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W.P.No.8485 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2025

CORAM:

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.8485 of 2024
and
WMP.No.9431 of 2024

P.Kandasamy

... Petitioner

Vs.

- 1.The District Collector,
Salem District, Salem,
- 2.The Additional District Magistrate and
The District Revenue Officer,
Salem.
- 3.The Revenue Divisional Officer,
Attur, Salem District.
- 4.The Territory Manager,
Bharat Petroleum Corporation Ltd.,
Athur & Kadaparai Village,
Erode Road, Athur Post, Karur-639 008.

5.P.Nivas

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certioraified Mandamus, calling for the records culminating in the order dated 27.12.2023 of the second respondent vide D.Dis.33681/2020/C2 granting “No
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Objection Certificate” to the fifth respondent and quash the same and direct the second respondent to hear the petitioner in terms of the order dated 27.06.2022 in WP.8056 of 2022, in considering the application of the fifth respondent submitted to the second respondent for grant of No Objection Certificate for setting up Petroleum Retail Outlet at S.No.118,1A1, Thumbai Village, Bethanayakampalayam Taluk, Salem District.

For Petitioner : Mr.K.Shakespeare

For Respondent : Mr.A.M.Ayyadurai, GA
Nos.1 to 3

For Respondent : Mr.V.Anantha Natarajan
No.4

For Respondent : Mr.Abhinav Parthasarathy
No.5

ORDER

The order dated 27.12.2023 of the second respondent vide D.Dis.33681/2020/C2 granting “No Objection Certificate” to the fifth respondent, is put under challenge in the present Writ Petition. Further, the petitioner has sought for a direction to the second respondent to hear him in terms of the order dated 27.06.2022 in W.P.8056 of 2022, in considering the application of the fifth



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respondent submitted to the second respondent for grant of No Objection Certificate for setting up Petroleum Retail Outlet at S.No.118,1A1, Thumbai Village, Bethanayakampalayam Taluk, Salem District.

2. Heard both sides.

3. The learned counsel for the petitioner submitted that the petitioner is running a Petroleum Retail Outlet adjacent to the fifth respondent's land. He contended that the fifth respondent made an application and participated in the notification issued by the fourth respondent for Retail Outlet permission, for which, No Objection Certificate was granted by the second respondent without considering his objections and affording an opportunity of hearing as per the order passed by this Court in W.P.No.8056 of 2022, which is in violation of the Court's order as well as to the distance norms of the respondents. He further submitted that in this regard, a civil suit was filed in O.S.182 of 2021 on the file of the Additional District Munsif Court, Attur. Hence, the present Writ Petition has been filed.



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4. Per contra, the learned counsel for the respondents submitted that IRC norms is not mandatory but only directory. In support of the said contention, he drew the attention of this Court to the decision of this Court in ***W.P.No.1956 of 2022 dated 04.02.2022 [H.Alaudeen Vs. Hindustan Petroleum Corporation, Regional Office, Salem and 2 others]***. The relevant portions of the order reads as under:

“... the issue in the present case was already decided by the Hon'ble Apex Court in (2016) Indian Oil Corporation Limited and others Vs. Arti Devi Dangi and another in which, it is stated that IRC guidelines is mandatory requirement of the tender conditions in the said case. This Court by its order in W.P.No.35885 of 2019 dated 11.03.2021 has admitted that IRC-2009 is not mandatory in nature. It is a further submission of the learned Additional Advocate General that the decision in W.P. (MD) No.9622 of 2020 and W.M.P.(MD) No.8659 of 2020 have been distinguished by the Madurai Bench in W.A.(MD) No.1054 of 2020 and in such a scenario, the case has to be referred to a Larger Bench for deciding the issue as to whether IRC guidelines is recommendatory or mandatory. Accordingly, he prays for appropriate orders.

6. The fact in the present case is not in dispute and by the order of both the Hon'ble Apex Court and the Division Bench of



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this Court, the Apex Court has taken consideration of IRC guidelines and based upon which, respective States have framed rules following the IRC. Further, the learned Single Judge has allowed the Writ Petition in W.P.No.8634 of 2021 and directed the respondents to issue No Objection Certificate to the respective persons.

7. Further, in yet another decision in W.P.No.35885 of 2019 vide order dated 11.03.2021, another learned Single Judge, advertent to various decision has clearly held that IRC is recommendatory and not mandatory. The relevant portion of the said order is as under:

“As seen from the above, the Indian Road Congress Guidelines have no statutory force as far as State of Tamil Nadu is concerned. The instructions given by the Assistant Divisional Engineer, Highways Department dated 08.11.2019 as well as instructions given by the Principal Secretary to Government of Tamil Nadu to all the District Collectors/Commissioner of Police dated 08.02.2020 relied upon by the learned Senior Counsel for the petitioner has no statutory force. In order for executive instructions to have force of Statutory Rules, it must be shown that they have been issued either under the authority conferred on the State Government by some statute or under some provision of the Constitution providing therefor.



25. *The Indian Road Congress Guidelines as observed earlier are not mandatory. The State of Tamil Nadu has not framed Statutory Rules incorporating the Indian Road Congress Guidelines till date and therefore, the Indian Road Congress does not have any binding statutory force.*”

8. *In similar Arti Devi Dangi's case (Supra), the Madurai Bench of this Court has held that IRC guidelines are only recommendatory and not mandatory, which is 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 affect mandate. However, on a closer 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 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.

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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 matter advance the case of the writ petitioner.

54. The learned counsel for the petitioners would submit that the memo of the Chief Engineer, dated 05.04.2018, is the decision of the Government. Such a plea cannot be countenanced, because, at best, the Chief Engineer can issue administrative instructions to her subordinate officers within the subjects falling within her jurisdiction. Any such instruction given to the subordinate officers beyond her powers cannot bind the Government. That apart, the memo dated 05.04.2018 has been issued citing the writ petition in W.P.No.691 of 2017. It is not known under what circumstances, the Chief Engineer referred to the said writ petition and issued the memo. The said writ petition was filed in the year 2017. The matter was heard by the Honourable



First Bench on 24.04.2017. On the said date, the time to file counter affidavit was extended as a last chance by two weeks i.e. On or before 16.06.2017 and rejoinder that to be filed within one week thereafter and the matter was directed to be listed on 04.07.2017. However, it appears that subsequently, the matter was listed on 18.11.2019 and the same was disposed of by the aforementioned order. The larger question would be whether the Chief Engineer had authority to instruct the Superintending Engineers (H) and Divisional Engineers (H) to strictly adhere to IRC 12-2009 Guidelines for issuance of no objection certificate. There is no reference to any direction issued by either the State Government or Central Government for the Chief Engineer to compel her subordinates to strictly comply with the IRC Guidelines. Therefore, we are of the view that the direction issued by the Chief Engineer at best can be treated as directory if it does not suffer from the vice of lack of jurisdiction. When a statutory rule or a notification is in vogue, the same will prevail over the memo issued by the Chief Engineer. Therefore, we cannot be called upon to alleviate the status of the memo issued by the Chief Engineer to that of the statutory notification or the rules.”

9. From the above, it is clear that IRC guidelines are only recommendatory and not mandatory and, accordingly, the decision relied on by the petitioner in W.P.(MD) No.8634 of 2021 is

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squarely attracted to the present case.”

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The above extract is self explanatory. He further submitted that for the very same issue, a Civil Suit has already been filed in O.S.No.182 of 2021 on the file of the Additional District Munsif Court, Attur and in view of the same, the petitioner has no right to approach this Court and prayed this Court to dismiss the petition.

5. I have considered the rival submissions made by the respective counsels and also perused the materials available on record.

6. On perusal of the case reveals that the IRC guidelines are not mandatory but only directory and the respondent concerned have issued the No Objection Certificate only after considering all the relevant norms and hence, there is no infirmity or illegality by the respondent concerned in issuance of NOC to the fifth respondent. That apart, for the very same issue, a civil suit is pending before the Court below as stated supra, this Court is not inclined to grant the relief as sought for by the petitioner in this petition.



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7. For the reasons stated above, the Writ Petition stands dismissed. Consequently, connected Miscellaneous Petition is closed. There shall be no orders as to costs.

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Index: Yes/No

NCC : Yes/No

Order : Speaking/Non Speaking

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