



W.P.(MD)No.14560 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 05.04.2024

DELIVERED ON : 30.04.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.14560 of 2021
and
W.M.P.(MD)No.11493 of 2021

S.Thomas Fernando

... Petitioner

Vs.

1.The District Revenue Officer,
Trichy District,
Trichy – 621 001.

2.The Divisional Engineer,
Highways Department, C&M Division,
Trichy-620 020.

3.M/s.Hindustan Petroleum Corporation Limited,
represented by the Chief Manager -
Retail Engineering,
Trichy Retail Regional Office,
No.90, 2nd Floor, MDSR Enclave,
Bharathidasan Road,
Trichy – 621 001.

... 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 to call for the records relating to the impugned proceedings of the second respondent in Ka.No.283/2021/E Va A2/ dated 23.03.2021 and quash the same and to consequently direct the first respondent to issue NOC on the basis of the application dated 10.10.2020 within the time frame fixed by this Court.

For Petitioner : Mr.P.N.Vignesh

For Respondents : Mr.A.K.Manikkam
Special Government Pleader
for R.1 and R.2

:Mr.M.Mahaboob Athiff
for R.3

ORDER

The Writ Petition is directed against the proceedings of the second respondent dated 23.03.2021 refusing to give NOC and for direction to the first respondent to issue NOC on the basis of the application dated 10.10.2020 within the time stipulated by this Court.

2. The third respondent issued a letter of intent dated 30.09.2020 accepting the petitioner's offer to provide alternate land situated in



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T.S.No.9/2B2, Ward No.E, Block No.15, S.F.No.874/2(F) of Sevalur Village, Manaparai Taluk, Trichy District abutting Manapparai – Kadauoor main road for establishment of a petroleum retain outlet. The third respondent submitted an application on 10.10.2020 to the first respondent requesting for No Objection Certificate as required under Rule 144 of the Petroleum Rules, 2002 in respect of the land meant for establishing petroleum outlet for obtaining licence for running the same.

3. The first respondent, after the receipt of the application of the third respondent, has issued a communication dated 22.10.2020 to the Sub-Collector, Srirangam, the Superintendent of Police, Trichirappalli, the District Officer of the Tamil Nadu Fire and Rescue Department, Trichirappalli, the Municipal Commissioner, Manaparai and to the second respondent herein directing the authorities to inspect the property and offer their remarks for giving NOC for the petroleum retain outlet. In pursuance of the same, the Tamil Nadu Fire and Rescue Department, Trichirappalli has sent a letter dated 13.01.2021 to the first respondent informing their no objection for establishment of petroleum retain outlet. But the second respondent in his reply dated 23.03.2021 has refused to



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give No Objection Certificate on the grounds that the site location is within 50 mts from the junction of NH 83 and the same does not conform to Indian Road Congress (IRC) Guidelines 2009-2012. Aggrieved by the said proceedings dated 23.03.2021 of the second respondent, the present Writ Petition came to be filed.

4. In the impugned proceedings, the second respondent has stated that the proposed site is only 50 mts in distance from intersection with National Highways / State Highways / Major District roads, as per Clause 3.5.2 of the Indian Road Congress (IRC) 12-2016 and that the proposed site is having distance of 20 mts from the start of an approach road of a Road Over Bridge (ROB) as against the required distance of 200 mts as per Clause 3.7 of Indian Road Congress (IRC), as the reasons for rejection.

5. The learned Counsel for the petitioner would submit that the proposed site is on an Ordinary District Road (ODR) and IRC Guidelines will not apply for the State Highways and other District or Village roads, that the second respondent has unilaterally rejected the proposed site by



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way of cryptic and vague order without notice to either the petitioner or the third respondent, that IRC Guidelines is neither a statute nor having a force of statute and the guidelines are only recommending nature and cannot be directly implemented, that the petitioner's right to carry on trade and business guaranteed under Article 19(1)(g) of the Constitution of India has been taken away by the impugned order of the second respondent and that therefore, the petitioner with no other option has approached this Court.

6. The defence of the second respondent is that the Indian Road Congress (IRC) Guidelines 12 – 2016 Clause 3.7 states that minimum distance from the start of an approach road of a Road Over Bridge (ROB) should be 200 mts, but in the present case, the said distance is only 20 mts, that as per IRC 12-2016 Clause 3.5.2, minimum intersection with National Highways/State Highways/Major District roads is 300 mts, but in the case on hand, it is only 50 mts, that even though, the proposed land is an ordinary district road, it lies within the urban area of Manapparai Municipality Town limit, that the second respondent is the authority competent to give NOC to set up fuel station, that the said Highways



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Department is uniformly following the IRC guidelines while considering the application for issuance of NOC to set up fuel station and that the second respondent has rightly rejected the requisition for NOC and the same cannot be found fault with.

7. The third respondent has filed an affidavit in support of the petitioner, whereunder they have taken a stand that IRC 12-2016 only applies to the National Highways which is evident from its nomenclature which is given as “Unified Guidelines for access permission to fuel stations, private properties, rest area complexes and such other facilities along National Highways”, that Indian Road Congress guidelines have no statutory force so far as the State of Tamil Nadu is concerned, that the impugned order dated 23.03.2021 is also in violation of Article 19(1)(g) of the Constitution of India whereby the petitioner as well as the third respondent are restrained from carrying on trade by the second respondent by relying upon the guidelines, is required to be quashed and the first respondent has to be directed to issue No Objection Certificate.



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8. A Division Bench of this Court in the Writ Appeal in W.A.Nos. 1209 to 1211 of 2017, in the case of ***S.Shanmugharaja Vs. the District Collector, Puducherry District and others***, has specifically observed that there is nothing on record to show that the Indian Road Congress norms are statutory in nature, that the Indian Road Congress has evolved certain guidelines for the purpose of road safety and to avoid accidents on highways and that those norms have not statutory flavour for enforcement and even otherwise, those norms would not apply to a retain petrol outlet located on the side of the village road.

9. The learned Counsel for the petitioner has then relied on another judgment of the Division Bench of this Court in the case of ***Durairaj Venkatachalam Vs. the Additional Chief Secretary, Revenue and Disaster Management Department, Chennai*** (W.P.(MD)Nos.19218 of 2019 and batch cases), dated 17.10.2019 and the relevant passages are extracted hereunder for better appreciation:

*“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*



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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. 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.”*

10. The Hon'ble Division Bench, after referring to the judgment of the Hon'ble Supreme Court in the case of ***Indian Oil Corporation***



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Limited and others Vs. Arti Devi Dangi and another reported in **(2016)15 SCC 480** and taking note of the absence of any records to show that the Tamil Nadu State Public Works Department had adopted 2009 guidelines and framed rules and sub-rules under the relevant statute, has held that the decision in Arti Devi Dangi's case would not help the petitioner therein. It is pertinent to note that Petition for Special Leave to Appeal (C) No.26440 of 2019 filed challenging the judgment of the Division Bench above referred, the Hon'ble Supreme Court vide order dated 15.11.2019 dismissed the Special Leave Petition and thereby confirmed the judgment of the Division Bench of this Court.

11. As rightly pointed out by the learned Counsel for the petitioner, another Hon'ble Division Bench of this Court in the case of ***the Divisional Engineer (C&M), Highways Department, Karur Vs. R.Meenakshi and others*** in the writ appeal in W.A.(MD)No.1054 of 2020, dated 26.02.2024, by referring to the judgment of the Hon'ble Supreme Court in the case of ***Arti Devi Dangi*** above referred and also the judgment of the Division Bench of this Court in W.P.(MD)No.2895 of 2020, dated 20.10.2020 dismissing the writ petition, has taken note of



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the finding regarding the non-mandatory nature of IRC guidelines and 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, dismissed the appeal.

12. Considering the above, it is clear that IRC guidelines are not mandatory. Moreover, the State of Tamil Nadu has not framed statutory rules incorporating the IRC guidelines till now and as such, the IRC guidelines do not have any binding statutory rules. Except the above, the second respondent has not assigned any other reason or ground for rejecting the claim of NOC. Hence, this Court has no hesitation to hold that the impugned order cannot legally be sustained.

13. In the result, the Writ Petition is allowed and the impugned proceedings of the second respondent, dated 23.03.2021 in Ka.No. 283/2021/E Va A2/ is quashed. The second respondent is directed to issue No Objection Certificate for the establishment of petroleum outlet,



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if otherwise everything is in order, within a period of six weeks from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

30.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

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Highways Department, C&M Division,
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K.MURALI SHANKAR,J.

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PRE-DELIVERY ORDER MADE IN

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