

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2021

DELIVERED ON : 11.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.35885 of 2019  
and WMP.Nos.36795 & 36797 of 2019

P.G.M.Petrol Bunk,  
Dealer of Indian Oil Corporation,  
Rep. by its Proprietor, P.Goush Basha,  
Dasagonipalli, Veppanapalli village & post,  
Krishnagiri Taluk & District.

... Petitioner

vs.

1. The Joint Chief Controller of Explosives,  
A and D Wing, Block 1 to 8, 2<sup>nd</sup> floor,  
Shastri Bhavan, 26, Haddows Road,  
Nungambakkam, Chennai.
2. The District Revenue Officer,  
Krishnagiri, Krishnagiri District.
3. The Divisional Engineer,  
Tamilnadu Highways Department,  
Krishnagiri.
4. The State Head,  
Essar Oil Ltd., Essar House,  
5<sup>th</sup> floor, No.7, Esplanade, Chennai - 600 108.

5. Tamilselfvi

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari to call for the records relating to the impugned order of the 2<sup>nd</sup> respondent in Ref.No.Mu.Mu.No.25271/2019/C2 dated 20.12.2019 and quash the same as the same is arbitrary, illegal and non-est in the eyes of law.

For Petitioner : Mr.V.Prakash, Senior Counsel  
for Mr.T.Arockia Dass  
for M/s.Dass and Viswa Associates

For Respondents : Mr.V.Ashok Kumar, CGSC for R1  
Mr.V.Shanmuga Sundar for R2  
Special Government Pleader  
Mr.Arul Dass for R3  
Government Pleader  
Mr.AR.L.Sundaresan, Senior Counsel  
for Mr.V.Nicholas for R5

O R D E R

The points for consideration in this writ petition are whether

(a) The Indian Road Congress Guidelines, 2009 stipulating a minimum distance of 300 meters between two petrol bunk in a non-urban rural area is mandatory.

(b) Whether a rival competitor has locus standi to challenge the No Objection Certificate issued to another competitor for setting up a petrol bunk.

2.The case of the petitioner is that the impugned order passed by the second respondent granting No Objection Certificate to the fifth respondent to set up a petrol bunk suffers from material irregularities and violates the norms and Guidelines issued by the Union Ministry of Road Transport and Highways dated 25.09.2003 as well as the Indian Road Congress Guidelines, 2009.

3.It is also the case of the petitioner that the second respondent has placed wrong reliance on the orders passed in the batch of writ petitions by the Madurai Bench of Madras High Court.

4.According to the petitioner, the petrol bunk proposed to be set up by the fifth respondent is within a distance of 170 meters from the petitioner's petrol bunk and hence the minimum distance criteria fixed under the Indian Road Congress Guidelines at 300 meters has been violated. According to the petitioner, this would endanger the lives of the people in and around that area as the object of those Guidelines are to ensure safe distance between the two retail outlets in order to avoid devastating effects in case of fire accidents.

5.It is the case of the petitioner that the second respondent without having regard to the safety aspect and prescribed Guidelines and order of the Division Bench of this Court has granted No Objection Certificate to the fifth

respondent under the impugned order on flimsy grounds which is arbitrary and illegal.

6.It is the case of the official respondents as seen from the counter affidavit filed by the second respondent is that the

(a) Impugned order is legally correct and not arbitrary.

(b) The impugned order does not suffer from any material irregularity and does not violate the norms and Guidelines framed by the Ministry of Road Transport and Highways.

(c) The impugned order has been passed based on the judgment rendered in a batch of writ petitions before the Madurai Bench of Madras High Court.

(d) There is no partiality in favour of any person and the second respondent has acted as per law and as per the rules laid in the Petroleum Act and Rules.

(e)The petitioner is dragging the issue for his business rivalry.

(f)The petitioner ought to have filed Statutory Appeal before the Statutory Appellate Authority but instead has filed this writ petition which is not maintainable.

(g)The third respondent is not the Authority in the matter and the remarks of the third respondent was overruled by the second respondent under the impugned order.

(h)The fourth respondent has obtained all the requisite permission to establish the subject petrol bunk in the subject land.

7.The fifth respondent which has been allotted subject petrol bunk by the fourth respondent would submit that

(a) Indian Road Congress Guidelines are not mandatory and would submit that the impugned order has been passed granting No Objection Certificate correctly by applying the decision of the Division Bench of the Madurai Bench of Madras High Court in W.P. (MD) Nos.19218, 2661, 3678 & 705 of 2019 dated 17.10.2019 wherein it has been held that the Indian Road Congress Guidelines are not mandatory as it will get statutory force only when appropriate rules are framed by the State Government.

8.It is also their case that Circulars and Letters are just communications between officials and can never take the place of Rules having statutory force.

9.Heard Mr.V.Prakash learned Senior Counsel assisted by Mr.Arockia Dass, learned counsel for the petitioner,

Mr.V.Shanmuga Sundar, learned Special Government Pleader for the second respondent, Mr.Arul Dass, learned Government Pleader for the third respondent and Mr.AR.L.Sundaresan, learned Senior Counsel assisted by Mr.V.Nicholas, learned counsel for the fifth respondent.

10.The learned Senior Counsel for the petitioner drew the attention of this Court to the Union Ministry of Road Transport and Highways and Indian Road Congress Guidelines-2009 and would submit that the subject petrol bunk is situated within a distance of 170 meters from the petitioner's petrol bunk and hence it is in violation of Guidelines 6.2.1 which stipulates that the minimum distance between two outlets in the rural areas should not be less than 300 meters.

11.The learned Senior Counsel for the petitioner drew the attention of this Court to a judgment of the Hon'ble 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 would submit that Indian Road Congress Guidelines are mandatory in nature and have to be necessarily adhered to.

12.He also drew the attention of this Court to a Division Bench order of the Madras High Court dated 12.12.2019 in W.P.No.18753 of 2019 and would submit that in the said order, the Division Bench has categorically held that the Indian Road Congress Guidelines are mandatory and therefore, while issuing No Objection Certificate for setting up a petrol /diesel outlet, the Indian Road Congress Guidelines will have to be adhered to.

13.The learned Senior Counsel for the petitioner then drew the attention of this Court to a letter dated 08.02.2020 sent by the Principal Secretary to Government of Tamil Nadu to all the District Collectors/ Commissioner of Police instructing them to follow the Indian Road Congress Guidelines for issuance of No Objection Certificate for new petroleum retail outlets along the road side and would therefore submit that the Indian Road Congress Guidelines are mandatory in nature.

14.The learned Senior Counsel for the petitioner also drew the attention of this Court to a letter dated 08.11.2019 sent by the Assistant Divisional Engineer, Highways, Krishnagiri to the Divisional Engineer, Highways and would submit that as per the said letter, it is clear that the subject petrol bunk to be set up by the fifth respondent is situated at 198.50 meters from the petitioner's petrol bunk in violation of the Indian Road Congress Guidelines which stipulates that the minimum distance between two petrol bunks should not be less than 300 meters.

15. According to the learned Senior Counsel, despite instructions given by the Assistant Divisional Engineer, Highways that the proposed retail outlet to be set up by the fifth respondent violates the Indian Road Congress Guidelines, the impugned order has been passed issuing No Objection Certificate to the fifth respondent for setting up the retail petroleum outlet.

16. Per contra, Mr. AR. L. Sundaresan, learned Senior Counsel for the fifth respondent would submit that the Indian Road Congress Guidelines are not mandatory in nature. According to him, the Hon'ble Supreme Court in *Arti Devi Dangi's* referred to supra by the learned Senior Counsel for the petitioner has clearly stated that the Indian Road Congress - 2009 recommendations cannot take statutory force until the respective State Government has adopted them and framed Rules incorporating the same.

17. He drew the attention of this Court to a Division Bench judgment of the Madurai Bench of Madras High Court dated 17.10.2019 in W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019 and would submit that the Division Bench in the said judgment has considered the decision of the Hon'ble Supreme Court in *Arti Devi Dangi's* case and only thereafter has come to the conclusion that Indian Road Congress-2009 recommendations can never be made mandatory in the State of Tamil Nadu as the Government of Tamil Nadu has not adopted them by framing Statutory Rules.

18. The learned Senior Counsel for the fifth respondent would also submit that the order dated 12.12.2019 passed by another Division Bench of this Court in W.P.No.18753 of 2019 is only an interim order, whereas the judgment dated 17.10.2019 passed by the Division Bench of the Madurai Bench of Madras High Court in W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019 is a final judgment which has given due consideration to the decision of the Hon'ble Supreme Court in *Arti Devi Dangi's* case and only thereafter came to the conclusion that Indian Road Congress Guidelines are not mandatory. He would further submit that the connected writ petitions which has been referred to in the order dated 12.12.2019 passed by another Division Bench of this Court in W.P.No.18753 of 2019 are all Public Interest Litigations in which the fifth respondent is not a party and therefore has no bearing for the facts of the instant case.

19. The learned Senior Counsel for the fifth respondent would further submit that the petitioner is a business rival of the fifth respondent. According to him, the writ petition has been filed purely out of business motive and therefore not maintainable. In support of his submissions, he relied upon the following decisions of the Madras High Court:

(a) Division Bench judgment in the case of Nataraja Agencies vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India, New Delhi and others reported in 2005 (1) CTC 394.

(b) Single Bench decision in the case of Kanyakumari District Petroleum Dealers Association vs. District Revenue Officer and Additional District Magistrate, Nagercoil and Others reported in 2006 WLR 917

(c) Single Bench decision dated 04.09.2017 passed in W.P.No.41827 of 2016 batch in the case of S.Shanmugharaja vs. District Collector and other.

20.Mr.V.Shanmuga Sundar, learned Special Government Pleader for the official respondent would agree with the submissions made by the learned Senior Counsel for the fifth respondent. He would further reiterate that the second respondent has not shown partiality to any one and the impugned order has been passed only in accordance with law. He would further submit that there is an alternate Appellate efficacious statutory remedy available to the petitioner as against the impugned order. According to him, without exercising the same, the petitioner has approached this Court under Article 226 of the Constitution of India and hence the writ petition is not maintainable.

Discussion:

21.Insofar as the first issue for consideration by this Court namely whether the Indian Road Congress Guidelines are mandatory or not is concerned, the said issue has already been considered by a Division Bench of the Madurai Bench of the Madras High Court in a batch of writ petitions namely W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019 dated 17.10.2019 wherein the Hon'ble Division Bench has held that the Indian Road Congress Guidelines will become mandatory only when it has been adopted by the respective State Governments by framing Statutory Rules incorporating the said Guidelines. In the said decision, the Division Bench has considered the decision of the Hon'ble Supreme Court in Arti Devi Dangi's case referred to supra and has held that Indian Road Congress recommendations - 2009 can take binding force and statutory effect only when appropriate Rules are framed by the State Government. Since Statutory Rules have not been framed by the State Government, the Division Bench in the aforesaid decision held that the Indian Road Congress Guidelines are not mandatory.

22.The relevant portion of the aforesaid decision of the Division Bench of the Madurai Bench of this Court are extracted hereunder:

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 affect mandate. However, on a closer 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 sub-rules 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.

51. In the case on hand, the petitioner has not been able to substantiate with any document to show that the State Public Works Department or the Central Government had adopted 2009 Guidelines and framed rules and sub-rules under the relevant statute. At this juncture, we wish to reiterate our conclusion, which we have recorded in the preceding paragraphs with regard to the effect of the order passed in W.P.No.691 of 2017 dated 18.01.2019, filed by Mr.V.B.R.Menon. We have already held that the said decision can in no manner advance the case of the writ petitioner.

54. The learned counsel for the petitioners would submit that the memo of the Chief Engineer, dated 05.04.2018, is the decision of the Government. Such a plea cannot be countenanced, because, at best, the Chief Engineer can issue administrative instructions to her subordinate officers within the subjects falling within her jurisdiction. Any such instruction given to the subordinate officers beyond her powers cannot bind the Government. That apart, the memo dated 05.04.2018 has been issued citing the writ petition in W.P.No.691 of 2017. It is not known under what circumstances, the Chief Engineer referred to the said writ petition and issued the memo. The said writ petition was filed in the year 2017. The matter was heard by the Honourable First Bench on 24.04.2017. On the said date, the time to file counter affidavit was extended as a last chance by two weeks i.e. on or before 16.06.2017 and rejoinder that to be filed within one week thereafter and the matter was directed to be listed on 04.07.2017. However, it appears that subsequently, the matter was listed on 18.01.2019 and the same was disposed of by the aforementioned order. The larger question would be

whether the Chief Engineer had authority to instruct the Superintending Engineers (H) and Divisional Engineers (H) to strictly adhere to IRC 12-2009 Guidelines for issuance of no objection certificate. There is no reference to any direction issued by either the State Government or Central Government for the Chief Engineer to compel her subordinates to strictly comply with the IRC Guidelines. Therefore, we are of the view that the direction issued by the Chief Engineer at best can be treated as directory if it does not suffer from the vice of lack of jurisdiction. When a statutory rule or a notification is in vogue, the same will prevail over the memo issued by the Chief Engineer. Therefore, we cannot be called upon to alleviate the status of the memo issued by the Chief Engineer to that of the statutory notification or the rules.

As seen from the above, the Indian Road Congress Guidelines have no statutory force as far as State of Tamil Nadu is concerned. The instructions given by the Assistant Divisional Engineer, Highways Department dated 08.11.2019 as well as instructions given by the Principal Secretary to Government of Tamil Nadu to all the District Collectors/Commissioner of Police dated 08.02.2020 relied upon by the learned Senior Counsel for the petitioner has no statutory force. In order for executive instructions to have force of Statutory Rules, it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution providing therefor. In the communication dated 08.11.2019 of the Assistant Divisional Engineer, Highways as well as the communication dated 08.02.2020 issued by the Principal Secretary to Government of Tamil Nadu there is no reference to any statute and therefore, the said communications are only in the nature of instructions and is not mandatory in nature. The official respondent before this Court have not raised any objection whatsoever for setting up of the petrol bunk by the fifth respondent in the subject location. Hence, it is clear that there is no illegality committed by the second respondent in granting No Objection Certificate to the fifth respondent for setting up a petrol bunk in the subject location.

23. Insofar as the order dated 12.12.2019 passed in W.P.No.18753 of 2019 by the Division Bench of this Court is concerned, it is only an interim order and the said writ petition is still pending on the file of this Court. An interim order cannot be used as a precedent when another Division Bench of this Court has earlier authoritatively decided the question in issue by holding that the Indian Road Congress Guidelines are not mandatory. Furthermore, in the Division Bench judgment of

the Madurai Bench of Madras High Court in a batch of writ petitions referred to supra has given due consideration to the decision of the Hon'ble Supreme Court in Arti Devi Dangi case referred to supra and only thereafter has come to the conclusion that the Indian Road Congress Guidelines are not mandatory. The other writ petitions referred to in the order dated 12.12.2019 passed in W.P.No.18753 of 2019 are all Public Interest Litigations which are still pending on the file of this Court and the fifth respondent is also not a party in those litigations. Therefore, this Court is of the considered view that insofar as the first issue for consideration namely whether Indian Road Congress Guidelines is mandatory or not will have to be answered in favour of the fifth respondent by holding Indian Road Congress Guidelines are not mandatory.

24. The petitioner is admittedly having a petrol bunk in the same area where the fifth respondent is proposing to set up the petroleum retail outlet. Admittedly, the petitioner is a competitor for the fifth respondent. The decisions relied upon by the learned Senior Counsel for the fifth respondent in the case of

(a) Nataraja Agencies vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India, New Delhi and others reported in 2005 (1) CTC 394

(b) Kanyakumari District Petroleum Dealers Association vs. District Revenue Officer and Additional District Magistrate, Nagercoil and Others reported in 2006 WLR 917

(c) S. Shanmugharaja vs. District Collector and other dated 04.09.2017 passed in W.P.Nos.41827 of 2016 batch squarely supports the case of the fifth respondent who has contended that a business rival cannot file a writ petition against his competitor. The Division Bench of this Court in Nataraja Agencies vs. The Secretary, Ministry of Petroleum and Natural Gas, Government of India, New Delhi and others case referred to supra has 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 S.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 injuria-damage without infringement of legal right. In our opinion, this will only result in promoting competition among the traders, 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.

25. Admittedly, petroleum outlets are set up with public interest in mind. None of the official respondents before this Court have raised any objection with regard to setting up of a petrol bunk by the fifth respondent. There is no material on record placed before this Court to establish that setting up of the petroleum retail outlet by the fifth respondent in the subject location is dangerous and is against public interest. The Indian Road Congress Guidelines as observed earlier are not mandatory. The State of Tamil Nadu has not framed Statutory Rules incorporating the Indian Road Congress Guidelines till date and therefore, the Indian Road Congress does not have any binding statutory force.

26. For the foregoing reasons, there is no merit in this writ petition and accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

pam

To

1.The Joint Chief Controller of Explosives,  
A and D Wing, Block 1 to 8, 2<sup>nd</sup> floor,  
Shastri Bhavan, 26, Haddows Road,  
Nungambakkam, Chennai.

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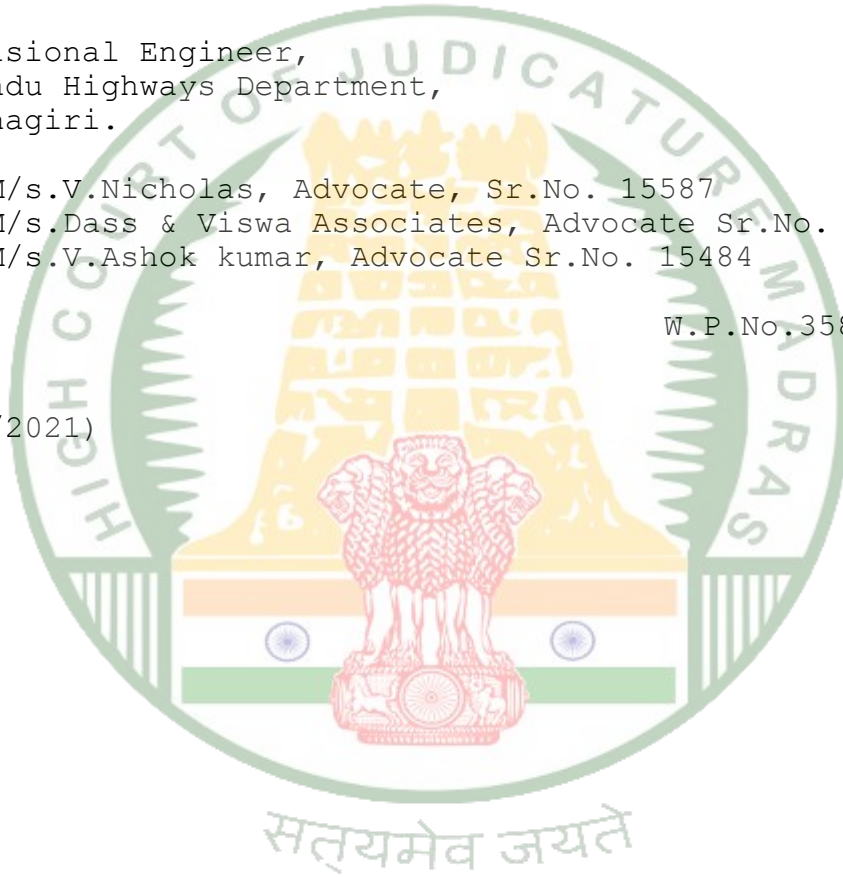
+2ccs to M/s.V.Nicholas, Advocate, Sr.No. 15587

+1 cc to M/s.Dass & Viswa Associates, Advocate Sr.No. 15593

+1 cc to M/s.V.Ashok kumar, Advocate Sr.No. 15484

W.P.No.35885 of 2019

SR II (CO)  
RMP (12/03/2021)



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