



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.04.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) No.7950 of 2023

R.Vidhya

... Petitioner

vs.

1.The Indian Oil Corporation Limited,
Madurai Divisional Office,
represented by its Chief Divisional Retail Sales Manager,
Door No.2, Race Court Road, Chokkikulam,
Madurai-625 002.

2.The Commissioner of Police,
Madurai City.

3.The Divisional Engineer,
Highways Department,
(Constructional and Maintenance),
Madurai-625 002.

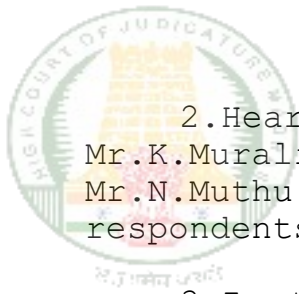
... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the impugned order, dated 10.01.2022 in Ku.No.3181/2021/E.Va.A2, passed by the third respondent and consequential impugned order, dated 03.03.2023 in C.No.72/16199/V2/2021 passed by the second respondent and to quash the same and consequentially to direct the respondents 2 and 3 to issue no objection certificate for establishment of new petroleum retail outlet of the Indian Oil Corporation Limited at the subject property in Plot Nos.21, 22, 23 and 24 in the approval layout in Resurvey No.600/1B1, Avaniyapuram Village, Madurai South Taluk within a time frame that may be stipulated by this Court.

For Petitioner	: Mr.J.Bharathan
For R1	: Mr.K.Muralidharan
For R2 and R3	: Mr.N.Muthu Vijayan
	Special Government Pleader

O R D E R

This Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records of the third respondent, dated 10.01.2022 in Ku.No.3181/2021/E.Va.A2 and the consequential impugned order of the second respondent dated 03.03.2023 in C.No.72/16199/V2/2021 and to direct the respondents 2 and 3 to issue no objection certificate for establishment of new petroleum retail outlet of the Indian Oil Corporation Limited at the subject property.



2. Heard Mr.J.Bharathan, learned Counsel for the petitioner, Mr.K.Muralidharan, learned Counsel for the first respondent and Mr.N.Muthu Vijayan, learned Special Government Pleader for the respondents 2 and 3.

3. In the affidavit filed in support of this Writ Petition, it had been stated that the first respondent had issued a letter of intent, dated 14.09.2020 offering a petrol retail outlet dealership of Indian Oil Corporation. The first respondent also sent a letter, dated 06.10.2020 to the second respondent for No Objection Certificate. Necessary certificate had been obtained from every other statutory authority including the Deputy Controller of Explosives, the District Officer of the Fire and Rescue Department and from the Commissioner of Madurai City Municipal Corporation.

4. The third respondent had sent the impugned order stating that the petrol bunk is situated within 15 meters from the intersection of the road and therefore, he has claimed that it is violative of Indian Road Congress guidelines.

5. The learned Counsel for the petitioner however placed reliance on the order of a learned Single Judge of this Court in W.P.No.35885 of 2019, dated 11.03.2021 in the case of P.G.M.Petro Bunk vs the Joint Joint Chief Controller of Explosives and others, wherein, the learned Single Judge had examined the observations a Division Bench of this Court in **Nataraja Agencies vs The Secretary, Ministry of Petroleum and Natural Gas, Government of India, New Delhi and others**, reported in **2005 (1) CTC 394**, wherein, it was held 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 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."

6.The learned Single Judge, had thereafter observed as follows:

"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....."

7.Thus it is seen that Indian Road Congress guidelines have no statutory force insofar as the State of Tamil Nadu is concerned. In view of this particular fact, the impugned order is set aside and a direction is issued that the **(*)Second respondent** may proceed to grant No Objection Certificate, if this is the only aspect, so far as the petitioner is concerned. The entire process should be completed within a period of eight weeks from the date of receipt of a copy of this order.

8.The Writ Petition stands allowed. No order as to costs.

Sd/-

Assistant Registrar (C.O)

(*)Corrected as per the order of this court dated 02.06.2023

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/06/2023

Sub Assistant Registrar(CS)

cmr



W.P.(MD)



23

(*)To be substituted the order already despatched on 19.05.2

To

1. The Divisional Engineer,
Highways Department,
(Constructional and Maintenance),
Madurai-625 002.

2. The Commissioner of Police,
Madurai City.

+1 CC to M/s.T.R.JEYAPALAM, Advocate (SR-24377[F] dated
28/04/2023)

W.P. (MD) No.7950 of 2023
26.04.2023

DL(18.05.2023) / 4P/ 4C

KB(13.06.2023) / 4P/ 4C