

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2020

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

W.P.No.6217 of 2020

and W.M.P.No.7310 of 2020

L.Loganayagi

.. Petitioner

Vs

1.The Secretary,  
Ministry of Road Transport and Highways,  
Transport Bhawan, 1, Parliament Street,  
New Delhi-110 001. .. Respondents

2.The Division Engineer,  
Ministry of Road Transport and Highways,  
Tiruvannamalai-606 604.

3.The Regional Officer,  
Hindustan Petroleum Corporation Limited (HPCL),  
Trichy Retail RO, MDSR Enclave, 2<sup>nd</sup> Floor,  
No.90, Bharatidasan Salai, Cantonment,  
Tamil Nadu, Tiruchirappalli-620 001.

4.The District Collector,  
Collectorate, Vengikkal,  
Tiruvannamalai-606 604.

5.The District Revenue Officer,  
Tiruvannamalai,  
Tiruvannamalai District -606 604.

6.The Revenue Divisional Officer,  
Tiruvannamalai,  
Tiruvannamalai District -606 604.

7.The District Fire Officer,  
Vengikkal, Tiruvannamalai,  
Tiruvannamalai District -606 604.

8.K.Azhagesan

Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Mandamus directing the third respondent to forbear from granting the permission for setting up a new fuel station in S.F.No.14/1A, Kanji Main Road, C-Gangam Pattu Village, Chengam Taluk, Tiruvannamalai, as

the same is in violation of the Guidelines/norms issued by the Ministry of Road and Transport, Government of India, in No.RW/NH-33023/19/99-DO-III, dated 24.07.2013.

For Petitioner : Dr.A.Thiyagarajan, Senior Counsel  
for M/s.S.Ramesh Kumar

For Respondents : Mr.V.Shanmuga Sundar,  
Special Government Pleader for RR4 to 7

Mr.M.Vijayan,  
for M/s.King & Partridge for R3

Mr.J.Bharathi Raja for R8

#### ORDER

The petitioner prays to forbear the third respondent from granting the permission for setting up a new fuel station in S.F.No.14/1A, Kanji Main Road, C-Gangam Pattu Village, Chengam Taluk, Tiruvannamalai, as the same is in violation of the Guidelines/norms issued by the Ministry of Road and Transport, Government of India, in No.RW/NH-33023/19/99-DO-III, dated 24.07.2013.

2. The petitioner, who is the existing dealer for selling petroleum and diesel products of the Indian Oil Corporation Limited (IOCL) for the past 15 years, is having a petrol outlet in Survey No.20/1G2 and 20/2A1 at Kanji Main Road, C-Gengampattu Village, Chengam Taluk, Tiruvannamalai. While so, the third respondent had called for a tender for allotment of retail outlet in and around Kanji Main Road, C-Gengampattu Village, Chengam Taluk, Tiruvannamalai. The eighth respondent has proposed to install an outlet in S.F.No.14/1A, Kanji Main Road, C-Gengampattu Village, Chengam Taluk, Tiruvannamalai, which is hardly 160 meters away from the petitioner's petrol bunk.

3. It is further stated that as per the Ministry of Road Transport and Highways (MoRTH) norms, the minimum distance between two stations should be 300 meters, if they were on a National Highways or State Highways or Major District Roads (MDRs). The petitioner also relied on the judgement of the Hon'ble Supreme Court in **Indian Oil Corporation Limited V. Arti Devi Dangi, (2016) 15 SCC 480**, wherein, it is reiterated that the duty of the authorities is to mandatorily follow the Indian Road Congress (IRC) guidelines. Though the IRC guidelines state the distance between two fuel stations should be of minimum 300 meters, in the present case it is only 150 metres and hence, it is a clear violation of guidelines issued by the IRC and the MoRTH, Government of India. Therefore, a representation was given by the petitioner's husband on 14.02.2020 to forbear the respondents, who are the revenue

authorities, from issuing "No Objection Certificate" (NOC) for the purpose of petroleum retail outlet. However, no action has been taken by the respondents. In the meanwhile, the eighth respondent is taking steps to operate the fuel station, in violation of the guidelines issued by the MoRTH. Hence, the writ petition is filed seeking a direction to the third respondent forbearing it from granting permission to set up a new fuel station in S.F.No.14/1A, Kanji Main Road, C-Gangampattu Village, Chengam Taluk, Thiruvannamalai, in favour of the eighth respondent, as it is violative of all the rules.

4. The third respondent, which is the oil company that represented by its Deputy General Manager - Retail, filed a counter affidavit objecting to the maintainability of the writ petition, as the petitioner herself is an existing dealer for an oil company. It is stated that the third respondent had released the advertisement on 25.11.2018 for selection of the retail outlet and the eighth respondent was selected for the location of Kanji-Tiruvannamalai Road. The Letter of Intent was already issued on 19.10.2019 favouring the eighth respondent, who has already in the process of construction of the retail outlet and energizing the same. It is specifically stated by the third respondent that the location at S.F.No.14/1A, C-Gangampattu village, Chengam Taluk, is neither on the National Highway nor on the State Highway. Besides, it is stated that the IRC guidelines referred to are not statutory in nature, but they are only guidelines.

5. Heard the learned Senior Counsel for the petitioner and the learned counsels appearing on behalf of the respondents and perused the materials available on record.

6. From the perusal of the averments made by the third respondent in the counter-affidavit, it is clear that the permission granted to the eighth respondent for the subject retail outlet cannot be stated to be violative of the IRC Guidelines. According to the third respondent, the retail outlet is neither in the National Highway nor State Highway. There is no dispute that in the judgement of the Hon'ble Supreme Court in **Indian Oil Corporation Limited V. Arti Devi Dangi, (2016) 15 SCC 480**, relied on by the learned counsel for the petitioner, it is reiterated that the authorities have to mandatorily follow the Indian Road Congress (IRC) guidelines. However, the said judgment is not helpful to advance the cause of the petitioner for the simple reason that the condition to have minimum of 300 meters distance between two fuel stations, as has been imposed in the IRC guidelines, is applicable for the stations along the National Highways and the same is not applicable to the fuel station of the eighth respondent.

7. From the averments of the petitioner, it is clear that excepting the business rivalry, the petitioner does not seem to have made out any other ground to oppose the permission granted to the eighth respondent to operate the new retail

outlet. It is only the apprehension of the petitioner that some of the customers will switch over to the proposed retail outlet, which made her to file this writ petition. It is to be stated that the opening of the new outlet certainly will not affect the public interest, but on the other hand, when there is a competition, the service providers will be compelled to offer better quality products at reasonable rates. Further, the Letter of Intent was already issued on 19.10.2019 in favour of the eighth respondent and he is in the process of construction of the retail outlet.

8. At this juncture, it is relevant to state that in **Nataraja Agencies vs. The Secretary, Ministry of Petroleum and Natural Gas** reported in **2005 (1) CTC 394**, a Division Bench of this court at paragraph Nos.3 and 4 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 service providers, 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."

9. The above said decision was followed by two learned single Judges of this court in (i) **T.N.Prakash vs. The Union of India and others made in W.P. No.5398 of 2016 dated 27.04.2016** and (ii) **S.Shanmugasundar v. District Collector** reported in **2017 SCC OnLine Made 23632**.

10. Following the decision of the Division Bench of this court in **Nataraja Agencies case (cited supra)**, this Court is of the view that the existing dealer cannot maintain a writ petition challenging the NOC issued for setting up a similar unit by another businessman.

11. For the foregoing reasons, there is no merit in the writ petition and accordingly, the same is dismissed. However, there shall be no order as to costs. Consequently connected miscellaneous petition is closed.

-Sd/-

Assistant Registrar (CS)

// True Copy //

Sub Assistant Registrar

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To

1.The Secretary,  
Ministry of Road Transport and Highways,  
Transport Bhawan, 1, Parliament Street,  
New Delhi-110 001.

2.The Division Engineer,  
Ministry of Road Transport and Highways,  
Tiruvannamalai-606 604.

3.The District Collector,  
Collectorate, Vengikkal,  
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4.The District Revenue Officer,  
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Tiruvannamalai District -606 604.

5.The Revenue Divisional Officer,  
Tiruvannamalai,  
Tiruvannamalai District -606 604.

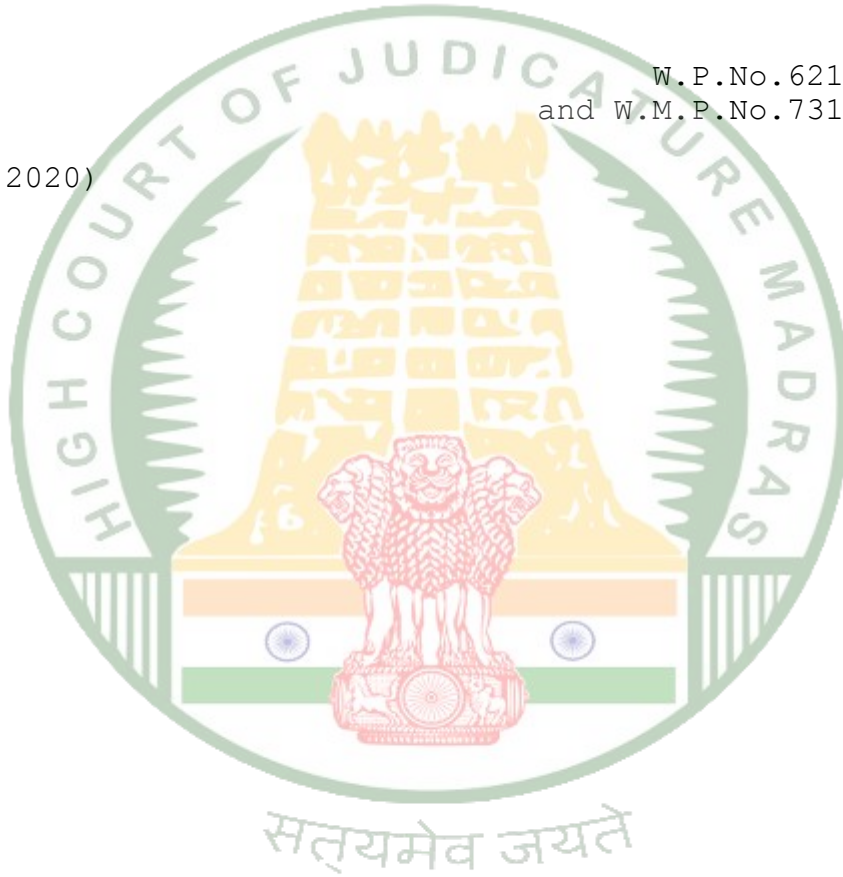
6.The District Fire Officer,  
Vengikkal, Tiruvannamalai,  
Tiruvannamalai District -606 604.

+1 C.C. to M/S.S.RAMESH KUMAR Advocate SR.NO.37303

+1 C.C. to M/S.KING AND PATRIDGE Advocate SR.NO.37142

SSV (CO)  
UM (15.12.2020)

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