



W.P.No.28592 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.28592 of 2022 and
W.M.P.No.27882 of 2022

Saravanajothi

...Petitioner

-Vs-

1. The District Collector,
Tirupur District.

2. The District Revenue Officer,
Tirupur District.

3. The Divisional Engineer,
(Construction and Maintenance)
State Highways Department,
Tirupur.

4. Indian Oil Corporation Limited,
Marketing Division, No.8/1079,
Avinashi Road, Coimbatore-641 018.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records to the impugned order in Mu.Mu.4805/2020/E2 dated 10.08.2022 and quash the same as illegal, improper, unreasonable, against the principles of natural justice and thereby direct the 2nd respondent to issue No Objection Certificate for the establishment of the MS/HSD retail outlet dealership at No.8, Chettipalayam Village, Tirupur North Taluk, Tirupur within the period specified by this Hon'ble Court.

For Petitioner	: Mr.A.K.Sriram Senior Counsel for Mr.P.N.Vignesh
For Respondents 1 to 3	: Mr.S.J.Mohammed Sathik Government Advocate
For Respondent 4	: Mr.Mohammed Fayaz Ali, Standing Counsel

ORDER

This Writ Petition has been filed challenging the order passed by the 2nd respondent dated 10.08.2022 thereby rejected the request made by the petitioner for issuance of No Objection Certificate.



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2. The 4th respondent issued a notification vide newspaper advertisement dated 25.11.2018 for the setting up of MS/HSD petroleum retail outlet dealership for the location at SH 196 from Pooluvapatti Pirivu to Kanakkampalayam Road Privu on left hand side. In pursuant to the notification, the petitioner submitted application and offered suitable piece of land admeasuring 900 Sq.mts at No.8, Chettipalayam Village, Tiruppur North Taluk, Tirupur. On 20.01.2020 a letter of intent was issued by the 4th respondent in response to the application submitted by the petitioner dated 19.12.2018 for setting up of petroleum retail outlet at the proposed site. In order to fulfill the statutory requirement under Rule 144 of the Petroleum Rules, 2002, an application was submitted by the 4th respondent to the first respondent through letter dated 08.02.2020 thereby requested for issuance of No Objection Certificate for setting up petroleum retail outlet. In fact on 06.06.2020 Fire Safety and Rescue Department had issued No Objection Certificate and on 13.01.2021 No Objection Certificate was issued by the Police Commissioner, Tirupur District. That apart, on 21.07.2022 No Objection Certificate was also issued by the Corporation Commissioner, Tirupur Corporation for setting up petroleum retail outlet at the proposed



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site location. The 2nd respondent by an order dated 10.08.2022 rejected the request made by the petitioner for issuance of No Objection Certificate on the ground that for setting up of petroleum retail outlet is in violation of Indian Road Congress (IRC) Guidelines and G.O.Ms.25, Highways and Minor Ports Department dated 24.02.2022.

3. The learned senior counsel appearing for the petitioner submitted that application as early as on 19.12.2018. Thereafter, the 4th respondent requested for issuance of No Objection Certificate on 08.02.2020 whereas the Government passed an order in G.O.Ms.No.25, Highways and Minor Ports Department dated 24.02.2022. Therefore, the said Government Order is not applicable in the case of the petitioner. That apart, IRC guidelines 12-2009 is only directory in nature and not mandatory. The Hon'ble Division Bench of this Court repeatedly held that the IRC guidelines 12-2009 is not mandatory in nature and it is recommendatory in nature. That apart, the G.O.Ms.No.25, Highways and Minor Port Department dated 24.02.2022 is also not applicable in the case of the petitioner. Without considering the same, the 2nd respondent mechanically rejected the request



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made by the 4th respondent for issuance of No Objection Certificate for citing IRC guideline and G.O.Ms.No.25, Highways and Minor Port Department dated 24.02.2022 and based on the report submitted by the Divisional Engineer, Highways Department dated 21.07.2020.

4. On perusal of the counter affidavit submitted by the 2nd respondent revealed that as per the report submitted by the Divisional Engineer, Highways department dated 21.07.2020 the distance between the existing fuel station and the alongside land proposed for the establishment of Petrol Bunk is within the distance of 159 meter. Further, within the same distance another Gas Bunk is also situated and as such the Divisional Engineer, Highways did not recommended for issuance of No Objection Certificate. Therefore, the 4th respondent did not fulfill the distance norms as per the IRC guidelines. Therefore, the 2nd respondent rightly rejected the request made by the 4th respondent for issuance of No Objection Certificate. That apart, as per Section 154(2) of Petroleum Rules, 2002, there is a appeal before the Transport Commissioner against the order passed by the 2nd respondent. Therefore, without exhausting the appeal remedy the present



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writ petition is not maintainable.

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5. The learned counsel for the 4th respondent would submit that the 2nd respondent is entitled to refuse to grant No Objection Certificate, the applicant shall be given reasonable opportunity of being heard as per the Rule 149 of the Petroleum Rules, 2002. Further, the G.O.Ms.No.25, Highways and Minor Port Department dated 24.02.2022 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 case.

6. Heard, the learned counsel appearing on either side and perused the records.

7. In response to the application submitted by the petitioner dated



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19.12.2018 in order to fulfill the statutory requirements as required under rule 144 of the Petroleum Rules, 2002 application was made by the 4th respondent to the first respondent dated 08.02.2020 for issuance of No Objection Certificate for setting up Petroleum Retail Outlet. On receipt of the same, the 2nd respondent received reports from the authorities including the Divisional Engineer, Highways dated 21.07.2020. The Divisional Engineer by its report stated that the distance between the existing fuel station and alongside land proposed for establishment of petrol bunk is within the distance of 159 meter and also there is a Gas Bunk situated in the very same distance. Therefore, it is in violation of guidelines issued in IRC 12-2009. On the strength of the said report, the second respondent rejected the request made by the 4th respondent for issuance of No Objection Certificate and also stating reason that the Government passed G.O.Ms.No.25, Highways and Minor Port Department dated 24.02.2022 thereby ordered the distance between the two fuel station in respect of the Rural is 300(SHs) and urban is is 200 Meter.



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8. The learned senior counsel relied upon various judgement of the Hon'ble Division Bench of this Court in which the case of ***Durairaj Venkatachalam vs The Additional Chief Secretary and others in W.P.(MD).No.19218 of 2019 etc., batch cases dated 17.10.2019*** held as follows:

"44. The Indian Road 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 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."

9. Thus, the IRC guidelines in 12-2009 are not being mandatory or a part of any prescribed statutory rules that would operate whenever a new petrol or diesel retail outlet is about to reopen. The guidelines have no statutory force and may not be applied, the fact that the proposed site may



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be at an intersection and may cause traffic snarls and inconvenience to the general public, may not be a relevant factor. Insofar as the G.O.Ms.No.25, Highways and Minor Port Department dated 24.02.2022 is concerned the petitioner had submitted his application on 19.12.2018, in response to the application submitted by the petitioner, the 4th respondent made request on 08.02.2020 for issuance of No Objection Certificate before the second respondent. The Government passed G.O.Ms.No.25, Highways and Minor Port Department issued only on 24.02.2022. Therefore, the said Government Order is not applicable to the case of the petitioner. In fact, the said some departments such as Fire Safety and Rescue Department had issued No Objection Certificate as early as on 06.06.2020. The Police Commissioner, Tirupur District also issued No Objection Certificate as early as on 13.01.2021. The Corporation Commissioner, Tirupur Corporation also issued No Objection Certificate as early as on 21.07.2022. But the second respondent on 10.08.2022 rejected the request made by the 4th respondent for issuance of No Objection Certificate by citing the IRC guidelines in IRC 12-2009 and G.O.Ms.No.25, Highways and Minor Port Department dated 24.02.2022. Though the specific contention of the respondents 1 to 3 that

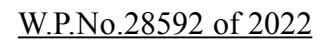


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the Section 154(2) of Petroleum Rules, 2002 there is a statutory appeal remedy as against the 2nd respondent and the petitioner and the 4th respondent were also given opportunity of hearing before rejecting the request made for issuance of No Objection Certification, it is relevant to extract Rule 149 of Petroleum Rules, 2002.

"149. Refusal of No Objection Certificate : A District authority refusing to grant a no objection certificate under rule 144 shall record, in writing, the reasons for such refusal and shall furnish to the applicant a copy of such order; Provided that before refusing to grant a no-objection certificate, the applicant shall be given a reasonable opportunity of being heard."

10. Therefore, the second respondent ought to have given reasonable opportunity of hearing to the petitioner and the 4th respondent before rejecting the request made by the 4th respondent for issuance of No Objection Certificate. Therefore, it is clear violation of principles of natural justice. Hence, this writ petition is very much maintainable without exhausting the appeal remedy as provided under section 154(2) of Petroleum Rules, 2002.



12. With the above direction, this writ petition is allowed.

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G.K.ILANTHIRAIYAN,J.
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To

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Tirupur District.
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(Construction and Maintenance)
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