



W.P(MD)No.14357 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.02.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14357 of 2023

and

W.M.P(MD)No.12164 of 2023

C.Thangapandian

... Petitioner

Vs.

1.The District Collector,
Nagercoil,
Kanyakumari District.

2.The District Revenue Officer,
Nagercoil,
Kanyakumari District.

3.The Indian Oil Corporation,
Represented by its Chief Divisional
Retail Sales Manager,
Indian Oil Corporation Limited,
Madurai Divisional Office,
No.2, Race Course Road,
Chokkikulam,
Madurai – 625 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus, to call for



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the records on the file of the second respondent pertaining to its order bearing Mu.Mu.C1/ E-26021/2022 dated 06.04.2023 and quash the same and consequently direct the respondents to issue No Objection Certificate so as to establish a retail out let at Puthalam to Nainaputhur on State Highway-179, Kanyakumari District at Survey .No. 1098/7B of Mathusoothanapuram South Village, Kanyakumari District.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.A.Kannan
Additional Government Pleader
for R.1 & R.2

Mr.K.Muralidharan
Standing Counsel for R.3

ORDER

Heard both sides.

2.The writ petitioner was selected by the Indian Oil Corporation to open their petroleum retail outlet at Puthalam in Kanyakumari District. The site is located in Survey No.1098/7B of Mathusoothanapuram South Village. It is located on State Highway - 179. The petitioner is obliged to obtain “No Objection Certificate” from the second respondent. The petitioner's application was originally negated vide order dated 27.12.2021. Questioning the same, the petitioner filed an appeal before



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the Transport Commission. The Deputy Transport Commissioner vide order dated 14.02.2023 remanded the matter. Following the remand, fresh site inspection was held and the petitioner's request was once again rejected vide proceedings dated 06.04.2023. Challenging the same the present writ petition came to be filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The learned Additional Government Pleader on the other hand submitted that the impugned order is well founded and that it does not call for interference. He pointed out that IRC guidelines stipulate that the proposed petroleum retail outlet should not be situated within the certain prohibited distance. In this case, the intersection road / branch road is at a distance of 70 meters and that is why the authority negatived the petitioner's application. The learned Additional Government Pleader submitted that the petition is without merit and he pressed for dismissal of the writ petition.



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5.The learned Standing Counsel appearing for the Indian Oil Corporation submitted that the IRC guidelines based on which the impugned order has been passed are only recommendatory and not mandatory. He drew my attention to the order dated 17.10.2019 made in W.P(MD)No.19218 of 2019 (Durairaj Venkatachalam & Others Vs The Additional Chief Secretary, Revenue and Disaster Management Department & Others)etc batch passed by the Hon'ble Division Bench of this Court. He supported the stand of the writ petitioner. He also added that a transformer is at a distance of 36.2 meters and that the proposed location will have serious safety implications.

6.I carefully considered the rival contentions and went through the materials on record.

7.The Hon'ble Division Bench in W.P(MD)No.19218 of 2019 (Durairaj Venkatachalam & Others Vs The Additional Chief Secretary, Revenue and Disaster Management Department & Others) etc batch dated 17.10.2019 had held as follows:



“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 sub-rules. These rules and subrules 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 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,



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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.”

I also do the occasions to deal with the similar issue in ***W.P(MD)No. 19632 of 2021 (U.Chakravarthy Vs The Principal Secretary to Government of Tamil Nadu, (Highways & Minor Ports Department) Secretariat, Chennai & Others)***. Vide order dated 18.07.2022, I had held that the IRC guidelines are only recommendatory and not mandatory. I referred to the judgment of the Hon'ble Division Bench made in ***W.A(MD)No.1054 of 2020, dated 26.02.2021(The Divisional Engineer Vs. R.Meenakshi)***. The Hon'ble Division Bench in turn had followed the decision of the Hon'ble Supreme Court of India reported in ***2016 (15) SCC 480 (Indian Oil Corporation Limited and others Vs. Arti Devi Dangi and another)***

8.In this case, the petitioner had submitted his application way back in the year 2018. IRC guidelines had been implemented in the State of Tamil Nadu by applying G.O(Ms)No.25 Highways and Minor Ports Department dated 24.02.2022. The selection notification was issued by



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IOCL in the year 2018. The petitioner was selected in the year 2020.

Therefore, the authority will have to apply the position that prevailed when the petitioner had submitted his application. The petitioner's case could not have been rejected by citing the subsequently issued G.O ie., G.O(Ms)No.25 Highways and Minors Ports Department dated 24.02.2022.

9.As rightly pointed out by the learned Standing Counsel for IOCL, the safety of the road users can be ensured by appropriately locating the pumps and by providing service road. (in the loose sense of the term).

10.However, while the location of the intersection road at a distance of 70 meters may not really pose any traffic hazard, I cannot brush aside the contention of the learned Additional Government Pleader based on the location of transformer at a distance of 36.2 meters. It is also stated that the petitioner has undertaken before the authority that he would take steps to have the said transformer shifted. The petitioner has to abide by the said undertaking. The authority can issue “No Objection



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Certificate” to the petitioner by putting the petitioner on appropriate terms and conditions with regard to shifting of the transformer and providing for service road.

11.In this view of the matter, the order impugned in the writ petition is set aside. The first respondent is directed to issue “No Objection Certificate” to the petitioner by incorporating appropriate terms and conditions. This shall be done by the second respondent within a period of six weeks from the date of receipt of a copy of this order.

12. This writ petition is allowed accordingly. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

26.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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