



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2020
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.9622 of 2020
and
W.M.P.(MD)No.8659 of 2020

R.Meenaakshi

... Petitioner

Vs.

1.The Territory Manager (Retail),
Bharat Petroleum Corporation Ltd.,
Karur - 639 008.

2.The District Revenue Officer,
District Collector Office, Karur District, Karur.

3.The Divisional Engineer (C & M),
Highways Department, Karur.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the 3rd respondent made in Na.Ka.No.179/2020/EVaA dated 15.05.2020 and quash the same and consequently direct the 2nd and 3rd respondents to grant no objection certificate in favour of petitioner for developing Retail Petroleum Outlet at S.No.910/5 and 910/6, Jagadabi Village, Karur Taluk, Karur District.

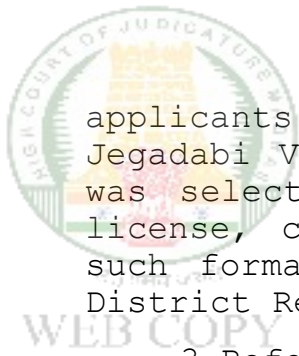
For Petitioner : Mr.K.Govindarajan

For Respondents : Mr.P.Mahendran,
Additional Govt. Pleader for R2 & R3.
Mr.Natesh Raja for R1

O R D E R

Heard the learned counsel appearing for the petitioner, the learned standing counsel appearing for Bharat Petroleum and the learned Additional Government Pleader appearing for second and third respondents.

2.The Bharat Petroleum Corporation Limited issued a notification calling for applications for grant of dealership to operate the petroleum outlets. The petitioner was one of the



applicants who wanted allotment for operating such an outlet in Jegadabi Village in Krishnarayapuram, Karur Taluk. The petitioner was selected by the corporation. But before formal issuance of license, certain formalities will have to be complied with. One such formality is obtaining of No Objection Certificate from the District Revenue Officer under Rule 144(5) of the Petroleum Rules.

3. Before the authority can issue such an NOC, he must obtain reports from several other authorities. One such authority is the third respondent herein. The third respondent by the impugned communication dated 15.05.2020 had declined to grant NOC on the ground that the location of the site is not in conformity with the relevant provisions in IRC Regulations, 2009. This stand of the third respondent is impeached in this writ petition.

4. The third respondent had filed a detailed counter affidavit and the learned Additional Government Pleader appearing for the respondents 2 and 3 reiterated all the contentions set out therein.

5. The stand of the petitioner is basically in two fold. He submitted that the regulations invoked by the third respondent are not mandatory. He further contended that the third respondent had adopted a different yardstick for another petroleum outlet.

6. In order to ascertain the facts obtaining on ground, this Court appointed Mr. C. Gangai Amaran as Advocate Commissioner. The said Advocate Commissioner conducted spot inspection and filed his report also. I carefully considered the rival contentions and went through the materials on record. I must at the out set sustain the objections of the learned Additional Government Pleader that the impugned communication being an interdepartmental communication is not open to challenge. The third respondent has informed the second respondent about his stand. The statutory provision does not indicate anywhere that the second respondent is bound by the stand of the third respondent. The District Officer, Fire and Rescue has recommended in favour of the petitioner. The Assistant Director, Directorate of Town and Country Planning has also recommended the petitioner's case. The Police Department has also recommended in favour of the petitioner. The third respondent alone has struck a note of disharmony. I can understand the compulsion of the writ petitioner for filing the writ petition. The petitioner's counsel states that in the normal course of events, citing the stand taken by the third respondent, the respondent would refuse to grant NOC.

7. Now the question that arises for my consideration is as to whether the second respondent should feel bound by the stand of the third respondent.

8. Though while considering the interim application, the Hon'ble Division of the Madras High Court had stated that IRC Regulations of 2009 are mandatory and binding, as rightly pointed out by the learned counsel appearing for the petitioner and the first respondent another Hon'ble Division Bench in the decision reported



in 2019 SCC Online Mad 8587 (Durairaj Venkatachalam v. Additional Chief Secretary Revenue and Disaster Management Department) had taken a contra view. The Hon'ble Division in its final order held as follows:-

"45. On a reading of the counter affidavit of the respondent Oil Corporations, we find the respondents they do not take such a rigid stand, but, their stand appears to be that the guidelines of the Indian Roads Congress are the guidelines per se and they cannot be compelled to follow the same as there are more stringent norms under the National Highways Act and PESO. If such is the position, the question would be whether, we, exercising jurisdiction under Article 226 of the Constitution of India could issue a writ of mandamus to compel the respondent Oil Corporations to adopt the guidelines issued by the Indian Roads Congress in the year 2009. The scope of issuing directions by the Writ Courts is no longer res integra. There should be a statutory duty cast upon the respondents to do a particular act. Upon failure, the arms of this Court are long enough to command to do that duty. In the instant case, the petitioner seeks for a direction from us to compel a Statutory Authority, namely, the State or the Central Government Authority and the Oil Corporations to follow a procedure, which is in the nature of the guidelines framed by an Expert Body and published in the year 2009. Therefore, in the facts of the present case, no direction can be issued to compel the respondents to adopt the guidelines of the Indian Roads Congress in its entirety.

46. One more aspect, which we need to take note of is that these guidelines, which are recommendatory, were issued in the year 2009. Admittedly, several notifications have been issued by the respondents Oil Corporations post 2009 and there is nothing on record placed before us by the petitioner to show that there was a challenge to any of those notifications on the ground of non-adherence to the guidelines of the Indian Roads Congress. In fact, the petitioner Mr. Durairaj Venkatachalam cannot plead for issuing a writ of mandamus, especially when he was an applicant under the notification. Therefore, the guidelines being recommendatory, it is for the appropriate Authority to consider the effectiveness and efficacy or bring amendments in the statute so as to bind the statutory authorities, who are required to issue no objection certificates or clearances or approvals. Therefore, we cannot be called upon to issue a direction to implement the guidelines, thereby introducing a different procedure



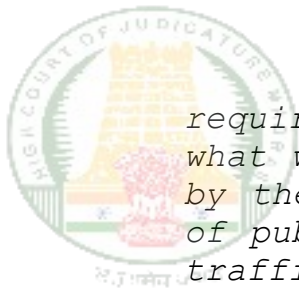
or norms than what have been prescribed under the Central enactment or the rules framed thereunder or any other statutory notification by the executive instructions issued by the Central or State Government.

47. It is no doubt true that sufficient thought process has gone into before framing 2009 guidelines. However, we are not experts to state that the guidelines are far superior than the statutory provisions or the statutory provisions are far superior than the guidelines. Admittedly, ten years have passed by, after the guidelines were published. There have been various developments in the country insofar as road infrastructure is concerned. Several methodologies have been adopted by the both State Highways and National Highways Authority of India. Therefore, we are of the clear view that no direction can be issued to the respondents by compelling them to follow the guidelines of the Indian Roads Congress published in the year 2009."

9. It is true that the other Hon'ble Division Bench in W.P.No.18753 of 2019 took a contra view in the light of the decision of the Hon'ble Supreme Court reported in **2016 (15) SCC 480 (Indian Oil Corporation Limited and others Vs. Arti Devi Dangi and another)**. But the said decision was distinguished by the subsequent Hon'ble Division Bench in W.P.(MD)No.19218 of 2019 in paragraphs 48, 49 and 50. The said paragraphs read as under:-

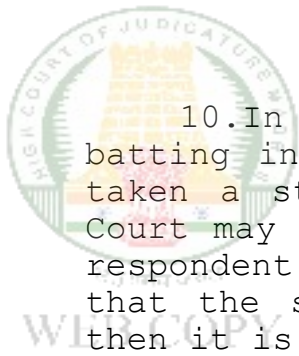
"48. In the case of Arti Devi Dangi (supra), the question was whether the insistence by the Indian Oil Corporation Limited on adherence to the Indian Roads Congress (IRC) Guidelines requiring maintenance of specific distance between the proposed retail outlet and the median of the road was correct in view of the fact that in the advertisement and the brochure there was no specific reference to the said guidelines and no specific mention was made that the same would have to be complied with by a tenderer. The Honourable Supreme Court noted that the IRC Guidelines have been adopted by the PWD, Madhya Pradesh and therefore, it was argued by the Indian Oil Corporation Limited that the respondents ought to have verified all such requirements that the rules and sub-rules of PWD stipulate including the requirements spelt out under the IRC Guidelines.

49. It was contended by the respondents therein that there was no specific reference to the guidelines in question and hence, the requirement of compliance of those guidelines was not an essential condition of the tender. It was held that if the clauses in the advertisement required a tenderer to fulfil all



requirements under the rules and sub-rules of PWD and if what was suggested / recommended by IRC has been adopted by the State PWD and the said norms are in the interest of public safety and would facilitate smooth movement of traffic, it will be difficult to hold that the rules and sub-rules of PWD contemplated in the advertisement do not embrace the IRC Guidelines either because there was no specific mention thereof in the tender documents or the same do not have a statutory flavour. Therefore, it was held that the fulfilment of the requirements spelt out by the IRC Guidelines, relevant to the said case, to be a mandatory requirement of the tender conditions. Accordingly, it was held that the action of the Corporation was not arbitrary or unreasonable. Further, on perusal of the orders of the High Court, it was held that the only basis on which the decision of the Corporation had been faulted by the High Court was on the ground that the IRC Guidelines were not mandatory. It was pointed out that such a view cannot be sustained keeping in mind the provisions of the advertisement, the purport and object of the said norms, the uniform application of the same to all the tenderers by the Corporation and above all the requirements of public interest. In the light of the said conclusion, the Honourable Supreme Court has held that it is not necessary to consider the arguments advanced on the question of permissibility of deviations from the tender conditions on the touchstone of public interest or the issue of understanding the requirement of the IRC Guidelines as implied terms of the tender document.

50. In our considered view, the decision in the case of Arti Devi Dangi (supra), at the first instance appears to hold that the IRC Guidelines are in effect mandate. However, on a closure reading of the decision, one important fact, which should not be lost sight of was that in the said case, the proposed retail outlet was to be located in the State of Madhya Pradesh and the Public Works Department of Madhya Pradesh have adopted the IRC Guidelines and they have framed rules and sub-rules. These rules and subrules were binding on the applicant. In such circumstances, the Honourable Supreme Court held that though the tender notification did not expressly spell out the requirements to comply with the IRC Guidelines, the same having been adopted by the State Public Works Department, the applicant cannot state that the compliance of such condition was not an essential condition of tender."



10. In the case on hand, the first respondent is strongly batting in favour of the petitioner. If the first respondent had taken a stand that they feel bound by the IRC Regulations, this Court may not be in a position to question the wisdom of the first respondent. When the first respondent themselves are of the view that the site in question is suitable for locating their outlet, then it is not for this Court to go into the matter further.

11. More than anything else, what swings the issue in favour of the writ petitioner is that the Advocate Commissioner who conducted the spot inspection observed that the road in question in which the petitioner's site is located is not a busy road. It does not witness much of traffic. That apart, there is some substance in the contentions of the petitioner that the third respondent had adopted an indulgent approach in the case of other petroleum outlet but I do not want to go into this issue beyond a point.

12. The learned standing counsel for the first respondent submitted that the petitioner can accommodate the concerns expressed by the third respondent by pushing their location by five more metres to the north. In similar circumstances, a learned Judge of this Court in W.P.(MD)No.13676 of 2018 vide order dated 04.03.2019 had found in favour of the allottee by recording the allottee's offer to shift the proposed location by 0.50 metres. This Court had observed that in that event the authority cannot have further objection for considering the application.

13. The learned Additional Government Pleader appearing for the respondents 2 and 3 states that the second respondent is yet to receive a report from the Revenue Divisional Officer. The Revenue Divisional Officer is directed to conduct a spot inspection and submit the report to the District Revenue Officer as early as possible. Once all the inputs are received by the District Revenue Officer, the District Revenue Officer will pass orders on the petitioner's petition mentioned application. I make it clear that the stand of the third respondent herein will not have any bearing on the discretion of the second respondent. The second respondent will take note of the observations made in this order and pass final orders on the petitioner's application. The entire exercise shall be completed within a period four weeks from the date of receipt of a copy of this order.

14. The writ petition is disposed of on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

- 1.The District Revenue Officer,
District Collector Office,
Karur District, Karur.
 - 2.The Divisional Engineer (C & M),
Highways Department,
Karur.
 - 3.The Revenue Divisional Officer, Karur.
- +1 CC to M/s.Special Govt.Pleader (SR-18688[F] dated 01/10/2020)
- +2 CC to M/s.K. GOVINDARAJAN, Advocate (SR-18819[F] dated 01/10/2020)

W.P. (MD)No.9622 of 2020
30.09.2020

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SDS (07.10.2020) 7P-7C