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W.P.No.11777 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.11777 of 2023
and WMP.Nos.11661, 11664 & 11665 of 2023

1.G.Vijayakumar
2.R.A.Sreedharan

.. Petitioners

Vs

- 1.The Principal Secretary to Government
Highways and Minor Ports (HN-2) Department
Fort St.George, Secretariat, Chennai - 600 009.
- 2.The Chief Engineer (Construction & Maintenance)
Highways Department
Chennai - 25.
- 3.The Divisional Engineer
Tamil Nadu Highways Department
Coimbatore.
- 4.The Commissioner of Police &
Additional District Magistrate
Coimbatore City.
- 5.Nayara Energy Limited
(Formerly Essar Oil Limited)
5th Floor, Mayflower Valencia
No.336/2, Avinashi Road
Nava India, Coimbatore - 641 004.

.. Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order dated 22.10.2022 in Rc.No.V2/7604/21 of the fourth respondent herein, quash the same and consequently direct the 4th respondent herein to grant No Objection Certificate for starting of Petroleum Retail Outlet at Old T.S.No.1105/2, New T.S.No.7180, Puliyakulam Village, Coimbatore South Taluk, Coimbatore.

For Petitioners : Mrs.A.L.Gandhimathi, Senior Counsel
Assisted by Mr.P.Gopiraja

For Respondents : Mr.C.Kathiravan
Special Government Pleader for R1 to R4
Mr.M.Vijaya Mehanath
for M/s.AAV Partners for R5

ORDER

The petitioners are the allottees of licence to open a petrol bunk at Old T.S.No.1105/2, correlated to New T.S.No.7180 at Puliyakulam Village in Coimbatore District, under the fifth respondent. One of the conditions required to be complied by the petitioner is to obtain a NOC from the fourth respondent. The fourth respondent vide his proceedings dated 22.10.2022 refers to IRC guidelines and also G.O.(Ms) No.25 Highways and Minor Ports (HN.2) Department, dated 24.02.2022. The IRC guidelines provide



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for certain norms for opening the petrol bunk. Earlier, these guidelines were considered as non-statutory and may not be binding. But in view of G.O.(Ms) No.25 Highways and Minor Ports (HN.2) Department, dated 24.02.2022, the Government has adopted the said IRC guidelines, with a result it has now got a statutory force.

2. Heard Mrs.A.L.Gandhimathi, learned Senior Counsel assisted by Mr.P.Gopiraja, counsel for the petitioner and the learned Special Government Pleader appearing for respondent 1 to 4 and the learned counsel appearing for the fifth respondent.

3. This Court carefully perused the impugned order wherein the fourth respondent has discussed the facts in paragraph Nos.1 to 3, but in the last paragraph, he appears to have outsourced the opinion he is required to formulate from his legal advisor, and has adopted the opinion of the legal advisor which is not permissible. Hence, this Court is constrained to set aside the order of the fourth respondent in Rc.No.V2/7604/21 dated 22.10.2022, and remand the matter back to the fourth respondent for a denovo consideration, and required to make his opinion on proper



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application of mind to the facts.

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4. In view of the above, this writ petition stand allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No

Speaking order / Non-speaking orders

To:

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N.SESHASAYEE.J.,

ds

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