

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2018

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THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.16476 of 2018
and W.M.P.Nos.19690 and 19691 of 2018

1. C.Chandrasekar
2. R.Hemavathi .. Petitioners

Vs.

1. The District Revenue Officer,
District Collectorate,
Krishnagiri, Krishnagiri District.
2. The Divisional Engineer (Highways),
Krishnagiri, Krishnagiri District.
3. The Revenue Divisional Officer,
Revenue Divisional Office,
Hosur, Krishnagiri District.
4. The Tahsildar,
Taluk Office,
Shoolagiri Taluk,
Krishnagiri District.
5. M/s.Essar Oil Limited,
No.3, 5th Floor, May Flower Valencia,
336/2, Avinashi Road,
Nava India,
Coimbatore - 641 004. .. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned communication dated 04.06.2018 bearing Na.Ka.No.816/2018/EVA-1 issued by the second respondent, quash the same and consequentially direct the first respondent to grant No Objection Certificate based on the application dated 09.04.2018 to set up new petroleum outlets in the site comprised in Survey No.125/2A situated at Athimugam, Shoolagiri Village, Krishnagiri District, within the time to be stipulated by this Court.

For Petitioner : Mr.R.Bharathkumar

For Respondents : Mr.N.Inbanathan,
Additional Government Pleader for RR1-4

No appearance for R5

O R D E R

The prayer of the petitioner is to quash the communication of the second respondent dated 04.06.2018 and to direct the first respondent to grant No Objection Certificate based on the application dated 09.04.2018 to set up new petroleum outlets.

2. The fifth respondent had given franchisee to the petitioners to operate retail outlet for selling petroleum products in the petition mentioned property and submitted an application on 09.04.2018 before the first respondent seeking No Objection Certificate (in short "NOC") for the same. The first respondent on 02.05.2018 called for reports from the concerned authorities. Accordingly, the Deputy Director of Public Health and Preventive Department issued the NOC on 16.05.2018 with certain conditions. On 19.05.2018, the District Officer, Fire and Rescue Department as well as the Inspector of Police, Bagalur Police Station, have given NOCs. The Revenue Divisional Officer, Hosur, vide communication dated 01.06.2018, enclosing the report of the Tahsildar, Sulagiri, recommended for granting NOC. However, the second respondent sent a report to the first respondent on 04.06.2018 refusing to grant NOC on the ground that the site of the petitioners is situated within 100 meters of the junction of Shoolagiri-Berigai and Athimugam-Berandapalli Road. The second respondent referred to the Indian Roads Congress (IRC) guidelines justifying his action. Seeking to quash the said order and for consequential direction, the petition is filed.

3. Seeking to sustain their communication, the second respondent filed a counter-affidavit.

4. Heard Mr.R.Bharathkumar, learned counsel for the petitioner and Mr.N.Inbanathan, learned Additional Government Pleader appearing on behalf of the respondents 1 to 4.

5. Admittedly, the petitioners received NOCs from the Health, Fire and Rescue Services, police and revenue departments. The second respondent - the Highways Department, has refused to give NOC on the ground stated supra.

6. This Court in Kanyakumari District Petroleum Dealers Association V. The District Revenue Officer and Additional

District Magistrate and others, reported in 2006 Writ L.R. 917, held as follows :

"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

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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".

7. In the instant case, the only ground on which the NOC claimed by the petitioners was rejected by the second respondent is that the proposed site is within 100 metres from the junction. As the petroleum outlet of the petitioners is not situated on the Highways, the ratio enunciated in the aforesaid order that 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 squarely applies to this case also. Hence, there is some force in the contentions of the learned counsel for the petitioners.

8. In the result, the impugned letter sent by the second respondent dated 04.06.2018 is set aside and the first respondent is directed to issue NOC to the petitioners within a period of two weeks from the date of receipt of a copy of this order.

9. This writ petition is ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The District Revenue Officer,
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Krishnagiri, Krishnagiri District.
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Taluk Office,
Shoolagiri Taluk,
Krishnagiri District.

+1cc to Mr.R.Bharathkumar, Advocate SR.No.88859

+2cc to Government Pleader SR.No.88924,88919

W.P.No.16476 of 2018

GMV (21/12/2018)



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