

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**TUESDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SRI JUSTICE B.VIJAYSEN REDDY

WRIT PETITION NO: 14186 OF 2023

Between:

Mohammed Moulana Mahboob Ali, S/o. Mohammed Dawood Ali, Aged about 38 years, Occ.Business, R/o.H.No.5-32, Maddur Village, Maddur Mandal, Siddipet District-506367.

.....PETITIONER

AND

1. The State of Telanagana, Rep. by its Principal Secretary, Department of Home, Secretariat Hyderabad.
2. The Commissioner of Police, Siddipet District.
3. The Territory Manager, (Retail), Nizamabad Bharat Petroleum Corporation Ltd., 1st Floor, G.N. Complex, Arya Nagar, Hyderabad Road, Nizamabad, T.S.-503230.

.....RESPONDENTS

Petition Under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ in nature of writ of mandamus to declare the action of the Respondent No. 2 in issuing Letter vide No. M/17/204/2021 dt. 19-04-2022 as illegal, arbitrary, unconstitutional and in violation of the several High Court Judgments and also in violation of fundaments rights of the petitioner of the Indian Constitution in the interests of justice. Consequently, to direct the Respondent No. 2 to issue No-Objection in respect of the New Retail Outlet on the subject matter property of the Petitioner.

I.A.NO:1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to set-aside the Letter vide No. M/ 17/204/2021 dt. 19-04-2022 issued by the Respondent No. 2 pending disposal of the above writ petition.

I.A.NO:2 OF 2023

Petition Under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the Respondent No. 2 to issue No-Objection in respect of the New Retail Outlet on the subject matter property of the Petitioner pending disposal of the above writ petition.

Counsel for the Petitioner : SRI MUHAMMAD VEQAR HUSSAIN

Counsel for the Respondent Nos.1 & 2 : GP FOR HOME

Counsel for the Respondent No.3 : SRI DOMINIC FERNNDES ✓

The Court made the following ORDER

THE HONOURABLE SRI JUSTICE B. VIJAYSEN REDDY

WRIT PETITION No.14186 of 2023

ORDER:

The writ petition is filed to declare the action of the respondent No.2-Commissioner of Police, Siddipet, in issuing Letter No.M/17/204/2021 dated 19.04.2022 as being arbitrary, unconstitutional and contrary to the law laid down by this Court and consequently, direct the respondent No.2 to issue NOC to the petitioner for installation of new retail outlet in the land of the petitioner admeasuring A.0.20 guntas in Sy.No.242/A/2, Maddur Village, Maddur Mandal, Siddipet District.

2. It is stated that the petitioner is the absolute owner and possessor of the subject land having acquired the same through a registered gift deed from his father, namely, Mohammed Dawood Ali vide document bearing No.134/2021 registered before the Tahsildar and Sub-Registrar, Maddur. Originally the subject land was an agricultural land. Later, the petitioner applied for conversion of the agricultural Land into non-agricultural land before the Tahsildar and Joint Sub-Registrar, Maddur and the same was accorded for the conversion vide Proceedings No.2100144999 dated 18.02.2021.

3. It is stated that in response to the advertisement dated 14.12.2018 published by the respondent No.3, the petitioner submitted application No.15470163296234 dated 09.01.2019 for allotment of MS/HSD Retail Outlet Dealership. In pursuance of drawal of lots, the respondent No.3 issued a Letter vide Ref.No.15470163296234 dated 06.12.2019 informing that the petitioner has been declared as successful candidate in the drawal of lots conducted on 05.12.2019 for selection of Retail Outlet (RO) dealership at the subject location. Thereafter, the respondent No.3 issued one more letter bearing No.15470163296234 dated 09.12.2020 to the petitioner for collecting of the letter of intent. Subsequently, the respondent No.3 issued a Letter of Intent vide NRT/NRO/ADVT 2018-19/S.NO.408/LOI dated 22.12.2020.

4. It is stated that for the purpose of starting construction of the Retail Outlet, the respondent No.3 issued a Letter No.NRT.NRO.DMNOC.MADDUR dated 03.02.2021 to the respondent No.2 to issue No-Objection Certificate in respect of the said Retail Outlet. The respondent No.2 issued a letter No.M/17/204/2021 dated 01.03.20d21 to the Revenue Divisional officer, Husnabad; District Panchayat Officer, Siddipet; Execute Engineer, (R&B), Siddipet; Assistant Commissioner of Police, Husnabad and Divisional Engineer, Electrical Operation, TSSPDCL, Cherial, to furnish remarks/reports for issuing NOC. Thereafter, the Executive

Engineer (R&B), Division, Siddipet through Letter No.Lr/No/PA/T3/ NOC/petrol pump/Maddur(V)/2021/2022/ dated 05.10.2021 requesting the respondent No.2 to issued NOC. Similarly, letters were issued by the District Panchayat Officer (FAC) Siddipet, the Divisional Engineer, Operation, TSSPDCL, Husnabad Division and the Revenue Divisional Officer.

5. It is stated that after receiving all the enquiry reports and also the enquiry Report from the Assistant Commissioner of Police, the respondent No.2 issued Letter No.M/17/204/2021 dated 19.04.2022 to the respondent No.3 rejecting NOC to the petitioner for installation of new retail outlet of MS/HSD stating that as per the guidelines of IRC: 12-2009 for access, location and layout of roadside fuels stations and service stations, the minimum distance between two fuel stations must be 300 meters but there is a HP filling station located at a distance of 50 meters to the proposed site. The respondent No.3 issued a clarification Letter No.NRT.NRO. DMNOC. MADDUR dated 21.06.2022 requesting for the issuance of NOC stating that the Indian Roads Congress (IRC) guidelines on which the request for NOC was rejected is not a statutory body and is only an advisory committee. But the respondent No.2 has not considered the said clarification. The respondent No.3 issued Letter vide NRT/LOI SCN/ADVT. No.408 dated 31.03.2023 to the petitioner to approach the respondent No.3 with supporting

documents within 21 days. Thereafter, the petitioner received Letter vide NRT/LOI SCN/ADVT. No.408 dated 17.04.2023 asking explanation as to why there is no progress in setting up of the retail outlet. The petitioner submitted a reply dated 18.04.2023 to the respondent No.3 requesting not to withdraw the offer of Retail Outlet, as he is intending to file a writ petition.

6. The case of the respondent No.2 is that reports were requisitioned from various authorities. The Assistant Commissioner of Police, Husnabad, submitted enquiry report vide C.No.242/ACP-HSB/2021, dated 15.12.2021 stating that the proposed site is having 33 KV power line and one HP filling station is located beside 50 meters from the proposed site. The Revenue Divisiona Officer, Husnabad vide Letter No.D/200/2021 dated.9.11.2021 reported that one HP Petrol Bunk exists near the proposed New Retail Outlet of MS/HSD and one road leading to the village is in between these two petrol bunks i.e. existing HP Petrol Bunk and proposed New Retail Outlet of MS/HSD. The Executive Engineer, R&B Division, Siddipet through Letter No. PA/T3/NOC/PetrolPump/Maddur(V)/2021-22/508 dated.5.10.2021/6.11.2021 informed that the existing road is single lane of undivided carriage way; the buffer strip size is proposed with 11.0 meters x 2.0 meters, which needs to be corrected; there is no approach road; there is no drainage facility etc.

7. It is stated that District Panchayat Officer, Siddipet and the Executive Engineer, R&B Department have expressed no objection. The Divisional Engineer, Electrical, Operation, TSSPDCL, Husnabad Division vide Memo. No.DEE/OP/HSB/AE/Comml.D/No.5148/20-21, dated 21.02.2022 stated that they have no objection for installation of New Retail Outlet, subject to certain conditions/compliances. It is submitted that, as per the report of the ACP, Husnabad & RDO, Husnabad and as per the guidelines of IRC: 12-2009 for access, location and layout of roadside fuel stations and service stations and Rule No.(4.6) the minimum distance between two fuel stations would be as : Rule No.(4.6.1) Plain and rolling terrain in non-urban (rural) areas: Undivided carriageway (for both sides of carriageway) is 300 meters (including deceleration and acceleration lanes). By considering the above reports, the respondent No.2 informed the respondent No.3 that request for NOC is rejected. The respondent No.3 again submitted an application dated 21.6.2022 on similar lines requesting the respondent No.2 to issue NOC and the same was rejected vide Letter No.M/17/204/2021 dated 01.06.2023.

8. In the counter filed by the respondent No.3, it is stated that the IRC guidelines are only recommendatory in nature and not mandatory. IRC is not a statutory body, but it is an Apex Body of Highway Engineers in the country. It suggests improved methods

of planning, design, construction, maintenance and administration of roads. Thus, the impugned rejection is illegal.

9. Learned counsel for the petitioner relied on a Division Bench decision of this Court in **PUTTALA ROSHAIAH v. UNION OF INDIA**¹ and decision of the High Court of Andhra Pradesh in **B.MADHAVI v. UNION OF INDIA**², to support his contention that IRC guidelines are not mandatory in nature.

10. Learned Government Pleader for Home submitted that the distance between the existing retail outlet and the proposed retail outlet is 50 meters and the safety of the public and the vehicles needs to be kept in mind before NOC is issued. There is every possibility of accidents being caused if the distance between the two retail outlets is less than the prescribed standard. Thus, the rejection of NOC vide Letter No.M/17/204/2021 dated 19.04.2022 does not call for any interference.

11. Heard learned counsel for the petitioner and learned Government Pleader for Home.

12. In para 7 of **PUTTALA ROSHAIAH**'s case (1 supra), it was held as under:

¹ 2022 (5) ALD 731 (TS) (DB)

² (2021) 1 High Court Cases (AP) 140 : 2021 SCC OnLine AP 192

"7. Much has been argued upon violation of the guidelines framed by the learned counsel for the petitioners. The guidelines framed by Indian Road Congress, 2009 certainly do not have statutory force. They are only directory in nature and not mandatory in nature. The petitioners have not pointed out violation of any statutory provision of law in the matter of establishment of retail outlet. Therefore, in the considered opinion of this Court, as Bharat Petroleum Oil Corporation Limited is establishing a retail outlet after following due process of law, no case for interference is made out in the matter."

In **B.MADHAVI's** case (2 supra), the High Court of Andhra Pradesh relied on the judgments of the Supreme Court and various High Courts and held at paras 16 and 17 as under:

"16. Sri Dominic Ferandes would rely upon a Judgment of the Hon'ble High Court of Orissa reported as **Indian Oil Corporation Limited vs. Collector & District Magistrate, Jajpur** (2017 SCC Online Orissa 687; MANU/OR/0600/2017) which considered various Judgments of the Hon'ble Supreme Court and other Courts including the Judgment of a Division Bench of a Madhya Pradesh High Court in Writ Appeal No.568 of 2014 in **Shailendra vs. Smt.Saroj Bhati** (Division Bench of Madhya Pradesh High Court), Judgment of a Division Bench of Punjab and Haryana High Court in the case of **Environment Society of India, Chandigarh vs. Administrator, Chandigarh Administration, Union Territory, Chandigarh** (AIR 1998 Punjab and Haryana 94), Judgment of the High Court of Allahabad in **Deepak Agarwal vs. State of U.P.** (2002 (95) FLR 63; 2003 (1) SLR 213; (2011) 6 SCC 725) in Civil Miscellaneous Writ Petition No.27184 of 2013 wherein in all

the above Judgments it was consistently held that the guidelines of the Indian Roads Congress are not mandatory.

17. In view of the aforesaid Judgments, it would have to be held that the guidelines issued by the Indian Roads congress are not mandatory and binding in 2nd respondent's Corporation. Further, the advertisement did not set out any condition that the guidelines set out by the Indian Roads Congress would be applicable. In these circumstances, the contention of the learned counsel for the petitioner that the 9th respondent cannot operate a retail outlet within 300 meters of the retail outlet of the petitioner, cannot be accepted."

13. In the light of the consistent view taken by various High Courts holding that IRC guidelines are only directory and not mandatory and further that the respondent No.2 has not pointed out any statutory provision or contra decision that IRC guidelines are mandatory, the writ petition deserves to be allowed and is accordingly allowed. Consequently, the respondent No.2 is directed to issue NOC in respect of the New Retail Outlet on the subject property of the petitioner.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

SD/-T. TIRUMALA DEVI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Principal Secretary, Department of Home, Secretariat State of Telanagana at Hyderabad.
2. The Commissioner of Police, Siddipet District.
3. The Territory Manager, (Retail), Nizamabad Bharat Petroleum Corporation Ltd., 1st Floor, G.N. Complex, Arya Nagar, Hyderabad Road, Nizamabad, T.S.-503230.
4. Two CCs to GP FOR HOME, High Court for the State of Telangana at Hyderabad. [OUT]

5. One CC to SRI MUHAMMAD VEQAR HUSSAIN, Advocate [OPUC]
6. One CC to SRI DOMINIC FERNNDES, Advocate (OPUC)
7. Two CD Copies

SA
BS

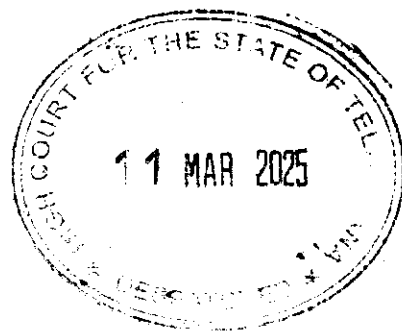
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HIGH COURT

DATED:31/12/2024

ORDER

WP.No.14186 of 2023



**ALLOWING THE W.P
WITHOUT COSTS.**

PA
(10) 11/3/25