



W.P.(MD)No.28195 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2023

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.(MD)No.28195 of 2022

and

W.M.P.(MD)Nos.22260, 22265 and 22268 of 2022

K.Syed Ali

... Petitioner

Vs.

1. The State of Tamil Nadu,
Represented by its
Principal Secretary to Government,
Highways and Minor Ports Department,
Secretariat,
Chennai - 600 009.
2. The Deputy General Manager,
Hindustan Petroleum Corporation Limited,
Madurai Retail Regional Office,
1st Floor, BSNL CMTS Bhavan,
70 Feet Road, Ellis Nagar,
Madurai – 626 016.
3. The District Revenue Officer,
Tenkasi,
Tenkasi District.



W.P.(MD)No.28195 of 2022

WEB COPY

4. The Divisional Engineer,
Tamil Nadu Highways Department,
Tenkasi,
Tenkasi District.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the fourth respondent in his proceedings in Na.Ka.No.1026/2022/இவ்வுரி dated 29.11.2022 and quash the same as illegal and consequentially to direct the fourth respondent to issue No Objection Certificate (NOC) to the petitioner for setting up new Petroleum Retail Outlet in Survey No.1089/1A to an extent of 48 Cents situated in Thippanampatty Village, Tenkasi Taluk, Tenkasi District.

For Petitioner : Mr.M.Ajmalkhan
Senior Counsel
for M/s.Ajmal Associates

For Respondents : Mr.J.Ashok
Addl. Govt. Pleader for R1,R3&R4
Mr.M.Mohammed Athiff for R2



W.P.(MD)No.28195 of 2022

WEB COPY

ORDER

This Writ Petition has been filed in the nature of certiorarified mandamus seeking records relating to the order passed by the fourth respondent / the Divisional Engineer, Tamil Nadu Highways Department, Tenkasi in proceedings in Na.Ka.No.1026/2022/இவ்வுரி, dated 29.11.2022 and quash the same and consequently, direct the fourth respondent / the Divisional Engineer, Highways Department to issue 'No Objection Certificate' to the petitioner for setting up a new Petroleum Retail Outlet in Survey No.1089/1A measuring 48 cents at Thippanampatty Village, Tenkasi Taluk, Tenkasi District.

2. In the affidavit filed in support of the Writ Petition, it had been stated that the petitioner was entitled to lands measuring an extent of 48 Cents having purchased the same by a registered sale deed dated 14.10.2017 from one Murugesan.

3. Independently, the second respondent had invited an application for grant of MS/HSD Retail Outlet Dealership, within 2 Kms



W.P.(MD)No.28195 of 2022

from Kadayam Perumpattu on State Highways, in Tirunelveli District under OBC category. A paper publication was issued on 25.11.2018 in this connection. The petitioner had applied for the same. The second respondent, Deputy General Manager, Hindustan Petroleum Corporation Limited, Madurai, had issued a letter of intent to the petitioner offering the Retail Outlet Dealership in the above said location. The petitioner then applied to the third respondent, District Revenue Officer, Tenkasi to grant 'No Objection Certificate'. This was recommended by letter dated 14.10.2022 addressed to the District Collector, Tenkasi. The petitioner had then obtained 'No Objection Certificate' from every other authority except from the Highways Department, the fourth respondent, the Divisional Engineer, Tamil Nadu Highways Department, Tenkasi. The fourth respondent took their own time in issuing 'No Objection Certificate'. Since there was a delay in obtaining the 'No Objection Certificate', the second respondent, who had originally given a letter of intent, issued a show cause notice threatening to withdraw the letter of intent. Thereafter, the petitioner received the copy of the order, dated 29.11.2022 issued by the fourth respondent refusing to issue 'No Objection Certificate' relying on conditions Nos.1 and 7 of G.O.



W.P.(MD)No.28195 of 2022

(Ms)No.25, Highways and Minor Ports (HN.2) Department, dated 24.02.2022.

WEB COPY

4. It appears that the petitioner had fallen short in one of the conditions, namely that when there is an intersection of two roads, there must be a distance of 300 meters. It had been stated that the petitioner's proposed fuel station was only at the distance of 167 meters. According to the fourth respondent, this particular necessity of having 300 meters distance from the intersection of two roads had been provided in what may be termed as IRC guidelines.

5. The Writ Petition has been filed calling interference with that particular order by relying on earlier pronouncements of this Court, wherein it had been consistently held that the IRC guidelines on the basis of which there was a refusal to issue 'No Objection Certificate' by the fourth respondent were not mandatory in nature, but were only directory in nature.



W.P.(MD)No.28195 of 2022

WEB COPY

6. Heard the learned Senior Counsel on behalf of the petitioner, the learned Additional Government Pleader on behalf of the respondents 1, 3 and 4 and the learned counsel for the second respondent.

7.A counter affidavit had been filed by the fourth respondent, the Divisional Engineer, Tamil Nadu Highways Department, Tenkasi, wherein, the guidelines in G.O.(Ms)No.25 were relied on and wherein, it has been stated that a distance of 300 meters is required from the intersection of two roads. The petitioner's location is located at a distance of 167 meters. It had been stated that therefore there was a possibility of occurrence of accidents. It had also been stated that therefore, the petitioner had not complied with the guidelines of the IRC:12-2009.

8. In view of this particular singular fact, the issuance of 'No Objection Certificate' had been refused by the fourth respondent.

9. In the counter affidavit, a reference was also made to a judgment of the Hon'ble Supreme Court reported in *(2016) 15 SCC 480*,



W.P.(MD)No.28195 of 2022

WEB COPY

Indian Oil Corporation Limited and others vs. Arti Devi Dangi and

another to Paragraph Nos.8 and 9. It was, therefore, to be stated that the Writ Petition should be dismissed.

9. The fact is that the petitioner had been selected by the second respondent for allotment of a Retail Petroleum Outlet. The petitioner had complied with all other conditions, namely, the provisions of land and such other requirements as has been stipulated by the second respondent. The second respondent had also insisted on the petitioner to get 'No Objection Certificate' from various statutory authorities. The petitioner was also able to get the same. But the fourth respondent, namely, the Divisional Engineer, Tamil Nadu Highways Department alone had refused to issue such 'No Objection Certificate'. The primary ground on which such refusal was made, was that the retail outlet of the proposed location was 167 meters from the road intersection, whereas, it should be 300 meters in accordance with the IRC guidelines. In concurrence with the said IRC guidelines, the Government of Tamil Nadu had also passed G.O.(Ms)No.25, Highways and Minor Ports (HN.2) Department, dated 24.02.2022, reiterating the same



W.P.(MD)No.28195 of 2022

condition, namely, the requirement of distance of 300 meters from the road intersection of any proposed Retail Outlet Dealership with petroleum products.

10. The issue whether the said IRC guidelines are statutory or mandatory or directory had come up for consideration, before the Courts in this State. There are at least two Division Bench orders which stated that they are only directory. However, in the counter affidavit, there has been a reference to a judgment of the Hon'ble Supreme Court, reported in **(2016) 15 SCC 480, Indian Oil Corporation Limited and others vs. Arti Devi Dangi and another** referred to supra. The relevant paragraphs of the said judgement are extracted below:

"8. A perusal of the orders of the High Court indicates that the only basis on which the decision of the appellant Corporation has been faulted with is that the IRC Guidelines are not mandatory. We fail to see how such a view can be sustained keeping in mind the provisions of the advertisement quoted above; the purport and object of the said norms; the uniform application of the same to all the tenderers by the appellant Corporation and above all the



WEB COPY



W.P.(MD)No.28195 of 2022

requirements of public interest.

9. In view of the above conclusion reached, it is not necessary for us 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."

11. In the Division Bench judgment, in a batch of Writ Petitions, the Division Bench was concerned with applicability or statutory applicability of IRC guidelines in ***W.P.No.19218 of 2019 etc., batch, Durairaj Venkatachalam vs. The Additional Chief Secretary, Revenue and Disaster Management Department, Chennai and others.*** The very same judgment relied on counter affidavit has been examined by the Division Bench and has been distinguished in the following manner:

"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



WEB COPY



W.P.(MD)No.28195 of 2022

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."

12. The learned Additional Government Pleader, however, referring to G.O.(Ms)No.25 had stated that IRC guidelines had been taken into consideration and Government Order had been passed by the State of Tamil Nadu. But that cannot be equated with adopting the guidelines and framing of rules and sub rules by the Government. That exercise will necessarily have to be done. It has to be given a statutory approval. A Government Order will not suffice in this particular case. In the Division Bench order referred to supra, the Division Bench had also held as follows:



WEB COPY



W.P.(MD)No.28195 of 2022

*"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



W.P.(MD)No.28195 of 2022

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



W.P.(MD)No.28195 of 2022

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."

13. This judgment of the Division Bench has been subsequently followed in yet another judgment of the Division Bench of this Court in ***W.P.(MD)No.2895 of 2020, M.G.Saravanan vs. The Commissioner of Police, Trichy City Police Office, Tiruchirappalli and others.***

14. Even in the said judgment, it had been very clearly stated that IRC guidelines are only directory in nature. The relevant portions of the said judgment are extracted hereunder:

"15. *In another batch of writ petitions in W.P. (MD) Nos.19218 and 3678 of 2019, the Division Bench of this Court, vide order dated 17.10.2019, has held that Indian Road Congress (IRC) norms are only recommendatory and not mandatory and the State of Tamil Nadu has not implemented / adopted the same*



WEB COPY



W.P.(MD)No.28195 of 2022

and even assuming the IRC norms are applicable to the present case, there is no violation in the petrol pump in dispute as the same is not in any road junction and even if there is any future expansion of road, the same will no way affect the land of the seventh respondent or the petrol pump in dispute.

.....

25. *The issue as to whether implementation of the IRC guidelines is mandatory or recommendatory came up for consideration before the Division Bench of this Court in W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019 and this Court, after considering the decision of the Honourable Apex Court in the case of **Indian Oil Corporation Limited and others vs. Arti Devi Dangi and another**, reported in **(2016) 15 SCC 480**, vide order dated 17.10.2019, dismissed the writ petitions holding that the IRC guidelines are only recommendatory and not mandatory. In the Judgment, the order passed in W.P.No.691 of 2017 was also considered. The relevant paragraphs of the said order would run thus:*

“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*



WEB COPY



W.P.(MD)No.28195 of 2022

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*



WEB COPY



W.P.(MD)No.28195 of 2022

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.

46. *One more aspect, which we need to take note of is that these guidelines, which are recommendatory, were issued in the year 2009. Admittedly, several notifications have been issued by the respondents Oil Corporations post 2009 and there is nothing on record placed before us by the petitioner to show that there was a challenge to any of those notifications on the ground of non-adherence to the guidelines of the Indian Roads Congress. In fact, the petitioner Mr.Durairaj Venkatachalam cannot plead for issuing a writ of mandamus, especially when he was an applicant under the notification. Therefore, the guidelines being recommendatory, it is for the appropriate Authority to consider the effectiveness and*



WEB COPY



W.P.(MD)No.28195 of 2022

efficacy or bring amendments in the statute so as to bind the statutory authorities, who are required to issue no objection certificates or clearances or approvals. Therefore, we cannot be called upon to issue a direction to implement the guidelines, thereby introducing a different procedure or norms than what have been prescribed under the Central enactment or the rules framed thereunder or any other statutory notification by the executive instructions issued by the Central or State Government.

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*



WEB COPY



W.P.(MD)No.28195 of 2022

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



WEB COPY



W.P.(MD)No.28195 of 2022

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



WEB COPY



W.P.(MD)No.28195 of 2022

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 subrules. 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 Pubic Works Department, the applicant cannot*



WEB COPY



W.P.(MD)No.28195 of 2022

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 manner advance the case of the writ petitioner.*

***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*



WEB COPY



W.P.(MD)No.28195 of 2022

*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."*

15. The pronouncements aforementioned are binding on this Court. The only ground on which a no objection Certificate was refused was the IRC guidelines. When the Government of Tamil Nadu had not taken up framing of rules in conjunction with same, the Courts had held that the guidelines are only directory in nature. The stand of the respondents cannot be countenanced.

16. Accordingly, the Writ Petition stands allowed. A direction is given to the third respondent / District Revenue Officer to issue necessary 'No Objection Certificate' within a period of six weeks from the date of receipt of a copy of this order. The second respondent may also ensure that necessary safety measures are put in place in the proposed retail outlet of



W.P.(MD)No.28195 of 2022

the petitioner and if any necessary additional safety measures have to be put up, then they may recommend the same and ensure that they are put up. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

29.03.2023

NCC: Yes / No
Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The Principal Secretary to Government,
The State of Tamil Nadu,
Highways and Minor Ports Department,
Secretariat,
Chennai - 600 009.



W.P.(MD)No.28195 of 2022

WEB COPY

2. The Deputy General Manager,
Hindustan Petroleum Corporation Limited,
Madurai Retail Regional Office,
1st Floor, BSNL CMTS Bhavan,
70 Feet Road, Ellis Nagar,
Madurai – 626 016.

3. The District Revenue Officer,
Tenkasi,
Tenkasi District.

4. The Divisional Engineer,
Tamil Nadu Highways Department,
Tenkasi,
Tenkasi District.



WEB COPY



W.P.(MD)No.28195 of 2022

C.V.KARTHIKEYAN, J.

vji

**W.P.(MD)No.28195 of 2022
and
W.M.P.(MD)Nos.22260, 22265 and 22268 of 2022**

29.03.2023