



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.1956 of 2022
and
W.M.P.No.2116 of 2022

H. Alaudeen

... Petitioner

Vs.

1. Hindustan Petroleum Corporation,
Represented by Head of Regional
Office & Duly Constituted Attorney
Salem Retail Regional Office,
Level 4, 'GK Towers'
Door No.395/2, First Main Road,
Fairlands, Salem-636 016.

2. The District Revenue Officer,
Collectorate,
Krishnagiri District.

3. The Division Engineer (c&M)
Highways Department,
Krishnagiri.

...Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records leading to the proceedings of the 3rd respondent in Na.Ka.N.275/2020/Petroleum/evaA-1/dated 14.09.2020, and quash the same and consequently direct the third respondent to issue a No Objection Certificate for the establishment of the retail MS/HSD/ outlet in survey No.36 in Batrahalli Village, Pochampalli Taluk and Krishnagiri district, in favour of the petitioner.

For Petitioner : Mr.C.Jagadish

For Respondents : M/s.Mohammed Fayaz Ali for R1
: Mrs. C. Sangamithirai,
Special Government Pleader for R2 & R3.



O R D E R

The petitioner has filed this writ petition seeking the relief of quashment of the impugned order dated 14.09.2020 passed by the 3rd respondent and a direction to the 3rd respondent to issue No Objection Certificate for the establishment of the retail outlet in favour of the petitioner.

2. M/s.Mohammed Fayaz Ali, learned counsel takes notice for the 1st respondent & Mrs.C.Sangamithirai, learned Special Government Pleader takes notice for the respondents 2 & 3.

3. The case of the petitioner is that upon the advertisement made by the 1st respondent calling for selection of dealers for regular and retail outlets for sale of MSD/HSD, the petitioner, in order to participate in the selection process took on lease land in Survey No.36. Subsequently, the petitioner was selected and the 1st respondent had proposed to offer Dealership of HPCL to the petitioner. In order to obtain the license for the proposed outlet, the 1st respondent had applied for No Objection Certificate as per the rule 144 of the Petroleum Rules, 2002, before the 3rd respondent, however, the 3rd respondent had rejected the claim for issuance of No Objection Certificate to the petitioner citing non-compliance of the IRC norms. Aggrieved by the same, the petitioner has come up with this Writ Petition seeking the relief of quashment of the impugned order.

4. The learned counsel for the petitioner submits that, this Court, in its various decisions held that the IRC guidelines are only recommendatory in nature and not mandatory. Therefore, strict reliance cannot be placed by the 3rd respondent to reject the claim for issuance of the No Objection Certificate. Hence, this Court may issue a direction to the 3rd respondent to issue the No Objection Certificate in favour of the petitioner.

5. Mrs. C. Sangamithirai,, learned Special Government Pleader appearing for the Respondents 2 and 3 submitted that the issue in the present case was already decided by the Hon'ble Apex Court in (2016) Indian Oil Corporation Limited and others Vs. Arti Devi Dangi and another in which, it is stated that IRC guidelines is mandatory requirement of the tender conditions in the said case. This Court by its order in W.P.No.35885 of 2019 dated 11.03.2021 has admitted that IRC-2009 is not mandatory in nature. It is a further submission of the learned Additional Advocate General that the decision in W.P.(MD) No.9622 of 2020 and W.M.P.(MD) No.8659 of 2020 have been distinguished by the Madurai Bench in W.A.(MD) No.1054 of 2020 and in such a scenario, the case has to be referred to a Larger Bench for



deciding the issue as to whether IRC guidelines is recommendatory or mandatory. Accordingly, he prays for appropriate orders.

6. The fact in the present case is not in dispute and by the order of both the Hon'ble Apex Court and the Division Bench of this Court, the Apex Court has taken consideration of IRC guidelines and based upon which, respective States have framed rules following the IRC. Further, the learned Single Judge has allowed the Writ Petition in W.P.No.8634 of 2021 and directed the respondents to issue No Objection Certificate to the respective persons.

7. Further, in yet another decision in W.P.No.35885 of 2019 vide order dated 11.03.2021, another learned Single Judge, advertent to various decision has clearly held that IRC is recommendatory and not mandatory. The relevant portion of the said order is as under:

"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.

25. 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."

8. In similar Arti Devi Dangi's case (Supra), the Madurai Bench of this Court has held that IRC guidelines are only recommendatory and not mandatory, which is as follows:

"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



WEB COPY

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 matter 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 18.11.2019 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



WEB COPY

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."

9. From the above, it is clear that IRC guidelines are only recommendatory and not mandatory and, accordingly, the decision relied on by the petitioner in W.P.(MD) No.8634 of 2021 is squarely attracted to the present case.

10. In view of the above, this Writ Petition is allowed and the 3rd respondent is directed to grant No Objection Certificate forthwith. No Costs. However, this order will not stand in the way of the Government to frame guidelines. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

NHS
To

1. The Head of Regional
Office & Duly Constituted Attorney
Hindustan Petroleum Corporation,
Salem Retail Regional Office,
Level 4, 'GK Towers'
Door No.395/2, First Main Road,
Fairlands, Salem-636 016.
2. The District Revenue Officer,
Collectorate, Krishnagiri District.
3. The Division Engineer (c&M)
Highways Department, Krishnagiri.

+1cc to Mr.C.Jagadish, Advocate SR.No.7289
+1cc to Government Pleader SR.No.7737

W.P.No.1956 of 2022

PMK(CO)
GMY(25/03/2022)