



W.P.(MD).No.23183 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2022

CORAM:

THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.(MD).No.23183 of 2022

and

W.M.P.(MD).Nos.17273 and 17275 of 2022

S.Karunakaran

... Petitioner

vs.

1.Bharat Petroleum Corporation Limited,
Trichy Retail Territory,
1st Floor, Raj Towers,
Karur Bye Pass Road,
Trichy 620 002.

2.The District Revenue Officer,
Trichy District,
Trichy.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in Letter No.Moo.Mu.D2/27122/2021, dated 14.06.2022 and quash the same and consequently, direct the second respondent to issue No Objection Certificate for the establishment of the retail MS/HSD outlet in S.No. 198/1, Vadakku Velli Village, Thuraiyur Taluk, Trichy District in favour of the petitioner.



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For Petitioner	: Mr.K.Srinivasan
For R1	: Mr.Natesh Raja
	Standing counsel
For R2	: Mr.D.Gandhiraj
	Special Government Pleader

ORDER

This Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the second respondent in Letter No.Moo.Mu.D2/27122/2021, dated 14.06.2022 and quash the same and consequently direct the second respondent to issue No Objection Certificate for the establishment of the retail MS/HSD outlet in S.No.198/1, Vadakku Velli Village, Thuraiyur Taluk, Trichy District in favour of the petitioner.

2. The case of the petitioner is that the first respondent by Notification dated 25.11.2018, called for selection of dealers for regular and retail outlets for sale of MS/HSD Retail Outlet dealership at Vadakku Velli Village, Thuraiyur Taluk, Trichy District and the petitioner has submitted an application for the same. Based upon the said application, the second respondent conducted an interview and drawl a lot was held



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by the first respondent, wherein the petitioner was awarded dealership and the first respondent had issued a letter of intent dated 09.09.2021, proposing to offer dealership of Bharat Petroleum Corporation Limited in the selection applied by the petitioner. The fire and safety Department and Highways Department have issued No Objection Certificate for establishing petroleum outlet and the police has also granted No Objection Certificate. However, the second respondent sent the impugned communication to the first respondent, wherein he has refused to grant NOC by stating that for issuance of NOC for establishing the retail outlet for the proposed site as it did not comply with the G.O. (Ms).No.25, dated 24.02.2022 issued by the Highways and Minor Ports Department. The petitioner has submitted an application before the first respondent on 15.12.2021, but the Government have issued G.O. recently ie. On 24.02.2022. Hence, the said G.O., is not applicable to the petitioner. The Highways Department has issued No Objection Certificate to the petitioner on 30.11.2021. But the second respondent has passed the impugned communication, based upon G.O.(Ms).No.25, dated 24.02.2022, issued by the Highways and Minor Ports Department. Hence, the present writ petition has been filed.



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3. The learned counsels appearing for the respondents would submit that the distance between two fuel stations for Rural/Urban/Hilly is 300 meters (SHs) and 200 meters (MDRs/ODRs), but the distance between the petitioner's land in S.No.198/1 and Murugan Agency, which is situated in S.No.173/1 is only 164 meters. Hence, the second respondent has rejected the petitioner's application.

4. In G.O.(Ms).No.25, Highways and Minor Ports (HN.2) Department, dated 24.02.2022, the Government has issued the following guidelines/norms as criteria for issuing No Objection Certificate (NOC) / access permissions to fuel stations, which reads as follows:

Sl. No.	DISTANCE NORMS	NORMS APPLICABLE (IN MATTERS)
NON -URBAN (Rural) STRETCHES:PLAIN AND ROLLING TERRAIN		
1.	Intersection with Shs/MDRs/ODRs	300 (SHs) 200 (MDRs/ODRs)
NON -URBAN (Rural) STRETCHES:HILLY/MOUNTAINOUS TERRAIN		
2.	Intersection with any category of road (irrespective of carriage way width)	100



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URBAN STRETCHES: PLAIN AND ROLLING/HILLY/MOUNTAINOUS TERRAIN

3.	Intersection with any category of road (irrespective of carriageway width)	100
GENERAL CRITERIA		
4.	Any barrier including that of Toll Plaza and Railway Level Crossing	500
5.	Distance from the start of approach road of ROB	200
6.	Start of approach road of Grade Separator/Flyover	300
7.	Distance between two fuel stations	Rural/Urban/Hilly 300 (SHs) 200 (MDRs/ODRs) (Both undivided and divided c/w)
8.	Acceleration/Deceleration	Rural: 100 (acceleration) 70 (deceleration) Urban/Hilly: Dispensed with
9.	Size of Plot	35 X 35 (Rural) 20 x20 (Urban/Hilly)



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5. The learned counsel appearing for the petitioner has relied on the order passed by this Court in W.P.No.15877 of 2021, dated 20.10.2021 and submitted that IRC guidelines are only recommendatory and not mandatory and this Court has directed the District Revenue Officer, Salem District to pass appropriate orders on the application submitted by the first respondent seeking No Objection Certificate, within a period of four weeks from the date of receipt of a copy of this order. Paragraph No.3 of the order reads as follows:

“3. The learned counsel for the petitioner placed reliance on the order dated 26.02.2021 passed in W.A.(MD) No. 1054 of 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 WP No. 15877 of 2021](#) another), wherein it was



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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”

6. Here is the case where the Fire and Safety Department and Highways Department have issued No Objection Certificate in the year 2021 itself and the authorities cannot now cite the fresh G.O., and denied his claim and this Court is inclined to pass an order that the second respondent is directed to act upon the various judgments and also taking into consideration of the orders issued by the respondent Highways Department, who has already given No Objection Certificate in the year 2021 and final order will be passed.



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7. Accordingly, the writ petition is allowed and impugned order passed by the second respondent in letter No.Moo.Mu.D2/27122/2021, dated 14.06.2022 is set aside and the second respondent is directed to issue No Objection Certificate, for the establishment of the retail MS/HSD outlet in Survey No.198/1, Vadakku Veli Village, Thuraiyur Taluk, Trichy District, which is a village road and not the State Highway, in favour of the petitioner, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

01.11.2022

Index :Yes/No

Internet:Yes

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To

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V.BHAVANI SUBBAROYAN,J.

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