

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2019

CORAM

THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.13676 of 2018

and

W.M.P.Nos.16127 & 16349 of 2018

G.Sasikala

... Petitioner

Vs

- 1.The Additional District Administrative Arbitrator cum the District Revenue Officer, Krishnagiri District, Krishnagiri.
 - 2.The Divisional Engineer, Highways Department, Krishnagiri.
 - 3.The Sub Collector, Hosur, Krishnagiri District.
 - 4.The Deputy General Manager (RS), Indian Oil Corporation Limited, Salem Divisional Office, No.234, 1st Floor, NH-7, Salem-Bangalore Bypass Road, Kondalampatti, Salem - 636 010.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the proceedings of the 1st respondent in Mu.Mu.No.2007/2018/C2 dated 28.02.2018 and quash the same as illegal, incomplete and ultravires and consequently direct the respondents to issue No Objection Certificate, by considering the application seeking NOC dated 16.06.2017.

For Petitioner : Mr.R.Jayaprakash

For Respondents: Mr.R.Govindasamy,

Special Government Pleader for R1 to R3

Mr.Guhan Balaji for R4

O R D E R

The petitioner is aggrieved against the order of the 1st respondent dated 28.02.2018, wherein and whereby, the 1st respondent rejected the request of the respondents for grant of No Objection Certificate for locating the Petroleum Retail Outlet. Consequently, the petitioner seeks for a direction to the respondents to issue No Objection Certificate by considering her application dated 16.06.2017.

2. The case of the petitioner is as follows:

She applied for Retail Outlet dealership to be located at her site in No.30/2B, Shoolagiri Village, Hosur Taluk, Krishnagiri District. The Indian Oil Corporation issued a letter of intent on 30.01.2017. Consequently, the application was made before the 1st respondent for issuing No Objection Certificate for setting up such Retail Outlet. The Fire Service, Health Service and Police Departments have issued No Objection Certificate for setting up the Retail Outlet. However, the 1st respondent rejected the request only by citing the guidelines issued by India Road Congress. Those guidelines are only recommendatory in nature and not mandatory, more particularly, when the proposed site is not situated in the highways.

3. A Counter affidavit is filed by the 2nd respondent, wherein it is stated that the location of the outlet was classified as Major District Roads (MDR) connecting these with each other or with the State Highways and National Highways. It is further stated that as per the policy framed by the Government of India, Ministry of Road Transport and Highways, No Objection Certificate was not issued to the petitioner, since the petitioner retail outlet was located within the 300 meters, which is in intersection with the Rural Roads.

4. The learned counsel for the petitioner submitted that such reasons stated by the 1st respondent for rejection cannot be sustained, as similar objection raised in respect of similarly situated case was rejected by this Court in W.P.No.16476 of 2018 dated 19.12.2018.

5. On the other hand, learned Special Government Pleader for the respondents submitted that apart from the fact that the petitioner's location is within 300 meters which is in intersection with the rural roads, the very proposed location is having only 6.5 meters distance from the road and therefore, unless the petitioner has minimum of 7 meters from the road, the 1st respondent cannot consider the request for grant of No Objection Certificate.

6. Heard both sides and perused the materials placed before this Court.

7. It is seen that the petitioner's request for grant of No Objection Certificate was rejected by the 1st respondent only by relying on the guidelines issued by India Road Congress. In the counter, it is stated that the petitioner retail outlet was located within 300 meters which is in intersection with the rural roads and therefore, the request was not considered. In so far as the issue as to whether the authorities are entitled to consider the guidelines issued by the Indian Road Congress in respect of the locations which are not situated in the National Highways, this Court has considered the same in the decision reported in 2006 WLR 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] and found that those guidelines are of administrative in nature having no statutory force. Following the said decision, this Court in a recent decision made in W.P.No.16476 of 2016, has allowed the writ petition and directed the first respondent therein to issue No Objection Certificate to the petitioner. The operative portion of the said order at paragraphs 5 to 8 reads as follows:

"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 - 100m

.....

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 meters 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."

8. Therefore, this Court finds that the reliance placed by the 1st respondent to reject the request of the petitioner on the reason that the proposed location is situated within 300 meters which in intersection with the rural roads cannot be accepted. At the same time, this Court finds that the proposed location is situated within 6.5 meters from the road whereas it is contended by the learned Special Government Pleader that atleast 7 meters should be left between the proposed site and road.

9. The learned counsel for the petitioner fairly submitted that the petitioner is willing to shift the proposed location by another 0.50 meters. If that be the case, this Court is of the view that the 1st respondent cannot have any further objection in considering the application of the petitioner.

10. Accordingly, this Writ Petition is allowed and the impugned order is set aside. Consequently, the matter is remitted back to the 1st respondent to consider the application of the petitioner for issuing NOC and pass orders, accordingly, subject to the condition that the petitioner shifts the proposed location of 0.50 meters from the present site distance from the main road. In other words, the petitioner should leave a distance of minimum 7 meters between the proposed location and the main road. The 1st respondent shall pass such orders within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

To

- 1.The Additional District Administrative
Arbitrator cum the District Revenue Officer,
Krishnagiri District,
Krishnagiri.
- 2.The Divisional Engineer,
Highways Department,
Krishnagiri.
- 3.The Sub Collector,
Hosur,
Krishnagiri District.
- 4.The Deputy General Manager (RS),
Indian Oil Corporation Limited,
Salem Divisional Office,
No.234, 1st Floor, NH-7,
Salem-Bangalore Bypass Road,
Kondalampatti, Salem - 636 010.

+1cc to Mr.R.Jayaprakash , Advocate SR.No. 20093

+1cc to Mr.Guhan Balaji , Advocate SR.No. 20884

+1 cc to Government Pleader SR.NO. 20557

W.P.No.13676 of 2018

vsn co

A.SK(01/04/2019)

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