puducherry before the High Court, intimating the District Collector that the learned Judge has orally observed that there is no prohibition to proceed further. The Government Pleaders are not expected to advise the Government to act on the basis of oral observation made by the Court during the course of hearing. The District Collector in his file note referred to the oral observation stated to have been made by the Court for issuing the no objection certificate. We make it clear that the law officers have no authority to advise the Government officers to act in a particular manner, taking inspiration from the observation made by the Court, unless the Court records such observation in writing. The Government and its officers are not bound to act on the basis of such oral observations unless there is a specific direction from the Court to the Government Pleader to take note of the observation and intimate the same to the concerned.

12. The writ appeals are dismissed with the above observation. No costs.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector
Puducherry District Puducherry
- 2 The Chief Regional Manager
Hindustan Petroleum Corporation Ltd.
No.90 Bharathidasan Road,
2nd Floor MDSR Enclave,
Cantonment Trichy-620 001.
- 3 The Chief Town Planner
Town & Country Planning Department, Puducherry
- 4 The Secretary
Ministry of Road Transport and Highways, New Delhi.

5 The Joint Secretary (Marketing)
The Ministry Of Petroleum and Natural Gas
New Delhi.

6 The Chief Secretary
Secretariat Government Of Puducherry

7 The Director General
Indian Road Congress New Delhi

8 Puducherry Planning Authority
Jawahar Nagar Boomianpet Puducherry

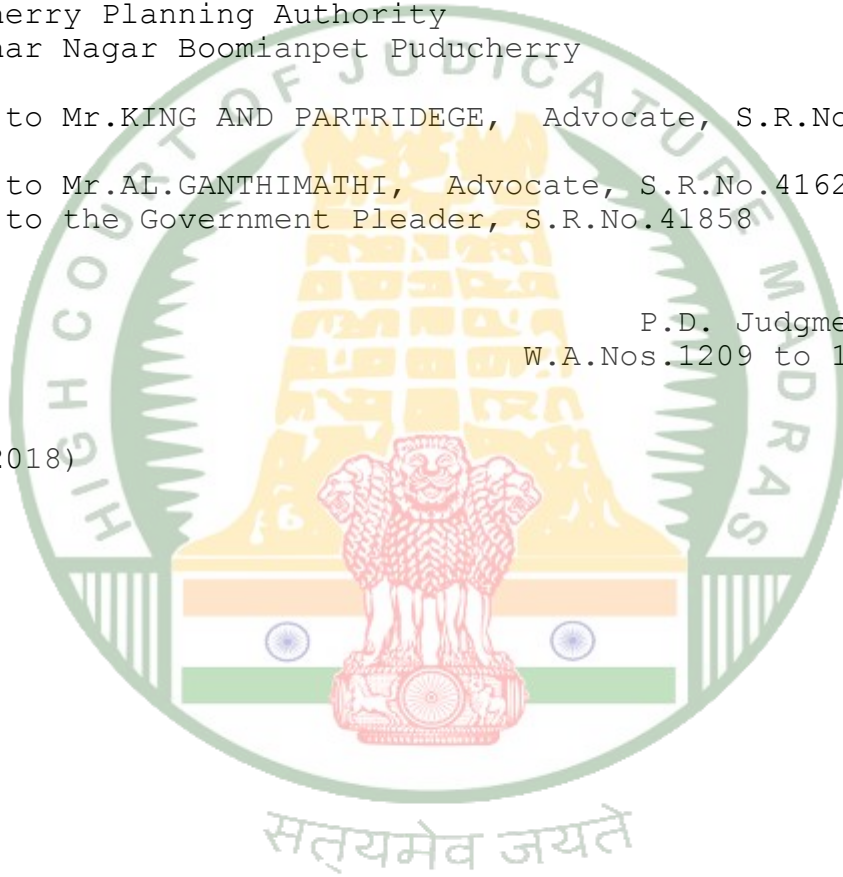
+3cc to Mr.KING AND PARTRIDGE, Advocate, S.R.No.41721 TO
41723

+1cc to Mr.AL.GANTHIMATHI, Advocate, S.R.No.41626

+1cc to the Government Pleader, S.R.No.41858

P.D. Judgment in
W.A.Nos.1209 to 1211 of 2017

TR(10/07/2018)



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