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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2024

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.11650 of 2021
and WMP.No.12391, 12393 & 12394 of 2021

R.Malarvannan

... Petitioner

Vs.

1. The District Collector,
Dharmapuri District.

2. The Superintendent of Police,
Harur Taluk, Dharmapuri District.

3. The District Revenue Officer,
Dharmapuri District.

4. The Divisional Manager,
Highways Department (C & M),
Dharmapuri District.

5. The Deputy chief Controller of Explosives,
A and D – Wing, Block 1-8, II floor,
Shastri Bhavan, No.26, Haddows Road,
Nungambakkam, Chennai-6.

6. M/s.The Resional Manager,
Bharat Petroleum Corporation Ltd.,
Regional Office,
No.1, 11th Main Road,
Ranganathan Garden,
Anna Nagar, Chennai-40.

7. M/s.Bharat Petroleum Corporation Ltd.,
Karur Retail Territory,



Athur & Kadapparai Village,
Athur PO, Karur.

... Respondents

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PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the impugned NOC in D.Dis No.14524/2020/C3 dated 29.01.2021 on the file of the first respondent and to quash the same.

For Petitioner : Mr.S.Silambannan, Sr.C.
For Mr.J.Bharathiraja

For Respondents : Mr.U.Bharanidharan, AGP RR1 to 4
Mr.S.Diwakar For R5
Mr.M.Vijayan for
M/s.King and Patridge RR6 & 7

O R D E R

The Writ Petition has been filed seeking to quash the impugned NOC in D.Dis No.14524/2020/C3 dated 29.01.2021 on the file of the first respondent.

2. It is the grievance of the petitioner that the respondents 1 to 4 have granted license to install the petroleum retail outlet at S.No.5/2A, Naripalli Village, Harur Taluk, contrary to the IRC guidelines. The proposed retail outlet is located within 158 meters of four road junctions and it affects the livelihood of the villagers who are wholly depends on the agriculture. The petitioner has made a representation to the respondents on 02.11.2020 to cancel the NOC and the same was rejected. Challenging the said impugned order dated 29.01.2021,



the present writ petition has been filed.

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3. The learned counsel for the petitioner submitted that when there is a IRC guidelines prohibited for granting license that there shall be a 300 metres distance between two petrol bunks and also it shall be located 300 metres away from road intersections. Without considering the same, the third respondent has issued NOC to the 8th respondent, which is unsustainable. The first respondent ought to have noted that in a similar matter DRO, Salem vide his proceedings dated 31.12.2020 has rejected the NOC applied by the Hindustan Petroleum Limited on the ground that the proposed site is within 200 meters from road junction which is violated of the IRC guidelines. Therefore, 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:



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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 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."*

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 8th respondent contrary to the guidelines issued by IRC.



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7. It is the main grievance of the petitioner is that the third respondent has issued NOC in favour of the 8th 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. The order passed by this Court dated 04.09.2017 in W.P.No.41827 of 2016 in the case of S.Shanmugaraja Vs.The District Collector and 3 others had categorically held that the IRC norms are only a guiding principle and the mandatory norm of 300 meters is not requested and the same can be overruled by the District Collector, if he deems fit and proper. For the case of convenience the same is reproduced hereunder:

"So far as the report of the 2nd respondent is concerned, he has stated that the Proposed petrol station situate within 180 meters from the existing petrol station and therefore, he is not recommending for issuance of No Objection Certificate As already stated, IRC guidelines are only meant for National and other Highways and it is not mandatory to follow as it is only a guideline and it does not bind legally. Therefore. I do not find any error



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overruling the report of the 2 respondent, who has erroneously stated that as per norms, the distance between two petrol stations should be 300 meters. However, I am of the view that the 1st respondent-District Collector should have given a finding with regard to the report of the 2nd respondent while issuing No Objection Certificate dated 25.04.10.17. The 1st respondent ought to have stated that the report of the 2nd respondent is erroneous for the reason that the IRC guidelines does not bind legally and could have overruled the report of the 2nd respondent. Since the report of the second respondent has no legal implication it does not of the No Objection certificate issued by the 1st respondent in any manner whatsoever."

8. Further, as rightly submitted by the learned counsel for the respondents, the very same issue has already been settled by the Hon'ble Division Bench of this Court in W.A.(MD) No.1054 of 2020 and the relevant paragraphs have stated supra.

9. From the above, it is clear that IRC guidelines are only recommendatory and not mandatory and, accordingly, the decision relied on by the respondents is squarely attracted to the present case. The prayer sought for by the petitioner cannot be granted and the same is negatived.



10. In the result, the writ petition stands dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

13.08.2024

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To

1. The District Collector,
Dharmapuri District.
2. The District Revenue Officer,
Dharmapuri District.
3. The Divisional Manager,
Indian Oil Corporation,
No.234, First Floor, SDLOA Building,
NH-7, Bye Pass Road,
Kondalampatti, Salem.
4. The Revenue divisional Officer,
Harur Division,
Dharmapuri District.
5. The Tahsildar,
Harur, Dharmapuri District.
6. The Assistant Divisional Engineer,
Highways Department,
Harur, Dharmapuri District.
7. The Deputy chief Controller of Explosives,
A and D – Wing, Block 1-8, II floor,
Shastri Bhavan, No.26, Haddows Road,
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M.DHANDAPANI,J

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