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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.1156 of 2024
and WMP.Nos.19835 and 29737 of 2024

Murugan

... Petitioner

Vs.

1. THE JOINT CHIEF CONTROLLER OF EXPLOSIVES,
A AND D WING, BLOCK 1 TO 8, 2ND FLOOR,
SHASTRI BHAVAN, 26 HADDOWS ROAD,
NUNGAMBAKKAM, CHENNAI.

2. THE DISTRICT COLLECTOR,
KRISHNAGIRI, KRISHNAGIRI DISTRICT.

3. THE DISTRICT REVENUE OFFICER,
KRISHNAGIRI, KRISHNAGIRI DISTRICT.

4. THE TERRITORY MANAGER (RETAIL),
BHARAT PETROLEUM CORPORATION LIMITED,
KARUR, ATHUR AND KADAPPARAI VILLAGE,
KARUR- 639 008.

5. S.VALARAMATHI

... Respondents

Prayer: This Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records relating to the impugned order of the 3rd respondent in Ref. No.D.Dis. No.22292/ 2023/C2 dated 28.11.2023 and quash the same as the same is not in consonance with the Indian Roads Congress as it is mandatory as per the G.O.Ms. 25 dated 24.02.2022.



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For Petitioner
For Respondent

: Mr.P.Rajalakshmi
: Dr.P.G.Santhosh Kumar R1
Mr.U.Bharanidharan, AGP RR2 & 3
Mr.Vijayan
For M/s.King & Patridge R4
Mr.R.Kannan R5

ORDER

This petition has been filed seeking to quash the impugned order of the 3rd respondent in Ref. No.D.Dis. No.22292/ 2023/C2, dated 28.11.2023 and the same is not in consonance with the Indian Roads Congress as it is mandatory as per the G.O.Ms. 25 dated 24.02.2022.

2. It is the case of the petitioner that When the 5th respondent tried to set up new petrol bunk, immediately the petitioner sent his objection to the first respondent on 12.04.2023. After field inspection, the Highways Department communicated its objection to the 3rd respondent vide communication dated 24.04.2023 to give NOC to the 5th respondent and on the basis of this, the 3rd respondent refused to give NOC vide its communication dated 17.07.2023. Subsequently on 28.11.2023, the third respondent has given NOC to the 5th respondent without considering the GO.No.25 dated 24.02.2022 issued by the Principal Secretary to the Government to follow the IRC guideline while issuing NOC for setting up new petrol bunk and even prior to that the chief Engineer



directed the authorities to follow the IRC guidelines vide communication dated 05.04.2018. That apart, the Director General of Police filed memo dated 18.06.2020 before this Court stating that he already enquired by sending application under RTI, he came to know that the NOC was issued to the 5th respondent without considering the objections raised by the petitioner or by the State Highways Department and also without considering IRC guidelines for setting up new petrol bunk as it is mandatory as per the G.O.Ms.No.25 dated 24.02.2022. Challenging the said order, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that as per norms of IRC, each and every side of the land should be not less than 35 meter. As far as the present land identified by the 5th respondent, to put up the petrol bunk, has no such measurement. The IRC guidelines are mandatory as per GO.MS.No.25 dated 24.02.2022. Without considering the same, the third respondent has issued NOC to the 5th respondent, which is unsustainable and the act of the third respondent is illegal and against the law. Hence, the learned counsel prays allowed the writ petition and set aside the impugned order.

4. On the other hand, the learned Government Counsel appearing on behalf of the official respondents submitted that the issue involved in the present



case is squarely covered by order dated 20.10.2021 passed by this Court in

W.A.(MD) No.1054 of 2020 wherein this Court held that IRC guidelines are recommendatory and not mandatory. For better appreciation, the relevant paragraphs of the said judgment are extracted hereunder:

"2. The learned counsel appearing for the appellant submitted that the guidelines are mandatory. Though the guidelines were subsequently withdrawn, it is not for the Court to consider the technical aspect. The comparison made with regard to the No Objection given to the nearby place, is not factually correct. Therefore, the appeal will have to be allowed.

3. The learned counsel appearing for the first respondent/writ petitioner submitted that the learned Single Judge allowed the writ petition, after placing reliance upon the report of the Advocate Commissioner and on that basis alone, it was held that the case of the respondent/writ petitioner is similar to one and No Objection Certificate has been granted to the very similar place.

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 another), wherein it was held that IRC guidelines.



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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 note of the report of the Advocate Commissioner. Further, the finding regarding the non-mandatory nature of guidelines is based upon the Judgment of the Hon-ble Supreme Court as stated supra.

6. The learned Advocate Commissioner found that not much of difference between the place for which No Objection is given and the present one.

7. 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.

8. We also take note of the subsequent communication of the Joint Secretary, Government of India, Ministry of Petroleum and Natural Gas, New Delhi to the Principal Secretary, Highways and Minor Ports Department, stating that IRC norms are meant to be used only on Highways alone and that too, based upon traffic, which is also not the case before us. No costs. Consequently,



connected miscellaneous petitions are closed."

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The learned counsel prays to dismiss the writ petition.

5. Heard the learned counsel for the petitioner and the learned Government Counsel appearing on behalf of the respondents and perused the materials available on record.

6. The issue that arises for consideration in the present case is whether the third respondent granted license in favour of the 5th respondent contrary to the guidelines issued by IRC.

7. It is the main grievance of the petitioner is that the third respondent has issued NOC in favour of the 5th respondent contrary to the guidelines issued by the IRC. The Indian Road Congress (IRC) is an independent body established by the Ministry of Road Transport & Highways in 1934 for framing of guidelines for the development of Road Transport in the Country and the same came into force in the year 2009. The IRC frames guidelines based on the construction works carried out for the national highways and the same is not applicable to the State Highways and Panchayat Roads.



8. From the above, it is clear that IRC guidelines are only recommendatory and not mandatory. This Court cannot be interfered with the NOC granted by the third respondent and the prayer sought for by the petitioner cannot be granted and the same is negatived.

9. In the result, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

01.10.2024

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M.DHANDAPANI,J.

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