

IN THE HIGH COURT AT CALCUTTA

(Civil Appellate Jurisdiction)

APPELLATE SIDE

Present:

**The Hon'ble Justice Subrata Talukdar
and
The Hon'ble Justice Krishna Rao**

MAT 689 of 2020

With

IA No. CAN 1 of 2020

Md. Ashif Mehaboob & Ors.

-Versus-

Union of India & Anr.

Mr. Mainak Bose
Mr. Rishabh Karnani
Mr. Anurag Bagaria

.....For the Appellants

Mr. Goutam Sardar
Mr. Goutam Malik

.....For the Union of India

Mr. Puspendu Chakraborty
Mr. Suman Dey

.....For the BPCL

Mr. Debabrata Saha Roy
Mr. Pingal Bhattacharyya
Mr. Rajdeep Bhattacharyya
Mr. Subhankar Das

.....For the Respondent No. 5

Heard on : 22.07.2022 & 05.08.2022

Judgment on : 22.12.2022

Krishna Rao, J.:-

This is an appeal against the order passed by the learned Single Judge in WPA No. 6840 of 2020 dt. 16th September, 2020 wherein the Learned Single Judge had passed the following order :

“This is an application for early hearing, which is disposed of by taking up the writ petition for consideration.

CAN 5876 of 2020 is disposed of.

Learned advocate for the petitioners seeks a direction upon the oil company to allot the petrol pump in favour of the petitioners. He submits that, an unsuccessful candidate filed a previous writ petition in which interim order was refused. The oil company is citing the pendency of such writ petition as a ground for denial of the permission.

There is an earlier writ petition at the behest of the unsuccessful candidate. Although interim order was refused in such writ petition it is yet to be disposed of finally. The writ petitioners herein are aware of the particulars of the earlier writ petition and the writ petitioners therein. Yet the writ petitioners chose not to make such other writ petitioner as party respondent in the present writ petition.

In order to avoid conflict of judicial decision it would be appropriate to decide both the writ petitions together. In such circumstances, let affidavit-in-opposition be filed within four weeks from date. Reply, if any, be filed within two weeks thereafter.”

The Bharat Petroleum Corporation, the respondent no. 2 had issued a Notification on 25th November, 2018 inviting application for petrol pump dealership in open category for Chandpur Bazar to WB-Jharkhand Border location. As per notification, the appellant had applied in the category of a Partnership for Regular/Rural Retail Outlet Dealership under open category for the aforementioned location on 11th December, 2018. After verification of the application submitted by the petitioner the respondent no. 2 vide e-mail

dt. 11th January, 2019 had declared the petitioner as selected for Chandpur Bazar to WB-Jharkhand Border location dealership. As per the e-mail dt. 11th January, 2019, the petitioner is required to comply with the terms and conditions to obtain final clearance for operation of the retail outlet in the aforesaid location. During the process, the petitioner had received another e-mail from the respondent no. 2 for submitting further documents and accordingly the petitioner had submitted the same. The Land Evaluation Committee had also visited the site and carried out inspection and verification of the site and found the same to be satisfactory.

On 25th February, 2019, the respondent no. 2 had issued Letter of Intent to the petitioner and accordingly the petitioner had obtained all necessary documents like No Objection from Gram Panchayat, Land Conversion Certificate, Fire Licence and No Objection from District Magistrate. On receipt of submission of all documents and on receipt of Letter of Intent, the appellant had commenced construction work for establishment of petrol outlet which was completed on 16th December, 2019 had only the petitioner was waiting for underground storage tank which is required to be supplied by the respondent no. 2.

In the meantime, the petitioner has received a copy of writ application being WPA No. 13179 of 2019 filed by one Shri Rafiqul Islam who is the unsuccessful applicant for the allotment of petrol outlet which was allotted to the appellant. In the said writ petition, it is alleged that the said allotment was in violation of IRC:12-2009, a circular of Indian Road Congress for access, location and layout of roadside fuel station and service station. In

the said writ petition, the petitioner had also prayed for interim order but the same was rejected and the writ petition is still pending for adjudication.

In spite of several requests made by the appellant, the respondent no. 2 has not issued final clearance to the appellant and finding no other alternative, the appellant had preferred a writ petition being WPA No. 6840 of 2020 praying for the following relief :

“(a) A writ of the nature of Mandamus do issue commanding the Respondents and each one of them and their men or agents to issue the final clearance to the Petitioners for commencing operation of the retail outlet at Chandpur Bazar to WB-Jharkhand Boarder location;

(b) A Writ in the nature of Certiorari do issue commanding the respondents, their men and agents and each one of them to forthwith transmit all records relating to the Petitioners’ retail outlet so that conscionable justice may be done by considering the same;

(c) Rule Nisi in terms of prayers above;

(d) Direct the Respondent No. 2 to forthwith issue the final clearance to the Petitioners for operation of the retail outlet at Chandpur Bazar to WB-Jharkhand Border location;

(e) Ad interim order in terms of prayer (d) above;

(f) Such further or other order or orders be passed and/or direction or directions be given as to this Hon’ble Court may deem fit and proper.”

The private respondent has filed writ application being WPA No. 13179 of 2019 against the respondent as well as the appellant praying for the following relief:

“(a) A Writ of and/or in the nature of Mandamus do issue commanding the respondents, in particular, the respondent no. 3 to strictly adhere to the conditions of the IRC:12-2009 for appointment of new Retail Outlet Dealership and not to select any person in violation thereof;

(b) A Writ of and/or in the name of Certiorari do issue calling upon the respondents and each of them to forthwith certify and transmit to this

Hon'ble Court, the records of the case culminating in the impugned decision to select the candidate in respect of the location "Chandpur Bazar to West Bengal – Jharkhand Border" so that upon perusal thereof, conscionable justice may be rendered to the petitioner by quashing the same;

(c) A Writ of and/or in the nature of Prohibition do issue prohibiting the respondents from giving effect or further effect to the decision, if taken in deviation of the norms of IRC:12-2009, in selecting candidate against the vacancy "Chandpur Bazar to West Bengal-Jharkhand Border", in any manner whatsoever;

(d) Rule NISI in terms of prayers (a), (b) and (c) above and to make the Rule absolute, if no causes and/or insufficient causes are shown;

(e) Injunction do issue restraining the respondents in particular the respondent no. 3 from giving effect or further effect to the decision, if taken in deviation of the norms of IRC:12-2009, in selecting candidate against the vacancy "Chandpur Bazar to West Bengal-Jharkhand Border", in any manner whatsoever;

(f) Ad-interim order in terms of prayer (e) above;

(g) Costs of and incidental to this petition be borne by the concerned respondents;

h) Such further or other order or orders and/or direction or directions be given as to this Hon'ble Court may seem fit and proper."

The main grievance of the private respondent is that as per the Circular dated 25th September, 2003 for setting up of fuel station along the National Highways, the minimum distance from intersection with National Highway would be 1000 mtrs in Non Urban Area (Rural) stretches and the petrol outlet which is allotted to the appellant is in the Rural area and the intersection with National Highway is less than 1000 mtrs.

At the time of hearing of the writ petition filed by the private respondent for grant of interim order, the Counsel for the IOCL and BPCL submits that the Circular dated 25th September, 2003 does not have any statutory force, and accordingly, the IOCL & BPCL are at liberty to advertise

for Retail Outlet Dealership as per their own guidelines and they have allotted the Retail Outlet Dealership to the appellant as per their own guidelines.

The Bharat Petroleum Corporation Limited had also filed an affidavit in opposition to WPA NO. 13179 of 2019 on 10th December, 2019 filed by the private respondent and in the said affidavit the BPCL has taken to following stand :

“6. The statements made in paragraph 10 to 33 of the said application are denied and disputed to the extent they are not matters of record. It is admitted fact that the petitioner did not apply for the dealership on the basis of the advertisement dated 25.11.2019 in respect of the location being “Chandipur Bazar to West Bengal – Jharkhand Border” in the District of Murshidabad. The instant Petition appears to have been filed purposefully and with an ulterior motive. It is not clear from the statements made in the petition as to how and in which manner his rights are infringed and/or he is prejudiced by the acts of the respondent Corporation. In the premises the application on behalf of the petitioner itself is not maintainable.

It is submitted that upon inspection of the land offered by the private Respondent No. 6 it has been found that the same satisfies the eligibility criteria and is suitable for the dealership. It is submitted that Respondent No 3 is bound to follow the Selection Brochure and act in terms of existing laws in giving appointment of the dealership. It is submitted that in the instant case Respondent No 3 while issuing Letter of Intent has acted on the basis of the Selection Brochure and has not violated any law, Circular or norms for setting up the Retail Outlet over the land offered by the Private Respondent. It is reiterated and submitted that the requirement under Specification of IRC: 12 – 2009 has no manner of application in the instant case. The said guideline is also not mandatory. In the premises the contention of the petitioner as reflected in paragraph 14 of the said application are totally misconceived. It is denied that BPCL is bound by the terms of the IRC : 12-2009 while granting dealership over the land offered by the Private Respondent herein. It is further denied that BPCL has no jurisdiction, authority or power to entertain the application of the Private Respondent and/or proceed to select him. It is respectfully submitted that the eligibility criteria for the dealership are very specific and the same does not prevent the petitioner from applying for the dealership. However, the petitioner choose not to apply for the same on a misconceived ground. In the premises the contention of the petitioner to the effect that the

selection candidate does not satisfy the eligibility criteria and/or the selection of private respondent is discriminatory or the Respondent Corporation prevented the similarly situate persons from making application against the said location as alleged. It is respectfully submitted that the Respondent Oil Company has no power or authority to waive application of any mandatory Circular or guideline for setting up of its Retail Outlet. However, in the instant case the Circulars/specifications referred to and relied upon by the petitioner has no manner of application in respect of the offered land of the Private Respondent. BPCL has published the advertisement for appointing a dealer within the stretch "Chandipur Bazar to West Bengal – Jharkhand Border". The land offered by the Private Respondent situates within the advertised location. It is still denied that the IRC guidelines has any manner of application over the offered land. It is further denied that any action on behalf of the Respondent Oil Company has deprived the petitioner from entering into the arena of consideration for the dealership in respect of the advertised location. It is still denied that acceptance of the application filed by the selected candidate is invalid due to the reason that the same is violative of the equality clause of the Constitution of India or the same is violative of the Rule of Administrative Law or arbitrary as alleged or at all. It is further denied that the action of the Respondent No 3 is discriminatory, arbitrary unreasonable and contrary to the terms of IRC: 12-2009 in as much as the said Circular has no manner of application over and in respect of the land offered by the private respondent. It is respectfully submitted that the Respondent Oil Company has in the instant case acted fairly and reasonably and the statements made in the said application contrary to the aforesaid are all baseless, harassive and malafide. It is still denied that BPCL is acting with predetermined mind to give appointment to its blue eyed candidates as alleged or at all. It is denied that the respondent Oil Company has failed to act in compliance of any law, Circular, selection Brochure or norms which are mandatorily applicable for setting up a Retail Outlet over land offered by the private respondent. It is further denied that the act on behalf of the Respondent No 3 has put any unlawful restriction on the petitioner's right to carry on trade and business which tantamount to violation of Article 19(1) (g) of the Constitution of India. It is denied that the grounds specified in the said application are good grounds for an interference by this Hon'ble Court. I crave leave to make appropriate submission with regard to the contents of the paragraphs under reference at the time of hearing of the instant writ petition."

Subsequently after about two years, i.e. on 15th November, 2021, the BPCL had filed supplementary affidavit in WPA No. 13179 of 2019 and have

changed the stand taken in their affidavit on 10th December, 2019. Relevant paragraph of affidavit dated 15th November, 2021 reads as follows :

“3. It is respectfully submitted that subsequent to the affirmation of the said affidavit in opposition, it came to the notice of respondent No. 3 that Government of India through its Notification dated 4.03.2014 had declared “The highway starting from its junction with NG-33 near Baharwa connecting Pakur in the State of Jharkhand and terminating with NH-12 near Nimtala in the State of West Bengal” as New National Highway No. 133A. It further transpired that the Director, Ministry of Road Transport & Highways, Government of India vide his letter dated 22.04.2014 had communicated factum of such declaration to the Secretary, Public Works Department, Government of Jharkhand/ West Bengal. The respondent No. 3 further came to know that the Central Government in exercise of powers conferred by Section 5 of the National Highways Act, 1956 and in suppression to all earlier orders/Notifications relating to the entrustment of NH31A in the State of West Bengal, had directed that the functions in relation to the execution of works pertaining to the new NH no. 133A shall be exercisable by the State Government of West Bengal subject to the condition that the State Government shall in the exercise of such functions be bound to comply with the rules for the time being in force under the said Act, through the Notification dated 20.01.2016.

4. It is respectfully submitted that the Executive Engineer, Murshidabad Highway Division No. 1, P.W. (Roads) Directorate through his letter dated 11.09.2019 had informed one of the dealers of the respondent Corporation that Upgradation to 2-lane with paved shoulder configuration & strengthening of NH-133A from Nimtala (Junction with NH-34) to Jharkhand Border in the district of Murshidabad, West Bengal work is going on under National Highway Division No. VII, P.W. (Roads) Directorate. Subsequently Manager Sales (Retail), Durgapur had through his letter dated 27.11.2020 requested the Executive Engineer to provide further details regarding the date on which the stretch i.e. “Chandpur Bazar to West Bengal-Jharkhand Border” was declared as a National Highway. It was also requested to provide the dates on which the stretch was handed over to Murshidabad High-Way Division for upgradation and when such upgradation work commenced. Thereafter vide letter dated 4.12.2020, Executive Engineer Murshidabad High-Way Division informed that the road had been handed over to Executive Engineer National Highway Division No.-VII, Public Work (Roads) Directorate, P.O. Jhaljhalia, District Malda, Pin-732102 on 7.12.2018.

5. It is respectfully submitted that at the time of affirming the affidavit in opposition it was not within the knowledge of the respondent that the stretch “Chandpur Bazar to West Bengal-Jharkhand Border” has been declared to be a National Highway. As a

matter of fact the said location has been advertised under Rural class of market. The Private Respondent No. 6 is the successful candidate and LOI has been issued in his favour. The Selection Brochure governing the appointment of dealerships for the advertised locations clearly mentions that NHAI norms are applicable for locating along National Highways and the successful candidate is obliged to fulfill the norms specified in the Selection Brochure.”

To decide the issue involve in the instant appeal, the relevant clauses of the IRC:12-2009 are set out below :

“3 SCOPE

3.1 Petrol/Diesel/Gas fuel stations and service stations with or without Rest Area Amenities etc. are hereinafter referred to as Fuel Stations.

3.2 These norms are applicable to all Fuel Stations with or without other user facilities of rest areas, along un-divided carriageway and divided carriageway sections of all categories of roads i.e. National Highways, State highways, Major District Roads and Rural roads in plain, rolling and hilly terrain, and passing through rural and urban stretches including towns and cities. For this purpose hilly or mountains terrain would be, when the cross slope of the country is more than 25 %. The urban stretches, only for the purpose of this guidelines, would be, where a highway passes through towns or cities which have been notified as Municipalities or Municipal Corporations.”

“4 GENERAL CONDITIONS OF SITING

4.5 In order to provide safe length for weaving of traffic, fuel stations along highways/roads shall be located at the minimum distance from an intersection (gap in the central median be treated as intersection), as given below. For single carriageway section, these minimum distances would be applicable for both sides. All the distances shall be measured between the tangent points of the curves of the side roads at intersections/the median openings and the access/egress roads of the fuel stations, as is applicable, in a direction parallel to the centre line of the nearest carriageway of the highway.

The above mentioned distances are applicable for setting up of fuel stations along National Highways, State Highways and Major District Roads. In case of the fuel stations along the Rural Roads in plain and rolling terrain, the distance from the intersection with NHs/SHs/MDRs

can be reduced to 300 m in place of 1000 m depending on the level of traffic.

4.5.1 Non-urban (Rural) stretches

(1) Plain and Rolling Terrain

- (i) Intersection with NHs/SHs/MDRs/City Roads 1000m*
- (ii) Intersection with Rural Roads/approach roads to private and public properties 300 m*

2) Hilly/Mountainous Terrain

- (i) Intersection with NHs/SHs/MDRs 300 m*
- (ii) Intersection with all other roads and tracks 100 m”*

4.6.3 If two or more fuel stations are to be sited in close proximity for some reasons, these would be grouped together to have a common access through a service road of 7.0 m width and connected to the highway through acceleration, deceleration lanes. From these considerations, the permission for the new fuel stations would be considered only if it is either in proximity to the existing one so that the common access can be provided or the new one located at distance of more than 1000 m. Any objection from the existing fuel station owner against granting of access permission from the highway for the proposed new fuel station are to be overruled and access to all fuel stations in case of clustering, shall invariably be from the service road only.

4.6.4 For installation of new fuel station within the 1000 m or 300 m distance of existing fuel station as the case may be, new entrant would be responsible for construction and maintenance of the common service road, deceleration and acceleration lanes, drainage and traffic control devices. Whatever, available ROW is inadequate to accommodate such service roads, deceleration/acceleration lanes, etc. the additional land by the side of ROW to accommodate such service roads shall also be acquired by the new entrant Oil Company. In case of hilly/mountainous terrain, common service access through service roads would not be a pre-condition.”

Clause 4.4.3 and 4.4.4 of the Ministry of Road, Transport and Highways vide their Letter No. RW/NH-33023/19/99-DOIII dt. 25.09.2003, APENDIX-1, specifying norms for location, layout and access to fuel stations along National Highways read as follows:

“4.4.3 If two or more fuel stations are to be sited in close proximity for some reasons, these would be grouped together to have a common access through a service road of 7.0 m width and connected to the highway through acceleration, deceleration lanes. From these considerations, the permission for the new fuel stations would be considered only if it is either in proximity to the existing one so that the common access can be provided or the new one located at the distance of more than 1000m.

4.4.4 For installation of new fuel station within the 1000m distance of existing fuel station in plain/rolling terrain and 300mm in hilly/mountains terrain and urban stretch, new entrant would be responsible for construction and maintenance of the common service road, deceleration & acceleration lanes, drainage and traffic control devices. In case of hilly/ mountains terrain, common service roads at all such locations may not be possible as per the site conditions and therefore common access through service roads would not be a pre-condition.”

In the Judgment reported in (2016) 15 SCC 480 (Indian Oil Corporation Limited & Others -Versus- Arti Devi Dangi and Another), the Authority while publishing advertisement for allotment of Petrol Outlet in the advertisement categorically mentioned that :

“2. *To answer the question arising, it will be necessary to note herein the relevant part of the advertisement issued dealing with the above question.*

“(a) For establishment of Kendra, the compulsory measurement of the plot should be 35 m × 35 m (apart from the PWD land) the proposed plot of land for KVK should not be on the National Highway/State Highway and should fulfil all the Rules and sub-rules of PWD and local legal necessities.”

In the said case, the State PWD of Madhya Pradesh had adopted the IRC Guidelines. In the instant case when the BPCL has published advertisement there is no whisper about the IRC guidelines nor there is any such clause as available in the case of Arti Devi (supra).

The case of Arti Devi (supra) was also considered by the Hon'ble Division Bench of Madras High Court in its Judgment reported in 2019 SCC OnLine 8587 (Durairaj Venkatachalam – versus- The Additional Chief Secretary & Ors.). In the said case the Division Bench of Madras High Court had also considered the IRC Guidelines:

***“41.** Having held so, we need to consider as to what would be the effect of the guidelines of the Indian Roads Congress. The petitioners cannot deny the fact that the procedures for grant of no objection certificate/clearance are regulated by the Central enactment, namely, the Petroleum Act and the Rules framed thereunder. Admittedly, the guidelines framed by the Indian Roads Congress have not been incorporated into the provisions of the Petroleum Act and the Rules framed thereunder.*

***44.** The Indian Roads Congress, Multi-Member Body, consists of Experts, have framed these guidelines from time to time. Their recommendations have to fructify into statutory notifications or orders or by suitable amendment to the legislation. Until the recommendations fructify into anyone of these, they continue to remain as guidelines and are to be interpreted as recommendatory and not mandatory. The Experts have made a suggestion with laudable intentions and the ultimate reason for doing so is to ensure safe road traffic. Therefore, the respondents would not be justified in refusing to look into the guidelines.*

***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.

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.*

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 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.*

52. *Further, we note that in Paragraph No. 8 of the decision in the case of Arti Devi Dangi (supra), the provisions of the advertisement were noted and the advertisement specifically states that the proposed plot of land for the dealership should not be on the National Highway/State Highway and should fulfill all the rules and sub-rules of PWD and local legal necessities. In the light of the said factual position, the above decision was rendered. Therefore, in our view, the said decision is factually distinguishable and does not render assistance to the case of the petitioners. Having held that the decision in the case of Arti Devi Dangi (supra) would not assist the case of the petitioner, it goes without saying that the same cannot be pressed into service as law declared under Article 141 of the Constitution of India and therefore, the said argument of the petitioner also has to fail.”*

The Hon’ble Division Bench of the Madras High Court clarified that the Public Works Department of Madhya Pradesh have adopted the IRC

Guidelines and they have framed rules and sub-rules and the said rules and sub rules were binding upon the applicants of the said case.

In the present case, the BPCL had simply notified the vacancy for allotment of Petrol Outlet and have not specified any IRC Rules and there is no document to show that the State of West Bengal have adopted the said guidelines and framed any rules or sub-rules. The very important aspect of the instant case is that the BPCL have admitted before the Hon'ble Single Bench in WPA No. 13179 of 2019 as filed by the private respondent that the IRC Guidelines do not have any statutory force and had adopted their own procedure as per their own guidelines had allotted the Retail Outlet Dealership to the appellant herein. After allotment of dealership, the appellant had invested huge sum for construction of petrol outlet and obtained all necessary licenses and permission from various authorities and the Oil Company accepted the same and only the appellant was waiting for final clearance. Now after the period of more than two years the oil company have changed their stand taken earlier.

If clause 4.4.3 and 4.4.4 of IRC Guidelines stated above are read together it can be said that the defect can be remedied.

In view of the above, this Court finds that the Public Works Department of the State of West Bengal has not adopted the IRC Guidelines and have not framed any Rule or Sub-Rule and thus IRC:12-2009 dated 25th September, 2003 cannot be made applicable in the case of appellant. The respondent authorities are directed to take appropriate steps for granting final clearance to the appellant for commencing operation of the Retail

Outlet of the appellant within a period of four weeks from the date of receipt of the order.

MAT No. 689 of 2020 is thus **allowed**.

In view of this order, **WPA No. 6840 of 2020** stands also **disposed of**.

Parties shall be entitled to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)

Later :

Learned Counsel for the private respondent prays for stay of the operation of the order.

Learned Counsel for the appellant raises objection.

Prayer for stay is considered and refused.

I agree.

(Subrata Talukdar, J.)

(Krishna Rao, J.)