



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.10.2021

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P. No. 15877 of 2021

Sekar Mathiyan

.. Petitioner

Versus

1. Hindustan Petroleum Corporation Limited
Salem Regional Office
Level 4, "GK Towers"
Door No.395/2, First Main Road
New Fairlands
Salem - 636 016.
2. The District Collector,
Salem District.
3. The District Revenue Officer,
Salem District.
4. The Divisional Engineer (C&M),
Highways Department,
Edappadi,
Salem District.

.. Respondents

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 3 & 4 to issue NOC for the establishment of the retail MS/HSD outlet in Survey No. 187/3A2 at Selavadai Village, Omalur Taluk, Salem District, in favour of the petitioner without reference to IRC 12 of 2009.

For Petitioner : Mr. A. Sundaravadhanan

For Respondents: Mr.Vijayan
for M/s. King and Patridge for R1

Mr.G.Krishnaraja
Government Counsel for R2-R4

ORDER

The prayer made in this writ petition is to issue a Writ of Mandamus directing the 3rd and 4th respondents to issue No Objection Certificate in favour of the petitioner for establishment of the retail MS/HSD outlet in Survey No. 187/3A2 at Selavadai Village, Omalur Taluk, Salem District without reference to IRC 12 of 2009.



for sale of MS/HSD. The petitioner submitted an application in Application No. 15442743897203 for the proposed dealership at Tharamangalam and Jalakandapuram, Salem District. Pursuant to the drawing of lot, the first respondent issued a letter of intent on 05.06.2020 proposing to offer the dealership of HPCL on the basis of inspection conducted by the first respondent. Further, for granting the license at the proposed outlet, the first respondent had applied for issuance of NOC from the 2nd respondent and the same was forwarded to the third respondent and the other officials. On enquiry, the petitioner understood that Fire and Safety Department, Police and the Revenue Department had issued No Objection Certificate, whereas, the third respondent had not issued NOC for want of an inspection report by the fourth respondent. Since the third respondent has not granted No Objection Certificate, the first respondent is likely to cancel the letter of intent issued to the petitioner. Therefore, the petitioner has filed this writ petition.

3. The learned counsel for the petitioner placed reliance on the order dated 26.02.2021 passed in W.A.(MD) No. 1054 off 2020 in C.M.P. (MD) Nos. 5781 and 7151 of 2020 (The Divisional Engineer (C&M), Highways Department, Karur vs. R. Meenakshi and others) and submitted that IRC guidelines are only recommendatory and not mandatory. The learned counsel also relied on the decision of the Honourable Supreme Court in the case of Indian Oil Corporation Limited and others vs. Arti Devi Dangi and another reported in 2016 (15) SCC 480 and also the order passed on 20.10.2020 by this Court in W.P. (MD) No. 2895 of 2020. For better appreciation, the relevant paragraphs of the said order are reproduced hereunder:

"4. With regard to the contention of the learned Special Government Pleader appearing for the appellant that the guidelines are mandatory, the learned Single Judge placed reliance on the decision of the Hon'ble Supreme Court in 2016 (15) SCC 480 (Indian Oil Corporation Limited and others vs. Arti Devi Dangi and another), wherein it was held that IRC guidelines are only recommendatory and not mandatory. The same was also reiterated by a Division Bench of this Court in W.P. (MD) No. 2895 of 2020, dated 20.10.2020.

5. The learned Single Judge recorded the factual finding after taking into note of the report of the Advocate Commissioner. Further, the finding regarding the non-mandatory nature of guidelines is based upon the judgement of the Hon'ble Supreme Court as stated supra.

... 6. Admittedly, in the present case, no objection was sought not for a State Highway. Thus, in the absence of any contrary material to hold that the findings are not factually correct, we are not inclined to allow this writ appeal. Accordingly, the Writ Appeal stands



dismissed"

4. By placing reliance on the above decision, the learned counsel for the petitioner submitted that IRC guidelines are not mandatory and they are only recommendatory. While so, the third and fourth respondents are not justified in not granting No Objection Certificate as sought for by the first respondent.

5. On the above contention, this Court heard the learned standing counsel for the first respondent as well as the Government Counsel for the respondents 2 to 4 and perused the materials placed.

6. The first respondent has issued a letter of intent to the petitioner on 05.06.2020. As requested by the first respondent, No Objection Certificate was issued by the Fire and Rescue Services Department, Police Department as well as other Departments. When a similar No Objection Certificate was sought from the third respondent, the third respondent appears to have sought for an inspection report from the fourth respondent. In effect, so far, the third respondent has not granted No Objection Certificate to the first respondent. In this context, in identical case, the Division Bench of this Court, in the judgment dated 10.08.2021 passed in WP Nos. 34652 of 2019 and 7280 of 2020, following the decision of the Honourable Supreme Court in Indian Oil Corporation Limited and others vs. Anti Devi Dangi and another, mentioned supra, held that Indian Road Congress guidelines are not mandatory and it is only recommendatory. Therefore, the third respondent is directed to act upon, as per the Judgment passed by the Division Bench of this Court mentioned supra, and pass appropriate orders on the application submitted by the first respondent seeking No Objection Certificate within a period of 4 weeks from the date of receipt of a copy of this order.

7. Accordingly, this Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

av/rsh

To

1. Hindustan Petroleum Corporation Limited,
Salem Regional Office,
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2. The District Collector,
Salem District.

3. The District Revenue Officer,
Salem District.

4. The Divisional Engineer (C&M),
Highways Department,
Edappadi,
Salem District.

+1cc to Mr.A.Sundaravadhanan, Advocate, S.R.No.53703

+2cc to M/s.King & Partridge, Advocate, S.R.No.53706

+1cc to the Government Pleader, S.R.No.53916

W.P. No. 15877 of 2021

SR(CO)
SB(23/11/2021)