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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.Nos.34652 of 2019 and 7280 of 2020
and W.M.P.Nos.35404 of 2019 & 8679 and 8680 of 2020

W.P.No.34652 of 2019

1.A.Periyasamy (Deceased)

2.Kalpana

(P2 substituted as legal representative
of deceased sole Petitioner vide order
dt. 06.07.2021 made in WMP.14235/2021)

... Petitioners in WP and WMP.35404/2019

Vs

1.The Deputy Collector (Revenue)

North cum Sub Divisional Magistrate Revenue
Complex Ground Floor No.505 Kamaraj Salai
New Saram Puducherry-605 013.

2.The Chief Town Planner

Town and Country Planning Department
Municipality Office Jawahar Nagar
Boomianmpet Puducherry-605 005.

3.The Superintendent of Police

(East) Jawaharlal Nehru Street
Puducherry-605 001.

4.The Superintending Engineer

Circle-1 PWD Complex Subash Chandra Bose
Street Puducherry-605 001.

5.The Commissioner

Puducherry Municipality Kamban Kalaiararam
Bussy Street Puducherry-605 001.



6.The Joint Chief Controller of
Explosives A and D Wing Block 1-8 Shastri
Bhavan No.26 Haddows Road
Nungambakkam, Chennai-6.

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7.M/s.Shell India Markets Pvt. Ltd
2nd Floor Campus-4A RMZ Millennia
Business Park No.143 Dr. MGR Road
Perungudi Chennai-96.

... Respondents in WP and WMP.35404/2019

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus to permanently forbear the respondents from issuing No Objection Certificate (NOC), Explosive License and other approval/ permission/ consent to the 7th respondent to set up and operate a New Road-side Petroleum Retail Outlet at Ward B, Block No.8, T.S.No.2, R.S.No.135/2 (Part), M.G.Road, Muthialpet, Puducherry-605 003, in close proximity to 2 Nos. of Government Anganwadis, Bharathidasan Government College for Women and several public places and in violation to IRC Circular No.12:2009.

W.P.No.7280 of 2020

1 A.Periyasamy (Deceased)

2 Kalpana
(P2 substituted as legal representative
of deceased sole petitioner vide order
dt.06/07/2021 in WMP.14235/2021)

... Petitioners in WP and WMP.8679 & 8680/2020

Vs

1.The District Magistrate
New Revenue Complex 1st Floor
Vazhuthavoor Road Puducherry 605 009

2.The Chief Town Planner
Town and Country Planning Department
Municipality Office Jawahar Nagar
Boomianpet Puducherry 605 005

3.The Superintendent of Police (East)
Jawaharlal Nehru Street
Puducherry 605 001



4.The Executive Engineer
Buildings and Roads (Central Division)
PWD Complex Puducherry 605 001

5.The Commissioner
Puducherry Municipality Kamban Kalaiarangam
Bussy Street Puducherry 605 001

6.The Joint Chief Controller of Explosives
A and D Wing Block 1-8
Shastri Bhavan No.26 Haddows Road
Nungambakkam Chennai 600 006.

7.M/s.Shell India Markets Pvt. Ltd.
Plot No.7 Bangalore Hardware Park
Devanahalli Industrial Park Mahadeva
Kodigehalli Bangalore 562 149

... Respondents in WP and WMP.8679 & 8680/2020

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the No Objection Certificate No.4488/DM/RO/TAH/D3/2019 Dated 11.11.2019 issued by the 1st respondent in favour of the 7th respondent to open and operate a New Road-side Petroleum Retail Outlet at Ward B Block No.8 T.S.No.2 R.S.No.135/2 (part) M.G.Road Muthialpet Puducherry 605 003 in close proximity to 2 Nos. of Government Anganwadis Bharathidasan Govt. College for Women and several public places and in violation to IRC Circular No.12:2009 and to quash the same.

For Petitioner in
both WPs. : Mr.V.B.R.Menon

For Respondents in
both WPs. : Mrs.N.Mala
Government Pleader (Puducherry)
for RR 1 to 5

: Mr.S.Muthusamy,
ACGSC, for R-6

: Mr.P.S.Raman, Senior Counsel,
Assisted by Mr.Jose John,
M.Narendran and Joshua Ebenezer,
for M/s.King & Patridge, for R-7



COMMON ORDER

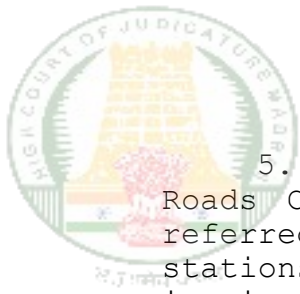
(Made by the Hon'ble Chief Justice)

These two petitions pertain to a proposed petroleum retail outlet on Mahatma Gandhi Road in the heart of Puducherry proper and the petitioner, espousing a public cause, refers to the failure by the private petroleum company and the local authorities in taking relevant considerations into account before choosing the site for the retail outlet.

2. Shell India Markets Pvt. Ltd proposes to set up a company owned and managed retail outlet at the site. The said private company, arrayed as the seventh respondent in both the petitions, has obtained permission by way of a no-objection certificate dated November 11, 2019 from the local government. W.P.No.34652 of 2019 was filed even before the permission had been obtained and its purpose was to obtain a direction on the appropriate authorities to ensure that no permission in such regard was granted. After the permission was obtained, W.P.No.7280 of 2020 was filed challenging the issuance of the no-objection certificate.

3. Three principal grounds have been taken by the petitioner in opposing the setting up of the petrol outlet at the relevant site. The petitioner complains that the proposed site is perilously close to residential buildings and is in the heart of the most populated part of town. The petitioner also relies on photographs of the site and the sketch-map that had been filed by the private oil company to obtain permission to demonstrate that the proposed site is at an intersection of a main road with a narrower side road. The third count of objection is that the proposed outlet does not maintain the appropriate distance norms, as it ought to have been at least 100 metre away from any other Anganwadi facility.

4. In support of the first contention that the proposed site is in the middle of a residential hub, the petitioner refers to an order dated September 5, 2017 passed on W.P.No.23546 of 2017 (B.Moorthi vs. The District Revenue Officer) by a Division Bench of this court. At paragraph 4 of the Division Bench judgment, the court referred to the health hazards caused by evaporation of petroleum in and around the outlets. The Bench went on to observe that the effects of contamination at petrol stations can be felt in buildings located within 100 metre and referred to articles based on research indicating that airborne organic compounds, like benzene, increase the risk of cancer. The Bench also referred to the deleterious effect of setting up a petrol pump near any place which houses a substantial number of children.



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5. The further case of the petitioner is that the Indian Roads Congress (IRC) has issued guidelines in 2009, generally referred to as IRC:12-2009 for roadside fuel and service stations. The petitioner points out that the avowed purpose for issuing such guidelines was to ensure the free flow of traffic on the roads along the fuel stations and the minimum disturbance to other vehicular movement by vehicles using the facilities. Among the conditions indicated in IRC:12-2009, there is an instruction that in an urban area with a population of over one lakh there should be a 100 metre distance between the site of a petrol outlet and the intersection with any category of road, irrespective of the width of the carriageway. In the present case, however, the proposed site has an immediate road in the front and two roads immediately on the two sides, though it is possible that there is only one side road. At first blush, on the basis of the requirement in such regard in the guidelines issued by the IRC, it seems that there has been aberration in this case. The petitioner goes on to rely on a Supreme Court judgment reported at (2016) 15 SCC 480 (Indian Oil Corporation Limited vs. Arti Devi Dangi) and places paragraphs 1 and 7 from the report.

6. In that case, an advertisement issued by the oil company required the rules and sub-rules of the local PWD to be followed and the rules of the local PWD incorporated the IRC Guidelines 12-2009. Thus, one of the tender conditions was that the site should be such as would conform to the local PWD norms as per the applicable rules and sub-rules and, when it was discovered that the site offered by the contractor was inappropriate on such ground, the oil company was entitled to disregard the offer or otherwise cancel the acceptance thereof.

7. On the distance norm, the petitioner refers to the Petroleum Rules, 2002 and says that even though more stringent norms have now come into place with the Central Pollution Control Board having issued strict guidelines at the prodding of the National Green Tribunal, even the rudimentary safety norms have not been met in this case.

8. The private oil company here submits that there is no specific distance norm that is shown to have been breached and the fact that the proposed site is in a residential area does not violate any norm or guideline that may have been in vogue at the time that the application to set up shop was considered and the no-objection certificate was issued on November 11, 2019. As to the failure on the part of the relevant oil company to adhere to the IRC norms, it is submitted that several Division Bench judgments of this Court have held that such norms are not binding.



9. Indeed, several Division Bench judgments have been cited on either side and though there is an odd decision that the IRC:12-2009 guidelines ought to be adhered to, there are more Division Bench judgments that refer to the guidelines not being mandatory or a part of any prescribed statutory rules that would operate whenever a new petrol or diesel retail outlet is about to reopen. The Supreme Court judgment cited would also not apply since the tender terms in that case required any person wanting to open a retail store in terms of the advertisement to adhere to the applicable norms and the tender terms specifically provided for adherence to the rules and sub-rules of the local PWD. In view of the several Division Bench judgments of this court, including the one rendered on October 17, 2019 reported at 2019 SCC OnLine Mad 8587 (Durairaj Venkatachalam vs. Additional Chief Secretary, Revenue and Disaster Management Department) and another rendered on W.P. (MD) No.2895 of 2020 (M.G.Saravanan vs. The Commissioner of Police) dated October 20, 2020, which clearly say that the IRC guidelines have no statutory force and may not be applied, the fact that the proposed site may be at an intersection and may cause traffic snarls and inconvenience to the general public, may not be a relevant factor.

10. However, it must also be noticed that before the District Collector issued the no-objection certificate on November 11, 2019, an opinion was sought from the PWD as to the feasibility of the site, particularly pertaining to its effect on vehicular traffic. The petitioner has relied on the adverse report given by the PWD in such regard. However, the no-objection certificate did not refer to the adverse opinion of PWD, though it specified that the layout of the fuel filling station should conform to IRC:12-2009.

11. The Union Territory of Puducherry is represented and it stands by the District Collector's decision to grant permission.

12. Though the petitioner appears to have had public interest in mind and felt concerned for those residing near the proposed site, it cannot be said that the permission granted by the issuance of the no-objection certificate on November 11, 2019 is invalid or the Collector acted in breach of any statutory norms while granting the permission or the private oil company has acted at variance with the conditions set in the no-objection certificate.

13. To the extent that the no-objection certificate required the IRC:12-2009 guidelines to be followed, it can be said that in view of the recent consistent stand taken by this court that the IRC guidelines do not have any statutory force and are not mandatory, the breach of the IRC guidelines may not be fatal. It



must also be recognised that notwithstanding the injunction subsisting now, substantial construction had been carried out previously. Even if it is accepted that no equity can be claimed by the private oil company as a consequence of commencing the construction and even if the petitioner's version is accepted that the construction has not been completed, it does not appear that at the time that the proposal for setting up the retail outlet was submitted or at the time that the no-objection certificate was issued on November 11, 2019, it was necessary for the strict conditions which are now in place to be followed or imposed in connection with the setting up of a new fuel outlet.

14. In such circumstances, the project cannot be interfered with and the private oil company may go ahead and take the requisite measures to open the retail outlet. But, in view of the outlet being in a residential area and at an intersection, some amount of additional care and caution need to be taken to operate the gas station. Considering the risks that a petrol station may bring to the local residents, the Collector will specify additional fire fighting equipment to be installed, so that in the unlikely event of a fire, it is possible to take immediate measures to arrest the spread thereof to the neighbouring buildings. In addition, sufficient open space must be left at the intersection to allow the smooth flow of traffic. In particular, the Collector should advise the private oil company to not construct a boundary wall along the narrower road opening onto M.G. Road, but the wall on such side should stop at at least 15 metre shy of M.G.Road to allow the smooth flow of traffic, especially vehicles entering or exiting the fuel station.

15. The additional safety norms, including the installation of a Vapour Recovery System (VRS), are imposed in public interest, particularly since the no-objection certificate of November 11, 2019 referred to the layout conditions indicated in IRC:12-2009, notwithstanding such guidelines being held by this court not to be mandatory.

W.P.Nos.34652 of 2019 and 7280 of 2020 are disposed of. WMP Nos.35404 of 2019, 8679 and 8680 of 2020 are closed. There will be no order as to costs.

Sd/-
Assistant Registrar(CS III)

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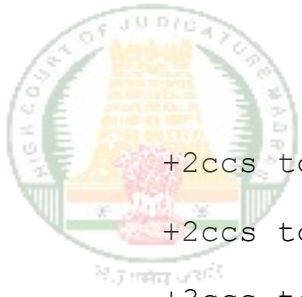
Sub Assistant Registrar



sra

To:

- 1.The Deputy Director,
North cum Sub Divisional Magistrate,
Revenue Complex, Ground Floor,
No.505, Kamaraj Salai,
New Saram, Puducherry-605 013.
- 2.The Chief Town Planner,
Town and Country Planning Department,
Municipality Office, Jawahar Nagar,
Boomianmpet, Puducherry-605 001.
- 3.The Superintendent of Police,
(East) Jawaharlal Nehru Street,
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- 4.The Superintending Engineer,
Circle-1 PWD Complex,
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- 5.The Commissioner,
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- 6.The Joint Chief Controller of Explosives
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- 7.M/s.Shell India Markets Pvt. Ltd,
2nd Floor, Campus-4A RMZ Millennia
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- 8.The District Magistrate,
New Revenue Complex 1st Floor,
Vazhuthavoor Road, Puducherry-605 009.
- 9.The Executive Engineer,
Buildings and Roads (Central Division),
PWD Complex, Puducherry-605 001.



+2ccs to Mr.S.Muthusamy, Advocate (SR No.39671)

+2ccs to Mr.VBR.Menon Advocate (SR No.39545)

+3ccs to King & Partridge, Advocate (SR No.39554)

+3ccs to King & Partridge, Advocate (SR No.39555) 16/08/2021

+1cc to the Government Pleader (SR No.39662) 16/08/2021

+2ccs to Mr.VBR.Menon, Advocate (SR No.39844) 18/08/2021

W.P.Nos.34652 of 2019
and 7280 of 2020

RLD (CO)
PR (13/08/2021)