

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONE AT CHENNAI**

ORIGINAL APPLICATION NO. 118 of 2021 (SZ)

BETWEEN:

D. Sakthivel,
S/o. Devaraj,
No.23, Main Road,
Pavai Thanneerpandal Palayam,
Periyasemur, Erode District -638 004

... Applicant

AND:

1. The District Collector
Erode District,
Collectorate Complex,
State Highway 96, Opp. District Court,
Palayapalayam, Erode - 638 001
2. The District Revenue Officer,
Erode District,
Collectorate Complex,
State Highway 96, Opp. District Court,
Palayapalayam, Erode - 638 001
3. The Joint Chief Controller of Explosives,
A and D Wing, Block1-8
Shastri Bhavan,
No.26, Haddows Road,
Nungambakkam, Chennai -600 006
4. The Divisional Engineer,
Highways Department (C&M)
Erode Division, Bharathi Nagar,
Moolapalayam, Erode - 638 002
5. The Commissioner,
Erode City Municipal Corporation ,
No.894, Meenatchi Sundaranar Road,
Erode - 638 001
6. The Territory Manager,
Bharat Petroleum Corporation Ltd.,
Coimbatore Retail Territory Office,
Ravathur Post, Irugur Via
Coimbatore - 641 103
7. The Chairman,
Tamil Nadu Pollution Control Board (TNPCB)
No. 76, Mount Salai, Guindy,
Chennai - 600 032.

8. The Regional Director,
Regional Directorate (South),
Central Pollution Control Board (CPCB),
2nd Floor, No. 77-A, South Avenue Road,
Ambattur Industrial Estate,
Chennai – 600 058.

... Respondents

**WRITTEN SUBMISSION FILED ON BEHALF OF THE 6TH
RESPONDENT**

The 6th Respondent begs to submit that the Reply Statement, Documents and Compilation of Judgments, filed by this Respondent before this Hon'ble Tribunal may be treated as part and parcel of this Written Submission.

1. It is submitted the present application has been filed seeking to permanently injunct the 6th Respondent from operating the New Road-side Petroleum Retail Outlet on Sathy-Erode Main Road in Survey No. 27/2, Periyasemur Village, Erode District - 638 004, in gross violation to the Siting Criteria prescribed by the Central Pollution Control Board (CPCB) in Clause "H" of the Office Memorandum No. B-13011/1/2019-20/AQM/10802-10847 dated 07.01.2020, in close proximity to a waterbody and in violation of the mandatory norms prescribed in Circular No. 12 – 2009 by the Indian Road Congress.

2. It is submitted that the applicant during the course of the arguments has raised the following grounds:

- A.** The Retail outlet was established in violation of CPCB Circular dated 07.01.2020, i.e., within a prohibited distance from
 - a.** School
 - b.** Water body
- B.** Violation of IRC Guidelines
- C.** Violation of G.O. (Ms). No. 79 dated 04.05.2017 issued under Tamil Nadu Town and Country Planning Act, 1971
- D.** Without Permission from the local authority.

3. Before dealing with the above grounds, it is submitted that the above Application is liable to be dismissed on the ground that the applicant has filed the above application with vested interest, has misrepresented, suppressed material facts and come with unclean hands.

4. It is submitted that the above application is not maintainable at all and devoid of merits on both factual and legal aspects. It is submitted that the Applicant has no locus standi to file the above Application as he has approached this Hon'ble Tribunal completely with a vested interest, on the instigation of unknown persons, intending to only cause unwanted agitation as against this Respondent and the same is evident from the fact that the Applicant has cited erroneous provisions and statutes, which are under no circumstance, in violation by this answering respondent and the Applicant is also in full knowledge of the same.

5. It is submitted that the vested interests of the present applicant is further evident in the very fact that this applicant had chosen to approach this Hon'ble Tribunal, belatedly, one month after the commencement of sales of the subject retail outlet whereas this applicant had ample and sufficient time to file a complaint before the relevant authorities in respect of the alleged violations or to approach this Hon'ble Tribunal as against the establishment of the retail outlet, during the stages of this respondent calling for applications in the year 2018 or during the stages where construction for the said retail outlet had begun. It is submitted that such calculative trivial claims made by this Applicant is liable to dealt with by an iron hand, through the imposition of exemplary costs on the applicant for attempting to misuse the powers of this Hon'ble Tribunal.

6. It is submitted that the applicant has approached this Hon'ble Tribunal with tainted and unclean hands and knowingly suppressed material facts and made misrepresentation and the same is abuse of process of law. Hence, the applicant is not entitled to any relief from this Hon'ble Tribunal.

7. It is submitted that the Applicant has relied on and filed various orders of the Hon'ble High Court which have little or not bearing on the present matter. In any case, it is submitted that the applicant is misusing the forum of this Hon'ble Tribunal to agitate matters which are to be adjudicated by the Hon'ble High Court and the same is evident from the numerous orders of the High Court filed and relied on by the Applicant.

8. It is submitted that this Respondent had issued an advertisement calling for applications for setting up of New Retail Outlets (NROs) on 25.11.2018 in Erode district on SH15, between Erode & Chithode (on Either side) under OBC - Regular DC category. It is submitted that in response to the advertisement, one Mr Senthil Kumar P was selected as per the selection process and a Letter of Intent (LOI) was issued on 04.01.2020.

9. It is submitted that the site area offered by LOI holder for setting up the New Retail Outlet was 1342.59 Sq.M admeasuring 35Mtr Approx (Frontage) X 35 Mtr Approx (depth) at Survey No. 27/2, Mamarthupalayam, Periyasemur Village, Erode Taluk & District.

10. It is submitted that this respondent had applied for a No objection certificate (NOC) from the district authorities on 11.01.2021. It is submitted that after receiving NOCs from various departments like Fire, Revenue, this respondent had received a No Objection Certificate from the District administration, Erode District on 26.02.2021, for setting up the new retail outlet, after the location of the subject retail outlet was duly verified and approved.

11. It is submitted that this respondent had also received a license from the Petroleum and Safety Organisation (PESO) on 30.03.2021 vide license no: P/SC/TN/14/9380 (P495111).

12. It is submitted that this respondent, after obtaining all the necessary approvals/clearances as is required, commenced the construction for the said retail outlet and this respondent had

commissioned the outlet and commenced the sales including nozzle sales from April of 2021. It is submitted that currently, the retail outlet is operating around 800 Ltr Petrol and 1200 Ltr Diesel per day.

13. It is submitted that despite aware of the above, the Applicant has approached this Hon'ble Tribunal with malafide intention and ill motive for his vested interest.

NOW DEALING WITH THE GROUNDS RAISED BY THE APPLICANT

A. The Retail outlet was established in violation of CPCB Circular dated 07.01.2020, i.e., within a prohibited distance (Siting Criteria) from

- a. School
- b. Water body

14. It is submitted that the present application has been filed with various allegations against the subject retail outlet, however, those allegations are neither the issue of pollution nor the issue of environmental degradation, which warrant the indulgence of this Hon'ble Tribunal under the provisions of the National Green Tribunal Act, 2020, however, the only allegation which can be decided by this Hon'ble Tribunal is that the subject retail outlet is established in violation to siting criteria prescribed by the Central Pollution Control Board in Clause "H" of the Office Memorandum No.B-13011/1/2019-20/AQM/10802-10847 dated 07.01.2020. In this regard, it is relevant to read the said Clause "H" and the same is as follows:-

"H. Siting criteria of retail Outlets:

*In case of siting criteria for petrol pumps new Retail Outlets shall not be located within a radial distance of 50 meters (from fill point/dispensing units/vent pipe whichever is nearest) from schools, hospitals (10 beds and above) and residential areas designated as per local laws. In case of constraints in providing 50 meters distance, the retail outlet shall implement additional safety measures as prescribed by PESO. **In no case the distance between new retail outlet from schools, hospitals (10 beds and above) and residential area***

***designated as per local laws shall be less than 30 meters.
No high tension line shall pass over the retail outlet."***

It is apparent from the above clause that the new Retail Outlets shall not be located under no case, within a radial distance of 30 meters from schools, hospitals and residential areas designated as per local laws.

a. SCHOOL

15. It is submitted that the subject retail outlet had obtained all the necessary permissions and clearances prior to its commencement and the said permissions were granted by the respective authorities only after duly verifying and inspecting the retail outlet, taking into consideration all the applicable conditions and regulations as would be required to be in compliance by the subject retail outlet. It is submitted that as such, the allegation that the subject retail outlet falls near a Primary school and is in violation of the minimum distance prescribed by CPCB, is all false and denied.

16. It is submitted that the alleged primary school is not a primary school and it is a Higher Secondary School, hence the present subject retail outlet, specifically the dispensing unit at the retail outlet, falls at a distance of about 36m from the said School and as such the subject retail outlet falls well within the permissible limit of minimum distance that is required to be maintained by a new retail outlet, where the prescribed distance under no case, should be less than 30m from any school. ***It is submitted that the same is evident from Pages 4 and 7 of the report submitted by the Joint Committee, duly appointed by this Hon'ble Tribunal.***

17. It is submitted that the allegation with respect to the retail outlet being in violation of G.O No. 256 of 2015, is all false and denied. It is submitted that the said G.O No. 256 of 2015 – Code of Regulations for Play Schools-2015, relied on by the applicant herein is only applicable for **"PLAY SCHOOLS"** and admittedly, the school mentioned by the Applicant in the Application which is alleged to be in close proximity to

the Retail Outlet is not a "**PLAY SCHOOL**" but a "**HIGHER SECONDARY SCHOOL**" and as such, the said G.O Ms No. 256 of 2015, relied upon by the Applicant does not apply to the present school. The applicability of said G.O., cannot be agitated before this Hon'ble Tribunal since its neither relates to a pollution nor degradation of environment.

18. It is further submitted that the distance criteria prescribed by the Central Pollution Control Board in its Circular dated 07.01.2020 is 50 meters, in any case, it should not be less than 30 metres, but the distance between the School and the subject retail outlet is 36 metres, hence the same is not at all a violation, as alleged by the Applicant. Further, this Respondent has furnished/installed various safety measures prided in the subject retail out and the same was also affirmed by the Tamil Nadu Pollution Control Board in its Supplementary Report. This apart, Automatic Leak Detection System (ALDS) has also been installed by this Respondent for additional safety and it is also submitted that this Respondent is willing to abide by any other safety conditions or measures as may be prescribed.

b. WATER BODY

19. It is submitted that the allegation that the subject retail outlet is in violation to the norms prescribed by CPCB, with respect to the presence of a Water body within the same survey number and adjacent to the subject site are all false and denied. It is submitted that there is not a single semblance of any word or rule relating to a minimum distance for a retail outlet from any "water body" under the norms prescribed by CPCB at the time of establishment and commencement of the operation of the subject retail outlet.

20. It is submitted that as on the date of the present application, there were no specific restrictions as to the presence of a retail outlet near a water body and as such, the allegation raised by the applicant is devoid of any merits and is liable to the imposition of costs, for making such imaginary claims before this Hon'ble Tribunal.

21. It is also further submitted that with respect to the subsequent reliance placed upon by the Applicant on the clarification issued by the CPCB with respect to the siting criteria of Retail Outlets near water bodies, vide its guidelines dated 16.08.2021, the same is not applicable to the subject retail outlet since the said clarification is clear as to its application and the same is reiterated hereunder :

" ADDENDUM TO GUIDELINES FOR SETTING UP FOR NEW PETROL PUMPS

a) ...
The sitting criterion is to be implemented for all new petrol pumps where construction by OMC's starts post the issuance of these guidelines"

Hence, the subject retail outlet, whose sales commenced as on April 2021, is exempted from the purview and application of the said Addendum issued by CPCB with respect to the siting criteria of Retail Outlets near water bodies.

22. It is further submitted that the Tahsildar, Erode, in his letter R.C No. 212/2021/A3 dated 18.01.2021, has submitted a report to District Revenue officer, where he has confirmed that there is no canal existing in Survey No. 27/2 and the same is expounded as hereunder :-

"No Koppu canal is seen in said land for getting irrigated. There is no waterway runs on said land, in this 0.17.0 Hec. Land, as 1342.59 Sq.Mr. extent becomes as the constructional land, no sort of hindrance occurs to irrigational canal or water distribution canal. And, there is no chance of affecting the groundwater level. There is no chance of the lands near by the land to which the licence is claimed to submerge in water or there is no chance of flooding the area. Also, there is no hindrance for discharge of sewage water."

B. IRC GUIDELINES

23. It is submitted that the applicant has raised the ground with respect to the subject unit being in violation of the IRC Norms. It is submitted that the IRC Norms, relied on by the Applicant, has no statutory force in the State of Tamil Nadu for the reason that they have not been formally adopted as a statute by the State till date and

as such, they remain only as recommendatory norms and not mandatory in nature. It is further submitted that the said argument has been countenanced and affirmed by numerous detailed judgements of the Hon'ble High Court of Madras and the same is enumerated hereunder.

i. the Hon'ble Division Bench of the Madras High Court had sought to clarify the legal position with respect to the application of IRC NORMS in the State of Tamil Nadu vide its detailed order dated 17.10.2019 in **W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019**, and the relevant portions are extracted hereunder :

"38.

...

It is the further submission of Mr.V.B.R.Menon, learned counsel, that the Chief Engineer of Construction and Maintenance of Highways Department of the State of Tamil Nadu, in Memo No. 4751/Contracts-1/2018, dated 05.04.2018, has clarified that for issuance of no objection certificate for road side petroleum retail outlets by Oil Marketing Companies or any other Agency in respect of Government Highways Roads (i.e.) State Highways, State Highways Urban, Major District Roads, other District Roads, other District Roads (Sugarcane Roads), the guideline 12-2009, issued by the Indian Roads Congress, should be strictly followed. It is the submission of Mr.V.B.R.Menon, learned counsel for the petitioner, that when he had filed a public interest litigation by appearing party-in-person in W.P.No.691 of 2017, wherein he sought for a direction to the respondents, namely, Union of India, State Government and the Director General of Police to comply with the guidelines of the Indian Roads Congress, the memo of the Chief Engineer was filed by him before the Court and this has been recorded in the order dated 18.01.2019, passed by the Division Bench and therefore, the State Government cannot wriggle out of their stand and are mandatorily required to implement the guidelines of the Indian Roads Congress.

39. *First, we test the correctness of the above submission. No doubt, it is true that W.P.No.691 of 2017 was filed as a public interest litigation and the petitioner therein is none other than the learned counsel for the petitioner herein. A prayer was made to direct the respondents therein to **comply with the guidelines of the Indian Roads Congress. The order passed by the Division Bench is as follows:***

"The writ petition was filed by the petitioner in Public Interest for seeking a direction to the respondents to comply with the guidelines contained in the Indian Road Congress (IRC)

Circular No.12 : 2009 for the issuance of No Objection Certificate for site approvals of Road-side Petroleum outlets by Oil Marketing Companies (OMC) within the State of Tamilnadu.

2. The petitioner has also filed a memo in this court today along with Exhibit 2 viz., Memo No. 4751/Contracts-1/2018, dated 5.4.2018 in which the Chief Engineer of construction and Maintenance of Highways Department of the State has clarified that for issuance of No Objection Certificate for Road side Petroleum Retail Outlets by Oil Marketing Companies (OMCs) or any other Agency in respect of Government Highways Roads (i.e.,) State Highways, State Highways Urban, Major District Roads, Other District Roads, Other District Roads (Sugarcane Roads), the guidelines issued by IRC 12- 2009 shall be strictly followed for passing orders. The earlier Circular issued vide Exhibit 1 dated 5.4.2018 itself gave the guidelines only for the Government Highways not including the other District Roads, etc.

3. Since a clarification has been issued by the Department concerned, the prayer made in the writ petition stands granted by the respondent. Therefore, we are of the view that no further direction is necessary in the present PIL writ petition. Accordingly, it is closed. No order as to costs. The connected miscellaneous petition is also closed."

40. On a careful reading of the order passed by the Honourable Division bench, it is clear that Paragraph No.2 of the order records the memo filed by the petitioner along with two exhibits. The order of the Court is in Paragraph No.3. It states that since a clarification has been issued by the Department concerned, the prayer made in the writ petition stands granted by the respondent. Therefore, the Court was of the view that no further direction is necessary in the writ petition. Thus, the decision is based on a memo filed by the petitioner, in which an exhibit was annexed, which was recorded by the Court and the Court observed that the prayer made in the writ petition stands granted by the respondent. Thus, the Court did not issue any direction as sought for by the petitioner and presumably, the petitioner therein was also satisfied that it would be sufficient to record the memo filed by him, which enclosed a memo of the Chief Engineer of the Construction and Maintenance of the Highways Department of the Government of Tamil Nadu. In our considered view, this decision cannot be pressed into service to state that the State Government has accepted the implementation of the guidelines of the Indian Roads Congress and therefore, they cannot wriggle out of such obligation. We are unable to countenance such a plea on a literal reading of the order passed by the Division Bench. Therefore, the arguments based on the said decision as placed before us has to necessarily fail.

41. Having held so, we need to consider as to what would be the effect of the guidelines of the Indian Roads Congress. The petitioners cannot deny the fact that the procedures for grant of

no objection certificate / clearance are regulated by the Central enactment, namely, the Petroleum Act and the Rules framed thereunder. Admittedly, the guidelines framed by the Indian Roads Congress have not been incorporated into the provisions of the Petroleum Act and the Rules framed thereunder.

...

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 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.

52. Further, we note that in Paragraph No.8 of the decision in the case of Arti Devi Dangi (supra), the provisions of the advertisement were noted and the advertisement specifically states that the proposed plot of land for the dealership should not be on the National Highway / State Highway and should fulfill all the rules and sub-rules of PWD and local legal necessities. In the light of the said factual position, the above decision was rendered. Therefore, in our view, the said decision is factually distinguishable and does not render assistance to the case of the petitioners. Having held that the decision in the case of Arti Devi Dangi (supra) would not assist the case of the petitioner, it goes without saying that the same cannot be pressed into service as law declared under Article 141 of the Constitution of India and therefore, the said argument of the petitioner also has to fail.

53. Once again, we revert back to the effect of the order, dated 18.01.2019, passed in W.P.No.691 of 2017. In the compilation of Judgments, the learned counsel for the petitioner has also enclosed a memo dated 05.04.2018, issued by the Chief Engineer

(H), Construction and Maintenance, Chennai. By the said memo, all the Superintending Engineers of Highways and Divisional Engineers of Highways of the Construction and Maintenance Wing were strictly instructed to comply with the IRC 12-2009 Guidelines. In the said memo, there is a reference to the writ petition filed by Mr.V.B.R.Menon in W.P.No.691 of 2017, dated 18.01.2019. This memo dated 05.04.2018, of the Chief Engineer (H), Construction & Maintenance, Chennai, was placed by the petitioner before the Division Bench and the same was placed on record and the Court observed that since clarification has been issued by the Department concerned, the prayer made in the writ petition stands granted by the respondent. Therefore, no further direction was necessary in the public interest writ petition.

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 18.01.2019 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.”

ii. It is further submitted that the Hon'ble Madras High Court in W.P. No. 35885 of 2019 in its order dated 11.03.2021, has observed as under :-

"....

21. Insofar as the first issue for consideration by this Court namely whether the Indian Road Congress Guidelines are mandatory or not is concerned, the said issue has already been considered by a Division Bench of the Madurai Bench of the Madras High Court in a batch of writ petitions namely W.P.(MD) Nos.19218, 2661, 3678 & 705 of 2019 dated 17.10.2019 wherein the Hon'ble Division Bench has held that the Indian Road Congress Guidelines will become mandatory only when it has been adopted by the respective State Governments by framing Statutory Rules incorporating the said Guidelines. In the said decision, the Division Bench has considered the decision of the Hon'ble Supreme Court in *Arti Devi Dangi's* case referred to supra and has held that Indian Road Congress recommendations – 2009 can take binding force and statutory effect only when appropriate Rules are framed by the State Government. Since Statutory Rules have not been framed by the State Government, the Division Bench in the aforesaid decision held that the Indian Road Congress Guidelines are not mandatory.

22. The relevant portion of the aforesaid decision of the Division Bench of the Madurai Bench of this Court are extracted hereunder:

"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.

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.

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 18.01.2019 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."

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. In the communication dated 08.11.2019 of the Assistant Divisional Engineer, Highways as well as the communication dated 08.02.2020 issued by the Principal Secretary to Government of Tamil Nadu there is no reference to any statute and therefore, the said communications are only in the nature of instructions and is not mandatory in nature. The official respondent before this Court have not raised any objection whatsoever for

setting up of the petrol bunk by the fifth respondent in the subject location. Hence, it is clear that there is no illegality committed by the second respondent in granting No Objection Certificate to the fifth respondent for setting up a petrol bunk in the subject location.

23. Insofar as the order dated 12.12.2019 passed in W.P.No.18753 of 2019 by the Division Bench of this Court is concerned, it is only an interim order and the said writ petition is still pending on the file of this Court. An interim order cannot be used as a precedent when another Division Bench of this Court has earlier authoritatively decided the question in issue by holding that the Indian Road Congress Guidelines are not mandatory. Furthermore, in the Division Bench judgment of the Madurai Bench of Madras High Court in a batch of writ petitions referred to supra has given due consideration to the decision of the Hon'ble Supreme Court in Arti Devi Dangi case referred to supra and only thereafter has come to the conclusion that the Indian Road Congress Guidelines are not mandatory. The other writ petitions referred to in the order dated 12.12.2019 passed in W.P.No.18753 of 2019 are all Public Interest Litigations which are still pending on the file of this Court and the fifth respondent is also not a party in those litigations. Therefore, this Court is of the considered view that insofar as the first issue for consideration namely whether Indian Road Congress Guidelines is mandatory or not will have to be answered in favour of the fifth respondent by holding Indian Road Congress Guidelines are not mandatory.

...

25. Admittedly, petroleum outlets are set up with public interest in mind. None of the official respondents before this Court have raised any objection with regard to setting up of a petrol bunk by the fifth respondent. There is no material on record placed before this Court to establish that setting up of the petroleum retail outlet by the fifth respondent in the subject location is dangerous and is against public interest. **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."**

iii. It is further submitted that the Hon'ble First Bench of the Hon'ble High Court of Madras, vide its order dated **01.08.2021** in **W.P Nos. 34652 of 2019 and batch**, has observed as follows :-

"8.

...

As to the failure on the part of the relevant oil company to adhere to the IRC norms, it is submitted that several Division

Bench judgments of this Court have held that such norms are not binding.

9. Indeed, several Division Bench judgments have been cited on either side and though there is an odd decision that the IRC:12-2009 guidelines ought to be adhered to, there are more Division Bench judgments that refer to the guidelines 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 Supreme Court judgment cited would also not apply since the tender terms in that case required any person wanting to open a retail store in terms of the advertisement to adhere to the applicable norms and the tender terms specifically provided for adherence to the rules and sub-rules of the local PWD. In view of the several Division Bench judgments of this court, including the one rendered on October 17, 2019 reported at 2019 SCC OnLine Mad 8587 (Durai Raj Venkatachalam vs. Additional Chief Secretary, Revenue and Disaster Management Department) and another rendered on W.P. (MD) No.2895 of 2020 (M.G.Saravanan vs. The Commissioner of Police) dated October 20, 2020, which clearly say that the IRC guidelines have no statutory force and may not be applied, the fact that the proposed site may be at an intersection and may cause traffic snarls and inconvenience to the general public, may not be a relevant factor.

...

13. To the extent that the no-objection certificate required the IRC:12-2009 guidelines to be followed, it can be said that in view of the recent consistent stand taken by this court that the IRC guidelines do not have any statutory force and are not mandatory, the breach of the IRC guidelines may not be fatal. It must also be recognised that notwithstanding the injunction subsisting now, substantial construction had been carried out previously. Even if it is accepted that no equity can be claimed by the private oil company as a consequence of commencing the construction and even if the petitioner's version is accepted that the construction has not been completed, it does not appear that at the time that the proposal for setting up the retail outlet was submitted or at the time that the no-objection certificate was issued on November 11, 2019, it was necessary for the strict conditions which are now in place to be followed or imposed in connection with the setting up of a new fuel outlet.

14. In such circumstances, the project cannot be interfered with and the private oil company may go ahead and take the requisite measures to open the retail outlet. But, in view of the outlet being in a residential area and at an intersection, some amount of additional care and caution need to be taken to operate the gas station. Considering the risks that a petrol station may bring to the local residents, the Collector will specify additional fire fighting equipment to be installed, so that in the unlikely event of a fire, it is possible to take immediate measures to arrest the spread thereof to the neighbouring buildings. In addition,

sufficient open space must be left at the intersection to allow the smooth flow of traffic. In particular, the Collector should advise the private oil company to not construct a boundary wall along the narrower road opening onto M.G. Road, but the wall on such side should stop at least 15 metre shy of M.G.Road to allow the smooth flow of traffic, especially vehicles entering or exiting the fuel station.”.

iv. It is further submitted that as against the above said order passed by the Hon'ble Madras High Court, an appeal was preferred before the Hon'ble Supreme Court in **SLA(C) No. 12699 of 2021**, wherein vide its order dated **03.09.2021**, the Hon'ble Supreme Court refused to interfere with the decision rendered by the Hon'ble First bench of the Madras High Court.

24. It is further submitted that the order annexed and relied upon by the applicant in W.P Nos. 18753 of 2019 is nothing but an interim order which is not a conclusive determination or settled decision of the law. It is submitted that the said matter in W.P No. 18753 of 2019 was closed on 10.02.2020 and as such any previous interim order before the matter had attained finality cannot be relied upon by the Applicant and is liable to not be considered. The said argument is countenanced by the observation of the Hon'ble High Court of Madras in W.P No. 35885 of 2019 vide order dated 11.03.2021 :

"23.Insofar as the order dated 12.12.2019 passed in W.P.No.18753 of 2019 by the Division Bench of this Court is concerned, it is only an interim order and the said writ petition is still pending on the file of this Court. An interim order cannot be used as a precedent when another Division Bench of this Court has earlier authoritatively decided the question in issue by holding that the Indian Road Congress Guidelines are not mandatory. Furthermore, in the Division Bench judgment of the Madurai Bench of Madras High Court in a batch of writ petitions referred to supra has given due consideration to the decision of the Hon'ble Supreme Court in Arti Devi Dangi case referred to supra and only thereafter has come to the conclusion that the Indian Road Congress Guidelines are not mandatory. The other writ petitions referred to in the order dated 12.12.2019 passed in W.P.No.18753 of 2019 are all Public Interest Litigations which are still pending on the file of this Court and the fifth respondent is also not a party in those litigations. Therefore, this Court is of the considered view that insofar as the first issue for consideration namely whether Indian Road Congress Guidelines is mandatory or not will have to

be answered in favour of the fifth respondent by holding Indian Road Congress Guidelines are not mandatory.”

25. It is also further submitted that the reliance placed upon by the Applicant upon a letter issued by the Principal Secretary to the Government dated 08.02.2020, with respect to the application of IRC Norms in the State, cannot be considered since the letter will not find place to be mandatorily acted upon unless the same has been adopted into a statute. It is submitted that the said issue has already been settled accordingly, by the Hon'ble Madras High Court vide its order dated 11.03.2021 in W.P Nos. 35885 of 2019 and the same is enumerated hereunder :-

“22.

...

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. In the communication dated 08.11.2019 of the Assistant Divisional Engineer, Highways as well as the communication dated 08.02.2020 issued by the Principal Secretary to Government of Tamil Nadu there is no reference to any statute and therefore, the said communications are only in the nature of instructions and is not mandatory in nature. The official respondent before this Court have not raised any objection whatsoever for setting up of the petrol bunk by the fifth respondent in the subject location. Hence, it is clear that there is no illegality committed by the second respondent in granting No Objection Certificate to the fifth respondent for setting up a petrol bunk in the subject location.”

C. Violation of G.O. (Ms). No. 79 dated 04.05.2017 issued under Tamil Nadu Town and Country Planning Act, 1971

&

D. Without Permission from the local authority under Tamil Nadu Town and Country Planning Act, 1971.

26. With respect to the grounds alleging that the subject site is an agricultural land and that no permission was sought to convert it for Non – Agricultural Purposes in view of the G.O Ms. No. 79 dated 04.05.2017 passed under the Tamil Nadu Town and Country Planning Act, 1971 and that no site development approval was obtained by this Respondent, it is submitted that the same are issues which are not within the purview of the NGT Act and jurisdiction conferred upon to this Hon'ble Tribunal by the National Green Tribunal Act, 2010 and the same needs to be agitated only before the appropriate forum.

27. It is submitted that in any case, there are precautionary measures as well as punitive measures in case of any violation of any of the conditions in the CPCB Guidelines. It is submitted that this Respondent has already undertaken to follow whatever directions are given by CPCB or this Hon'ble Tribunal.

28. It is submitted that this present applicant has been filed this present application with vested and malafide interests, only with an intention to unnecessarily agitate and make false and baseless allegations as against this respondent and the same is liable to be condemned heavily by this Hon'ble Tribunal and it is requested that this Hon'ble Tribunal may impose exemplary costs on the applicant, for filing this bogus and highly malafide application, so as to prevent this applicant from filing such baseless applications and misusing the powers of this Hon'ble Tribunal.

For the reasons stated above, it is therefore humbly prayed that this Hon'ble Tribunal may be pleased to dismiss the above application as devoid of merits with heavy cost and pass such further or other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case and thus render justice.



COUNSEL FOR 6th RESPONDENT